



## CITY COMMISSION MEETING AGENDA

CITY COMMISSION

DAYTON, OHIO

APRIL 27, 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: **Heroin/Opioid Addiction Issue Update – 10:00 a.m.**  
(City/County Joint Meeting)  
(Mayor Nan Whaley and Commission-President Judy Dodge)  
**Sinclair Community College – Building 12**  
**Charity Earley Auditorium**
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 31<sup>st</sup> of the current year).**

#### 1. Purchase Order:

##### MUNICIPAL COURT

**A1. F & S Supply and Furniture LLC (six lots of office furniture)**

**\$23,523.96**

1. (Cont'd):

**PUBLIC WORKS**

- B1. CDO Technologies, Inc.** (Radio Frequency Identification – RFID – tags, maintenance and repair services) **\$38,483.49**
- B2. McNeilus Truck & Manufacturing Company** (two Compressed Natural Gas –CNG - rear load refuse collection trucks) **495,590.00**

**WATER**

- C1. Dell Marketing LP** (fourteen servers, ten Smart UPS and ten APC Network Management cards) – P1600874 **125,263.26**
- C2. Dell Marketing LP** (additional Storage Area Network/Network Attached Storage “SAN/NAS” storage capacity) – P1600875 **138,119.98**
- C3. Tristate Valves & Controls, Inc. dba Trivaco** (to cover parts and services to maintain and repair Emerson and Yokogawa brand sludge and boiler process systems as needed through 12-31-16) **20,000.00**
- C4. Burnett Lime Company, Inc.** (two Burnett brand carbon dioxide feed panels installed and with training) **187,360.00**
- C5. Lake Erie Electric, Inc.** (electrical testing and inspection services) **18,500.00**
- C6. Wayne Overhead Door Sales of Dayton, Inc.** (Overhead door repair parts and services as needed through 12-31-16) **30,000.00**  
**(and for the period of 01-01-17 through 12-31-18) 60,000.00**
- Depts. of Public Works, Water and The Municipal Court/Clerk of Courts.  
**Total: \$1,136,840.69**

2. **County Corp. – HOME Agreement** – for the County Corp Redevelopment Project - eligible costs of acquiring and renovating up to seven single family dwellings in the Roosevelt, Wolf Creek, Five Points, Five Oaks, Santa Clara and Mount Vernon neighborhoods – Dept. of Planning & Community Development. **\$300,000.00**  
**(Thru 03/31/18)**
3. **County Corp. – HOME Agreement** – for the Whitmore Arms Apartments - eligible project costs of acquiring and renovating forty apartments within six buildings located at 241 Almond Avenue in Residence Park neighborhood – Dept. of Planning & Community Development. **\$725,000.00**  
**(Thru 03/31/18)**
4. **David E. Rager Management Consulting, LLC – Professional Services Agreement** – for as-needed Utility Management Consulting Services – Dept. of Water/Water Engineering. **\$75,000.00**  
**(Thru 06/2018)**

**D. Neighborhood Grants:**

5. **Miami Valley Housing Opportunities – Subrecipient Agreement** – for the Shelter Plus Care Tenant-based Rental Assistance Program – Dept. of Planning & Community Development. **\$2,186,636.00**  
**(Thru 04/30/17)**

**IV. LEGISLATION:**

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

6. **No. 6186-16** Accepting the Donation of a Public Monument Valued at Seventy Thousand Dollars and Zero Cents (\$70,000.00) from the Dayton Foundation, and Declaring an Emergency.
7. **No. 6187-16** Amending Resolution No. 4270 Designating the Dayton International Airport Community Reinvestment Area No. 19 as a Community Reinvestment Area, Amending Resolution No. 5020-99, and Declaring an Emergency.

**Emergency Resolutions – Second Reading:**

8. **No. 6180-16** Objecting to the Renewal of Liquor Permit #7540720, Steven K. Ross, Sr., dba Club 22, 2117-19 James H. McGee Boulevard, Dayton, Ohio 45417, and Declaring an Emergency.
9. **No. 6181-16** Continuing the Objection to the Renewal of Liquor Permit #2105088, DEV, Inc. dba A1 Food Mart, 272 Linden Avenue, Dayton, Ohio 45403, and Declaring an Emergency.
10. **No. 6182-16** Continuing the Objection to the Transfer of Ownership of Liquor Permit #5595765, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, and Declaring an Emergency.
11. **No. 6183-16** Continuing the Objection to the Issuance of Liquor Permit #55957650005, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, and Declaring an Emergency.
12. **No. 6184-16** Continuing the Objection to the Issuance of Liquor Permit #18793640005, Delven Parks dba D Anthony's Grille, LLC, 2404 East Third Street, Dayton, Ohio 45403, and Declaring an Emergency.

13. **No. 6185-16** Objecting to the Renewal of Liquor Permit #2850880, Fourth & St. Clair, LLC dba Vex, 101 S. St. Clair Street, Dayton, OH 45402, and Declaring an Emergency.

**Ordinances – Second Reading:**

14. **No. 31486-16** Enacting Section 72.20 of the Revised Code of General Ordinances Regarding the Downtown Business Delivery Parking Permit.
15. **No. 31487-16** Requiring Bidders to Provide Additional Information and to Certify Compliance with Applicable Law in Bidding and Performing Public Works Projects for the City and Repealing Ordinance No. 30575-06.

**Informal Resolution:**

16. **No. 920-16** Urging the Ohio General Assembly to Support Senate Joint Resolution 3, an Amendment to the Ohio Constitution to Permit General Obligation Bonds to be Used for Sewer and Water Capital Improvements.

**VI. MISCELLANEOUS:**

**ORDINANCE NO. 31488-16**

**RESOLUTION NO. 6188-16**

**IMPROVEMENT RESOLUTION NO. 3598-16**

**INFORMAL RESOLUTION NO. 921-16**

1.

**CITY OF DAYTON  
CITY MANAGER'S REPORT**

TO: City Manager

Date April 27, 2016

FROM: Central Services / Purchasing  
*Department/Division*

Code \_\_\_\_\_

(CHECK ONE)

Amount \$ 1,136,840.69

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

Supplier/Vendor/Company/Individual:

NAME See Below  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

Justification and description of purchase, contract or payment:

MUNICIPAL COURTS – CLERK OF COURT

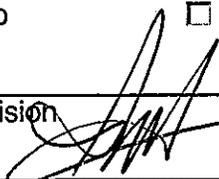
(A1) P1600865 – F AND S SUPPLY AND FURNITURE LLC, TROTWOOD, OH

- Six (6) lots of office furniture.
- These goods are required to replace old and worn furnishings at six Clerk of Courts offices.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 11040K, with pricing through 9/30/2016.
- The Municipal Courts Clerk recommends approval of this order.
- Authority: \$23,523.96

Approved Affirmative Action Program on File  Yes

No  NA

Approved by City Commission

Division 

\_\_\_\_\_  
Clerk

Department

\_\_\_\_\_  
Date

  
City Manager

PUBLIC WORKS – WASTE COLLECTION

(B1) P1600802 – CDO TECHNOLOGIES INC, RIVERSIDE, OH

- Radio Frequency Identification (RFID) tags, maintenance and repair services.
- These goods and services are required to install RFID in units #1931, #1943 and #1948 and maintenance and repair services for existing RFID products.
- CDO Technologies, Inc. is recommended as the original software developer to ensure proper product compatibility and integration, therefore this purchase was negotiated.
- The Department of Public Works recommends approval of this order.
- Authority: \$38,483.49

(B2) P1600859 – MCNEILUS TRUCK & MANUFACTURING COMPANY, GAHANNA, OH

- Two (2) Compressed Natural Gas (CNG) rear load refuse collection trucks.
- These goods are required to maintain daily operations of the Division of Waste Collection and replace City units #1925 and #1926, which will be disposed of in the best interest of the City of Dayton.
- Rates are in accordance with the City of Dayton's existing price agreement RFP 16040U, with pricing through 7/31/2020.
- The Department of Public Works recommends acceptance of the best proposal.
- Authority: \$495,590.00

WATER – WATER ENGINEERING

(C1) P1600874 – DELL MARKETING LP, ROUND ROCK, TX

- Fourteen (14) servers, Ten (10) Smart UPS and Ten (10) APC Network Management cards
- These goods are required to replace obsolete equipment.
- Dell Marketing LP is recommended because the City has standardized on Dell computing equipment, therefore this purchase was negotiated.
- The Department of Water recommends approval of this order.
- Authority: \$125,263.26

(C2) P1600875 – DELL MARKETING LP, ROUND ROCK, TX

- Additional Storage Area Network/Network Attached Storage ("SAN/NAS") storage capacity.
- These goods are required for data storage in the Department of Water.
- Dell Marketing LP is recommended because the City has standardized on Dell computing equipment, therefore this purchase was negotiated.
- The Department of Water recommends approval of this order.
- Authority: \$138,119.98

WATER – WATER RECLAMATION

- (C3) P1600803 – TRISTATE VALVES & CONTROLS, INC. dba TRIVACO, LOVELAND, OH
- To cover parts and services to maintain and repair Emerson and Yokogawa brand sludge and boiler process systems, as needed through 12/31/2016.
  - These goods and services are required to maintain operations of the Water Reclamation Division.
  - Tristate Valves & Controls Inc. dba Trivaco is recommended as the sole original equipment manufacturers (OEM) authorized regional distributor, therefore this purchase was negotiated.
  - The Department of Water recommends approval of this order.
  - Authority: \$20,000.00

WATER – WATER SUPPLY AND TREATMENT

- (C4) P1600860 – BURNETT LIME COMPANY, INC., CAMPBELLO, SC
- Two (2) Burnett brand carbon dioxide feed panels, installed and with training.
  - These goods and services are required to maintain daily operations at the Miami Water Treatment Plant.
  - Burnett Lime Company, Inc. is the original equipment manufacturer (OEM) of the carbon dioxide tanks and is recommended for compatibility with equipment, parts and maintenance, therefore this purchase was negotiated.
  - The Department of Water recommends approval of this order.
  - Authority: \$187,360.00
- (C5) P1600189 – LAKE ERIE ELECTRIC, INC., FRANKLIN, OH
- Electrical testing and inspection services.
  - These services are required to comply with the National Fire Protection Agency (NFPA) code to ensure safe, reliable and high voltage electrical switchgear.
  - This amendment increases the previously authorized amount of \$20,000.00 by \$18,500.00 for a total not to exceed \$38,500.00 and therefore requires City Commission approval.
  - The Department of Central Services recommends approval of this order.
  - Authority: \$18,500.00

WATER – WATER UTILITY FIELD OPERATIONS

- (C6) P1600418 – WAYNE OVERHEAD DOOR SALES OF DAYTON, INC., CENTERVILLE, OH
- Overhead door repair parts and services, as needed through 12 /31/2016.
  - These goods and services are required to repair overhead garage doors at various Water Utility Field Operations (WUFO) division facilities.
  - Rates are in accordance with the City of Dayton’s existing price agreement IFB D16016, with firm pricing through 2/28/2019.
  - This amendment increases the previously authorized amount of \$10,000.00 by \$30,000.00 for a total not to exceed \$40,000.00 and therefore requires City Commission approval.
  - The Department of Water recommends approval of this order.
  - Initial encumbrance authority: \$30,000.00
  - Authority to cover additional needs in the following periods:
    - 1/1/17 – 12/31/17 \$30,000.00
    - 1/1/18 – 12/31/18 \$30,000.00

The aforementioned departments recommend approval of these orders.

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager  
  
FROM: Department of Planning & Community Development  
Division of Community Development

Date April 27, 2016

Code 27007-2390-1159-31-PL1506

(CHECK ONE)

Fund Title 2015 HOME Funds

Amount \$ \$300,000.00  
(Through March 31, 2018)

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

Supplier/Vendor/Company/Individual:  
NAME County Corp.

ADDRESS 130 W. Second St., Ste. 1420  
Dayton, OH 45402

Justification and description of purchase, contract or payment:

**HOME Agreement – County Corp Redevelopment Project**

Approval is requested to enter into an Agreement with County Corp. This Agreement provides \$300,000.00 in 2015 HOME Investment Partnerships Program funds to County Corp. for eligible costs of acquiring and renovating up to seven (7) single family dwellings in the Roosevelt, Wolf Creek, Five Points, Five Oaks, Santa Clara and Mount Vernon Neighborhoods.

County Corp. will manage the acquisition and renovation of each home. County Corp. will also market the completed homes, qualify the buyers, and work with buyers to secure financing. Once completed, the dwellings must be sold to households with an income at 80% of area median income (\$48,150/four person household).

This Agreement has been reviewed by the Law Department as to form and correctness. This Agreement shall commence upon execution by the City, and it shall terminate March 31, 2018.

A Certificate of Funds in the amount of \$300,000.00 is attached.

Approved Affirmative Action Program on File  Yes

No       NA

Approved by City Commission

Erin M. Apparis  
Division

Clerk

Don L. Lovell

Date

Department  
Donald J. Clemens  
City Manager

# CERTIFICATE OF FUNDS

CT161426

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

**NO DRAFT DOCUMENTS PERMITTED**

  X   New Contract                             Renewal Contract                             Change Order:

	<b>Execution by the City</b>
Contract Start Date	03/31/18
Expiration Date	
Original Commission Approval	\$ 300,000.00
Initial Encumbrance	\$ 300,000.00
Remaining Commission Approval	\$ -
Original CT/CF	
Increase Encumbrance	
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

**Required Documentation**

<u>  X  </u>	Initial City Manager's Report
<u>  X  </u>	Initial Certificate of Funds
<u>  X  </u>	Initial Agreement/Contract
<u>      </u>	Copy of City Manager's Report
<u>      </u>	Copy of Original Certificate of Funds

Amount: <u>  \$ 300,000.00  </u> Fund Code <u>27007 - 2390 - 1159 - 31 - PL1506</u> <small style="display: block; text-align: center;">Fund    Org    Acct    Prog    Act    Loc</small>	Amount: <u>                  </u> Fund Code <u>XXXX - XXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund    Org    Acct    Prog    Act    Loc</small>
Amount: <u>                  </u> Fund Code <u>XXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund    Org    Acct    Prog    Act    Loc</small>	Amount: <u>                  </u> Fund Code <u>XXXX - XXX - 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: County Corp

Vendor Address: 130 W Second St; Suite1420      Dayton      OH      45402 1420  
Street                      City                      State                      Zip code + 4

Federal ID: 31-0978908

Commodity Code: 96117

Purpose: HOME funds will be granted to County Corp for the costs of acquiring and renovating up to seven single-family dwellings in the Roosevelt, Wolf Creek, Five Points, Five Oaks, Santa Clara, and Mount Vernon neighborhoods.

Contact Person: PETE THORNBURGH 3797                      Planning & Community Development                      4/15/2016  
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:                       4-19-2016  
Date

CF Prepared by:                       4/19/2016  
Date

CT161426  
~~COMMISSION~~  
 CF/CT Number

APR 27 2016

**CALENDAR**



**HOME AGREEMENT  
COUNTYCORP REDEVELOPMENT  
CFDA 14.239**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, is between the **CITY OF DAYTON, OHIO**, a municipal corporation of the State of Ohio hereinafter referred to as the "**City**," and **COUNTYCORP**, a not-for-profit corporation organized under the laws of the State of Ohio, hereinafter referred to as "**Developer**."

**WITNESSETH, THAT:**

WHEREAS, the City received a grant under Title II of the Cranston-Gonzales National Affordable Housing Act from the United States Department of Housing and Urban Development ("HUD"); and,

WHEREAS, pursuant to the terms of the HUD grant, the City is required to undertake certain activities to provide and expand the supply of decent, safe, sanitary, and affordable housing in its jurisdiction and is required to reserve not less than fifteen percent (15%) of its HOME grant for HOME-qualified non-profits known as Community-Based Housing Development Organizations ("CHDO(s)"); and,

WHEREAS, Developer is a qualified non-profit, which may act as a CHDO, and perform certain activities and services through the HOME provisions contained in the National Affordable Housing Act; and,

WHEREAS, Developer is developing and providing affordable housing to Dayton residents, tenants and owners; and,

WHEREAS, the parties desire to enter into this Agreement to assist the Developer with funds to manage existing, and develop new, affordable housing for HOME eligible households;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and Developer agree as follows:

**ARTICLE 1. TERM OF CONTRACT**

This Agreement shall commence upon execution by the City and unless terminated earlier as provided for in this Agreement, it shall terminate when all funds have been exhausted or on March 31, 2018, whichever comes first. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer remains in control of HOME funds or other HOME assets, including Program Income.

**ARTICLE 2. SCOPE OF SERVICES**

Developer hereby agrees to perform, in a manner satisfactory to the City, the following work and services for the CountyCorp Redevelopment project.

- A. Developer will acquire and renovate up to seven (7) single family residences in the City of Dayton. Of the seven (7) residences, five will be sold to income eligible households; the remaining two residences will become affordable rental units. Attachment "A" illustrates the map of eligible project areas.
- B. HOME funds will be used for eligible costs of CHDO administration, predevelopment, acquisition, and renovation activities that benefit low and moderate-income Dayton residents.
- C. Up to THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00) of HOME funds will be used for eligible project costs. The terms accompanying this \$300,000.00 are as follows. Up to SEVENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$75,000.00) will be available for eligible administrative activities; the remaining TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$225,000.00) will be available for eligible predevelopment, acquisition, and renovation activities.
- D. The HOME subsidy for each HOME-assisted dwelling will not exceed an average cost of FORTY TWO THOUSAND EIGHT HUNDRED FIFTY SEVEN DOLLARS AND ZERO CENTS (\$42,857.00).
- E. Developer agrees to execute any mortgage, note, or deed restrictions as required by the City, or HUD, to successfully complete the Project and secure affordability of the dwelling.
- F. Developer agrees that all restrictive covenants governing the use of Project funds will be recorded at the time the mortgage and notes are executed. Developer shall not request final payment from the City until Developer demonstrates, to the satisfaction of the City, that all restrictive covenants, mortgages, and notes (if applicable) have been appropriately recorded. Developer shall be responsible for the preparation and recording of all affordability documents, including the restrictive covenant.
- G. Developer also shall abide by those additional terms and conditions set forth herein concerning the use of HOME funds to be provided by the City under this Agreement.

**ARTICLE 3. DISBURSEMENT OF FUNDS**

Upon execution of this Agreement by the City, Developer shall be eligible to receive funding in an amount not to exceed THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00) in City HOME funds for the eligible costs described in Article 2. Disbursement of funds shall be made by the City in accordance with the provisions set forth below. The City shall disburse loan funds in the following manner:

- A. Contractor may invoice a first draw of administrative funds up to FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00) upon execution of this Agreement. A second draw of administrative funds up to TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) may be made after October 31, 2016, but before March 31, 2018.
- B. Upon closing of all loan documents, presentation of documentation substantiating incurred expenses, filing of mortgages and restricted covenants, and the submission of an invoice, the City shall release funds equal to the eligible invoiced expense for each dwelling.
- C. The City shall pay all invoices within thirty (30) days of submission, unless disputed. All funds disbursed shall be used by Developer as provided for in Article 2 above.

**ARTICLE 4. PROGRAM INCOME**

Funds received by Developer that are generated from the use of HOME funds provided herein are known as "HOME Program Income", and as such, are governed by the appropriate HOME administrative rules and regulations, and are to be remitted to and utilized at the sole discretion of the City. The HOME Program Income funds include, but are not limited to, loan principal and interest payments, deferred loan payments, sales proceeds, and recaptured funds. HOME Program Income does not include any funds identified in the Project pro-forma for normal and usual fees associated with the Project, including development fees or rental income.

**ARTICLE 5. AFFORDABILITY AND DURATION OF AGREEMENT**

Housing assisted with HOME funds must follow all applicable requirements under 24 CFR Part 92.252. As part of those requirements, HOME assisted housing must remain affordable for not less than the appropriate period beginning after Project completion, without regard to the term of the mortgage or to transfer of ownership.

The HOME assisted housing units contained in this project must meet the affordability requirements specified in 24 CFR § 92.252 for the period of time based on the amount of HOME funds invested per unit. If the assisted housing does not meet affordability requirements for the term stated under these requirements, full repayment of all loaned HOME funds expended in the entire Project must be returned within thirty days.

**ARTICLE 6. ENFORCEMENT**

To ensure that affordability requirements are met, such provisions as deed restrictions, liens on real property, covenants running with the land, or other action as determined by the City, shall be required, as applicable to the HOME assisted activity. In any event, the affordability requirements set forth in Article 5 above shall be enforced by mortgages and deed restrictions.

**ARTICLE 7. COMPLIANCE WITH APPROVED PROGRAM**

All activities authorized by this Agreement shall be performed in accordance with the approved program or project description, the approved budget, the grant conditions, and the relevant HUD Regulations of 24 CFR, Part 92, in particular, Subpart F, as applicable, in accordance with the type of program assisted.

**ARTICLE 8. PEP PARTICIPATION GOALS**

Developer agrees that the PEP Participation goals for certified minority-owned businesses (MBE) and certified women-owned businesses (WBE) are:

MBE: 10% sub-contracting goal

WBE: 5% sub-contracting goal

The City of Dayton encourages all bidders to review the list of certified companies in our Procurement Enhancement Program at <http://daytonhrc.org/wp-content/uploads/2016/02/Copy-of-VendorPEP242016.pdf>. A company must be certified with the City of Dayton Human Relations Council at the time of the bid opening and must be pre-qualified to perform the proposed subcontracted work. You are advised to obtain a copy of the company's certification letter and to review the Certification List.

A bidder must submit a separate form for each goal for which you are requesting a waiver. A bidder requesting a total or partial waiver of the, MBE/WBE/SBE/DLSB or HUD3 Participation Goal must maintain supporting documentation and will be required to provide such documentation within two days of its request. The bidder must provide a written explanation of the good faith effort for all activities listed on the waiver form at the time the bid is submitted. If no explanation is provided, the waiver form will not be accepted. 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 the MBE/WBE/SBE/DLSB or HUD3 goal based on your good faith efforts; and only where the HRC determines that the bidder has completed all items in the following list of activities. In determining whether a bidder has made good faith efforts, the Executive Director of the Council, or his/her designee, may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful lowest and best bidder fails to meet the contract goal, but others meet it, the Executive Director of the Council, or his/her designee, may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. The waiver request form must be submitted with your HUD Section 3 Plan if you are requesting a waiver of any goal.

Participation forms (Attachment "B") and waiver request forms (Attachment "C") are attached to this document. Make as many copies as needed.

ARTICLE 9.     **SECTION 3 REQUIREMENTS**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and

subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at <http://daytonhrc.org/wp-content/uploads/2015/11/103115COD-HUD-Section-3-Certification-List.pdf>.

The City of Dayton's Section 3 Guide Book provides guidance on meeting the Section 3 requirements of 24 CFR Part 135. The Section 3 Plan is considered part of this contract. The plan must state employment and subcontracting goals and commitments. The guidebook can be found at <http://daytonhrc.org/wp-content/uploads/2013/09/Section-3-Guide-Book-Final.pdf>. The Section 3 Plan template can be found at <http://daytonhrc.org/wp-content/uploads/2013/09/Section-3-Plan-Template.dotx>.

#### **ARTICLE 10. USE OF FUNDING**

Developer hereby agrees to utilize the funds made available under this Agreement for eligible activities and according to Program guidelines that have been provided by the City as stated in Article 2.

#### **ARTICLE 11. ENCUMBRANCES AND DISBURSEMENTS**

Encumbrances shall be made in accordance with the rules and procedures of the City governing the HOME Program and all applicable federal rules, regulations, and management circulars.

#### **ARTICLE 12. FISCAL AND ADMINISTRATIVE RESPONSIBILITIES**

Developer agrees to comply with the Applicable Uniform Administrative provisions of 24 CFR § 92.505 and other applicable requirements and standards, which include, but are not limited to the following:

A. Restriction on Disbursements.

1. Developer may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount and timing of each request shall be according to Article 3 above.
2. No funds provided under this Agreement shall be disbursed by Developer to any entity prior to the execution of a written agreement which incorporates the applicable requirements under 24 CFR § 92.504.

B. Allowable and Allocable Costs. Costs must be necessary, reasonable and directly related to the Program as set forth in Article 2 above. In addition, costs must be legal and proper.

C. Documentation of Costs. All costs shall be supported by properly executed records, invoices, contracts, or vouchers or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

D. Records and Reports.

1. Establishment and Maintenance of Records.

Records shall be maintained in accordance with requirements prescribed by HUD and the City with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained for a period of five (5) years after receipt of final payment under this Agreement.

2. Reports.

- (a) At such times and in such forms as HUD or the City may require, and upon prior reasonable notice, there shall be furnished to HUD or the City such statements, records, data and information as HUD or the City may request pertaining to matters covered by this Agreement.
- (b) Developer shall submit to the City progress reports, as requested, concerning Developer's activities and accomplishments during the period with emphasis on the Program pursuant to this Agreement. Developer shall also submit to the City an annual report summarizing the progress/status of the HOME assisted activity. Additionally, Developer shall provide statistical data with respect to services provided or persons benefited under this Agreement, as required in the HOME annual performance report.

E. Audits and Reviews.

1. City of Dayton and Federal Audits.

- (a) At any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, upon prior

reasonable notice, there shall be made available, for examination by the City, HUD, and/or representatives of the Comptroller General, all Developer's records with respect to all matters covered by this Agreement. Further, Developer shall permit the City, HUD, and/or representatives of the Comptroller General to audit, examine, and make excerpts of transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

- (b) The City may make an examination of Developer's fidelity bonding and fiscal and accounting procedures to determine whether these procedures meet the requirements of this Agreement.

## 2. Periodic Review.

At regular intervals during the term of this Agreement, upon prior reasonable notice, the City may conduct reviews of the content and progress of Developer's work and services to be performed under this Agreement. If, as a result of such review, it is the opinion of the City that revisions to the Agreement are necessary or the methods employed by Developer are inappropriate, the City may require such revisions by notifying Developer in writing. Upon receipt of such notification of revisions, Developer shall, within ten (10) days, propose the manner in which such revisions shall be made. Developer's proposed revisions shall be subject to the City's written approval and subject to the amendment procedures set forth herein.

## F. Project Close-Out.

In the event Developer does not expend the amount allocated under this Agreement or the Project is canceled, expired, assigned or terminated for any reason, any funds not invoiced by Developer and approved by the City for allowable costs by the end of the term of the Agreement or by the date of cancellation, expiration, or termination of the Agreement, as the case may be, shall no longer be payable to Developer under this Agreement.

## ARTICLE 13. PROPERTY STANDARDS

Housing assisted with HOME funds, at a minimum, must meet Housing Quality Standards and local housing codes in compliance with 24 CFR § 92.251.

Developer must state in any written agreement that the City has the option to inspect property during the period of affordability and the property must be in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of this affordability period.

**ARTICLE 14. DISPLACEMENT, RELOCATION, AND ACQUISITION**

Developer shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601), and 49 CFR Part 24 and regulations described in 24 CFR § 92.353, if applicable.

Developer will work in good faith with the City and supply all documentation in a timely manner to comply with this Article.

**ARTICLE 15. PROHIBITION AND ELIMINATION OF LEAD-BASED PAINT HAZARD**

Notwithstanding any other provision, Developer shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et. seq.*) and its regulations set forth in 24 CFR Part 35 concerning testing, prohibition, and abatement of lead based paint in HUD-associated housing. Every contract or subcontract including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

**ARTICLE 16. AFFIRMATIVE MARKETING**

- A. Developer shall carry out the City's policy and procedures for affirmative marketing by the use of community-wide publications, approved Equal Housing Opportunity logo type or slogan in any applicable marketing of housing assisted with HOME funds, and by any other procedure delineated in City's "Affirmative Marketing Procedures," which is based on the provisions of 24 CFR § 92.351.
- B. Developers who are not in compliance with the above Affirmative Marketing policy will be in violation of this Agreement, and subject to corrective actions herein including termination, if deemed necessary by the City.

**ARTICLE 17. ENVIRONMENTAL REVIEW**

Developer shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) as it is applied at 24 CFR Part 58, including any requirements that may be imposed by the City as a result of its responsibility for environmental review, decision-making, and action under NEPA Home.

**ARTICLE 18. EQUAL OPPORTUNITY AND FAIR HOUSING**

Developer shall comply with the provision that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, Developer shall comply with the following:

- A. The requirements of the Fair Housing Act (42 U.S.C. 3601 *et. seq.*) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by E.O. 12259 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and implementing regulations issued at 24 CFR Part 1, all of which require equal opportunity in housing and related facilities provided by federal financial assistance.
- B. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8.
- C. The requirement of Executive Order 11246 (3 CFR Part 1964-65, Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
- D. The Fair Housing Amendments Act of 1988, which prohibits discrimination in the sale or rental of housing on the basis of a handicap or because there are children in a family.
- E. The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701U) that provides:
  1. To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any Project assisted with HOME funds be given to low-income persons residing within the metropolitan area in which the project is located; and
  2. To the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction projects are given to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which the assistance is expended.
- F. Developer shall comply with the provisions of 24 CFR § 92.350.
- G. To the extent applicable, Developer shall comply with the Revised Code of General Ordinances (R.C.G.O.) of the City of Dayton, Chapter 32, and specifically Section 32.05.
- H. The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S.

Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of **TWO THOUSAND DOLLARS AND ZERO CENTS (\$2,000.00)** for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

#### ARTICLE 19.    **CONFLICT OF INTEREST**

Developer shall comply with all provisions listed in 24 CFR § 92.356.

No member of the Commission of the City of Dayton, the City Manager, Assistant City Managers, Department Directors of the City, or members of the Board of Directors of Developer, may have any personal financial interest, direct or indirect, in this Agreement; provided, however, that all other employees of the City or Developer have the right to apply for and receive on the same terms and conditions as all other applicants, loans made by Developer or its assignee affiliate.

Developer shall take appropriate steps to insure compliance with this Article.

#### ARTICLE 20.    **DEBARMENT AND SUSPENSION**

A person who is debarred or suspended shall be excluded from federal financial and non-financial assistance and benefits under federal programs and activities. The undersigned representative of Developer certifies, to the best of his or her knowledge and belief, that:

- A.    Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement; and
- B.    It will include the following clause without modification, in all proposals, agreements, contracts, proposals, or other lower tier covered transactions:

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction: The prospective lower tier Developer certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, or proposed for debarment by any federal department or Developer. Where

the prospective lower tier Developer is unable to certify to any of the statements in this certification, such prospective Developer shall attach an explanation to this proposal."

**ARTICLE 21. RELIGIOUS ORGANIZATIONS**

In accordance with 24 CFR § 92.257, HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 92. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds pursuant to 24 CFR Part 92. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship are ineligible for HOME-funded improvements.

**ARTICLE 22. MINORITY BUSINESS OUTREACH**

Developer shall comply with the requirements of Executive Orders 11625, 12432, and 12138, concerning Minority and Women's Business Enterprise, and the policy laws and ordinances of the City, which further supports and encourages the participation of minority and women-owned businesses in the benefits of the HOME program, by:

- A. Contacting all minority businesses, offering services needed by the organization in carrying out the HOME program, with copies of any ads outlining information on where, when and how to submit bids or proposals for such work; and
- B. Keeping records on contacts made to minority and women businesses and any correspondence (letters, proposals, bids, etc.) received from such businesses for any contracts let through the HOME program, and relaying this information to the City at least semi-annually.

**ARTICLE 23. EQUAL EMPLOYMENT OPPORTUNITY**

Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin or place of birth or Vietnam-era veteran status with respect to employment, upgrading, promotion, or transfer, recruitment or recruitment advertising, lay off or termination, rates of pay or to other forms of compensation, and 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 as if specifically rewritten herein and that failure of Developer to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement.

**ARTICLE 24. DISCRIMINATION IN SERVICE DELIVERY PROHIBITED**

Developer shall not discriminate against any applicant for its services because of race, religion, color, sex, national origin, age, handicap, ancestry, or Vietnam-era or disabled veteran status. Developer shall not limit its services or give preference to persons on basis of race, religion, color, sex, gender identity, national origin, age, handicap, ancestry, sexual orientation or Vietnam-era or disabled veteran status.

**ARTICLE 25. COMPLIANCE WITH FEDERAL RULES AND REGULATIONS**

Developer shall abide by all applicable federal rules and regulations, as amended from time to time, including but not limited to those federal rules and regulations referred to in this Agreement. Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time or if the grant to the City of Dayton under Title II of the Cranston-Gonzales National Affordable Housing Act is suspended or terminated.

**ARTICLE 26. INTEREST OF DEVELOPER**

Developer covenants that no person who presently exercises any function or responsibilities in connection with the Project has any personal financial interest, direct or indirect, in any parcels of property within the City which hereby causes conflict in any manner or degree with the performances of its services hereunder.

**ARTICLE 27. PERSONNEL**

Developer represents that it has or will secure all personnel required in performing the services under this Agreement. All of the services required will be performed by Developer or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

Any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**ARTICLE 28. BOND**

All persons responsible for the receipt, custody and disbursement of Developer's funds shall be covered by a fidelity insurance bond in the amount of at least SIXTY THOUSAND DOLLARS AND ZERO CENTS (\$60,000.00).

**ARTICLE 29. TERMINATION OF AGREEMENT FOR CAUSE**

All of the provisions and remedies afforded in 24 CFR § 85.43 are incorporated into and made a part of this Agreement. If Developer materially fails to comply with any term of this Agreement, the City may exercise any of the provisions or remedies therein, provided,

however, that the City provides written notice to Developer at least five (5) business days prior to the exercise of such provisions and remedies.

The City may terminate this Agreement, in whole or in part for cause, which includes, but is not limited to:

- A. Failure, for any reason, of Developer to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with the approved program and contract conditions, and such statutes, executive orders, and HUD directives as may become applicable at any time.
- B. Submission by Developer to the City of reports that are incorrect or incomplete in any material respect.
- C. Ineffective or improper use of funds provided under this Agreement.
- D. Failure of Developer to supply the City with requested project reports and data.
- E. Suspension or termination by HUD of the grant to the City under which this Agreement is made, or the portion of it designated by the Agreement; provided, however, that if the grant is merely reduced and in the absence of any contrary HUD directive, Developer may readjust its budget and recommend amendments to the City.
- F. When required or directed by HUD to terminate, assign, or transfer this Agreement.

Developer may propose to terminate this Agreement in whole or in part, for good cause only, by giving at least thirty (30) days written notice to the City specifically stating the cause for such requested termination. Any such request for termination shall be subject to the written approval of the City, and will be acted upon by the City within ten (10) business days of receipt of the notice of request to terminate. The decision of the City shall be final and conclusive. This Agreement may also be terminated by either the City or Developer in whole or in part, by mutual written agreement setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City of Dayton determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate this Agreement in its entirety.

If this Agreement is terminated or canceled for any reason prior to the completion of the Project, as defined at 24 CFR § 92.2, all HOME funds remaining with Developer must be repaid to the City within thirty (30) days.

**ARTICLE 30. TERMINATION FOR NECESSITY OF THE CITY**

Notwithstanding any of the provisions to the contrary, the City may, with the consent of Developer, suspend, reduce, modify, or terminate any portion of this Agreement in accordance with 24 CFR § 85.44.

**ARTICLE 31. REVERSION OF ASSETS**

Upon the expiration or termination of this Agreement, Developer shall transfer to the City any HOME funds on hand at the time of the expiration and any accounts receivable attributable to the use of HOME funds.

**ARTICLE 32. INDEMNIFICATION**

Developer shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Developer, its agents, employees, and representatives. Further, in the event that Developer violates any HOME regulation or requirement, Developer shall assume full and complete responsibility for the violations, including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify, and hold harmless the City, its elected officials, officers, agents, and employees.

**ARTICLE 33. INDEPENDENT CONTRACTOR**

The parties hereby agree that, at all times, Developer shall be an Independent Contractor and not subject to control by the City, except as provided herein. As an Independent Contractor, the parties hereby agree that the relationship between the parties shall not be held out or construed as employer-employee, joint venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of, the other party, without the prior written and express authority to do so by a duly authorized representative. Contractor is not a "public employee" for the purpose of Ohio Public Employees Retirement System membership.

Developer understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City employees and not entitled to any of the emoluments of City employment. Further, Developer shall be responsible to withhold and pay, or cause such agents, Developers and sub-Developers to withhold and pay all federal, state and local taxes.

**ARTICLE 34. AMENDMENTS**

The City or Developer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and are signed by a duly authorized representative of the City and Developer. Such amendments shall not invalidate this Agreement, nor relieve or release Developer from its obligations under this Agreement, and must be approved by the Commission of the City of Dayton, if necessary.

**ARTICLE 35. NOTICES AND COMMUNICATION**

Any written notice, invoice 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:

Developer:	City of Dayton:	Section 3 MBE/FBE Reporting:
CountyCorp	Planning & Comm. Dev.	Human Relations Council
Attn. Adam Blake	Attn. Pete Thornburgh	Attn. Juleda Hyde
130 W. Second Street	101 W. Third Street	371 W. Second Street
Suite 1420	Room 613	Suite 100
Dayton, Ohio 45402	Dayton, Ohio 45402	Dayton, Ohio 45402
937-531-7448	937-333-3797	937-333-1403
<a href="mailto:ablake@countycorp.com">ablake@countycorp.com</a>	<a href="mailto:pete.thornburgh@daytonohio.gov">pete.thornburgh@daytonohio.gov</a>	<a href="mailto:Juleda.hyde@daytonohio.gov">Juleda.hyde@daytonohio.gov</a>

**ARTICLE 36. REFERENCES TO LAW**

All references to federal, state and local laws, regulations, rules, or orders contained in this Agreement shall include any and all subsequent amendment, modifications, additions, or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

**ARTICLE 37. POLITICAL CONTRIBUTIONS**

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

**ARTICLE 38. ENTIRE AGREEMENT/INTEGRATION**

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

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

**CITY OF DAYTON, OHIO**

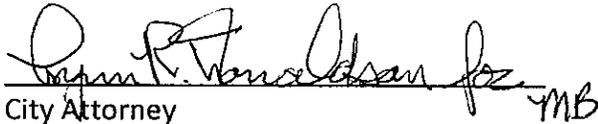
**COUNTYCORP**

\_\_\_\_\_  
City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
\_\_\_\_\_  
City Attorney MB

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

\_\_\_\_\_, 2016

Min./Bk. \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Commission





**ATTACHMENT "B"**

**WOMAN-OWNED OR MINORITY-OWNED BUSINESS ENTERPRISE PARTICIPATION FORM**

**Project Name:**

**COUNTYCORP REDEVELOPMENT**

The City of Dayton has adopted procurement programs for Minority, Woman, Small Business Enterprises, and Dayton Local Preference Program in accordance with Sections 35.30 – 35.68 of the Revised Code of General Ordinances (R.C.G.O.), inclusively. This form is to be used to record participation under the aforementioned Sections of the R.C.G.O. In order to participate in the City's Program, Developers must be pre-certified and pre-qualified in accordance with the rules and regulations pertinent to this program. When determining the level of participation, 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	Type of Construction Work to be Performed	\$ Amount of Total Base Bid	% 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 type="checkbox"/>				
Business Firm Name								
Tax I.D. Number								
Street Address								
City/State/ Zip Code								
Phone								
Total \$ Amount of PRIME CONTRACTOR'S Base Bid					Total \$ Amount for Sub	% of Dollars in Base Bid		
PRIME CONTRACTOR'S NAME				PRIME CONTRACTOR'S ADDRESS				
				Street Address				
				City/State/Zip				

**ATTACHMENT "C"**  
**HUD SECTION 3 PARTICIPATION WAIVER REQUEST DOCUMENTATION FORM**  
**10% HUD SECTION 3 PARTICIPATION GOAL**

A bidder requesting a total or partial waiver of the, **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 the **HUD Section 3** goal based on your greatest extent feasible efforts; and only where the HRC determines that the bidder has obtained at least seventy-five (75) points from the following list of activities. **The form with the point values for your greatest extent feasible efforts 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 <b>HUD Section 3</b> having the capability to perform the work of the contract. The bidder must solicit this interest within ten (10) business days of the bid submittal deadline in order to allow the <b>HUD Section 3</b> sufficient time to respond to the solicitation.		
2	20	Negotiated with <b>HUD Section 3</b> 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 <b>HUD Section 3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.		
4	15	Rejected <b>HUD Section 3</b> 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 <b>HUD Section 3</b> 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: <b>HUD Section 3</b> ).		
7	5	Assisted interested <b>HUD Section 3</b> 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 <b>HUD Section 3</b> in the assistance of their business growth and development.		
	100	<b>Bidding Company Name:</b>		

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date April 27, 2016

FROM: Department of Planning & Community Development  
Division of Community Development

Code 27007-2390-1159-31-PL1507

(CHECK ONE)

Fund Title 2015 HOME Funds

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

Amount \$ \$725,000.00  
(Through March 31, 2018)

Supplier/Vendor/Company/Individual:  
NAME County Corp.

ADDRESS 130 W. Second St., Ste. 1420  
Dayton, OH 45402

Justification and description of purchase, contract or payment:

**HOME Agreement – Whitmore Arms Apartments**

Approval is requested to enter into an Agreement with County Corp. This Agreement provides \$725,000.00 in 2015 HOME Investment Partnerships Program funds as a loan. County Corp. will use the funds for eligible project costs of acquiring and renovating forty (40) apartments within six (6) buildings located at 241 Almond Avenue in the Residence Park neighborhood.

County Corp. will manage the project. Once completed, five (5) three-bedroom units and 10 (ten) two-bedroom units must be leased to households at or below 80% area median income, and rents will be capped per the HOME regulations. Additionally, a minimum of two (2) of the three-bedroom units must be made fully accessible, and one (1) of the units must be made accessible to persons with hearing or visual impairments. The maximum annual household income for a three-person family is \$44,450; three-bedroom monthly rents can be no more than \$972; and two-bedroom monthly rent can be no more than \$726. Loan repayment will be made from available cash flow, beginning two years after project completion.

This Agreement has been reviewed by the Law Department as to form and correctness. This Agreement shall commence upon execution by the City, and it shall terminate March 31, 2018.

A Certificate of Funds in the amount of \$725,000.00 is attached.

Approved Affirmative Action Program on File  Yes

No       NA

Approved by City Commission

Edm Appris  
Division

Clerk

R K Lowell  
Department

Date

David J. Clemens  
City Manager

# CERTIFICATE OF FUNDS

CT161425

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

**NO DRAFT DOCUMENTS PERMITTED**

         New Contract     
           Renewal Contract     
           Change Order:

	<b>Execution by the City</b>
Contract Start Date	03/31/18
Expiration Date	03/31/18
Original Commission Approval	\$ 725,000.00
Initial Encumbrance	\$ 725,000.00
Remaining Commission Approval	\$ -
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>725,000.00</u> Fund Code <u>27007 - 2390 - 1159 - 31 - PL1507</u> <small style="display: flex; justify-content: space-between; font-size: small;"> <span>Fund</span> <span>Org</span> <span>Acct</span> <span>Prog</span> <span>Act</span> <span>Loc</span> </small>	Amount: _____ Fund Code <u>XXXX - XXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: small;"> <span>Fund</span> <span>Org</span> <span>Acct</span> <span>Prog</span> <span>Act</span> <span>Loc</span> </small>
Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: small;"> <span>Fund</span> <span>Org</span> <span>Acct</span> <span>Prog</span> <span>Act</span> <span>Loc</span> </small>	Amount: _____ Fund Code <u>XXXX - XXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: small;"> <span>Fund</span> <span>Org</span> <span>Acct</span> <span>Prog</span> <span>Act</span> <span>Loc</span> </small>

Attach additional pages for more FOAPALS

Vendor Name: County Corp

Vendor Address: 130 W Second St; Suite1420    Dayton    OH    45402 1420  

Street
City
State
Zip code + 4

Federal ID: 31-0978908

Commodity Code: 96117

Purpose: HOME funds will be loaned to County Corp for the Acquisition and renovation of 40 units of rental housing in six buildings located at 241 Almond Avenue in a project known as Whitmore Arms Apartments.

Contact Person: PETE THORNBURGH 3797    Planning & Community Development    4/14/2016  

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:       Date: 4-19-2016

CF Prepared by:       Date: 4/19/2016

CT161425  
 CF/CT Number  
**COMMISSION**  
 APR 27 2016  
**CALENDAR**

HOME AGREEMENT  
WHITMORE ARMS APARTMENTS  
CFDA 14.239

**COPY**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, is between the **CITY OF DAYTON, OHIO**, a municipal corporation of the State of Ohio hereinafter referred to as the "**City**," and **COUNTY CORP.**, a not-for-profit corporation organized under the laws of the State of Ohio, hereinafter referred to as "**Developer**."

**WITNESSETH, THAT:**

WHEREAS, the City received a grant under Title II of the Cranston-Gonzales National Affordable Housing Act from the United States Department of Housing and Urban Development ("HUD"); and,

WHEREAS pursuant to the terms of the HUD grant, the City is required to undertake certain activities to provide and expand the supply of decent, safe, sanitary, and affordable housing in its jurisdiction and is required to reserve not less than fifteen percent (15%) of its HOME grant for HOME-qualified non-profits known as Community-Based Housing Development Organizations ("CHDOs"); and,

WHEREAS, Developer is a qualified non-profit, which may act as a CHDO, and perform certain activities and services through the HOME provisions contained in the National Affordable Housing Act; and,

WHEREAS, Developer is developing and providing affordable housing to Dayton residents, tenants and owners; and,

WHEREAS, the City desires Developer to render certain services through the provisions of the HOME Investment Partnership Program (hereinafter referred to as "HOME") under the National Affordable Housing Act;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and Developer agree as follows:

**ARTICLE 1. TERM OF CONTRACT**

This Agreement shall commence upon execution by the City and unless terminated earlier as provided for in this Agreement, it shall terminate when all funds have been exhausted or on March 31, 2018, whichever comes first. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer remains in control of HOME funds or other HOME assets, including Program Income.

ARTICLE 2.     **SCOPE OF SERVICES**

Developer hereby agrees to perform, in a manner satisfactory to the City, the following work and services for the Whitmore Arms Apartments Redevelopment project.

- A.     Developer has caused to be formed Whitmore Arms Associates, LLC, an Ohio limited liability company (the Company”) in which Whitmore Arms Inc., an Ohio for-profit corporation which is wholly-owned by Developer, is the Managing Member. All references in this Agreement to a requirement of the Developer shall be read to include that Developer shall cause the Company to take such actions.
  
- B.     Developer will cause the Company to acquire and renovate forty (40) rental apartments contained in six (6) buildings located at 241 Almond Avenue in the City of Dayton (the “Project”). The Project is illustrated in Attachment “A” on page 19.
  
- C.     HOME funds will be used for eligible costs of acquisition and renovation of fifteen (15) of the apartment units. These fifteen (15) floating units will be designated as HOME-assisted units and will be made available to households with incomes at or below eighty percent (80%) of the Area Median Income. Section 504 regulations of 24 CFR Part 8, the Rehabilitation Act of 1973 [29 U.S.C. 794], require that of the forty (40) units, a minimum of two (2) three-bedroom apartments must be made fully accessible; and an additional one (1) unit must be made accessible to persons with hearing and visual impairments. The owners/managers of properties with accessible units must develop and provide to the City a copy of a written procedure to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities and ensures that reasonable, non-discriminatory steps are taken to ensure that accessible units are offered first to persons with disabilities who require the accessibility features. All units must meet the requirements of 24 CFR Part 8, implementing regulations for the Rehabilitation Act of 1973 [29 U.S.C. 794] and must be built to conform to the design and construction requirements of the Fair Housing Act.
  
- D.     Up to SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$725,000.00) of HOME funds will be used for eligible project costs. The terms accompanying this \$725,000.00 are as follows.
  - Interest rate: 1%
  - Term: 30 years
  - Repayment: Through available cash flow, beginning two years after redevelopment is completed (25% of available cash flow shall be paid to the City annually, applied first to interest and then to principal).
  
- E.     The proceeds of the loan from the City to Developer (the “Loan”) shall be loaned from Developer to the Company, upon the same terms as set forth above (the “Conduit Loan”). All payments received by the Developer under the Conduit Loan shall be paid to the City. The Conduit Loan shall be evidenced and secured by a Promissory Note and Mortgage

executed by the Company in favor of Developer. The Developer shall execute a Restrictive Covenant in favor of the City. Additionally, the Loan shall become due and payable in full if title to the Project is transferred from the Company to any party other than Developer or its affiliate, Homestart, Inc.

- F. All rehabilitation work on units built prior to 1978, where painted surfaces may be disturbed, will be subject to a lead-based paint (LBP) risk assessment and clearance evaluation to be performed by State of Ohio licensed Risk Assessors. All rehabilitation work must be completed per Ohio Law regarding rehabilitation of residential units containing LBP (Ohio Administrative Code 3701-32). The use of Ohio licensed LBP contractors and workers will be required where applicable under Ohio law. For all forty (40) units, common areas, and exterior painted surfaces, Developer will: 1) either perform lead-based paint testing on all painted surfaces to be disturbed or replaced during renovation, or presume that all these painted surfaces contain lead-based paint; and 2.) A state-certified lead assessor must assess each of the forty (40) units and all common areas and exterior painted surfaces; and 3.) Any presumed LBP surfaces or any LBP surfaces identified in 1 and 2 above with LBP at or above the Action Level, must be remediated at a minimum through Interim Controls; and 4.) Implement lead-safe work practices during rehabilitation.
- G. All units and common areas not previously surveyed for asbestos must be surveyed and hazards evaluated. All identified friable asbestos must be removed by certified, licensed asbestos abatement contractors, transported by a licensed hauler, and disposed of in an approved asbestos disposal facility. Developer will provide copies of documents recording the removal, transport, and storage of all abated asbestos hazards.
- H. Developer acknowledges that after receiving initial project plan approval from the Department of Building Services, requested change orders or modifications to approved site plans or elevations that substantially alter the design or exterior appearance of any structure must be submitted in writing to the Department of Planning and Community Development, to the attention of Mr. Peter Thornburgh.
- I. The HOME subsidy for each HOME-assisted unit will not exceed an average cost of FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00).
- J. Developer agrees to execute any mortgage, note, or deed restrictions as required by the City, or HUD, to successfully complete the Project and secure affordability of the dwelling.
- K. Developer agrees that all restrictive covenants governing the use of Project funds will be recorded at the time the mortgage and notes are executed. Developer shall not request final payment from the City until Developer demonstrates, to the satisfaction of the City, that all restrictive covenants, mortgages, and notes (if applicable) have been appropriately recorded. Developer shall be responsible for the preparation and recording of all loan documents, including the loan agreement and mortgage.

- L. Developer also shall abide by those additional terms and conditions set forth herein concerning the use of HOME funds to be provided by the City under this Agreement.
- M. Eligible soft costs include legal fees, application fees, architect and engineering fees, and other professional services fees associated with the project. Eligible hard costs include site work, utilities, labor and materials required to redevelop the units.

**ARTICLE 3. DISBURSEMENT OF FUNDS**

Upon execution of this Agreement by the City, Developer shall be eligible to receive funding in an amount not to exceed SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$725,000.00) in City HOME funds for the eligible costs described in Article 2. The City shall disburse loan funds in the following manner:

- A. Upon closing of all loan documents, presentation of documentation substantiating incurred expenses, filing of mortgages and restricted covenants, and the submission of an invoice, the City shall release funds equal to the eligible invoiced expense for a pro-rata share of costs incurred. For example, if 15% of the project is complete, 15% of the HOME funds may be released.
- B. The City shall pay all invoices within thirty (30) days of submission, unless disputed. All funds disbursed shall be used by Developer as provided for in Article 2 above.

**ARTICLE 4. PROGRAM INCOME**

Funds received by Developer that are generated from the use of HOME funds provided herein are known as "HOME Program Income", and as such, are governed by the appropriate HOME administrative rules and regulations, and are to be remitted to and utilized at the sole discretion of the City. The HOME Program Income funds include, but are not limited to, loan principal and interest payments, deferred loan payments, sales proceeds, and recaptured funds. HOME Program Income does not include any funds identified in the Project pro-forma for normal and usual fees associated with the Project, including development fees or rental income.

**ARTICLE 5. AFFORDABILITY AND DURATION OF AGREEMENT**

Housing assisted with HOME funds must follow all applicable requirements under 24 CFR Part 92.252. As part of those requirements, HOME assisted housing must remain affordable for not less than the appropriate period beginning after Project completion, without regard to the term of the mortgage or to transfer of ownership.

The HOME assisted housing units contained in this project must meet the affordability requirement in 24 CFR § 92.252 for housing for a 15 (fifteen) year period. If the assisted housing does not meet affordability requirements for the term stated under these requirements, full

repayment of all loaned HOME funds expended in the entire Project must be returned within thirty days.

**ARTICLE 6. ENFORCEMENT**

To ensure that affordability requirements are met, such provisions as deed restrictions, liens on real property, covenants running with the land, or other action as determined by the City, shall be required, as applicable to the HOME assisted activity. In any event, the affordability requirements set forth in Article 5 above shall be enforced by mortgages and deed restrictions.

**ARTICLE 7. COMPLIANCE WITH APPROVED PROGRAM**

All activities authorized by this Agreement shall be performed in accordance with the approved program or project description, the approved budget, the grant conditions, and the relevant HUD Regulations of 24 CFR, Part 92, in particular, Subpart F, as applicable, in accordance with the type of Program assisted.

**ARTICLE 8. PEP PARTICIPATION GOALS**

Developer agrees that the PEP Participation goals for certified minority-owned businesses (MBE) and certified women-owned businesses (WBE) are:

MBE: 10% sub-contracting goal

WBE: 5% sub-contracting goal

The City of Dayton encourages all bidders to review the list of certified companies in our Procurement Enhancement Program at <http://daytonhrc.org/wp-content/uploads/2016/02/Copy-of-VendorPEP242016.pdf>. A company must be certified with the City of Dayton Human Relations Council at the time of the bid opening and must be pre-qualified to perform the proposed subcontracted work. You are advised to obtain a copy of the company's certification letter and to review the Certification List.

A bidder must submit a separate form for each goal for which you are requesting a waiver. A bidder requesting a total or partial waiver of the, MBE/WBE/SBE/DLSB or HUD3 Participation Goal must maintain supporting documentation and will be required to provide such documentation within two days of its request. The bidder must provide a written explanation of the good faith effort for all activities listed on the waiver form at the time the bid is submitted. If no explanation is provided, the waiver form will not be accepted. 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 the MBE/WBE/SBE/DLSB or HUD3 goal based on your good faith efforts; and only where the HRC determines that the bidder has completed all items in the following list of activities. In determining whether a bidder has made good faith efforts, the Executive Director of the Council, or his/her designee, may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful lowest and best bidder fails to meet the contract goal, but others

meet it, the Executive Director of the Council, or his/her designee, may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. The waiver request form must be submitted with your HUD Section 3 Plan if you are requesting a waiver of any goal.

Participation forms (Attachment "B") and waiver request forms (Attachment "C" are attached to this document. Make as many copies as needed.

#### ARTICLE 9.      **SECTION 3 REQUIREMENTS**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at <http://daytonhrc.org/wp-content/uploads/2015/11/103115COD-HUD-Section-3-Certification-List.pdf>.

The City of Dayton's Section 3 Guide Book provides guidance on meeting the Section 3 requirements of 24 CFR Part 135. The Section 3 Plan is considered part of this contract. The plan must state employment and subcontracting goals and commitments. The guidebook can be found at <http://daytonhrc.org/wp-content/uploads/2013/09/Section-3-Guide-Book-Final.pdf>. The Section 3 Plan template can be found at <http://daytonhrc.org/wp-content/uploads/2013/09/Section-3-Plan-Template.dotx>.

#### **ARTICLE 10. USE OF FUNDING**

Developer hereby agrees to utilize the funds made available under this Agreement for eligible activities and according to Program guidelines that have been provided by the City as stated in Article 2.

#### **ARTICLE 11. ENCUMBRANCES AND DISBURSEMENTS**

Encumbrances shall be made in accordance with the rules and procedures of the City governing the HOME Program and all applicable federal rules, regulations, and management circulars.

**ARTICLE 12. FISCAL AND ADMINISTRATIVE RESPONSIBILITIES**

Developer agrees to comply with the Applicable Uniform Administrative provisions of 24 CFR § 92.505 and other applicable requirements and standards, which include, but are not limited to the following:

A. Restriction on Disbursements.

1. Developer may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount and timing of each request shall be according to Article 3 above.
2. No funds provided under this Agreement shall be disbursed by Developer to any entity prior to the execution of a written agreement which incorporates the applicable requirements under 24 CFR § 92.504.

B. Allowable and Allocable Costs. Costs must be necessary, reasonable and directly related to the Program as set forth in Article 2 above. In addition, costs must be legal and proper.

C. Documentation of Costs. All costs shall be supported by properly executed records, invoices, contracts, or vouchers or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

D. Records and Reports.

1. Establishment and Maintenance of Records.

Records shall be maintained in accordance with requirements prescribed by HUD and the City with respect to all matters covered by this Agreement. Except as otherwise authorized by HUD, such records shall be maintained for a period of five (5) years after receipt of final payment under this Agreement.

2. Reports.

- (a) At such times and in such forms as HUD or the City may require, and upon prior reasonable notice, there shall be furnished to HUD or the City such statements, records, data and information as HUD or the City may request pertaining to matters covered by this Agreement.
- (b) Developer shall submit to the City progress reports, as requested, concerning Developer's activities and accomplishments during the period with emphasis on the Program pursuant to this Agreement. Developer shall also submit to the City an annual report summarizing the progress/status of the HOME assisted activity. Additionally, Developer shall provide statistical data with respect to services provided or persons benefited under this Agreement, as required in the HOME annual performance report.

E. Audits and Reviews.

1. City of Dayton and Federal Audits.

- (a) At any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, upon prior reasonable notice, there shall be made available, for examination by the City, HUD, and/or representatives of the Comptroller General, all Developer's records with respect to all matters covered by this Agreement. Further, Developer shall permit the City, HUD, and/or representatives of the Comptroller General to audit, examine, and make excerpts of transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
- (b) The City may make an examination of Developer's fidelity bonding and fiscal and accounting procedures to determine whether these procedures meet the requirements of this Agreement.

2. Periodic Review.

At regular intervals during the term of this Agreement, upon prior reasonable notice, the City may conduct reviews of the content and progress of Developer's work and services to be performed under this Agreement. If, as a result of such review, it is the opinion of the City that revisions to the Agreement are necessary or the methods employed by Developer are inappropriate, the City may require such revisions by notifying Developer in writing. Upon receipt of such notification of revisions, Developer shall, within ten (10) days, propose the manner in which such revisions shall be made. Developer's proposed revisions shall be subject to the City's written approval and subject to the amendment procedures set forth herein.

F. Project Close-Out.

In the event Developer does not expend the amount allocated under this Agreement or the Project is canceled, expired, assigned or terminated for any reason, any funds not invoiced by Developer and approved by the City for allowable costs by the end of the term of the Agreement or by the date of cancellation, expiration, or termination of the Agreement, as the case may be, shall no longer be payable to Developer under this Agreement.

**ARTICLE 13. PROPERTY STANDARDS**

Housing assisted with HOME funds, at a minimum, must meet Housing Quality Standards and local housing codes in compliance with 24 CFR § 92.251.

Developer must state in any written agreement that the City has the option to inspect property during the period of affordability and the property must be in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of this affordability period.

**ARTICLE 14. DISPLACEMENT, RELOCATION, AND ACQUISITION**

Developer shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601), and 49 CFR Part 24 and regulations described in 24 CFR § 92.353, if applicable.

Developer will work in good faith with the City and supply all documentation in a timely manner to comply with this Article.

**ARTICLE 15. PROHIBITION AND ELIMINATION OF LEAD-BASED PAINT HAZARD**

Notwithstanding any other provision, Developer shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et. seq.*) and its regulations set forth in 24 CFR Part 35 concerning testing, prohibition, and abatement of lead based paint in HUD-associated housing. Every contract or subcontract including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

**ARTICLE 16. AFFIRMATIVE MARKETING**

- A. Developer shall carry out the City's policy and procedures for affirmative marketing by the use of community-wide publications, approved Equal Housing Opportunity logo type or slogan in any applicable marketing of housing assisted with HOME funds, and by any other procedure delineated in City's "Affirmative Marketing Procedures," which is based on the provisions of 24 CFR § 92.351.
- B. Developers who are not in compliance with the above Affirmative Marketing policy will be in violation of this Agreement, and subject to corrective actions herein including termination, if deemed necessary by the City.

**ARTICLE 17. ENVIRONMENTAL REVIEW**

Developer shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) as it is applied at 24 CFR Part 58, including any requirements that may be imposed by the City as a result of its responsibility for environmental review, decision-making, and action under NEPA Home.

**ARTICLE 18. EQUAL OPPORTUNITY AND FAIR HOUSING**

Developer shall comply with the provision that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, Developer shall comply with the following:

- A. The requirements of the Fair Housing Act (42 U.S.C. 3601 *et. seq.*) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by E.O. 12259 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and implementing regulations issued at 24 CFR Part 1, all of which require equal opportunity in housing and related facilities provided by federal financial assistance.
- B. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8.
- C. The requirement of Executive Order 11246 (3 CFR Part 1964-65, Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
- D. The Fair Housing Amendments Act of 1988, which prohibits discrimination in the sale or rental of housing on the basis of a handicap or because there are children in a family.
- E. The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701U) that provides:
  - 1. To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any Project assisted with HOME funds be given to low-income persons residing within the metropolitan area in which the Project is located; and
  - 2. To the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction projects are given to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which the assistance is expended.
- F. Developer shall comply with the provisions of 24 CFR § 92.350.
- G. To the extent applicable, Developer shall comply with the Revised Code of General Ordinances (R.C.G.O.) of the City of Dayton, Chapter 32, and specifically Section 32.05.

H. The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request. The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of TWO THOUSAND DOLLARS AND ZERO CENTS (\$2,000.00) for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

#### **ARTICLE 19. CONFLICT OF INTEREST**

Developer shall comply with all provisions listed in 24 CFR § 92.356.

No member of the Commission of the City of Dayton, the City Manager, Assistant City Managers, Department Directors of the City, or members of the Board of Directors of Developer, may have any personal financial interest, direct or indirect, in this Agreement; provided, however, that all other employees of the City or Developer have the right to apply for and receive on the same terms and conditions as all other applicants, loans made by Developer or its assignee affiliate.

Developer shall take appropriate steps to insure compliance with this Article.

#### **ARTICLE 20. DEBARMENT AND SUSPENSION**

A person who is debarred or suspended shall be excluded from federal financial and non-financial assistance and benefits under federal programs and activities. The undersigned representative of Developer certifies, to the best of his or her knowledge and belief, that:

A. Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement; and

- B. It will include the following clause without modification, in all proposals, agreements, contracts, proposals, or other lower tier covered transactions:

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction: The prospective lower tier Developer certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, or proposed for debarment by any federal department or Developer. Where the prospective lower tier Developer is unable to certify to any of the statements in this certification, such prospective Developer shall attach an explanation to this proposal."

#### ARTICLE 21. RELIGIOUS ORGANIZATIONS

In accordance with 24 CFR § 92.257, HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under 24 CFR Part 92. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds pursuant to 24 CFR Part 92. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship are ineligible for HOME-funded improvements.

#### ARTICLE 22. MINORITY BUSINESS OUTREACH

Developer shall comply with the requirements of Executive Orders 11625, 12432, and 12138, concerning Minority and Women's Business Enterprise, and the policy laws and ordinances of the City, which further supports and encourages the participation of minority and women-owned businesses in the benefits of the HOME program, by:

- A. Contacting all minority businesses, offering services needed by the organization in carrying out the HOME program, with copies of any ads outlining information on where, when and how to submit bids or proposals for such work; and
- B. Keeping records on contacts made to minority and women businesses and any correspondence (letters, proposals, bids, etc.) received from such businesses for any contracts let through the HOME program, and relaying this information to the City at least semi-annually.

#### ARTICLE 23. EQUAL EMPLOYMENT OPPORTUNITY

Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin or place of birth or Vietnam-era veteran status with respect to employment, upgrading, promotion, or transfer, recruitment or recruitment advertising, lay off or termination, rates of pay or to other forms of compensation, and 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 as if specifically rewritten herein and that failure of Developer to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement.

**ARTICLE 24.    DISCRIMINATION IN SERVICE DELIVERY PROHIBITED**

Developer shall not discriminate against any applicant for its services because of race, religion, color, sex, national origin, age, handicap, ancestry, or Vietnam-era or disabled veteran status. Developer shall not limit its services or give preference to persons on basis of race, religion, color, sex, sexual identity, national origin, age, handicap, ancestry, sexual orientation or Vietnam-era or disabled veteran status.

**ARTICLE 25.    COMPLIANCE WITH FEDERAL RULES AND REGULATIONS**

Developer shall abide by all applicable federal rules and regulations, as amended from time to time, including but not limited to those federal rules and regulations referred to in this Agreement. Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time or if the grant to the City of Dayton under Title II of the Cranston-Gonzales National Affordable Housing Act is suspended or terminated.

**ARTICLE 26.    INTEREST OF DEVELOPER**

Developer covenants that no person who presently exercises any function or responsibilities in connection with the Project has any personal financial interest, direct or indirect, in any parcels of property within the City which hereby causes conflict in any manner or degree with the performances of its services hereunder.

**ARTICLE 27.    PERSONNEL**

Developer represents that it has or will secure all personnel required in performing the services under this Agreement. All of the services required will be performed by Developer or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

Any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

**ARTICLE 28.    BOND**

All persons responsible for the receipt, custody and disbursement of Developer's funds shall be covered by a fidelity insurance bond in the amount of at least SIXTY THOUSAND DOLLARS AND ZERO CENTS (\$60,000.00).

**ARTICLE 29. TERMINATION OF AGREEMENT FOR CAUSE**

All of the provisions and remedies afforded in 24 CFR § 85.43 are incorporated into and made a part of this Agreement. If Developer materially fails to comply with any term of this Agreement, the City may exercise any of the provisions or remedies therein, provided, however, that the City provides written notice to Developer at least five (5) business days prior to the exercise of such provisions and remedies.

The City may terminate this Agreement, in whole or in part for cause, which includes, but is not limited to:

- A. Failure, for any reason, of Developer to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with the approved program and contract conditions, and such statutes, executive orders, and HUD directives as may become applicable at any time.
- B. Submission by Developer to the City of reports that are incorrect or incomplete in any material respect.
- C. Ineffective or improper use of funds provided under this Agreement.
- D. Failure of Developer to supply the City with requested project reports and data.
- E. Suspension or termination by HUD of the grant to the City under which this Agreement is made, or the portion of it designated by the Agreement; provided, however, that if the grant is merely reduced and in the absence of any contrary HUD directive, Developer may readjust its budget and recommend amendments to the City.
- F. When required or directed by HUD to terminate, assign, or transfer this Agreement.

Developer may propose to terminate this Agreement in whole or in part, for good cause only, by giving at least thirty (30) days written notice to the City specifically stating the cause for such requested termination. Any such request for termination shall be subject to the written approval of the City, and will be acted upon by the City within ten (10) business days of receipt of the notice of request to terminate. The decision of the City shall be final and conclusive. This Agreement may also be terminated by either the City or Developer in whole or in part, by mutual written agreement setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City of Dayton determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate this Agreement in its entirety.

If this Agreement is terminated or canceled for any reason prior to the completion of the Project, as defined at 24 CFR § 92.2, all HOME funds remaining with Developer must be repaid to the City within thirty (30) days.

**ARTICLE 30. TERMINATION FOR NECESSITY OF THE CITY**

Notwithstanding any of the provisions to the contrary, the City may, with the consent of Developer, suspend, reduce, modify, or terminate any portion of this Agreement in accordance with 24 CFR § 85.44.

**ARTICLE 31. REVERSION OF ASSETS**

Upon the expiration or termination of this Agreement, Developer shall transfer to the City any HOME funds on hand at the time of the expiration and any accounts receivable attributable to the use of HOME funds.

**ARTICLE 32. INDEMNIFICATION**

Developer shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Developer, its agents, employees, and representatives. Further, in the event that Developer violates any HOME regulation or requirement, Developer shall assume full and complete responsibility for the violations, including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify, and hold harmless the City, its elected officials, officers, agents, and employees.

**ARTICLE 33. INDEPENDENT CONTRACTOR**

The parties hereby agree that, at all times, Developer shall be an Independent Contractor and not subject to control by the City, except as provided herein. As an Independent Contractor, the parties hereby agree that the relationship between the parties shall not be held out or construed as employer-employee, joint venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of, the other party, without the prior written and express authority to do so by a duly authorized representative. Contractor is not a "public employee" for the purpose of Ohio Public Employees Retirement System membership.

Developer understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City employees and not entitled to any of the emoluments of City employment. Further, Developer shall be responsible to withhold and pay, or cause such agents, Developers and sub-Developers to withhold and pay all federal, state and local taxes.

**ARTICLE 34. AMENDMENTS**

The City or Developer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and are signed by a duly authorized representative of the City and Developer. Such amendments shall not invalidate this Agreement, nor relieve or release Developer from its obligations under this Agreement, and must be approved by the Commission of the City of Dayton, if necessary.

**ARTICLE 35. NOTICES AND COMMUNICATION**

Any written notice, invoice 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:

Developer:  
County Corp.  
Attn. Adam Blake  
130 W. Second Street  
Suite 1420  
Dayton, Ohio 45402  
937-531-7048  
[ablake@CountyCorp.com](mailto:ablake@CountyCorp.com)

City of Dayton:  
Planning & Comm. Dev.  
Attn. Pete Thornburgh  
101 W. Third Street  
Room 613  
Dayton, Ohio 45402  
937-333-3797  
[pete.thornburgh@daytonohio.gov](mailto:pete.thornburgh@daytonohio.gov)

Section 3 MBE/FBE Reporting:  
Human Relations Council  
Attn. Juleda Hyde  
371 W. Second Street  
Suite 100  
Dayton, Ohio 45402  
937-333-1403  
[Juleda.hyde@daytonohio.gov](mailto:Juleda.hyde@daytonohio.gov)

**ARTICLE 36. REFERENCES TO LAW**

All references to federal, state and local laws, regulations, rules, or orders contained in this Agreement shall include any and all subsequent amendment, modifications, additions, or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

**ARTICLE 37. POLITICAL CONTRIBUTIONS**

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

**ARTICLE 38. ENTIRE AGREEMENT/INTEGRATION**

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

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

**CITY OF DAYTON, OHIO**

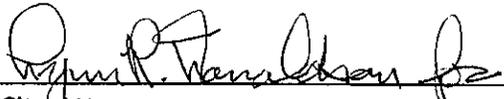
**COUNTY CORP.**

\_\_\_\_\_  
City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
\_\_\_\_\_  
City Attorney *MS*

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

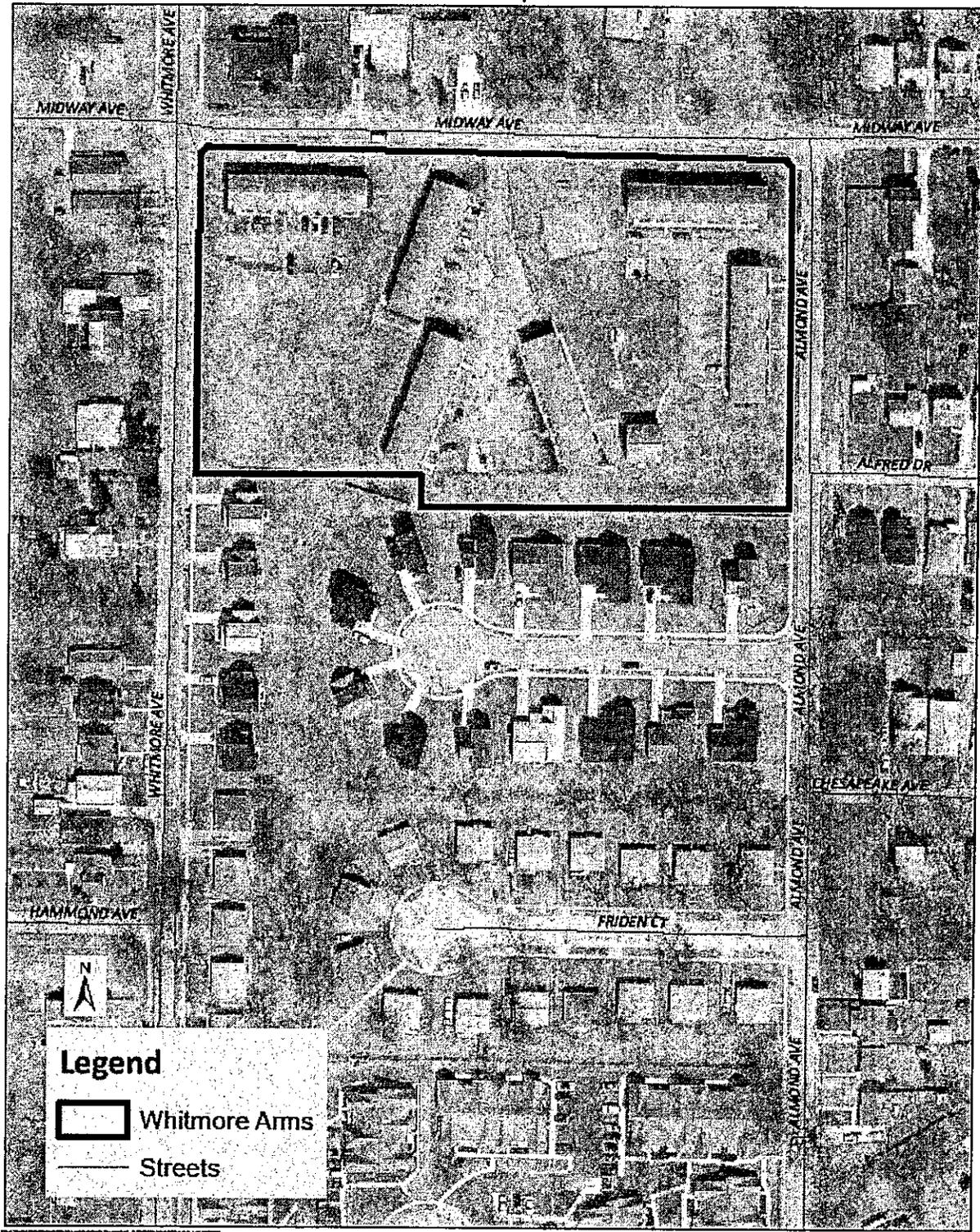
\_\_\_\_\_, 2016

Min./Bk. \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Commission

ATTACHMENT "A"  
Map of Project Area

Whitmore Arms Apartments Site



**ATTACHMENT "B"**

**WOMAN-OWNED OR MINORITY-OWNED BUSINESS ENTERPRISE PARTICIPATION FORM**

**Project Name:** WHITMORE ARMS REDEVELOPMENT

The City of Dayton has adopted procurement programs for Minority, Woman, Small Business Enterprises, and Dayton Local Preference Program in accordance with Sections 35.30 – 35.68 of the Revised Code of General Ordinances (R.C.G.O.), inclusively. This form is to be used to record participation under the aforementioned Sections of the R.C.G.O. In order to participate in the City's Program, Developers must be pre-certified and pre-qualified in accordance with the rules and regulations pertinent to this program. When determining the level of participation, 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	Type of Construction Work to be Performed	\$ Amount of Total Base Bid	% 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 type="checkbox"/>				
Business Firm Name								
Tax I.D. Number								
Street Address								
City/State/ Zip Code								
Phone								
Total \$ Amount of PRIME CONTRACTOR'S Base Bid					Total \$ Amount for Sub	% of Dollars in Base Bid		
PRIME CONTRACTOR'S NAME				PRIME CONTRACTOR'S ADDRESS				
				Street Address				
				City/State/Zip				

**ATTACHMENT "C"**  
**HUD SECTION 3 PARTICIPATION WAIVER REQUEST DOCUMENTATION FORM**  
**10% HUD SECTION 3 PARTICIPATION GOAL**

A bidder requesting a total or partial waiver of the, **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 the **HUD Section 3** goal based on your greatest extent feasible efforts; and only where the HRC determines that the bidder has obtained at least seventy-five (75) points from the following list of activities. **The form with the point values for your greatest extent feasible efforts 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 <b>HUD Section 3</b> having the capability to perform the work of the contract. The bidder must solicit this interest within ten (10) business days of the bid submittal deadline in order to allow the <b>HUD Section 3</b> sufficient time to respond to the solicitation.		
2	20	Negotiated with <b>HUD Section 3</b> 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 <b>HUD Section 3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.		
4	15	Rejected <b>HUD Section 3</b> 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 <b>HUD Section 3</b> 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: <b>HUD Section 3</b> ).		
7	5	Assisted interested <b>HUD Section 3</b> 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 <b>HUD Section 3</b> in the assistance of their business growth and development.		
	100	<b>Bidding Company Name:</b>		

4.

**CITY OF DAYTON  
CITY MANAGER'S REPORT**

TO: City Manager

Date April 27, 2016

FROM: Water / Water Engineering  
Department/Division

Code 53003-3420-1159-54-WD1501 (\$37,500)  
55004-3420-1159-54-WD1501 (\$37,500)

Fund Title 2016 Water & Sewer Capital Funds

(CHECK ONE)

Amount \$ 75,000.00 (Thru 6/2018)

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

Supplier/Vendor/Company/Individual:

NAME David E. Rager Management Consulting, LLC  
ADDRESS 444 Warren Avenue  
Cincinnati, OH 45220

Justification and description of purchase, contract or payment:

**AS-NEEDED UTILITY MANAGEMENT CONSULTING AGREEMENT**

The Department of Water requests permission to enter into a Consulting Services Agreement with David E. Rager Management Consulting, LLC in the amount of \$75,000.00 for As-Needed Utility Management Consulting Services. The consulting services will be used only when requested by the City. The services to be provided include:

- Assist in the development of Department of Water goals, objectives, policies, and priorities.
- Plan and coordinate work as directed by the Director of the Department of Water.
- Provide staff assistance to the Director of the Department of Water and other executive level staff.
- Participate in various internal and external meetings.
- Review significant reports, plans, and documents.
- Other related tasks as directed by the Director of the Department of Water.

David E. Rager Management Consulting, LLC was selected based upon its unique qualifications, expertise in the utility management field, and past performance, therefore this Agreement was negotiation.

The Agreement is being funded using 2016 Water & Sewer Capital Funds.

The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on June 30, 2018.

The Agreement has been reviewed by the Law Department as to form and correctness. A Certificate of Funds and a copy of the Agreement are attached.

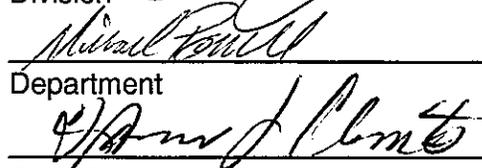
Approved Affirmative Action Program on File  Yes

No       NA

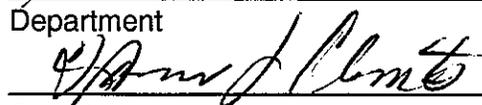
Approved by City Commission

  
Division

Clerk

  
Department

Date

  
City Manager



## **AGREEMENT FOR CONSULTING SERVICES**

**THIS AGREEMENT** is between the City of Dayton, Ohio (“City”) and David E. Rager Management Consulting, LLC (“Contractor”), 444 Warren Avenue, Cincinnati, Ohio 45220.

### **W I T N E S S E T H:**

**WHEREAS**, The City desires certain professional services in connection with “as-needed” services in the City of Dayton, Ohio; and,

**WHEREAS**, Contractor is willing to perform such professional services and represents that they are fully qualified to perform such services; and,

**WHEREAS**, The professional services to be provided under this Agreement are necessary to achieve the purposes of the City’s Water Department.

**NOW THEREFORE**, in consideration of the promises contained in this Agreement (“Agreement”), the City and the Contractor agree as follows:

#### **ARTICLE 1. TERM**

The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on June 30, 2018, whichever date is earlier. The City, however, reserves the right to extend the term of this Agreement to a later date by mutual written agreement, as described in Article 10, subsection J.

#### **ARTICLE 2. SERVICES TO BE PERFORMED BY CONTRACTOR**

##### **A. PROFESSIONAL QUALIFICATIONS**

Contractor is qualified and permitted by law to perform the professional services to be furnished under the terms of this Agreement. Contractor represents and warrants that they are qualified to perform the services to be provided herein and are permitted to do the work they perform. Contractor shall furnish the City with a certified statement setting forth the technical qualifications and the general and specific experience with utility management work, together with other substantiating information as to the Contractor’s qualifications and experience.

##### **B. SERVICES TO BE PERFORMED**

Contractor shall provide, upon the City’s request, one or more of the following services:

1. Assist in the development of Department of Water goals, objectives, policies, and priorities as identified by the City.
2. Plan and coordinate project work as directed by the Director of the Department of Water.
3. Provide staff assistance to the Director of the Department of Water and other executive level staff as appropriate.
4. Participate in various internal and external meetings.
5. Review significant reports, plans, and documents as identified by the City.
6. Research, analyze, and evaluate service delivery methods and techniques identified through the “Water Efficiency Master Plan” study.
7. Research, analyze, and evaluate service delivery methods and techniques identified in the wastewater collection and treatment system.
8. Other related tasks as directed by the Director of the Department of Water.

The services to be furnished by Contractor under this Agreement are to be performed on an “on demand” basis. Unless the City requests Contractor’s services in the manner outlined below, no expenditures under

this Agreement are authorized and Contractor shall be ineligible for reimbursement for that particular service.

### C. ON-CALL SERVICES

The Contractor shall be compensated for twenty (20) hours of on-call services per month. Services provided shall be at the direction of the Director of the Department of Water. The Contractor shall provide the City each month with written documentation of on-call services provided and shall notify the City when the number of hours for services in a calendar month is anticipated to exceed twenty (20) hours.

Prior to commencing the work in excess of twenty (20) hours in a calendar month, the Contractor shall obtain the written approval of the Director of the Department of Water. Within ten (10) business days from the date of receipt of a Work Request or other mutually agreed upon date, Contractor shall provide the City with a written "Scope of Services," which shall include the price for the Work Request service and a time frame for completion of the specified service.

Upon the City's review of the Scope of Services, the City shall indicate its acceptance of Scope of Services and authorize the service to be performed by furnishing Contractor with a written "Notice to Proceed," which shall reference and incorporate the Scope of Services.

### D. DELIVERABLES

All documents, such as audits or assessments, shall be signed and sealed by a principal of the Contractor. All Deliverables shall include a cover letter that references this Agreement's contract number.

## **ARTICLE 3. COMPENSATION**

### A. TOTAL COMPENSATION

The total remuneration of this Agreement shall not exceed SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) for all services to be provided by Contractor pursuant to this Agreement. The Contractor shall be paid at an hourly rate of ONE HUNDRED FORTY-FIVE DOLLARS AND ZERO CENTS (\$145.00) for actual hours worked. This rate is all-inclusive, additional costs, including but not limited to extraordinary travel made at the request of the City will be reimbursed out of the total compensation amount as outlined in Article 3, subsection B, Travel.

### B. TRAVEL

The City acknowledges and agrees that Contractor is not required to travel in performance of any part of the Services. However, if the Parties agree to Contractor travelling as part of the Services then the City agrees to reimburse Contractor for its travel expenses reasonably incurred in performance of the Services. However, payment for such reimbursable expenses is subject to the following limitations:

1. Travel costs shall be billed only for approved, on-site training specifically requested by the Director of the City of Dayton Water Department. Air travel reimbursement is limited to coach/economy rates. Local automobile travel expenses are included in the hourly rates paid as compensation for services. Automobile travel expenses for any destination outside of Montgomery County, Ohio will be reimbursable at the rate of as set by the U. S. Internal Revenue Service for business mileage reimbursement. Contractor shall not be reimbursed for travel expenses to any meetings in Montgomery County, Ohio, or any adjoining Ohio counties.
2. Reimbursable expenses are limited to those out-of-pocket expenses paid by Contractor to some third party, excluding itself, and its employees, excluding any other contractor and sub-contractor and excluding any third party in which Infor has an ownership interest or

Infor receives payments or benefits in consideration for service or product orders given to that third party.

3. Amounts billed as reimbursable expenses are limited to direct costs incurred by Contractor and shall not include any multiple or additional percentage of those costs.
4. In order to be reimbursable, expenses must have been reasonably appropriate or must have been necessary, when evaluated in the light of the services to be performed. The cost of alcoholic beverages or entertainment shall not be reimbursed.
5. Signed, legible and explanatory receipts must be submitted for all reimbursable expenses.

#### C. INVOICES

The Contractor shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

#### **ARTICLE 4. CITY'S RESPONSIBILITIES**

The City will furnish Contractor, at no cost or expense, all reports, records, and data that might be necessary or useful to complete the Services required under this Agreement.

#### **ARTICLE 5. STANDARD OF CARE**

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

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

#### **ARTICLE 6. LIABILITY AND INDEMNIFICATION**

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

This Article 6 shall survive early termination or expiration of this Agreement.

#### **ARTICLE 7. CONFIDENTIALITY**

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

To the extent permitted by law, each party agrees that for a period of two (2) years following the date of

disclosure of the confidential or proprietary information, it will not disclose such information of the other to any third party without the other party's written consent. During this two-year period, each party will protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

Nothing in this Article shall prohibit or limit a party's disclosure of confidential information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) that is or becomes publicly available through no breach of this Agreement, (iv) when such disclosure is required by an order of a Court or under state or federal law, or (v) when such disclosure is authorized in writing by the City.

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

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

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

#### **ARTICLE 9. TERMINATION**

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

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

Any such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the Contractor. The City will be under no further monetary obligation or commitment to the Contractor. The City may terminate this contract at any time upon thirty (30) days written notice to the Contractor.

In the event of termination, the City may, at its option, exercise any remedy available to it, including those available under the Uniform Commercial Code, according to Ohio law.

#### **ARTICLE 10. STANDARD TERMS**

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

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

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

**B. GOVERNING LAW AND VENUE**

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

**C. COMMUNICATIONS**

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

Contractor: David E. Rager Management Consulting, LLC  
444 Warren Avenue  
Cincinnati, Ohio 45220  
Attention: David E. Rager

City: City of Dayton, Department of Water  
320 West Monument Avenue  
Dayton, Ohio 45402  
Attention: Mr. Michael Powell  
Interim Director, Department of Water

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

**D. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

**E. WAIVER**

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

**F. SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or

enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

#### **G. INDEPENDENT CONTRACTOR**

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

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

Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

#### **H. ASSIGNMENT**

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

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

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

#### **J. AMENDMENT**

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

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

#### **K. RECORDS**

Contractor shall keep its records related to the matters covered by this Agreement in compliance and conformity with generally accepted accounting practices. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City all of its records with respect to all matters covered herein, and will permit the City, at its expense, to audit, examine, and

make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and other data pertaining in whole or part to matters covered within this Agreement. In performing any independent audit, Contractor shall require the auditor to reasonably comply with all applicable City rules and regulations governing such procedures.

**L. POLITICAL CONTRIBUTIONS**

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

**M. INTEGRATION**

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

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

**CITY OF DAYTON, OHIO**

**DAVID E. RAGER MANAGEMENT  
CONSULTING, LLC**

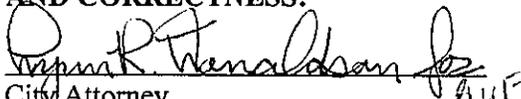
\_\_\_\_\_  
City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
\_\_\_\_\_  
City Attorney

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

\_\_\_\_\_, 2016

Min./Bk. \_\_\_\_\_ Pg. \_\_\_\_\_

\_\_\_\_\_  
Clerk of Commission

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager Date April 27, 2016

FROM: Planning & Community Development Code 25529-2390-1159-31  
Community Development Division

(CHECK ONE) Fund Title Miami Valley Housing  
Opportunities Inc.  
Amount \$2,186,636.00 (Thru 4/30/17)

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

Supplier/Vendor/Company/Individual:  
NAME Miami Valley Housing Opportunities  
ADDRESS 907 W. Fifth Street  
Dayton, Ohio 45402

Justification and description of purchase, contract or payment:

**Miami Valley Housing Opportunities for the Shelter Plus Care Tenant-based Rental Assistance Program**

The Department of Planning and Community Development is requesting authorization to enter into a Subrecipient Agreement with Miami Valley Housing Opportunities (MVHO) for the Shelter Plus Care Tenant-based Rental Assistance (S+C TRA) Program. This renewal grant was awarded to the City of Dayton by the U.S. Dept. of Housing and Urban Development (HUD) through the 2015 Homeless Continuum of Care. The 2015 S+C TRA Program operates from May 1, 2016, through April 30, 2017. MVHO administers the S+C TRA Program on behalf of the City by providing permanent supportive housing to reduce homelessness in our community.

Due to various timing delays related to the Federal Government budget process, the U.S. Department of Housing and Urban Development has advised the City that the award for the FY 2015 Shelter Plus Care Grants will be delayed several months. To minimize impact on the S+C TRA Program, which provides over 260 rental subsidies on a monthly basis to homeless adults who have severe and persistent mental illness, chronic substance abuse, or HIV/AIDS and related diseases, this Agreement provides a General Fund advance to MVHO in the amount of \$1,000,000.00. The advance will be repaid once the new grant award and agreements are in place and the equivalent amount of grant funds is drawn. Approval is requested for the full award amount of \$2,186,636.00, but only \$1,000,000.00 will be encumbered at this time. Upon receipt of grant agreements, an additional Certificate of Funds in the amount of \$1,186,636.00 will be requested for the balance of the grant award.

This Agreement has been reviewed by the Law Department as to form and correctness. This Agreement shall commence upon execution by the City, and it shall terminate April 30, 2017.

A Certificate of Funds in the amount of \$1,000,000.00 is attached.

Approved Affirmative Action Program on File  Yes

Approved by City Commission

Clerk

Date

No       NA

*Erin M. Apprie*  
Division

*Ann K. Souell*  
Department

*James D. Chrost*  
City Manager



**CONTINUUM OF CARE AGREEMENT  
SHELTER PLUS CARE TENANT-BASED RENTAL ASSISTANCE  
CFDA 14.238**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, is between the **CITY OF DAYTON, OHIO** (hereinafter referred to as the "City") and **MIAMI VALLEY HOUSING OPPORTUNITIES, INC**, a not-for-profit corporation organized under the laws of the State of Ohio, (hereinafter referred to as "Subrecipient").

**WITNESSETH, THAT:**

WHEREAS, pursuant to Title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and the Continuum of Care Program Regulation, the City approved the Dayton/Kettering/Montgomery County 2014 Continuum of Care application prepared by the Homeless Solutions Policy Board; and anticipates being awarded Shelter Plus Care Program grant renewals for Tenant-based Rental assistance components; and

WHEREAS, it is necessary that the City and the Subrecipient enter into an Agreement for the implementation of activities related to the Shelter Plus Care Program ("S+C Program");

NOW, THEREFORE, for the consideration of mutual promises hereinafter set forth, City and Subrecipient agree as follows:

**ARTICLE I.        SCOPE OF SERVICES**

Subrecipient shall provide the work and services, in a manner satisfactory to the City, for the S+C Program as set out in "Attachment A, Scope of Services," which is attached hereto and incorporated herein.

**ARTICLE II.        TERM OF PERFORMANCE**

This allocation of funds from the U.S. Department of Housing and Urban Development (HUD) is for a one-year period. This Agreement shall be effective for services performed May 1, 2016, through April 30, 2017, at which time all work must be satisfactorily completed in compliance with this Agreement. The Subrecipient shall commence performance upon the effective date of the Agreement.

The Subrecipient shall submit all requests for funds to the City by April 30, 2017. Such funds must be approved, processed and reimbursed by May 31, 2017.

**ARTICLE III.      GRANT OF FUNDS**

The City shall make available to the Subrecipient, **TWO MILLION ONE HUNDRED EIGHTY-SIX THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS AND ZERO CENTS (\$2,186,636.00)**, for the work and services to be provided by the Subrecipient pursuant to this Agreement.

The S+C Program Tenant-based Rental Assistance (TRA) program provides rental assistance to clients who choose their own housing in the private rental market.

Funds to be provided hereunder shall be expended in accordance with the line item budget referred in Attachment A, Section F, Table A.

**ARTICLE IV.      BUDGET AND PAYMENT PROCEDURES**

**A.      Budget**

Attachment A, Section F, Table A is the official budget for work to be performed under this Agreement. The Subrecipient's accounting and invoices will be structured in the same level of detail as the budget to facilitate monitoring of performance. Expenditures made by Subrecipient shall be allowable to the extent they:

1. Conform to all provisions of this Agreement;
2. Are necessary in order to carry out the activities and accomplish the objectives and goals set forth in Attachment A;
3. Conform to the HUD Fair Market Rent and/or rent reasonableness established for each particular unit;
4. Are actual net costs (i.e., Contract Rent minus any tenant contributions, rebates, refunds, or other items of value received by Subrecipient that have the effect of reducing the cost actually incurred);
5. Are incurred during the dates this Agreement is effective;
6. Conform with the standards for allowable costs set forth in the Federal Management Circular 74-4; and
7. Are satisfactorily documented in accordance with generally accepted accounting principles and the procedures approved or prescribed by HUD in OMB Circulars A-110 and A-122, and the City.

**B.      Process for Payments**

Disbursements of funds shall be made against the line item budget specified in Attachment A, Section F, Table A and in accordance with performance. The City will pay the Subrecipient for

projected rental costs for the succeeding month based on estimates submitted by the Subrecipient through the Shelter + Care Advance Request Form.

Expenditures shall be made solely for goods and services that will be utilized during the term of this Agreement. The Subrecipient shall not spend funds for services that are to be furnished beyond the term of Agreement. Funds spent for services supplied or consumed in whole or in part beyond the term of this Agreement shall be unallowable expenses with respect to that portion of goods or services consumed or supplied beyond the term hereof.

**C. Settle-Up Provisions**

1. Recognizing that the City is paying the Subrecipient for the succeeding month of service, there is the possibility that actual expenditures may be greater or less than the amount invoiced. The City will compare the estimated amount billed for the Shelter Plus Care Advance Request Form (Exhibit I) with the month's actual costs in the Shelter Plus Care Actual Expenditure Report (Exhibit II). In the event that the City over or under pays Subrecipient for actual expenses, settle-up provisions will need to occur in order to maintain accurate expenditures. Each month, the City will determine the amount of settle-up costs based on month-end actual expenditure reports submitted by the Subrecipient, required in this Agreement under Attachment A, Section I, Reporting.
2. If actual expenditures through the end of the quarter are more than the cumulative monthly amounts paid to Subrecipient, Subrecipient will submit an additional invoice to receive the difference. The City will make the additional payment at the time it remits payment for the succeeding month.
3. If the actual amount expended is less than the amount paid to Subrecipient, the City will deduct the difference from payment on the next regular monthly invoice submitted.
4. The settle-up process will conclude with a final assessment at the end of the grant period and reconciliation between expenditures and revenue.

**ARTICLE V. GENERAL CONDITIONS**

**A. Independent Contractor**

The parties hereby agree that at all times, the Subrecipient shall be an independent contractor and not subject to control by the City, except as provided herein. As an independent contractor, the parties hereby agree that the relationship between the parties shall not be held out or construed as employer-employee, joint-venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of the other party, without the prior written and express authority to do so by a duly authorized representative of the other party.

Subrecipient understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City employees, and not entitled to any

of the emoluments of City employment, including for the purposes of Ohio Public Employee Retirement System membership. Further, the Subrecipient shall be responsible for paying such agents, Subrecipients and sub-Subrecipients and for withholding from their pay, all local, state and federal taxes as well as Workers Compensation Insurance.

**B. Insurance and Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to all advances of funds from the City. Subrecipient shall comply with the bonding and insurance requirements of Attachment B of OMB Circular A-110, Bonding and Insurance.

**C. Amendments**

1. The City and Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.
2. If a substantive change is proposed (hereby defined as any change that requires approval from HUD), the Homeless Solutions Policy Board may provide input into the changes prior to City approval.
3. This Agreement shall conform to federal, state and local governmental guidelines, policies and available funding amounts. If such conformity results in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, the City and Subrecipient agree to amend this Agreement to reflect any such change.

**D. Subcontracting**

1. None of the services covered by this Agreement shall be subcontracted without prior written consent by the City and/or formal amendment of this agreement except those subcontracts identified in "Attachment B" of this Agreement (Sub-Subrecipient Agreement between Miami Valley Housing Opportunities (MVHO) and the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board for Montgomery County).
2. The Subrecipient will monitor the approved subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported by documented evidence of follow-up actions taken to correct areas of noncompliance.

**E. Assignability**

The Subrecipient shall not assign any interest in this Agreement, and shall not transfer any interest in the same without prior written consent of the City.

**F. Indemnification**

The Subrecipient shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages and expenses to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement, including any violation of state, federal or local laws, rules and regulations governing the use of S+C Program dollars and/or the acts, omissions or conduct of Subrecipient employees, contractors or agents.

**G. Political Contributions**

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

**H. Suspension or Termination**

1. Either Party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination.
2. The City may terminate this Agreement and such additional supplemental Agreements hereafter executed, in whole or in part, and may recover any funds paid to the Subrecipient at its discretion if Subrecipient:
  - (a) Violates any provision of the Agreement; or
  - (b) Violates any provision of the Stewart B. McKinney Homeless Assistance Act, as amended by the HEARTH Act; or
  - (c) Violates any applicable regulations or terms and conditions of approval of the applications that the Secretary of HUD has issued or shall subsequently issue during the period of this Agreement; or
  - (d) Fails to complete performance as specified in Attachment A or in a timely manner.
3. The City may also terminate this Agreement and such supplemental Agreements hereafter executed, in whole or in part, by giving the Subrecipient 30 days written notice, in the event that the Secretary of HUD shall:

- (a) Withdraw funds allocated to the City under its application for S+C Program activities, thus preventing substantial performance of the S+C Program or any portion thereof intended as activities to be undertaken by the Subrecipient; or
  - (b) Terminate the City's funding allocation pursuant to an Act of Congress.
4. The City may impose sanctions if the Subrecipient violates any provision of this Agreement. These sanctions may include, but are not limited to:
- (a) Refusal to renew or extend the present Agreement or execute a new agreement with the Subrecipient.
  - (b) Total or partial suspension of funding by non-payment or partial payment of invoices or by other means.
  - (c) Withholding or disallowing the payment or reimbursement of administrative costs.
  - (d) Termination of funding or of the Agreement itself.

**I. Entire Agreement / Integration**

This Agreement, together with all Attachments and Exhibits referenced herein, represents the entire and integrated Agreement between the City and the Subrecipient. 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.

**J. Conflict of Interest**

Subrecipient agrees to abide by the provisions of 24 CFR, Part 582.340 (b) with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner of degree with the performance of services described in Article I and Attachment A, Scope of Services. Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official to the City. Participation by homeless individuals who are also participants under the program in policy or decision-making does not constitute as a conflict of interest.

**ARTICLE VI. ADMINISTRATIVE REQUIREMENTS**

**A. Compliance with Regulations**

The Subrecipient shall comply with all applicable uniform administrative requirements, including those listed in Attachment B, that is attached hereto and made a part hereof, as if fully rewritten.

**B. Financial Management**

1. Accounting Standards

The Subrecipient shall comply with Attachment F of OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer the program in conformance with OMB Circular A-122, Cost Principles for Non-Profit Organizations. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

**C. Documentation and Record-Keeping**

1. Maintenance and Availability of Records

- (a) The Subrecipient shall maintain all accounting and client records and documents, and any evidence pertaining to costs incurred, as more fully described in Attachment A, Section H that is attached hereto and made a part hereof as if fully rewritten.
- (b) Such records shall be furnished and available for inspection by the City, HUD, the Comptroller General of the United States, and/or any authorized representative of the City of Dayton.
- (c) Such records shall be available at the Subrecipient's offices at all reasonable times during the contract period.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there are claims, audits, negotiations, litigation or other actions that involve any of the records cited and that have commenced before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Close-Outs

The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of S+C Program assets (including the return of all unused materials, equipment, unspent cash advances) and determining custodianship of records.

4. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, its designees or the Federal Government, at any time during normal business hours, as often as the City, or its designees deem necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully rectified by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with OMB Circular A-133.

5. Reversion of Assets

When the Agreement ends, the Subrecipient must transfer to the City any S+C Program funds on hand and accounts receivable attributable to the use of S+C Program funds.

**D. Reporting Procedures**

1. Annual Report

In regard to this Agreement, the Subrecipient shall complete a HUD Annual Progress Report and submit it to the City on or before May 30, 2017.

2. Progress Reports

The Subrecipient shall submit and provide to the City a monthly progress report with each invoice. At a minimum, the progress report should contain the following:

- (a) Number of clients anticipated to be served during the month, broken down by continued tenants and estimated new tenants.
- (b) Every new and continued tenant must be categorized by the type of unit the tenant will be occupying (zero-bedroom, one-bedroom, etc.).
- (c) The total rental assistance being requested by category of unit (multiplied by the number of continued tenants and estimated new tenants by the local HUD Fair Market Rent determined for each category of unit).

- (d) The total TRA rental assistance being requested, broken down by continued tenants, new tenants and the administrative charges associated with each.
- (e) The total monthly rent assistance and administrative charges being requested for the upcoming month. Subtract any carry-over from the previous month's payment from the sum of the rental assistance and the corresponding administrative charge, for a net total request.
- (f) The total projected S+C Program statistics for the upcoming month that total clients by the type of unit they will occupy and by their diagnosis (mentally ill; substance abuser; mentally ill and a substance abuser; living with AIDS; and, without a current diagnosis).
- (g) The landlord list by S+C client, citing their address and the type of unit they will occupy, the client's diagnosis, the expenses attributed to each and then totaling those expenses (by client and for the entire list).

**E. Procurement**

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, "Procurement Standards," and shall subsequently follow Attachment N, "Property Management Standards," as modified by Title 24 CFR 570.502 (b)(6), covering utilization and disposal of property.

**ARTICLE VII SECTION 3 REQUIREMENTS**

**A. Section 3 Clause**

**1. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient agrees to comply with the "Section 3" requirements set forth above, and shall include the following language in all subcontracts executed for the program:

"The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements

of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to insure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project or program is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or program or the neighborhood in which the project or program is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project or program is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project or program is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with the requirements set forth herein. Should this activity be deemed not feasible, Subrecipient will be responsible for providing City with all necessary documentation for justification.

## 2. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

## 3. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**ARTICLE VIII. ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. 7401, et seq.
2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. Environmental Protection Agency (EPA) regulations pursuant to Title 40 CFR, Part 50 as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by FEMA as having specific flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint regulations at 24 CFR 570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

**ARTICLE IX. NOTICES**

Communications and notices concerning this Agreement shall be directed to the following contract representatives:

**City of Dayton**  
Erin Ritter  
Dept. of Planning & CD  
101 W. Third Street  
Dayton, Ohio 45402  
(937) 333-3816  
Erin.Ritter@daytonohio.gov

**Miami Valley Housing Opportunities, Inc.**  
Debbie Watts-Robinson  
907 West Fifth Street  
Dayton, OH 45402  
(937) 263-4449 ext 402  
drobinson@mvho.net

**IN WITNESS WHEREOF**, the City by its City Manager, and the Subrecipient, by its Chief Executive Officer, have executed this Agreement.

**CITY OF DAYTON, OHIO**

**MIAMI VALLEY HOUSING  
OPPORTUNITIES, INC.**

\_\_\_\_\_  
City Manager

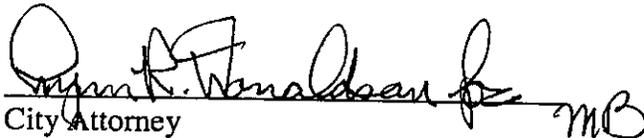
\_\_\_\_\_  
Debbie Watts-Robinson, Chief Executive Officer

Date \_\_\_\_\_, 2016

Date \_\_\_\_\_, 2016

**APPROVED AS TO FORM  
AND CORRECTNESS**

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

  
\_\_\_\_\_  
City Attorney

\_\_\_\_\_, 2016

Min./Bk. \_\_\_\_\_ Page \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Commission

# ATTACHMENT A

## Scope of Services

### A. Program Description

This Shelter Plus Care (S+C) Program will provide permanent, subsidized, housing aligned with support services to homeless single adults with qualifying disabilities, and homeless adults with qualifying disabilities, who have family members living with them. This Program includes Tenant-Based Rental Assistance (TRA) which is further described hereinafter.

The qualifying disabilities for S+C Program participants include: severe and persistent mental illness; serious mental disorder; chronic chemical dependency or substance abuse; co-occurring severe and persistent mental illness and chemical dependency; AIDS and related diseases.

The Subrecipient certifies that this Program described herein will benefit disabled, homeless individuals, as described at 24 CFR, Part 582 (1) (a).

### B. Program Outcomes

The Program will provide rent subsidy for at least 261 units of service (allocated as follows: 221 for TRA, 10 for TRA Chronic I, 14 for TRA Chronic II, and 16 for TRA Chronic III) over the term of the Agreement. A "unit of service" is defined as providing 12-months of permanent subsidized housing, aligned with supportive services.

As required by the regulations contained in 24 CFR, Part 582.110, the Subrecipient shall maintain all documentation necessary to verify a match of supportive services. Such supportive services will be available to participants for the entire term of the rental assistance.

### C. Homeless Population to be Served

#### 1. Participant Characteristics

The homeless persons to be served under this Program have serious disabilities that impede their ability to live independently. They are extremely low income because their disability restricts their ability to work. They need independent living skills support, supportive services related to their disability, access to employment services and opportunities, and money management support.

#### 2. Program Participant Entry

Before entry into the Program, participants must be homeless. This is defined as persons who, without Shelter Plus Care Program assistance, would spend the night in a shelter or place not meant for human habitation, including:

- Sleeping places not meant for human habitation;
- Sleeping in shelters;
- Living in transitional/supportive housing, but came there from the streets or shelter;

- Being evicted within the week from a private dwelling, and having no residence identified or resources/supports to find housing.
- Being discharged from a hospital or institution following a stay of less than 30 days and having no residence identified or resources/supports to find housing.

**3. Outreach/Referral Plan**

Potential Program participants will be referred through the Homeless System Front Door Assessment Process. The Front Door assessment of homeless persons is conducted by the PATH street outreach program, and at the four gateway shelters- Gettysburg Gateway for Men, St. Vincent DePaul for Women and Families, Daybreak (youth), and the YWCA (victims of domestic violence). The Front Door Process also conducts assessments of homeless person referred by the mental health system, substance abuse treatment centers, AIDS Resource Center of Ohio, and the VA Medical Center.

**4. Dwelling Types:**

The anticipated 261 units of service that will be subsidized and made available under this Program, by dwelling type, are as follows:

Zero Bedroom	2
One Bedroom	187
Two Bedroom	40
Three Bedroom	23
Four Bedroom	9

Allocation between the TRA Program components for the aforementioned specific dwelling types is set forth in Table A, which is attached hereto.

**D. Subrecipient Responsibilities**

The Subrecipient shall be responsible for completing the following activities:

- 1. General Responsibilities**
  - a. Coordinating all services related to the Program.
  - b. Maintaining and reporting on Program implementation and status.
  - c. Providing a total of 261 units of service as follows: 221 units of Tenant-based Rental Assistance (TRA) for homeless persons with disabilities, 10 units of Tenant-Based Rental Assistance for chronically homeless persons with disabilities (TRA Chronic I), and 14 units of Tenant-based Rental Assistance for chronically homeless persons with disabilities (TRA Chronic II), and 16 units of Tenant-based Rental Assistance for chronically homeless persons with disabilities (Chronic III) in accordance with Table A and the regulations contained in 24 CFR, Part 582.
  - d. Certifying that the Program activities benefit the disabled and homeless, as described at 24 CFR, Part 582 (1)(a).
  - e. Utilizing the Homeless Management Information System (HMIS) to track client outcomes throughout their participation in the Program.

## 2. **Participant Related Activities**

The Subrecipient shall be responsible for the following Program participant related activities:

- a. Implement an outreach plan, obtain participant agreements to enter Program and establish income qualification. Income qualification must be completed initially and at least annually thereafter. This activity must commence within the first thirty days from the date of the City's execution of this Agreement.
- b. Ensure that an assessment to establish disability under the Subrecipient's service category be completed by the referring agency. All assessments must be conducted by individuals identified in the Ohio Department of Mental Health's Administrative Rules for Mental Health Assessment- Non Physician and/or Psychiatric Diagnostic Interview, Physician (for individuals with mental health disorders) and Ohio Department of Alcohol and Drug Addiction Services' Administrative Rules for Assessment (for individuals with alcohol and other drug disorders).
- c. Assist Program participants with selecting an appropriate residence from the units available to the Subrecipient; and, if the unit is to be leased from a third party directly to the participant, insure that the lease Agreement conforms to Program standards and requirements.
- d. The Subrecipient must provide or cause to be provided a system of case management for each Program participant, and assure that each participant has access to the supportive services. Supportive service delivery shall commence within ninety days of the date this Agreement is executed by the City, or upon occupancy of each unit, whichever occurs earlier.
- e. Acclimate each Program participant to the residence, immediate environs, neighborhood, and community services. It is the Subrecipient's responsibility to communicate with the Front Door referring agency's case management services to provide the Program participant with furniture, fixtures, supplies, and other essentials.

## 3. **Housing Related Activities**

The Subrecipient shall be responsible for the following housing related activities for the Program:

- a. Verify the continued availability of housing resources and find equivalent alternative housing resources as required. The Subrecipient will negotiate a contract rent. Contract rent cannot exceed the rent reasonableness standard and in many cases the "Fair Market Rent."
- b. Prior to occupancy of any unit by a Program participant, the Subrecipient will ensure a physical inspection by a qualified HQS inspector. If the unit inspected fails to meet HQS, the Subrecipient or the lessor is responsible for the cost of repairs necessary to meet HQS.

- c. The Subrecipient will test for rent reasonableness (i.e. the contract rent is reasonable in relation to rents currently being charged for comparable unassisted units) as well as not in excess of rents currently being charged by the same owner for comparable unassisted units. Prior to submitting any voucher form requesting the payment of the rent subsidy for a unit, the Subrecipient shall comply with 24 CFR, Part 582.305 (b), by using the "Rent Reasonableness Survey" from the Greater Dayton Apartment Association and assure that the unit has also met GDPM's HQS.
- d. Require annual re-inspection and HQS certification from HQS -trained inspectors.
- e. Maintain records of any Program participant's absence during the lease term for inpatient care at a hospital or other health care facility. If a Program participant is temporarily away to receive inpatient care, Program rental assistance will continue for up to 90 days. Invoices provided to the City shall indicate each participant and unit-residence for which rental assistance is billed during the current period.

**4. Participant Intake and Processing**

The Subrecipient shall manage the intake of Program participants, verify eligibility for participants to be housed in TRA units, monitor participants and ensure that the services they require are being provided, and prepare subsidy vouchers for the 261 TRA units in the following manner:

- a. The Subrecipient will process referrals from the Homeless System Front Door Assessment Process and shall create a list of "eligible persons" as described in 24 CFR, Part 582 (1)(a).
- b. The Subrecipient shall maintain policies and procedures consistent with Shelter Plus Care Program and the federal "Section 8" regulations generally as they are applicable to the Shelter Plus Care Program grant and shall utilize these policies and procedures in receiving referrals from the Homeless System Front Door Assessment Process

**5. Participant Referrals for Tenant-Based Housing**

- a. The Subrecipient shall make referrals of persons on the list generated from the standards set forth in Paragraph 4(a) above, Participant Intake and Processing to property owners (tenant-based assistance) for purposes of securing housing through the Program.
- b. To determine HQS compliance, the Subrecipient shall assist potential Program participants with contacting the property owner and shall select an inspector and arrange for the inspection.
- c. The Subrecipient shall assure that the unit has passed inspection and keep a copy of the inspection form on file for a period of no less than 3 years after vacation of the unit by the participant. A participant will not be allowed to move into a unit until that unit has successfully passed an inspection. The Subrecipient shall also ensure that housing units used in the Program are re-inspected on not less than an annual basis. The participant must also keep

copies of the re-inspection on file for a period of no less than 3 years after vacation of the unit. HQS trained inspectors shall perform such annual inspections.

**E. Performance Monitoring**

The City will monitor the Subrecipient's performance against goals and performance standards as identified in Section B above and the regulations contained in 24 CFR, Part 582.

The City shall conduct on-site monitoring of the Subrecipient annually. Substandard performance, as determined by the City, shall constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time, as determined by both parties, after being notified by the City, Agreement termination procedures will be initiated.

**F. Budget**

The Subrecipient shall use the funds made available by this Agreement for the Program to provide rental assistance and for such administrative costs as are described in Table A, which is attached hereto and incorporated herein.

**G. Payment Procedures**

1. Subject to receipt of funds from the Federal Government/grantor agency, the City agrees to advance and/or reimburse the Subrecipient for authorized expenditures for which vouchers, rental receipts and other similar documentation to support payment expenses are maintained by the Subrecipient under those generally accepted accounting principles and procedures approved by the City and outlined in OMB Circulars A-110 and A-122 and those specific requirements in Article IV of this Agreement.
2. Payments to the Subrecipient shall be made upon the submission of a monthly rental assistance invoice to the City's Department of Planning and Community Development. Such invoices will include the following information:
  - a. A summary of current and cumulative actual costs compared to the budget; and
  - b. Such other reports, documentation and information as specified within this Agreement.
3. Payments to the Subrecipient shall be made as follows:
  - a. The City shall process invoices within thirty (30) days following receipt thereof or, if documentation is inappropriate or insufficient, the City shall provide the Subrecipient a clear statement regarding the ineligibility or deficiencies to be eliminated prior to acceptance for processing.
  - b. In the event that it is deemed necessary by the City, HUD or the Comptroller General of the United States of America, or any authorized representative of said agencies or persons, to conduct any audit of the records of the Subrecipient, the City may withhold payment until such audit is concluded, if improprieties are suspected.

- c. The City shall retain in its Line of Credit the Subrecipient's reserve funds which shall consist of the differential between Fair Market Rent (FMR) and Contract Rent less tenant rent contribution, not to exceed eight percent (8%) of total FMRs for all Subrecipients' units. The Subrecipient may draw upon this reserve fund in order to pay for:
- (i.) Administrative Costs: The costs of administering the housing assistance Program including eligible costs of processing rental payments to landlords, examining participant income and family composition, inspecting units for compliance with housing quality standards, providing housing information and assistance, and receiving into the Program new participants. It does not include any costs of support services or the costs of audits or preparation of reports or forms required under this Agreement.
  - (ii.) Property Damage: Damage to housing due to the action of a participant, not to exceed the amount of one month's rent.
  - (iii.) Additional Rent Payments: The costs of rent increases or the costs of serving a greater number of participants.

#### **H. Documentation and Record Keeping**

The Subrecipient shall keep and maintain the following records and documents specified hereinafter as well as all others identified within this Agreement in accordance with the requirements set forth in Article IV of the Agreement:

1. The list of all current members of the Subrecipient's Board of Trustees (or Directors) with addresses, professional affiliations, home and work phone numbers, and term of office.
2. The Subrecipient's most recent letter from the Federal Internal Revenue Service certifying that the Subrecipient holds "501(c)(3)" not-for-profit status.
3. The Subrecipient's current financial statement.
4. The Subrecipient's 2013 and 2014 audited financial statements.
5. Resolution by the Subrecipient's Board of Trustees (or Directors) authorizing acceptance of this Agreement, signed by the Board Chair or President.
6. A copy of each form to be used by the Subrecipient for Program activities to be performed. These shall include but are not limited to: lease form between the Subrecipient and Lessor; participant application; GDAA Rent Reasonableness Survey; GDPM HQS form; occupancy agreement and lease rescission agreement between the Subrecipient and Program participants; participant's income verification; annual recertification of participant's income; participant release of personal history Agreement; documentation of disability.
7. A copy of the Subrecipient's participant rights plan or grievance process.
8. A copy of the Subrecipient's outreach plan that shows how full occupancy of all Subrecipient housing units will be attained.

9. A register of the specific properties for which Program rental assistance will be used, including addresses, ownership, number of bedrooms, and Contract Rent, and term of lease Agreement.
10. Records pertaining to rental assistance provided to Program participants, including:
  - a. Record of individual participants participating in Program and their duration.
  - b. Copy of occupancy agreements.
  - c. Copy of service commitments.
  - d. Copy of form(s) used to calculate Contract Rent, Tenant Rent, and Program Rent Payment.
  - e. Copy of rent receipts for leased units or copy of invoices for Subrecipient-owned units.
  - f. Copy of HQS Certificate, initial and annual.
  - g. Copies of correspondence between Subrecipient and Lessors.
  - h. Copies of correspondence between Subrecipient and participants relating to the housing unit occupied.
11. Records pertaining to the use and documented Program administration costs and funds, including:
  - a. Copies of invoices to the City with justification of administrative costs.
  - b. Copies of any notices of Contract Rent adjustment that will increase or decrease the Program rental payment.
12. Documentation of supportive services that provide the local match for Program rental assistance, including the following:
  - a. A record of total annual service obligations as specified in this Attachment A at Paragraph B, titled "Program Outcomes."
  - b. Value of pro-rata share of lease on buildings where services will be provided to participants;
  - c. Salaries and benefits of staff and pro-rata share directly benefiting Program participants with supportive services; and
  - d. Value of other supportive services including voluntary services and donated professional services.
  - e. Record of supportive services expenses for the current period; cumulative expenses for the fiscal year; and the balance remaining to be expended.
  - f. Individual service expenditures for each participant.
  - g. Log of all voluntary activity indicating the name of the volunteer, the hours worked during the month, the services provided, and the dollar value assigned. (Voluntary services may be valued at \$10 per hour, except that professional services may be valued at the practitioner normal hourly rate.)



**TABLE A**

**Attachment A, Section F**

**City of Dayton Shelter Plus Care Renewal Grant  
2014 Program Budget**

**Tenant-Based Rental Assistance (TRA) Component Program Budget**

Name of metropolitan or non-metropolitan Fair Market Rent (FMR) area: Dayton/Montgomery County				
Size of Units	Number Of Units	FMR or Actual Rent	Number of Months	Total
SRO	x	x	=	\$
0 Bedroom	2 x	\$493 x	12 =	\$11,832
1 Bedroom	187 x	\$554 x	12 =	\$1,243,176
2 Bedrooms	40 x	\$726 x	12 =	\$348,480
3 Bedrooms	23 x	\$972 x	12 =	\$268,272
4 Bedrooms	9 x	\$1,089 x	12 =	\$117,612
5 Bedrooms	x	x	=	\$
6 Bedrooms	x	x	=	\$
Other: _____	x	x	=	\$
<b>Totals:</b>	<b>261</b>	x	=	<b>\$1,989,372</b>

Administration Costs not to exceed \$197,264

## ATTACHMENT B

The Subrecipient hereby assures and certifies that:

1. It will comply with various local, state, and federal laws, orders, rules, regulations, and acts that pertain to the implementation of this Agreement and or the Program, including, but not limited to the following:
  - a. It will comply with Title IV of the Civil Rights Act of 1964 (42 United States Code ("U.S.C.") § 2000 (d)) and regulations pursuant thereto (Title 24 CFR, Part 1), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Program or activity for which the Subrecipient receives financial assistance, and will immediately take any measures necessary to effectuate this Agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of federal financial assistance extended to the Subrecipient, this assurance shall obligate the Subrecipient, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the federal financial assistance is extended or for another purpose involving provision of similar services or benefits.
  - b. It will comply with the Fair Housing Act (42 U.S.C. §§ 3601-19), as amended, and with the implementing regulations at 24 CFR, Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its Programs and activities relating to housing in a manner to affirmatively further fair housing.
  - c. It will comply with President's Executive Order ("EO") 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR, Part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with federal financial assistance.
  - d. It will comply with EO 11246 and all regulations pursuant thereto (42 CFR, Chapters 60-61), which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal contracts and shall take affirmative action to ensure equal employment opportunity. The Subrecipient will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.
  - e. It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701(u)), and regulations pursuant thereto (24 CFR, Part 35), which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the Program and contracts for work in connection with the Program be awarded in substantial part to persons residing in the area of the Program.
  - f. It will comply with Section 540 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and with implementing regulations at 24 CFR, Part 8, which prohibit

discrimination based on handicap in federally-assisted and conducted Programs and activities.

- g. It will comply with the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07), as amended, and implementing regulations at 24 CFR, Part 146, which prohibit discrimination because of age in Programs and activities receiving federal financial assistance.
  - h. It will comply with EO 11625, 12432 and 12138, which state that Program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.
  - i. If persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.
  - j. It will comply with the reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended.
  - k. It will comply with Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, Ohio and 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 determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.
2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) by:
- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subrecipients workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - b. Establishing an ongoing drug-free awareness Program to inform employees about:
    - (1) the dangers of drug abuse in the workplace;
    - (2) the grantee's policy of maintaining a drug-free workplace;
    - (3) any available drug counseling, rehabilitation, and employees assistance Programs; and
    - (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will (1) abide by the terms of the

statement; and (2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

- e. Notifying the City in writing, within ten business days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
  - f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;
    - (1) taking appropriate personnel action against such an employee, up to and including termination consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation Program approved for such purposes by a federal, state, or local health agency, law enforcement, or other appropriate agency;
  - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f);
  - h. Providing the street address, city, county, state, and zip code for the site or sites where performance of work in connection with the grant will take place. For some Subrecipients who have functions carried out in several locations, more than one location may need to be specified. It is further recognized that Subrecipients may add or change sites as a result of changes to Program activities during the course of grant-funded activities. Subrecipients, in such cases, are required to advise the City by submitting a revised "Place of Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.
3. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR, Part 24.
4. No federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative Agreement.

If any funds, other than federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with this federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying" according to its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative Agreements) and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. It and its principles (see 24 CFR, Part 24.105(p)):
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR, Part 24.110) by any federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in (b) of this certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default. Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation behind this page.
6. The Subrecipient assures that the assistance provided by HUD, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the grant, or that Subrecipient will provide any shortfall, if necessary. The Subrecipient further assures that it will provide or secure supportive services appropriate to the needs of the population served and equal in value to the aggregate amount of rental assistance funded by HUD for the full term of the grant and that it will fund the supportive services itself if the planned resources do not become available for any reason.
7. It will comply with the Housing Development Policies identified below.
  - a. For each proposed new housing facility development, the Subrecipient will obtain written certification from the appropriate government jurisdiction that the proposed facility is consistent with that jurisdiction's current Consolidated Plan, or that written

certification that the government jurisdiction agrees to an exception under the specific conditions of the proposed development.

- b. Subrecipient will provide a list of private-landlord-owned housing facilities which includes a mixture of units inside and outside of Dayton City limits which is proportionate to the ratio of Montgomery County residents living inside and outside of Dayton City limits to all participants of tenant-based and sponsor-based rental subsidy Programs administered by Subrecipient. The list will include a statement that the list is not all-inclusive and that housing location is the choice of the participant.

**ADOPTED BY THE SUBRECIPIENT:**

Board of Trustees Resolution # \_\_\_\_\_

\_\_\_\_\_  
Deborah Watts-Robinson, Chief Executive Officer  
Miami Valley Housing Opportunities, Inc.

Date \_\_\_\_\_

**ENDORSED BY:**

Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS) Board  
of Montgomery County

\_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

1<sup>st</sup> And 2<sup>nd</sup> Reading 6.

6186-16

BY.....

NO.....

**A RESOLUTION**

Accepting the Donation of a Public Monument Valued at Seventy Thousand Dollars and Zero Cents (\$70,000.00) from the Dayton Foundation, and Declaring an Emergency.

**WHEREAS**, The Greater Downtown Dayton Plan, adopted on November 17, 2010, calls for the enhancement of public spaces through capital improvements; and,

**WHEREAS**, A group of civic-minded public servants has been inspired by the Pflaum Family to develop this public monument which will be displayed in Cooper Park; and,

**WHEREAS**, Funds for this project will all be raised privately; and,

**WHEREAS**, The City of Dayton desires to honor public service and public servants with a dedicated public monument; and,

**WHEREAS**, Public service is a most honorable profession and public servants and their work are critically important to the well-being of the City; and,

**WHEREAS**, To provide for the timely acceptance of funds and allow for the commencement of the project for which funding has been gifted, 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 of Dayton hereby accepts the donation of a public monument valued at Seventy Thousand Dollars and Zero Cents (\$70,000.00) from the Dayton Foundation.

Section 2. That the City Manager, or her designee, is hereby authorized to execute any documents and agreements necessary to accept the donation described in Section 1 above.

Section 3. That for 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

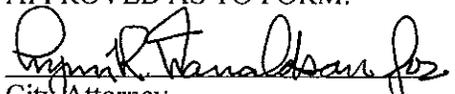
SIGNED BY THE MAYOR ....., 2016

\_\_\_\_\_  
Mayor of the City of Dayton, Ohio

ATTEST:

\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

1<sup>st</sup> and 2<sup>nd</sup> Reading 7.

No. 6187-16

By.....

**A RESOLUTION**

Amending Resolution No. 4270 Designating the Dayton International Airport Community Reinvestment Area No. 19 as a Community Reinvestment Area, Amending Resolution No. 5020-99, and Declaring an Emergency.

**WHEREAS**, The Commission (the "Commission") of the City of Dayton, Ohio (the "City") desires to pursue real property tax exemptions available in accordance with law to assist and encourage the construction and remodeling of structures within the boundaries of the Dayton International Airport site; and

**WHEREAS**, By Resolution No. 4270 adopted on March 1, 1989 and in accordance with the law then in effect, the Commission designated the Dayton International Airport site as a Community Reinvestment Area then identified as "Dayton International Airport Community Reinvestment Area No. 19"; and

**WHEREAS**, Pursuant to Section 3 of Amended Substitute Senate Bill No. 19 enacted by the 120<sup>th</sup> General Assembly of the State of Ohio ("Senate Bill 19"), the City may substantively amend Resolution No. 4270 twice without complying with certain other provisions of law enacted by Senate Bill 19 and otherwise applicable to Community Reinvestment Areas; and

**WHEREAS**, Pursuant to Ohio Revised Code Section 3735.661 and Section 757.60 of Amended Substitute House Bill Number 59 enacted by the 130<sup>th</sup> General Assembly of the State of Ohio ("House Bill 59"), the Commission may substantively amend Resolution No. 4270 by a single ordinance or resolution to, among other things, expand the geographic size of a Community Reinvestment Area, increase the term of any tax exemption or category of tax exemptions authorized for a Community Reinvestment Area, or extend the duration of a Community Reinvestment Area and qualify the amending ordinance or resolution as one of the two substantive amendments permitted under Senate Bill 19; and

**WHEREAS**, By Resolution No. 5020-99 adopted on September 1, 1999 and in accordance with the law then in effect, the Commission substantively amended Resolution No. 4270 for the first time as provided by law; and

**WHEREAS**, In order to authorize real property tax exemptions available in accordance with law to assist and encourage the construction and remodeling of structures within the boundaries of the Dayton International Airport site, the Commission desires to substantively amend Resolution No. 4270 for the second time as provided by law; and

**WHEREAS**, By passage of time, the boundaries of the Dayton International Airport site have expanded and now constitute all of the parcels designated in the records of the Montgomery County Auditor as of the date of this Resolution as tax parcel numbers: R727174130001; R727174139001; R72717413T0001; R727174130003; R727174130004; R727174130005; R727174130006; R727174130007; R727174130008; R727174130009; R727174130010; and R727174130011 located within the municipal corporate boundaries of the City, all as depicted in the parcel list and map attached hereto as Exhibit A, and the City desires that Dayton International

Airport Community Reinvestment Area No. 19 include all of the current boundaries of the Dayton International Airport site; and

**WHEREAS,** To allow the Department of Aviation to consider applications for tax exemptions in a timely manner within Dayton International Airport Community Reinvestment Area No. 19 and to otherwise provide for the usual daily operations of the Department of Aviation, the Commission finds that an emergency exists requiring this Resolution to take effect at the earliest possible time; now, therefore,

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

Section 1. That Resolution No. 4270 designating Dayton International Airport Community Reinvestment Area No. 19 as a Community Reinvestment Area is hereby amended for the second time by this Resolution.

Section 2. That the Commission finds that Dayton International Airport Community Reinvestment Area No. 19 designated by Resolution No. 4270 is hereby expanded to include all of the parcels designated in the records of the Montgomery County Auditor as of the date of this Resolution as tax parcel numbers R727174130001; R727174139001; R72717413T0001; R727174130003; R727174130004; R727174130005; R727174130006; R727174130007; R727174130008; R727174130009; R727174130010; and R727174130011 located within the municipal corporate boundaries of the City, all as depicted in the parcel list and map attached hereto as Exhibit A, and shall continue to be identified as "Dayton International Airport Community Reinvestment Area No. 19."

Section 3. That the exemptions authorized in Resolution No. 4270 and Resolution No. 5020-99 (including in Section 1 of Resolution No. 5020-99) are hereby amended, and the construction of new structures and the remodeling of existing structures within Dayton International Airport Community Reinvestment Area No. 19 are hereby declared to be a public purpose for which exemption from real property taxation may be granted as follows:

- (a) Exemptions from real property taxation may be applied for and claimed for twelve (12) years for the remodeling at a cost of at least Five Thousand Dollars (\$5,000.00) of any existing commercial or industrial structure located within Dayton International Airport Community Reinvestment Area No. 19; and
- (b) Exemptions from real property taxation may be applied for and claimed for fifteen (15) years for the construction of any new commercial or industrial structure located within Dayton International Airport Community Reinvestment Area No. 19.

Section 4. That the Commission hereby designates the Director of the Department of Aviation as the housing officer required by the law in effect for Dayton International Airport Community Reinvestment Area No. 19 who shall be responsible for administering and implementing the provisions of this Resolution. The Director of the Department of Aviation, or his designee, shall accept applications from owners of any real property within Dayton International Airport Community Reinvestment Area No. 19 for exemptions from real property taxation authorized by this Resolution and shall carry out the other duties of the housing officer as required by the law in effect for Dayton International Airport Community Reinvestment Area No. 19.

Section 5. That the Commission hereby appoints a housing council to carry out the duties of the housing council as required by the law in effect for Dayton International Airport

Community Reinvestment Area No. 19 with membership consisting of two (2) designees of the Mayor, two (2) appointees of the Commission, one (1) member of the City's Planning Commission designated by the Mayor, and two (2) appointees of the foregoing five (5) designated or appointed members who shall be residents of the City. The Director of the Department of Aviation and any member of the staff of the Department of Aviation may serve as a designee or an appointee to the housing council.

Section 6. That the Commission finds under law, including Senate Bill 19, Ohio Revised Code Chapter 3735.65 et seq., House Bill 59, Ohio Revised Code Section 3735.661, and the Charter of the City, that this Resolution is intended to and shall be considered the second substantive amendment to Resolution No. 4270 designating Dayton International Airport Community Reinvestment Area No. 19 as a Community Reinvestment Area.

Section 7. That except as amended hereby, Resolution Nos. 4270 and 5020-99 remain in full force and effect.

Section 8. That the Clerk of this Commission is hereby directed to publish a copy of this Resolution in a newspaper of general circulation within the City once a week for two consecutive weeks.

Section 9. That the Clerk of this Commission is hereby directed to submit a copy of this Resolution, including the map of Dayton International Airport Community Reinvestment Area No. 19 attached to this Resolution as Exhibit A, to the Ohio Director of Development Services not later than fifteen (15) days following the adoption of this Resolution.

Section 10. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the adoption of this Resolution, and that all deliberations of this Commission and any of its committees that resulted in those formal actions, occurred in meetings open to the public in compliance with law.

Section 11. 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

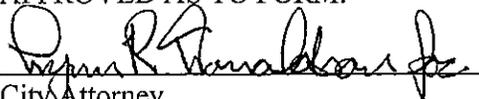
SIGNED BY THE MAYOR.....2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**EXHIBIT A**

List of Parcels<sup>1</sup> and Map Depicting Dayton International Airport Community Reinvestment Area No.  
19

**List of Parcels:**

R727174130001  
R727174139001<sup>2</sup>  
R72717413T0001<sup>3</sup>  
R727174130003  
R727174130004  
R727174130005  
R727174130006  
R727174130007  
R727174130008  
R727174130009  
R727174130010  
R727174130011

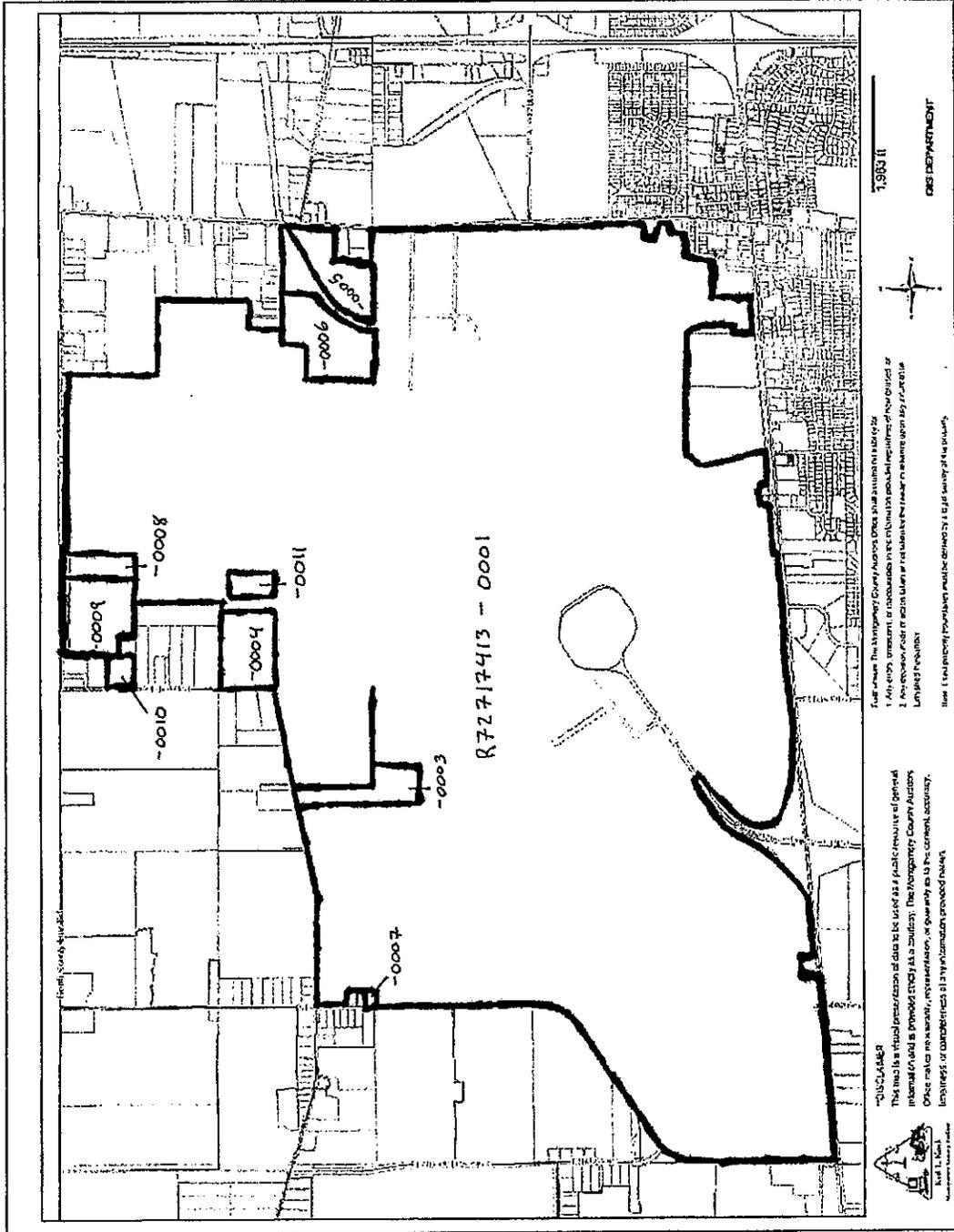
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<sup>1</sup> Parcels identified on this Exhibit A are deemed to refer to the parcel designations in existence in the records of the Montgomery County Auditor as of the date of this Resolution, and any structures constructed or remodeled on the real property within Dayton International Airport Community Reinvestment Area No. 19 shall be eligible for tax exemption as provided in this Resolution.

<sup>2</sup> Parcel R727174139001 is an additional parcel ID number designated to the geographical real property also bearing the parcel ID number R727174130001. The attached map therefore does not show Parcel R727174139001 as a separate geographical parcel.

<sup>3</sup> Parcel R72717413T0001 is an additional parcel ID number designated to the geographical real property also bearing the parcel ID number R727174130001. The attached map therefore does not show Parcel R72717413T0001 as a separate geographical parcel.

Map:



1983 II  
GIS DEPARTMENT



This shows Montgomery County Auditor Office parcel information as of 1983 II  
 1. Any errors, omissions, or inaccuracies in this information are the responsibility of the user of this information.  
 2. Any person who uses this information for any purpose other than that intended by the Montgomery County Auditor Office is doing so at their own risk.  
 3. The Montgomery County Auditor Office is not responsible for any errors or omissions in this information.

**DISCLAIMER**  
 This map is a virtual presentation of data to be used as a general reference of general information and is provided solely as a service. The Montgomery County Auditor Office makes no warranty, representation, or guarantee as to the current accuracy, timeliness, or completeness of the information provided herein.



2nd Reading

8.

BY.....

NO..... 6180-16

**A RESOLUTION**

Objecting to the Renewal of Liquor Permit #7540720, Steven K. Ross, Sr. dba Club 22, 2117-19 James H. McGee Boulevard, Dayton, Ohio 45417, and Declaring an Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code ("ORC") authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and

WHEREAS, It appears from such investigation that the applicant, any partner, member, officer, director, or manager thereof, or any shareholder owning ten percent or more of the capital stock of the holder of Liquor Permit #7540720, has operated his liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations or local ordinances of this state or any other state; that the place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the renewal of the permit and operation thereunder by the applicant; and

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

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

Section 1. That this Commission objects to the renewal of Liquor Permit #7540720, Steven K. Ross, Sr. dba Club 22, 2117-19 James H. McGee Boulevard, Dayton, Ohio 45427, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble, and that this Commission requests that the Division of Liquor Control also reject the application for renewal for good cause.

Section 2. That two (2) certified copies of this resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said permit premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the City Attorney for the City of Dayton, or the City Attorney's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

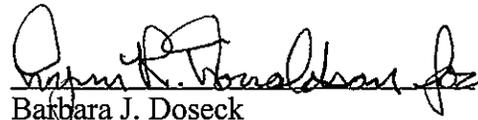
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

#### STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney for the City of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of renewing Liquor Permit #7540720, Steven K. Ross, Sr. dba Club 22, 2117-19 James H. McGee Boulevard, Dayton, Ohio 45427, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

2<sup>nd</sup> Reading

9.

BY.....

NO. 6181-16.....

**A RESOLUTION**

Continuing the Objection to the Renewal of Liquor Permit #2105088, DEV, Inc. dba A1 Food Mart, 272 Linden Avenue, Dayton, OH 45403, and Declaring an Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code (“ORC”) authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and,

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and,

WHEREAS, It appears from such investigation that the applicant, any partner, member, officer, director, or manager thereof, or any shareholder owning ten percent or more of the capital stock of the holder of Liquor Permit #2105088, has operated his or her liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations or local ordinances of this state or any other state and that the place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the issuance of the permit and operation thereunder by the applicant;

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

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

Section 1. That this Commission continues its objection to the transfer of Liquor Permit #2105088, DEV, Inc. dba A1 Food Mart, 272 Linden Avenue, Dayton, OH 45403, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble and that this Commission requests that the Division of Liquor Control also reject the application for good cause. A hearing on Commission’s initial objection to renewal of the permit was held on July 8, 2015. The renewal application was subsequently denied by the Division of Liquor Control and the matter is currently set for appeal before the Liquor Control Commission on May 4, 2016.

Section 2. That two (2) certified copies of this resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said permit premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the Law Director of the City of Dayton, or the Law Director's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

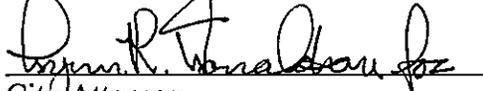
SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

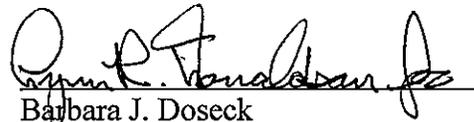
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of renewing liquor permit #2105088, DEV, Inc. dba A1 Food Mart, 272 Linden Avenue, Dayton, OH 45403, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

2<sup>nd</sup> Reading

10.

BY..... NO. 6182-16.....

**A RESOLUTION**

Continuing the Objection to the Transfer of Ownership of Liquor Permit #5595765, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, and Declaring an Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code (“ORC”) authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and,

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and,

WHEREAS, It appears that the place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the issuance of the permit and operation thereunder by the applicant; and,

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

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

Section 1. That this Commission continues its objection to the transfer of ownership of Liquor Permit #5595765, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble and that this Commission requests that the Division of Liquor Control also reject the application for good cause. A hearing on Commission’s initial objection to transfer of the ownership of the permit was held on July 8, 2015. The transfer application was subsequently denied by the Division of Liquor Control and the matter is currently set for appeal before the Liquor Control Commission on May 4, 2016.

Section 2. That two (2) certified copies of this resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said permit

premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the Law Director of the City of Dayton, or the Law Director's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

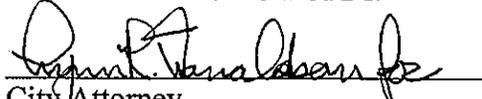
SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

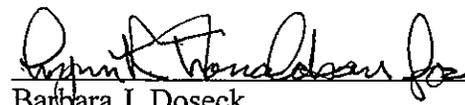
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney of the City of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of transferring liquor permit #5595765, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

2<sup>nd</sup> Reading

16

BY..... NO. 6183-16.....

**A RESOLUTION**

Continuing the Objection to the Issuance of Liquor Permit #55957650005, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403 and Declaring an Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code (“ORC”) authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and,

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and,

WHEREAS, It appears that the place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the issuance of the permit and operation thereunder by the applicant; and,

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

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

Section 1. That this Commission continues its objection to the transfer of ownership of Liquor Permit #55957650005, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble and that this Commission requests that the Division of Liquor Control also reject the application for good cause. A hearing on Commission’s initial objection to transfer of the ownership of the permit is set for May 18, 2016.

Section 2. That two (2) certified copies of this resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said permit premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the Law Director of the City of Dayton, or the Law Director's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

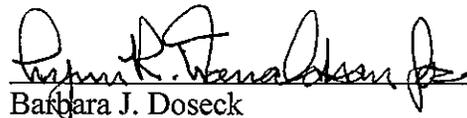
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney of the City of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of issuing liquor permit #55957650005, Nimesh Patel dba Maruti Foodmart Inc., 272 Linden Avenue, Dayton, OH 45403, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

2<sup>nd</sup> Reading

12.

BY..... NO..... 6184-16

**A RESOLUTION**

Continuing the Objection to the Issuance of Liquor Permit #18793640005, Delven Parks dba D Anthony's Grille, LLC, 2404 East Third Street, Dayton, Ohio 45403, and Declaring an Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code ("ORC") authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and,

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and,

WHEREAS, The place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the issuance of the permit and operation thereunder by the applicant; and,

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

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

Section 1. That this Commission continues its objection to the issuance of Liquor Permit #18793640005, Delven Parks dba D Anthony's Grille, LLC, 2404 East Third Street, Dayton, Ohio 45403, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble, and that this Commission requests that the Division of Liquor Control also reject the license application for good cause. The Commission made its initial objection to issuance of the permit in Informal Resolution 907-15 that was adopted on May 27, 2015.

Section 2. That two (2) certified copies of this resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said permit premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the Law Director of the City of Dayton, or the Law Director's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

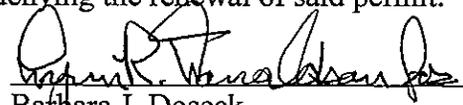
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney of the City of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of issuing liquor permit #18793640005, Delven Parks dba D Anthony's Grille, LLC, 2404 East Third Street, Dayton, Ohio 45403, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

2<sup>nd</sup> Reading

13

BY.....

NO. 6185-16.....

**A RESOLUTION**

Objecting to the Renewal of Liquor Permit #2850880, Fourth & St. Clair, LLC dba Vex, 101 S. St. Clair Street, Dayton, Ohio 45402, and Declaring and Emergency.

WHEREAS, Section 4303.271 of the Ohio Revised Code (“ORC”) authorizes the legislative authority of a municipal corporation to object to the renewal of liquor permits issued under ORC Sections 4303.11 to 4303.183, within the limits of such municipal corporation and request a hearing thereon; and,

WHEREAS, This Commission caused an investigation to be made by Departments of the City of Dayton and received objections concerning various permit premises within the City of Dayton; and,

WHEREAS, It appears from such investigation that the applicant, any partner, member, officer, director, or manager thereof, or any shareholder owning ten percent or more of the capital stock of the holder of Liquor Permit #2850880, has operated his or her liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations or local ordinances of this state or any other state and that the place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace or good order would result from the renewal of the permit and operation thereunder by the applicant; and,

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

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

Section 1. That this Commission objects to the renewal of Liquor Permit #2850880, Fourth & St. Clair, LLC dba Vex, 101 S. St. Clair Street, Dayton, Ohio 45402, for all the statutory reasons provided in ORC Section 4303.292, as well as for the reasons stated in the preamble, and that this Commission requests that the Division of Liquor Control also reject the application for renewal for good cause.

Section 2. That two (2) certified copies of this informal resolution, together with a request that a hearing be held in the City of Dayton, the county seat of the county in which said

permit premises are located, be sent to the Superintendent of the Ohio Division of Liquor Control no later than May 2, 2016.

Section 3. That the Law Director of the City of Dayton, or the Law Director's designee, is authorized and directed to appear on behalf of this Commission before the Ohio Division of Liquor Control, at such time and place as a hearing is scheduled with respect to the objection to the renewal of said permit, and to state this Commission's reasons for objecting to the renewal of the said permit and submit evidence in support thereof.

Section 4. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon passage.

ADOPTED BY THE COMMISSION....., 2016

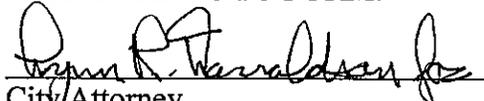
SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

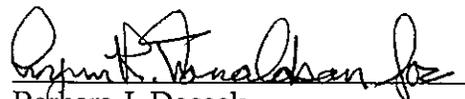
\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

STATEMENT OF THE CHIEF LEGAL OFFICER

The undersigned, Barbara J. Doseck, City Attorney of the City of Dayton, Ohio, hereby states that she has reviewed the reports of the Department of Police regarding the advisability of renewing liquor permit #2850880, Fourth & St. Clair, LLC dba Vex, 101 S. St. Clair Street, Dayton, Ohio 45402, and that the facts alleged in such reports, if true, constitute, in her opinion, substantial legal grounds, within the meaning and intent of division (A) Section 4303.292 of the Revised Code of Ohio, for denying the renewal of said permit.

  
\_\_\_\_\_  
Barbara J. Doseck  
City Attorney

By.....

No.....

**AN ORDINANCE**

Enacting Section 72.20 of the Revised Code of General Ordinances Regarding the Downtown Business Delivery Parking Permit.

WHEREAS, The City of Dayton recognizes that a standard delivery policy in the downtown area will facilitate delivery and loading for downtown businesses; and

WHEREAS, It is in the best interest of the City to allow persons engaged in business in the downtown area to obtain a permit to park without cost in designated loading zones and metered on-street parking areas for short intervals; now, therefore,

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

Section 1. That Section 72.20 of the Revised Code of General Ordinances be, and the same hereby is, enacted to read as follows:

**Sec. 72.20 Downtown business delivery parking permit.**

- (A) Any person lawfully using real property in the Central Business District ("CBD") or the Urban Business District ("UBD") for office, service, entertainment or retail purposes is eligible to apply for a downtown business delivery parking permit.
- (B) The operator of any vehicle displaying a downtown business delivery parking permit may park the vehicle in a designated delivery zone or in a metered on-street parking space in the CBD or the UBD without charge for a period not to exceed thirty (30) minutes. Any vehicle displaying a downtown business delivery parking permit and parked anywhere except a designated delivery zone or a metered on-street parking space in the CBD or the UBD, or for a period exceeding thirty (30) minutes, shall be subject to all applicable parking regulations and penalties for violation thereof.
- (C) A person eligible to apply for a downtown business delivery parking permit pursuant to subsection (A) above may submit an application to the Director of the Department of Public Works on a form provided by the Director. The application shall describe the use of the real property and state the reason or necessity for the permit. The Director shall issue a permit upon (1) verification of the applicant's eligibility and (2) determination that a permit is necessary. A permit issued in accordance with this section shall be valid until January 1<sup>st</sup> of the following year

and may be renewed, but a permit is not transferable and may be revoked if the holder at any time becomes ineligible.

Passed by the Commission....., 2016

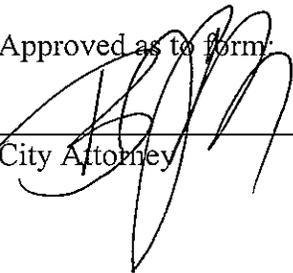
Signed by the Mayor....., 2016

\_\_\_\_\_  
Mayor of the City of Dayton, Ohio

Attest:

\_\_\_\_\_  
Clerk of the Commission

Approved as to form:

  
\_\_\_\_\_  
City Attorney

2<sup>nd</sup> Reading

15.

BY.....

NO. 31487-16

**AN ORDINANCE**

Requiring Bidders to Provide Additional Information and to Certify Compliance with Applicable Law in Bidding and Performing Public Works Projects for the City and Repealing Ordinance No. 30575-06.

WHEREAS, The City routinely solicits bids and awards contracts for public works projects; and,

WHEREAS, The City enacted Ordinance No. 30575-06 in order to require bidders on public work projects to provide additional information and certify compliance with applicable laws to assist the City in awarding and managing public works projects; and

WHEREAS, The City wishes to repeal Ordinance No. 30575-06 and enact a new ordinance that will further improve the process by requiring bidders on public works projects to provide even more information, certify compliance with applicable laws, and allow the City to request even more information when it determines that it will assist in the awarding and managing of public works projects;

WHEREAS, The City seeks to protect its proprietary interests and investments by helping to ensure that work on publicly funded construction is performed by responsible and qualified contractors; and,

WHEREAS, The City seeks to increase its monitoring of proprietary construction projects and improve project management and execution by selecting contractors that have the necessary facilities and management capacity to complete City projects; now therefore,

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

Section 1. That a bidder submitting a bid in excess of Seventy-Five Thousand Dollars (\$75,000) on a public works project shall submit together with the bid a signed statement certifying:

- A. The bidder (and all sub-contractors, direct or lineal) is current in the payment of any City of Dayton taxes on payroll and net profits; or, in the event the bidder is not current, that the bidder is in good standing with regard to any payment plan entered into with the city to extinguish the arrearage; and, that bidder is current with payment of state and federal taxes;
- B. The bidder (and all subcontractors, direct or lineal) has a current, valid workers' compensation insurance policy registered with the State of Ohio Bureau of Workers' Compensation, or is legally self-insured. In addition, the bidder shall

certify compliance with the Bureau's Drug Free Workplace Program and disclose bidder's substance abuse policy covering all personnel working on the project;

- C. The bidder shall comply with all state or federal prevailing wage laws, as applicable and required by the funding for the public works project;
- D. The bidder has a current, valid unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services; and
- E. In accordance with the City's bid documents and ordinances, and applicable federal and state law, the bidder has made a good faith effort to promote diversity and full and equal business opportunity for all persons in contracting for work required by the public works project.

Section 2. That a bidder submitting a bid in excess of Seventy-Five Thousand Dollars (\$75,000) on a public works project shall submit the following with the bid:

- A. A complete listing of the fringe benefits the bidder provides its employees, including but not limited to health insurance and retirement benefits;
- B. The identity of any "bonafide apprenticeship training program" in which the bidder participates in accordance with the Ohio Bureau of Apprenticeship Training and the U.S. Department of Labor;
- C. A list of all subcontractors whose quotes or information are included or used in the bid submitted for the public works project; and
- D. Verification of required licenses for public works construction contracts involving crafts subject to R.C. 4740 including: heating, ventilating & cooling (HVAC), electrical, refrigeration, hydronics, plumbing/steamfitting or fire suppression.

Section 3. In addition to the information provided above, the City may request additional information either before or after the bids are submitted. This additional information includes, but is not limited to the following:

- A. A complete list of all minority business enterprises, women business enterprises, and/or small business enterprises, contacted by the bidder for the purpose of obtaining quotes to perform work required by the public works project;
- B. Overall experience of the bidder, including number of years in business under the present or former business names;
- C. Names and qualifications of key bidder personnel;

- D. Complete listing of all ongoing and completed public and private construction contracts of the bidder in the last three years, including nature, status and value of each contract and a name, address, and phone number for a representative of the owner of each related project;
- E. Complete listing of any EPA, OHSA or other regulating entity issues or citations issued within the last 10 years;
- F. Complete listing of all outstanding liens against the bidder;
- G. Certified financial statements with trade and bank references;
- H. Description of relevant facilities of the bidder;
- I. Description of the management experience of the bidder's project managers and superintendent(s);
- J. Complete listing of any determinations of the bidder's violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 10 years by any court, administrative or governmental tribunal; and
- K. Complete listing of any and all federal, state, or local disbarments and findings of "non-responsibility."

Section 4. That in addition to other criteria established by the City to determine the lowest and best bidder, and subject to state or federal funding requirements, the City may consider the signed statement and information required by or requested in accordance with Sections 1, 2, and 3 of this ordinance in awarding a public works contract.

Section 5. For purposes of this ordinance, the terms "minority business enterprise", "women business enterprise", and "small business enterprise" shall have the same meanings as those terms are defined in Dayton R.C.G.O. Section 35.35.

Section 6. That a bidder awarded a contract by the City to perform work on a public works project shall provide, upon request by the City, a sworn statement with supporting documents in response to any written complaint received by the City by any person performing work on the public works project, as either an employee or an independent contractor, alleging a violation of state or federal law, or City ordinance, by the bidder awarded the contract by the City.

Section 7. That Ordinance No. 30575-06 is hereby repealed.

PASSED BY THE COMMISSION....., 2016

SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
Mayor Nan Whaley, City of Dayton, Ohio

ATTEST:

\_\_\_\_\_  
Clerk of the Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

# MEMORANDUM



March 14, 2016

**TO:** Shelley Dickstein, City Manager

**FROM:** Barbara J. Doseck, City Attorney

A handwritten signature in black ink, appearing to be "BD", is written over the name Barbara J. Doseck.

**SUBJECT:** Responsible Contractor Ordinance

Attached for City Commission approval is legislation that updates the current Responsible Contractor Ordinance passed on June 21, 2006 (Ordinance No. 30575-06).

The changes in this version include increasing the dollar threshold from \$50,000 to \$75,000 to coincide with the increase in prevailing wage. It also updates the terms and provisions based upon the Construction Material Specifications and Procurement Enhancement Program that were both enacted after the original Ordinance was passed. This has also been reviewed and approved by the Department of Public Works and the Human Relations Counsel.

If you have any questions, please let me know.

BD/jcm

Attach.

c: Mr. Earley  
Mr. Parlette  
Mr. Gray  
Ms. Crosby  
Mr. Stovall

By.....

No. 920-16.....

**AN INFORMAL RESOLUTION**

Urging the Ohio General Assembly to Support Senate Joint Resolution 3,  
an Amendment to the Ohio Constitution to Permit General Obligation  
Bonds to be Used for Sewer and Water Capital Improvements.

WHEREAS, Senate Joint Resolution 3, as introduced by Senator Joe Schiavoni, expands  
uses of State General Obligation bonds to include sewer and water public infrastructure, and

WHEREAS, Sewer and water infrastructure is part of the vital public infrastructure needed  
for the continued success of businesses, institutions, and residences in the State of Ohio's  
communities; and

WHEREAS, It is in the State of Ohio's best interest to ensure that this public  
infrastructure is maintained, repaired, expanded, and replaced on an ongoing basis; and

WHEREAS, The Ohio Constitution already allows the use of proceeds from State General  
Obligation bonds to be used for public infrastructure including roads and bridges; now, therefore,

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

SECTION 1: That the Dayton City Commission urges the Ohio General Assembly to pass  
Senate Joint Resolution 3 as introduced by Senator Joe Schiavoni to expand eligible uses of State  
General Obligation bonds to include sewer and water public infrastructure and to issue bonds for  
this purpose.

ADOPTED BY THE COMMISSION....., 2016

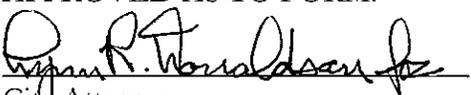
SIGNED BY THE MAYOR....., 2016

\_\_\_\_\_  
MAYOR, CITY OF DAYTON, OHIO

ATTEST:

\_\_\_\_\_  
Clerk of Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney