



**City of Dayton, Ohio  
Department of Public Works**

**DIVISION OF CIVIL ENGINEERING  
PROFESSIONAL SERVICES FOR PROPERTY ACQUISITIONS**

**Salem Avenue Reconstruction Phase 2  
And  
West Hillcrest Sidewalk Phase 2**

**REQUEST FOR PROPOSAL (RFP)  
20-004PWCE**

February 2020

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## SECTION 1 – PROPOSAL INSTRUCTIONS

**1.01 COMMUNICATIONS REGARDING THIS PROJECT.** Please direct all communications regarding the RFP Process to:

City of Dayton, Division of Civil Engineering

101 West Third Street

Dayton, Ohio 45402

Joseph Weinel

Telephone: (937) 333-4218

Fax: (937) 333-4077

E-Mail: joe.weinel@daytonohio.gov

All communications/questions concerning this RFP must be submitted in writing referencing the specific paragraph and page number. The deadline for questions is listed in Section 1.02 (RFP Schedule). Written responses will be prepared by the City and posted on the city's web site by the date listed in *Section 1.02*. Changes to this RFP will be made only by formal written correspondence issued by the City.

A copy of this proposal and any additional documentation may be found at the City of Dayton's website at:  
<http://daytonohio.gov/bids.aspx>

**1.02 RFP SCHEDULE.** The following is the anticipated schedule for the RFP Process:

Issue RFP:	February 24, 2020
Proposers Deadline to Submit Questions:	5:00 PM on March 12, 2020
City's Written Responses to Questions:	March 16, 2020
Due Date and Time for Proposals:	4:00 PM on March 19, 2020

**1.03 SUBMITTING A PROPOSAL.** Each Contractor seeking consideration for performance of services related to the project must submit a Proposal. Proposers are to submit one original copy signed by an officer authorized to bind the company and 3 copies of their written proposal. All proposals shall be sealed, properly addressed with the name of the Contractor and sent to:

Professional Services for Property Acquisition

City of Dayton, Division of Civil Engineering

Joseph Weinel

City Hall, 5<sup>th</sup> Floor

101 West Third Street

Dayton, Ohio 45402

Sealed proposals must be received at the above address by **March 19, 2020** on the date indicated in Section 1.02 (RFP Schedule). Proposals received after the scheduled date/time will not be considered. All supporting materials and documentation must be included with the proposal. The responsibility of timely delivery lies solely with the proposer. Faxed and e-mailed proposals are **not** acceptable.

The City reserves the right to reject any and all proposals, to waive any irregularities in a proposal, or to accept the proposal(s) which in the judgment of proper officials, is in the best interest of the City. The City reserves the right to accept a part or parts of a proposal unless otherwise restricted in the RFP or issue subsequent Requests for Proposal. The City reserves the right to approve or reject any sub-Contractors proposed for work under this proposal or waive any minor irregularities

The City reserves the right to select the successful proposer on the basis of proposals received, without seeking further information for clarification from proposers. Upon review of proposals, the City may designate the most qualified proposals as finalists. These finalists may be invited to make oral presentations and participate in a question and answer session with the City. The City shall have the right to visit selected user sites, should this be deemed necessary.

All federal, state, and local laws regarding competitive bidding, anti-competitive practices, and conflict of interest shall be applicable to this RFP.

The City does not guarantee that any contract will be awarded as a result of this RFP. In the event that a contract award is made but the contract is not executed, the City does not guarantee that the contract will be re-awarded.

**1.04 REQUIRED PROPOSAL CONTENTS.** All brochures and supplemental documentation shall be included with the original and all of the copies. If not, the proposal may be considered as non-responsive. Contractors are required to submit the following information in their proposal:

- **Letter of Transmittal:** The proposer shall provide a transmittal letter with authorizing signature for the proposal. The letter must briefly summarize the vendor's ability and willingness to perform the services required by the RFP. The letter must be on the form provided in Exhibit A.
- **Company Profile and Background.** Provide the following information:
  - **Location** - The street address of the proposer's company headquarters.
  - **Local Office of Proposer** - Provide the location of the proposer's office nearest to Dayton, Ohio. Include the local office, a contact name, address, telephone, and fax numbers.
  - **Company's Primary Business** - State the proposer's primary business, the number of years in the proposer's industry, and the number of employees assigned to these related activities.
  - **State the legal make-up** of your company: sole proprietorship, partnership, corporation, etc.
  - **Please list any Lawsuits that you are currently engaged in.** Please provide any and all suits either with the City of Dayton or any other Municipalities (include, but not limited to Federal, State, Local or other Municipalities and Governmental agencies).
- **Key Personnel Information.** Provide the name, title, mailing address, telephone number and e-mail address of the persons who will function as the City's primary contact and back-up contact person. Provide brief resumes/qualifications of personnel who will be primarily involved in this project. Include any certifications earned, special training taken, and memberships in professional groups. Complete Form found in Exhibit A.
- **Proposal Response** as per Section 2.
- **Statement of Exceptions to RFP requirements:** Provide a detailed description of any exceptions taken to the requirements of this RFP, including the City Standard Terms and Conditions in Section 3. Exceptions shall be referenced to the applicable RFP section/sub-section numbers. Any other departures from the city's RFP are to be identified and failure to do so shall make the proposal non-responsive. City's standard Terms for Payment are Net 30 days from date of invoice once the project is complete, unless otherwise negotiated. If you cannot comply with this, please state any changes in the Statement of Exceptions to the RFP Requirements
- **References:** Provide a list of references on form provided as Exhibit B. The City is particularly interested in contacting your governmental clients in the state of Ohio.

**1.05 ITEMS THAT DISQUALIFY A VENDOR IMMEDIATELY.**

- Incomplete or non-responsive proposal
- Inability to obtain Affirmative Action Assurance approval prior to award of the contract. See Section 3.06 for information on how to contact the Human Relations Council.

**1.06 Selection Committee.**

The selection committee members for the project are:

Joseph Weinel	Civil Engineering	Chief Engineer (Project Manager)
David Burns	Civil Engineering	Senior Engineer I
Brian Zamostny	Civil Engineering	Senior Engineer I

1.07 CRITERIA. The selection committee will evaluate each proposal submitted based on the following criteria. After receipt and review of the written proposal, the City may elect to have the proposal presented in person, or clarifications submitted in writing.

Proposers shall not assume that any information shared with the City prior to this RFP will be considered in the Evaluation process of this RFP. Evaluation team may or may not have prior knowledge of any discussions and

Evaluation Criteria for Goods and Services		
Item	Description	Percentage Possible
1	Cost/Price/Lump Sum Fee	30%
2	Previous Experience	20%
3	Key Personnel for this Project	20%
4	Property Acquisition Approach	10%
5	Perform Within Time Limits	10%
6	Dayton Local Business	5%
7	PEP Certified Vendor	5%
	<b>Total Points</b>	<b>100%</b>

## SECTION 2 – SCOPE OF PROJECT

The City of Dayton, Ohio, requests proposals for the turn-key conveyance of the right-of-way for various City of Dayton construction projects (see attached list). Acquisition of the right-of-way is necessary to complete these important projects.

### 2.01 OBJECTIVE

To acquire properties in the project areas in order to implement the projects in a timely manner. This will be a turn key operation. The consultant will provide all services to convey clear title to the City of Dayton including title reports and updates, appraisals, reviews, negotiations and/or appropriation filings, including all services through the closing for all parcels.

## 2.02 REQUIREMENTS

All consultants will be ODOT prequalified with five years of demonstrated experience in public real estate/right-of-way acquisition. Individuals or firms should have a proven record of completing projects satisfactorily and on schedule. Consultants must have considerable experience in successfully handling condemnation proceedings and must demonstrate an ability to obtain possession of properties on schedule.

For the purposes preparing this Proposal, the consultant will follow accepted real estate acquisition standards that are in compliance with the Ohio Revised Code, the Federal Uniform Act, and as outlined in the most current version of the Ohio Department of Transportation's *Real Estate Policy & Procedures Manual*.

**Reference Documents** – Applicable provisions of the following documents will be incorporated by reference into this Scope of Service:

- Ohio Department of Transportation, Office of Real Estate Policy and Procedures Manual
- The Ohio Revised Code
- The Ohio Administrative Code

## 2.03 SCOPE OF WORK

- Project Mobilization Meeting** – A Project Mobilization Meeting will be held to introduce each other and to clarify any questions relating to project scope. A Project Mobilization Meeting will outline contact persons and communication protocol. At this meeting, all issues related to the specific job and its division of responsibilities will be resolved. The Consultant will be provided with a complete set of right-of-way plans and legal descriptions for all effected properties at the meeting or as the plans and descriptions become available.
- Property Inventory Classification** – The Consultant will prepare a Property Inventory Classification (using Ohio Department of Transportation (ODOT) Form RE-95's), if needed, for specific parcels on this project. This will identify signs, fences, light poles, etc... being removed as part of the project, which are located in the Warranty Deed (WD), Permanent Easement and Temporary Easement areas. This form will establish ownership of these items and identify which improvements are real property and which are personal property. These forms will be provided to the appraiser(s) so that the owners/tenants are accurately compensated for their site improvements.
- Title/Title Updates** – For parcels requiring permanent easements or fee simple takes for roadway purposes (WD) takes, the Consultant will be responsible for a title search back to warranty deed according to ODOT Standards. Lesser title reports can be provided, per the latest addition of ODOT's Real Estate Policy and Procedures Manual for temporary easement takings only, with approval by the City and District Real Estate Administrator.
- Title Updates** – The Consultant will review County records and note any recent activity affecting the property to be acquired since the original date of the title search. Updates will be prepared by the Consultant for appropriation cases, and immediately before closings. Updates for

appropriation parcels shall be performed no more than seven (7) days prior to submission of an acceptable billing package.

- e. **Preparation of Individual Parcel Files** – The Consultant will be responsible for the assemblage and maintenance of all acquisition and relocation files. All files will be maintained in accordance with the ODOT Real Estate Policies and Procedures Manual and as directed by the City.
- f. **Appraisal/Appraisal Updates** – The Consultant will be responsible for all appraisal activities. All valuation activities will be done in accordance with USPAP appraisal standards and ODOT Real Estate Manual Section 4000 et seq., unless otherwise directed by the City. Appraisal and appraisal updates will be the responsibility of the Consultant. Any appraisal update will require prior approval from the City.
- g. **Appraisal Reviews** – The Consultant shall compile packages for third party appraisal review. Appraisal Reviews are required if either: (1) directed by the City or (2) Federal funds are used on any phase of this project. A Review Appraiser is not part of this Scope of Work and the proposal will not include fees for a Review Appraiser.
- h. **Legal (Conveyance) Instruments by the Consultant** – The Consultant will utilize ODOT approved Conveyance Documents for this project, unless otherwise directed. The City will review these documents and approve of their use, or provide alternate documents for use by the Consultant. Items required on the legal instrument: current owner(s), name as they took title, marital status, Auditor’s Permanent Parcel Number(s), Volume/Page or imaging number(s) where current owner(s) took title, survey statement, surveyor name and number, and dollar amount. With Warranty Deed (WD) parcels, the right of ingress and egress statement must be present. On Temporary Easements, the duration of the easement must be present. Also, any descriptions containing more than one Auditor’s Parcel Number will show all Auditor’s Numbers. All land and/or property shall be acquired by the Consultant in the name of the City of Dayton, Ohio, unless directed otherwise.
- i. **Acquisition (Negotiations)** – The Consultant will be responsible for all negotiation activities. All negotiation activities will be done in accordance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), Section 163 of the Ohio Revised Code and the ODOT Real Estate Manual Sections 5100-5700 et seq. Consultant is responsible for the preparation and distribution of the Notification Letters and Brochures; and the preparation and distribution of Good Faith Offer Letters. During negotiations, the Consultant shall supply the fee owner with a copy of the applicable Appraisal or Value Analysis. Consultant will prepare and supply the owner a City approved acquisition Brochure.
- j. **Billing** – Complete billing packages (signed parcels or appropriations) will be submitted to the City for processing. Billing package contents will be consistent with the particular section of the ODOT Policies and Procedures Manual being utilized. Specific items of information to be included in the package will be defined in the Project Mobilization meeting. All billing requests will be reviewed and warrants processed by appropriate City personnel. Deficient packages returned for correction shall be completed and returned to the City within ten (10) business days. In the case of signed parcels, the warrant shall be prepared by the City and then forwarded to the Consultant for

payment to the owner(s). In the case of appropriations, the warrant will be forwarded to the City Law Director to be placed on deposit with the Court.

- k. **Closings** – All closing activities will be the responsibility of the Consultant. Closing activities may include, but are not limited to:
- Preparation of mortgage and lien releases;
  - Securing of said releases on encumbered property from the property owners or the mortgage/lien holders;
  - Conducting of closings and the disbursement and collecting of monies as required;
  - Assisting the property owner in the execution of required instruments and forms, including but not limited to the Closing & Settlement Statement (RE-44/44-1) and Affidavit by Seller (RE-45);
  - Securing the necessary approvals from required local agencies to permit the transfer of ownership of property rights in the County Auditor’s Office;
  - Recording the instruments and releases with the County Recorder’s Office;
  - Depositing the pro-rated taxes with the required County office and obtaining a receipt;
  - Completing and submitting to the County offices the tax exemptions RE-30 or RE-31;
  - Monitoring the property owner for compliance with performance withholding requirements on non-structure parcels involving retention of signs, etc.;
  - Paying owner(s) and securing receipt upon property owners’ compliance with requirements.
- After the completion of the closing process, the Consultant will deliver to the City a completed parcel file. This file will contain, as applicable, the following items: All correspondence relative to the parcel including, but not limited to: recorded instruments and releases; **original** of all signed, recorded legal instruments; a copy of the signed Closing and Settlement Statement (RE 44/44-1); any warranty receipts for payment, the receipt for taxes/assessments; the Affidavit by Seller (RE-45); a title update or copy of the original title with original certification that no changes have occurred in the property title, the certification must also be dated immediately before the closing of the right-of-way parcel; the completed Auditor’s estimate of pro-rated taxes and assessments (RE-57); receipts for taxes and assessments from the County Auditor and a copy of the check; copies of the RE-30 or RE-31 submitted to the County for tax exemption; a copy of the Tax Exemption from Real Property conveyance fee. The City will review closing packages as necessary, and notify the Consultant of any deficiencies. Deficiencies shall be corrected by the Consultant and returned to the City within ten (10) business days.
- l. **Appropriation** – Appraisal updates will be processed and prepared by the Consultant. The Consultant will file the RE-30 and/or RE-31 upon receipt of a final court entry.
- m. **Project Administration (Management)** - The Consultant is responsible for the following activities:
- Review Plans, titles, appraisals for compliance with aforementioned policies and standards.
  - Prepare Status Reports and project timelines
    - As part of the monthly invoicing process, the Consultant will provide status reports to the City on a form acceptable to the City. The status report will be a stand-alone document indicating the current acquisition status of the project. Additional reports will be supplied upon request from the City.
  - Attend meetings
    - The Consultant will meet with City personnel once per month after the Project Mobilization Meeting, or as required by the City. The City reserves the option to have more or less frequent project meetings, or waive monthly meetings, as deemed necessary.
  - Monitor overall project for compliance with ODOT Policy and Procedures

- Review and coordinate billing packages and invoicing requests
  - Consultant will invoice the City on a monthly basis for labor payments. Invoices will contain the Project Status Report and a separate brief description of items contained on said invoice.
- Respond to inquires from the City, ODOT or property owners.
- Verify right-of-way plans with owners.
- Obtain clear and marketable title.
- Prepare condemnation packages.
- Testify at all condemnation hearings as required
- Provide all appropriate notices.
- Prepare Right of Way Certification
  - Upon completion of all acquisition activities for the project, the Consultant will certify to the City that all acquisition activities are completed in accordance with ODOT Real Estate Policies and Procedures.
- Final File Disposition
  - All documentation compiled during the term of the agreement will be submitted to the City at the conclusion of the agreement. This documentation will be organized by Consultant. A complete original file will be submitted to the City as well as a copy on a CD-ROM in Adobe Acrobat at the conclusion of the acquisition process. All information received from Consultant will be maintained for at least 3 years after the latest of:
    - ▶ The date by which all payments for the acquisition of the real property have been issued; or
    - ▶ The date the project has been completed; or
    - ▶ The date by which all issues resulting from litigation, negotiation, audit, or other action (e.g., civil right compliance) have been resolved.

## 2.04 PERFORMANCE AND DELIVERABLES

All work will be completed and the right-of-way for the project will be conveyed within one year from the beginning of the acquisition. Monthly progress reports will be provided, outlining all actions and significant occurrences indicating dates. Upon completion of the project, all acquisition files become the property of the City of Dayton; files must be made available at any time for agency review upon reasonable request.

## 2.05 City of Dayton Right-of-Way Acquisition Projects (Preliminary plans can be found on our website <https://www.daytonohio.gov/bids.aspx>)

1. Salem Avenue Reconstruction Phase 2 (Federal Funds) (PID 106121)
  - Approximate # of parcels – 25 (14 Warranty Deeds with Temporary Easement and 11 Temporary Easements)
  - Begin acquisition process – May 2020
  - Parcels acquired by – August 2021
2. West Hillcrest Sidewalk Phase 2 (Federal Funds) (PID 106120)
  - Approximate # of parcels – 14 (1 Warranty Deeds, 2 Warranty Deeds with Temporary Easement and 11 Temporary Easements)
  - Begin acquisition process – May 2020
  - Parcels acquired by – August 2021

3. Bridge Street/Wolf Creek Corridor Project (OPWC Clean Ohio Funds)
  - Appraisal for a Conservation easement over parcels  
R72 12105 0002  
R72 12110 0011  
R72 12110 0013

## SECTION 3 – REQUIREMENTS AND CONDITIONS FOR ALL PROPOSERS

**3.01 TAX EXEMPTION.** All items purchased under this contract will be exempt from the State of Ohio Sales Tax as provided for in Section 5739-02(b)(1) of the Revised Code of Ohio, and will be exempt from the State of Ohio Use Tax, Section 5741.02(C)(2). Blanket Certification of Exemption Forms will be furnished to the Proposer by the Division of Purchasing.

**3.02 PROPOSER AFFIDAVIT.** If the successful proposer should be a corporation not incorporated under the laws of the State of Ohio, a certificate from the Secretary of State showing the rights of the successful proposer to do business in the State of Ohio shall be furnished. Each proposer is required to submit with their bid, an Affidavit stating that neither the proposer nor agents thereof, nor any other party of the proposer has paid or agreed to pay directly or indirectly, any person, firm or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract herein referred to, and further agreeing that no such money or reward will hereafter be paid.

**3.03 PROCUREMENT ENHANCEMENT PROGRAM.** It is the policy of the City to promote full and equal business opportunity to all persons doing business with the City. The City must ensure that businesses seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not engaged in passive participation in any form of discrimination. (R.C.G.O. Section 35.32) It is the City of Dayton's position to encourage the greatest participation possible on all projects connected with any aspect of the City's auspices through the Procurement Enhancement Program (PEP). All contractors are encouraged to review the list of Minority, Women and Small Businesses at <http://daytonhrc.org/business-technical-assistance/certification/procurement-enhancement-program/> for certified subcontractors.

**3.04 PROPOSER'S FINANCIAL OBLIGATION TO THE CITY.** No bid may be accepted or contract awarded to any person, firm or corporation that is in arrears or in default to the City, or that is a defaulter of surety or otherwise upon any obligation to the City, or has failed to perform faithfully any previous contract with the City.

**3.05 PROPOSER'S INCURRED COSTS.** Each proposer shall be responsible for all costs incurred in preparing a response to this RFP. All materials and documents submitted by the proposer in response to this RFP shall become the property of the City, and shall not be returned. Respondents selected for further negotiations, as well as the proposer ultimately selected to enter into a contractual agreement with the City, shall be responsible for all costs incurred by it during negotiations.

**3.06 AFFIRMATIVE ACTION ASSURANCE (AAA).** The selected Contractor must file an Affirmative Action Assurance form ("AAA Form") with the City's Human Relations Council (HRC) and obtain approval from HRC to do business with the City. You may contact the HRC for the Rules and Regulations, and the AAA Form required of vendors of the City, at:

Human Relations Council  
371 West Second Street, Suite 100  
Dayton, Ohio 45402  
(937) 333-1413 (Office)  
(937) 222-4589 (Fax)

Failure to maintain a current AAA Form on file with the HRC may result in termination of the contract and/or denial of future contract awards from the City. The AAA Form must be filed annually.

**3.07 STANDARD AGREEMENT TERMS FOR PROFESSIONAL SERVICES – These are standard terms are subject to change by the City prior to the award of the contract.**

## ARTICLE 1. TERM

The Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds provided herein or on December 31, 2023, whichever date is earlier.

## ARTICLE 2. SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all services necessary to complete the Services that are described in an Attachment, Scope of Services, which is incorporated herein by reference.

## ARTICLE 3. COMPENSATION

The total remuneration in this Agreement shall not exceed XXXX THOUSAND DOLLARS (\$XXX,000.00). Contractor shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

## ARTICLE 4. CITY'S RESPONSIBILITIES

The City is responsible for all matters described in an Exhibit, City's Responsibilities, which is incorporated herein by reference.

## ARTICLE 5. STANDARD OF CARE

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

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

## ARTICLE 6. INDEMNIFICATION

Contractor shall indemnify and defend the City and its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Contractor and its agents, employees, contractors, sub-contractors and representatives in undertaking and performing the Services.

This Article shall survive early termination or expiration of this Agreement.

## ARTICLE 7. INSURANCE –

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

- (1) General Liability Insurance, having a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (2) Automobile Liability Insurance, having a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (3) Employers' Liability Insurance, having a limit of \$500,000 for each occurrence.
- (4) Professional Liability Insurance, having a limit of \$1,000,000 annual aggregate.

(5) Contractor shall maintain errors and omissions insurance in the amount of \$1,000,000.00.

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

Contractor also shall maintain Workers' Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the City evidence of same.

## **ARTICLE 8. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided in this Agreement, documents and reports prepared by Contractor as part of the Services shall become the sole and exclusive property of the City upon payment. However, Contractor shall have the unrestricted right to their use.

Contractor shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of Contractor.

## **ARTICLE 9. TERMINATION**

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement. Contractor shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The City may terminate or suspend performance of this Agreement for the City's convenience upon thirty (30) days prior written notice to Contractor. In the event of termination by the City hereunder, the City will pay Contractor for Services actually provided up to the date of termination.

## **ARTICLE 10. STANDARD TERMS**

### **A. DELAY IN PERFORMANCE**

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

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

### **B. GOVERNING LAW AND VENUE**

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

**C. COMMUNICATIONS**

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

Company Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State Zip Code \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Title: \_\_\_\_\_

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

**D. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

**E. WAIVER**

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

**F. SEVERABILITY**

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

**G. INDEPENDENT CONTRACTOR**

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

Contractor, its employees and any persons retained or hired by Contractor to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes. Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

#### **H. ASSIGNMENT**

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

#### **I. THIRD PARTY RIGHTS**

Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

#### **J. AMENDMENT**

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

#### **K. POLITICAL CONTRIBUTIONS**

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

#### **L. INTEGRATION**

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



City of Dayton, Ohio  
Department of Public Works  
**DIVISION OF CIVIL ENGINEERING**  
**PROFESSIONAL SERVICES FOR PROPERTY ACQUISITIONS**  
**March 2020**

EXHIBIT A – LETTER OF TRANSMITTAL

The undersigned hereby certifies that items furnished as a result of this proposal will be in full accordance with the City of Dayton specification applying thereto unless exception are stated above.

The Proposer's name and address exactly as it would appear in a contract:

Entity Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Proposer's Phone Number: \_\_\_\_\_

Proposer's Fax Number: \_\_\_\_\_

Proposer's E-mail Address: \_\_\_\_\_

**Form of Ownership**    **Sole Proprietorship**    **Franchise**    **Partnership**    **Corporation**  
 **Joint Venture**    **LLC**    **Other (Specify):** \_\_\_\_\_

If a corporation, state of incorporation: \_\_\_\_\_

Federal Identification Number (or SSN if sole proprietorship): \_\_\_\_\_

**Please include your IRS Form W9 with your proposal.**

I certify the proposing entity complies with City of Dayton Ordinance #30829-09 and the City's Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages.    **Yes**    **No**

SIGNATURE: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

By signing this page, you state that you are an authorized representative, and have reviewed and are presenting this proposal on behalf of your business entity. Please continue completing this exhibit on the next page.

**EXHIBIT A – LETTER OF TRANSMITTAL (continued)**

**COMPANY PROFILE AND BACKGROUND**

Name of Proposing Company: \_\_\_\_\_

Company’s Primary Business - State the proposer’s primary business, the number of years in the industry, and the number of employees assigned to these related activities:		
Primary Business	# of Years	# of Employees Assigned

If a corporation, state of incorporation: \_\_\_\_\_

Current Pending Lawsuits: Please provide any and all suits either with the City of Dayton or any other Municipalities and Government Agencies; including, but not limited to Federal, State, Local or other Municipalities and Governmental Agencies:

Local Office of Proposer: Office in/nearest to Dayton, Ohio: \_\_\_\_\_

Federal Identification Number (or SSN if sole proprietorship): \_\_\_\_\_  
 \_\_\_\_\_

Key Personnel:

Name	Title	Contact Information: Mailing address, telephone number, fax number and email address	Designated as Primary Contact for the City of Dayton? YES / NO



City of Dayton, Ohio  
Department of Public Works  
DIVISION OF CIVIL ENGINEERING  
PROFESSIONAL SERVICES FOR PROPERTY ACQUISITIONS  
March 2020

## EXHIBIT B – REFERENCES FOR PROPOSING COMPANY

Name of Proposing Company: \_\_\_\_\_

**List company names, addresses, and telephone numbers for at least three references presently or previously served by your Company for RFP . Do not use the City of Dayton as a reference.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_



City of Dayton, Ohio  
Department of Public Works  
PROFESSIONAL SERVICES FOR PROPERTY ACQUISITIONS  
March 2020

**EXHIBIT C – PRODUCT MANUFACTURE LABOR STANDARDS: VENDOR COMPLIANCE FORM**

By informal resolution 301-97, the City of Dayton is prohibited from purchasing, leasing, renting or taking on consignment goods for use or for resale by the City which were produced under sweatshop conditions.

The City of Dayton requests the following information concerning the products you intend to provide to the City as a result of this bid. This information will allow us to determine your products' compliance with the standards outlined in informal resolutions 301-97.

We require that you make a good faith effort to ascertain the following about the factories which manufacture the products you intend to supply to the City and that you make information available to us for our verification of your claims.

Child Labor. The factory or producer does not employ anybody younger than the legal age as established by the jurisdiction in which such factory or producer is located for children to work or participate in the production.

Forced Labor. The factory or producer does not use forced labor of any kind-prison labor, indentured labor or bonded labor. However, goods produced by prisoners and/or patients as part of a formal rehabilitation or treatment program shall not be considered "forced labor" under the terms of this section.

Wages and Benefits. The factory or producer pays and/or provides at least the minimum wages and/or benefits as required by law in the jurisdiction in which the factory or producer is located.

Hours of Work. Employees are not required to work more hours than the maximum allowed by law for the jurisdiction in which the factory or producer is located.

Worker Rights. The factory or producer makes available to its employees such rights and procedures as required by law for the jurisdiction in which the factory or producer is located.

Health and Safety. The factory or producer provides at least the minimum safe and healthy working environment as required by law for the jurisdiction in which the factory or producer is located.

Notice to Employees. The factory or producer provides any and all applicable notices to its workers as required by law for the jurisdiction in which the factory or producer is located.

This compliance form must be submitted with your bid. If at any time your products are found to be out of compliance with these standards, or if you refuse to provide information to the City for our verification of compliance, the City reserves the right to terminate contracts for those products.

City of Dayton Ref. No.: \_\_\_\_\_  
Bidding Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Signature/Title: \_\_\_\_\_  
Federal I.D.#: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
FaxNo.: \_\_\_\_\_