



CITY COMMISSION MEETING AGENDA

CITY COMMISSION

DAYTON, OHIO

JANUARY 13, 2016

8:30 A.M.

I. AGENDA SCHEDULE

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

1. Call Meeting to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Minutes
6. Communications and Petitions Distribution (if any)
7. Special Awards/Recognition
8. Discussion of City Manager's Recommendations (See Section II)
9. Citizen Comments on City Manager's Recommendations
10. City Commission Action on City Manager's Recommendations
11. Public Hearing: 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, Price Agreements and Contracts:

(All contracts are valid until delivery is complete or through December 31st of the current year).

1. Purchase Order:

FIRE

A1. Rush Truck Centers of Ohio, Inc. (Medic unit repairs as needed through 12-31-16)	\$30,000.00
(and for the period of 01-01-16 through 12-31-17)	60,000.00
-Dept. of Fire.	Total: \$90,000.00

B. Construction Contracts/Estimates of Cost:

2. **Charles F. Jergens Construction, Inc. – Contract** – for the Nuisance Abatement Program Commercial Demolition I – 2015 (10% HUD Section 3 Participation Goal/10% HUD Section 3 Achieved) (Federal CDBG Funds) – Dept. of Planning & Community Development/Housing Conservation.

\$247,809.50
(Thru 03/01/18)

C. Revenue to the City:

3. **Prior to Tee Time – Agreement** – for golf professional services at Kittyhawk Golf Center – Dept. of Recreation & Youth Services/Golf.

\$834,900.00 (for 2016-2018)
\$600,000.00
(Revenue to the City)

IV. LEGISLATION:

Emergency Ordinance – First and Second Reading:

4. **No. 31468-16** Appropriating Property Designated as Parcels 10SH, 10 T1, and 10 T2 and 11 SH1, 11 SH2, 11 T1, 11 T2 and 11 T3 in Connection with the Cleveland Park Bikeway Connector Project, and Declaring an Emergency.

Emergency Resolutions – First Reading:

5. **No. 6161-16** Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not to Exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) for the Angstrom Materials, Inc., Project, on Behalf of the City of Dayton, and Declaring an Emergency.
6. **No. 6162-16** Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not To Exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) for the Rostam Direct Project, on Behalf of the City of Dayton, and Declaring an Emergency.

- 7. No. 6163-16** Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not To Exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for the Hohman Plating Project, on Behalf of the City of Dayton, and Declaring an Emergency.

VI. MISCELLANEOUS:

ORDINANCE NO. 31469-16

RESOLUTION NO. 6164-16

IMPROVEMENT RESOLUTION NO. 3598-16

INFORMAL RESOLUTION NO. 918-16

CITY OF DAYTON
CITY MANAGER'S REPORT

TO: City Manager

Date January 13, 2016

FROM: Central Services / Purchasing
Department/Division

(CHECK ONE)

Amount \$ 90,000.00

- Purchase Order Lease Agreement
- Price Agreement Estimate of Cost
- Award of Contract Payment of Voucher
- Other 2016 Purchase Orders

Supplier/Vendor/Company/Individual:

NAME See Below

ADDRESS _____

Justification and description of purchase, contract or payment:

FIRE

(A1) P1600442 – RUSH TRUCK CENTERS OF OHIO, INC., DECATUR, AL

- Medic unit repairs, as needed through 12/31/2016.
- These services are required to maintain and repair medic units.
- Rush Truck Centers of Ohio, Inc. is the sole local distributor for International brand equipment, therefore this order was negotiated.
- The Department of Fire recommends approval of this order.
- Initial encumbrance authority: \$30,000.00
- Authority to cover additional needs in the following periods:
 - 1/1/16 – 12/31/16 \$30,000.00
 - 1/1/17 – 12/31/17 \$30,000.00

The aforementioned department recommends approval of this order.

Approved Affirmative Action Program on File Yes No NA

Approved by City Commission

Clerk _____

Date _____

Division [Signature]

Department _____

City Manager [Signature]

2.

CITY OF DAYTON
CITY MANAGER'S REPORT

TO: City Manager Date January 13, 2016

FROM: Planning Department/Housing Conservation Code 26015-2420-1159-32
Department/Division

(CHECK ONE) Fund Title Commercial Demolition Program
Amount \$ \$247,809.50 (through 3/1/2018)

Purchase Order Lease Agreement Supplier/Vendor/Company/Individual:
 Price Agreement Estimate of Cost NAME Charles F. Jergens Construction, Inc.
 Award of Contract Payment of Voucher ADDRESS 1280 Brandt Pike
 Other _____ Dayton, OH 45404

Justification and description of purchase, contract or payment:

NUISANCE ABATEMENT PROGRAM COMMERCIAL DEMOLITION I – 2015
(10% HUD SECTION 3 PARTICIPATION GOAL/10% HUD SECTION 3 ACHIEVED)
(FEDERAL CDBG FUNDS)

The Contractor will supply all materials, tools and personnel for the demolition and disposal of approximately 11 commercial buildings or equivalent volume and all associated building materials and incidentals thereto. The contract work includes all demolition activities, excavation, back-fill, site grading, landscaping and seeding. There is no list of structures associated with this bid.

Three bids were received and opened on November 12, 2015 for this project. After evaluating the bids, the bid from Charles F. Jergens Construction, Inc. in the amount of \$247,809.50, which is the base bid, was determined to be the lowest. The estimated cost for the project was \$267,450. The time bid for completion is 37 working days.

This project is being funded using federal CDBG Funds.

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

Approved Affirmative Action Program on File Yes No NA

Approved by City Commission

Clerk

Date

Division *R K Lowell*

Department

City Manager *[Signature]*

CERTIFICATE OF FUNDS

Dayton, Ohio

Bid Tabulation For: Nuisance Abatement Program

Department of Public Works

Commercial Demolition I – 2015

(10% HUD Section 3 Participation)

(Federal CDBG Funds)

Bid Opening Date:	Cost Estimate:	Estimated Time Of Completion:
<u>November 12, 2015</u>	<u>\$267,450.00</u>	<u>37 Working Days</u>

<u>Bidders</u>	<u>Actual Amount Of Base Bid</u>	<u>Adjustment For Work Days</u>	<u>Adjustment For Comparison Purposes Only</u>
<u>*Charles F Jergens Construction, Inc.</u>	<u>\$247,809.50</u>	<u>-0-</u> 37 Working Days	<u>\$247,809.50</u>
<u>Evans Landscaping, Inc.</u>	<u>\$250,334.00</u>	<u>-0-</u> 37 Working Days	<u>\$250,334.00</u>
<u>Performance Site Development</u>	<u>\$354,955.00</u>	<u>-0-</u> 37 Working Days	<u>\$354,955.00</u>
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MEMORANDUM

November 23, 2015

TO: Frederick Stovall, Director
Department of Public Works

FROM: RoShawn Winburn, Business and Technical Assistance Administrator
Human Relations Council (HRC) *EW*

SUBJECT: **Nuisance Abatement Program Commercial Demolition 1 – 2015 (10% HUD)**

The apparent low bidder, Charles Jergens Construction, submitted a bid utilizing one certified companies to meet the participation goal. The HRC contract compliance analysis of the bids submitted verified the company is an approved bidder in the City of Dayton Affirmative Action Assurance program and that the authorized representative signed the Contractor's Certification to indicate fair hiring practices. The recommended company to receive the aforementioned construction award is as follows:

	PERCENTAGE OF PARTICIPATION
1. Charles Jergens Company	
A. MINORITY BUSINESS ENTERPRISE	
B. WOMEN BUSINESS ENTERPRISE	
C. SMALL BUSINESS ENTERPRISE	
D. DAYTON LOCAL SMALL BUSINESS	
E. DISADVANTAGED BUSINESS ENTERPRISE	
F. HUD SECTION 3 BUSINESS ENTERPRISE	
Bladecutters, Inc.	10%
TOTAL PARTICIPATION	<hr/> 10% HUD

The attached participation verification letters should be included with the contract agreement. Contract Compliance will include meeting verified participation and minimal worker utilization goals as stated in the Affirmative Action Program Equal Employment Opportunity form certified in the bid submission. If you have any questions or need additional information please contact Catherine Crosby at 333-1403.



1280 BRANDT PIKE
DAYTON, OHIO 45404
(937) 233-1830 • Fax (937) 233-2075

To: Juleda Hyde
City of Dayton

From: David Hickey
Charles Jergens Construction

Ref: Nuisance Abatement Program Commercial 1 (10% HUD Section3)

Juleda, please find the requested information below.

1. Nuisance Abatement Program Commercial Demolition 1 – 2015
2. Charles Jergens Construction
3. Dayton, Ohio
4. Demolition
5. Unit Cost .145 cubic foot Total Cost \$24,780.00
6. Material .087 cubic foot Labor .058 cubic foot
7. N/A
8. N/A

Thank you,

A handwritten signature in black ink, appearing to read "David Hickey", written over a horizontal line.

David Hickey
Charles Jergens Construction
937-776-5258



CITY OF DAYTON, OHIO
HUMAN RELATIONS COUNCIL

371 West Second Street, Suite 100, Dayton, OH 45402-1417
 (937) 333-1403 • FAX 222-4589
www.daytonohio.gov/departments/hrc



Catherine H. Crosby
 Executive Director

Board of Directors

Patricia Rickman
 Chair

Amaha Sellasie
 Vice-Chair

Jerry Bowling, III
 Scotty Didier
 Rev. Darryl Fairchild
 Alex Freeman
 Rev. Dr. Sherry Gale
 Dwayne Johnson
 David Larson
 Gabriella Pickett-Mosier

November 17, 2015
VIA ELECTRONIC MAIL.

John Scott
 Bladecutters, Inc.
 5440 N. Dixie Drive
 Dayton, OH 45414

Dear Mr. Scott,

As you are aware, you were listed by Charles Jergens as a subcontractor on the City of Dayton's 2015 Nuisance Abatement Program Commercial Demolition 1 (10% HUD Section 3). The following must be submitted on your letterhead to our office by close of business on Thursday, November, 19 2015:

1.	Name of Project	NAPC 1
2.	Name of Prime Contractor	Jergens
3.	City and State of Prime Contractor	Dayton, OH
4.	Project work division area(s) to be performed and list the specific segment of work you will perform according to the plans and specifications	Demo Truckings
5.	For each segment of the work you will perform	
	Unit Cost	Truckings 73 hour
	Total Cost	24780
6.	Cost breakdown for each segment of work you will perform	
	Material	.087
	Labor	.028
7.	Indicate your markup or profit on the materials purchased (not ordinarily in stock) and all specific items that are specialized electrical equipment or any other specialized or sole-source equipment.	
8.	If this is a trucking company, list:	
	Number of trucks	6
	Types of truck(s)	Quadr
	Describe the work you will perform	
	Type of material	
	Number of hours	?

Demo
1445

If you have any questions or need additional information, contact me at (937) 333-1405.

Sincerely,
Juleda Hyde

Juleda Hyde, Contract Compliance Officer
 Copy to: Ms. Catherine Crosby

NOTE TO CONTRACTORS:

Since there will be copies made of the bid form of this improvement, please use black ink or a typewriter to fill in the bid prices and extensions.

CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid Form for Nuisance abatement program commercial demolition 1
2015 (10% HUD section 3 participation)

Bidder Charles Jergens Construction

1280 Brandt Pike

Dayton, Ohio 45404

BID FORM

To: Director, Department of Public Works
The City of Dayton

The undersigned, having full knowledge of the site and the provisions of the plans and specifications for the following improvement, and the conditions of this bid, hereby agrees to furnish all services, labor, materials and equipment, and to construct in every respect complete:

NUISANCE ABATEMENT PROGRAM
COMMERCIAL DEMOLITION I - 2015
(10% HUD SECTION 3 PARTICIPATION)
(FEDERAL CDBG FUNDS)

in accordance with said plans and specifications on file in the office of the City Engineer at the unit prices hereinafter set forth.

Bid Form (Continued)

NUISANCE ABATEMENT PROGRAM
COMMERCIAL DEMOLITION I - 2015
(10% HUD SECTION 3 PARTICIPATION)
(FEDERAL CDBG FUNDS)

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>EST. QUANT.</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL \$</u>
1	Structural Demolition	1,540,000	CF	\$ <u>.145</u>	\$ <u>223,300.00</u>
2	Debris Removal	8,800	CF	\$ <u>.19</u>	\$ <u>1,672.00</u>
3	Landscaping	27,500	SF	\$ <u>.285</u>	\$ <u>7,837.50</u>
4	Contingency Allowance	1	LUMP	\$ <u>15,000.00</u>	\$ <u>15,000.00</u>
				BASE BID	\$ <u>247,809.50</u>

Bid Form (Continued)

NUISANCE ABATEMENT PROGRAM
COMMERCIAL DEMOLITION I - 2015
(10% HUD SECTION 3 PARTICIPATION)
(FEDERAL CDBG FUNDS)

The consideration to be paid for the performance of the Contract of the above described project is provided as follows: This information provides for the issuance of the tax-exempt form for the purchase of materials for this project.

<u>DESCRIPTION</u>	<u>CONSIDERATION FOR MATERIALS</u>	<u>CONSIDERATION FOR OBLIGATIONS</u>	<u>TOTALS</u>
TOTAL BASE BID	\$ <u>148,685.70</u>	\$ <u>99,123.80</u>	\$ <u>247,809.50</u>

The time of completion fixed by the City is 37 Working Days.

Following are the names of all persons, firms, and corporations interested in the above bid as principals. If none, state that "No person or party other than the bidder is interested in this Bid."

NAME

ADDRESS

No person other than the bidder is interested in this bid

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 X

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.

Bidder is

An Individual
Firm Name

Business Address

Telephone

Partnership
Firm Name

Members of Firm and
Their Business Address

Telephone

Corporation
Name

Charles Jergens Construction

State of Incorporation

Ohio

Name and Title of
Officers with Authority
to Sign Contract

Phillip Jergens / President

Charles Jergens / Vice President

Home Office Address

1280 Brandt Pike Dayton Ohio 45404

Local Address

Same

Telephone 937-233-1830

Fax 937-233-2075

E-mail hdaveearl@aol.com

Federal I.D.# 31-0988185

Dated this 12th day of November, 2015

Bidder: Charles Jergens Construction

(Person, Firm, or Corporation)

By:



Title: President

If a certified or cashier's check is submitted with Bid Form, please furnish the following information:

_____ Certified Check

_____ Cashier's Check

Amount _____ Dollars
on _____ Bank
of _____ is Attached.

Bidder

Cash in the amount of _____
Dollars is attached.

Bidder

BID BOND

Amount \$ 24,780.95

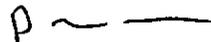
We, the undersigned, are held and firmly bound unto the City of Dayton, Ohio in the sum of 24,780.95 Dollars, for the payment of which well and truly to be made, we hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, if the Bid attached hereto is accepted and the Contract award to the bidder, Charles F. Jergens Construction, Inc.

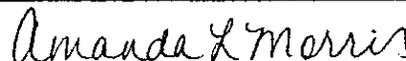
named therein, and the said bidder shall within ten (10) days after being notified that said contract has been awarded to the bidder, enter into a Contract in the form acceptable to the Director and give bond in a form to be furnished by the Director, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed and sealed at Dayton, Ohio, this 12th day of November, 2015.

Charles F. Jergens Construction, Inc.

By: 
Bidder

Merchants Bonding Company (Mutual)

By: 
Amanda L. Morris Surety Attorney-in-Fact

Marsh & McLennan Agency LLC
Name of Insurance Agency

P.O. Box 37, Dayton, Ohio 45401
Address of Insurance Agency

Telephone 937-228-4135 FAX 937-824-3265

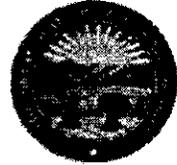
Office of Risk Assessment
50 West Town Street
Third Floor - Suite 300
Columbus, Ohio 43215
(614)644-2658
Fax(614)644-3256
www.insurance.ohio.gov

Ohio Department of Insurance

John R. Kasich - Governor

Mary Taylor - Lt. Governor/Director

Certificate of Compliance



Issued 03/10/2015

Effective 04/03/2015

Expires 04/01/2016

I, Mary Taylor, hereby certify that I am the Lt. Governor/Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

MERCHANTS BONDING COMPANY (MUTUAL)

of Iowa is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Fidelity

Other Liability

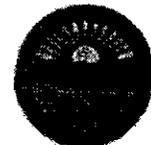
Surety

MERCHANTS BONDING COMPANY (MUTUAL) certified in its annual statement to this Department as of December 31, 2014 that it has admitted assets in the amount of \$141,935,907, liabilities in the amount of \$50,108,936, and surplus of at least \$91,826,971.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Mary Taylor

Mary Taylor, Lt. Governor/Director



MERCHANTS BONDING COMPANY (MUTUAL)

Statements of Admitted Assets, Liabilities, and Surplus - Statutory Basis

	Dec. 31, 2014
Admitted Assets	
Cash and Invested Assets	
Bonds	\$ 85,940,161
Common Stocks	27,210,905
Real Estate	3,928,104
Cash and Short-Term Investments	10,624,688
Total Cash and Invested Assets	<u>127,703,858</u>
Investment Income Due and Accrued	547,940
Premiums in the Course of Collection	7,037,886
Reinsurance Recoverable from Reinsurers	(322,524)
Current Federal Income Taxes Recoverable	326,324
Net Deferred Tax Asset	2,410,888
Receivable from Affiliate	744,311
Other Assets	3,487,224
Total Admitted Assets	<u>\$ 141,935,907</u>
Liabilities & Surplus	
Liabilities	
Losses	\$ 5,349,970
Reinsurance Payable on Paid Losses and LAE	(103,231)
Loss Adjustment Expenses	12,515,566
Commissions Payable	1,556,130
Other Expenses	2,691,988
Taxes, Licenses, and Fees	396,054
Unearned Premiums	22,062,641
Dividends Declared to Policyholders	2,010,466
Reinsurance Payable to Reinsurers	(1,195,413)
Amounts Withheld for Others	4,824,765
Total Liabilities	<u>50,108,936</u>
Surplus	<u>91,826,971</u>
Total Liabilities and Policyholders' Surplus	<u>\$ 141,935,907</u>

I, Don Blum, Chief Financial Officer and Treasurer of Merchants Bonding Company (Mutual), do hereby certify that the foregoing is a true and correct statement of the balance sheet of said Corporation as of December 31, 2014, to the best of my knowledge and belief.


Don Blum, CFO & Treasurer

MERCHANTS
BONDING COMPANY
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Amanda L Morris; Brenda G Taylor; Constance Collins; David E Griffin; Debra D Brummett; Jennifer Eddy; Jennifer L Salm; Katherine J Scarberry; Lisa Dawson-Knight; Michelle A Demmitt; Nicholas J Bertke; Nicole A Laber

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

FIVE MILLION (\$5,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

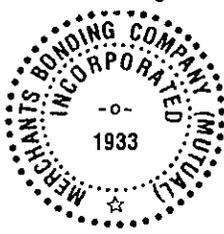
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 15th day of October, 2015.



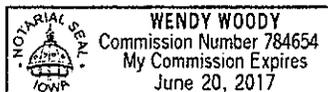
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of October, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

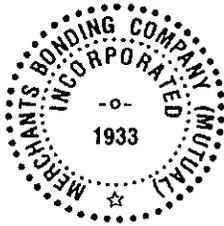


Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 12th day of November, 2015.



William Warner Jr.
Secretary

CITY OF DAYTON, OHIO
Department of Public Works

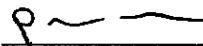
Responsible Contractor Bidding Requirements
(Form 1 of 3)

In accordance with Ordinance No. 30575-06 of the City of Dayton, Ohio Revised Code of General Ordinances, I, Phillip Jergens hereby certify that _____
(print name – an Officer of the company)

Charles Jergens Construction meets the following Contractor requirements relating
(company)

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
- 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: President

Date: 11/12/15

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.

<u>Paid Holidays</u>	<u>Medical Insurance</u>
<u>Dental Insurance</u>	<u>Vision Insurance</u>
<u>Paid Vacation</u>	

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.

<u>N/A</u>	

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

<u>Blade Cutters</u>	

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 3 of 3)

D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

~~Tall View Palladium~~ _____

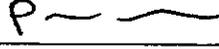
~~Green Star Trucking~~ _____

**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:

Phillip Jergens being duly sworn, deposes and states as follows:

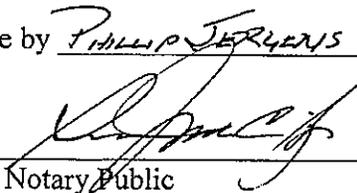
1. I am duly authorized to make the statements contained herein on behalf of Charles Jergens Construction ("the Contracting Party").
2. The Contracting Party is a/an (select one):
 - Individual, partnership, or other unincorporated business association (including without limitation, a professional association 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: 

Title: President

STATE OF OHIO,
COUNTY OF Montgomery, ss:

Sworn to before me and subscribe in my presence by Phillip Jergens
this 12th day of Nov., 2015.


Notary Public

DENNIS J. MCCREIGHT, Notary Public
In and for the State of Ohio
My Commission expires July 5, 2020

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID
WILL RESULT IN YOUR BID NOT BEING READ

AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: Commercial Nuisance Demolition 1 - 2015 Dayton
NAME LOCATION

During the performance of this contract:

Charles Jergens Consturction 1280 Brandt Pk Dayton Ohio 45404 233-1830 / 233-2075
CONTRACTOR ADDRESS TELEPHONE/FAX

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 therefor.

- 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 I.
- 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

Charles Jergens Construction (Contractor)
certifies that:

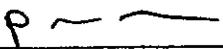
1. The following listed construction trades will be used in performance of this project.

<u>Operators</u>	<u>Laborers</u>
<u>Truck Drivers</u>	<u>Supervisors</u>
_____	_____
_____	_____
_____	_____

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)

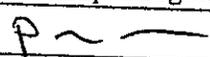
**FAILURE TO SUBMIT AND SIGN THIS DOCUMENT WITH YOUR BID
WILL RESULT IN YOUR BID NOT BEING READ**

(Circle one: SBE/MBE/WBE/DLSB/DBE/HUD Section 3) PARTICIPATION FORM

Project Name:

Commercial Nuisance Abatement 1 2015

This form may be used for more than one funding source. City of Dayton general fund and State of Ohio funds: The City of Dayton has adopted procurement programs for Minority-owned, Woman-owned, Small Business Enterprises, and Dayton Local Small Business in accordance with Sections 35.30 – 35.68 of the Revised Code of General Ordinances (R.C.G.O.), inclusively. Federal funds: The City of Dayton is committed to meeting HUD-established subcontracting and employment opportunities for HUD Section 3 companies certified with the Human Relations Council. This commitment applies to all projects funded through NSP/CDBG/HOME. The City of Dayton is a recipient of Department of Transportation funds and complies with the DBE program. Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26). State Funds: When determining the level of participation the, only the total work performed by the certified subcontractor either singularly or severally, will be considered. This form must be utilized to indicate your subcontractors and must be fully completed and returned with your bid proposal, i.e., you must list the name(s), address, etc. of the subcontractor, type of work to be performed, dollar amount of the subcontract and percentage of the base bid. Use as many copies of this form as necessary to list all subcontractors. Should you have questions regarding this form, please contact the Human Relations Council (HRC) Office. (937) 333-1403.

Firm Name, Tax I.D. Number and Mailing Address		Please Check One				Type of Service or Supply to be Provided	Type of Construction Work to be Performed	
		Prime Contract Bid	Joint Venture Bid	Supply or Service Subcontract	Construction Subcontract			
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
Certified Business Firm Name:		Blade Cutters						Demolition and Trucking
Tax I.D. Number:	31-1265427							
Street Address:	5440 N Dixie Dr Dayton, Ohio 45414							
City/State/ Zip Code:								
Phone (area code/#):	E-mail:	937-274-3861						
Total \$ Amount of PRIME CONTRACTOR'S Base Bid:		247,809.50		Total \$ to subcontract	24,780.95		Total % subcontract: 10%	
PRIME CONTRACTOR'S REPRESENTATIVE								
Print Name:	Phillip Jergens			Street Address	1280 Brandt Pike			
Sign Name:				City/State/Zip	Dayton, Ohio 45404			

WAIVER REQUEST DOCUMENTED ACTIVITY FORM

Date: 11/12/15

NO WAIVER REQUESTED

Project: Commercial Nuisance abatement 1 2015

Participation Goal (list only one): _____

Submit a separate form for each goal for which you are requesting a waiver. A bidder requesting a waiver of the (circle one: SBE/MBE/WBE/DLSB/DBE/HUD Section 3) Participation Goal must maintain supporting documentation and will be required to provide such documentation within two days of its request. The City of Dayton Human Relations Council (HRC) shall review and evaluate the Bidder's efforts to meet and comply with the project participation goal. A bidder will be granted a Waiver for SBE/MBE/WBE/DLSB goals based on good faith efforts; DBE goals based on good faith efforts; HUD Section 3 goals based on efforts to the greatest extent feasible; and only where the HRC determines that the bidder has obtained at least seventy-five (75) points from the following list of activities. This form must be completed and submitted with your bid if you are requesting a waiver of any goal.

#	Points Possible	Activity Description	Points Requested	Points Approved
1	20	Solicited the interest of all certified MBE/WBE/SBE/DLSB or DBE or HUD3 having the capability to perform the work of the contract. The bidder must solicit this interest at least ten (10) business days before the bid submittal deadline in order to allow the MBE/WBE/SBE/DLSB or DBE or HUD3 sufficient time to respond to the solicitation.		
2	20	Negotiated with MBE/WBE/SBE/DLSB or DBE or HUD3 subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration.		
3	15	Divided contract work items into economically feasible units to facilitate MBE/WBE/SBE/DLSB or DBE or HUD3 participation, even when the bidder might otherwise prefer to perform these work items with its own forces.		
4	15	Rejected MBE/WBE/SBE/DLSB or DBE or HUD3 as being unqualified only with reasons based on a diligent investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.		
5	10	Provided interested MBE/WBE/SBE/DLSB or DBE or HUD3 with, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract within ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.		
6	10	Contacted the Minority Business Assistance Center (MBAC) and used the services of community organizations, contractors' groups, local, state and federal business assistance offices, and other organizations to find subcontractors certified as (circle one: MBE/WBE/SBE/DLSB or DBE or HUD3).		
7	5	Assisted interested MBE/WBE/SBE/DLSB or DBE or HUD3 that responded to the bidder's solicitation in actually obtaining bonding, lines of credit, or insurance as required by the City or the bidder.		
8	5	The bidder is actively participating in an ongoing Joint Venture or Strategic Partnership (R.C.G.O. § 35.41), documented mentor/protégé program or documented construction management program with a certified MBE/WBE/SBE/DLSB or DBE or HUD3 in the assistance of their business growth and development.		
	100	Bidding Company Name:		

Company Contact Information

Company Name: Charles Jergens Construction

Address: 1280 Brandt Pike

Contact Person: David Hickey

Phone: 937-776-5258

Email Address: hdaveearl@aol.com

Section 3 Plan

NUISANCE ABATEMENT PROGRAM
COMMERCIAL DEMOLITION I – 2015
(10% HUD SECTION 3 PARTICIPATION)
(FEDERAL CDBG FUNDS)

VARIOUS LOCATIONS
DAYTON, OHIO

SECTION 3 PLAN

This document serves as the Section 3 Plan for **Nuisance Abatement Program Commercial Demolition I – 2015 (10% HUD Section 3 Participation) (Federal CDBG Funds)** in compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3), is to ensure that training, employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and Local laws and regulations, be directed to the greatest extent possible to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns, which provide economic opportunities to low- and very low-income persons.

NUMERICAL GOALS FOR TRAINING AND EMPLOYMENT OPPORTUNITIES

The City of Dayton will, to the greatest extent feasible, when awarding contracts or providing training and/or employment opportunities for activities or projects subject to the requirements of Section 3, strive to comply with the goals established in this section.

The numerical goals established in this section represent minimum numerical targets.

Training and employment opportunities will be made available to Section 3 residents as follows:

- (i) 30 percent of the aggregate number of new hires/training opportunities resulting from funds awarded for FY and continuing thereafter. Number of Section 3 jobs/training opportunities anticipated _____.

PREFERENCE FOR SECTION 3 RESIDENTS IN TRAINING AND EMPLOYMENT OPPORTUNITIES

In providing training and employment opportunities, generated from the expenditure of Section 3 activities to Section 3 residents, the following order of preference will be followed:

Highest Priority: Low- and very-low income residents certified as Section 3 eligible residing in the neighborhood where the project is located.

Second Priority: Participants of public and social service programs funded by City of Dayton HUD funding.

Third Priority: Other low- and very-low income residents throughout the City certified as Section 3 eligible.

In compliance with the Section 3 Plan requirements, the applicant must submit a current list of employees as of the date the Section 3 Plan is submitted for approval along with anticipated new hires. A list of employees can be submitted on the Worker Utilization Form included in the appendices or an official company form that includes the same information requested on the Worker Utilization Form. The applicant must also develop a list of strategies to be adopted for compliance with the stated employment, training and contracting goals. When preparing the list, please refer to Examples of Efforts to Offer Training Employment Opportunities to Section 3 Residents.

LIST OF STRATEGIES TO BE ADOPTED FOR COMPLIANCE WITH THE STATED EMPLOYMENT, TRAINING AND CONTRACTING GOALS:

Please check all that apply and add any additional strategies you will employ on the lines provided below. Mandatory actions have already been checked.

- We will work with the Section 3 Program Coordinator to identify eligible Section 3 subcontractors;
- We will contact individuals on the Certified Section 3 Residents lists maintained by the City of Dayton and Greater Dayton Premier Management;
- We will post job opportunities at the job site;
- We will post job opportunities in local newspapers;
- We will post job opportunities on our website;
- We will notify the Section 3 Employment Opportunities Notification List of job openings;
- We will notify the local unemployment office of job openings;
- We will notify local union halls of job openings for specific trades or skills;
- We will notify certifying agencies of job openings for specific trades or skills;
- We will _____;

SECTION 3 TRAINING AND EMPLOYMENT GOALS

Name of Project: Commercial Nuisance Abatement 1 2015

Name of Contractor: Charles Jergens Construction

Amount of Award: \$ 247,809.50

	# of Anticipated Hires	# of Anticipated Section 3 Hires (MUST be at least 30% of Anticipated Hires)	# of Current Employees	# of Current Section 3 Employees
Skilled	0	0	42	0
Semi-Skilled	0	0	42	0
Skilled Trainees	0	0,	42	0
Unskilled Trainees	0	0	42	0
Semi-Skilled Trainees	0	0	42	0
Professional & Admin	0	0	42	0
Clerical	0	0	42	0
Apprentices	0	0	42	0
Other	0	0	42	0

CITY OF DAYTON MANPOWER UTILIZATION FORM

NAME OF PROJECT: NAP Commercial Demolition 1 - 2015

REPORTING PERIOD: _____
(MONTH)

TO: SUPERVISOR OF CONTRACT COMPLIANCE
HUMAN RELATIONS COUNCIL
371 WEST SECOND STREET, #100
DAYTON OH 45402

FROM:	Dennis McCreight
COMPANY:	Charles F. Jergens Construction
ADDRESS:	1280 Brandt Pike
CITY/ST/ZIP:	Dayton, OH 45404
TELEPHONE:	937.233.1830
E-MAIL:	troll103@sbcglobal.net

ALL INFORMATION WILL BE KEPT CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.

Name of Employee	Employee ID #	Address	HUD 3	Ethnic Group					Gender		Trade	Classificatio				# of Hours Wrkd				
				White (Not of Hispanic Origin)	Black (Not of Hispanic Origin)	Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Male	Female		Journeyman	Helper	Apprentice	Trainee	1 st Week	2 nd Week	3 rd Week	4 th Week	
Rod Golub	214	West Carrollton, OH	X						X		Oper./Labor	X								
Eddie Merz	4171	Xenia, OH	X						X		Oper./Labor	X								
Cris Smith	1675	Wilmington, OH	X						X		Laborer	X								
Jimmy Brewer	6021	Fairborn, OH						X	X		Oper./Labor	X								
Bryan Hill	600	New Carlisle, Oh	X						X		Driver	X								
Phil Jergens	890	Tipp City, OH	X						X		Oper./Labor	X								
Robert Fillmore	6255	Dayton, OH						X	X		Mechanic	X								
INSTRUCTIONS:		Complete the information above for ALL employees in Greene, Miami, Montgomery, and Preble Counties for the preceding month. Make copies of this sheet as needed. Submit the form to the address listed on this form.																		
Workforce Goals:		11.5% MINORITY					6.9% FEMALE					10% HUD SECTION 3					Revised 2011.02.02			

CITY OF DAYTON MANPOWER UTILIZATION FORM

NAME OF PROJECT: NAP commercial Demolition 1 -2015

REPORTING PERIOD: _____
(MONTH)

TO: SUPERVISOR OF CONTRACT COMPLIANCE
HUMAN RELATIONS COUNCIL
371 WEST SECOND STREET, #100
DAYTON OH 45402

FROM:	Dennis McCreight
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ALL INFORMATION WILL BE KEPT CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.

Name of Employee	Employee ID #	Address	HUD 3	Ethnic Group						Gender		Trade	Classificatio				# of Hours Wrkd										
				White (Not of Hispanic Origin)	Black (Not of Hispanic Origin)	Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Male	Female	Journeyman		Helper	Apprentice	Trainee	1 st Week	2 nd Week	3 rd Week	4 th Week								
Terry Trapps	2086	Dayton, OH			X					X		Driver	X														
Jeff Fisher	5114	St.Paris, OH		X						X		Oper./Labor	X														
David Wilson	9705	Vandalia, Oh		X						X		Oper./Labor	X														
Art Long	3197	Dayton, OH		X						X		Driver	X														
Christian Thomas	8413	St.Paris, OH		X						X		Laborer		X													
Mike Petrella	964	New Carlisle, OH								X		Driver	X														
Chris D. Smith, Jr.	6218	Wilmington, OH		X						X		Laborer		X													
INSTRUCTIONS:		Complete the information above for ALL employees in Greene, Miami, Montgomery, and Preble Counties for the preceding month. Make copies of this sheet as needed. Submit the form to the address listed on this form.																									
Workforce Goals:		11.5% MINORITY						6.9% FEMALE						10% HUD SECTION 3				Revised 20110202									

NUMERICAL GOALS FOR CONTRACTING ACTIVITIES:

These goals apply to contract awards in excess of \$100,000 in connection with a Section 3 eligible project, and it applies to contractors, subcontractors, developers, and/or sub-recipients.

Charles Jergens Construct(COMPANY NAME) commits to award to Section 3 business concerns:

1. At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
2. At least 3 percent of the total dollar amount of all other Section 3 covered contracts.
3. In the event that the contractor, subcontractor, developer and/or sub-recipient is unable to reach the goals stated above, they will be required to contribute the difference between 10% of the covered contract amount (3% for non-construction related covered contracts) and the amount provided to Section 3 business concerns and/or in the employment of Section 3 residents in to the City's Section 3 Implementation Fund.

PREFERENCE FOR SECTION 3 BUSINESS CONCERNS:

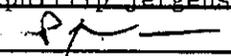
The following order of preference will be followed when providing contracting opportunities to Section 3 businesses:

- (i) First priority will be given to Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located.
- (ii) Second priority will be given to Section 3 business concerns selected to carry out HUD funded Programs.
- (iii) Third priority will be given to Section 3 business concerns that provide economic opportunities for Other Section 3 Residents located outside the service area or neighborhood in which the Section 3 covered project is located.

HUD SECTION 3 (HUD3) PARTICIPATION FORM

Project Name: Commercial Nuisance Demolition 1 2015

The City of Dayton is committed to meeting HUD-established subcontracting and employment opportunities for HUD Section 3 eligible projects. This commitment applies to all projects funded with HUD Section 3 eligible funding sources. Questions about the City of Dayton HUD Section 3 Program should be directed to the Human Relations Council (HRC). (937) 333-1403.

Firm Name, Tax I.D. Number and Mailing Address	Please Check One				Type of Service or Supply to be Provided	Type of Construction Work to be Performed	HUD3 \$ Amount of Total Base Bid	HUD3 % of Total Base Bid
	Prime Contract Bid <input type="checkbox"/>	Joint Venture Bid <input type="checkbox"/>	Supply or Service Subcontract <input type="checkbox"/>	Construction Subcontract <input checked="" type="checkbox"/>				
HUD Section 3 Business Firm Name Blade Cutters Tax I.D. Number 31-1265427 Street Address 5440 N Dixie Dr City/State/ Zip Code Dayton Ohio 45414 Phone 937-274-3861						Trucking Demolition	247,809.50	10%
Total \$ Amount of PRIME CONTRACTOR'S Base Bid <u>247,809.50</u> Total \$ to HUD3 Firm <u>24,780.95</u> Total % to HUD 3 Firm <u>10%</u>								
PRIME CONTRACTOR'S PRINTED NAME AND SIGNATURE								
phillip jergens 				Street Address		1280 Brandt pk		
				City/State/Zip		Dayton, Ohio 45404		

STATEMENT OF COMMITMENT

By signature below, I am hereby acknowledging to the City of Dayton Ohio that I have been duly provided with information regarding the City's Section 3 Program which explains the obligations and requirements of any construction project which is funded in part or whole by HUD sourced funds. I certify that I am fully empowered to enter into this Statement of Section 3 Utilization Commitment on behalf of this company I am certifying that the information contained within this Section 3 Utilization Plan is accurate and correct and that I understand that the City may impose penalties and sanctions for the submission of any false and inaccurate statements within this document.

Phillip Sarge-s
COMPANY AUTHORIZED REPRESENTATIVE

P
SIGNATURE OF AUTHORIZED REPRESENTATIVE

President
TITLE

Denny McCraight
COMPANY SECTION 3 COORDINATOR
(Leave blank if the same as authorized representative)

HDavecarla@aol.com 776-5258
EMAIL ADDRESS PHONE

Charles Sarge-s Construction
COMPANY NAME

1286 Brandt Pike Dayton OH 45404
COMPANY COMPLETE ADDRESS

COMPANY WEBSITE (if applicable)

SECTION 3 PLAN APPROVAL

In compliance with the Section 3 Plan requirements, the applicant must develop a list of strategies to be adopted for compliance with the stated employment, training and contracting goals. Contracts in excess of \$100,000 must include the Section 3 Clause.

If federal and state funds are combined to fund an eligible Section 3 project, the combined amount is submitted to the Section 3 requirements.

In compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, we the undersigned have read and have received a copy of the Section 3 Plan for this project. We acknowledge being a party to this Plan and further pledge our commitment to adhere to the objectives set forth. The signatures below acknowledge receipt and approval of this Section 3 Plan.

Juleda Hyde

HRC SECTION 3 COORDINATOR

SIGNATURE OF SECTION 3 COORDINATOR

DATE

Catherine Crosby

HRC EXECUTIVE DIRECTOR

SIGNATURE OF EXECUTIVE DIRECTOR

DATE

REPRESENTATIVE OF AWARDING DEPARTMENT

SIGNATURE OF DEPARTMENT REPRESENTATIVE

DATE

Shelley Dickstein

CITY MANAGER

SIGNATURE OF CITY MANAGER

DATE

CITY OF DAYTON
CITY MANAGER'S REPORT

TO: City Manager
FROM: Recreation and Youth Services/Golf
Department/Division

Date January 13, 2016
Code 59000-6550-24111-56
59000-6550-1158-56

(CHECK ONE)

- Purchase Order
- Lease Agreement
- Price Agreement
- Estimate of Cost
- Award of Contract
- Payment of Voucher
- Other Agreement

Fund Title Golf Operating
Amount \$ \$834,900 (for 2016-2018)
(\$600,000 revenue to the City)

Supplier/Vendor/Company/Individual:
NAME Prior to Tee Time
ADDRESS 5555 Germantown Pike
Dayton, Ohio 45418

Justification and description of purchase, contract or payment:

Approval is requested to award a three (3) year contract for the 2016-2018 golf seasons for Golf Professional Services at Kittyhawk Golf Center. The contract shall commence upon Commission approval and expire on December 31, 2018, unless terminated earlier in accordance with Article X. The total contract shall not exceed \$834,900 which is comprised of the following:

1. **Golf Professional Services and golf shop personnel - \$234,900**
The contractor shall be paid \$2,050 monthly and for golf professional services (\$24,600 annually), \$675 per quarter for meeting Performance Goals (\$2,700 annually) and \$4,250 monthly for golf shop personnel (\$51,000 annually) over the term of the contract. Golf professional services and costs for starters and rangers shall not exceed \$78,300 annually.
2. **Revenue from Pro Shop sales, lessons, driving range and cart concessions - \$600,000**
The contractor deposits all daily gross receipts from both City and contractor-generated revenue. Under this section of the contract, the contractor is reimbursed for 100% of sales and fees related to the pro shop merchandise and lessons, 90% of the driving range and 20% of cart rentals. The contractor submits bi-monthly invoices to the City for the aforementioned sales and fees. The City then issues a check to the contractor for that revenue. The revenue estimate per year is \$200,000.

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

A Certificate of Revenue for the contract in the amount of \$600,000 is attached in order to receive revenue from pro shop sales, lessons, driving range and cart concessions.

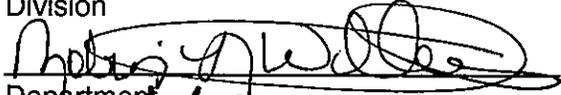
A Certificate of Funds in the amount of \$834,900 is attached in order to pay for golf professional services, golf shop personnel and reimbursed revenue from pro shop sales, lessons, driving range and cart concessions.

Approved Affirmative Action Program on File Yes No NA

Approved by City Commission

Clerk

Date

Division _____

Department _____

City Manager

CERTIFICATE OF FUNDS

CT 16 1368

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

New Contract
 Renewal Contract
 Change Order

Contract Start Date	01/01/16
Expiration Date	12/31/18
Original Commission Approval	\$ 834,900.00
Initial Encumbrance	\$ 278,300.00
Remaining Commission Approval	\$ 556,600.00
Original CT/CF	
Increase Encumbrance	\$ -
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

Required Documentation

<input checked="" type="checkbox"/>	Initial City Manager's Report
<input checked="" type="checkbox"/>	Initial Certificate of Funds
<input checked="" type="checkbox"/>	Initial Agreement/Contract
<input type="checkbox"/>	Copy of City Manager's Report
<input type="checkbox"/>	Copy of Original Certificate of Funds

Amount: <u>\$ 278,300.00</u> Fund Code <u>59000 - 6550 - 1158 - 56 - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>	Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>
Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>	Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>

Attach additional pages for more FOAPALs

Vendor Name: Prior to Tee Time

Vendor Address: 5555 Germantown Pike Dayton OH 45418
Street City State Zipcode + 4

Federal ID: 262020217

Commodity Code: 96199

Purpose: Golf Professional payments per contract at Kittyhawk Golf Center for FY16

Contact Person: Kelly Pressel RYS/Golf 12/22/2015
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

CF Prepared by

12/28/2015
 Date

12/23/15
 Date

CT 16 1368

COMMISSION

JAN 13 2016

CALENDAR

CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Prior to Tee Time

Address 5555 Germantown Pike

City Dayton State OH Zip+4 45418 -

Customer # 262020217 Address Location #

Federal ID# 262020217

Revenue Information: Fund 59000 Organization 6550 Revenue 24111 Program 56

Contract Information: Contract Start Date 1/01/16 Contract Expiration Date 12/31/18

Billing Information: Rate: Will Vary Arrears X Pre-bill

Monthly (1st month of billing) January 2016

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

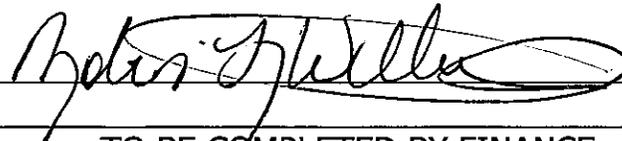
Other (explain) Bi-Monthly Invoices

Rate Change Date NA Rate Change Amount NA

Description of Services (wording on invoice):

Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department's pay-in process. Total estimated revenue for the contractual period is \$600,000 (\$200,000 annually).

Departmental Approval



TO BE COMPLETED BY FINANCE

Revenue Contract
Number

3-0217-1

Auditor

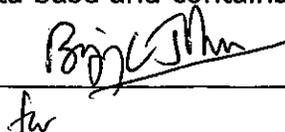


Date

12/28/2015

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

 Lashae Smith 12/28/2015

**AGREEMENT
FOR GOLF PROFESSIONAL SERVICES AND USE OF SPACE
AT KITTYHAWK GOLF COURSE**

This **AGREEMENT FOR GOLF PROFESSIONAL SERVICES AT KITTYHAWK GOLF COURSE** (“Agreement”) is entered into this _____ day of _____, 20__, between the **City of Dayton, Ohio**, a municipal corporation in and of the State of Ohio, (hereinafter referred to as the “City”) and **Prior To Tee Time LLC**, an Ohio limited liability company (hereinafter referred to as “Contractor”).

WITNESSETH THAT:

WHEREAS, the City owns and operates the improved real property known, referred to and operated as Kittyhawk Golf Course (“Golf Course”), which is located in the City of Dayton, County of Montgomery and State of Ohio;

WHEREAS, the City seeks an experienced and qualified contractor to provide management and operational services for the daily operations at the Golf Course; and

WHEREAS, Contractor represented to the City that it is engaged in the business of providing golf related management and operation services, and is willing to provide such services to the City at the Golf Course on and subject to the terms and conditions of this Agreement.

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

ARTICLE I – PREMISES

Contractor is authorized to occupy and use, for the purposes stated in Article II, approximately 2,000 square feet of retail floor space designated by the City’s Director of the Department of Recreation and Youth Services (the “Director”) at the Golf Course clubhouse facility (hereinafter referred to as the “Premises”).

Contractor shall have the right to use all improvements, fixtures and other tangible personal property located and/or situated upon the Premises (hereinafter collectively referred to as the “Personalty”). However, the City makes no representation or warranty as to such Personalty, its fitness for a particular purpose or merchantability or condition. By execution hereof, Contractor represents that it has inspected the Premises and the Personalty, and accepts same on an “as-is” basis.

ARTICLE II – USE OF PREMISES

- A. Contractor shall have the sole and exclusive right to use and occupy the Premises to operate a “Golf Pro Shop”, and to use said Premises for such other purposes as approved in writing by the Director.
- B. Contractor shall not use or permit the Premises or Golf Course to be used for any improper, immoral, unlawful, or illegal business or purposes or for lodging.
- C. Contractor shall actively use the Premises for the uses and purposes permitted hereunder, and shall not, at any time, cease operating the Golf Pro Shop upon the Premises or providing the work and services for the Golf Course required hereunder without the prior written consent of the City.
- D. Not later than ten (10) consecutive days from the date of termination or expiration of this Agreement, Contractor shall:

1. remove any installations, merchandise fixtures and/or equipment, which is exclusively owned by Contractor, and located upon the Premises; and
2. restore the Premises to its original condition, ordinary wear and tear excepted.

In the event Contractor fails to remove any installations, fixtures, or equipment within this 10-day period, the installations, fixtures and equipment remaining on the Premises shall become the sole and exclusive property of the City.

E. Contractor, at its sole cost and expense, may make minor improvements and changes to the Premises that are necessary for its operation of the Golf Pro Shop (i.e., installation of shelving and hanging displays). Any additions, alterations, demolition or changes to the Premises and improvements of a material, substantial or structural nature, are not permitted without the Director's prior written consent. All improvements to the Premises and all fixtures shall become the property of the City upon expiration or termination of this Agreement.

F. Contractor shall maintain the Premises in a neat, clean, and presentable condition at all times and shall ensure that the Golf Pro Shop windows, inside and outside, are clean at all times.

G. Contractor shall not erect, install, or maintain on the Premises or the Golf Course or the exterior of any improvement at the Golf Course, any billboards or advertising signs, except those which are approved in advance by the Director. Notwithstanding, Contractor is permitted to maintain on the Premises identifying signage, with the size and type of sign(s) subject to the Director's advance approval.

ARTICLE III – TERM

This Agreement shall commence on January 1, 2016, and it shall expire on December 31, 2018, unless terminated earlier in accordance with Article X. The City shall have the right, but not the obligation, to renew this Agreement for up to three (3) consecutive one (1) year periods; provided, however, that any such renewal shall be reduced to writing, making specific reference to this Agreement, and shall be executed by a duly authorized representative for each party, and if required or applicable, approved by the Commission of the City of Dayton. In the event Contractor shall hold over and remain in possession of the Premises herein described after the expiration of this Agreement, such period of holding over shall be considered a month-to-month tenancy, which may be terminated, without notice, at any time by the City.

ARTICLE IV – GENERAL RIGHTS AND OBLIGATIONS OF CONTRACTOR

A. Contractor represents and agrees that Ms. Jana Dalton, its member, is and shall remain during the entire term hereof a Class A member in good standing of the Professional Golfers' Association of America ("PGA") professional. In the event Ms. Dalton does not maintain her PGA professional status during the term hereof, the City may immediately terminate this Agreement.

B. Contractor shall, at its sole cost and expense, procure from all authorities having jurisdiction over the operations of the Contractor at and from the Premises, all licenses, certificates, permits or other authorizations, which may be lawfully required for the conduct of its operations and/or the Golf Pro Shop.

C. Contractor shall conduct its business and the Golf Pro Shop operations at the Golf Course in a fair and business like manner so that it will be a credit to the City and to the Golf Course. The City will establish hours of operation for the Golf Pro Shop operation.

D. Contractor and its employees, agents, and servants, shall enforce, comply with, and obey such rules and regulations for the operation and use of the Golf Course, as may from time to time be promulgated by City, and shall obey all federal, state, and local laws, including all ordinances of the City of Dayton and

the City's Division of Golf Policy Manual (hereinafter this policy manual shall be referred to as the "Golf Policy Manual"). If the City elects to update or amend the Golf Policy Manual, it will provide an opportunity for the Contractor to comment and/or make recommendations.

E. Contractor shall repair or pay for all damage to City and its property, caused by the intentional, wrongful and/or negligent acts or omissions of Contractor, its agents, servants, employees and contractors, arising out of the use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

F. Contractor shall pay when due all federal, state and local taxes or assessments that may be levied against its personal, real and/or leasehold property situated at the Golf Course; provided, however, that Contractor shall have the right to protest or contest by legal proceeding or in such other manner as it may deem suitable, the validity or amount of any imposition which it is obligated to pay.

G. Contractor shall require Ms. Dalton and, in her absence, a qualified assistant or a responsible adult, to be present in the Golf Pro Shop at all times so that the sales and services, which are herein required, will be available at all times during the scheduled hours of operation and use of the Golf Course and its facilities. During the months of April through October, Ms. Dalton shall not be absent for any two consecutive day period without first notifying and receiving the approval of the City. Vacations may only be taken between November 1st and March 31st of each contract year.

H. Contractor is responsible for stocking and maintaining all inventory for the Golf Pro Shop merchandise. At a minimum, Contractor must stock a reasonable amount of golf balls, clubs, gloves and other golf related merchandise and clothing. Within thirty (30) days from the date of execution of this Agreement, Contractor shall enter all merchandise and equipment Contractor will stock, maintain, and sell at the Golf Pro Shop within the designated point of sale system. Throughout the duration of this contract, the designated point of sale system will be used to manage all merchandise and equipment. Contractor is solely responsible for payment, to the proper taxing authority, of all sales taxes on merchandise sold at the Golf Pro Shop.

I. Contractor is responsible for complying with all federal, state, and local employment and labor laws, codes, directives, orders and rules and regulations. Notwithstanding termination or expiration of this Agreement, Contractor shall remain responsible for timely completion and filing of tax documentation and for furnishing all employees, agents and contractors with all tax information and/or documentation (i.e., W-2 or 1099 forms), as required by law. In the event the City is required to pay any unemployment compensation contributions for persons who were employed by Contractor, or any other expenses normally assumed and paid by an employer, but by operation of law are imposed on the City, Contractor shall reimburse the City for any payments so made. Contractor shall reimburse the City within fifteen (15) days after City sends an invoice for payment.

J. Contractor shall maintain accurate books of accounts in accordance with Generally Accepted Accounting Principals ("GAAP") for all aspects of the operation of the Golf Pro Shop, revenues collected on behalf of the City of Dayton and all other fees and charges collected at the Golf Course. At any time during normal business hours, and as often as the City may deem necessary, Contractor shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine and make excerpts and transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, revenues collected, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require Contractor to provide, at Contractor's own cost and by an independent Certified Public Accounting ("CPA") firm, a full audit of this Agreement and Contractor's operations at the Golf Course.

ARTICLE V – GOLF MANAGEMENT SERVICES

- A. Contractor will perform the following golf management services at the Golf Course:
1. Contractor shall cooperate with all City employees, agents and contractors in the administration and operation of the Golf Course, and assist in assuring proper conduct of all users of the facility, maintaining it in a clean, neat, and sanitary condition. Contractor shall enforce the City's "No-Smoking" policy in and about the Premises at all times.
 2. Contractor shall, each day at the times designated by the City for the operation and use of the Golf Course, open locker rooms, and common area rest rooms for public use, and at the end of the day, Contractor shall be responsible for securing and locking said areas including course access gates.
 3. Contractor is subject to and shall comply with all orders and directions issued by the Director in the operation, maintenance and improvement of the Golf Course and facilities thereon.
 4. Contractor shall employ a sufficient number of employees, agents and/or contractors to render the golf services specified herein. Because such persons will be interacting with the public, Contractor shall insure that all personnel retained shall provide prompt and courteous treatment of the public using the Golf Course and its facilities, including annual fee players and/or guests. All such employees, contractors and/or agents shall be clean, courteous, efficient, and neat in appearances. Contractor shall not employ any person(s) who use improper language or act in a loud or boisterous, discriminatory, offensive or otherwise improper manner in providing services at the Golf Course or the Golf Pro Shop. Contractor agrees to terminate the services of any person whose conduct the City believes is detrimental to the best interest of the City or the operation of the Golf Course. Contractor agrees to furnish the Director, with a list of the names and addresses of all employees a minimum of one (1) day before employment and shall update said list as necessary.
 5. Contractor, and its employees and agents, shall collect for and on behalf of the City all golf-related fees and charges for the Golf Course, which includes, but is not limited to, greens fees, range fees, locker rentals, annual privilege fees, league fees, golf cart fees and all other fees and charges for the use of the Golf Course and its facilities and/or equipment prescribed by the City. The City reserves the sole and exclusive right to establish all such fees, charges, and costs for use of the Golf Course and its facilities and equipment.
 6. Contractor will act as an ambassador of the City of Dayton, promoting the City of Dayton and use of the Golf Course in all aspects of the Golf Pro Shop business and golf management services. This shall include, but not be limited to, meeting and greeting customers, providing golf and etiquette tips, and generally promoting and representing the Golf Course in a favorable light.
 7. Contractor shall have the right to sponsor and promote golf tournaments, special events and other outings held at the Golf Course, provided that such tournaments, events or outings are first approved by the Golf Manager. Upon approval by the Golf Manager, Contractor shall be responsible for the scheduling, management, and collection of all revenues from such tournaments, special events and other outings. Contractor shall provide to the Golf Manager on the first day of each month, a complete schedule of tournaments and outings to be held on the course for the upcoming month with number of participants, date of outing, and other information as required by the Golf Manager. Contractor will follow the City's fee schedule and will get variances from the schedule by approval of the Golf Manager only. All fees related to outings, tournaments, and other events, shall be paid and entered into the City's

cash register system by the day of the event. Any outings, tournaments, and other events that may require an invoice for payment shall be invoiced through the City's point-of-sale system.

8. Contractor shall employ all the starters and rangers necessary for the Golf Course operations. Preference in hiring shall go to City of Dayton residents. Contractor shall consult with the City or such other City-designated contractor(s) prior to hiring persons for the starter and/or ranger positions. It is further agreed that all starters and rangers hired must meet the requirements set forth in the Golf Policy Manual. All starters and rangers shall receive training before or immediately following their first scheduled date of work, with such training the responsibility of the Contractor.
9. The City shall provide Contractor with a listing of all hours of work for starters and rangers, which must be covered. Contractor shall schedule the starters and rangers accordingly, and shall furnish all schedules of work for approval by the Director. In the event Contractor fails to meet the City's scheduling requirements and needs for starters and rangers, the City shall invoice Contractor for the cost for services not rendered to the City. Such amounts will be calculated and invoiced by the City and paid by Contractor no later than the fifteenth day of the following month.
10. Contractor will insure, through the starters and rangers, that all users of the Golf Course are given a cash register receipt to demonstrate payment of the charges and fees to use the Golf Course, including any persons allowed discounted or free golf under the "Special Play Privilege Policy" contained in the Golf Policy Manual.
11. By execution of this Agreement, Contractor represents that it received a copy of the Golf Policy Manual and is familiar with its contents and will observe and enforce same.
12. Contractor shall, at its sole expense, provide golf shirts and nametags for all employees, starters, rangers, agents, contractors, and volunteers providing any of the golf services specified in this Agreement. Contractor will require that all such persons wear the shirts and nametags at all times when they are providing such services at the Golf Course.

B. Contractor shall manage and operate the City's golf cart concession at the Golf Course. The work and services to be provided by Contractor related to the golf cart concession include, but are not necessarily limited to, the following:

1. Contractor is responsible for providing the gasoline, and checking oil routinely for all gas golf carts supplied by the City. If the City procures electric carts for use in the golf cart concession, Contractor shall, on a daily basis, insure that all electric carts are fully charged. Unless the parties make other arrangements at the time the City provides electric carts for use at the Golf Course, the City will be responsible for the replacement of electric cart batteries.
2. Charging and collecting (by using the cash registers and, as applicable, the credit card processing equipment provided by the City) the fees and charges prescribed by the City for the rental of golf carts. In no event shall Contractor charge more or less than the rate, fee or charge prescribed by the City, unless a different fee or charge is approved in advance by the Golf Manager.
3. Washing the entire golf fleet daily, unless weather conditions do not permit. In the event Contractor fails to comply with this requirement, the City may, but is not obligated to provide such washing services, with the cost thereof billed to and paid by Contractor with a 25% surcharge.

4. Conducting daily inspections of the entire golf cart fleet. Any damage or accidents must be reported on an accident form, which shall be submitted to the City's Division of Golf administrative offices within twenty four (24) hours after the accident occurred or damage noticed.
5. Performance of all routine maintenance on the golf cart fleet. As used herein, "routine maintenance" includes, but is not limited to, adding gas and oil, cleaning and inspecting the engines and the replacement of straps and tires, as may be necessary. Contractor is responsible for providing replacement tires for all golf carts. However, Contractor is not responsible for winter routine maintenance of the golf cart fleet. Contractor agrees that no more than ten percent (10%) of the golf cart fleet may be "out of service" at any one time due to routine maintenance activities to be performed by Contractor. The City shall have the right to inspect the entire golf cart fleet, during normal business hours, to verify compliance with this provision.
6. Insuring that the "Cart Rental Agreement Form" which form will be provided by the City, is fully completed prior to each golf cart transaction, including usage when the golf cart is provided at no cost. The completed form for the day's transactions shall be given to the City on a daily basis. In the event a golf cart is provided at no cost or charge, Contractor shall provide a detailed explanation on the golf cart rental form; and if the City determines that a fee or charge should have been assessed, Contractor will pay the City an amount equal to 80% of the fee or charge that should have been collected and Contractor shall forego receipt of its Concession Fee (as this term is defined in Article VII, Subsection E).
7. Insuring a sufficient number of golf carts is available for tournaments, special events or other outings. If there is an insufficient number, Contractor shall notify the Golf Manager within five (5) days to arrange rental of additional golf carts that are necessary for such tournament, event, or outing. The revenue collected for the additional golf cart rentals will be distributed per the agreed upon golf cart percentages set forth in this Agreement.

C. Contractor shall insure that the "STRAIGHT 90 DEGREE" rule and all other rules and regulations for the game of golf (including those set forth in the Golf Policy Manual) are enforced at all times.

D. Contractor shall take an active role in the promotion and management of the City's Amateur Tournaments, junior golf programs, and other special events that may be held from time to time at Kittyhawk Golf Course. Contractor shall provide a minimum of ten (10) hours of free instruction to junior golfers aged six (6) to seventeen (17). In lieu of such instruction and if the City offers its Junior Golf Program, Contractor shall provide, at no cost, range usage and all range balls needed by the participants in the City's Junior Golf Program.

ARTICLE VI – RIGHTS AND OBLIGATIONS OF CITY

A. City shall have the right to and shall adopt, enforce, and amend reasonable rule(s) and regulation(s) regarding the use and operation of the Golf Course, facilities, and equipment, including the Golf Policy Manual. The City shall establish Golf Pro Shop operation hours.

B. The Director and other City designees and representatives shall have, at any and all times, the full and unrestricted right to enter the Premises for the purposes of inspecting the Premises and of doing any and all things which the City is obligated or authorized to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of the Golf Course in the exercise of the City's police power.

C. City warrants to Contractor quiet enjoyment of the rights and privileges granted hereunder during the term of this Agreement, upon Contractor's full and faithful performance of all terms, obligations, promises and covenants contained herein.

D. The City will maintain the Golf Course in a playable condition, insofar as weather and finances of the City permit.

E. The City reserves to itself the sole and exclusive right to manage, control, and operate the Golf Course for the benefit of the public in such manner as the City, in its discretion, shall determine advisable. Nothing contained in the Agreement shall be construed to infringe upon or interfere with this exclusive right of management, control, and operation of the Golf Course by the City in any manner whatsoever. For example, the City may authorize other PGA professionals, which have an agreement with the City, to provide golf lessons or instruction to the public at the Golf Course even though Contractor's PGA professional will also be performing golf lessons and instruction at the Golf Course.

F. The City will provide and maintain for Contractor's use all cash registers for all transactions at the Golf Course, including the collection of all fees, charges, and costs specified in this Agreement (i.e., golf cart concession fees, greens fees, locker rentals, merchandise sales). The City will also provide the necessary equipment for acceptance of credit cards (Visa and MasterCard), but Contractor shall reimburse the City for all merchant credit card transaction fees for credit transactions involving Contractor's sales of golf merchandise, golf club rentals, golf club repair, golf lessons, and range ball charges (for purposes of this Subsection only, referred to as "Contractor Revenues"). With each invoice permitted under Article VII, Subsection G, Contractor shall deduct the merchant credit card transaction fees from the payment due Contractor and shall include in the Concession Report a detailed statement as to the credit card transactions involving Contractor Revenues. The City agrees to assume full responsibility for payment of the merchant credit card transaction fees for golf cart rentals, notwithstanding Contractor's entitlement to the Concession Fee.

Whenever there are updates or upgrades to the City's "Point of Sale" system, Contractor will receive training and overviews from the City and shall then be responsible for training and providing overviews to Golf Pro Shop staff. The City will not cover the costs of this training for Golf Pro Shop staff.

G. Contractor will pay the costs for long distance telephone, cable/internet services and alarm services for the Golf Pro Shop and Premises.

H. Gasoline and/or electric golf carts for the golf cart concession at the Golf Course to be operated and managed by Contractor, as specified herein. All golf carts provided to Contractor will have matching numbered keys.

I. The City agrees to retain or make available a qualified technician to make repairs, including minor repairs, to the golf cart fleet. However, the City shall only be responsible to pay the costs of repairs to the golf cart fleet, which are not caused by Contractor's failure to provide routine maintenance on the golf cart fleet as specified in Article V, Subsection B(6).

ARTICLE VII – FINANCIAL MATTERS AND REPORTS

A. Contractor and its employees, agents, and contractors shall use the cash registers provided by the City for all transactions at the Golf Course and Golf Pro Shop, including, but not limited to, collection of greens fees, golf club rentals, range ball charges, locker rentals, annual privilege fees, league fees, golf cart fees, golf lessons, golf merchandise sales and all other miscellaneous golf-related charges and fees. All such transactions must be contemporaneously entered on the cash registers and, as applicable, the

credit card processing equipment at the time of sale and collection of funds. Contractor shall balance the registers and credit card equipment each night. In the event of an overage (that cannot be reconciled), such funds shall be deposited as provided in Subsection B, and become property of the City. In the event of a shortage (that cannot be reconciled), Contractor shall be responsible for providing, from its own funds, an amount equal to the shortage; but such amount will be returned to Contractor if the Contractor can demonstrate to the satisfaction of the City that an inadvertent or other justifiable error occurred causing such shortage (i.e., funds were not correctly counted before deposit, register error). It is Contractor's responsibility for assuring that the beginning daily balance for all cash registers is at least Two Hundred Dollars (\$200).

B. Contractor shall deposit in a City-designated bank account, all daily Gross Receipts from the management and operation of the Golf Course, within a 24-hour period, excluding holidays and weekends; and shall be responsible for the safekeeping, storage, and transportation of said Gross Receipts until they are deposited in the City-designated bank account. Contractor shall make deposits of Gross Receipts for holiday and weekends on the next business day, which is not a holiday or a weekend day. All daily deposit receipts for Gross Receipts shall be provided to the City's Manager for the Division of Golf the next business day after deposit and the deposit receipt must be legible and must be bank validated. For purposes of this Agreement, "Gross Receipts" means all revenues derived from the management and operation of the Golf Course, whether by cash, check or credit card, including, greens fees, golf club rentals, locker rentals, annual privilege fees, league fees, Golf Cart Revenues (as this term is defined in Subsection E below), golf merchandise sales at the Golf Pro Shop, golf lessons, range ball charges, cash register overages, and all other fees and charges for the use of the Golf Course and its facilities and/or equipment, including any sales taxes or other taxes relating to sales or services provided.

C. The City agrees to pay Contractor a "Golf Management Fee" of Two Thousand and Fifty Dollars (\$2,050) per month for the golf management services to be provided pursuant to this agreement. In addition, the City agrees to pay Contractor a "Performance Goal Fee" of Six Hundred and Seventy Five Dollars (\$675.00) per quarter. Such payment is subject to the Contractor meeting or exceeding complete quarterly performance objectives set forth as follows. In the event only a % of the goals are completed, such payment will be prorated based on the percentage completed. These Performance Goals may be modified or adjusted annually; however any such modifications must be reduced to writing and mutually agreed upon:

1. By the end of March each year, Contractor must have:

- a. Revise Kittyhawk Golf Shop Procedure Manual which outlines operational expectation for employees. Manual should include Division of Golf Operations Manual where applicable. Manual should be reviewed and Approved by Golf Manager prior to staff trainings.
- b. Conduct pre-season staff training for all staff (Proshop, Starter, Ranger) to include Procedure Manual and any changes for the upcoming season. Sign-in sheets and meeting agenda from said training must be submitted to the Golf Division Manager by March 31.
- c. Effectively communicated with all prior year league presidents and outing organizers, including appreciation for prior year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Kittyhawk. Proof of said communication must be provided to the Golf manager by March 31 of each year.

- d. Effectively communicated with the Men's and Women's Associations of Kittyhawk Golf Course to ensure that any scheduling needs are met and that any questions and/or concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by March 31 of each year.
- e. Be innovative and create new programming not limited to traditional golf. Plan at minimum one new Marketing Activity and Promotions per season as described, but not limited to, in Business Plan on page 7. Detailed plan must be submitted and approved by the Golf Division Manager by March 31.
- f. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.
- g. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.
- h. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

2. By the end of June each year, Contractor must have:

- a. Worked with the Dayton Golf Commission and fellow City of Dayton Golf Professionals to ensure that the annual Golf Commission tournaments have been effectively planned and executed or are ready for execution.
- b. Implement at minimum one new Marketing Activity and Promotions per season as approved by the Golf Division Manager. Marketing collateral to be used for said activity must be readily available to the public by May 1st of each season.
- c. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.
- d. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.
- e. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

3. By the end of September each year, Contractor must have:

- a. Effectively communicated with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Kittyhawk. Proof of said communication must be provided to the Golf manager by September 30 of each year.

- b. Executed the majority of marketing efforts or other initiatives specified to the golf manager in the first quarter.
- c. Effectively and actively supported the City of Dayton's Junior Golf program by providing course times to the program, assisting with program lessons, player development, and positively communicating and advertising the program to guests and potential customers.
- d. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.
- e. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.
- f. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

4. By the end of December each year, Contractor must have:

- a. Submitted a final report on outings and tournaments to include outing name, course receipt number and number of actual participants.
- b. Submitted your annual accomplishments as it pertains to the operation, programming and management of Kittyhawk Golf Center.
- c. Submitted a detailed plan for any and all aesthetic or capital improvements to the Golf Shop for the upcoming year. Said plan must be submitted in writing by December 31 of each year.
- d. Effectively communicated with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Kittyhawk. Proof of said communication must be provided to the Golf manager by December 31 of each year.
- e. Effectively communicated with the Men's and Women's Associations of Kittyhawk Golf Course to ensure that any scheduling needs have been met and that any questions and/or concerns from the current year have been addressed and any concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by December 31 of each year.
- f. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.

- g. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.
- h. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

D. The City will make available to Contractor up to Fifty One Thousand Dollars (\$51,000) annually for personnel costs. The City will disburse these funds in advance and in equal monthly installments of Four Thousand Two Hundred and Fifty Dollars (\$4,250) starting in January 2016. If, at the expiration or early termination of this Agreement, Contractor has not expended the full amount of advanced funds set forth in this paragraph, Contractor shall reimburse to the City the unexpended amount within thirty (30) days or take such other action as the City may direct with respect to the unexpended amount. This provision shall survive termination of this Agreement.

E. The City will pay Contractor a "Concession Fee" of twenty percent (20%) of the Golf Cart Revenues for all work and services provided by Contractor for the golf cart concession. As used herein "Golf Cart Revenues" shall mean all monies collected or charged, whether by cash or credit, for the rental of the golf carts at the Golf Course.

F. The City will retain a "Maintenance Fee" of ten percent (10%) of Driving Range Revenues for all work and services provided by the City for the driving range concession. As used herein "Driving Range Revenues" shall mean all monies collected or charged, whether by cash or credit for the rental of driving range balls at the Golf Course. In exchange for the Maintenance fee, the City will mow the driving range, fertilize and seed and ensure that the range remains in as good of condition as excessive use and weather permit. Contractor will retain the right to dictate pricing for driving range services, provided that fees remain reasonable and within market expectations. Contractor, at its sole cost and expense, shall make and maintain improvements to the golf course driving range.

G. On the 1st day of each month during the term of this Agreement, Contractor shall submit to the City an invoice for payment of the Golf Management Fee and request for disbursement of the monthly installment amount for Golf Pro Shop personnel costs. Upon request by the City, Contractor shall furnish supporting documentation and records to substantiate the information contained in said report. The City shall use good faith efforts to pay such invoice on or before the 15th day of the month.

H. On the 1st and 16th day of each month (or the next business day that is not a Saturday, Sunday, or City observed holiday) during the term of this Agreement, Contractor shall review an invoice prepared by the City for payment of the Concession Fee and release of the funds related to golf merchandise sales, golf lessons, golf club rentals and range ball charges. With each invoice permitted under this Subsection H, Contractor shall sign a sworn or verified "Concession Report", in a format acceptable to the City, detailing, at a minimum for the immediately preceding period, the total amount of Golf Cart Revenues and golf merchandise sales (which amount shall include payment of all sales taxes and other taxes charged, as payment of such taxes is the responsibility of Contractor), golf club rentals, golf lessons, and range ball charges and the total amount of credit transactions for which Contractor is responsible for the payment of the associated merchant credit card acceptance fee as required in Article VI, Subsection F. Unless disputed or the Concession Report is incomplete, the City will use good faith efforts to pay the invoice within ten (10) business days from the City's receipt of the invoice.

I. Quarterly, Contractor shall submit to the Director a detailed income statement, in compliance with GAAP and in such format acceptable to the City, together with such additional information or documentation as the City may require. If as a result of such statement a discrepancy is noted, Contractor shall take such corrective action as the City may require.

J. The City's financial obligations under this Agreement are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available.

ARTICLE VIII – INSURANCE AND INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees against any and all claims for injury or damage to persons or property in any way connected with or arising out of Contractor's occupancy or use of the demised premises, the performance or non-performance of this Agreement and the acts, errors and omission of Contractor or its employees, agents, and/or contractors.

B. During the term hereof, Contractor shall procure and maintain, at Contractor's sole cost and expense, with an insurance company authorized to conduct business in the State of Ohio and having at least an "A" rating from A.M. Best, Comprehensive General Liability Insurance, with a combined single limit of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate, and specifically covering all personal injuries, property damage and all losses and damages occurring on the Premises and/or resulting from Contractor's activities at the Golf Course. Contractor's insurance shall also include coverage for damaged doors and glass breakage and any structural damage related thereto.

C. Contractor shall also maintain Workers' Compensation Insurance for all employees, in such amounts as prescribed by Ohio law.

D. All policies of insurance required herein, but excluding Workers' Compensation Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that City shall be notified thirty (30) days in advance of any termination or diminution of coverage. Within thirty (30) days of the execution of this Agreement, Contractor shall furnish the Director with a complete copy of the certificate(s) of insurance demonstrating compliance with the insurance requirements contained herein.

E. Contractor shall furnish a performance and fidelity bond in the amount of Twenty Five Thousand Dollars (\$25,000) to indemnify the City against loss of funds collected by Contractor on behalf of City and its agents or employees, in accordance with the terms of this Agreement and to be held by the City as security for the performance of Contractor's obligations under this Agreement.

ARTICLE IX – NON-DISCRIMINATION

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

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

B. Contractor agrees that it will not discriminate by segregation or otherwise, against any person or persons because of race, creed, sex, or national origin in furnishing or by refusing to furnish to such

person or persons the use of the Golf Course facility, including any and all services, privileges, and activities provided thereat.

In the event of a finding of a breach of the above nondiscrimination covenant, the City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and facilities thereon and the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. Notwithstanding the foregoing sentence, it is specifically agreed that nothing herein contained shall prevent Contractor from exhausting all administrative and/or judicial remedies available to Contractor in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

ARTICLE X – TERMINATION

A. This Agreement may be terminated by the City upon giving written notice of termination to Contractor at least thirty (30) days prior to the effective date of such termination. The City may immediately terminate this Agreement, without notice, in the event of any unethical conduct by Contractor or violation or alleged violation of federal, state, or local law, rule, regulation, or order, but excluding any violation or alleged violation of the Golf Policy Manual.

B. This Agreement may be terminated by the City in the event Contractor defaults in the performance of any duty, obligation or responsibility hereunder, including any violation or alleged violation of the Golf Policy Manual, but only if Contractor fails to cure the default to the satisfaction of the City or fails to submit a mutually acceptable plan to cure said default within fifteen (15) days from the City's written notice to the Contractor explaining the default.

C. Contractor may terminate this Agreement in the event the City defaults in the performance of its duties, responsibilities or obligations hereunder, but only if the City fails to cure or undertake reasonable actions to cure the default within thirty (30) days from Contractor's written notice to the City explaining such default.

D. In the event this Agreement is terminated, the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. On the effective date of termination, the City shall take immediate possession of the Premises, without being deemed guilty of trespassing, but will allow the Contractor to access the Premises for the period and specific purpose set forth in Article II, Subsection D.

ARTICLE XI – GENERAL PROVISIONS

A. Where this Agreement speaks of approval and consent by the City or the Director, such approval and consent will not be unreasonably withheld.

B. This Agreement represents the entire and integrated agreement between City and Contractor. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject matter of this Agreement. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

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

D. Contractor shall meet with the City and its designees at such reasonable times designated by the City to review and discuss performance of this Agreement. Contractor shall allow the City to conduct

inspections or monitoring, and shall cooperate with the City in all respects concerning the review and monitoring of Contractor's performance pursuant to this Agreement.

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

Contractor: Prior to Tee Time, LLC
c/o Jana Dalton
5555 Germantown Pike
Dayton, Ohio 45418

City: The City of Dayton, Ohio
Department of Recreation & Youth Services
101 W. Third Street, P.O. Box 22
Dayton, OH 45401
Attn: Director

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

F. Contractor shall not assign any rights or duties under this Agreement without the prior written consent to the City. Unless otherwise stated in the City's written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement. Notwithstanding the foregoing, all promises, covenants, stipulations, and agreements set forth in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

G. Contractor represents that it has carefully reviewed the terms and conditions of this Agreement, is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement.

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

Contractor understands and agrees that the Contractor and all persons retained or hired to perform the duties and responsibilities under this Agreement, including starters and rangers, are not City employees and are not "public employees" for the purposes of OPERS membership. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all local, state, and federal taxes.

I. The City may amend this Agreement, provided no such amendment shall be effective unless it is reduced to writing, executed by each party and, if required, approved by the Commission of the City of Dayton, Ohio.

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

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

PRIOR TO TEE TIME
an Ohio limited liability company

THE CITY OF DAYTON, OHIO

By: _____

City Manager

Its: _____

**APPROVED AS TO FORM
AND CORRECTNESS:**

Ann M... for

City Attorney *MS*

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

_____, 2016

Min. Bk. ____ Pg. ____

Clerk of the Commission

By MR. Williams

No. 31468-16

AN ORDINANCE

Appropriating Property Designated as Parcels 10SH, 10 T1, and 10 T2 and 11 SH1, 11 SH2, 11 T1, 11 T2 and 11 T3 in Connection with the Cleveland Park Bikeway Connector Project, and Declaring an Emergency.

WHEREAS, This Commission, by Resolution No. 6151-15, adopted on November 18, 2015, and Resolution No. 6156-15 adopted December 16, 2015 declared its intention to appropriate the real property interests hereinafter described ("Property") in connection with the Cleveland Park Bikeway Connector Project ("Project"); and

WHEREAS, The property being appropriated is for the Project to construct a bike path through Cleveland Park that is open to the public without charge; and

WHEREAS, The owners of the parcels comprising the Property are unable to come to an agreement with City or are unable to deliver clear title to the City; and

WHEREAS, The total appraised value of the parcels 10SH, 10 T1, and 10 T2 comprising the Property is \$3,025.00; and estimated filing fees and court costs are \$500.00 and the total appraised value of the parcels 11 SH1, 11 SH2, 11 T1, 11 T2 and 11 T3 comprising the Property is \$5,665.00; and estimated filing fees and court costs are \$500.00; and

WHEREAS, The City must acquire the Property for the Project at the earliest date possible, it is necessary for the immediate preservation of the public peace, property, health and safety, that this ordinance take effect immediately upon passage to avoid delay in completing the Project; now, therefore,

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

Section 1. That the Commission hereby appropriates, for the purposes stated in the preamble hereof, standard highway easements in, under, over, and through the real property described in Exhibits marked "A", "B", and "C", and a temporary construction easements in, under, over, and through the real property described in Exhibits marked "D" through "H" attached hereto (collectively, the "Property"), the owners of record and the appraised value for the real property being as follows:

Parcel 10SH, 10 T1, and 10 T2
Deed Holders: Wilfrey Investment Co.
Appraised Value: \$3,025.00
BPI: R72-151-1-9

Parcel 11 SH1, 11 SH2, 11 T1, 11 T2 and 11 T3
Deed Holders: Fath Wyoming Hill LLC
Appraised Value: \$5,665.00
BPI: R72-151-1-23

Section 2. That the City Attorney is hereby authorized and directed to apply to the Court of Common Pleas, Montgomery County, Ohio, for the purpose of assessing the compensation to be paid for each parcel of the Property.

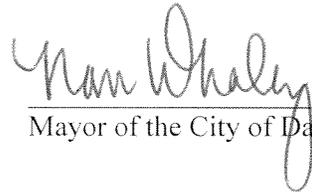
Section 3. That the costs and expense for the appropriation described herein shall be paid out of the following account:

CLEVELAND PARK BIKEWAY
41463-6450-1421-54
NINE THOUSAND SIX HUNDRED NINETY DOLLARS
(\$9,690.0000)

Section 4. For the reasons stated in the preamble hereof, the Commission declares this ordinance to be an emergency measure that shall take effect immediately upon its passage.

Passed by the Commission January 13, 2016

Signed by the Mayor January 13, 2016



Mayor of the City of Dayton, Ohio

Attest:



Clerk of the Commission

Approved as to form:



City Attorney

EXHIBIT A

LPA RX 871 SH

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Rev. 06.09

Ver. Date 06/26/15

PID 93233

**PARCEL 10-SH
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the City Of Dayton, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being part of Lot Number 78201 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Wilfrey Investment Co. in Deed MF 76-063A01 and Deed MF 80-508C05, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at a 5/8" iron pin set at a corner of said Lot 78201, said point also being the southeast corner of Lot Number 56642 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton (Sta 21+57.98, 28.11' LT);

Thence along the south line of said Lot 56642, North 84°04'34" West a distance of 137.00 feet to a 5/8" iron pin set, said point being the **TRUE PLACE OF BEGINNING**. (Sta 20+07.87, 10.00' LT)

Thence along the northern boundary of this easement the following four courses:

- 1) **South 07°37'45" West** a distance of 4.14 feet to a 5/8" iron pin set (Sta 20+12.01, 10.00' LT);

EXHIBIT A

LPA RX 871 SH

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Rev. 06/09

- 2) Along a curve to the left a distance of **8.50** feet (Radius: **5.31** feet, Delta: **91°43'58"**, Chord Bearing: **South 38°14'14" East**, Chord Length: **7.62** feet) to a 5/8" iron pin set (Sta 20+36.52, 10.00' LT);
- 3) **South 84°06'13" East** a distance of **90.67** feet to 5/8" iron pin set (Sta 21+27.18, 10.00' LT);
- 4) Along a curve to the right a distance of **44.88** feet (Radius: **85.00** feet, Delta: **30°15'03"**, Chord Bearing: **South 68°58'42" East**, Chord Length: **44.36** feet) to a 5/8" iron pin set on the north right-of-way line of Wyoming Street (Sta 21+66.78, 10.00' LT);

Thence along the north right-of-way line of Wyoming Street, **South 72°11'32" West** a distance of **27.21** feet to a 5/8" iron pin set (Sta 21+48.11, 10.00' RT);

Thence along the southern boundary of this easement the following four courses:

- 1) Along a curve to the left a distance of **18.14** feet (Radius: **65.00** feet, Delta: **15°59'21"**, Chord Bearing: **North 76°06'33" West**, Chord Length: **18.08** feet) to a 5/8" iron pin set (Sta 21+27.18, 10.00' RT);
- 2) **North 84°06'13" West** a distance of **90.67** feet to a 5/8" iron pin set (Sta 20+36.52, 10.00' RT);
- 3) Along a curve to the right a distance of **40.52** feet (Radius: **25.31** feet, Delta: **91°43'58"**, Chord Bearing: **North 38°14'14" West**, Chord Length: **36.33** feet) to a 5/8" iron pin set (Sta 20+12.01, 10.00' RT);
- 4) **North 07°37'45" East** a distance of **3.55** feet to a 5/8" iron pin set on the north line of said Lot 78201 and on the southern terminus of Santa Cruz Avenue (Sta 20+08.47, 10.00' RT);

Thence along the north line of said Lot 78201 and the southern terminus of Santa Cruz Avenue, **South 84°04'34" East** a distance of **20.01** feet to the **TRUE PLACE OF BEGINNING**.

Containing **0.0693** acres, more or less, of which, 0.0000 acres is present road occupied. (Parcel Number: R72-15101-0009: 0.0693 acres)

Subject to all legal highways, easements and restrictions of record.

EXHIBIT A

Page 3 of 3

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Prior instrument reference as of the date of this survey is Deed MF 76-063A01 and Deed MF 80-508C05 of the deed records of Montgomery County, Ohio. (Parcel Number: R72-15101-0009)

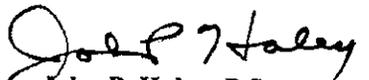
All instruments referenced in the description are on record in the Montgomery County Recorder's Office.

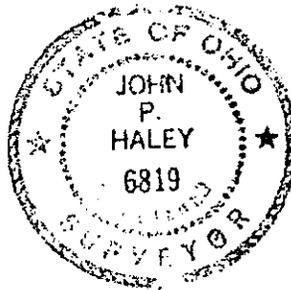
Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa 6819".

This description is based upon a field survey conducted under the supervision of John P. Haley, Registered Surveyor, Ohio License Number 6819, in January, February and October of 2014.

Haley-Dusa Engineering & Surveying Group, LLC


John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
ACREAGE AND CLOSURE ONLY
DATE 08-26-15 FILE NO. 2015-0192

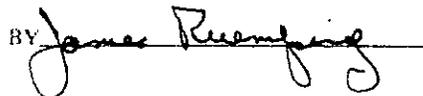
BY 

EXHIBIT B

LPA RX 871 SH

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Rev. 06/09

Ver. Date 06/26/15

PID 93233

**PARCEL 11-SH1
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the City Of Dayton, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being part of Lot Number 78202 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Fath Wyoming Hills, LLC as a 4.819 acre tract in IR Deed #05-116030, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at a 5/8" iron pin set on the north line of Lot Number 56643 at the northwest corner of Overlook Heights as recorded in Plat Book "S", Page 6 said point also being the western terminus of Marimont Drive (Sta 29+25.05, 376.88' LT);

Thence along the north line of said Lot 56643, North 86°06'03" West a distance of 443.13 feet to the southeast corner of said 4.819 acre tract (Sta 27+77.66, 25.69' RT);

Thence along the east line of said 4.819 acre tract, North 08°57'16" East a distance of 440.58 feet to a 5/8" iron pin found at a corner of said 4.819 acre tract (Sta 23+45.02, 44.24' LT);

Thence along said 4.819 acre tract, North 83°40'37" West a distance of 90.66 feet (Sta 22+93.13, 24.51' RT);

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
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DATE 08-26-15 FILE NO. 2015-0192

BY James Ruenfing
LPA RX 871 SH

EXHIBIT B

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Thence continuing along said 4.819 acre tract, North 31°57'59" West a distance of 42.00 feet to a 5/8" iron pin set at the **TRUE PLACE OF BEGINNING**. (Sta 22+53.71, 10.00' RT);

Thence along the proposed easement line, North 52°10'16" West a distance of 25.76 feet to a 5/8" iron pin set on the south right-of-way line of Wyoming Street (Sta 22+27.95, 10.00' RT);

Thence along the south right-of-way line of Wyoming Street, North 72°11'32" East a distance of 9.18 feet to the northeast corner of said 4.819 acre tract (Sta 22+33.13, 2.42' RT);

Thence along the east line of said 4.819 acre tract, South 31°57'59" East a distance of 21.93 feet to the **TRUE PLACE OF BEGINNING**.

Containing 0.0022 acres, more or less, of which, 0.0000 acres is present road occupied. (Parcel Number: R72-15101-0023: 0.0022 acres)

Subject to all legal highways, easements and restrictions of record.

Prior instrument reference as of the date of this survey is IR Deed #05-116030 of the deed records of Montgomery County, Ohio. (Parcel Number: R72-15101-0023)

All instruments referenced in the description are on record in the Montgomery County Recorder's Office.

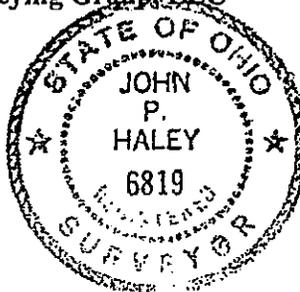
Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa 6819".

This description is based upon a field survey conducted under the supervision of John P. Haley, Registered Surveyor, Ohio License Number 6819, in January, February and October of 2014.

Haley-Dusa Engineering & Surveying Group, LLC

John P. Haley
John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380

EXHIBIT C

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PID 93233

**PARCEL 11-SH2
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the City Of Dayton, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being part of Lot Number 78202 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Fath Wyoming Hills, LLC as a 4.819 acre tract in IR Deed #05-116030, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at a 5/8" iron pin set on the north line of Lot Number 56643 at the northwest corner of Overlook Heights as recorded in Plat Book "S", Page 6, said point also being the western terminus of Marimont Avenue (Sta 29+25.05, 376.88' LT);

Thence along the north line of said Lot 56643, North 86°06'03" West a distance of 443.13 feet to the southeast corner of said 4.819 acre tract (Sta 27+77.66, 25.69' RT);

Thence along the east line of said 4.819 acre tract, North 08°57'16" East a distance of 137.63 feet to a 5/8" iron pin set, said point being the **TRUE PLACE OF BEGINNING**. (Sta 26+34.47, 10.00' RT);

Thence along the western boundary of this easement the following seven courses:

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- 1) Along a curve to the left a distance of **3.25** feet (Radius: **320.00** feet, Delta: **00°34'53"**, Chord Bearing: **North 09°46'15" West**, Chord Length: **3.25** feet) to a 5/8" iron pin set (Sta 26+31.12, 10.00' RT);
- 2) **North 10°03'41" West** a distance of **52.27** feet to a 5/8" iron pin set (Sta 25+78.85, 10.00' RT);
- 3) Along a curve to the right a distance of **20.64** feet (Radius: **125.00** feet, Delta: **09°27'44"**, Chord Bearing: **North 05°19'49" West**, Chord Length: **20.62** feet) to a 5/8" iron pin set (Sta 25+59.86, 10.00' RT);
- 4) **North 00°35'57" West** a distance of **136.71** feet to a 5/8" iron pin set (Sta 24+23.15, 10.00' RT);
- 5) Along a curve to the right a distance of **21.07** feet (Radius: **125.00** feet, Delta: **09°39'32"**, Chord Bearing: **North 04°13'49" East**, Chord Length: **21.05** feet) to a 5/8" iron pin set (Sta 24+03.76, 10.00' RT);
- 6) **North 09°03'34" East** a distance of **39.65** feet to a 5/8" iron pin set (Sta 23+64.11, 10.00' RT);
- 7) Along a curve to the left a distance of **37.22** feet (Radius: **40.00** feet, Delta: **53°19'13"**, Chord Bearing: **North 17°36'02" West**, Chord Length: **35.90** feet) to a 5/8" iron pin set on a line of said 4.819 acre tract (Sta 23+17.58, 10.00' RT);

Thence along said 4.819 acre tract, **South 83°40'37" East** a distance of **26.03** feet to a 5/8" iron pin set (Sta 23+34.67, 10.00' LT);

Thence along the eastern boundary of this easement the following five courses:

- 1) Along a curve to the right a distance of **35.33** feet (Radius: **60.00** feet, Delta: **33°44'11"**, Chord Bearing: **South 07°48'31" East**, Chord Length: **34.82** feet) to a 5/8" iron pin set (Sta 23+64.11, 10.00' LT);
- 2) **South 09°03'34" West** a distance of **39.65** feet to a 5/8" iron pin set (Sta 24+03.76, 10.00' LT);
- 3) Along a curve to the left a distance of **17.70** feet (Radius: **105.00** feet, Delta: **09°39'32"**, Chord Bearing: **South 04°13'49" West**, Chord Length: **17.68** feet) to a 5/8" iron pin set (Sta 24+23.15, 10.00' LT);

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- 4) South 00°35'57" East a distance of 136.71 feet to a 5/8" iron pin set (Sta 25+59.86, 10.00' LT);
- 5) Along a curve to the left a distance of 14.68 feet (Radius: 105.00 feet, Delta: 08°00'35", Chord Bearing: South 04°36'15" East, Chord Length: 14.67 feet) to a 5/8" iron pin set on the east line of said 4.819 acre tract (Sta 25+75.94, 10.00' LT);

Thence along the east line of said 4.819 acre tract, South 08°57'16" West a distance of 61.54 feet to the **TRUE PLACE OF BEGINNING**.

Containing 0.1272 acres, more or less, of which, 0.0000 acres is present road occupied. (Parcel Number: R72-15101-0023: 0.1272 acres)

Subject to all legal highways, easements and restrictions of record.

Prior instrument reference as of the date of this survey is IR Deed #05-116030 of the deed records of Montgomery County, Ohio. (Parcel Number: R72-15101-0023)

All instruments referenced in the description are on record in the Montgomery County Recorder's Office.

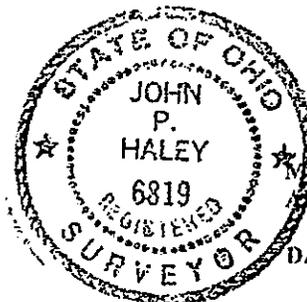
Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa 6819".

This description is based upon a field survey conducted under the supervision of John P. Haley, Registered Surveyor, Ohio License Number 6819, in January, February and October of 2014.

Haley-Dusa Engineering & Surveying Group, LLC


John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
ACREAGE AND CLOSURE ONLY
DATE 08-26-15 FILE NO. 2015-0192

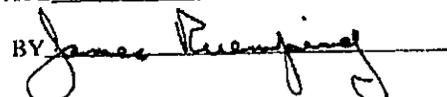
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EXHIBIT D

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PID 93233

**PARCEL 10-T1
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
BIKEWAY CONSTRUCTION
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being an easement for bikeway construction over part of Lot Number 78201 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Wilfrey Investment Co. in Deed MF 76-063A01 and Deed MF 80-508C05, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at a corner of said Lot 78201, said point also being the southeast corner of Lot Number 56642 (Sta 21+57.98, 28.11' LT);

Thence along the south line of said Lot 56642, North 84°04'34" West a distance of 157.01 feet to the **TRUE PLACE OF BEGINNING**. (Sta 20+08.47, 10.00' RT)

Thence **South 07°37'45" West** a distance of **3.55** feet (Sta 20+12.01, 10.00' RT);

Thence along a curve to the left a distance of **40.52** feet (Radius: **25.31** feet, Delta: **91°43'58"**, Chord Bearing: **South 38°14'14" East**, Chord Length: **36.33** feet) (Sta 20+36.52, 10.00' RT);

Thence **South 84°06'13" East** a distance of **90.67** feet (Sta 21+27.18, 10.00' RT);

Thence along a curve to the right a distance of **18.14** feet (Radius: **65.00** feet, Delta: **15°59'21"**, Chord Bearing: **South 76°06'33" East**, Chord Length: **18.08** feet) to the north right-of-way line of Wyoming Street (Sta 21+48.11, 10.00' RT);

Thence along the north right-of-way line of Wyoming Street, **South 72°11'32" West** a distance of **18.64** feet (Sta 21+28.35, 19.99' RT);

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Thence **North 84°06'13" West** a distance of **91.52** feet (Sta 20+36.52, 20.00' RT);
Thence along a curve to the right a distance of **56.53** feet (Radius: **35.31** feet, Delta: **91°43'58"**,
Chord Bearing: **North 38°14'14" West**, Chord Length: **50.68** feet) (Sta 20+12.01, 10.00' RT);

Thence **North 07°37'45" East** a distance of **3.25** feet to the north line of said Lot 78201 and the southern terminus of Santa Cruz Avenue (Sta 20+08.76, 20.00' RT);

Thence along the north line of said Lot 78201 and the southern terminus of Santa Cruz Avenue, **South 84°04'34" East** a distance of **10.00** feet to the **TRUE PLACE OF BEGINNING**.

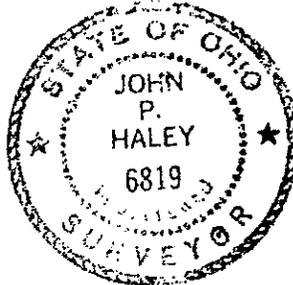
Containing **0.0350** acres, more or less.

Subject to all legal highways, easements and restrictions of record.

Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

Haley-Dusa Engineering & Surveying Group, LLC


John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380

EXHIBIT E

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PID 93233

**PARCEL 10-T2
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
BIKEWAY CONSTRUCTION
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being an easement for bikeway construction over part of Lot Number 78201 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Wilfrey Investment Co. in Deed MF 76-063A01, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at a corner of said Lot 78201, said point also being the southeast corner of Lot Number 56642 (Sta 21+57.98, 28.11' LT);

Thence along the south line of said Lot 56642, North 84°04'34" West a distance of 40.41 feet to the **TRUE PLACE OF BEGINNING**. (Sta 21+27.78, 19.56' LT)

Thence along a curve to the right a distance of **52.90** feet (Radius: **95.00** feet, Delta: **31°54'18"**, Chord Bearing: **South 68°07'25" East**, Chord Length: **52.22** feet) (Sta 21+69.81, 20.00' LT);

Thence **South 52°10'16" East** a distance of **3.54** feet to the north right-of-way line of Wyoming Street (Sta 21+73.35, 20.00' LT);

Thence along the north right-of-way line of Wyoming Street, **South 72°11'32" West** a distance of **12.16** feet (Sta 21+66.78, 10.00' LT);

Thence along a curve to the left a distance of **44.88** feet (Radius: **85.00** feet, Delta: **30°15'03"**, Chord Bearing: **North 68°58'42" West**, Chord Length: **44.36** feet) (Sta 21+27.18, 10.00' LT);

Thence **North 84°06'13" West** a distance of **90.67** feet (Sta 20+36.52, 10.00' LT);

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Thence along a curve to the right a distance of **8.50** feet (Radius: **5.31** feet, Delta: **91°43'58"**, Chord Bearing: **North 38°14'14" West**, Chord Length: **7.62** feet) (Sta 20+12.01, 10.00' LT);

Thence **North 07°37'45" West** a distance of **4.14** feet to the north line of said Lot 78201 and the southern terminus of Santa Cruz Avenue (Sta 20+07.87, 10.00' LT);

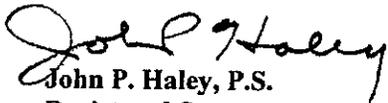
Thence along the north line of said Lot 78201, **South 84°04'34" East** a distance of **96.59** feet to the **TRUE PLACE OF BEGINNING**.

Containing **0.0324** acres, more or less.

Subject to all legal highways, easements and restrictions of record.

Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

Haley-Dusa Engineering & Surveying Group, LLC



**John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819**



June 26, 2015

Job # S3380

EXHIBIT F

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PID 93233

**PARCEL 11-T1
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
BIKEWAY CONSTRUCTION
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being an easement for bikeway construction over part of Lot Number 78202 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Fath Wyoming Hills, LLC as a 4.819 acre tract in IR Deed #05-116030, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning on the south right-of-way line of Wyoming Street at the northeast corner of said 4.819 acre tract (Sta 22+33.13, 2.42' RT);

Thence along the south right-of-way line of Wyoming Street, South 72°11'32" West a distance of 9.18 feet to the **TRUE PLACE OF BEGINNING**. (Sta 22+27.95, 10.00' RT)

Thence **South 52°10'16" East** a distance of 25.76 feet to the east line of said 4.819 acre tract (Sta 22+57.71, 10.00' RT);

Thence along the east line of said 4.819 acre tract, **South 31°57'59" East** a distance of 28.95 feet (Sta 22+80.88, 20.00' RT);

Thence **North 52°10'16" West** a distance of 59.77 feet to the south right-of-way line of Wyoming Street (Sta 22+21.11, 20.00' RT);

Thence along the south right-of-way line of Wyoming Street, **North 72°11'32" East** a distance of 12.11 feet to the **TRUE PLACE OF BEGINNING**.

Containing 0.0098 acres, more or less.

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Subject to all legal highways, easements and restrictions of record.

Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

Haley-Dusa Engineering & Surveying Group, LLC


John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380

EXHIBIT G

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PID 93233

**PARCEL 11-T2
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
BIKEWAY CONSTRUCTION
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being an easement for bikeway construction over part of Lot Number 78202 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Fath Wyoming Hills, LLC as a 4.819 acre tract in IR Deed #05-116030, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at the southeast corner of said 4.819 acre tract (Sta 27+77.66, 25.69' RT);

Thence along the east line of said 4.819 acre tract, North 08°57'16" East a distance of 93.90 feet to the **TRUE PLACE OF BEGINNING**. (Sta 26+78.91, 21.03' RT);

Thence along a curve to the right a distance of 44.86 feet (Radius: 235.26 feet, Delta: 10°55'30", Chord Bearing: North 04°35'57" West, Chord Length: 44.79 feet) (Sta 26+31.12, 20.00' RT);

Thence North 10°03'41" West a distance of 52.27 feet (Sta 25+78.85, 20.00' RT);

Thence along a curve to the right a distance of 22.30 feet (Radius: 135.00 feet, Delta: 09°27'44", Chord Bearing: North 05°19'49" West, Chord Length: 22.27 feet) (Sta 25+59.86, 20.00' RT);

Thence North 00°35'57" West a distance of 136.71 feet (Sta 24+23.15, 20.00' RT);

Thence along a curve to the right a distance of 22.76 feet (Radius: 135.00 feet, Delta: 09°39'32", Chord Bearing: North 04°13'49" East, Chord Length: 22.73 feet) (Sta 24+03.76, 20.00' RT);

Thence North 09°03'34" East a distance of 39.65 feet (Sta 23+64.11, 20.00' RT);

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Thence along a curve to the left a distance of **32.06** feet (Radius: **30.00** feet, Delta: **61°13'50"**, Chord Bearing: **North 21°33'21" West**, Chord Length: **30.56** feet) (Sta 23+10.68, 20.00' RT);

Thence **North 52°10'16" West** a distance of **10.19** feet to a line of said 4.819 acre tract (Sta 23+00.49, 20.00' RT);

Thence along said 4.819 acre tract, **South 83°40'37" East** a distance of **18.41** feet (Sta 23+17.58, 10.00' RT);

Thence along a curve to the right a distance of **37.22** feet (Radius: **40.00** feet, Delta: **53°19'13"**, Chord Bearing: **South 17°36'02" East**, Chord Length: **35.90** feet) (Sta 23+64.11, 10.00' RT);

Thence **South 09°03'34" West** a distance of **39.65** feet (Sta 24+03.76, 10.00' RT);

Thence along a curve to the left a distance of **21.07** feet (Radius: **125.00** feet, Delta: **09°39'32"**, Chord Bearing: **South 04°13'49" West**, Chord Length: **21.05** feet) (Sta 24+23.15, 10.00' RT);

Thence **South 00°35'57" West** a distance of **136.71** feet (Sta 25+59.86, 20.00' RT);

Thence along a curve to the left a distance of **20.64** feet (Radius: **125.00** feet, Delta: **09°27'44"**, Chord Bearing: **South 05°19'49" East**, Chord Length: **20.62** feet) (Sta 25+78.85, 10.00' RT);

Thence **South 10°03'41" East** a distance of **52.27** feet (Sta 26+31.12, 10.00' RT);

Thence along a curve to the right a distance of **3.25** feet (Radius: **320.00** feet, Delta: **00°34'53"**, Chord Bearing: **South 09°46'15" East**, Chord Length: **3.25** feet) to the east line of said 4.819 acre tract (Sta 26+43.47, 10.00' RT);

Thence along the east line of said 4.819 acre tract, **South 08°57'16" West** a distance of **43.73** feet to the **TRUE PLACE OF BEGINNING**.

Containing **0.0764** acres, more or less.

Subject to all legal highways, easements and restrictions of record.

Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

EXHIBIT G

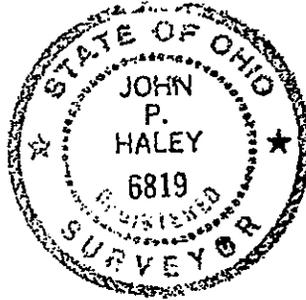
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Haley-Dusa Engineering & Surveying Group, LLC

John P. Haley

**John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819**



**June 26, 2015
Job # S3380**

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**PARCEL 11-T3
MOT~CLEVELAND PARK BIKEWAY CONNECTOR
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
BIKEWAY CONSTRUCTION
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Sections 27, Town 2, Range 7 M.Rs., City of Dayton, County of Montgomery, State of Ohio and being an easement for bikeway construction over part of Lot Number 78202 of the Revised and Consecutive Numbers of Lots on the Plat of the City of Dayton as shown on Wyoming Development Co. Subdivision, recorded in Plat Book 87, Page 51, and conveyed to Fath Wyoming Hills, LLC as a 4.819 acre tract in IR Deed #05-116030, more particularly described as follows (All stations and offsets refer to the Centerline Plat (Cleveland Park) for Mot~Cleveland Park Bikeway Connector recorded in Plat Book 226, Page 37, IR Plat #15-046907, unless noted otherwise):

Beginning at the southeast corner of said 4.819 acre tract (Sta 27+77.66, 25.69' RT);

Thence along the east line of said 4.819 acre tract, North 08°57'16" East a distance of 199.17 feet to the **TRUE PLACE OF BEGINNING**. (Sta 25+75.94, 10.00' LT);

Thence along a curve to the right a distance of 14.68 feet (Radius: 105.00 feet, Delta: 08°00'35", Chord Bearing: North 04°36'15" West, Chord Length: 14.67 feet) (Sta 25+59.86, 10.00' LT);

Thence North 00°35'57" West a distance of 136.71 feet (Sta 24+23.15, 10.00' LT);

Thence along a curve to the right a distance of 17.70 feet (Radius: 105.00 feet, Delta: 09°39'32", Chord Bearing: North 04°13'49" East, Chord Length: 17.68 feet) (Sta 24+03.76, 10.00' LT);

Thence North 09°03'34" East a distance of 39.65 feet (Sta 23+64.11, 10.00' LT);

Thence along a curve to the left a distance of 35.33 feet (Radius: 60.00 feet, Delta: 33°44'11", Chord Bearing: North 07°48'31" West, Chord Length: 34.82 feet) to a line of said 4.819 acre tract (Sta 23+34.67, 10.00' LT);

EXHIBIT H

LPA RX 887 T

Page 2 of 2

Rev. 07/09

Thence along said 4.819 acre tract, **South 83°40'37" East** a distance of **11.38 feet** (Sta 23+38.86, 20.00' LT);

Thence along a curve to the right a distance of **35.35 feet** (Radius: **70.00 feet**, Delta: **28°56'01"**, Chord Bearing: **South 05°24'26" East**, Chord Length: **34.97 feet**) (Sta 23+64.11, 20.00' LT);

Thence **South 09°03'34" West** a distance of **39.65 feet** (Sta 24+03.76, 20.00' LT);

Thence along a curve to the left a distance of **16.01 feet** (Radius: **95.00 feet**, Delta: **09°39'32"**, Chord Bearing: **South 04°13'49" West**, Chord Length: **16.00 feet**) (Sta 24+23.15, 20.00' LT);

Thence **South 00°35'57" West** a distance of **98.01 feet** to the east line of said 4.819 acre tract (Sta 25+59.86, 20.00' RT);

Thence along the east line of said 4.819 acre tract, **South 08°57'16" West** a distance of **54.08 feet** to the **TRUE PLACE OF BEGINNING**.

Containing **0.0502 acres**, more or less.

Subject to all legal highways, easements and restrictions of record.

Basis of Bearings: US State Plane 1983, Ohio South 3402,
NAD 1983, (2011) (CONUS)

Haley-Dusa Engineering & Surveying Group, LLC


John P. Haley, P.S.
Registered Surveyor
Ohio License Number 6819



June 26, 2015
Job # S3380



MEMORANDUM

January 5, 2016

To: Shelley Dickstein
Interim City Manager

From: Stephen Finke, Deputy Director
Department of Public Works *SF*

Subject: Ordinance for Appropriation

Attached is the Ordinance to appropriate two parcels in connection with the Cleveland Park Bike Connector project. Please present this Ordinance to the City Commission as an emergency.

The parcels are being appropriated because the owners are unable to come to an agreement with the City or are unable to deliver clear title to the City. Resolution No. 6151-15, adopted on November 18, 2015, and Resolution No. 6156-15 adopted December 16, 2015 declared the Commission's intention to appropriate.

If you have any questions, please give me a call at 3839.

Attachments

SJF/jrw

cc: Mr. Earley
Mr. Parlette

BY.....

NO. 6161-16.....

A RESOLUTION

Authorizing the City Manager to Accept Funding From the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not to Exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) for the Angstrom Materials, Inc. Project, on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, This Commission is committed to the welfare of the City of Dayton and the surrounding communities through the promotion of regional cooperation; and,

WHEREAS, The Board of Commissioners of Montgomery County, Ohio ("Board") established the Montgomery County Economic Development/Government Equity Program ("ED/GE") to enhance the local area's ability to compete successfully in a global economic marketplace by providing a significant fund of grant dollars to attract and retain jobs and tax base; and,

WHEREAS, Evidence of such cooperation has been demonstrated by the approval and formal execution of an agreement with the Board by each participating jurisdiction in Montgomery County; and,

WHEREAS, By Resolution No.15-1702, passed by the Board of County Commissioners on December 10, 2015, the City of Dayton was awarded an amount not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) in ED/GE funding for the Angstrom Materials, Inc. project identified in the City's ED/GE Fall 2015 funding cycle application; and,

WHEREAS, To provide for the timely acceptance of the grant funds and allow for the commencement of the project for which ED/GE funding has been awarded, and for the immediate preservation of the public peace, property, health and safety, it is therefore necessary that this Resolution take effect at the earliest possible date; now, therefore,

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

Section 1. That the City Manager is authorized, on behalf of the City of Dayton, to execute all documents and agreements necessary to accept the funding awarded by the Board of County Commissioners of Montgomery County, Ohio under the Montgomery County Economic Development/Government Equity Program ("ED/GE") for the following project(s) and in the following amount:

APPROVED PROJECTS/FUNDING FROM FALL 2015 FUND

Angstrom Materials, Inc. Project \$40,000.00

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 its adoption.

ADOPTED BY THE COMMISSION, 2016

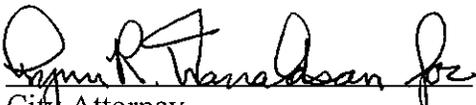
SIGNED BY THE MAYOR, 2016

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:



City Attorney

2015-2016
MONTGOMERY COUNTY
ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM PROJECT AGREEMENT

THIS AGREEMENT is entered into on the date(s) at the end hereof, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as the "Board," and the THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, in October of 1989, O.R.C. Section 307.07 became effective, and granted the Board the authority to create an Office of Economic Development and to appoint a person to act as Director of said Office, referred to hereinafter as the Director; and

WHEREAS, O.R.C. Section 307.07 further constitutes a grant of authority to the Board to become actively involved in the development and execution of economic development in Montgomery County, Ohio; and

WHEREAS, on or about June 4, 1991, and pursuant to O.R.C. Section 307.07, the Board did create a Montgomery County Office of Economic Development and did appoint a Director of same; and

WHEREAS, O.R.C. Section 307.07 further authorizes the Board to use a portion of its sales tax revenues for the purpose of furthering and fostering economic development in Montgomery County, Ohio; and

WHEREAS, O.R.C. Section 307.07(B)(3) authorizes the Director, with the approval of the Board, to enter into Agreements with federal, state and local governmental agencies for the purpose of carrying out economic development functions of the Board relative to economic development; and

WHEREAS, the Board and the Participant are desirous of mutually cooperating in the funding of an economic development project situate within the boundaries of Montgomery County, Ohio, known as the ANGSTRON MATERIALS Project, hereinafter referred to as the "Project;" and

WHEREAS, the Board is willing to use some of its sales tax revenues to foster same; and

WHEREAS, the Board has been advised by the Director that the Project properly qualifies as an economic development project in the Montgomery County area; and

WHEREAS, the Participant has supplied the Board with proof that it possesses sufficient statutory/legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, on December 10, 2015, by Resolution #15-1702, the Board awarded the THE CITY OF DAYTON an amount not to exceed \$40,000, or 3.9% of total project cost, from the 2015 Primary Economic Development Fund, to provide funding support for the ANGSTRON MATERIALS Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume the responsibility of administering the Project, which project is found specifically identified in the Scope of Work, which scope is attached hereto and made a part hereof as Exhibit "A," and a budget document for said project, which budget is attached hereto and made a part hereof, as Exhibit "B". The Board agrees to tender to the Participant the sum of Forty Thousand Dollars (\$40,000) or three and nine tenths percent (3.9%) of total project cost, whichever is less, of the Board's 2015 sales tax revenue to assist the Participant in conducting the Project.

2. The Participant agrees that the Board's sales tax revenues referred to in paragraph 1, above, will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of Board's said sales tax revenues be used for any purpose other than that of the Project, the Participant will repay the Board the amount improperly expended, and will do so within fourteen (14) calendar days of written notice to it by the Board that such an improper expenditure has occurred, stating therein the amount which the Board believes has been misapplied.

3. Upon execution of this Agreement by both parties and certification by the Montgomery County Auditor, the Board agrees to tender the amount identified in paragraph 1 hereof to the Participant on a regular reimbursement basis as more fully explained in this paragraph. The Participant agrees to supply the Board with regular statements, or invoices, indicating therein the amount of monies expended by the Participant in the furtherance of the Project, this statement, or invoice, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment.

The Board will, within thirty (30) calendar days of the receipt of such a statement, or invoice, reimburse the Participant the amount stated in the Participant's statement or invoice. Should the Board be of the opinion that any amount of monies identified in the Participant's invoice was expended for purposes other than the furtherance of the Project, the Board may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the Board, through its Office of Economic Development, has the authority to meet with the contractor, person or business entity employed by the Participant for the Project, and review documentation as it deems necessary to determine that the Board's sales tax revenues are being expended for Project purposes.

4. The Participant agrees that the Board's sales tax revenues are to be expended by the Board in its sole discretion, and that the Board's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the Board's sales tax revenues.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the Board's sales tax revenues, and that as such, said consideration constitutes public funds, and the Participant acknowledges that the Board, the Montgomery County, Ohio Auditor and/or the Ohio Bureau of Inspection and Supervision of Public Offices (State Auditor's Office) is legally authorized to inspect and make copies of the Participant's books and audit the receipt and expenditure of said consideration. The Participant, therefore, agrees to allow either the Board, the Montgomery County, Ohio Auditor or his representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the Board, the Montgomery County, Ohio Auditor or his representative, the State Auditor's Office or its

representative, the books/financial records concerning the Participant's receipt and expenditure of the economic development funding received by the Participant pursuant to the Agreement.

6. The Participant agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Participant must notify the Board, in writing, of its intent to destroy said records. The Board reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Participant in writing, otherwise, the Board will issue to the Participant a written Certificate of Records Disposal, it being understood that no records in the Participant's possession will be destroyed until the Participant has received a Certificate of Records Disposal. The Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

7. The Participant agrees that, upon completion of said Project, Participant will deliver to the Board's Director of Economic Development a report certifying the Participant's expenditures for the total Project, including ED/GE funds and all other financial sources. In addition, the Participant agrees to provide to the Board's Director of Economic Development, upon the Director's request and at such intervals as requested by the Director, but not to exceed three years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

8. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program and constitutes a distribution to the Participant thereunder. The parties agree that use of the funds distributed hereunder is subject to all terms and conditions of the Economic Development/Government Equity Participation Agreement previously entered into between the parties hereto.

9. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written approval of the Board, which approval may be withheld in the sole discretion of the Board.

10. During the performance of this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Participant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Participant, or any person claiming through the Participant agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. Either party may terminate this Agreement by serving written notice on the other party at least fourteen (14) calendar days before the effective date of such termination as is mentioned in the notice.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio.

15. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of

_____, 20__.

Signed and acknowledged
in the presence of:

BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

Witness

By: _____

Witness

By: _____

Witness

By: _____

OR

Witness

By: _____

Joseph P. Tuss
County Administrator

AND

Witness

By: _____

Erik S. Collins, Director
Community & Economic Development

AND

Witness

Name of Jurisdiction

Address

City State Zip

By: _____

Title: _____

APPROVED AS TO FORM AND CORRECTNESS
[Signature]
CITY ATTORNEY

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY
BY: _____
Assistant Prosecuting Attorney
DATE: _____

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**EXHIBIT A
Work Program**

Jurisdiction: THE CITY OF DAYTON

Project: ANGSTRON MATERIALS

The project will include the acquisition and improvements to 1235 McCook Avenue in order to expand production.

<u>TASK</u>	<u>BEGINNING DATE</u>	<u>COMPLETION DATE</u>
Acquisition and build-out	March 2016	August 2016
Equipment Installation	August 2016	December 2016

EXHIBIT B
Budget

Jurisdiction: **THE CITY OF DAYTON**

Project: **ANGSTRON MATERIALS**

SOURCES	
Private Equity	960,000
ED/GE	40,000
Local Government	25,000
TOTAL	1,025,000

USES	
Acquisition and construction*	435,000
Equipment	420,000
Fixtures	170,000
TOTAL	1,025,000

*denotes ED/GE expense

It is expressly understood by the Board and the Participant that the Board will reimburse to the Participant only \$40,000, or 3.9% of total project cost, whichever is less. All costs, including those relating to salaries and benefits, shall be supported by documentation sufficient to support any claim for reimbursement under this Agreement.



MEMORANDUM

January 5, 2016

TO: Shelley Dickstein, Interim City Manager
City Manager's Office

FROM: Ford P. Weber, Director *FPW by CJR*
Department of Economic Development

SUBJECT: ED/GE Fall 2015 Award – Angstrom Materials, Inc.

This memorandum will accompany and explain the attached legislation for consideration by the Dayton City Commission. On October 30, 2015, the Department of Economic Development made application to the Montgomery County ED/GE Fall 2015 program for funding of the Angstrom Materials, Inc. (AMI) Project. The committee awarded funding of \$40,000 to the project on December 10, 2015. The legislation will authorize the City to accept the funding.

AMI will invest \$1,025,000 to acquire, renovate, and equip the building located at 1235 McCook Avenue in order to expand their capacity for their anticipated growth. As a result, the company will retain eleven (11) full-time positions and add fifteen (15) new full-time jobs within three years.

We are requesting that this resolution be passed as an **emergency with one reading at two separate meetings**. The Development Agreement with the company will be presented to the City Commission for approval at a later date, once the ED/GE funds are in place.

Thank you for your attention to this matter. If you have any questions or desire additional information, please call Keith Klein of my staff at x3812.

FW/kek

C: Keith Klein

1st Reading 6.

NO. 6162-16

BY.....

A RESOLUTION

Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, In An Amount Not To Exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) For the Rostam Direct Project, on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, This Commission is committed to the welfare of the City of Dayton and the surrounding communities through the promotion of regional cooperation; and,

WHEREAS, The Board of Commissioners of Montgomery County, Ohio ("Board") established the Montgomery County Economic Development/Government Equity Program ("ED/GE") to enhance the local area's ability to compete successfully in a global economic marketplace by providing a significant fund of grant dollars to attract and retain jobs and tax base; and,

WHEREAS, Evidence of such cooperation has been demonstrated by the approval and formal execution of an agreement with the Board by each participating jurisdiction in Montgomery County; and,

WHEREAS, By Resolution #15-1702, passed by the Board of County Commissioners on December 10, 2015, the City of Dayton was awarded an amount not to exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) in ED/GE funding for the Rostam Direct Project; and,

WHEREAS, To provide for the timely acceptance of the grant funds and allow for the commencement of the project for which ED/GE funding has been awarded, and for the immediate preservation of the public peace, property, health and safety, it is therefore necessary that this Resolution take effect at the earliest possible date; now, therefore,

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

Section 1. That the City Manager is authorized, on behalf of the City of Dayton, to execute all documents and agreements necessary, including the Montgomery County Economic Development/Government Equity Program Project Agreement, attached hereto as Exhibit A, to accept the funding awarded by the Board of County Commissioners of Montgomery County, Ohio under the Montgomery County ED/GE Program for the following project(s) and in the following amount:

APPROVED PROJECTS/FUNDING FROM FALL 2015 FUND

Rostam Direct Project

\$100,000

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 its adoption.

ADOPTED BY THE COMMISSION, 2016

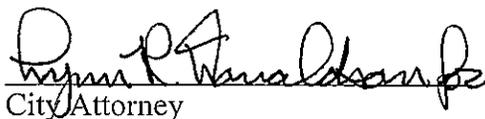
SIGNED BY THE MAYOR, 2016

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:



City Attorney

Exhibit A

2015-2016
MONTGOMERY COUNTY
ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM PROJECT AGREEMENT

THIS AGREEMENT is entered into on the date(s) at the end hereof, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as the "Board," and the THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, in October of 1989, O.R.C. Section 307.07 became effective, and granted the Board the authority to create an Office of Economic Development and to appoint a person to act as Director of said Office, referred to hereinafter as the Director; and

WHEREAS, O.R.C. Section 307.07 further constitutes a grant of authority to the Board to become actively involved in the development and execution of economic development in Montgomery County, Ohio; and

WHEREAS, on or about June 4, 1991, and pursuant to O.R.C. Section 307.07, the Board did create a Montgomery County Office of Economic Development and did appoint a Director of same; and

WHEREAS, O.R.C. Section 307.07 further authorizes the Board to use a portion of its sales tax revenues for the purpose of furthering and fostering economic development in Montgomery County, Ohio; and

WHEREAS, O.R.C. Section 307.07(B)(3) authorizes the Director, with the approval of the Board, to enter into Agreements with federal, state and local governmental agencies for the purpose of carrying out economic development functions of the Board relative to economic development; and

WHEREAS, the Board and the Participant are desirous of mutually cooperating in the funding of an economic development project situate within the boundaries of Montgomery County, Ohio, known as the ROSTAM DIRECT Project, hereinafter referred to as the "Project;" and

WHEREAS, the Board is willing to use some of its sales tax revenues to foster same; and

WHEREAS, the Board has been advised by the Director that the Project properly qualifies as an economic development project in the Montgomery County area; and

WHEREAS, the Participant has supplied the Board with proof that it possesses sufficient statutory/legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, on December 10, 2015, by Resolution #15-1702, the Board awarded the THE CITY OF DAYTON an amount not to exceed \$100,000, or 8.3% of total project cost, from the 2015 Primary Economic Development Fund, to provide funding support for the ROSTAM DIRECT Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume the responsibility of administering the Project, which project is found specifically identified in the Scope of Work, which scope is attached hereto and made a part hereof as Exhibit "A," and a budget document for said project, which budget is attached hereto and made a part hereof, as Exhibit "B". The Board agrees to tender to the Participant the sum of One Hundred Thousand Dollars (\$100,000) or eight and three tenths percent (8.3%) of total project cost, whichever is less, of the Board's 2015 sales tax revenue to assist the Participant in conducting the Project.

2. The Participant agrees that the Board's sales tax revenues referred to in paragraph 1, above, will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of Board's said sales tax revenues be used for any purpose other than that of the Project, the Participant will repay the Board the amount improperly expended, and will do so within fourteen (14) calendar days of written notice to it by the Board that such an improper expenditure has occurred, stating therein the amount which the Board believes has been misapplied.

3. Upon execution of this Agreement by both parties and certification by the Montgomery County Auditor, the Board agrees to tender the amount identified in paragraph 1 hereof to the Participant on a regular reimbursement basis as more fully explained in this paragraph. The Participant agrees to supply the Board with regular statements, or invoices, indicating therein the amount of monies expended by the Participant in the furtherance of the Project, this statement, or invoice, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment.

The Board will, within thirty (30) calendar days of the receipt of such a statement, or invoice, reimburse the Participant the amount stated in the Participant's statement or invoice. Should the Board be of the opinion that any amount of monies identified in the Participant's invoice was expended for purposes other than the furtherance of the Project, the Board may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the Board, through its Office of Economic Development, has the authority to meet with the contractor, person or business entity employed by the Participant for the Project, and review documentation as it deems necessary to determine that the Board's sales tax revenues are being expended for Project purposes.

4. The Participant agrees that the Board's sales tax revenues are to be expended by the Board in its sole discretion, and that the Board's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the Board's sales tax revenues.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the Board's sales tax revenues, and that as such, said consideration constitutes public funds, and the Participant acknowledges that the Board, the Montgomery County, Ohio Auditor and/or the Ohio Bureau of Inspection and Supervision of Public Offices (State Auditor's Office) is legally authorized to inspect and make copies of the Participant's books and audit the receipt and expenditure of said consideration. The Participant, therefore, agrees to allow either the Board, the Montgomery County, Ohio Auditor or his representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the Board, the Montgomery County, Ohio Auditor or his representative, the State Auditor's Office or its

representative, the books/financial records concerning the Participant's receipt and expenditure of the economic development funding received by the Participant pursuant to the Agreement.

6. The Participant agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Participant must notify the Board, in writing, of its intent to destroy said records. The Board reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Participant in writing, otherwise, the Board will issue to the Participant a written Certificate of Records Disposal, it being understood that no records in the Participant's possession will be destroyed until the Participant has received a Certificate of Records Disposal. The Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

7. The Participant agrees that, upon completion of said Project, Participant will deliver to the Board's Director of Economic Development a report certifying the Participant's expenditures for the total Project, including ED/GE funds and all other financial sources. In addition, the Participant agrees to provide to the Board's Director of Economic Development, upon the Director's request and at such intervals as requested by the Director, but not to exceed three years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

8. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program and constitutes a distribution to the Participant thereunder. The parties agree that use of the funds distributed hereunder is subject to all terms and conditions of the Economic Development/Government Equity Participation Agreement previously entered into between the parties hereto.

9. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written approval of the Board, which approval may be withheld in the sole discretion of the Board.

10. During the performance of this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Participant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Participant, or any person claiming through the Participant agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. Either party may terminate this Agreement by serving written notice on the other party at least fourteen (14) calendar days before the effective date of such termination as is mentioned in the notice.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio.

15. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of

_____, 20__.

Signed and acknowledged
in the presence of:

BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

Witness

By: _____

Witness

By: _____

Witness

By: _____

OR

Witness

By: _____

Joseph P. Tuss
County Administrator

AND

Witness

By: _____

Erik S. Collins, Director
Community & Economic Development

AND

Witness

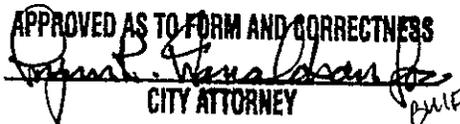
Name of Jurisdiction

Address

City State Zip

By: _____

Title: _____

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY
BY: _____
Assistant Prosecuting Attorney
DATE: _____

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**EXHIBIT A
Work Program**

Jurisdiction: THE CITY OF DAYTON

Project: ROSTAM DIRECT

This project will create an opportunity that enable the business to move into Montgomery County and lease 350,000 square feet at the Dayton International Airport.

<u>TASK</u>	<u>BEGINNING DATE</u>	<u>COMPLETION DATE</u>
Finalize Lease Agreement	December 2015	December 2015
Install Fulfillment Lines	1 st quarter 2016	3 rd quarter 2016
Relocate equipment/inventory	2 nd quarter 2016	3 rd quarter 2016
Fully operational	3 rd quarter 2016	3 rd quarter 2016

EXHIBIT B
Budget

Jurisdiction: **THE CITY OF DAYTON**

Project: **ROSTAM DIRECT**

SOURCES	
Private Equity	1,059,500
ED/GE	100,000
Local Government	50,000
TOTAL	1,209,500

USES	
Equipment Relocation	50,000
Inventory Relocation	150,000
New Equipment	900,000
Recruitment	25,000
Training	84,500
TOTAL	1,209,500

It is expressly understood by the Board and the Participant that the Board will reimburse to the Participant only \$100,000, or 8.3% of total project cost, whichever is less. All costs, including those relating to salaries and benefits, shall be supported by documentation sufficient to support any claim for reimbursement under this Agreement.



MEMORANDUM

January 5, 2016

TO: Shelley Dickstein, Interim City Manager
City Manager's Office

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

SUBJECT: ED/GE Fall 2015 Award

On October 30, 2015, the Department of Economic Development made application to the Montgomery County ED/GE Fall 2015 program for funding of the Rostam Direct Project. The committee awarded funding of \$100,000 to the project on December 10, 2015. The company will lease an approximately 350,000 square feet facility to establish their business operations at the Dayton International Airport. The project will consist of relocation expenses, purchase of new equipment and employee recruitment and training. The project will create approximately 54 new jobs within three years.

We are requesting that this resolution be passed as an **emergency with one reading at two separate meetings**.

Paperwork to complete this process will be forthcoming. If you have any questions or desire additional information, please call Lila Ivanovska at x3624.

1st Reading

7.

BY.....

NO. 6163-16.....

A RESOLUTION

Authorizing the City Manager to Accept Funding From the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not to Exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for the Hohman Plating Project, on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, This Commission is committed to the welfare of the City of Dayton and the surrounding communities through the promotion of regional cooperation; and,

WHEREAS, The Board of Commissioners of Montgomery County, Ohio ("Board") established the Montgomery County Economic Development/Government Equity Program ("ED/GE") to enhance the local area's ability to compete successfully in a global economic marketplace by providing a significant fund of grant dollars to attract and retain jobs and tax base; and,

WHEREAS, Evidence of such cooperation has been demonstrated by the approval and formal execution of an agreement with the Board by each participating jurisdiction in Montgomery County; and,

WHEREAS, By Resolution No. 15-1702, passed by the Board of County Commissioners on December 10, 2015, the City of Dayton was awarded an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) in ED/GE funding for the Hohman Plating project identified in the City's ED/GE Fall 2015 funding cycle application; and,

WHEREAS, To provide for the timely acceptance of the grant funds and allow for the commencement of the projects for which ED/GE funding has been awarded, and for the immediate preservation of the public peace, property, health and safety, it is therefore necessary that this Resolution take effect at the earliest possible date; now, therefore,

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

Section 1. That the City Manager is authorized, on behalf of the City of Dayton, to execute all documents and agreements necessary to accept the funding awarded by the Board of County Commissioners of Montgomery County, Ohio under the Montgomery County Economic Development/Government Equity Program ("ED/GE") for the following project(s) and in the following amount:

APPROVED PROJECTS/FUNDING FROM FALL 2015 FUND

Hohman Plating, Inc. Project \$25,000.00

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 its adoption.

ADOPTED BY THE COMMISSION, 2016

SIGNED BY THE MAYOR, 2016

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:



City Attorney

2015-2016
MONTGOMERY COUNTY
ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM PROJECT AGREEMENT

THIS AGREEMENT is entered into on the date(s) at the end hereof, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as the "Board," and the THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, in October of 1989, O.R.C. Section 307.07 became effective, and granted the Board the authority to create an Office of Economic Development and to appoint a person to act as Director of said Office, referred to hereinafter as the Director; and

WHEREAS, O.R.C. Section 307.07 further constitutes a grant of authority to the Board to become actively involved in the development and execution of economic development in Montgomery County, Ohio; and

WHEREAS, on or about June 4, 1991, and pursuant to O.R.C. Section 307.07, the Board did create a Montgomery County Office of Economic Development and did appoint a Director of same; and

WHEREAS, O.R.C. Section 307.07 further authorizes the Board to use a portion of its sales tax revenues for the purpose of furthering and fostering economic development in Montgomery County, Ohio; and

WHEREAS, O.R.C. Section 307.07(B)(3) authorizes the Director, with the approval of the Board, to enter into Agreements with federal, state and local governmental agencies for the purpose of carrying out economic development functions of the Board relative to economic development; and

WHEREAS, the Board and the Participant are desirous of mutually cooperating in the funding of an economic development project situate within the boundaries of Montgomery County, Ohio, known as the HOHMAN PLATING Project, hereinafter referred to as the "Project;" and

WHEREAS, the Board is willing to use some of its sales tax revenues to foster same; and

WHEREAS, the Board has been advised by the Director that the Project properly qualifies as an economic development project in the Montgomery County area; and

WHEREAS, the Participant has supplied the Board with proof that it possesses sufficient statutory/legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, on December 10, 2015, by Resolution #15-1702, the Board awarded the THE CITY OF DAYTON an amount not to exceed \$25,000, or 0.8% of total project cost, from the 2015 Primary Economic Development Fund, to provide funding support for the HOHMAN PLATING Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume the responsibility of administering the Project, which project is found specifically identified in the Scope of Work, which scope is attached hereto and made a part hereof as Exhibit "A," and a budget document for said project, which budget is attached hereto and made a part hereof, as Exhibit "B". The Board agrees to tender to the Participant the sum of Twenty-Five Thousand Dollars (\$25,000) or eight tenths of a percent (0.8%) of total project cost, whichever is less, of the Board's 2015 sales tax revenue to assist the Participant in conducting the Project.

2. The Participant agrees that the Board's sales tax revenues referred to in paragraph 1, above, will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of Board's said sales tax revenues be used for any purpose other than that of the Project, the Participant will repay the Board the amount improperly expended, and will do so within fourteen (14) calendar days of written notice to it by the Board that such an improper expenditure has occurred, stating therein the amount which the Board believes has been misapplied.

3. Upon execution of this Agreement by both parties and certification by the Montgomery County Auditor, the Board agrees to tender the amount identified in paragraph 1 hereof to the Participant on a regular reimbursement basis as more fully explained in this paragraph. The Participant agrees to supply the Board with regular statements, or invoices, indicating therein the amount of monies expended by the Participant in the furtherance of the Project, this statement, or invoice, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment.

The Board will, within thirty (30) calendar days of the receipt of such a statement, or invoice, reimburse the Participant the amount stated in the Participant's statement or invoice. Should the Board be of the opinion that any amount of monies identified in the Participant's invoice was expended for purposes other than the furtherance of the Project, the Board may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the Board, through its Office of Economic Development, has the authority to meet with the contractor, person or business entity employed by the Participant for the Project, and review documentation as it deems necessary to determine that the Board's sales tax revenues are being expended for Project purposes.

4. The Participant agrees that the Board's sales tax revenues are to be expended by the Board in its sole discretion, and that the Board's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the Board's sales tax revenues.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the Board's sales tax revenues, and that as such, said consideration constitutes public funds, and the Participant acknowledges that the Board, the Montgomery County, Ohio Auditor and/or the Ohio Bureau of Inspection and Supervision of Public Offices (State Auditor's Office) is legally authorized to inspect and make copies of the Participant's books and audit the receipt and expenditure of said consideration. The Participant, therefore, agrees to allow either the Board, the Montgomery County, Ohio Auditor or his representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the Board, the Montgomery County, Ohio Auditor or his representative, the State Auditor's Office or its

representative, the books/financial records concerning the Participant's receipt and expenditure of the economic development funding received by the Participant pursuant to the Agreement.

6. The Participant agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Participant must notify the Board, in writing, of its intent to destroy said records. The Board reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Participant in writing, otherwise, the Board will issue to the Participant a written Certificate of Records Disposal, it being understood that no records in the Participant's possession will be destroyed until the Participant has received a Certificate of Records Disposal. The Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

7. The Participant agrees that, upon completion of said Project, Participant will deliver to the Board's Director of Economic Development a report certifying the Participant's expenditures for the total Project, including ED/GE funds and all other financial sources. In addition, the Participant agrees to provide to the Board's Director of Economic Development, upon the Director's request and at such intervals as requested by the Director, but not to exceed three years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

8. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program and constitutes a distribution to the Participant thereunder. The parties agree that use of the funds distributed hereunder is subject to all terms and conditions of the Economic Development/Government Equity Participation Agreement previously entered into between the parties hereto.

9. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written approval of the Board, which approval may be withheld in the sole discretion of the Board.

10. During the performance of this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Participant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Participant, or any person claiming through the Participant agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. Either party may terminate this Agreement by serving written notice on the other party at least fourteen (14) calendar days before the effective date of such termination as is mentioned in the notice.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio.

15. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, 20__.

Signed and acknowledged
in the presence of:

BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

Witness

By: _____

Witness

By: _____

Witness

By: _____

OR

Witness

By: _____

Joseph P. Tuss
County Administrator

AND

Witness

By: _____

Erik S. Collins, Director
Community & Economic Development

AND

Witness

Name of Jurisdiction

Address

City State Zip

By: _____

Title: _____

APPROVED AS TO FORM AND CORRECTNESS
[Signature]
CITY ATTORNEY

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY
BY: _____
Assistant Prosecuting Attorney
DATE: _____

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EXHIBIT A
Work Program

Jurisdiction: THE CITY OF DAYTON

Project: HOHMAN PLATING

The project will include the assist the business with upgrades to the manufacturing area that will allow the business to add new machinery/equipment. In addition to site improvements, the business will be installing new furniture/fixtures and manufacturing equipment.

<u>TASK</u>	<u>BEGINNING DATE</u>	<u>COMPLETION DATE</u>
Building Construction	March 2016	August 2016
Equipment Installation	August 2016	December 2016

**EXHIBIT B
Budget**

Jurisdiction: **THE CITY OF DAYTON**

Project: **HOHMAN PLATING**

SOURCES	
Private Equity	2,900,000
ED/GE	25,000
Local Government	25,000
TOTAL	2,950,000

USES	
Site development*	1,100,000
Equipment	1,500,000
Fixtures	350,000
TOTAL	2,950,000

*denotes ED/GE expense

It is expressly understood by the Board and the Participant that the Board will reimburse to the Participant only \$25,000, or 0.8% of total project cost, whichever is less. All costs, including those relating to salaries and benefits, shall be supported by documentation sufficient to support any claim for reimbursement under this Agreement.



MEMORANDUM

January 5, 2016

TO: Shelley Dickstein, Interim City Manager
City Manager's Office

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

SUBJECT: ED/GE Fall 2015 Award – Hohman Plating

This memorandum will accompany and explain the attached legislation for consideration by the Dayton City Commission. On October 30, 2015, the Department of Economic Development made application to the Montgomery County ED/GE Fall 2015 program for funding of the Hohman Plating Project. The committee awarded funding of \$25,000 to the project on December 10, 2015. The legislation will authorize the City to accept the funding.

Hohman Plating will invest \$2,950,000 to renovate their existing facility and add new plating equipment in order to expand their capacity for growth. As a result, the company will retain one hundred forty-six (146) full-time positions and add nine (9) new full-time positions within three years.

We are requesting that this resolution be passed as an **emergency with one reading at two separate meetings**. The Development Agreement with the company will be presented to the City Commission for approval at a later date, once the ED/GE funds are in place.

Thank you for your attention to this matter. If you have any questions or desire additional information, please call Keith Klein of my staff at x3812.

FW/kek

C: Keith Klein