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

   (janitorial supplies as needed through 12/31/24)
   $50,000.00
1. (Cont’d):

**FIRE**
A2. Pickrel Brothers, Inc. (plumbing and related supplies as needed through 12/31/21) $5,000.00

**PLANNING, NEIGHBORHOODS AND DEVELOPMENT**
B1. Comptech Computer Technologies, Inc. (temporary staffing services as needed through 12/31/21) $30,000.00

**PROCUREMENT, MANAGEMENT AND BUDGET**
C1. Bound Tree Medical LLC (PPE gloves) $44,457.70
C2. Fastenal Company (PPE gloves) $50,400.00
C3. PH&S Products LLC (PPE gloves) $11,582.50

**WATER**
D1. Friends Service Company, Inc. dba FriendsOffice (office furniture including delivery and installation services) $20,298.49

-Depts. of Fire, Planning, Neighborhoods and Development, Procurement, Management and Budget, and Water. **Total: $211,738.69**

**B. Construction Contract:**

2. **Bladecutters, Inc. – Award of Contract** – for Nuisance Abatement Program Residential Demolition III – 2020 (10% SBE and 10% MBE Participation Goal/ 15% SBE Participation Achieved - Department of Planning, Neighborhoods and Development/Housing Inspection. $225,300.00 (Thru 12/31/22)

**C. Revenue to the City:**

3. **Barrett Paving Materials Inc.– Contract Modification** – for off-duty police security and traffic control during ODOT Project #20-0603 – Department of Police/Director. $129,536.00 (Paid to the City)
E. Other – Contributions, Etc.:

4. JJR Solutions, LLC and Tangram Flex, Inc. – Dayton Economic Attraction Program (DEAP) Annual Payments – Department of Planning, Neighborhoods and Development.  
\[\text{\$179,079.70} \]  
(Thru 12/31/21)

IV. LEGISLATION:

Emergency Ordinances – First and Second Reading

5. No. 31899-21 Amending Section 36.01 of the Revised Code of General Ordinances Relating to the Department of Finance, and Declaring an Emergency.

6. No. 31900-21 Determining to Proceed with the Acquisition, Construction and Improvement of Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

Emergency Resolutions – First and Second Reading:

7. No. 6592-21 Authorizing the City Manager to Accept the American Rescue Plan Act (“ARPA”) Grant from the United States of America, Department of Transportation for the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport on Behalf of the City of Dayton in an Amount Not to Exceed Eight Million Seven Hundred Eighty-One Thousand Six Hundred Twenty-Nine Dollars and Zero Cents ($8,781,629.00), and Declaring an Emergency.


9. No. 6594-21 Approving the Necessity of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District and Declaring an Emergency.
10. **No. 6595-21** Authorizing the Acceptance of a Grant Award from the State of Ohio Development Services Agency (ODSA), Minority Business Development Division in an amount up to Four Hundred Fifty Thousand Dollars ($450,000.00) and Declaring an Emergency.

Ordinances – First Reading

11. **No. 31901-21** Authorizing the City of Dayton, Ohio to Furnish Water to the City of Brookville, Ohio and Authorizing the City Manager to Execute the Water Service Agreement and Any Documents and Agreements Related Thereto.

12. **No. 31902-21** To Vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

13. **No. 31903-21** To Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

VI. MISCELLANEOUS:

- **ORDINANCE NO. 31904-21**
- **RESOLUTION NO. 6596-21**
- **IMPROVEMENT RESOLUTION NO. 3599-21**
- **INFORMAL RESOLUTION NO. 991-21**
City Manager’s Report

From 2730 – PMB/Procurement
Supplier, Vendor, Company, Individual

Name See Below
Address See Below

Date July 21, 2021
Expense Type Purchase Order
Total Amount $211,738.69

2021 Purchase Orders

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

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

Description

FIRE

(A1) P0210413 – H P PRODUCTS CORPORATION dba FERGUSON FACILITIES SUPPLY, NEWPORT NEWS, VA

- Janitorial supplies as needed through 12/31/2021.
- These goods are required to replenish inventories used in daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21007N with pricing through 4/30/2025.
- This amendment increases the previously authorized amount of $10,000.00 by $5,000.00 for a total not to exceed $15,000.00 and therefore requires City Commission approval.
- The Department of Fire requests additional authority of $45,000.00 through 12/31/2024.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6330-1301-71</td>
<td>$5,000.00</td>
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<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-6330-1301-71</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>General Fund</td>
<td>10000-6330-1301-71</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>General Fund</td>
<td>10000-6330-1301-71</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Date

Updated 06/2016
FIRE (CONTINUED)

(A2) P0210208 – PICKREL BROTHERS, INC., DAYTON, OH

- Plumbing and related supplies as needed through 12/31/2021.
- These goods are required to replenish inventories for maintenance and repairs.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21006N with firm pricing through 12/31/2021.
- This amendment increases the previously authorized amount of $10,000.00 by $5,000.00 for a total not to exceed $15,000.00 and therefore requires City Commission approval.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
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<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6330-1301-71</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

PLANNING, NEIGHBORHOODS AND DEVELOPMENT – HOUSING AND INSPECTIONS

(B1) P0211034 – COMPTECH COMPUTER TECHNOLOGIES, INC., CENTERVILLE, OH

- Temporary staffing services as needed through 12/31/2021.
- These services are required to augment staff to maintain daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
- The Department of Planning, Neighborhoods and Development recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-2320-1159-32</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>

PROCUREMENT, MANAGEMENT AND BUDGET – PROCUREMENT

(C1) P0211023 – BOUND TREE MEDICAL LLC, DUBLIN, OH

- PPE gloves.
- These goods are required to protect City employees during the COVID-19 pandemic.
- Twelve (12) possible vendors were solicited and seven (7) responses were received. This order establishes firm pricing through 9/30/2021.
- One hundred percent (100%) of funding is from the Coronavirus Aid, Relief and Economic Securities (CARES) Act.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Coronavirus Local Relief Fund</td>
<td>28133-9980-1384-99-CRF27</td>
<td>$44,457.70</td>
</tr>
</tbody>
</table>
(C2) P0211024 – FASTENAL COMPANY, DAYTON, OH
- PPE gloves.
- These goods are required to protect City employees during the COVID-19 pandemic.
- Twelve (12) possible vendors were solicited and seven (7) responses were received. This order establishes firm pricing through 9/30/2021.
- One hundred percent (100%) of funding is from the Coronavirus Aid, Relief and Economic Securities (CARES) Act.
- Fastenal Company qualifies as a Dayton local entity.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Coronavirus Local Relief Fund</td>
<td>28133-9980-1384-99-CRF27</td>
<td>$50,400.00</td>
</tr>
</tbody>
</table>

(C3) P0211033 – P H & S PRODUCTS LLC, MINERVA, OH
- PPE gloves.
- These goods are required to protect City employees during the COVID-19 pandemic.
- Twelve (12) possible vendors were solicited and seven (7) responses were received. This order establishes firm pricing through 9/30/2021.
- One hundred percent (100%) of funding is from the Coronavirus Aid, Relief and Economic Securities (CARES) Act.
- The Department of Procurement, Management and Budget recommends acceptance of the lowest and best response(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Coronavirus Local Relief Fund</td>
<td>28133-9980-1384-99-CRF27</td>
<td>$11,582.50</td>
</tr>
</tbody>
</table>
WATER – WATER UTILITY FIELD OPERATIONS

(D1) **P0211032 – FRIENDS SERVICE COMPANY, INC. dba FRIENDSOFFICE, MORaine, OH**
- Office furniture including delivery and installation services.
- These goods and services are required to replace old furnishings worn beyond economical repair for the Water Distribution and Sewer Maintenance building locations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 17047D with firm pricing through 9/30/2022.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
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<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3445-1301-54</td>
<td>$9,519.31</td>
</tr>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>55000-3445-1301-54</td>
<td>$5,909.76</td>
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<tr>
<td>2021</td>
<td>Water Operating</td>
<td>58000-3445-1301-54</td>
<td>$4,869.42</td>
</tr>
</tbody>
</table>

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

From: 2320 - Planning, Neighborhoods & Dev. / Housing & Inspections

Name: Bladcutters Inc.
Address: 5440 N. Dixie Dr.
Dayton, Ohio 45414

Date: July 21, 2021
Expense Type: Award of Contract
Total Amount: $225,300.00 (thru 12/31/22)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
General Fund | 16022-2320-1174-32 | $225,300.00

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

Description:

NUISANCE ABATEMENT PROGRAM
RESIDENTIAL DEMOLITION III – 2020
(10% SBE and 10% MBE PARTICIPATION GOAL/15% SBE PARTICIPATION ACHIEVED)

The Contractor will supply all materials, tools and personnel for the demolition and disposal of approximately 10 residential structures and all associated building material and incidentals thereto. All properties listed below are fire damaged or emergency demolition piles with debris to be disposed of as asbestos-containing material. The contract work includes all demolition activities, excavation, back-fill, site grading, landscaping, and seeding. The properties to be removed are: 324 Savannah Ave., 845 Kumler Ave., 1955-57 W. Grand Ave., 46 S. Garfield St., 71 S. Garfield St., 1325 Xenia Ave., 20 S. Jersey St., 1321 Schaeffer St., 25 N. McGee St., 252 Hock St. and 21 Crown Ave.

Four bids were received for this project. It is recommended that the contract be awarded to the second lowest bidder, Bladcutters Inc., in the amount of $225,300.00, $220,300.00 base bid and $5,000.00 Alternate 1 Contingency Allowance. The estimated cost for the project was $307,000.00. The time bid for completion is 100 working days. Please note that Badger Construction Company Inc. was the lowest bidder but unable to provide the required insurance for this project so the Department of Planning, Neighborhoods & Development, with the Department of Law’s guidance, decided to award the next lowest bidder, Bladcutters.

This project is being funded using Demolition Special Projects funds.

A Certificate of Funds, Tabulation of Bids, Human Relations Council’s verification letter, and the Bid Form from the firm recommended for award are attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 10/2019
# CERTIFICATE OF FUNDS

### SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Contract Start Date</strong></th>
<th><strong>Expiration Date</strong></th>
<th><strong>Original Commission Approval</strong></th>
<th><strong>Initial Encumbrance</strong></th>
<th><strong>Remaining Commission Approval</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon Execution</td>
<td>12/31/22</td>
<td>$225,300.00</td>
<td>$225,300.00</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Original CT/CF</strong></th>
<th><strong>Increase Encumbrance</strong></th>
<th><strong>Decrease Encumbrance</strong></th>
<th><strong>Remaining Commission Approval</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Required Documentation

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

### Amount

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>16022</td>
<td>$225,300.00</td>
</tr>
</tbody>
</table>

### Add additional pages for more FOAPALs

- **Vendor Name:** Bladecutters Inc. 937-274-3861
- **Vendor Address:** 5440 N. Dixie Dr. Dayton, Ohio 45414
  - Street: __________
  - City: Dayton
  - State: Ohio
  - Zipcode + 4: __________
- **Federal ID:** 31-1265427
- **Commodity Code:** 96832
- **Purpose:** Nuisance Abatement Program Residential Demolition III - 2020
  - (10% SBE and 10% MBE Participation Goal)

### Contact Person

- **Ariane Cook**

### Originating Department Director's Signature

- Signature: 
- Date: 8-Jul-21

### 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 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:** 7/13/2021

### CF Prepared by

- **Jeanne Williams**
- **Date:** 7/13/2021
- **CF/CT Number:** CT21-3020

October 18, 2011
"CF Bladecutters-NAP Residential Demo III-2020" History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-07-08 - 8:20:06 PM GMT - IP address: 198.30.33.2

Document emailed to Todd M. Kinskey (todd.kinskey@daytonohio.gov) for signature
2021-07-08 - 8:20:26 PM GMT

Email viewed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
2021-07-09 - 12:20:59 PM GMT - IP address: 198.30.33.2

Document e-signed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-07-09 - 12:21:21 PM GMT - Time Source: server - IP address: 198.30.33.2

Agreement completed.
2021-07-09 - 12:21:21 PM GMT
Dayton, Ohio

Department of Public Works

Bid Tabulation For: Nuisance Abatement Program
Residential Demolition III – 2020
(10% SBE and 10% MBE Participation Goal)

<table>
<thead>
<tr>
<th>Bid Opening Date:</th>
<th>Cost Estimate:</th>
<th>Estimated Time Of Completion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 3, 2020</td>
<td>$307,000.00</td>
<td>100 Working Days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bidders</th>
<th>Actual Amount Of Base Bid</th>
<th>Adjustment For Work Days</th>
<th>Adjustment For Comparison Purposes Only</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Badger Construction Company</em></td>
<td>$206,000.00</td>
<td>-0-</td>
<td>$206,000.00</td>
</tr>
<tr>
<td>Bladecutters Inc.</td>
<td>$220,300.00</td>
<td>-0-</td>
<td>$220,300.00</td>
</tr>
<tr>
<td>Andistic</td>
<td>$230,890.00</td>
<td>-0-</td>
<td>$230,890.00</td>
</tr>
<tr>
<td>Roxanna Clearing and Demo</td>
<td>$271,926.00</td>
<td>-0-</td>
<td>$271,926.00</td>
</tr>
</tbody>
</table>

*Awarded
Revised 9/14/98
March 26, 2021

TO: Don Long, Interim Division Manager
    Division of Housing Inspection
    Department of Planning & Community Development

FROM: Chrisondra Goodwine, Interim Business & Technical Assistance Administrator
      Human Relations Council (HRC)

SUBJECT: Nuisance Abatement Program, Residential Demolition II - 2020

The apparent low bidder, Badger Construction Co., submitted a bid utilizing one (1) PEP certified contractor to meet the project's participation goal. However, the low bidder, Badger Construction Co., informed the Department of Planning & Community Development that they were unable to obtain the required insurance for the project. The Department of Planning & Community Development did not waive the insurance requirement and move forward with the second lowest bidder. The second low bidder, Bladecutters Inc., submitted a bid utilizing one (1) PEP certified contractor to meet the project's participation goal.

The HRC's contract compliance analysis has verified that Bladecutters Inc., is an approved bidder in the City of Dayton’s Affirmative Action Assurance program and that the company’s authorized representative signed the Contractor’s Certification to indicate fair hiring practices.

The recommended company to receive the above-mentioned construction award is as follows:

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Amount of Base Bid + Alternate 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bladecutters Inc.</td>
<td>$220,300.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Certified Business Participation</th>
<th>Committed Dollar Amount</th>
<th>% Toward Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>EWOL Trucking</td>
<td>$22,530.00</td>
<td>10% MBE</td>
</tr>
<tr>
<td>EWOL Trucking</td>
<td>$22,530.00</td>
<td>10% SBE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Committed Participation</th>
<th>10% MBE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10% SBE</td>
</tr>
</tbody>
</table>

The attached participation forms should be included with the contract agreement. Contract compliance will include meeting verified participation and minimal worker utilization goals as stated.
PEP-CERTIFIED

(SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSE).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Bladecutters Inc
Address: 5440 N Duke Dr
City: Dayton
State: OH ZIP: 45414
Telephone: 9377243861 Email: info@bladecutters.com
Primes Base Bid $ 225,300.00
Name of Project: Nuisance Abatement Program Residential Demo II-202

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Ewok Trucking
PEP-Certified Firm's Tax ID#: 81-1478486
Scope of Work to Be Performed by Certified Firm: Trucking

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid $ 225,300.00</td>
<td>% 20</td>
<td>$ 45,060.00</td>
</tr>
<tr>
<td>Materials $</td>
<td>%</td>
<td>$</td>
</tr>
<tr>
<td>Labor $</td>
<td>%</td>
<td>$</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

John Scott
(Printed Name of Bidder/Proposer's Authorized Agent)

President
(Title of Bidder/Proposer's Authorized Agent)

11-30-2020
(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid

Nuisance Abatement Program
Residential Demo III - 2020

10% SBE & 10% MBE

Bidder
Bladecutters Inc
5440 N Dixie Dr
Dayton, Ohio 45414
### Nuisance Abatement Program, Residential Demolition III # 2020 (#7384137)

**Owner:** Dayton OH, City of  
**Solicitor:** Dayton OH, City of  
**12/03/2020 12:00 PM EST**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Item Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>324 Savannah Ave, R72 13204 0002 LOT 48165 P7</td>
<td>LUMP</td>
<td>1</td>
<td>$19.100.00</td>
<td>$19.100.00</td>
</tr>
<tr>
<td>2</td>
<td>1845 Kummer Ave, R72 07708 0057 LOT 39876</td>
<td>LUMP</td>
<td>1</td>
<td>$19.100.00</td>
<td>$19.100.00</td>
</tr>
<tr>
<td>3</td>
<td>1955-57 W Grand Ave, R72 07904 0014 LOT 35500</td>
<td>LUMP</td>
<td>1</td>
<td>$20.100.00</td>
<td>$20.100.00</td>
</tr>
<tr>
<td>4</td>
<td>46 S Garfield St, R72 02204 0095 LOT 11318</td>
<td>LUMP</td>
<td>1</td>
<td>$19.100.00</td>
<td>$19.100.00</td>
</tr>
<tr>
<td>5</td>
<td>71 S Garfield St, R72 02204 0061 LOT 11119</td>
<td>LUMP</td>
<td>1</td>
<td>$22.300.00</td>
<td>$22.300.00</td>
</tr>
<tr>
<td>6</td>
<td>1325 Xenia Ave, R72 02306 0013 LOT 14480 P1</td>
<td>LUMP</td>
<td>1</td>
<td>$20.100.00</td>
<td>$20.100.00</td>
</tr>
<tr>
<td>7</td>
<td>20 S Jersey St, R72 04610 0028 LOT 17668</td>
<td>LUMP</td>
<td>1</td>
<td>$22.100.00</td>
<td>$22.100.00</td>
</tr>
<tr>
<td>8</td>
<td>1321 Schoeffer St, R72 05204 0074 LOT 23128</td>
<td>LUMP</td>
<td>1</td>
<td>$20.100.00</td>
<td>$20.100.00</td>
</tr>
<tr>
<td>9</td>
<td>25 N McGee St, R72 04604 0063 LOT 15707-08 P1S</td>
<td>LUMP</td>
<td>1</td>
<td>$18.100.00</td>
<td>$18.100.00</td>
</tr>
<tr>
<td>10</td>
<td>252 Hoch St, R72 00004 0036 LOT 1799-1800 P1S</td>
<td>LUMP</td>
<td>1</td>
<td>$19.100.00</td>
<td>$19.100.00</td>
</tr>
<tr>
<td>11</td>
<td>21 Crown Ave, R72 15503 0077 LOT 64366-64367P1</td>
<td>LUMP</td>
<td>1</td>
<td>$21.100.00</td>
<td>$21.100.00</td>
</tr>
</tbody>
</table>

**Alternate No. 1 Contingency Allowance**  
$5,000.00

**Contingency Allowance ($5,000)**  
LUMP            | 1        | $5,000.00 | $5,000.00 |

**Base Bid Total**  
$220,300.00
Bidder is
An Individual
Firm Name

Business Address

Telephone

Partnership
Firm Name

Members of Firm and
Their Business Address

Corporation
Name

State of Incorporation

Name and Title of
Officers with Authority
to Sign Contract

Home Office Address

Local Address

Telephone

Federal I.D. # 31-1265427

Dated this 20 day of NOV, 2020

Bidder: Bladecutters Inc

(Person, Firm, or Corporation)

By: 

Title: President
DISCLOSURE OF LITIGATION

Disclosure of Litigation: Have you or any person, group, partnership, company, or corporation affiliated with you been engaged in the past three (3) years in litigation, mediation or any form of contractual dispute resolution with any state government or any political subdivision thereof including, without limitation, the State of Ohio, the City of Dayton, Ohio, or Montgomery County, Ohio? For the purpose of your response, “affiliated” means directly or indirectly controlling, controlled by, or under common control, with “control” meaning legally or operationally in a position to exercise restraint or direction over the other.

RESPONSE: YES ☐ NO ☒

If your response is “YES” please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.
"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned Bladecutters, Inc.
5440 N. Dixie Drive Dayton, Ohio 45414
as principal and Westfield Insurance Co. as sureties, are hereby held and firmly bound unto City of Dayton
as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on December 3rd, 2020 to undertake the project known as Nuisance Abatement Program, Residential Demolition III - 2020. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate bids made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of _______ dollars. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrator, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has submitted a bid for Nuisance Abatement Program, Residential Demolition III - 2020.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid or the costs, in connection with the resubmission of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void; otherwise to remain in full force and effect, if the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein:

Now also, if the said Bladecutters, Inc.
shall well and faithfully do and perform the things agreed by Bladecutters, Inc.
to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials suppliers or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omission, or additions, in or to the terms of the said contract or in or to the plans or specifications thereof shall in any wise affect the obligations of said surety on its bond."

Signed this 19 day November 2020

PRINCIPAL: Bladecutters, Inc.

TITLE: [Signature]

SURETY: WESTFIELD INSURANCE CO.

TITLE: [Signature] Attorney-in-fact

SURETY COMPANY ADDRESS:
BOND DEPARTMENT
WESTFIELD INSURANCE CO.
P. O. BOX 5001, 1 PARK CIRCLE
WESTFIELD CENTER, OHIO 44251-5001

SURETY COMPANY ADDRESS:
AGENCY NAME: Hamler Gingrich Insurance Agency
STREET: 102 N. Miami St
CITY, STATE, ZIP: West Milton, Ohio 45383
General
Power of Attorney

CERTIFIED COPY

Know All Men by These Presents. That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company", and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
MARK T. HAMLER, LINDA K. SWIGART, MATT JAMES GINGRICH, TIFFANY MORGAN, KURT HAMLER, JULIE A. PAULUS,
JOINTLY OR SEVERALLY
of WEST MILTON and State of OH its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, undertakings, and recognizances; provided, however, that the penal sum of any such instrument executed hereunder shall not exceed SEVEN MILLION DOLLARS AND NO CENTS ($7,000,000)--

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and hereby vested with full power and authority to appoint one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:
The Attorney(s)-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company’s liability thereunder, and any such instruments so executed by any such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary.
"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000)

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereinafter affixed this 02nd day of JANUARY A.D. 2020.

[Seals and Signatures]

By
Gary W. Stumper, National Surety Leader and Senior Executive

On this 02nd day of JANUARY A.D. 2020, before me personally came Gary W. Stumper to me known, who, being by me duly sworn, did depose and say, that he resides in Hartford, CT; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

David A. Kotnik, Attorney at Law. Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

Frank A. Carrino, Secretary

BPOAC1 (combined) (06-02)
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 3)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General Ordinances,

I, [Name], hereby certify that

[Company Name], meets the following Contractor requirements relating to this City of Dayton construction project.

Check All That Apply:

☑ Comply with all City of Dayton income tax obligations and requirements

☑ Maintain worker’s compensation insurance for all employees as required by the State of Ohio

☑ Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project

☑ Comply with the State of Ohio Bureau of Worker’s Compensation Drug Free Workplace Policy

☑ Maintain an unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services

☑ Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By: [Signature]

Title: [Title]

Date: [Date]
CITY OF DAYTON, OHIO  
Department of Public Works  

Responsible Contractor Bidding Requirements  
(Form 2 of 3)  

A. Please provide a complete listing of the fringe benefits provided to employees, including but not limited to health insurance and retirement benefits.

<table>
<thead>
<tr>
<th>Benefit</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>401 K Health Insurance</td>
<td></td>
</tr>
</tbody>
</table>

B. Please identify any “bona fide apprentice training program” in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

<table>
<thead>
<tr>
<th>Program Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EWOK Trucking</td>
<td></td>
</tr>
</tbody>
</table>
D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

- Ewok Truckers
- 
- 
- 
- 

E. Provide a complete listing of any determinations of the bidder's violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 3 years.

- 
- 
- 
- 
- 
- 
CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Montgomery, ss:

John L. Scott being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of
Blade Cutters Inc. ("the Contracting Party").

2. The Contracting Party is a/an (select one):

□ Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.

☑ Corporation organized and existing under the laws of the State of Ohio.

□ Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: [Signature]
Title: President
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT

STATE OF Ohio } SS:
COUNTY OF Montgomery }

John L. Scott, being first duly sworn deposes and states that:
(1) He/she is President of Bladecutters, that
(owner, partner, officer, representative, or agent)
(business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering.

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from offering in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Dayton, its employees, or citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including the affiant.

SIGNED
President
TITLE
AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: Nuisance Abatement Program Residential Demo III - 2022

NAME

LOCATION

During the performance of this contract:

Bladecutters 5440 N Dixie Dr

Dayton OH 45414

937-274-3861/274-9300

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) Goals & Timetables. The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

| Goals of Minority Worker Utilization Expressed in Percentage Terms |
| From 1/1/2000 to Present | 11.5% |

| Goals of Female Worker Utilization Expressed in Percentage Terms |
| From 4/1/80 to Present | 6.9% |
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2) **Specific Affirmative Action Steps.** A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives’ meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor’s employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor’s employees needs consistent with its obligations under Part l.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.
Part II: Contractor’s Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR’S CERTIFICATION

Bladecutters Inc. (Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.

Trucking

a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor’s aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN: ____________________________

(Signature of Authorized Representative of Bidder)

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ
City Commission approval is requested for a modification to a Service Agreement with Barrett Paving Materials Inc., 3751 Commerce Dr., Franklin, Ohio 45005. Barrett Paving Materials Inc. has requested off-duty police to provide security and traffic control during ODOT Project#20-0603, in various locations all within the municipal corporation limits of the City of Dayton, Ohio that began on Monday, April 12, 2021 and will continue through Friday, December 31, 2021.

The original contracted amount of $9,715.20 was for 120 officer hours at a rate of $66.68 per hour, 120 vehicle hours at a rate of $13.00 per hour and 120 night differential hours at a rate of $1.28 per hour. The original contract was under $10,000.00 and did not require Commission approval.

The First Amendment to the agreement is for an additional 1,480 officer hours at a rate of $66.68 per hour, 1,480 vehicle hours at a rate of $13.00 per hour and 1,480 night differential hours at a rate of $1.28 per hour. The total estimated revenue is $129,536.00 and thus requires Commission approval.

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

The Certificate of Revenue is attached.
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name: Barrett Paving Materials Inc.
Address: 3751 Commerce Drive

City: Franklin State: Ohio Zip+4: 45005

Customer #: 133003901 Address Location #: P1

Federal ID#: 13-3003901

Revenue Information: Fund: 10000 Organization: 6210 Revenue: 22611 Program: 71

Contract Information: Contract Start Date: 04/12/2021 Contract Expiration Date: 12/31/2021

Billing Information: Rate: Off. $66.68 - X Arrears X Pre-bill X
Sgt. $77.33
Lt. $89.68
Shift Diff. $1.28 - X
Veh $13.00 - X

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

Other (explain): Estimated Revenue $129,536.00 + Monthly Invoiced

Rate Change Date: TBD Rate Change Amount: TBD

Description of Services (wording on invoice): To provide security and traffic control during DOT Project#20-0603, in various locations all within the municipal corporation limits of the City of Dayton, Ohio beginning on Monday, April 12, 2021 through Friday, December 31, 2021.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 5-3901 Auditor: D Billig Date: 7/12/2021

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

Director of Finance

E-SIGNED by Eric Henderson on 2021-07-08 18:48:46 GMT
FIRST AMENDMENT TO THE AGREEMENT BETWEEN BARRETT PAVING MATERIALS INC. AND THE CITY OF DAYTON, OH

This First Amendment to the original Agreement (hereinafter “Agreement”) between the Barrett Paving Materials Inc. and the City of Dayton, Ohio (hereinafter “City”), is effective __________, 2021.

WHEREAS, Barrett Paving Materials Inc. and the City entered into the Agreement effective Monday, April 12, 2021 (“Original Agreement”); and

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

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

Section 1. Replace Exhibit A with the following:

Exhibit A

1. Scope of Services/Event Information

   A. To provide security and traffic control during ODOT Project#20-0603, in various locations all within the municipal corporation limits of the City of Dayton, Ohio beginning on Monday, April 12, 2021 through Friday, December 31, 2021.

2. Payment/Cost/Method of Payment

   A. PAYMENT

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

   Work hours requested and invoiced will include travel time, up to a maximum of thirty (30) minutes per officer, per shift, from the designated Dayton Police Department District to and from the requested coverage location.

   Said hourly rates listed above reflect an amount equal to 1-1/2 times the current regular hourly rate of pay as established by the current labor agreement between the City and the Fraternal Order of Police, John C. Post Lodge #44 for each rank of police personnel, plus fringe benefits. Contractor agrees to pay any increase in the foregoing hourly rates of pay of police personnel required by said labor agreement or necessitated by negotiation of a new labor agreement or any regulation, order or law related to police personnel compensation binding upon the City. "Fringe benefits," as used herein includes pension, Workers' Compensation and other similar employer costs, as determined by the City's Finance Department.
B. ESTIMATED COST: $129,536.00 (1600 Officer Hours @ $66.68 per hour; 1600 Night Differential @ $1.28 per hour; 1600 Vehicle Hours @ $13.00 per hour)

C. METHOD OF PAYMENT: Invoiced Monthly

3. Contractor’s Authorized Representative/Contact

NAME: Cole Barney
ADDRESS: 3751 Commerce Dr.
Franklin, Ohio 45005
Cell: (937) 776-0470

4. Officers Assigned to Event, Rank: 1 Officer

Section 2. Except as amended herein, all other provisions of the Agreement, as now amended, remain in full force and effect and remain unchanged.

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

WITNESSED BY:  

Witness: Scott Weeks

CITY OF DAYTON, OHIO

City Manager

BARRETT PAVING MATERIAL INC.

Brian Motolik, 6.29.2021
Project Manager

APPROVED BY:

E-SIGNED by Eric Henderson on 2021-07-08 18:48:53 GMT
Director and Chief of Police

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

______________________________, 2021
Min./Bk. ________ Pg. __________

CLERK OF THE COMMISSION

APPROVED AS TO FORM AND CORRECTNESS:

_________________________, 6/21/2021

X  John Musto for  
City Attorney

Signed by: Musto, John
AGREEMENT

THIS AGREEMENT is made this 25 day of March 2021, between the City of Dayton, Ohio ("City") and Barrett Paving Materials Inc., 3751 Commerce Dr., Franklin, Ohio 45005. ("Contractor").

WITNESSETH THAT:

WHEREAS, the City, upon request by a private person, firm, corporation, or institution, may detail off-duty police officers to perform police-related functions pursuant to the authority of Section 35.27 of the Revised Code of General Ordinances of the City of Dayton; and

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

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

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

Section 1. Subject to Sections 2 and 3, the City agrees to make available certain police personnel to perform the police-related functions which are further explained in Exhibit A attached hereto and incorporated herein, beginning Monday, April 12, 2021.

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

Section 2. Unless waived by the City, Contractor shall notify the City at least fourteen (14) days in advance of the date(s) for which the police services are requested. The notice shall be given to the City’s Chief of Police or his/her authorized representative, and shall specify the number and rank of police personnel requested and the hours and specific location(s) where the police services are needed.

The City’s Chief of Police or authorized representative shall have final authority for determining the availability of off-duty police personnel and the number and rank of such police personnel needed to provide an adequate level of security, traffic control and/or crowd control for the specified date(s) and location(s).
Section 3. All police personnel assigned pursuant to this Agreement shall remain subject to the authority of the City’s Chief of Police, and shall act and respond in accordance with established City police procedures, rules and regulations. The duties and responsibilities of the police personnel assigned pursuant to this Agreement, including chain of command duties and responsibilities, shall be determined in accordance with the City’s established police procedures, rules and regulations.

Off-duty police personnel assigned pursuant to this Agreement may be reassigned, without notice to Contractor, to other locations and/or to perform other police services, functions or duties as required by the City’s established police procedures, rules and regulations or by exigent circumstances requiring a police response.

Section 4. Contractor shall pay the City for the services of the police personnel assigned pursuant to this Agreement as outlined in Exhibit A. Work hours requested and invoiced will include travel time, up to a maximum of thirty (30) minutes per officer, per shift, from the designated Dayton Police Department District to and from the requested coverage location.

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

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

Section 7. Contractor shall defend, indemnify and save harmless the City and its officers, employees, and representatives from and against all expenses (including attorney’s fees), damages, claims, suits or liabilities of every kind, including, but not limited to: false arrest, detention, malicious prosecution; libel, slander, or defamation of character; violation of an individual’s right of privacy; assault and battery; discrimination; violation of civil rights; improper service of process; and any other liability arising out of or in any way related to the provision and performance of the police services to be provided hereunder.

Section 8. In addition to all other remedies available to the City, this Agreement shall be subject to termination by the City should any one or more of the following events occur or for the following reasons: (i) Without cause, with fifteen (15) days prior written notice, sent Certified U.S. Mail to Contractor at the address set forth above or such other address as may be specified by Contractor; or (ii) if Contractor shall default in or fail to make payment(s) for the police services at the times and in the amounts as required of it under this Agreement, and said default is not cured by amounts due and owing within fifteen (15) days after the City notifies Contractor of such default.
Section 9. This Agreement shall be for the period of Monday, April 12, 2021 through Friday, December 31, 2021.

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

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

CITY OF DAYTON, OHIO

City Manager

BARRETT PAVING MATERIALS INC.

Brian Motolik
Project Manager

E-QUEED by Matt Carper
on 2021-03-30 17:03:25 GMT
Director and Chief of Police

E-Mail: cole.barney@barrett paving.com
Office: (513) 833-7352

Federal I.D. Number: 13-3003901

APPROVED AS TO FORM AND CORRECTNESS:

E-SIGNED by John Musto
on 2021-03-18 19:50:16 GMT
City Attorney

THIS AGREEMENT HAS BEEN APPROVED AS TO FORM AND CORRECTNESS BY THE DAYTON CITY ATTORNEY. THIS AGREEMENT IS IN AN AMOUNT OF TEN THOUSAND DOLLARS ($10,000) OR LESS. NO CITY COMMISSION ACTION IS REQUIRED.
Exhibit A

1. Scope of Services/Event Information

   A. To provide security and traffic control during ODOT Project#20-0603, in various locations all within the municipal corporation limits of the City of Dayton, Ohio beginning on Monday, April 12, 2021 through Friday, December 31, 2021.

2. Payment/Cost/Method of Payment

   A. PAYMENT

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

       Work hours requested and invoiced will include travel time, up to a maximum of thirty (30) minutes per officer, per shift, from the designated Dayton Police Department District to and from the requested coverage location.

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

   B. ESTIMATED COST: $9,715.20 (120 Officer Hours @ $66.68 per hour; 120 Night Differential @ $1.28 per hour; 120 Vehicle Hours @ $13.00 per hour)

   C. METHOD OF PAYMENT: Prepaid $2,428.80 (25% of Estimated Cost) + Invoiced Monthly

3. Contractor's Authorized Representative/Contact

   NAME: Cole Barney
   ADDRESS: 3751 Commerce Dr.
             Franklin, Ohio 45005
   Cell: (937) 776-0470

4. Officers Assigned to Event, Rank: 1 Officer

   Note: Please email invoices to: bmotolik@barrett-paving.com

5
City Manager’s Report

Date July 21, 2021

Expense Type Other, (See Description Below)
Total Amount $179,079.70 thru 12-31-2021

From 2600 - Planning, Neighborhoods & Dev. / Development
Supplier, Vendor, Company, Individual Various
Address See attached CF’s

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>Development Fund</td>
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<td>$179,079.70</td>
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Includes Revenue to the City ✔ Yes   ☐ No Affirmative Action Program ✔ Yes   ☐ No   ☐ N/A

Description

Dayton Economic Attraction Program (DEAP): Annual Payments

The Department of Planning, Neighborhoods and Development, Division of Development requests approval to disburse annual DEAP grants based on income tax withholdings for net new jobs created. On February 25, 2009 the Dayton City Commission approved DEAP and its policies, eligibility criteria and administrative guidelines by Ordinance No. 30837-09. On November 30, 2016 the Dayton City Commission amended the administrative guidelines by Ordinance No. 31538-16.

DEAP provides an annual grant for three years to qualified companies that create new full-time jobs in the City of Dayton. The annual grant is calculated as a percentage of the income tax collected the prior year. The grant is based on a 2.25% tax rate because the Issue 9 funds are earmarked for specific uses. Based on the new employment and payroll information submitted by the companies and verified by the City’s financial records, these two companies have fulfilled their obligations for DEAP and will receive grants:

- JJR Solutions, LLC (2020)
- Tangram Flex, Inc. (2019 & 2020)

A Certificate of Funds is attached for each company.

Funding source is the Development Fund.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<th>New Contract</th>
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Attach additional pages for more FOAPALs

Vendor Name: JR Solutions LLC
Vendor Address: 607 E. Third Street Suite 400 Dayton Ohio 45402
Federal ID: 26-4200469
Commodity Code: 91849
Purpose: DEAP reimbursement for first year of program.

Contact Person: Jill Bramini
Planning, Neighborhoods & Development/Development 7/12/2021

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 7/13/2021

CF Prepared by: 7/13/2021

Finance Department
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- New Contract

Contract Start Date: upon execution
Expiration Date: 12/31/2021
Original Commission Approval: $103,655.03
Initial Encumbrance: $103,655.03
Remaining Commission Approval: $

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

NO DRAFT DOCUMENTS PERMITTED

Change Order:

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

Amount: $103,655.03
Fund Code: 16300 - 2600 - 1224 - 41 - 00 - 00

Amount:
Fund Code: XXXXX - XXXXX - XXXXX - XXXXX - XXXXX - XXXXX

Attach additional pages for more FOAPALs

Vendor Name: Tangram Flex Inc.
Vendor Address: 607 E. Third Street Suite 500 Dayton Ohio 45402
Street City State Zipcode + 4
Federal ID: 82-4306611
Commodity Code: 91849
Purpose: DEAP reimbursement for first and second year of program.

Contact Person: Jill Bramini
Planning, Neighborhoods & Development/Development 7/12/2021
Department/Division Date

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 7/13/2021
CF/CT Number: CT21-3019
CF Prepared by: 7/13/2021

Finance Department
AN ORDINANCE

Amending the Dayton Economic Attraction Program and Adopting the Policies, Eligibility Criteria, and Administrative Guidelines for the Dayton Economic Attraction Program, and Declaring an Emergency.

WHEREAS, The Commission of the City of Dayton established the Dayton Economic Attraction Program (DEAP) by Ordinance Number 30837-09 on February 25, 2009; and

WHEREAS, The purpose of the DEAP is to be aggressive and proactive in stimulating job growth in the City; and

WHEREAS, Current economic conditions have made business attraction more competitive than ever before; and

WHEREAS, In order to be a more competitive location for businesses Dayton wishes to amend the administrative guidelines to allow for more flexibility in the business incentive program that rewards business for adding jobs in the City; and

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

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

Section 1. The Dayton Economic Attraction Program is hereby amended.

Section 2. The Dayton Economic Attraction Program shall be administered according to the policies, eligibility criteria, and administrative guidelines as specified in Attachment A.

Section 3. The City Manager is authorized to implement the Dayton Economic Attraction Program and recommend projects for consideration by the Dayton City Commission.
Section 4. 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...Nov...30......, 2016

SIGNED BY THE MAYOR...November 30......, 2016

Mayor Whalen
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

Rachel Strawder
Clerk of the Commission

Approved as to form:

Deborah Flounders
City Attorney
November 22, 2016

TO: Shelley Dickstein, City Manager

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

SUBJECT: Ordinance Amending the Administrative Guidelines of the Dayton Economic Attraction Program

This memorandum accompanies and explains the legislation to amend the policies, eligibility criteria, and administrative guidelines of the Dayton Economic Attraction Program (DEAP). On February 25, 2009 the Dayton City Commission approved DEAP and its policies, eligibility criteria, and administrative guidelines by Ordinance number 30837-09.

The Department of Economic Development requests approval of changes to the program to allow for more flexibility as an attraction tool. Changes include:

1. a cap on the total three-year benefit for each business,
2. allowing DEAP to be used for startups with adequate business plans and documentation,
3. DEAP Review Committee changed to Development Fund Allocation Committee, and
4. a change to the benefit percentages for Downtown businesses to 100% in year one, 75% in year two, and 50% in year three.

If you have any questions, please contact Mary Faulkner at extension 3819.

FPW/jb
Attachments
1. Ordinance 30837-09
2. DEAP Incentive Grant Application
3. DEAP Guidelines
4. DEAP Administrative Policies

C: Tammi Clements
   Joe Parlette
AN ORDINANCE

Establishing the Dayton Economic Attraction Program and Adopting the Policies, Eligibility Criteria, and Administrative Guidelines for the Dayton Economic Attraction Program, and Declaring an Emergency.

WHEREAS, Dayton seeks to be aggressive and proactive in stimulating job growth in the City; and

WHEREAS, Current economic conditions have made business attraction more competitive than ever before; and

WHEREAS, In order to stay in front of the competition, Dayton has developed a persuasive new business incentive program that rewards business for adding jobs in the City; and

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

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

Section 1. The Dayton Economic Attraction Program is hereby established.

Section 2. The Dayton Economic Attraction Program shall be administered according to the policies, eligibility criteria, and administrative guidelines as specified in Attachment A.

Section 3. The City Manager is authorized to implement the Dayton Economic Attraction Program and recommend projects for consideration by the Dayton City Commission.

Section 4. 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 February 25, 2009

SIGNED BY THE MAYOR February 25, 2009

Mayor Rhine McLin, City of Dayton, Ohio

ATTEST:

Rachelle Lamarre
Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
AN ORDINANCE

Amending Section 36.01 of the Revised Code of General Ordinances Relating to the Department of Finance 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 and Finance Director have recommended the creation of a new division within the Department of Finance entitled the Division of Finance Administration; and,

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

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

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

Section 1. That Section 36.01 of the R.C.G.O. be, and hereby is, amended to read as follows:

Sec. 36.01. - Department of Finance.

(A) The Department of Finance is created and established, and shall be organized into an Office of the Director, a Deputy Director and the following divisions:

(1) Division of Finance Administration,

(2) Division of Tax and Accounting Administration, and

(3) Division of Utility Revenue Administration.

(B) The Office of the Director shall be in charge of the Director who shall be responsible for and in overall charge of the department and all of its functions, and who shall also have the following powers and duties: 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.

(C) The Division of Finance Administration. This division shall be responsible for the department’s annual budget preparation and management; department performance measures; annual encumbrances and departmental contract administration; training, travel, and professional development of departmental staff; assisting the other department divisions with internal control procedures and monitoring; coordinating project initiatives and city-wide initiatives for the department; and all other duties and responsibilities previously assigned by the Charter or ordinances to the Division Manager, except those duties that have been set explicitly by Ordinance to any other department and/or division.

(D) Division of Tax and Accounting Administration. This division shall be responsible for the administration of the accounts in the General Ledger and the annual reporting and audit of the City’s financial transactions and state; the payment of City and municipal court payrolls and invoices; the receipt and custody of all public monies of the City, including the making and collection of utility revenue and special assessments; the management of all city debt, including the sale of bonds and notes; the investment of funds; the promulgation of rules and regulations related to the City’s income tax; and all other duties and responsibilities previously assigned by the Charter or ordinances to the Division Manager, except those duties that Ordinance has specifically assigned to any other department and/or division.

(E) Division of Utility Revenue Administration. This division shall be responsible for meter reading operations, the preparation of customer bills and the billing of the City’s utility accounts, including the City’s water, sewer, storm, wellfield, and waste collection tariffs and charges, and the enforcement of the rules and regulations of the Department of Water and the Department of Public Works related thereto; utility customer account management, and the operation of the City’s Customer Call Center; and all other duties and responsibilities previously assigned by the Charter or ordinances to the Division Manager, except those duties that Ordinance has specifically assigned to any other department and/or division.

(F) Where necessary for the efficient operation of the Department of Finance, the Director may reassign or expand the functions of the various divisions with the advice and consent of the City Manager.

(G) The Director, Deputy Director and the heads of the divisions above shall serve at the pleasure of the City Manager.

Section 2. The existing Section 36.01 of the Revised Code of General Ordinance of the City of Dayton is hereby repealed.
Section 3. For a reason outlined in the preamble hereof, the Commission declares this Ordinance to be an emergency measure which shall take effect immediately upon its passage.

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

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

Mayor of the City of Dayton, Ohio

Attest:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney
AN ORDINANCE

Determining to Proceed with the Acquisition, Construction, and Improvement of Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, The Commission (“Commission”) of the City of Dayton, Ohio (the “City”) duly adopted Resolution No. 21-59 on July 14, 2021, (the “Resolution of Necessity”), (i) declaring the necessity of acquiring, constructing, and improving the special energy improvement Project defined in the Resolution of Necessity as the Project, located on real property owned by 130 West 2nd Street LLC (the “Owner”) at 130 West 2nd Street within the City (the “Property”, as more fully described in Exhibit A to the Project Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owners’ Project Petition and Supplemental Plan (each as defined in the Resolution of Necessity), including by levying and collecting the Special Assessments (as defined in the Resolution of Necessity) to be assessed upon the Property in a maximum amount sufficient to pay the costs of the Project, which is estimated to be $5,057,325.00, together with other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Dayton Regional Energy Special Improvement District (“ESID”) administrative fees and expenses; and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the ESID; and,

WHEREAS, The claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners and no claims for damages have been filed with this Commission; and,

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

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

Section 1. Definitions. That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.
Section 2. Determination to Proceed. That this Commission declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Project Petition and the Resolution of Necessity. The Project shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Director of the Department of Finance and the Clerk of the Commission.

Section 3. Special Assessments. That the Special Assessments to pay costs of the Project, which are estimated to be $5,057,325.00, together with other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner and its affiliates or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Project Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and the scheduled amounts payable as the ESID administrative fee. The Special Assessments shall be assessed against the Property commencing in tax year 2021 for collection in calendar year 2022 and shall continue through tax year 2040 for collection in calendar year 2041. In addition to the Special Assessments, the Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the Auditor of Montgomery County, Ohio.

Section 4. Amount of Assessments. That the estimated Special Assessments for costs of the Project prepared and filed in the office of the Clerk of the Commission and in the office of the Finance Director, in accordance with the Resolution of Necessity, are adopted.

Section 5. Certification to County Auditor. That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Commission is directed to deliver a certified copy of this Ordinance to the Auditor of Montgomery County, Ohio within fifteen (15) days after the date of its passage.

Section 6. Contracts. That all contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code, the Project Petition, and the Supplemental Plan, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

Section 7. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees
that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 8. Effective Date. 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

CERTIFICATE

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

Clerk of the Commission
City of Dayton, Ohio
July 13, 2021

TO: Shelley Dickstein, City Manager

FROM: Chris Lipson
Department of Planning, Neighborhoods & Development – Division of Development

SUBJECT: An Emergency Ordinance Determining to Proceed with Certain Public Improvements for 130 West Second Street in the Dayton Regional Energy Special Improvement District

The Department of Planning, Neighborhoods & Development, Division of Development is requesting adoption of the attached Ordinance Determining to Proceed with the Acquisition, Construction, and Improvement of Certain Public Improvements Street in the Dayton Regional Energy Special Improvement District (ESID). This will enable the property owners to finance energy efficiency improvements for their property.

We are requesting two readings at one meeting of the ordinance. Additional legislation will be presented next month.

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

If you have any questions, please contact me at extension 3820.

CJL

c: Todd Kinskey
A RESOLUTION

Authorizing the City Manager to Accept the American Rescue Plan Act ("ARPA") Grant from the United States of America, Department of Transportation for the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport on Behalf of the City of Dayton in an Amount Not to Exceed Eight Million Seven Hundred Eighty-One Thousand Six Hundred Twenty-Nine Dollars and Zero Cents ($8,781,629.00), and Declaring an Emergency.

WHEREAS, The United States Congress enacted the American Rescue Plan Act (H.R. 1319), which includes aid for sponsors of commercial service and general aviation airports; and

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

WHEREAS, The funds provided under this Act may be available for any purpose for which airport revenues may lawfully be used; and may not be used for any purpose not directly related to the airport; and

WHEREAS, As a result of the United States of America, Department of Transportation’s desire to expedite this aid, it is necessary to authorize the City Manager to accept the award of all ARPA Grants on behalf of the City of Dayton; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of the Department of Aviation, it is necessary that this Resolution take effect immediately upon passage; now, therefore,

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

Section 1. That the City Manager or her designee is authorized to execute any and all documents and agreements on behalf of the City of Dayton, which are necessary to apply for and accept ARPA Grants awarded by the United States of America acting through the Federal Aviation Administration in an amount not to exceed Eight Million Seven Hundred Eighty-One Thousand Six Hundred Twenty-Nine Dollars and Zero Cents ($8,781,629.00), for any purpose for which airport revenues may lawfully be used at the James M. Cox Dayton International Airport and the Dayton-Wright Brothers Airport.
Section 2. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon adoption.

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

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

Mayor of the City of Dayton, Ohio

ATTEST:

______________________________
Clerk of Commission

APPROVED AS TO FORM:

______________________________
City Attorney
July 13, 2021

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

FROM: Gilbert Turner, Director  
       Department of Aviation

SUBJECT: A Resolution – for the American Rescue Plan Act of 2021  
         (ARPA)

The Department of Aviation submits the attached Resolution for Commission approval. This Resolution authorizes the City Manager or her designee to accept a grant from the United States Department of Transportation through the American Rescue Plan Act of 2021.

The three grants offered through the ARPA as well as Dayton’s eligible funding amounts are as follows:

1. DAY Primary Grant $7,998,056.00
2. DAY Concessionaire Grant - $724,573.00
3. MGY Nonprimary Grant - $59,000.00

The total of the grants for which the Department is eligible is $8,781,629.00. There is no required local match.

Attached is an executable copy of the Resolution approved by the Law Department. If there are any questions, please contact Chris Wimsatt at 454-8211 or Elizabeth Spreng at 454-6529.

GT/clw

Encl.

cc: File
A RESOLUTION

Approving the Petition and Supplemental Plan for Special Energy Improvement Projects Under Ohio Revised Code Chapter 1710, and Declaring an Emergency.

WHEREAS, As set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts ("ESIDs") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and,

WHEREAS, Pursuant to Resolution 6117-15, passed June 24, 2015, this Commission approved the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the "Establishing Petition"), including an initial plan entitled Dayton Regional Energy Special Improvement District Program Plan (the "Program Plan") and Articles of Incorporation of the Dayton Regional Energy Special Improvement District, Inc. (the "Articles"); and,

WHEREAS, Following such approval, the Dayton Regional Energy Special Improvement District (the "District"), an energy special improvement district under the laws of the State of Ohio, and the Dayton Regional Energy Special Improvement District, Inc. (the "Corporation"), a nonprofit corporation under the laws of the State of Ohio, the board of directors of which governs the District in accordance with Ohio Revised Code Chapters 1702 and 1710, were formed; and,

WHEREAS, First Barclay, LLC (the "Owner"), as the owner of certain real property located within the City of Dayton, Ohio (the "City"), has identified certain real property owned by the Owner located at 137 N. Main Street in the City (the "Project Site"), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and,

WHEREAS, The Owner has submitted to the District, and the board of directors of the Corporation (the "Board"), as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, has approved or will approve a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the "Project Petition") and a Supplement to Plan for 137 N. Main Street, Dayton, Ohio Project (the "Supplemental Plan"), which Project Petition and Supplemental Plan request that the Project Site be added to the District and that the City levy special assessments on the Project Site to pay the costs of a special energy improvement project to be provided on
the Project Site, all as described more particularly in the Project Petition and the Supplemental Plan (the “Project”); and,

WHEREAS, On _____________, 2021 pursuant to Ohio Revised Code Chapter 1710, the Owner submitted the Project Petition and the Supplemental Plan to this Commission and to the City Manager of the City, and said Project Petition and Supplemental Plan are on file with the Clerk of the Commission; and,

WHEREAS, Said Project Petition and Supplemental Plan are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Project Petition and the Supplemental Plan identify the amount and length of the special assessments to be imposed with respect to the Project; and,

WHEREAS, This Commission, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Project Petition and Supplemental Plan within sixty (60) days of the submission of the Project Petition and Supplemental Plan; and,

WHEREAS, This Commission has determined to approve the Project Petition and Supplemental Plan; and,

WHEREAS, This Commission, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement project to be constructed and implemented on the Project Site is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and,

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

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

Section 1. Approval of Project Petition and Supplemental Plan. That this Commission approves the Project Petition and further approves the Supplemental Plan in substantially the forms now on file with the Clerk of the Commission.
Section 2. Transfer of Energy Special Improvement Project. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Commission determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Commission accordingly authorizes the Board to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Project Site is any consideration greater than or equal to One Dollar and Zero Cents ($1.00).

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

Section 4. Effective Date. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

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

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

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

[Signature]
City Attorney
July 13, 2021

TO: Shelley Dickstein, City Manager

FROM: Chris Lipson
Department of Planning, Neighborhoods and Development – Division of Development

SUBJECT: Two Emergency Resolutions Approving a Petition to Include 137 North Main Street in the Dayton Energy Special Improvement District (ESID)

The Department of Planning, Neighborhoods and Development, Division of Development, is requesting adoption of the attached Resolutions approving the Petition and Supplemental Plan for Special Assessments to the property located at 137 North Main Street formerly known as the Barclay Building. We are requesting both resolutions as emergency legislation with two readings at one meeting.

Built in 1927, the property is an historic 10-story 60,000 SF limestone & brick building. First Barclay, LLC is investing over $25 million to transform the property into a 118-room Tapestry Collection by Hilton hotel. The Property Assessed Clean Energy (PACE) plan as submitted will improve the energy efficiency of the property through the installation of LED lighting.

The Property Owner will finance the improvements through a Special Assessment to their property taxes. The first Resolution approves the Petition filed by the Property Owner, while the second Resolution approves the Necessity of the Special Assessments. Additionally, three Ordinances for this project are being prepared for the July 28, 2021 City Commission meeting.

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

If you have any questions, please contact me at extension 3820.

c: Todd Kinskey

CJL
A RESOLUTION

Approving the Necessity of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and,

WHEREAS, First Barclay, LLC (the “Owner”) petitioned to add property owned by it to the Dayton Regional Energy Special Improvement District (the “ESID”) pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of a special energy improvement project to be constructed on the property; and,

WHEREAS, The Commission (“Commission”) of the City of Dayton, Ohio (the “City”) has, by Resolution No. _______, adopted on _________, 2021, approved a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Project Petition”) and a Supplement to Plan for 137 N. Main Street, Dayton, Ohio Project (the “Supplemental Plan”), in accordance with Ohio Revised Code Section 1710.02; and,

WHEREAS, The Project Petition, a copy of which, together with the Supplemental Plan, is attached to, and incorporated into this Resolution as Exhibit A, has been signed by the Owner, as the owner of one hundred percent (100%) of the real property affected by the Project Petition (as further described in Exhibit A to the Project Petition, the “Property”); and,

WHEREAS, The Project Petition and the Supplemental Plan propose the necessity of the acquisition, construction, installation, improvement, and equipping of energy efficiency improvements, including, without limitation, LED lighting and related improvements (the “Project”) and financing the Project through the cooperation of the ESID; and,

WHEREAS, In the Project Petition and the Supplemental Plan, the Owner requests that the Project be paid for by special assessments to be assessed upon the Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be $2,794,140.40, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on
obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and ESID administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and such other parties as the City may deem necessary or appropriate; and,

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

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

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

Section 2. Public Necessity of Special Assessments. That this Commission declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 137 N. Main Street in the City, by providing for the implementation of various special energy improvement projects on the Property including, without limitation, the Project, as set forth in the Project Petition and the Supplemental Plan, and providing for the payment of the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Project Petition and the Supplemental Plan, profiles, specifications, and estimates of cost of the Project, all of which are on file with the Director of the Department of Finance and open to the inspection of all persons interested.

Section 3. One Project. That this Commission determines that the Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project’s elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project’s elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project’s elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the
ESID pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 4. Approval of Plans. That the Plans and Specifications and total cost of the Project now on file in the office of the Clerk of the Commission are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

Section 5. Public Necessity of Project. That this Commission has previously determined and by this Resolution ratifies and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the ESID, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Project Petition and the Supplemental Plan. This Commission determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

Section 6. Allocation of Costs of Project Among City and Owner. That pursuant to and subject to the provisions of a valid Petition signed by the owners of one hundred percent (100%) of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The provisions of the Project Petition are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Project allocable to the City will be zero percent (0%). The City does not intend to issue securities in anticipation of the levy or collection of the Special Assessments.

Section 7. Assessment Method. That the method of levying the Special Assessments shall be in proportion to the benefits received from the financing of the Project, allocated among the parcels constituting the Property as set forth in the Project Petition and Supplemental Plan.

Section 8. Property. That the lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Project Petition, all of which lots and lands are determined to be specially benefited by the financing of the Project.

Section 9. Assessment Schedule. That the Special Assessments shall be levied and paid in forty (40) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Project Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the passage of the assessing ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is $2,794,140.40. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are
determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the Auditor of Montgomery County, Ohio.

**Section 10.** Director of the Department of Finance to File Estimate of Special Assessments. That the Director of the Department of Finance or the Director of the Department of Finance’s designee is authorized and directed to prepare and file in the office of the Clerk of the Commission the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Project Petition, the Supplemental Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

**Section 11.** Notice to Property Owner. That upon the filing of the estimated Special Assessments with the Clerk of the Commission, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

**Section 12.** Collection of Special Assessments. That the Director of the Department of Finance or the Director of the Department of Finance’s designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

**Section 13.** Appropriation of Special Assessments. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

**Section 14.** Acceptance of Waiver of Process. That this Commission accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Dayton, Ohio, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

(i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;

(ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
(iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
(iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
(v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
(vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
(vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
(viii) The right to notice of the passage of the assessing resolution or ordinance under Ohio Revised Code Section 727.26; and
(ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 15. Agreements. That the City is authorized to enter into agreements by and among the City, the ESID, and such other parties as the City may deem necessary or appropriate in order to provide the Authorized Improvements, and that the City Manager, the Economic Development Director, and the Commission President, or any of them, is authorized to execute, on the City’s behalf, such agreements.

Section 16. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.
Section 17. Effective Date. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

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

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

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
EXHIBIT A

PROJECT PETITION AND SUPPLEMENTAL PLAN

[See Attached]
PETITION FOR SPECIAL ASSESSMENTS FOR
SPECIAL ENERGY IMPROVEMENT PROJECTS AND AFFIDAVIT

A PETITION TO THE CITY OF DAYTON, OHIO SEEKING THE IMPOSITION OF
SPECIAL ASSESSMENTS AGAINST REAL PROPERTY OWNED BY THE
PETITIONER TO PAY CERTAIN COSTS OF VARIOUS SPECIAL ENERGY
IMPROVEMENT PROJECTS, THE FINANCING OF WHICH WILL SPECIALLY
BENEFIT SUCH REAL PROPERTY, INCLUDING A WAIVER OF ALL RIGHTS TO
NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL
ASSESSMENTS

To: The City Manager and Commission of the City of Dayton, Ohio

First Barclay, LLC, an Ohio limited liability company (the Petitioner) is the owner of
100% of the property described on Exhibit A attached hereto (the Property).

The Board of Directors of the Centerville, Dayton, Kettering, Oakwood, Riverside,
Springboro, Washington Township Regional Energy Special Improvement District, Inc. doing
business under the registered trade name the Dayton Regional Energy Special Improvement
District, Inc. (the Corporation), an Ohio nonprofit corporation formed to govern the Dayton
Regional Energy Special Improvement District (the District), initially created within the
boundaries of the City of Dayton, Ohio has approved a plan (the Program Plan) for the purpose
of developing and implementing special energy improvement projects as defined in Ohio
Revised Code Section 1710.01(1). The Program Plan is attached to this Petition as Exhibit C.
The Corporation’s Amended Articles of Incorporation are attached to this Petition as Exhibit D.

Pursuant to the Program Plan, the Corporation has caused special energy improvement
projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710
and the Program Plan, the Program Plan may be amended from time to time by supplemental
plans (the Supplemental Plans) (the Program Plan and every Supplemental Plan together
constituting the Plan) to provide for additional special energy improvement projects, and the
District may be enlarged from time to time to include additional property so long as at least one
special energy improvement project is designated for each parcel of real property within the
additional territory added to the District.

The Board of Directors of the Corporation has received or will receive the Supplemental
Plan attached to this Petition as Exhibit B, including the description of the special energy
improvement projects proposed to be constructed or installed on the Property (the Authorized
Improvements), and related materials in support of the expansion of the District to include the
Property.

As required by Ohio Revised Code Section 1710.02, the Petitioner, as the owner of the
Property, being 100% of the area proposed to be added to the District and 100% of the area
proposed to be assessed for the Authorized Improvements, hereby (a) petitions the City
Commission (the Commission) of the City of Dayton, Ohio (the City) to (i) approve the addition
of the Property to the District and (ii) approve an amendment and supplement to the Plan by the Supplemental Plan attached as Exhibit B to include the Authorized Improvements and (b) requests that (i) the Authorized Improvements be undertaken by the District, and (ii) the total cost of those Authorized Improvements be assessed on the Property in proportion to the special benefits that will result from the financing of the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Program Plan and the Supplemental Plan, (ii) the plans, specifications and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in the Supplemental Plan and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in the Supplemental Plan. The Petitioner acknowledges that the estimated special assessments are in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioner hereby petitions for the approval of the Authorized Improvements identified in this Petition and the Supplemental Plan attached to this Petition as Exhibit B, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the Special Assessments) to pay the costs of the Authorized Improvements, in the amount set forth on Exhibit B. The Petitioner hereby certifies, represents, and warrants to the District and the City that the actual costs of the Authorized Improvements have been ascertained. The Petitioner further agrees that it will be solely responsible for any costs of the Authorized Improvements in excess of the amount set forth on Exhibit B.

In the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Montgomery County, Ohio then the Petitioner hereby requests that the Special Assessments be allocated among the resulting parcels in proportion to the acreage of the existing parcels that are contained in each resulting parcel that contains a portion of an existing parcel. The Petitioner hereby certifies, represents, and warrants to the District and the City that the portion of the Special Assessments allocated to each resulting parcel as described above are in proportion to, and do not exceed, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Petition.

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in Exhibit A shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; costs of labor and material; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; the costs incurred in connection with the preparation, levy and collection of the Special Assessments; expenses of legal services; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the
Petitioner or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Authorized Improvements for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Authorized Improvements; together with all other necessary expenditures.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by the Commission of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in Exhibit B, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessments for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessments and the transferee’s assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further acknowledges and confirms that the Special Assessments set forth in this Petition and in the Supplemental Plan attached as Exhibit B are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the Authorized Improvements identified in this Petition. The Petitioner further consents to the levying of the Special Assessments against the Property by the City. The Petitioner acknowledges that these Special Assessments are fair, just and equitable and being imposed at the Petitioner’s specific request.

The Petitioner hereby waives notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710 and consents to proceeding with the Authorized Improvements. Without limiting the foregoing,
the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioner, in accordance with Ohio Revised Code Section 1710.02(A), further agrees that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Petitioner further agrees not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any Special Assessments levied against such Property.

The Petitioner further agrees and consents to the Commission promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioner acknowledges that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City and regardless
of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioner further acknowledges that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within 30 days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the County Auditor of Montgomery County, Ohio, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner hereby waives the right to pay the final assessments for the Authorized Improvements in cash within 30 days from the passage of the ordinance confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in 40 semi-annual installments, together with interest at the rate of 5.35% and with collection commencing on the earliest date permitted by said County Auditor, but in no event sooner than the semiannual installment payment of first-half real property taxes for tax year 2022 due in 2023 with respect to the Property.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioner hereby appoints the duly elected members of the Board of Directors of the District as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 or such representative as may be duly appointed by the Petitioner from time to time, which designation shall not expire unless and until the Petitioner shall notify the Secretary of the District that said designation is no longer in effect or that Petitioner has made a new designation to replace said designation.

The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, equipped, and improved or the proceedings relating to the acquisition, installation, equipment, and improvement of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio, and the Charter of the City of Dayton, Ohio. The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioner acknowledges and understands that the City and the Corporation will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, any successors or assigns of the Petitioner, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.
IN WITNESS WHEREOF, the Petitioner has caused this Petition to be executed by its undersigned duly authorized signatory.

PETITIONER:
FIRST BARCLAY, LLC

By: [Signature]

Name: David Feldman

Title: General Counsel

Address for notices to Property Owner: 10275 W. Higgins Rd.

Des Plaines, Illinois 60018

Attn: 

STATE OF Illinois

COUNTY OF Cook

The foregoing Petition was acknowledged before me this 14th day of July, 2021, by David Feldman, the General Counsel of First Barclay, LLC, an Ohio limited liability company, on behalf of such company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

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

[Signature]

Notary Public
EXHIBIT A

DESCRIPTION OF PROPERTY

The real property subject to this Petition and owned by First Barclay, LLC is located at 137 N. Main Street in Dayton, Ohio, having Montgomery County Auditor Parcel ID No. R72 00202 0037 and the following legal description:

Situate in the City of Dayton, County of Montgomery and State of Ohio and being part of Lot Numbered Sixty-One (61) of the revised and consecutive numbers of lots on the plat of the said City of Dayton, and being more particularly described as follows:

Beginning at the Northeast corner of said Lot 61, being the Southwest corner of Main and First Streets in the said City of Dayton; thence Southwardly along the East line of said Lot 61, a distance of 75 feet to a corner; thence Westwardly along a line parallel to and 75 feet south of the North line of said Lot 61, a distance of 99.20 feet to a corner; thence Northwardly along a line parallel to and 99.20 feet West of the East line of said Lot 61, a distance of 75 feet to a point on the North line of said Lot 61; thence Eastwardly along the North line of said Lot 61, a distance of 99.20 feet to the place of beginning.

Parcel No. R72-00202-0037
Property Address: 137 North Main Street, Dayton, Ohio 45402

KARL KEITH
COUNTY AUDITOR
MONTGOMERY COUNTY DAYTON, OHIO
DESCRIPTION APPROVED FOR STRAIGHT TRANSFER CLOSURE
NOT CHECKED.

DATE 10/24/18
MAP DEPARTMENT
EXHIBIT B

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
PROGRAM PLAN

SUPPLEMENT TO PLAN FOR 137 N. MAIN STREET, DAYTON, OHIO PROJECT

As more fully provided by the Dayton Regional Special Improvement District Program Plan (the Program Plan), the Dayton Regional Energy Special Improvement District (the District) has undertaken the administration of a property assessed clean energy (PACE) program (the Program). The Program will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Supplemental Plan, First Barclay, LLC, an Ohio limited liability company (the Property Owner), has requested and consented to certain special assessments by City of Dayton, Ohio (the City) in cooperation with the District with respect to certain real property owned by the Property Owner and located on Montgomery County Auditor Parcel Number R72 00202 0037 as more fully described on Exhibit 1 (the Property). A proposed schedule of special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as Exhibit 2. The Property Owner hereby certifies, represents, and warrants to the City and the District that the actual costs of the Authorized Improvements have been ascertained. The special assessments shall be allocated among the parcels that make up the Property as follows:

<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>Proportion of Total Special Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>R72 00202 0037</td>
<td>100%</td>
</tr>
</tbody>
</table>

In the event that at any time following the date of this Supplement to the Plan the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Montgomery County, Ohio then the Property Owner requested in the Petition that the Special Assessments be allocated among the resulting parcels in proportion to the acreage of the existing parcels that are contained in each resulting parcel that contains a portion of an existing parcel. The Property Owner further certified, represented, and warranted to the District and the City in the Petition that the portion of the Special Assessments allocated to each resulting parcel as described above are in proportion to, and do not exceed, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Supplement to the Plan.

The Property Owner hereby certifies, represents, and warrants to the City and the District that the actual costs of the Authorized Improvements have been ascertained. The Authorized Improvements applicable to the Property will include the acquisition, construction, installation, improvement, and equipping of LED lighting upgrades and related improvements. As required by Ohio Revised Code Sections 1710.01(I) and 1710.01(K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the
Authorized Improvements is attached to this Supplemental Plan as **Exhibit 3**. The Property Owner hereby acknowledges and agrees that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of financing to pay the costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the special assessments to be levied to pay the costs of the financing.

The Property Owner will cause this Supplemental Plan to be promptly filed with the Board of Directors of the District and with the Clerk of the City Commission of the City of Dayton, Ohio.

The undersigned owner of real property to be located within the District acknowledges that the District and the City are subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* The undersigned property owner agrees to the disclosure of certain property owner information by the District or the City to the extent required by law.

[Balance of Page Intentionally Left Blank]
BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS SUPPLEMENTAL PLAN.

Date: 1-14-2021

Property Owner:  
FIRST BARCLAY, LLC  

By:  

Name: David Fechner  

Title: General Counsel  

Address for notices to Property Owner:  
10275 W. Higgins Rd.  
Des Plaines, Illinois 60018  

Attn:  

[Property Owner Consent to Supplemental Plan]
EXHIBIT 1

DESCRIPTION OF PROPERTY

The real property subject to this Supplemental Plan and owned by First Barclay, LLC is located at 137 N. Main Street in Dayton, Ohio, having Montgomery County Auditor Parcel ID No. R72 00202 0037 and the following legal description:

Situate in the City of Dayton, County of Montgomery and State of Ohio and being part of Lot Numbered Sixty-One (61) of the revised and consecutive numbers of lots on the plat of the said City of Dayton, and being more particularly described as follows:

Beginning at the Northeast corner of said Lot 61, being the Southwest corner of Main and First Streets in the said City of Dayton; thence Southwardly along the East line of said Lot 61, a distance of 75 feet to a corner; thence Westwardly along a line parallel to and 75 feet south of the North line of said Lot 61, a distance of 99.20 feet to a corner; thence Northwardly along a line parallel to and 99.20 feet West of the East line of said Lot 61, a distance of 75 feet to a point on the North line of said Lot 61; thence Eastwardly along the North line of said Lot 61, a distance of 99.20 feet to the place of beginning.

Parcel No. R72-00202-0037
Property Address: 137 North Main Street, Dayton, Ohio 45402

KARL KEITH
COUNTY AUDITOR
MONTGOMERY COUNTY DAYTON, OHIO
DESCRIPTION APPROVED FOR STRAIGHT TRANSFER CLOSURE NOT CHECKED.
BY Rogers DATE 10/24/18
MAP DEPARTMENT
EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs: $2,794,140.40
Estimated semi-annual special assessments for 20 years: $69,853.51
Number of semiannual assessments: 40
First semiannual installment due (approximately): February 15, 2023

The schedule of Special Assessments for the Authorized Improvements is as follows:

<table>
<thead>
<tr>
<th>Special Assessment Date*</th>
<th>Total Special Assessment Amount**</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 15, 2023</td>
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<tr>
<td>July 15, 2023</td>
<td>69,853.51</td>
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<tr>
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</table>

*Date
**Amount
<table>
<thead>
<tr>
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<tbody>
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</tr>
<tr>
<td>July 15, 2042</td>
<td>69,853.51</td>
</tr>
</tbody>
</table>

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit 2 are subject to adjustment by the Montgomery County Auditor under certain conditions.
** Pursuant to Ohio Revised Code Section 727.36, the Montgomery County Auditor may charge and collect a fee in addition to the amounts listed in the above schedule.
EXHIBIT 3

Description of Authorized Improvements

The Authorized Improvements are expected to consist of the following energy efficiency elements, the total costs of which are $1,500,000.00.

- LED lighting upgrades
EXHIBIT C

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT PROGRAM

PLAN

[See Attached]
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
PROGRAM PLAN

The Dayton Regional Energy Special Improvement District (the “District”) will administer a property assessed clean energy (“PACE”) program (the “Program”). The Program will provide financing secured by special assessments on real property for special energy improvement projects. Pursuant to Section 1710.02(F) of the Ohio Revised Code, Tower Partners, LLC, as the initial owner of real property within the District (the “Owner”) authorizes, consents to, and submits to the City of Dayton, Ohio for approval this plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the “Plan”) to provide for the Program’s administration and to set forth the terms and conditions of participation in the Program.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the “Act.” Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District’s Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program’s terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property (“Assessment Schedule”), and the governing documents forming the District. The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the “Governing Documents”). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the “District Documents.” In addition to the District Documents, property owners may be required to agree to and execute an agreement to impose special assessments as a condition to receiving financing of special energy improvement projects from the District.

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.
I. Purpose of the Program

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects, as that term is defined in the Act (the “Authorized Improvements”). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, and nonprofit corporation securities (collectively, the “Program Obligations”) may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, however, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the board of directors of the District, or any of the directors, officers, agents, members, independent contractors, or employees of the District or board of directors that the Program is the best financing option available. Property owners are advised to conduct independent research to determine the best course of action.

II. The District’s Governance, Program Administrator, and Conduit Financing Entity

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors (“Board”) of the Dayton Regional Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the “Corporation”) to govern the District.

Pursuant to the Act, other Ohio law, and the Code of Regulations of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, the District may contract for the services of a “Program Administrator” and for the services of a “Conduit Financing Entity.”

The Program Administrator may provide, without limitation, the following services: (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and
administering an application, setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals; (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services; and (iii) establishing and administering a revolving loan facility providing financing for certain special energy improvement projects.

The Conduit Financing Entity shall be the Dayton-Montgomery County Port Authority. The Conduit Financing Entity may provide, without limitation, the following services: (i) pursuant to Part III of this Plan, financing Authorized Improvements and cooperating with property owners to obtain financing for Authorized Improvements; (ii) pursuant to Part IV of this Plan, tracking and administering Program Obligations, administering special assessments, budgeting, and conducting or overseeing the audit process; and (iii) assisting with marketing efforts relating to the District.

III. Program Eligibility, Approvals, Financing, and Procurement

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

(A) **Eligibility.** The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including, specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the
District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner, with the exception of the Owner, must file a supplement to this Plan (the “Supplemental Plan”) with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Supplemental Plans shall include such other information as may be required by the Board. Supplemental Plans shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

(B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application’s use and evaluation.

(C) Contractors. The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor’s requirements.

Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

(D) Procurement and Referrals. The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to
eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

(E) **Financing.** The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

IV. **Program Services**

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

(A) **Program Design.** The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.

(B) **Program Administration.** The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.

(C) **Marketing.** The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.

(D) **Authorized Improvement Implementation.** The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Supplemental Plans by participating political subdivisions and the Board.

(E) **Tracking and Administration of Program Obligations.** The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
(F) **Administering Special Assessments.** The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners’ claims regarding the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.

(G) **Budgeting.** The Board shall provide for the production of an annual report describing the District’s budget, services delivered, revenues received, expenditures made, and other information about the District’s activities. The annual report shall be made available to the Board and to the District’s members. The Board may hire such professionals as may be required to successfully account for all District finances.

(H) **Auditing.** The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.

(I) **Other Services.** The Board is hereby authorized to provide any other services authorized by the Act.

V. **Fees**

**Program Costs.** The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

(A) The cost of creating and operating the District, including creating and operating the Corporation, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;

(B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan or any Supplemental Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan or any Supplemental Plan, the management, protection, and maintenance costs of public or private facilities;

(C) Any court costs incurred by the District in implementing this Plan or any Supplemental Plans;
(D) Any damages resulting from implementing this Plan or any Supplemental Plan;

(E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan or any Supplemental Plan; and

(F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District’s territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

Application Fee. The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

VI. Energy Efficiency and Renewable Energy Regulations and Requirements

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility (“EDU”) with a District Authorized Improvement within the EDU’s certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.
Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

VII. Statutory Requirements

As provided in the District Documents:

(A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.

(B) The District Documents may be amended or supplemented in accordance with their terms.

(C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.

(D) The public improvements to be provided by the District are the Authorized Improvements identified in the petition and Supplemental Plan. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or in any petition requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.

(E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

VIII. Changes in State and Federal Law

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District’s Program.
IX. Releases and Indemnification

The District has been created with the approval of the City of Dayton, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program. Any political subdivision that owns real property included in the District agrees to release and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision’s participation in the Program in its capacity as a property owner.

X. Changes in the Program Terms; Severability

Participation in the Program is subject to the District Documents’ terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the terms and conditions of the District Documents at any time without notice. No such change will affect a property owner’s obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

XI. Disclosure of Property Owner Information

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District’s business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District
and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio’s energy programs, property owners’ names and contact information may be disclosed to their current electric utilities. Property owners’ names, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

Each owner of real property located within the District acknowledges that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 et seq. Each property owner that executes this Plan agrees to the disclosure of certain property owner information as stated in this Part.

XII. Initial Authorized Improvements

The Owner has requested and consented to certain special assessments by the District with respect to certain real property owned by the Owner and located at 40 North Main Street, Dayton, Ohio, 45423 (the “Property”), which Property is described more specifically in Exhibit A attached to this Plan. A schedule of special assessments to be levied on the Property to pay the costs of the Authorized Improvements is attached to this Plan in Exhibit B.

The Authorized Improvements applicable to the Property will include: the replacement of lighting fixtures to increase energy efficiency, the installation of variable frequency drives on air-handling-unit motors and dampers, the refurbishment of building automation controls, the installation of a new condensing boiler to gain efficiency over existing non-condensing boilers, the replacement of outdoor air intake controls, and the improvement of the energy efficiency of a water storage tank. As required by Ohio Revised Code Section 1710.01(K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Plan in Exhibit B.
BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.

Date: _5-15-15_ 2015

Property Owner:
TOWER PARTNERS, LLC

By: Jerry Brunswick, Director of the Dayton-Montgomery County Port Authority, the Attorney-in-Fact of Tower Partners, LLC

Address for notices to Property Owner: Tower Partners, LLC
80 Skyline Drive, Suite 303
Plainview, New York 11803

[Property Owner Consent to Plan]
LEGAL DESCRIPTION OF PROPERTY

The Property subject to this Agreement is commonly known as Kettering Tower, located at the commonly used address 40 North Main Street, Dayton, Ohio, 45423, with Montgomery County Auditor Parcel ID Nos. R72-00208-0006, R72-00208-0011, R72-00208-0014, and R72-00208-0018 and with the following legal description:

Parcel No. 1: Located in the City of Dayton, County of Montgomery, State of Ohio and being parts of Lots Nineteen (19) of the First Hundred Five (105), One Hundred Six (106), One Hundred Seven (107), and One Hundred Eight (108) of the consecutive numbers of Lots on the plat of the City of Dayton, and more particularly described as follows: Beginning at the Northwest corner of said Lot No. 107, said Northwest corner being the intersection of the East line of North Main Street with the South line of East Second Street; thence with the South line of said East Second Street and the North line of said Lot No. 107, and its eastward extension, said extension being the North line of said Lot No. 106 and making an interior angle with the West line of said Lot No. 107, of twenty degrees four minutes thirty seconds (20° 04' 30") for two hundred sixty-six and 60/100 (266.60) feet to the Northeast corner of said Lot No. 106; thence southwesterly with the East line of said Lot No. 106 and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for ninety-nine and 42/100 (99.42) feet; thence westerly with the eastward extension of the South line of said Lot No. 107 and with the South line of said Lot No. 107 and making an interior angle with the last mentioned course of ninety degrees five minutes thirty seconds (90° 05' 30") for one hundred eighty-nine and 90/100 (189.90) feet to a point located one hundred sixty-six and 20/100 (166.20) feet westward from the Northwest corner of said Lot No. 107; thence northwesterly and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for six hundred and 92/100 (600.92) feet to a point in the eastward extension of the North wall of the existing building belonging to The Third National Bank of Dayton; thence westerly along the north wall of said Bank Building and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for eighty-two and 49/100 (82.49) feet to the point of beginning.

Parcel No. 2: Located in the City of Dayton, County of Montgomery, State of Ohio and being a part of Lot No. 105 of the First Hundred Five (105), the North line of said Lot No. 105 and making an interior angle with the West line of said Lot No. 105 of ninety degrees four minutes thirty seconds (90° 04' 30") for eighty-one and 60/100 (81.60) feet; thence southwesterly, leaving said south line and said north line and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for eighty-two and 49/100 (82.49) feet; thence southwesterly and making an interior angle with the last-mentioned course of two hundred seventy
degree four minutes thirty seconds (276° 04' 30") for seventeen and 34/100 (17.54) feet to a point in the East line of said Lot No. 105 and the West line of North Jefferson Street; Thence Southwardly with said East line and said West line and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for fifty and 24/100 (50.24) feet, Thence Westwardly, leaving said West line and said East line and making an interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for one hundred and thirty and 48/100 (130.48) feet to the point of beginning.

Parcel No. 3: Located in the City of Dayton, County of Montgomery, State of Ohio and being a part of Lot No. 105 of the revised and consecutive numbers of Lots on the plat of said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at the Northeast corner of said Lot No. 105, said Northeast corner being the intersection of the South line of East Second Street with the West line of North Jefferson Street; Thence Southwardly with the West line of North Jefferson Street and the East line of said Lot No. 105 and making an interior angle with the North line of said Lot No. 105 of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for sixty and 24/100 (60.24) feet, Thence Westwardly, leaving said West line and said East line and making an interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for seventeen and 34/100 (17.54) feet, Thence Southwardly and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for thirty and 42/100 (30.42) feet to a point in the North line of said Lot No. 105 and the South line of said East Second Street; Thence Eastwardly with said North line and said South line and making an interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for seventeen and 34/100 (17.54) feet to the point of beginning.

Also parts of Lots No. 105, 106 and 108 of the Revised and Consecutive Numbers of Lots on the Plat of said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at the Southwest corner of said Lot No. 105, said Southwest corner being the intersection of the North line of Jeff Avenue with the West line of North Jefferson Street; Thence Eastwardly with the South line of said Lot 105 and its westward extension, said extension being the South line of said Lot Nos. 106 and 108 and the North line of said Jeff Avenue and making an interior angle with the West line of said Lot No. 105 of eighty-nine degrees four minutes thirty seconds (89° 04' 30") for two hundred and 45/100 (200.45) feet to a point located one hundred ninety-six and 40/100 (196.40) feet eastwardly from the Southwest corner of said Lot No. 105; Thence Southwardly, parallel to the West line of said Lot No. 106 and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for ninety-nine and 60/100 (99.60) feet to a point on the North line of said Lot No. 108; Thence Eastwardly with the North line of said Lot No. 108 and its eastward extension and making an interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for one hundred one and 20/100 (101.20) feet to a point in the East line of said Lot No. 108 and the West line of said Lot No. 105; Thence Southwardly with said East line and said West line and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for twenty and 60/100 (20.60) feet; Thence Eastwardly, parallel to the North line of said Lot No. 105 and making an interior angle with the last-mentioned course of two hundred seventy degrees four minutes thirty seconds (276° 04' 30") for ninety-nine and 20/100 (99.20) feet.
(92.20) feet to a point in the East line of said Lot No. 105 and the West line of said North Jefferson Street; Thence southeasterly with said East line and said West line and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30'') east for seventy-nine and 32/100 (79.32) feet to the point of beginning.Parcel Nos. R72-602-08-0011, 0012, 0021, 0022, 0025.

Parcel No. 4 (Parking): Located in Section 4, Town 1, Range 7, Between the Miamis, City of Dayton, County of Montgomery, State of Ohio and being part of Lot 135 and part of Lot 136 of the Revised and Consecutive Numbers of Lots on the Plat of said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at a null found at the Southeast corner of said变科 City Community Redevelopment Corporation by deed recorded in Deed Miscellaneous No. 80-555099 of the Deed Records of Montgomery County, Ohio. Said corner being in the South line of Lot 135 and the North line of East Third Street (109.24 feet wide), said corner being located 145.36 feet westwardly from the intersection of the North line of East Third Street (109.24 feet wide) and the West line of North Jefferson Street (99 feet wide); Thence with the East line of said City Community Redevelopment Corporation land North ten degrees forty-six minutes forty-four seconds (10° 46' 44'') West for two hundred twenty-eleven and 12/100 (222.12) feet to an iron pin found at the Northeast corner thereof, said corner being in the North line of Lot 135 and the South line of Artz Lane (116.57 feet); thence with the South line of Artz Lane and the North line of Lot 135 and its eastward extension, said extension being the North line of Lot 136 North seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24'') East for sixty-three and 39/100 (63.39) feet to a point in the North line of Lot 135; Thence southerly on a new division line through Lot 135 and Lot 136, said new division line being located 0.16 feet; East of and parallel to the first east face of existing building, for the following seven (7) courses: South ten degrees forty-two minutes six seconds (10° 42' 06'') East for twenty-twenty and 31/100 (222.31) feet; Thence North seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54'') East for three and 43/100 (3.43) feet; Thence South ten degrees forty-two minutes six seconds (10° 42' 06'') East for eight and 29/100 (8.29) feet; Thence South seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54'') West for three and 20/100 (3.20) feet; Thence South ten degrees forty-two minutes six seconds (10° 42' 06'') East for twenty-two and 70/100 (22.70) feet; Thence South seventy-nine degrees seven minutes forty-four seconds (79° 07' 44'') West for eighteen and 12/100 (18.12) feet; Thence South ten degrees forty-six minutes forty-two seconds (10° 46' 42'') East for one hundred fifty-eight and 51/100 (158.61) feet to a point in the South line of Lot 135 and the North line of East Third Street; Thence with the South line of Lot 135 and the North line of East Third Street South seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24'') West for forty-five and 32/100 (45.32) feet to a point in the center, containing 1.241 square feet; Note: The above described tract of land and the remaining land conveyed to City Community Redevelopment Association by deed recorded in Deed Miscellaneous Numbers 79-1755091 and 791755090 both of the Deed Records of Montgomery County, Ohio, Note: The above description was based on field surveys made by Woodlake Consultants in December, 1979, on December 15, 1983 and September 26, 1985. Parcel No. 072-002-438-0006.

Parcel No. 5 (Parking): Located in Section 4, Town 1, Range 7, Between the Miamis, City of Dayton County of Montgomery, State of Ohio and being part of Lot 135 and part of Lot 136 of the Revised and Consecutive Numbers of Lots on the Plat of the said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at a point at the Southeast corner of Lot 136, said corner being the intersection of the North line of East Third Street (169.24 feet wide) and the West line of North Jefferson Street (99 feet wide); Thence with the North line of East Third Street and the South line of Lot 136 and its westward extension, said extension being the South line of Lot 135 South seventy-nine
degrees eight minutes (twenty-four seconds) (79° 08' 24") West for one hundred twenty and 05/100 (120.06) feet to a point on the South line of Lot 135; thence Northwesterly on a new division line through Lot 135 and Lot 126, said new division line being located 0.10 feet East of and parallel to the East face of an existing building, for the following sever (7) courses: North ten degrees forty-six minutes forty-two seconds (10° 46' 42") West for one hundred fifty-eight and 61/100 (158.61) feet; thence North seventy-nine degrees six minutes forty-four seconds (79° 06' 44") East for eighteen and 12/100 (18.12) feet; thence North ten degrees forty-two minutes six seconds (10° 42' 06") West for twenty-seven and 90/100 (27.90) feet; thence North seventy-nine degrees seven minutes fifty-four seconds (79° 07' 54") East for three and 43/100 (3.43) feet; thence North ten degrees forty-two minutes six seconds (10° 42' 06") West for twenty-seven and 39/100 (27.39) feet; thence North seventy-nine degrees seven minutes fifty-four seconds (79° 07' 54") West for two hundred two and 00/100 (200.00) feet to a point at the Northeast corner of said Lot 136, said corner being also the intersection of the South line of Lot 135 and the West line of North Jefferson Street; thence with the West line of Lot 136 and the West line of North Jefferson Street; thence with the East line of Lot 136 and the West line of North Jefferson Street; thence ten degrees forty-six minutes forty-two seconds (10° 46' 42") East for two hundred twenty-one and 12/100 (221.12) feet; to the point of beginning, containing 25,493 square feet, more or less, Note: The above described tract of land is part of the land conveyed to Gem Savings Association by deeds recorded in Deed Microfiche Numbers 81-1807, 81-1804, and 81-1805 and part of the remaining land conveyed to Gem City Savings Association by deeds recorded in Deed Microfiche Numbers 79-175003 and 79-175009 all of the Deed Records of Montgomery County, Ohio. Note: The above description was based on field surveys made by Woolpert Consultants in December 1979, on December 15, 1983 and on September 26, 1985.

Parcel Nos.: R72-00208-0006, R72-00208-0011, R72-00208-0014, R72-00208-0023, R72-00208-0018, R72-00208-0016,

Commonly known as: 60 North Main Street, Dayton, Montgomery County, Ohio
PLAN—EXHIBIT B

DESCRIPTION OF INITIAL AUTHORIZED IMPROVEMENTS AND SCHEDULE OF SPECIAL ASSESSMENTS

The real property owned by Tower Partners, LLC at 40 North Main Street, Dayton, Ohio, 45423 is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the “Project”). The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. Replacement of existing T12 lighting fixtures with new light emitting diode (LED) fixtures; estimated annual savings—$72,381.98
2. Installation of VFDs on Air-Handling-Unit (AHU) motors and manual dampers on each floor; estimated annual savings—$198,942.00 (energy savings plus operational savings).
3. Refurbishment of costly pneumatic and Andover building automation controls with additional DDC controls; estimated annual savings—$99,781.00.
4. Installation of new condensing boiler to gain efficiency over existing non condensing boilers installed in 1971; estimated annual savings—$20,833.00.
5. Installation of an Enthalpy Based Economizer Control to replace the current outdoor air intake control, which will achieve efficiencies by accounting for the temperature and humidity of the outdoor air; estimated annual savings—$13,334.00.
6. Installation of a DHW Motor/VFD/Storage Tank to prevent the motor from running at full speed when no water is being used; estimated annual savings—$7,949.00.

Total estimated annual savings—$413,220.00
Total estimated savings during assessment term—$4,132,209.80

Total assessment costs—$2,814,700.50
Estimated average annual special assessments for 9 years: $284,284.75
Number of semi-annual assessments: 20
First annual installment due: January 31, 2016

[Balance of Page Intentionally Left Blank]
The schedule of Special Assessments for the Project is as follows:

<table>
<thead>
<tr>
<th>Special Assessment Payment Date</th>
<th>Special Assessment Installment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 31, 2016</td>
<td>143,347.75</td>
</tr>
<tr>
<td>July 31, 2016</td>
<td>141,236.00</td>
</tr>
<tr>
<td>January 31, 2017</td>
<td>144,122.75</td>
</tr>
<tr>
<td>July 31, 2017</td>
<td>141,908.75</td>
</tr>
<tr>
<td>January 31, 2018</td>
<td>144,701.25</td>
</tr>
<tr>
<td>July 31, 2018</td>
<td>142,372.50</td>
</tr>
<tr>
<td>January 31, 2019</td>
<td>140,043.75</td>
</tr>
<tr>
<td>July 31, 2019</td>
<td>142,715.00</td>
</tr>
<tr>
<td>January 31, 2020</td>
<td>140,265.00</td>
</tr>
<tr>
<td>July 31, 2020</td>
<td>142,815.00</td>
</tr>
<tr>
<td>January 31, 2021</td>
<td>140,243.75</td>
</tr>
<tr>
<td>July 31, 2021</td>
<td>142,672.50</td>
</tr>
<tr>
<td>January 31, 2022</td>
<td>139,980.00</td>
</tr>
<tr>
<td>July 31, 2022</td>
<td>142,287.50</td>
</tr>
<tr>
<td>January 31, 2023</td>
<td>144,473.75</td>
</tr>
<tr>
<td>July 31, 2023</td>
<td>141,538.75</td>
</tr>
<tr>
<td>January 31, 2024</td>
<td>143,591.25</td>
</tr>
<tr>
<td>July 31, 2024</td>
<td>140,522.50</td>
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<tr>
<td>January 31, 2025</td>
<td>142,453.75</td>
</tr>
<tr>
<td>July 31, 2025*</td>
<td>374,263.75</td>
</tr>
</tbody>
</table>

*The 10% Primary Reserve will be applied by the Bond Trustee to the final semiannual assessment on July 31, 2025. If never called upon to cure a monthly payment default, the Primary Reserve of $261,500 will be applied to the final semiannual payment, and $112,763.75 will be the difference owed by Tower Partners, LLC.
EXHIBIT D

AMENDED ARTICLES OF INCORPORATION
OF DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

[See Attached]
*201708003500*

Receipt
This is not a bill. Please do not remit payment.

BRICKER & ECKLER LLP
ATTN: CHRISTINA MILLER
100 SOUTH THIRD STREET
COLUMBUS, OH 43215

STATE OF OHIO
CERTIFICATE

Ohio Secretary of State, Jon Husted
2417642

It is hereby certified that the Secretary of State of Ohio has custody of the business records for
DAYTON, KETTERING REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.
and, that said business records show the filing and recording of:

Document(s)                                      Document No(s):
DOMESTIC/AMENDMENT TO ARTICLES                  201708003500

Effective Date: 03/20/2017

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of March, A.D. 2017.

United States of America
State of Ohio
Office of the Secretary of State

Ohio Secretary of State
Certificate of Amendment  
(Nonprofit, Domestic Corporation)  
Filing Fee: $50

Check the appropriate box:

- Amendment to existing Articles of incorporation by Members pursuant to Ohio Revised Code section 1702.38(C) (128-AMD)
- Amended and Restated Articles by Members pursuant to Ohio Revised Code section 1702.38(D) or by Directors pursuant to Ohio Revised Code section 1702.38(E) (126-AMAN) - The following articles supersede the existing articles and all amendments thereto.

Complete the following information:

Name of Corporation: Dayton Regional Energy Special Improvement District, Inc.
Charter Number: 2417642

A copy of the resolution of amendment must be attached to this document.

Note: If amended and restated articles were adopted, amended articles must set forth all provisions required in original articles other than with respect to the initial directors pursuant to Ohio Revised Code section 1702.38(A). In the case of adoption of the resolution by the directors, a statement of the basis for such adoption shall be provided.
Required
Must be signed by an authorized officer of the Corporation pursuant to the Ohio Revised Code section 1702.38(G).

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Jerome J. Brunswick, Chairperson
Print Name

Signature

By (if applicable)

Print Name
ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE MEMBERS OF
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

Pursuant to Section 1702.25, Ohio Revised Code and Section 1.08 of the Code of Regulations of the Dayton Regional Energy Special Improvement District, Inc. (the "Corporation") and in lieu of a meeting of Members of the Corporation for such purposes, the undersigned, being all of the Members of the Corporation entitled to notice of such meeting, do hereby waive such notice of such meeting and hereby take and authorize by unanimous written consent each and all of the following actions for amendment of the Articles of Incorporation of the Corporation and transaction of all such other business as hereinafter set forth:

Approval of Amendment to Articles of Incorporation:

RESOLVED, that Article First of the Articles of Incorporation of the Corporation, attached to these resolutions as Appendix I (the "Articles of Incorporation") is hereby amended to read as follows:

FIRST Name of Corporation: The name of the Corporation shall, at any time and from time to time be the unique proper name only of each participating political subdivision, as defined in Ohio Revised Code ("ORC") Section 1710.02(E), of the special improvement district governed by the Board of Directors of the Corporation, separated by commas, and followed by the words "Regional Energy Special Improvement District, Inc." For demonstration purposes, as of the adoption of this Article First, the name of the Corporation shall be "Dayton, Kettering Regional Energy Special Improvement District, Inc."

FURTHER RESOLVED; that Article Third of the Articles of Incorporation is hereby amended to read as follows:

THIRD The purpose for which the Corporation is formed shall be:

(A) To govern the Dayton, Kettering Regional Energy Special Improvement District, a special improvement district (as the same shall from time to time be named in accordance with Article First of these Articles of Incorporation, the "District") created pursuant to ORC Chapter 1710. The District's purpose is to enhance the value of properties within the District and improve the environment by developing and assisting in developing within the District special energy improvement projects. The
District will be authorized to provide special energy improvement projects pursuant to ORC Chapter 1710 that will benefit property and the environment within the boundaries of the District. The District will be authorized to take any other actions pursuant to ORC Chapter 1710 that may be taken by a special improvement district organized for the purpose of developing and implementing plans for special energy improvement projects. The City of Dayton, Ohio ("Dayton") and the City of Kettering, Ohio ("Kettering") are each a "participating political subdivision," as that term is defined in ORC Section 1710.01(E), that will be authorized to levy a special assessment on each property within their respective territorial within the District to pay for such improvements, based on the benefits those special energy improvement projects confer.

(B) To engage in any lawful act, activity, or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio.

(C) To have and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing, or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and whersoever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at any time and from time to time, deem advisable.

(D) The reasons for establishing the District include enhancing the value of properties within the District and improving the environment. The District will enhance the public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory’s carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

FURTHER RESOLVED, that Article Sixth of the Articles of Incorporation is hereby amended to read as follows:

SIXTH

The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least five (5) individuals (individually a "Director").

(A) The municipal executive, as defined in ORC Section 1710.01(D), of each participating political subdivision of the District or an employee of each participating political subdivision who is involved with
its planning or economic development functions and who shall be appointed by and serve at the pleasure of such participating political subdivision's municipal executive each shall serve as a Director.

(B) A person appointed by and serving at the pleasure of the legislative authority of each participating political subdivision of the District each shall serve as a Director.

(C) The remaining Directors shall be Members or executive representatives of Members elected, designated, or appointed by the Members as described in the Code of Regulations of the Corporation.

The Board of Directors of the Corporation from time to time shall constitute the Board of Directors of the Corporation under ORC Chapter 1710.

FURTHER RESOLVED, that Article Seventh of the Articles of Incorporation is hereby amended to read as follows:

SEVENTH The territory within the District shall be described generally as that portion of the participating political subdivisions consisting of property owned by each property owner within a participating political subdivision that has petitioned the participating political subdivision for the development of a special energy improvement project, as that term is defined in ORC Section 1710.01(I). As provided in ORC Section 1710.02(A), the territory in the District may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included in the District. As further provided in Section 1710.02(A), additional territory may be added to the District for the purpose of developing and implementing plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within such additional territory and the addition of territory is authorized by the plan for the District under Chapter 1710. The addition of such territory shall be authorized in the plan for the District.

FURTHER RESOLVED, that Article Eleventh of the Articles of Incorporation is hereby amended to read as follows:

ELEVENTH The District is hereby authorized to use the trade name "Dayton Regional Energy Special Improvement District," and the Corporation is hereby authorized to use the trade name "Dayton Regional Energy Special Improvement District, Inc."
There being no further business to be taken by the undersigned Members pursuant to this action by unanimous written consent, each of the Members has signed this action as of the date indicated below, and this action by unanimous consent shall be filed with or otherwise entered in the minutes or other appropriate records of this Corporation.

TOWER PARTNERS, LLC

Name: [Signature]
Title: [Signature]

THIRTY TWO WEBSTER STREET LLC

Name: [Signature]
Title: [Signature]

DELCO LOFTS, LLC

Name: [Signature]
Title: [Signature]
There being no further business to be taken by the undersigned Members pursuant to this action by unanimous written consent, each of the Members has signed this action as of the date indicated below, and this action by unanimous consent shall be filed with or otherwise entered in the minutes or other appropriate records of this Corporation.

TOWER PARTNERS, LLC

Name: [Signature]
Title: [Title]

3/8, 2017

THIRTY TWO WEBSTER STREET LLC

Name: [Signature]
Title: [Title]

_________________________, 2017

DELCO LOFTS, LLC

By: First Street Acquisition, LLC
Its: Managing Member

Name: [Signature]
Title: [Title]

3/9, 2017

By: [Signature]
Name: [Name]
Title: [Title]
CERTIFICATE

The undersigned Secretary-Treasurer of the Dayton, Kettering Regional Energy Special Improvement District, Inc. hereby certifies that the foregoing resolutions were duly adopted by the majority of the voting members of the Corporation present in person, by use of authorized communications equipment, by mail, or by proxy at a meeting of the members held for that purpose, at which a quorum was present.

DATE: 3/17/17

[Signature]

Secretary-Treasurer
Dayton, Kettering Regional Energy Special Improvement District, Inc.
APPENDIX I
ARTICLES OF INCORPORATION
OF
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

[See Attached]
STATE OF OHIO
CERTIFICATE

Ohio Secretary of State, Jon Husted

It is hereby certified that the Secretary of State of Ohio has examined the true copy of the

DAYTON REGIONAL ENERGY SPECIAL DISTRICT, INC.

and that said document is true to the filing and recording of

DOMESTIC NONPROFIT CORP. - ARTICLES
Effective Date: 08/13/2013

Witneses my hand and the seal of the

Secretary of State of Ohio

Office of the Secretary of State

Page 1
The purpose for which the Corporation is formed shall be:

4. To promote the Dayton Regional Energy Special Improvement District, a special improvement district, also known as "District," created pursuant to Ohio Revised Code ("ORC") Chapter 710, the District's purpose is to enhance the value of property within the District and improve the environment by developing and maintaining projects within the District special energy improvement projects. The District will be authorized to promote special energy improvement projects pursuant to ORC Chapter 710 that will benefit property and the environment within the boundaries of the District. The District will be authorized to issue any other bonds pursuant to ORC Chapter 710 that may be issued by a special improvement district, including for the purpose of developing and implementing plans for special energy improvement projects. The City of Dayton, Ohio ("City") is a "participating political subdivision," as that term is defined in ORC Section 1319.051(C)(2), and will be authorized to levy a special assessment on each property within the territorial boundaries of the City within the District to pay for such improvements, based on the benefits those special energy improvement projects provide.

5. To engage in any lawful act, activity, or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio.

6. To lease and convey all property, rights, and privileges purchased or otherwise acquired by the District, including, but not limited to, leasing, hiring, or otherwise acquiring and holding, any interest in any property, and re-vesting, if applicable, or otherwise disposing of any interest in any property, and for personal or public benefit. The District may also engage in other activities, whether current or otherwise, in furtherance of the purposes of the District, as necessary to carry out its intended purposes.

7. To sue and be sued, and to otherwise exercise all powers, rights, and privileges conferred by the laws of the State of Ohio or any other governmental authority, or by any governmental or private entity, for the promotion and improvement of the District and any improvements included therein, and for the promotion and improvement of the public health, safety, welfare, and convenience, and for the development and maintenance of special energy improvement projects that benefit the public welfare, as directed by the District, to the extent permitted by the laws of the State of Ohio.

The purposes of the District include enhancing the value of property within the District and improving the environment. The District will enhance public health, safety, welfare, and convenience, and will engage in energy-saving and conservation activities, as well as in developing special energy improvement projects that benefit the public welfare. The District will engage in activities to promote and improve the environment, and to enhance the value of property within the District, and to improve the environment.
FOURTH:
The part of the net earnings of the Corporation shall be distributed to its members, donors, trustees, or other persons, except that the Corporation shall not distribute to its members, donors, trustees, or other persons any amount in excess of the amount contributed by those persons, any dividends, or interest on any amounts contributed by those persons, any other income, or any other amounts contributed by those persons.

FIFTH:
The net earnings of the Corporation shall be distributed to its members, donors, trustees, or other persons, except that the Corporation shall not distribute to its members, donors, trustees, or other persons any amount in excess of the amount contributed by those persons, any dividends, or interest on any amounts contributed by those persons.

SIXTH:
The Corporation shall be constituted and managed under the direction of the Board. The Board shall consist of at least two (2) individuals (individually a "Director").

(a) The Directors shall be the City’s members, each of whom serves as a Director for a term of three (3) years.

(b) The Board shall consist of members elected by the members of the Corporation.

(c) The Board shall consist of members elected by the members of the Corporation.

SEVENTH:
The Board shall consist of members elected by the members of the Corporation.

TENTH:
The Board shall consist of members elected by the members of the Corporation.

EXHIBIT:
The Board shall consist of members elected by the members of the Corporation.

Page 8
Directors: No person shall be disqualified from being a Director of the Corporation because he or she is or may be a party to, and no Director of the Corporation shall be disqualified from voting in, any contract or other transaction to which the Corporation is or may be a party.

Transactions: No contract, notice, or other transaction shall be void or invalid for the reason that any Director as officer or other agent of the Corporation is a party to the contract, notice, or transaction, or otherwise has any direct or indirect interest in the contract, notice, or transaction or to any other party to the contract, notice, or transaction, or for the reason that any interested Director or officer or other agent of the Corporation is asked or participates in the administration of such contract, notice, or transaction, provided that:

The person here as to such interest and as to the contract, notice, or transaction are disclosed or any other person known to the Board or applicable committee of Directors of the time the contract, notice, or transaction is entered into and the Directors to the Members of the committee, or, good faith reasonably justified by the Board, commits the contract, notice, or transaction by at least a majority vote of the disinterested Directors or disinterested Members of the committee, even though such disqualified Director or Members are present at the time of the vote or:

The contract here in such interest and as to the contract, notice, or transaction are disclosed to the interested Directors in the manner or the time the contract, notice, or transaction is authorized and the certificate of the persons, notice, or transaction or the contract, notice, or transaction (1) is in form reasonably as the Corporation does with the number of Directors or Officers of the Corporation and each Director or Officer or other agent of the Corporation has any interest or (2) is otherwise given to the contract or the time it is authorized.

Any interested Director may be removed in determining the presence of a quorum at any meeting of the Board or any committee of the Board which authorizes the contract, notice, or transaction.

Meetings: Any meeting of the Board of Directors of the Corporation shall be open to all of the Directors and to any members of the staff of the Corporation.

Amendments: The provisions of these Articles of Incorporation may be amended only by the affirmative vote of a majority of the Members of the Corporation and any meeting of which a quorum is present, and (1) also serve of approval of such amendments by
resolution of the legislative authority of such political subdivision, and
180 shall be subject to the approval of the Ohio Secretary of
181 State, provided that each amendment shall be consistent with the applicable
182 provisions of Ohio Constitution 1933 and 17EA.
DRAFT

By............................................... No........................................

A RESOLUTION

Authorizing the Acceptance of a Grant Award from The State of Ohio Development Services Agency (ODSA), Minority Business Development Division in an amount up to Four Hundred Fifty Thousand Dollars ($450,000.00) and Declaring an Emergency.

WHEREAS, The State of Ohio Development Services Agency (ODSA), Minority Business Development Division administers a Minority Business Assistance Center program to provide counseling, training, business development, strategic management, and technical assistance to Ohio’s minority, socially and economically disadvantaged business community. ODSA has confirmed that the City of Dayton will be the host for the program which will serve Montgomery, Greene, Miami, Preble, Darke, Butler, Clark, Mercer, Auglaize, Shelby, Logan, Champaign, and Madison Counties, and

WHEREAS, Pursuant to Section 36.10 of the Revised Code of General Ordinances of the City of Dayton, the City Manager executed the grant application to fund the services provided by the City of Dayton, Human Relations Council Minority Business Assistance Center (MBAC); and

WHEREAS, ODSA awarded the City of Dayton a grant in an amount up to Four Hundred Fifty Thousand Dollars ($450,000.00) to fund the services provided by the MBAC the period of July 1, 2021 through June 30, 2023; and

WHEREAS, This Commission finds it in the best interest of the City of Dayton to accept this award of grant funding;

WHEREAS, To provide for the timely acceptance of the grant funds and for the immediate preservation of the public health and safety and the usual operation of City departments it is necessary that this resolution take effect immediately; now, therefore,

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

Section 1. That the City Manager or her designee is authorized and directed to execute any and all documents and agreements on behalf of the City of Dayton, which are necessary to accept a grant in an amount up to Four Hundred Fifty Thousand Dollars ($450,000.00) from the State of Ohio Development Services Agency (ODSA).
Section 2. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon adoption.

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

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

MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

Clerk of Commission

Approved as to form:

City Attorney
July 9, 2021

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

FROM: Joann Mawasha, Deputy Director  
      Human Relations Council

RE: Greater Dayton Minority Business Assistance Center (MBAC)

Please find attached a resolution, Grant Agreement, Grant Approval Form, Grant Award Letter, and Certificate of Funds to host the Greater Dayton Minority Business Assistance Center from July 1, 2021 until June 30, 2023.

The Human Relations Council (HRC) will receive funding from the Ohio Development Services Agency, Minority Business Development Services in the amount of $450,000 to administer a Minority Business Assistance Center program to provide counseling, training, business development, strategic management, and technical assistance to Ohio’s minority, socially and economically disadvantaged business community.

The law department has reviewed and approved the grant as to form and correctness. We request that this be placed on the July 21, 2021 City Manager’s Calendar.

If you have any questions, call me at 1402.
July 6, 2021

Erica Fields
City of Dayton for its Human Relations Council
371 W. 2nd Street, Ste 100
Dayton, Ohio 45402

Dear Ms. Fields:

On behalf of the Ohio Development Services Agency’s Minority Business Development Division, I am pleased to notify you that your agency has been selected to host the Dayton Region Minority Business Assistance Center (MBAC). The Dayton Region MBAC will offer services in the following counties: Auglaize, Champaign, Clark, Darke, Greene, Logan, Madison, Miami, Mercer, Montgomery, Preble, and Shelby.

The funding will be used to address the following core functions identified as the primary role of the MBAC. The core functions are: marketing development, client services and ensuring operational quality for small, minority and disadvantaged business enterprises located in the specific geographic areas defined above. Further, the focus of the MBAC’s services should be targeted at emerging businesses with the capacity for growth and sustainability.

The funding is for a 24-month period beginning July 1, 2021, through June 30, 2023. The purpose of the grant award, subject to the availability of program funds, is to provide professional counseling and technical services for businesses located within the identified Dayton Region MBAC service area.

Final approval for grant award is contingent upon the division’s certification of the required cash match and approval of the host organization’s fiscal oversight and internal controls process. The award is also subject to successful execution of a grant agreement. Please contact the Minority Business Development Division at 614-466-5700 or OhioMBAC@development.ohio.gov if you have any questions or need additional information. Thank you and I look forward to working with you.

Sincerely,

Matthew McClellan
Assistant Director
Ohio Development Services Agency
GRANT APPLICATION APPROVAL FORM

Date: April 28, 2021

Department/Division
Submitting Application: Human Relations Council

Project Title: 2021-2023 MBAC Grant

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 is from the federal government, even if the application is going to a state or local authority.)

Brief Description of Project:
Host the Greater Dayton Minority Business Assistance Center to assist the Ohio Department of Development with its efforts to provide counseling, training, business development, strategic management and technical assistance to Ohio’s minority, socially and economically disadvantaged business community. The total budget is $656,770 with a grant request for $450,000 and a cash match of $150,000.

Name and phone of staff person to be called when signed application is ready: Erica Fields x1407
Name of staff person responsible for this grant: Seney Semere
Deadline for submission to funding agency:

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

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<tr>
<td>State</td>
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<tr>
<td>City of Dayton</td>
<td>($150,000 General Fund, In kind $56,770)</td>
<td>$ 206,770.00</td>
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<tr>
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(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: ___________________________ 4-28-21

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, Department of Procurement, Management & Budget

E-SIGNED by Diane Shannon on 2021-04-29 14:58:15 GMT

April 29, 2021

Date

Director of Finance (IF CASH MATCH IS REQUIRED)

E-SIGNED by LaShea Lofton on 2021-04-29 16:34:50 GMT

April 29, 2021

Date

City Manager’s Office

E-SIGNED by Shelley Dickstein on 2021-04-30 14:52:53 GMT

April 30, 2021

Date
# CERTIFICATE OF FUNDS

## SECTION I - to be completed by User Department

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| Fund Code:       | 10000 - 9980 - 1221 - 99 - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount:          |                       |
| Fund Code:       | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALS

### Vendor Information

- **Vendor Name:** City of Dayton
- **Vendor Address:** 101 West Third Street, Dayton, OH 45402
- **Federal ID:** 316000175
- **Commodity Code:**
- **Purpose:** Cash Match for the Minority Business Assistance Center grant.

### Contact Person

- **Contact Person:** Erica Fields
- **Human Relations Council:** 4/28/2021
- **Department/Division:**
- **Date:** 4/28/2021

### Originating Department Director's Signature

- **Signature:** [Signature]

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

I hereby certify that the amount of money required to meet the payment(s) called for in the 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**

- **Signed by LaShea Lofton on 2021-04-29 16:35:13 GMT**
- **Date:** April 29, 2021

**CF Prepared by**

- **Signed by Tonika Williams on 2021-04-29 15:04:19 GMT**
- **Date:** CT21-2972

- **Finance Department**

- **K.B.**

- **October 18, 2011**
GRANT AGREEMENT

<table>
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<th>City of Dayton for its Human Relations Council</th>
<th>Grant Control No.:</th>
<th>MBDG22005</th>
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<tbody>
<tr>
<td>Project Site Address:</td>
<td>371 W. Second Street, Suite 100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City:</td>
<td>Dayton</td>
<td>State:</td>
<td>OH</td>
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<td>Project:</td>
<td>Minority Business Assistance Center</td>
<td>Effective Date:</td>
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Project Contact

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<th>Grantee Contact:</th>
<th>Erica Fields</th>
<th>Title:</th>
<th>Executive Director</th>
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<tr>
<td>Address:</td>
<td>371 W. Second Street, Suite 100</td>
<td>State:</td>
<td>Ohio</td>
</tr>
<tr>
<td>Phone Number:</td>
<td>937-333-1407</td>
<td>FAX Number:</td>
<td>937-222-4589</td>
</tr>
<tr>
<td>Email Address:</td>
<td><a href="mailto:Erica.Fields@daytonohio.gov">Erica.Fields@daytonohio.gov</a></td>
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Key Performance Measures

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This Grant Agreement (the “Agreement”) is made and entered into by and between the State of Ohio, Development Services Agency (“Grantor”) and Grantee to set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance to undertake the management and operation of a Minority Business Assistance Center (“MBAC”) to provide direct, quality business assistance and advocacy opportunities in support of Ohio’s minority, socially and economically disadvantaged businesses (the “Project”). This Agreement incorporates by reference the “Scope of Work,” which is attached to this Agreement as Exhibit I.

1. Project Funding.

   (a) State Grant. Grantor hereby grants to Grantee funds in the aggregate amount of $450,000 (the “Grant Funds”) to be used for the sole and express purpose of undertaking and completing the Project. Grantee shall undertake and complete the Project substantially as described in Exhibit I. Grantee may not use the Grant Funds for any purpose other than completion of the Project.

   (b) Cash Match Requirements. It is a condition to the award of Grant Funds that Grantee provides additional funds from other sources to pay Project costs in an amount equal to or greater than twenty-five (25) percent of the Grant Funds as set forth in the budget included in Grantee’s Grant Application (as such budget may be amended from time to time, the “Budget”). Grantee represents and warrants to Grantor that Grantee has obtained such additional funds or that Grantee has a binding commitment for such additional funds and, with the exercise of reasonable diligence, will have obtained such additional funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable. Grantee shall verify the matching investment requirements by completing and submitting the Certification of Cash Match Form, in the form prescribed by the Grantor from time to time.
(c) **Budget Reductions.** Grantee acknowledges that Grantor is subject to State of Ohio budgetary constraints that could result in the reduction of the amount of Grant Funds provided under this Agreement. Should Grantor's funding levels be reduced, Grantor shall notify Grantee in writing of the extent of any reduction to the Grant Funds and reduce Grantee's commitments in a manner corresponding to the reduction of Grant Funds and such notice shall result in the Agreement being amended without further action by the parties. Grantee hereby irrevocably authorizes Grantor to reduce the amount of Grant Funds provided under this Agreement upon written notice to Grantee provided there is a corresponding reduction in the Key Performance Measures outlined on page 1 of this Agreement.

(d) **Subsequent Increase.** In cases where there is a reduction of Grant Funds and Grantor provides the written notice in accordance with Section 1(c) above, but subsequently additional funds become available to Grantor to increase the amount of Grant Funds to be provided to Grantee, Grantor shall notify Grantee in writing, but any such increase shall require mutual agreement of the parties which shall be reflected in an Amendment signed in accordance with Section 15(e) of this Agreement.

2. **Payment of Grant Funds.**

(a) **Disbursement of Funds.** The Grant Funds allocated to Grantee shall be payable on a quarterly reimbursement basis upon the Grantor's receipt and approval of proper invoices. Grantee shall submit to Grantor for review and approval requests for reimbursement detailing expenditures which have then been incurred by Grantee in accordance with the Project description included in Exhibit I. All expenses to be reimbursed with Grant Funds shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence the costs incurred by Grantee. Grantor shall be the sole judge of the adequacy of such documentation; Grantor shall not unreasonably withhold approval of such invoices and shall provide Grantee with reasonable notice and opportunity to cure any defects in the invoices.

(b) **Reconciliation and Quarterly Payments.** Subject to the provisions of subsection (c) below, Grantor shall disburse the Grant Funds, by method as established in subsection (a), on a quarterly basis. As part of Grantee's Quarterly Financial Report required under Section 8(b) and a condition to Grantor providing quarterly reimbursement payments to Grantee as scheduled, Grantor shall submit to Grantor for review and approval requests for reimbursement detailing expenditures which have then been incurred by Grantee during the previous quarter in accordance with the Project budget.

(c) **Final Grant Payment and Reconciliation.** Grantee shall submit its final Quarterly Financial Report no later than July 15, 2023, detailing expenditures that have been incurred by Grantee during the final quarter in accordance with the Project budget. Following Grantor's review and approval of Grantee's documented expenditures, Grantor shall make a final payment to Grantee, in an amount equal to the lesser of the balance of the Grant Funds not previously reimbursed to Grantee or the amount of expenditures for which Grantee has provided proper documentation for the preceding quarter.

3. **Grant Funds Not Expended.** If the Grant Funds are not expended by Grantee in accordance with the terms and conditions of this Agreement or within the time period set forth in this Agreement, the award of the Grant Funds shall cease, and Grantor shall have no further obligation to disburse the Grant Funds. Grantor shall also have no obligation to disburse any amount of the Grant Funds that exceeds the eligible costs of the Project actually incurred by Grantee. If Grant Funds have been paid to Grantee and Grantor determines that Grantee has not performed in accordance with the terms and conditions of this Agreement, Grantee shall return such improperly expended Grant Funds within thirty (30) days after demand by Grantor. If the Project does not become operational by the End Date (as such date may be extended as provided in Section 5(a)) and/or is affirmatively abandoned by Grantee, all Grant Funds paid by Grantor to Grantee under this Agreement shall be refunded to Grantor by Grantee within thirty (30) days after the End Date or abandonment has occurred.
4. **Accounting of Funds.** Grant Funds, any and all interest income earned therefrom and associated program income shall be posted and maintained in a separate account upon the books and records of the Grantee (the "Account"). The accounting systems used by the Grantee shall be maintained in accordance with generally accepted accounting principles; 2 CFR 200, part 200; and other applicable local, state and federal statutes, regulations, directives, and guidelines. Grantee shall utilize generally accepted accounting procedures, which will use to assure proper fiscal and management practices to deposit and account for the Grant Funds. Grantee shall maintain separate accounting records for each of its local or state cash match income, program income, or in-kind, and any other fiscal matters relating to the budget. All disbursements from the Account shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure. Failure to comply with this requirement may allow the Grantor to withhold payment allocation requests until such compliance is demonstrated.

5. **Agreement Deadlines and Term.**

(a) **Project Completion.** Grantee shall complete the Project not later than the End Date set forth on the first page of this Agreement. If Grantee anticipates that the Project will not be completed by the End Date, Grantee must request an extension of time to complete the Project at least sixty (60) days before the scheduled End Date. It will be within the sole discretion of Grantor to grant or deny such extension of time.

(b) **Term of Agreement.** This Agreement shall be in effect from the Effective Date set forth on the first page of this Agreement through the End Date, unless it is terminated earlier as provided in Section 11 (collectively, the "Term"). Grantee acknowledges that the Term extends beyond the End Date for purposes of reporting by Grantee and monitoring by Grantor of the results of the award of Grant Funds.

6. **Project Requirements.** In addition to the requirements set forth in the Scope of Work attached as Exhibit I and the requirements contained in Grantor’s Request for Proposals dated April 27, 2021, Grantee shall:

(a) Cooperate with other state-supported outreach assistance programs in the establishment of a comprehensive minority business assistance delivery system.

(b) Require the MBAC Director to work a minimum of five hundred (500) hours per fiscal quarter.

(c) Ensure that all MBAC staff, including MBAC counselors, whether paid or volunteer, do not (1) solicit or accept compensation for any services to clients assigned to them while operating under the terms of this Agreement, (2) recommend the purchase of goods or services from sources in which the counselor has an interest or which the counselor represents, or (3) request or accept fees or commissions from third parties who have supplied goods or services to a client upon a counselor’s recommendation.

(d) Satisfactorily comply with all deliverables outlined in Exhibit I and the deliverables, requirements and procedures contained in Grantor's Minority Business Assistance Centers Compliance Manual (the "Compliance Manual"), as such manual is updated from time to time. In the event of a conflict between a provision in the Compliance Manual and this Agreement, this Agreement shall control.

(e) Provide business information and counseling services to clients utilizing local, state and federal resources. **Counseling assistance shall be provided at no cost to MBAC clients.** Separate files shall be maintained for each counseling case, and all client files shall contain the name, address and phone number of the client.

(f) Determine the maximum amount of hourly assistance provided to any client of the MBAC. Notwithstanding the forgoing, prior written approval of the Grantor is required if the amount of assistance
to any one client during the term of this Agreement exceeds fifty (50) hours.

(g) Be permitted to hire a consultant to assist a client if Grantee is unable to do so. Notwithstanding the foregoing, prior written approval of the Grantor is required if the amount of a sub-contract exceeds $10,000. If a consultant is hired, Grantee shall make copies of all sub-contract agreements relating to client counseling available to Grantor.

(h) Make available for general distribution to the public a promotional brochure, pre-approved by Grantor, describing the services provided by Grantee under the terms of this Agreement. All promotional materials must include the MBAC logo. Grantee shall provide Grantor with a supply of brochures and include Grantor on its general mailing list. Any publication resulting from the use of Grant funds, including brochures, fact sheets, and similar publications, whether copyrighted or not, shall include the disclaimers set forth in the Compliance Manual.

7. **Non-Discrimination.**

(a) **Minority Hiring Goal.** Grantee shall make a good faith effort to employ minority persons in the completion and operation of the Project and in the fulfillment of Grantee’s job creation obligations in the same percentage as the average percentage of minority persons who reside in the county in which the Project is located and any contiguous Ohio counties.

(b) **Equal Employment Opportunity.** Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.

8. **Reporting.** As a condition of receiving the Grant Funds, Grantee shall be required to submit certain reports to Grantor.

(a) **Weekly Reports.** Grantee shall use Salesforce (the “Reporting System”) to document counseling and training activities related to the MBAC (including the use of sub-contracts for consultants). The Reporting System shall be updated each Monday, documenting all client/customer activities for the preceding week, including, but not limited to, counseling, loan activity, workshops, walk-ins, general information requests, and success stories.

(b) **Quarterly Financial Reports.** Grantee shall provide Grantor a Quarterly Financial Report for each fiscal quarter during the Term of the Agreement. The report is to be submitted no later than the 15th day of the month following the end of each fiscal quarter (e.g., April 15th, July 15th, October 15th, and January 15th). Such report requires a signed acknowledgement by the MBAC director, as established in subsection (f) of this section.

(c) **Quarterly Programmatic Reports.** Grantee shall provide a Quarterly Programmatic Report to the Grantor for each fiscal quarter during the Term of the Agreement showing Grantee's progress towards meeting the Key Performance Measures set forth on page 1 of this Agreement. The report is to be submitted no later than the 15th day of the month following the end of each quarter (e.g., April 15th, July 15th, October 15th, and January 15th). The report shall detail the activity of the Grantee for the quarter that is being reported, as well as provide any additional information requested by Grantor. The Quarterly Programmatic Report shall be submitted on a form provided by Grantor, as updated from time to time, and is due on or
before the submission of the Quarterly Financial Reports.

(d) **Annual Report.** A year-end narrative summary of activities and economic indicators (statistical data) shall be submitted to Grantor (i) within thirty (30) days following the end of Grantor’s Fiscal Year 2020 (June 30, 2020), and (ii) within thirty (30) days following the End Date of this Agreement. Each annual report is to include a final fiscal year-end reconciliation for the Grant Funds distributed under this Agreement as well as all matching funds expended in the performance of this Agreement.

(e) **Audit.** On or before March 31st of each calendar year, Grantee shall forward to Grantor an annual audit by an independent auditor of the financial records of Grantee for the preceding calendar year. The annual audit must include documentation of the cash match requirement related to Grant Funds.

(f) **Approval and Costs.** The MBAC Director shall submit each report required under this Section 8 to Grantor with a signed acknowledgement by the MBAC Director and, if the MBAC is not an authorized signatory of Grantee, a duly authorized representative of Grantee that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement, including the audit requirements contained in Section 8(e), shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.

(g) **Remedy.** Performance reports are essential for Grantor’s effective administration of this grant and its financial incentive programs, generally. If Grantee fails to submit any required report and such breach continues uncured for more than thirty (30) days, Grantor may recover, and Grantee shall pay, as liquidated damages for the breach, an amount equal to $500 for each month or part of a month such report is past due.

(h) **Notification Requirements.** Grantee shall notify Grantor, as promptly as practicable, (i) upon the occurrence of a material communication affecting the Grantee in a materially adverse manner, and Grantee will promptly respond fully to any inquiry of Grantor made with respect thereto, or (ii) upon any other adverse report in the public domain related to Grantee.

9. **Records Maintenance and Access.**

(a) **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the End Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports, job creation and retention statistics, and all other information pertaining to Grantee’s performance of its obligations under this Agreement. If any audit, dispute or litigation is then pending, however, Grantee shall maintain such records as may be relevant to such matter until it is finally resolved.

(b) **Inspection and Copying.** At any time during normal business hours and upon not less than twenty-four (24) hours’ prior written notice, Grantee shall make available to Grantor, its agents or other appropriate State agencies or officials all books and records regarding this Agreement, the Grant Funds and the Project which are in the possession or control of Grantee, including, but not limited to, records evidencing employment at the Project Site. Grantor, its agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal business operations of Grantee. Grantee shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 9(b) from Grantee’s other records of operation.

(c) **On-Site Reviews.** Throughout the Term of this Agreement, Grantor will schedule a minimum of two on-site reviews and follow-up visits as deemed necessary. The purpose of the on-site review process is to review all aspects of a MBAC operation, to ensure compliance with state and federal guidelines, and to identify areas for improvement. The dates for the reviews will be agreed-upon by the parties in advance.
of the review. It is the Grantee’s responsibility to ensure that all administrative, financial, counseling and training records are available for Grantor’s review.

(d) Evaluation and Assessment. Grantee shall maintain a system to evaluate the effectiveness of client counseling and client satisfaction with MBAC services by providing each client a survey after all significant client counseling contact points. Grantee shall also institute such systems as necessary to assess minority business needs in Grantee’s service delivery area. Grantee shall provide Grantor a copy of the assessment tool not later than September 30, 2021.

10. Adherence to State and Federal Laws and Regulations.

(a) General. Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee’s obligations under this Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under this Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers’ compensation premiums, income tax withholding, social security withholding, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.

(b) Ethics. Grantee, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 et seq., §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

(c) Conflict of Interest. No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Grantee shall immediately disclose in writing to Grantor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Grantee shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(d) Outstanding Liabilities. Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

(e) Falsification of Information. Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its employees or agents in the process of obtaining the award of Grant Funds. Grantee acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio,
any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code § 2921.13(F)(1).

(f) **Public Records.** Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. Grantee’s non-public financial information may be exempt from disclosure under a trade secret exception to the public records law.

11. **Default and Remedies.**

(a) **Default.** Grantee shall be in default of this Agreement if Grantee fails to perform any of its obligations under this Agreement and such failure to perform continues uncured for more than 30 days after written notice (a “Default Notice”) from Grantor. During the thirty-day cure period, Grantee shall incur only those obligations or expenditures pre-approved by Grantor that are necessary to enable Grantee to continue its operations and achieve compliance with the terms and conditions of this Agreement. Grantee shall also be in default of this Agreement if Grantee is in default of any other agreement between Grantor and/or the Director of Grantor and Grantee and such default continues beyond any applicable period of cure or grace.

(b) **Remedies.** Following a default by Grantee, Grantor may exercise one or more of the following remedies:

(i) **Discontinue Disbursements.** If the Grant Funds have not been fully disbursed, Grantor may terminate any and all of Grantor’s obligations under this Agreement, including the obligation to make further disbursements of Grant Funds.

(ii) **Demand Repayment of Grant Funds or Liquidated Damages.** Under the circumstances described in Section 3 of this Agreement, demand repayment of Grant Funds improperly expended and under the circumstances described in Section 8 of this Agreement, demand liquidated damages as provided in Section 8(g). Grantee shall not be required to refund Grant Funds or pay liquidated damages in an amount that exceeds the Grant Funds awarded.

(iii) **Other Legal Remedies.** Pursue any other legal or equitable remedies Grantor may have under this Agreement or applicable law.

(c) **Early Termination.** Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor and Grantee, (ii) admits Grantee’s inability to pay its debts as such debts become due, (iii) Grantee commences a voluntary bankruptcy, (iv) an involuntary bankruptcy action occurs against Grantee which remains undischarged or unstayed for sixty (60) days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location. The events permitting early termination by Grantor shall be considered a default by Grantee and subject to the remedies available under paragraph (b) of this Section 11.

(d) **Remedies Cumulative.** No remedy provided to Grantor under this agreement or otherwise by law or in equity is exclusive of any other available remedy. No delay or omission by Grantor in exercising any right or power accruing upon any default shall impair any such right or power or be construed as a waiver, and each such right or power may be exercised from time to time as often as may be deemed by Grantor to be expedient.

(e) **Effects of Termination.** Within sixty (60) days after termination of this Agreement following any
default, Grantee shall provide Grantor with a final report setting forth the programmatic information required by Grantor, the total expenditure of the Grant Funds by Grantee and the status of the Project at the time of termination. The final report shall be signed and certified in the same manner as the reports required by Section 8 of this Agreement. This reporting obligation shall survive the termination of the Agreement.

(f) **Grantor’s Expenses.** Grantee shall reimburse Grantor for all expenses, including, without limitation, reasonable attorneys’ fees, in connection with the enforcement of this Agreement.

12. **Indemnification.** Grantee shall indemnify and hold harmless Grantor, the State of Ohio and their officials, employees and agents from any and all liability, loss, claim, damage, cost and expense arising from or related to this Agreement, including, without limitation, any failure of any representation or warranty of Grantee to be correct in all respects and any performance or non-performance by Grantee, its directors, officers, employees, agents or affiliates of any obligations or activities under this Agreement or in furtherance of the Project. Grantee shall bear all costs associated with the defense of Grantor, the State of Ohio and their officials, employees and agents against any claim for which Grantee may be liable under this Section 12.

13. **Certification of Funds.** None of the rights, duties and obligations of the parties under this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code including, without limitation, Section 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate state agencies.

14. **Notice.** Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to Grantee:

Ohio Development Services Agency
77 South High Street, 28th Floor
Columbus, Ohio 43215
ATTN: Chief, Minority Business Development Division
FAX No.: (614) 466-4172

With copy to Chief Legal Counsel, Ohio Development Services Agency.

If to Grantee:

To the Grantee Contact and address as set forth on page one of this Agreement.

15. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio as to all matters including, but not limited to, its validity, construction, effect and performance.

(b) **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.
(c) **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.

(d) **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

(e) **Amendments.** This Agreement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.

(f) **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights under this Agreement or applicable law.

(g) **Pronouns.** The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

(h) **Headings.** Section headings contained in this Agreement are inserted for convenience only and shall not be used in construing this Agreement.

(i) **Assignment.** Neither this Agreement nor any rights, duties, or obligations of Grantee pursuant to this Agreement shall be assigned by Grantee without the prior express written consent of Grantor, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.

(j) **Binding Effect.** Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

(k) **Survival.** Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

(l) **Permissible Expenses.** If “travel expenses,” as defined in Ohio Administrative Code Section 126-1-02, are a cost of the Project eligible for reimbursement with Grant Funds, Grantee shall be reimbursed for those permissible travel expenses in amounts in accordance with Ohio Administrative Code Section 126-1-02, as updated from time to time (the “Expense Rule”) and Grantee agrees that it shall not be reimbursed and Grantor shall not pay any items that are deemed to be “non-reimbursable travel expenses” under the Expense Rule, whether purchased by the Grantee or Grantor or their respective employees or agents.

(m) **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format (“PDF”) shall be deemed to be originals for purposes of execution and proof of this Agreement.
[Signature page follows.]
Signature: Each of the parties has caused this Grant Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

Grantee:

[GRANTEE]

By: ____________________________
Printed Name: __________________
Title: __________________________
Date: __________________________

Grantor:

State of Ohio
Development Services Agency

Lydia L. Mihalik, Director
Ohio Development Services Agency

By: ____________________________
Printed Name: __________________
Title: __________________________
Date: __________________________

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION
Exhibit I
(Scope of Work)

The Ohio Development Services Agency ("Grantor"), through its Minority Business Development Division, will provide grant funds of $[XXXXXXXX] during fiscal years 2022-2023 to operate the [CENTER NAME] (the "MBAC") hosted by [GRANTEE] (the "Grantee"). The overall objective of the MBAC is to act as a liaison between all public and private local, state and federal small and minority business resources by performing the activities set forth below in accordance with the general goals and objectives of the Minority Business Development Division. The Grantee has provided the Grantor with a work plan outlining in detail the type and delivery mechanisms of services offered and the performance measures to be followed. A summary of the work plan follows.

The Work Plan:

- Increase the use of the Minority Business Development Division's technical assistance and procurement programs that assist minority, disadvantaged and small businesses in its service area to grow and expand which in turn will help to create, retain and expand job opportunities;

- Review applications and supporting documentation, conduct on-site visits as may be required for MBE/EDGE certification applications and make recommendations to the Department of Administrative Services, Statewide EEO Coordinator. NOTE: ORC 123.151 specifically authorizes the EEO Coordinator to approve the application of any Minority Business Enterprise that complies with the rules adopted under the Department of Administrative Services, Equal Opportunity Division. That authority will not/cannot transfer to the MBAC. Consistent with its role in the Ohio Development Services Agency network of service providers, the MBAC will assist MBE/EDGE applicants in understanding the program(s) requirements and compiling the required supporting documentation. After a review of the supporting documentation, the MBAC will forward the information to the EEO Coordinator. The EEO Coordinator will approve, reject or request additional information pursuant to the ORC;

- Develop relationships with regional and local workforce investment boards to develop and target entrepreneurial and workforce training initiatives to minority and small business owners;

- Develop and implement programming to encourage the growth and success of innovative minority and small businesses by meeting and exceeding Key Performance Measures (KPM) in the areas of counseling, training, certification and contract awards; and

- Provide timely and accurate reports in the approved reporting management system to ensure all activity is being counted and expected results are being achieved.

The MBAC Grantee will also perform work in three basic areas - market development, client services and operational quality. These elements are designed to increase the exposure and visibility of minority and small business enterprises. MBAC efforts in these areas should produce quantifiable results.

Market Development: This basic MBAC function is designed to facilitate the identification of potential/existing minority business owners, methods to solicit potential MBAC clients, and to identify, develop and leverage public and private sector resources and business opportunities for the center's clients. A core function of the MBAC is to promote individual minority business owners to the public and private sectors to build market awareness of the capability, talent and capacity of its clients.
**Client Services:** Provide direct client assistance to minority and socially and economically disadvantaged business owners on the basis of individualized client assessment. Under the client services function, the MBAC director and counseling staff provide detailed business counseling services to minority firms and individuals that have agreed in writing to becoming MBAC clients. Clients shall be assisted primarily through one-on-one business consulting, strategic team consulting, and training workshops lead by MBAC.

MBAC business counselors shall conduct a client assessment which provides each MBAC client with a fundamental business evaluation. This process is designed to standardize services across the MBAC network, maintain the quality of center operations and to facilitate the client referral process among the network. This requires an interview be conducted between the client and counselor. This assessment function is designed to provide:

- Background and contact information on the client;
- Client business analysis with respect to its core competency, organizational structure, market and industry placement, production of products/delivery of services, marketing plan, resources and financial viability;
- Analysis and benchmarking of client;
- Identification of immediate and long-term client needs and expectations;
- Development of an action plan;
- Strategic referrals;
- Identification of resources;
- Implementation of targeted plans of actions for increasing size, scale and capacity;
- Increased exposure and visibility of the MBAC program and MBEs; and
- Promote achievement of client outcomes.

**Operational Quality:**
The MBAC will maintain operational efficiency and the effectiveness of the overall operations as well as the quality of its client services throughout the duration of the grant period.
AN ORDINANCE

Authorizing the City of Dayton, Ohio to
Furnish Water to the City of Brookville, Ohio
and Authorizing the City Manager to Execute
the Water Service Agreement and Any
Documents and Agreements Related Thereto.

WHEREAS, The City of Dayton has the resources and capacity to provide water
to residents, businesses and governmental entities located outside the Dayton municipal
corporation boundaries; and

WHEREAS, Brookville desires to acquire and purchase water from Dayton for
use by itself, and the residents, institutions and businesses located within and adjacent to
Brookville’s municipal corporation boundaries; and,

WHEREAS, The City of Dayton has determined that surplus water is available
for sale to the City of Brookville to serve the Brookville Water Service Area, as described
herein; and,

WHEREAS, the “Brookville Water Service Area” shall be the comprised of the
entire municipal corporation limits of the City of Brookville, Ohio, including any area(s)
as may be annexed thereto during the term of this Agreement, plus any area located
outside, but adjoining, the municipal corporation limits of the City of Brookville; and;

WHEREAS, the Water Service Agreement sets forth the terms and conditions
under which the City of Brookville will have non-exclusive right to obtain and provide
the City of Dayton’s water for a period of fifteen (15) years with one (1) renewal period
with a term that shall not exceed ten (10) years; and,

WHEREAS, On June 15, 2021, the City of Brookville City Council
recommended approval authorization for the City Manager’s execution of the Water
Service Agreement between the City of Dayton and the City of Brookville; now,
therefore,

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

Section 1. That the Dayton City Commission accepts the terms and conditions of
the Water Service Agreement which was approved by the City of Brookville on June 15,
2021, and the City of Dayton does hereby agree to carry out the terms and conditions
therein set forth.
Section 2. That the City Manager or her designee is authorized to execute on behalf of the City of Dayton, the Water Service Agreement, a copy of which is attached hereto as Exhibit A, and any and all other documents, agreements or contracts related thereto and necessary for the City of Dayton to provide potable water to the City of Brookville.

Passed 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
July 9, 2021

TO: Shelley Dickstein, City Manager

FROM: Michael Powell, Director
       Department of Water

       Subject: City of Brookville Water Service Agreement

Attached for your review is an Ordinance authorizing the City of Dayton to furnish water to the City of Brookville, Ohio. We request that the Ordinance and Agreement be presented for Commission approval at your earliest convenience. The City of Brookville’s Commission approved the Water Service Agreement on June 15, 2021 and the City of Dayton Law Department has approved the Agreement and Ordinance as to form and correctness. The Water Service Agreement stipulates that annual water rates will be established using the Cost of Service Model.

If you have any questions or need any additional information, please contact Kena Crist at 333-4236.

Attachments – Ordinance & Copy of Water Service Agreement

Copy: Joseph Parlette, Deputy City Manager
          LaShea Lofton, Deputy City Manager & Acting Finance Director
          Aaron Zonin, Deputy Director, Department of Water
          Rosalind Bertolo, Special Projects Administrator, Department of Water
WATER SERVICE AGREEMENT

This Agreement is dated this ___ day of ________________, 2021 between the City of Dayton, Ohio ("Dayton") and the City of Brookville, Ohio ("Brookville"), both municipal corporations in and existing under the laws of the State of Ohio.

WITNESSETH THAT:

WHEREAS, Dayton has the resources and capacity to provide water to residents, businesses and governmental entities located outside the Dayton municipal corporation boundaries; and

WHEREAS, Brookville desires to acquire and purchase water from Dayton for use by itself, and the residents, institutions and businesses (hereinafter referred to as "User" or "Users") located within and adjacent to Brookville’s municipal corporation boundaries; and

WHEREAS, Dayton has determined that surplus water is available for sale to Brookville to serve the Brookville Water Service Area, as described herein.

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

SECTION 1. WATER SERVICE AREA

A. For purposes of this Agreement, the “Brookville Water Service Area” shall be the comprised of the entire municipal corporation limits of the City of Brookville, Ohio, including any area(s) as may be annexed thereto during the term of this Agreement, plus any area located outside, but adjoining, the municipal corporation limits of the City of Brookville. The Brookville Water Service Area is more specifically defined within Exhibit A, which is attached thereto and incorporated herein.

It is understood and agreed that Brookville will have the non-exclusive right to obtain and provide Dayton’s water for the portion of the Brookville Water Service Area located outside its municipal corporation limits. Notwithstanding the foregoing sentence, it is agreed that nothing contained herein shall prevent or impede Dayton from negotiating and executing a water service agreement(s) to provide Dayton water directly to the area(s) outside the Brookville municipal corporation limits.

B. The parties hereby agree that the Brookville Water Service Area may be modified only by mutual written agreement between the parties, and subject to the ability of Dayton to supply its water to serve the expanded or additional territory.

SECTION 2. TERM

This Agreement shall commence upon the first full billing cycle following approval by the
Commission of the City of Dayton, Ohio and approval by the Council of the City of Brookville, Ohio and remain in effect for a period of fifteen (15) years ("Initial Term"). This Agreement may be renewed by mutual agreement of the parties for one additional renewal period and the term for the renewal shall not exceed ten (10) years. No renewal will be effective unless it is reduced to writing, executed by duly authorized representatives for each party and approved by the Commission of the City of Dayton, Ohio and Council of the City of Brookville, Ohio.

SECTION 3. BROOKVILLE WATER SYSTEM

For purposes of this Agreement, the “Brookville Water System” shall be all mains, distribution and transmission lines situate inside the Brookville municipal corporation limits, now existing or as may be added in the future. The Brookville Water System shall also include all mains, distribution and transmission lines and infrastructure constructed by Brookville to supply water to Users situate outside the Brookville municipal corporation boundaries, whether existing now or added in the future.

At the time of execution of this Agreement, Brookville hereby represents and warrants to Dayton that the Brookville Water System existing at the time of this Agreement provides Dayton water to the existing Users in the Brookville Water Service Area.

During the term of this Agreement and any renewal hereof, Brookville shall submit to Dayton’s Director of Water for consent and approval prior to actual construction, all plans and specifications for any additional mains, laterals, transmission and/or distribution lines for the Brookville Water System. Dayton’s Director of Water shall review said plans and specifications for adequate flow, volume and other system needs, with said consent and approval not to be unreasonably withheld. Further, Brookville agrees that all Brookville Water System planning, construction, installation and inspection(s) shall be performed in accordance with Dayton’s specifications, rules, regulations and inspection requirements for similar work now existing or as amended, and all applicable federal and state laws, regulations, standards or orders.

SECTION 4. DISTRIBUTION OF WATER

A. During the term of this Agreement, Dayton shall endeavor to use its best efforts equivalent to that effort used to provide water to Dayton residents to furnish an adequate supply of water to Brookville for resale by Brookville to the Users within the Brookville Water Service Area subject to such interruption of supply as may arise from natural causes, failure or insufficiency of equipment or water lines or causes reasonably beyond Dayton’s control. All water supplied under this Agreement, including water supplied for municipal facilities, shall be individually metered.

B. During the term of this Agreement, Dayton shall endeavor to use its best efforts so that
the water pressure and volume of water to be provided under this Agreement will not be reduced within the Brookville Water System, subject to emergency failure of pressure due to supply line breaks, insufficient water mains or equipment, power failure, acts of God or other events beyond the control of Dayton. In the event of a restriction in flow or pressure due to drought conditions or other causes which significantly affect the entire Dayton water system, Dayton shall endeavor to use its best efforts so that the reduction in flow or pressure to the Brookville Water Service Area will not be proportionally greater than applied to other users of Dayton water outside Dayton’s municipal boundaries. Dayton shall have no responsibility for water pressure or volume problems and conditions arising in the Brookville Water System, not designed and built by Dayton.

C. The use and consumption of water by Users within the Brookville Water Service Area shall be subject at all times to such rules and regulations, specifically including those concerning excessive use, as Dayton may establish and as are generally applicable to other users of Dayton water outside Dayton’s municipal boundaries. Such rules and regulations applicable to the operation of, and consumption and distribution from the Water Works of Dayton shall, as may be practicable and applicable, govern and apply to similar situations within the Brookville Water Service Area. Fire hydrants shall be used only by Brookville’s Fire Department or for normal system flushing, except that special permits for hydrant use (such as pool use, street sweeping, construction) may be obtained in accordance with Dayton’s Department of Water Rules and Regulations. Private fire hydrants may be set in accordance with Dayton’s Department of Water Rules and Regulations.

D. Nothing contained herein shall prevent Brookville from establishing such similar or additional rules and regulations governing the consumption and use of water to be provided under this Agreement. However, any such rules and regulations established by Brookville shall not establish requirements or set standards which conflict with and/or fall below those rules, regulations, standards, conditions, or restrictions set forth in Dayton’s Department of Water Rules and Regulations, and shall be consented to by Dayton.

SECTION 5. WATER METERS AND TAPS

A. Dayton shall furnish and install all meters necessary to measure the use of water furnished to the Users within the Brookville Water Service Area and shall make all service taps on the distribution system, including the Brookville Distribution System. Service charges for installing and setting the meters, cost of the meters and other special charges will be at the rates in effect at the time of execution of this Agreement or may be hereinafter established by Dayton, plus a ten percent (10%) surcharge. All meters installed shall remain the sole property of Dayton.

B. Taps shall only be made after a Dayton permit has been obtained by a plumber, who shall be licensed and bonded with Dayton. The plumber shall first obtain and remit
payment for all required permits from Brookville, if any, prior to seeking a Dayton permit. The Dayton permit shall set forth the plumber’s name, address and the address and size of the tap to be made. Dayton’s charge for the permit will be the same as the charge for a permit within the municipal boundaries of Dayton, plus a ten percent (10%) surcharge. Dayton’s charge for the tap will be the same as the charge for a tap within the municipal boundaries of Dayton, plus a ten percent (10%) surcharge.

C. Service taps will only be made in the sizes currently offered and permitted under the Dayton Department of Water Rules and Regulations. Prices for taps two inches (2”) in diameter and smaller shall be at the standard rates charged within Dayton, plus a 10% surcharge. Prices for taps over four inches (4”) in diameter will only be provided upon plumber’s request, and will be based upon the requisite tapping charge and estimate of the actual cost(s) to Dayton for labor and materials, plus a ten percent (10%) surcharge.

D. All tapping fees and permit fees or charges shall be paid by the plumber seeking to obtain the Dayton permit(s), with payment to be made directly to the municipality imposing said fee or charge. Dayton agrees that it shall be responsible for the billing and collection of its tapping and permit fee(s) or charge(s). The plumber shall be responsible for all excavations, as Dayton will not excavate in any street outside its corporate limits. Once a Dayton permit is issued, Dayton shall install the specified tap. Despite payment of tapping fees and permit fees to Dayton, the tap and all service lines from the tap to the curb stop shall become the sole property of Brookville, and Brookville shall be responsible for maintenance, service and replacement of same.

SECTION 6. WATER PAYMENT AND USER BILLING

A. Dayton will read all meters within the Brookville Water Service Area and furnish Brookville with a quarterly billing statement for all water usage within the Brookville Water Service Area. Dayton shall also provide Brookville with quarterly billing information in electronic format evidencing Dayton’s charges for each individual User served within the Brookville Water Service Area. However, only the electronic information shall be in such format as to be readily usable by Brookville for individual billing to Users within the Brookville Water Service Area.

The quarterly billing statement shall form the basis for a water payment to Dayton, for the water furnished and consumed by Users within the Brookville Water Service Area. Brookville shall remit to Dayton the aforesaid quarterly billing payment in full within thirty (30) days of receipt of bill. Beginning five (5) years following commencement of this agreement, any amount not paid in full within thirty (30) days of receipt of bill is subject to a ten percentage (10%) penalty. Dayton reserves the right to change to a monthly billing statement based on mutual agreement with Brookville. An amendment addressing monthly billing terms to this Agreement shall be issued if monthly billing is implemented.

B. The rates or charges to be paid by Brookville to Dayton for water supplied under this
Agreement and under any special permits shall be rates equal to the rates now established within Dayton’s Water Service Agreement Cost of Service Financial Model. The model accounts for an allocation of the City’s total water utility costs (operating and capital) and projected water production and consumption across the City’s customer classes. The resulting outputs are the rates and fees necessary to generate the needed revenue for the City to properly operate the utility and serve all customers. The Cost of Service Financial Model follows the “Utility Method” of rate setting and follows the methodology defined in Principles of Water Rates, Fees, and Charges, Manual of Water Supply Practices, American Water Works Association M1, Latest Edition. Under the utility method, revenue requirements are recovered through several cost components, operation and maintenance (O&M) expenses, depreciation, and rate of return on assets. Time frames and additional details are explained in Exhibit B.

C. If any meter or other measuring device fails to function, the compensation or charges during such period of failure shall be based upon estimated quantities to be determined and fixed by Dayton’s Director of Water after consultation with Brookville for this meter's typical usage.

D. Brookville shall be responsible to bill all Users within the Brookville Water Service Area for all Dayton water provided under this Agreement, at such rates and charges as Brookville may establish from time to time. It is agreed and understood that Dayton shall not be responsible for any User billing errors or failure by User to remit payment. If a User dispute arises, whereby a User seeks to challenge the amount of water consumed and Brookville desires Dayton’s involvement, Brookville shall immediately contact Dayton concerning such dispute and Dayton shall take such actions within sixty (60) days as reasonably necessary to investigate same under its existing policies and procedures for such disputes. Regardless of whether Brookville has credited or taken such other action to resolve the dispute Dayton shall not be bound by such resolution, absent consent from Dayton’s Director of Water.

SECTION 7. MAINTENANCE, LEAK DETECTION AND BACKFLOW

A. Brookville, except as provided for in Section 5, shall assume all maintenance, repair, replacement, and service responsibilities and costs for the Brookville Water System.

B. Dayton shall assume all maintenance, repair and replacement responsibilities for the water meters.

C. In the event that Brookville fails to repair service or replace any portion of the Brookville Water System within twenty-four (24) hours after Dayton’s Director of Water notifies Brookville to do so, Dayton shall cause such repair, service or replacement, and Brookville shall reimburse Dayton for any and all costs reasonably related thereto.
D. Brookville shall coordinate with Dayton for a complete Brookville Water System leak detection survey every five (5) years that this Agreement is effective. The scope of said leak detection survey(s) in the Brookville Water Services Area shall include all then existing water pipe of the Brookville Water System. Dayton and Brookville shall coordinate to determine the date of the first survey as part of Dayton’s leak detection efforts

Notwithstanding the foregoing, if twenty percent (20%) or greater of the annual amount of Dayton water supplied through the Brookville Water System is not accounted for based upon the consumption by the Brookville Water Service Area Users, Dayton’s Director of Water will provide written notice to Brookville of the area(s) deemed to require a leak detection survey or the necessity for a more involved Brookville Water System leak detection survey. If Brookville fails to undertake or cause the limited or complete leak detection survey(s) within one hundred and eighty days (180) from the date of the notice or such other period as Dayton and Brookville may mutually agree upon, Dayton shall have the right to conduct said leak detection survey(s) in the Brookville Water Service Area.

Dayton shall also retain the right to make such emergency leak detection survey(s) as may be deemed necessary by Dayton’s Director of Water, after consultation with Brookville.

If Dayton conducts any leak detection survey, Brookville shall be responsible to reimburse Dayton for the actual costs of same and shall provide assistance during the leak detection survey, including, but not limited to, making valves accessible, operating the valves and repairing leaks. Should Brookville fail to provide said assistance, Brookville shall be responsible to reimburse Dayton for all costs and overhead expenses reasonably incurred for performing same. Brookville shall be responsible to provide such drawings of the Brookville Water System and appurtenance locations, as may be requested by Dayton’s Director of Water.

E. Brookville shall protect the public water supply in the Brookville Water Service Area, and shall implement and maintain a backflow prevention and cross connection control program in compliance with the laws of the State of Ohio and in accordance with Dayton’s Department of Water Rules and Regulations, which are in effect at the time of execution of this Agreement or as may be amended, modified or enacted.

SECTION 8. DEFAULT

If Brookville defaults in its water payment to Dayton as required under Section 6 of this Agreement and said default is not cured within twenty-one (21) days from written notice thereof, Dayton may, at its option, continue to furnish water to the Brookville Water Service Area through the Brookville Water System, including main(s) and distribution lines then existing, maintain and operate the entire Brookville Water Service Area water system, and bill all Users at rates equal to the rates now obtaining or hereafter established for comparable users within Dayton’s corporation limits, plus a surcharge not to exceed thirty five percent (35%) of the amount billed to the User. Dayton shall also be entitled to directly bill and
collect all meter installation fees, service fees, permit fees and tap fees chargeable to Users by Brookville under this Agreement, and to recover from Brookville all remaining costs for the complete operation of the water system, all without any obligation to reimburse Brookville for the use of the entire Brookville Water Service Area water system during said period of default.

ARTICLE 9. TERMINATION

This Agreement may be terminated by Dayton upon written notice in the event of substantial failure by Brookville to perform in accordance with the terms of this Agreement for any reason other than default which is addressed in Section 8 herein. Brookville shall have fifteen (15) calendar days from the date of the termination notice to submit a plan to remedy the substantial failure acceptable to the City.

Dayton or Brookville may terminate or suspend performance of this Agreement for convenience upon one (1) year prior written notice to the other party. In the event of termination hereunder, Brookville will pay the City for all usage and fees incurred up to the date of termination.

SECTION 10. REPRESENTATIONS

A. Brookville hereby represents and agrees that nothing contained herein shall be construed or accepted, directly or indirectly, as conferring upon Brookville the right to extend any water distribution or service line or main outside the Brookville Water Service Area for the purposes of supplying any other municipality, political Subdivision, or other governmental entity with Dayton water.

B. Brookville hereby represents and agrees that the Brookville Water System shall not be supplied or serviced with other water under any contract or agreement with any other governmental or private water supply system during the term of this Agreement. However, Brookville shall have the right to develop emergency inter-connections with other sources of water supply, which may be used only in emergency situations and upon notice to and consent by Dayton.

SECTION 11. GENERAL PROVISIONS

A. Consent. Whenever in this Agreement consent is to be given by Dayton or Brookville, such consent shall not be unreasonably withheld. For purposes of this Agreement, consent by Dayton shall be manifested by action of its Director of Water.

B. Integration. 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. **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect. The parties further agree that in such instances, the parties will act in good faith to mutually agree to an acceptable substitute provision.

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

E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

F. **Independent Contractor.** The parties hereby agree that at all times, the relationship between the parties shall be that of an independent contractor. At no time shall the relationship between the parties under this Agreement be construed, held out or considered as a joint venture, principal-agent or employer-employee.

G. **Assignment.** Assignment of this Agreement for the benefit of bond holders or other debt holders of some or all of the water facilities to be constructed and installed as described herein, including all contracts, agreements and/or franchises, and all right, title, and interest in real and personal property for the purposes of financing the water service enhancements, is specially approved and permitted. No other assignment of this Agreement is permitted or authorized without the express written consent of both parties.

H. **Amendment.** This Agreement may be amended by the parties, provided that any such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of Dayton and Brookville, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio and Council of the City of Brookville, Ohio.

I. **Notices.** Notice required or permitted herein shall be sufficient if hand-delivered or sent by certified U.S. Mail, return receipt requested, to the respective Parties at the following addresses:

**To Dayton:** City of Dayton, Ohio  
320 West Monument  
Dayton, OH 45401  
Attn: Director of Water

**To Brookville:** City of Brookville, Ohio  
301 Sycamore Street, P.O. Box 10  
Brookville, OH 45309-0010  
Attn: City Manager
[Remainder of this page intentionally left blank.]
IN WITNESS WHEREOF, Brookville and Dayton, each by a duly authorized representative and intending to be legally bound, have executed this Agreement as of the day and date written above.

THE CITY OF DAYTON, OHIO

______________________________
City Manager

THE CITY OF BROOKVILLE, OHIO

______________________________
City Manager

APPROVED AS TO FORM,
AND CORRECTNESS:

6/8/2021

X

Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia
City of Dayton, Ohio

APPROVED AS TO FORM:

______________________________
Law Director
City of Brookville, Ohio

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

______________________________ , 2021
Min./Bk.______ Pg.______

______________________________
Clerk of the Commission
EXHIBIT A
BROOKVILLE WATER SERVICE AREA

The Brookville Water Service Area shall be the following described geographic area:

SEE ATTACHED MAP
EXHIBIT B
Determination of Rates and Charges

The Financial Cost of Service Model will be updated on an annual basis unless both City of Dayton and the City of Brookville agree to other terms. Model data will be updated according to the process below:

- The City shall update the Model each calendar year during the Term of the Agreement to determine the rates and fees to be charged to Brookville.
- On or before November 1st of each year, the City shall deliver to Brookville the City’s determination of the next year’s rates and fees to be charged to Brookville based upon the annually updated Model.
- The Rates charged to Brookville shall be comprised of a base charge and a volumetric rate.

The 2021 base charge is $134,238 per year, payable quarterly at $33,559.62 per quarter.

The 2021 volumetric rate is $26.83/1,000 CF.
AN ORDINANCE

To Vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

WHEREAS, The City Commission did on the 19th day of May, 2021, by Resolution No. 6574-21, declare its intention to vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive; vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive described herein will enable the abutting property owner to develop this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive being more particularly bounded and described in as follows:

Being all of the 50 foot Shelby Avenue from the 50 foot Kling Drive to 100 feet east of Kling Drive

is hereby vacated. The vacation shall be subject to the following conditions:

A. AES Ohio shall retain a ten foot diagonal easement over, under, and through Shelby Avenue for its existing aerial electric facilities. With written consent from AES Ohio these facilities may be relocated or abandoned at the expense of the applicant.
B. 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, and eight inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

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
July 7, 2021

TO: Shelley Dickstein  
City Manager

FROM: Joseph Weinel, Chief Engineer  
Division of Civil Engineering

SUBJECT: The Vacation Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21538 requesting the vacation was received from Nicholas Ungard on March 29, 2021. Resolution No. 6574-21 declaring the Commission’s intention to vacate was adopted on May 19, 2021. The Board of Revision of Assessments recommended the vacation on June 23, 2021. The vacation will enable the abutting property owners to safeguard this property.

If you have any additional questions, please contact Joe Weinel at extension 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
AN ORDINANCE

To Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

WHEREAS, The City Commission did on the 19th day of May, 2021, by Resolution No. 6575-21, declare its intention to vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way: and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that South Orchard Avenue from Home Avenue to US Route 35 Right of Way; vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way described herein will enable the abutting property owner to develop this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That South Orchard Avenue from Home Avenue to US Route 35 Right of Way being more particularly bounded and described in as follows:

Being all of the 50 foot South Orchard Avenue from the 100 foot Home Avenue to the US Route 35 Right of Way

is hereby vacated. 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. The street opening at Home Avenue shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
C. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing 113” X 72” storm sewer, six inch water main, and thirty inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

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
July 7, 2021

TO: Shelley Dickstein
City Manager

FROM: Joseph Weinle, Chief Engineer
Division of Civil Engineering

SUBJECT: The Vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21539 requesting the vacation was received from Randall E. Lucas on April 1, 2021. Resolution No. 6575-21 declaring the Commission’s intention to vacate was adopted on May 19, 2021. The Board of Revision of Assessments recommended the vacation on June 23, 2021. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact Joe Weinle at extension 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