



## CITY COMMISSION MEETING AGENDA

CITY COMMISSION

DAYTON, OHIO

JUNE 22, 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 – **COMMISSIONER MIMS**
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: **The Convention Center Study Briefing - (J. Parlette)**  
**City Manager's Large Conference Room**  
**Following the City Commission Meeting**
17. Miscellaneous (See Section VI)

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### 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:**

##### **AVIATION**

**A1. P & R Communications Service, Inc.** (two dispatch radio consoles, six software licenses, antennae, maintenance and related items) **\$88,750.39**

1. (Cont'd):

**A2. Motorola Solutions, Inc.** (five radio base stations and related items) **20,475.75**

**FIRE**

**B1. EMOD LLC** (construction and construction management services to build a 24' by 56' modular office site) **32,679.00**

**B2. Motorola Solutions, Inc.** (radio communication encryption software upgrades and related items) **72,500.00**

**WATER**

**C1. Recruiter Solutions International** (professional personnel recruitment and placement services as needed through 12-31-16) **24,166.00**

-Depts. of Aviation, Fire and Water. **Total: \$238,571.14**

2. **Evans Landscaping – Contract** – for Obstruction (Tree) Removal & Clearing, Dayton Wright Brothers Airport (20% SBE Goal, 20.2% SBE Participation) – Dept. of Aviation. **\$150,150.00**  
(Thru 12/2017)

3. **Lykins Oil Company, DBA STEP Resources Consulting, LLC – First Amendment** – for Electric Management – Dept. of Water. **\$140,000.00**  
(Thru 5/2018)

4. **Montg. Co. Board of Commissioners – Supplemental Agreement** – for the Electronic Home Detention Program – The Municipal Court/Court Administration. **N/A**

5. **Montgomery County Transportation Improvement District – Air Cargo Access Improvement Projects Management and Financing Agreement** – for Phase I professional services related to proposed infrastructure improvements at the Dayton International Airport – Dept. of Aviation. **\$150,000.00**

6. **Patrick Hansford – Professional Services Agreement** – for renovation of the Human Relations Council offices – The Human Relations Council. **\$25,600.00**  
(Thru 12/31/16)

**B. Construction Contracts/Estimates of Cost:**

7. **Adleta, Inc. – Contract** – for the 2016 Curb Ramp Replacement (15% MBE Participation Goal/15.75% MBE Achieved) (5% WBE Participation Goal/9% WBE Achieved) – Dept. of Public Works/Civil Engineering. **\$225,000.00**

**C. Revenue to the City:**

8. **NP Dayton Building 1, LLC – Ground Lease and Development Agreement (PAD 1)** – for a 39 acre development site located at the Dayton International Airport – Dept. of Aviation. **\$1,500,000.00 Infrastructure**  
**\$5,902,109.93 Lease Payment**  
**(49 Yrs.)**  
**(Revenue to the City)**

**D. Neighborhood Grant:**

- COMMISSIONER SHAW** 9. **CityWide Development Corporation – Subrecipient Agreement** – for the 2015 RTA Community Grants Program – CityWide for the Sugarcreek Bus Shelter Project – Dept. of Planning & Community Development. **\$12,000.00**  
**(Thru 6/30/18)**

**IV. LEGISLATION:**

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

- COMMISSIONER WILLIAMS** 10. **No. 6195-16** Accepting the 2016 Community Development Grant from the Ohio Environmental Protection Agency in an Amount Not to Exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) on Behalf of the City of Dayton; and Declaring an Emergency.
- COMMISSIONER JOSEPH** 11. **No. 6196-16** Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, on Behalf of the City of Dayton; and Declaring an Emergency.

**VI. MISCELLANEOUS:**

**ORDINANCE NO. 31499-16**

**RESOLUTION NO. 6197-16**

**IMPROVEMENT RESOLUTION NO. 3598-16**

**INFORMAL RESOLUTION NO. 924-16**

1

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

TO: City Manager

Date June 22, 2016

FROM: Central Services / Purchasing  
Department/Division

Code \_\_\_\_\_

(CHECK ONE)

Amount \$ 238,571.14

- 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:

AVIATION

(A1) P1600953 – P & R COMMUNICATIONS SERVICE, INC., DAYTON, OH

- Two (2) dispatch radio consoles, six (6) software licenses, antennae, maintenance and related items.
- These goods are required to replace communications equipment that is beyond economical repair for Dayton Airport Police.
- P & R Communications Service, Inc. qualifies as a Dayton local entity.
- Rates are in accordance with State of Ohio Term Schedule #573077-0.
- The Department of Aviation recommends approval of this order.
- Authority: \$88,750.39

Approved Affirmative Action Program on File  Yes

No

NA

Approved by City Commission

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

[Signature]  
Division \_\_\_\_\_  
Department \_\_\_\_\_  
[Signature]  
City Manager

AVIATION (CONTINUED)

(A2) P1600973 – MOTOROLA SOLUTIONS, INC., SCHAUMBURG, IL

- Five (5) radio base stations and related items.
- These goods are required to replace communications equipment that is beyond economical repair for Dayton Airport Police.
- Rates are in accordance with State of Ohio Term Schedule #573077-0.
- The Department of Aviation recommends approval of this order.
- Authority: \$20,475.75

FIRE

(B1) P1600936 – EMOD LLC, MAPLE HEIGHTS, OH

- Construction and construction management services to build a 24' by 56' modular office site.
- These services are required to install concrete foundation and electric utility for a modular office site to be used for firefighter recruit training and continuing education for firefighters.
- Twenty-one possible bidders were solicited and two bids were received.
- The Department of Fire recommends acceptance of low bid.
- Authority: \$32,679.00

(B2) P1600975 – MOTOROLA SOLUTIONS, INC., SCHAUMBURG, IL

- Radio communication encryption software upgrades and related items.
- These goods are required to protect public safety communications and security sensitive information.
- Rates are in accordance with State of Ohio Term Schedule #573077-0.
- The Department of Fire recommends approval of this order.
- Authority: \$72,500.00

WATER – ADMINISTRATION

(C1) P1600977 - RECRUITER SOLUTIONS INTERNATIONAL, MENTOR, OH

- Professional personnel recruitment and placement services, as needed through 12/31/2016.
- These services are required to assist with the recruitment and screening of specialized positions in the Department of Water.
- Recruiter Solutions International is recommended on the basis of proven past performance and in accordance with 2015 agreement, which stipulated \$5,000 fee for recruitment and \$35,000 fee for successful placement, therefore this purchase was negotiated.
- The Department of Water recommends approval of this order.
- Authority: \$24,166.00

The aforementioned departments recommend approval of these orders.

**CITY OF DAYTON, OHIO - PURCHASING DIVISION - BID TABULATION**

For: **CONSTRUCTION SERVICES FOR MODULAR OFFICE SITE**

Dept./Div.: **FIRE / FIRE SUPPORT SVCS & RESOURCE MGMT**

Requisition No.: **054FDOP6**

IFB NO.: **D16028**

BID OPENING: **11:00 A.M.; 04-25-2016**

<b>BIDDER NAME &amp; STREET ADDRESS:</b>		<b>No.:</b>		<b>1</b>	<b>2</b>
		<b>CITY:</b>		<b>DAYTON</b>	<b>MAPLE HEIGHTS</b>
<b>STATE &amp; ZIP:</b>		<b>Recommended for Award</b>		<b>OH 45402</b>	<b>OH 44137</b>
<b>QUALIFIES FOR LOCAL PREFERENCE?</b>				<b>YES</b>	<b>NO</b>
<b>QUALIFIES FOR CERTIFIED PREFERENCE?</b>				<b>NO</b>	<b>NO</b>
<b>LOCAL / CERTIFIED PREFERENCE A FACTOR IN AWARD?</b>				<b>NO</b>	<b>NO</b>
<b>Item #</b>	<b>ITEM DESCRIPTION</b>	<b>U/M</b>	<b>UNIT COST</b>	<b>UNIT COST</b>	
<b>PLEASE READ ALL BID/PROPOSAL RESPONSES TO ENSURE THAT ALL INFORMATION RECEIVED FROM VENDOR IS REVIEWED AND USED IN EVALUATION PROCESS</b>					
<b><u>TOTAL PROJECT</u></b>					
<b>1</b>	Construction Services For Modular Office Site	Lot	\$58,500.00	●	\$32,679.00
<b><u>INDIVIDUAL COMPONENTS OF PROJECT</u></b>					
<b>2</b>	Design, Permit, Inspection Services and Project Management	Lot	\$6,500.00		\$5,750.00
<b>3</b>	Foundation Services	Lot	\$19,000.00		\$7,949.00
<b>4</b>	Concrete Services	Lot	\$15,000.00		\$7,104.00
<b>5</b>	Electrical Services	Lot	\$18,000.00		\$11,876.00
<b>TERMS:</b>			<b>NET 30</b>	<b>NET 30</b>	
<b>F.O.B.:</b>			<b>DEST</b>	<b>DEST</b>	
<b>DELIVERY:</b>			<b>120 DAYS</b>	<b>75 DAYS</b>	

● = lowest bid X = vendor selected for award

**THE FOLLOWING VENDORS WERE SOLICITED BUT DID NOT BID:**

- |   |   |
|---|---|
| HRC<br>Dayton OH 45402  | 10. Mad River Construction LLC (Certified)<br>Dayton OH 45432             |
| 1. City of Dayton Division of Facilities Mgmt (Local)                     | 11. Wise Construction Management (Certified)<br>Dayton OH 45427           |
| 2. City of Dayton Dept of Public Works (Local)                            | 12. Yoder Concrete Construction Inc (Certified)<br>West Liberty OH 43357  |
| 3. RL Fender Construction (Local)<br>Dayton OH 45403                      | 13. Architectural Maintenance Services (Certified)<br>Miamisburg OH 45342 |
| 4. M & R LLC (Local)<br>Dayton OH 45414                                   | 14. Wenco Construction (Certified)<br>New Carlise OH                      |
| 5. Angler Construction (Local)<br>Dayton OH 45403                         | 15. Double Jay Construction<br>Englewood OH 45322                         |
| 6. Fryman Kuck General Contractors Inc (Local)<br>Dayton OH 45413         | 16. Bon Builder<br>Englewood OH   |
| 7. Tall View Palladium Inc (Local/Certified)<br>Dayton OH 45417           | 17. Outdoor Enterprise LLC<br>Casstown OH 45312                           |
| 8. Belgray Inc (Local/Certified)<br>Dayton OH 45402                       | 18. Prestige Construction<br>Trotwood OH 45426                            |
| 9. Unified Construction Services LLC (Local/Certified)<br>Dayton OH 45403 | 19. L J DeWeese Co Inc<br>Tipp City OH 45371                              |

2.

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date 06/22/16

FROM: Aviation / Operations  
Department/Division

Code 51237-3210-1423-43

(CHECK ONE)

Fund Title Aviation Capital

Amount \$ \$ 150,150.00 (thru 12/2017)

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

Supplier/Vendor/Company/Individual:

NAME Evans Landscaping

ADDRESS 4229 Round Bottom Rd.

Cincinnati, OH 45244

Justification and description of purchase, contract or payment:

**OBSTRUCTION (TREE) REMOVAL & CLEARING, DAYTON WRIGHT BROTHERS AIRPORT (20% SBE GOAL, 20.2% SBE PARTICIPATION)**

The proposed improvement project includes the removal of trees, clearing & grubbing, and restoration (seeding and mulching) of affected areas. The trees included for removal are located on Airport property, owned by the City of Dayton.

Three (3) bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, Evans Landscaping Company. The total contract amount is \$150,150.00, including the base bid of \$135,150.00, Add Alternate No. 1 (Contingency Allowance) in the amount of \$15,000.00. The engineer's estimate of cost for this project was \$221,000. The time of completion is 60 Calendar Days. Evans Landscaping's expected SBE participation is 20.2%. The contract will be awarded at execution and is not expected to be closed until December 2017.

The project is being funded with a \$100,000 in State of Ohio-Department of Transportation Grant Funds and \$50,150 in Aviation Capital. A Certificate of Funds, Tabulation of Bids, Human Relations Council's verification letter, and the proposal from the firm recommended for award are attached.

Copy: Human Relations Council, Public Works/Business Office

Approved Affirmative Action Program on File  Yes  No  NA

Approved by City Commission

Clerk

Date

Division

Department

City Manager



**NOTE TO CONTRACTORS:**

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

**CITY OF DAYTON, OHIO**

**DEPARTMENT OF PUBLIC WORKS**

Bid Form

OBSTRUCTION (TREE) REMOVAL  
+ CLEARING  
DAYTON WRIGHT BROTHERS  
AIRPORT  
(20% SBE PARTICIPATION)

Bidder EVANS LANDSCAPING INC.  
4229 ROUND BOTTOM RD  
CINCINNATI, OH 45244

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**BID FORM**

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

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

**OBSTRUCTION (TREE) REMOVAL CLEARING DAYTON WRIGHT BROTHERS  
AIRPORT**

**(20% SBE PARTICIPATION)**

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

Bid Form (Continued)

OBSTRUCTION (TREE) REMOVAL CLERING  
DAYTON WRIGHT BROTHERS AIRPORT  
(20% SBE PARTICIPATION)

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>EST. QUANT.</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL \$</u>
624.01	Mobilization	1	LS	<u>7,900<sup>00</sup></u>	<u>7,900<sup>00</sup></u>
M101.1	Maintaining Traffic & Airfield Safety	1	LS	<u>37,800<sup>00</sup></u>	<u>37,800<sup>00</sup></u>
SP-1	Tree Removal - Area 1	6.4	acre	<u>4,000<sup>00</sup></u>	<u>25,600<sup>00</sup></u>
SP-2	Tree Removal - Area 2	2.5	acre	<u>4,000<sup>00</sup></u>	<u>10,000<sup>00</sup></u>
SP-3	Tree Removal - Area 3	1	acre	<u>4,000<sup>00</sup></u>	<u>4,000<sup>00</sup></u>
SP-4	Tree Removal - Area 4	1.9	acre	<u>4,500<sup>00</sup></u>	<u>8,550<sup>00</sup></u>
SP-5	Tree Removal - Area 5	1.5	acre	<u>4,000<sup>00</sup></u>	<u>6,000<sup>00</sup></u>
SP-6	Clearing and Grubbing (Mechanical) - 20 Ft W -along Fence Line	8000	LF	<u>2,00</u>	<u>16,000<sup>00</sup></u>
SP-7	Clearing and Grubbing (by hand)- 20 Ft W- along Fence Line	200	LF	<u>30.00</u>	<u>6,000<sup>00</sup></u>
659.01	Seeding & Mulching, including restoration	13.3	acre	<u>1,000<sup>00</sup></u>	<u>13,300<sup>00</sup></u>

TOTAL BASE BID

\$ 127,250<sup>00</sup>

135,150.<sup>00</sup> FH

Bid Form (Continued)

**OBSTRUCTION (TREE) REMOVAL CLEARING**  
**DAYTON WRIGHT BROTHER AIRPORT**  
**(20% SBE PARTICIPATION)**

In determining the lowest and best bid the City Commission may give consideration to the following alternate bids:

**ALTERNATE NO. 1**  
**CONTINGENCY ALLOWANCE**

This Alternate is for a "CONTINGENCY ALLOWANCE" to be used in the event of unforeseen work which must be undertaken to complete this project. The work could be as additional quantities to the bid items or as non-bid items.

<b><u>ITEM</u></b>		<b><u>EST.</u></b>		<b><u>UNIT</u></b>	
<b><u>NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>QUANT.</u></b>	<b><u>UNIT</u></b>	<b><u>PRICE</u></b>	<b><u>TOTAL \$</u></b>
A-1	Contingency Allowance	1	AL	\$ 15,000.00	\$ 15,000.00
<b>TOTAL ALTERNATE NO. 1</b>				<b>\$</b>	<b>15,000.00</b>

Bid Form (Continued)

**OBSTRUCTION (TREE) REMOVAL CLEARING**  
**DAYTON WRIGHT BROTHERS AIRPORT**  
**(20% SBE PARTICIPATION)**

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

<u>DESCRIPTION</u>	<u>CONSIDERATION FOR MATERIALS</u>	<u>CONSIDERATION FOR OBLIGATIONS</u>	<u>TOTAL \$</u>
TOTAL BASE BID	\$ <u>7,000<sup>00</sup></u>	\$ <u>128,150<sup>00</sup> <del>120,250<sup>00</sup></del></u>	\$ <u>135,150<sup>00</sup> <del>127,250<sup>00</sup></del></u>
TOTAL ALT. NO 1 (Contingency Allowance)	\$ <u>-0-</u>	\$ <u>15,000.00</u>	\$ <u>15,000.00</u>

The time of completion fixed by the City is 60 Calendar Days

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

NAME

ADDRESS

NO PERSON OR PARTY OTHER THAN THE BIDDER IS  
INTERESTED IN THIS BID

## DISCLOSURE OF LITIGATION

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

RESPONSE: YES \_\_\_\_\_ NO X

If your response is "YES" please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.

**Bidder is**

An Individual  
Firm Name

Business Address

Telephone

Partnership  
Firm Name

Members of Firm and  
Their Business Address

Corporation  
Name

State of Incorporation

Name and Title of  
Officers with Authority  
to Sign Contract

Home Office Address

Local Address

Telephone

EVANS LANDSCAPING INC.

OHIO

DOUG EVANS - PRES. JAKE MEAGHER - PROJECT MGR  
JAMES BAILEY - V. PRES.

4229 ROUND BOTTOM

CINCINNATI, OH 45244

Telephone 513-271-1119x706 Fax 513-271-4215

E-mail JMEAGHER@EVANSLANDSCAPING.COM

Federal I.D.# 31-1175355

Dated this 24 day of FEBRUARY, 2016

Bidder: JAKE MEAGHER EVANS LANDSCAPING INC.  
(Person, Firm, or Corporation)

By: Jake Meagher

Title: PROJECT MANAGER

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

\_\_\_\_\_ Certified Check

\_\_\_\_\_ Cashier's Check

Amount \_\_\_\_\_ Dollars

on \_\_\_\_\_ Bank

of \_\_\_\_\_ is Attached

\_\_\_\_\_  
Bidder

Cash in the amount of \_\_\_\_\_  
Dollars is attached.

\_\_\_\_\_  
Bidder

**BID BOND**

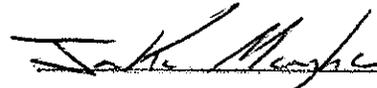
AMOUNT \$ 250,000.00

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

The condition of this obligation is such that, if the Bid attached hereto is accepted and the Contract awarded to the bidder, Evans Landscaping, Inc.

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

Signed and sealed at Dayton, Ohio this 25th day of February, 2016.

  
\_\_\_\_\_  
Evans Landscaping, Inc.

Bidder

  
\_\_\_\_\_  
Anthony G. Balzano, Attorney-in-Fact  
Lexon Insurance Company

Surety

American Contracting Services, Inc.  
\_\_\_\_\_  
Name of Insurance Agency

781 Neeb Road Cincinnati, OH 45233  
\_\_\_\_\_  
Address of Insurance Agency

Telephone 513-793-5333 FAX 513-793-8498

POWER OF ATTORNEY

LX- 254688

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office i Louisville, Kentucky, does hereby constitute and appoint: Anthony Balzano, Deborah Roth, Sarabeth Scott, Sue Smith its true and lawfu Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligator in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 2,500,000.00, Two Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fac shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 29th day of July, 2015.



LEXON INSURANCE COMPANY

BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 29th day of July, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY L. TAYLOR Notary Public- State of Tennessee Davidson County Mv Commission Expires 01-09-16

BY [Signature] Amy J. Taylor Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 25th Day of February, 20 16



BY [Signature] Andrew Smith Assistant Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**LEXON INSURANCE COMPANY**  
**FINANCIAL STATEMENT SUMMARY**  
As of December 31, 2014

ASSETS	LIABILITIES
Bonds	\$70,106,366
Money Market &/or Stocks	15,406,596
Real Estate	9,137,649
Cash and Short-Term Investments	45,204,725
Receivables for Securities	51,724
Agents' Balances &/or Uncollected Premiums	8,835,599
Investment Income Due & Accrued	517,986
Aggregate Write-ins for Invested Assets	137,975
Amounts Recoverable from Reinsurers	1,158,236
Funds Held or Deposited with Reinsured Companies	0
Receivable from Parent, Subsidiaries and Affiliates	97,288
Aggregate write-ins for other than Invested Assets	6,604,015
Other Assets	4,451,210
<b>Total Assets</b>	<b><u>\$161,709,369</u></b>
	<b><u>\$23,667,439</u></b>
	<b>606,476</b>
	<b>29,534,824</b>
	<b>1,368,401</b>
	<b>295,000</b>
	<b>0</b>
	<b>5,075,240</b>
	<b>100,000</b>
	<b>638,000</b>
	<b>275,091</b>
	<b>47,003,103</b>
	<b>632,341</b>
	<b><u>\$109,195,915</u></b>
	<b><u>POLICYHOLDERS' SURPLUS</u></b>
	<b>\$36,322,749</b>
	<b>16,190,705</b>
	<b><u>\$52,513,454</u></b>
	<b><u>\$161,709,369</u></b>

**CERTIFICATE**

I certify that the above financial statements to the best of my knowledge are a true and accurate reflection of the financial condition of the Company as of December 31, 2014. Additionally, I certify that the above financial statements are in agreement with the Statutory Financial Statements filed with the Texas Department of Insurance as of the same date.

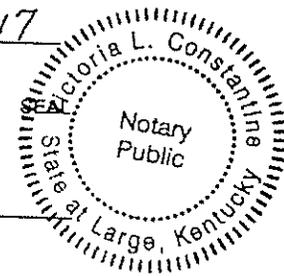
*P. Gregory Laue*  
P. Gregory Laue  
CFO, Secretary, VP & Assistant Treasurer

**SUBSCRIBED**

and sworn to me this 20th day of March 2015

My commission expires: April 22, 2017

*Victoria L. Constantine*  
Notary Public  
Victoria L. Constantine  
Printed Name



Office of Risk Assessment  
50 West Town Street  
Third Floor - Suite 300  
Columbus, Ohio 43215  
(614)644-2658  
Fax(614)644-3258  
www.insurance.ohio.gov

**Ohio Department of Insurance**

John R. Kasich - Governor

Mary Taylor - Lt. Governor/Director

**Certificate of Compliance**



Issued 03/23/2015

Effective 04/02/2015

Expires 04/01/2016

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

**LEXON INSURANCE COMPANY**

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

**Section 3929.01 (A)**

Fidelity

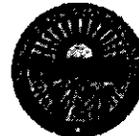
Surety

LEXON INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2014 that it has admitted assets in the amount of \$161,709,369, liabilities in the amount of \$109,195,915, and surplus of at least \$52,513,454.

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

*Mary Taylor*

Mary Taylor, Lt. Governor/Director



CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 1 of 3)

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

LANDSCAPING INC. meets the following Contractor requirements relating  
(company)

to this City of Dayton construction project (check all that apply):

- Comply with all City of Dayton income tax obligations and requirements
- Maintain worker's compensation insurance for all employees as required by the State of Ohio
- Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project
- Comply with the State of Ohio Bureau of Worker's Compensation Drug Free Workplace Policy
- Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By:

Jake Meagher  
(signature)

Title:

PROJECT MANAGER

Date:

2/24/16

CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 2 of 3)

- A. Please provide a complete listing of the fringe benefits provided to employees expected to be utilized at the project site, including, but not limited, to health insurance and retirement benefits. {Reference to benefits traditionally provided on past, similar projects can be made.}

VACATION \_\_\_\_\_  
Holiday \_\_\_\_\_  
401K \_\_\_\_\_  
HEALTH INSURANCE \_\_\_\_\_  
DENTAL INSURANCE \_\_\_\_\_  
DISABILITY INSURANCE \_\_\_\_\_

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

NONE \_\_\_\_\_  
\_\_\_\_\_

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

INFRASTRUCTURE + DEVELOPMENT ENGINEERING INC. \_\_\_\_\_  
EWOL TRUCKING + CONSTRUCTION \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 3 of 3)

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

INFRASTRUCTURE + DEVELOPMENT ENGINEERING INC

EWOL TRUCKING + CONSTRUCTION

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

STATE OF OHIO,  
COUNTY OF HAMILTON, ss:

JAKE MEAGHER being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of EVANS LANDSCAPING INC. ("the Contracting Party").
2. The Contracting Party is a/an (select one):
  - Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.
  - Corporation organized and existing under the laws of the State of OHIO.
  - Labor organization.
3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: Jake Meagher  
Title: PROJECT MANAGER

STATE OF OHIO,  
COUNTY OF HAMILTON, ss:

Sworn to before me and subscribe in my presence by JAKE MEAGHER  
this 24 day of FEBRUARY 2016.



MAY BLANTON  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Butler County  
My Comm. Exp 9/8/2018

May Blanton  
Notary Public

**CITY OF DAYTON  
CONTRACTOR NON-COLLUSION AFFIDAVIT  
TO BE NOTARIZED AND SUBMITTED WITH BID FORM**

STATE OF OHIO )  
COUNTY OF HAMILTON ) SS:

JAKE MEAGHER, being first duly sworn deposes and states that:

(1) He/she is PROJECT MANAGER of  
(owner, partner, officer, representative, or agent)

EVANS LANDSCAPING INC that  
(business or organization name)

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

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

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

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

Sworn to before me and subscribed in my presence

this 24 day of FEBRUARY, 2016.

May Blanton  
NOTARY PUBLIC

Jake Meagher  
SIGNED  
PROJECT MANAGER  
TITLE



MAY BLANTON  
NOTARY PUBLIC  
STATE OF OHIO

Recorded in  
Butler County  
My Comm. Exp. 9/8/2018

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

**AFFIRMATIVE ACTION PROGRAM  
EQUAL EMPLOYMENT OPPORTUNITY**

PROJECT: OBSTRUCTION (TREE) REMOVAL + CLEARING DAYTON WRIGHT  
BROTHERS AIRPORT (20% SBE PARTICIPATION) DAYTON  
NAME LOCATION MONTGOMERY CO,

During the performance of this contract:

EVANS LANDSCAPING INC. 4229 ROUND BOTTOM 513-271-1119 X 706  
CONTRACTOR ADDRESS CINCINNATI, OH 45244 TELEPHONE / FAX 513-271-4215 FAX

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

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

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

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

The required goals and timetables are as follows:

	Goals of Minority Worker Utilization Expressed in Percentage Terms
From 1/1/2000 to Present	<hr/> 11.5%
	Goals of Female Worker Utilization Expressed in Percentage Terms
From 4/1/80 to Present	<hr/> 6.9%

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

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

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

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

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

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

- a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.
- b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefor.

- c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
- e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.
- f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.
- g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.
- h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.
- i) The contractor shall validate all tests and other selection requirements.
- j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.
- k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.
- l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.
- m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

- o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.
- 3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.

**Part II: Contractor's Certification.** A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

**CONTRACTOR'S CERTIFICATION**

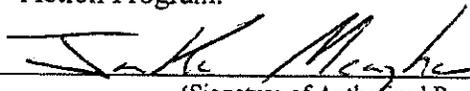
EVANS LANDSCAPING INC (Contractor)  
certifies that:

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

<u>ENGINEERING</u>	
<u>TRUCKING</u>	

- a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and
- b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN:

  
(Signature of Authorized Representative of Bidder)

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



**(Circle one: SBE/MBEWBE/DLSB/DBE/HUD Section 3) PARTICIPATION FORM**

**Project Name:**

OBSTRUCTION (TREE) REMOVAL + CLEARING DAYTON WEIGHT BROTHERS AIRPORT (20% SBE PARTICIPATION)

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

Please Check One						
Firm Name, Tax I.D. Number and Mailing Address	Prime Contract Bid <input type="checkbox"/>	Joint Venture Bid <input type="checkbox"/>	Supply or Service Subcontract <input type="checkbox"/>	Construction Subcontract <input type="checkbox"/>	Type of Service or Supply to be Provided	Type of Construction Work to be Performed
Certified Business Firm Name: <u>INFRASTRUCTURE + DEVELOPMENT ENGINEERING</u> Tax I.D. Number: <u>26-4750413</u> Street Address: <u>2451 CROWN POINT PLACE</u> City/State/ Zip Code: <u>CINCINNATI, OH 45241</u> Phone (area code/#): <u>513-671-8144</u> E-mail: <u>JHAHN@IDE-OH.COM</u>					<u>ENGINEERING SERVICES</u>	
Total \$ Amount of PRIME CONTRACTOR'S Base Bid: <u>142,750.00</u>			Total \$ to subcontract <u>4,000.00</u>		Total % subcontract: <u>7.7%</u>	
<b>PRIME CONTRACTOR'S REPRESENTATIVE</b>				Street Address: <u>4229 ROUND BOTTOM RD</u>		
Print Name: <u>JAKE MEGHER</u>				City/State/Zip: <u>CINCINNATI, OH 45244</u>		
Sign Name: <u>Jake Megher</u>						

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

**Project Name:**

OBSTRUCTION (TREE) REMOVAL + CLEARING DAYTON

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

		Please Check One				Type of Service or Supply to be Provided	Type of Construction Work to be Performed
Firm Name, Tax I.D. Number and Mailing Address	Prime Contract Bid	Joint Venture Bid	Supply or Service Subcontract	Construction Subcontract			
Certified Business Firm Name: <u>EWOL TRUCKING + CONSTRUCTION</u>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		TRUCKING
Tax I.D. Number:	<u>31-14178486</u>						
Street Address:	<u>4645 WOLF CREEK PIKE</u>						
City/State/ Zip Code:	<u>DAYTON, OH 45417</u>						
Phone (area code/#):	<u>937-470-1624</u>						
E-mail:	<u>EWOLTRUCKING30@YAHOO.COM</u>						
Total \$ Amount of PRIME CONTRACTOR'S Base Bid: <u>142,250.00</u>		Total \$ to subcontract <u>17,500.00</u>		Total % subcontract: <u>12.5%</u>			
PRIME CONTRACTOR'S REPRESENTATIVE							
Print Name:	<u>TAKE MEBGER</u>			Street Address	<u>4229 ROUND BOTTOM RD</u>		
Sign Name:				City/State/Zip	<u>CINCINNATI, OH 45244</u>		

**WAIVER REQUEST DOCUMENTED ACTIVITY FORM**

Date \_\_\_\_\_

Project: \_\_\_\_\_ Participation Goal (list only one): \_\_\_\_\_

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 wavier form at the time the bid is submitted. If no explanation is provided, the wavier 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 bid if you are requesting a waiver of any goal.**

Check if completed	Activity Description
	Solicited the interest of all certified <b>MBE/WBE/SBE/DLSB or HUD3</b> having the capability to perform the work of the contract. The bidder must solicit this interest at least ten (10) business days before bid submittal deadline in order to allow the <b>MBE/WBE/SBE/DLSB or HUD3</b> sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient good faith effort, if it is the sole method of communication used.
	Divided contract work items into economically feasible units to facilitate <b>MBE/WBE/SBE/DLSB or HUD3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
	Negotiated with <b>MBE/WBE/SBE/DLSB or HUD3</b> subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration. Rejected <b>MBE/WBE/SBE/DLSB or HUD3</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.
	Provided interested <b>MBE/WBE/SBE/DLSB or HUD3</b> with plans and specifications at no cost, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract at least ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.
	Sought the assistance of the Minority Business Assistance Center (MBAC) or used the services of community organizations, contractors' groups, local, state or federal business assistance offices, or similar organizations to find subcontractors certified as (circle one: <b>MBE/WBE/SBE/DLSB or HUD3</b> ). Contacting HRC for the certified list will not be deemed as sufficient good faith efforts.
Bidding Company Name:	

**ADDENDUM NO. 1****OBSTRUCTION (TREE) REMOVAL & CLEARING DWBA  
(20% SBE PARTICIPATION)****February 15, 2016**

---

**TO ALL BIDDERS:**

This addendum is issued to clarify and/or modify the specifications and contract documents for the titled project. This addendum, including all articles and corrections listed below, shall be taken into account in preparing the "Proposals" and shall become part of the Contract.

All bidders are requested to attach this Addendum to the Bid Form and return to the City. This Addendum No. 1 includes:

The bid date is changed from February 18, 2016 to **February 25, 2016**

February 15, 2016  
Stephen Finke  
Deputy Director  
Department of Public Works

**ADDENDUM NO. 2****OBSTRUCTION (TREE) REMOVAL & CLEARING DWBA  
(20% SBE PARTICIPATION)****February 18, 2016**

---

**TO ALL BIDDERS:**

This addendum is issued to clarify and/or modify the specifications and contract documents for the titled project. This addendum, including all articles and corrections listed below, shall be taken into account in preparing the "bid form" and shall become part of the Contract.

All bidders are requested to attach this Addendum to the Bid Form and return to the City. This Addendum No. 1 includes:

A project site walkthrough, at the Dayton Wright Brothers Airport, will be available between the hours of 10AM and 12PM on Friday **February 19, 2016**.

February 18, 2016  
Stephen Finke  
Deputy Director  
Department of Public Works



## MEMORANDUM

---

March 9, 2016

TO: Frederick Stovall, Director  
Department of Public Works

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

SUBJECT: **Obstruction Tree Removal DWBA (20% SBE)** 

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

	<b>PERCENTAGE OF PARTICIPATION</b>
1. Evans Landscaping Inc.	
A. MINORITY BUSINESS ENTERPRISE	
B. WOMEN BUSINESS ENTERPRISE	
C. SMALL BUSINESS ENTERPRISE	
EWOL Trucking	12.95%
Infrastructure Development Engineering	8.14%
D. DAYTON LOCAL SMALL BUSINESS	
E. DISADVANTAGED BUSINESS ENTERPRISE	
F. HUD SECTION 3 BUSINESS ENTERPRISE	
 TOTAL PARTICIPATION	<hr/> 21.09% SBE

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

**EWOL TRUCKING & CONST INC.  
P. O. BOX 26040  
TROTWOOD, OHIO 45426  
(937) 470-1624**

**AGREEMENT BETWEEN EWOL TRUCKING/ EVANS LANDSCAPING**

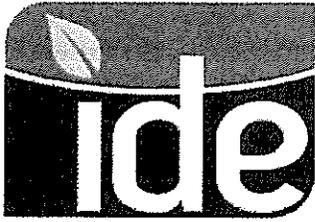
**HAULING RATES: DUMP TRAILER \$ 100.00 HRLY**

**JOB SITE: WRIGHT BROTHERS AIRPORT**

**JOB DESCRIPTION: TREE REMOVAL CLEARING**

**HOURS: 8 HRS DAILY FOR APPROXIMATELY 22 DAYS**

**AMOUNT: \$ 17, 500.00**



**INFRASTRUCTURE  
DEVELOPMENT  
ENGINEERING**

- Civil Engineering
- Land Surveying
- Environmental
- Geotechnical
- Materials Testing
- Construction Inspection

March 1, 2016

1.	Name of Project	Obstruction (Tree) Removal at DWBA
2.	Name of Prime Contractor	Evan's Landscaping
3.	City and State of Prime Contractor	Cincinnati, OH
4.	Project work division area(s) to be performed and list the specific segment of work you will perform according to the plans and specifications	Land Surveying
5.	For each segment of the work you will perform	n/a
	Unit Cost	2 man crew \$180/hr Licensed Surveyor \$98/hr
	Total Cost	\$11,000 estimated
6.	Cost breakdown for each segment of work you will perform	n/a
	Material	n/a
	Labor	\$11,000 estimated
7.	Indicate your markup or profit on the materials purchased (not ordinarily in stock) and all specific items that are specialized electrical equipment or any other specialized or sole-source equipment.	n/a
8.	If this is a trucking company, list:	n/a
	Number of trucks	
	Types of truck(s)	
	Describe the work you will perform	
	Type of material	
	Number of hours	

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Water  
Department/Division

53000-9970-1159-54 (\$70,000)  
Code 51000-3210-1159-43 (\$50,000)  
~~10000-5540-1159-54 (\$20,000)~~

(CHECK ONE)

Fund Title 2016 Water Operating Fund  
2016 Aviation Operating Fund  
2016 General Operating Fund

Amount \$ \$140,000 (Thru 5/2018)

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

Supplier/Vendor/Company/Individual:  
 NAME Lykins Oil Company, DBA  
STEP Resources Consulting, LLC  
 ADDRESS 8366 Princeton-Glendale Rd., Suite B1  
West Chester, OH 45069

Justification and description of purchase, contract or payment:

**ELECTRIC MANAGEMENT**

Permission is requested for a First Amendment (Amendment) with Lykins Oil Company, DBA STEP Resources Consulting, LLC in the amount of \$140,000.00. This Amendment will cover additional services/work which is needed to continue with electric procurement, contract management, and training. The purchase of electric Generation Supply through DPLER was structured to deploy strategies and obtain the best possible rates for City Facilities. The electric procurement team recommends STEP Resources Consulting, LLC be retained for an additional two years based on their proven past performance, experience with other Ohio government accounts, experience with Water and Wastewater Treatment Facilities, their knowledge of Water and Aviation electric usage and Peak Load Capacity options, and the ability to maintain continuity with other DPLER contract work completed to date.

The funding for the Amendment is as follows:

<u>Funding by Year</u>	<u>2016</u>	<u>2017</u>
Water Operating Fund	\$35,000.00	\$35,000.00
Aviation Operating Fund	\$25,000.00	\$25,000.00
General Operating Fund	\$10,000.00	\$10,000.00

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

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

Approved Affirmative Action Program on File  Yes       No       NA

Approved by City Commission

Clerk

Date

Division \_\_\_\_\_  
*[Signature]* / For  
 Department \_\_\_\_\_  
*[Signature]*  
 City Manager



**FIRST AMMENDMENT OF THE  
AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS FIRST AMENDMENT OF THE AGREEMENT FOR PROFESSIONAL SERVICES** (“First Amendment”) is between the City of Dayton, Ohio, (“City”) and STEP Resources Consulting LLC, a division of Lykins Oil Company, (“Contractor”), 8366 Princeton-Glendale Road, Suite B1, West Chester, Ohio 45069.

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

**WHEREAS**, The City and Contractor entered into a Professional Services Agreement (“Agreement”) for energy consulting and advisory services on June 17, 2014; and,

**WHEREAS**, The City desires additional Professional Consulting Services for energy consulting and advisory services for purchasing and managing energy purchases; and,

**WHEREAS**, Contractor is qualified and available to provide the Services to the City on the terms and conditions stated herein.

**WHEREAS**, The parties desire to amend the Agreement to extend the term and amend the Agreement to accommodate the City’s need for additional services.

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

**SECTION 1.** Article 1, Term, shall be deleted in its entirety and replaced with the following:

The Agreement shall continue upon execution by the City (“Commencement Date”) and it shall expire two (2) years after the date which it is continued. The City reserves the right to extend the term of this Agreement to a later date by mutual written agreement, as described in Article 17.

**SECTION 2.** Article 3, Compensation, shall be deleted in its entirety and replaced with the following:

**ARTICLE 3. COMPENSATION**

The total remuneration in this Agreement shall not exceed Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) or Seventy Thousand Dollars and Zero Cents (\$70,000.00) annually. 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.

**SECTION 3.** Attachment A, Scope of Services, shall be deleted in its entirety and replaced with the attached Attachment A.

**SECTION 4.** Except as modified herein, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, Dayton and Contractor, each by a duly authorized representative and intending to be legally bound, have executed this First Amendment as of the date set forth below.

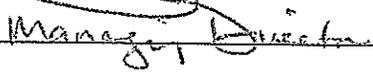
**CITY OF DAYTON, OHIO**

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

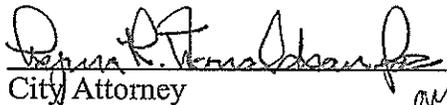
Date: \_\_\_\_\_

**STEP RESOURCES CONSULTING, LLC**

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


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


**APPROVED AS TO FORM  
AND CORRECTNESS:**

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

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

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

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

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

**ATTACHMENT A  
TO  
AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**

**City:** City of Dayton, Ohio  
**Project:** Management of Energy Purchases and Price Risk Management  
**Contractor:** STEP Resources Consulting, a division of Lykins Oil Company

**SCOPE OF SERVICES**

**Procurement:**

1. Assist the City of Dayton in the electric procurement process to ensure that Dayton properties lock in the best price possible considering all the factors involved in the electric market, including: pricing, PUCO, DP&L and PJM requirements.
2. STEP updates to the City employees from Aviation, Water and the General Fund will include:
  - a. Walk through of market monitoring and purchasing procedures;
  - b. Make recommendations for block, fixed, and other products that will provide hedging to maximize savings;
  - c. Assist with the purchasing process;
  - d. Follow up and review any actions necessary by employees to assist in the purchasing effort.
3. STEP will monitor the electric market and the City's facilities usage data to advise the City on the best strategy and timing on how to lower costs.
4. Implementation of the procurement and monitoring process. STEP will participate and lead:
  - a. In person meeting(s) to review markets and other relevant information at least every two months;
  - b. Make recommendations to the City on purchase options and strategies

**Demand and Peak Load Commitment (PLC):**

1. Review operations and make recommendation for demand and PLC reductions, such as usage timing and backup systems;
2. Issue Demand/PLC curtailment notices a minimum of 24 hours in advance, if possible.

**Miscellaneous:**

1. Advise the City of regulatory changes that have the potential to impact electric prices, and provide the City cost impacts of the proposed rate changes;

2. Provide an annual update of all accounts usage and costs;
3. Review and make recommendations on alternative energy projects with the potential to impact electric usage, such as the Community Solar Project.



## MEMORANDUM

June 1, 2016

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

**FROM:** Rich Sirucek, Supervisor Financial Analysis   
Department of Water

**SUBJECT:** STEP Resources, Inc., Agreement

STEP Resources, a division of Lykins Oil Company, has provided the City with Professional Consulting Services for several years. STEP's current contract expires on June 17, 2016. Copies of the contract are attached for your review and approval.

The electric procurement team recommends STEP Resources be retained for two years to assist in the management, education, and contract work. The team recommends STEP for the following reasons:

- Proven past performance,
- Experience with other governmental accounts,
- Experience with other Water Treatment Facilities,
- Knowledge of the City Water, Aviation, and General Fund electric usage and Peak Load Capacity options,
- Educational efforts and staff support by STEP, and
- Maintain continuity with the DPLER/IGS contract work completed to date.

The breakdown of the costs includes:

	Annual	2-Years	
Water Department	\$35,000	\$70,000	53000-9980-1159-54
Aviation	\$25,000	\$50,000	51000-3210-1159-43
General Fund	<u>\$10,000</u>	<u>\$20,000</u>	10000-5540-1159-54
	\$70,000	\$140,000	

If you have any questions about the contract, please contact Donna Winchester at 333-3674.

APPROVED:

  
\_\_\_\_\_  
Mike Powell, Interim Director, Department of Water

4.

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Municipal Court / Court Administration  
*Department/Division*

Code 22113-2510-29601-74

Fund Title Montgomery County Electronic Home Detention

(CHECK ONE)

Amount \$ NA

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

Supplier/Vendor/Company/Individual:

NAME Montg. Co. Board of Commissioners  
 ADDRESS 451 W Third St. 11<sup>th</sup> Floor  
Dayton, Ohio 45422

Justification and description of purchase, contract or payment:

**Supplemental Agreement**

On behalf of the Board of County Commissioners of Montgomery County and the Dayton Municipal Court we are requesting approval of the Supplemental Agreement for the Electronic Home Detention Program (EHDP).

This supplemental agreement is an amendment to the resolution dated December 2, 2015. The supplemental agreement is for the replacement of two vehicles which were donated in 2008 by Montgomery County for the program. The City of Dayton will purchase and maintain ownership of the two vehicles for the (EHDP) at a later date. The purchase price of the vehicles and other expenses will be invoiced to Montgomery County.

Attached is a copy of the original City Manager's Report and Certificate of Revenue which was approved by the City Commission on December 2, 2015.

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

Approved Affirmative Action Program on File     Yes       No       NA

Approved by City Commission

Clerk

Date

Division \_\_\_\_\_  
*Christ Marie Murray*  
 Department \_\_\_\_\_  
*James D. Clements*  
 City Manager

**RESOLUTION AUTHORIZING A SUPPLEMENTAL AGREEMENT TO RESOLUTION 15-1803 DATED DECEMBER 22, 2015 WITH THE CITY OF DAYTON SERVING AS FISCAL AGENT FOR THE DAYTON MUNICIPAL COURT TO PROVIDE AN ELECTRONIC HOME DETENTION PROGRAM FOR THE MUNICIPAL COURTS OF MONTGOMERY COUNTY, OHIO TO AMEND THE SCOPE OF WORK TO AUTHORIZE THE PURCHASE OF TWO REPLACEMENT VEHICLES FOR THE ELECTRONIC HOME DETENTION PROGRAM AT NO ADDITIONAL COST TO THE COUNTY.**

FUNDING SOURCE: DEPT: 14, OCA: 114786, OBJ: 7195, \$375,000.00 CE#600045

**WHEREAS**, the Board of County Commissioners of Montgomery County, Ohio previously approved Resolution 15-1803 dated December 22, 2015, an Agreement with the City of Dayton, Dayton Municipal Court to provide an Electronic Home Detention Program for the municipal courts of Montgomery County; and

**WHEREAS**, there is a need for the replacement of the two vehicles originally donated to the program; and

**WHEREAS**, the City of Dayton may purchase and maintain ownership of two vehicles to be used in the Electronic Home Detention Program; and

**WHEREAS**, the purchase price of the vehicle, city fleet maintenance preparation fees, and marking expenses will be invoiced to the county through the normal invoicing process.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Montgomery County, Ohio, does hereby authorize a supplemental agreement to Resolution 15-1803 dated December 22, 2015 with the City of Dayton serving as fiscal agent for the Dayton Municipal Court to provide an Electronic Home Detention Program for the municipal courts of Montgomery County, Ohio to amend the Scope of Work to authorize the purchase of two replacement vehicles for the Electronic Home Detention Program at no additional cost to the county.

**BE IT FURTHER RESOLVED** that the Clerk of the Commission certify a copy of this Resolution and make an imaged copy of this resolution available on the Montgomery County, Ohio website at <http://www.mcoho.org/>.

## SUPPLEMENTAL AGREEMENT

Supplemental Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between the Board of County Commissioners of Montgomery County, Ohio hereinafter referred to as the "Board" and the City of Dayton, Ohio, hereinafter referred to as the "City".

In consideration of mutual promises set forth herein and by consent of all of the parties hereto, that a certain Agreement entered into between the Board and the City pursuant to Resolution 15-1803 dated December 22, 2015 shall be and hereby is modified, altered and amended in the following respect only:

### **EXHABIT "A" SCOPE OF WORK**

#### **Part F. Vehicles**

During the term of this agreement the City of Dayton is authorized to purchase two replacement vehicles to be owned by the City for the purposes of carrying out the functions of the Electronic Home Detention Program.

All remaining terms and conditions in the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have hereunto set their hands on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

WITNESS:

**BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO**

\_\_\_\_\_  
By \_\_\_\_\_  
Judy Dodge, President  
\_\_\_\_\_  
By \_\_\_\_\_  
Dan Foley  
\_\_\_\_\_  
By \_\_\_\_\_  
Deborah A. Lieberman

OR

\_\_\_\_\_  
WITNESS  
By \_\_\_\_\_  
Joseph P. Tuss  
Montgomery County Administrator

\_\_\_\_\_  
WITNESS  
By \_\_\_\_\_  
Tom Kelley, Assistant County Administrator  
Director, Human Services Planning & Development

**APPROVED AS TO FORM:  
MATHIAS H. HECK, JR.  
Prosecuting Attorney for Montgomery County, Ohio**

BY Mary Montgomery  
Assistant Prosecuting Attorney

Date 4.18.16

WITNESSED BY:

DAYTON MUNICIPAL COURT

\_\_\_\_\_

By \_\_\_\_\_  
Court Administrator

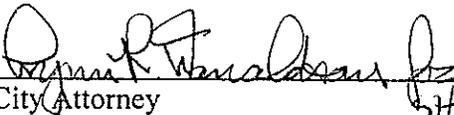
WITNESSED BY:

CITY OF DAYTON, OHIO

\_\_\_\_\_

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

APPROVED AS TO FORM AND  
CORRECTNESS:

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

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

\_\_\_\_\_, 201\_\_

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

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

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Aviation  
Department/Division

Code 51137-3210-1159-43

(CHECK ONE)

Fund Title 2016 CFC Concorde & Freight Dr. Rehab

Amount \$ \$150,000

- Purchase Order
- Price Agreement
- Award of Contract
- Other Air Cargo Access Improvement Projects Management and Financing Agreement
- Lease Agreement
- Estimate of Cost
- Payment of Voucher

Supplier/Vendor/Company/Individual:  
 NAME Montgomery County Transportation Improvement District  
One Chamber Plaza, Suite 200  
 ADDRESS Dayton, Ohio 45402

Justification and description of purchase, contract or payment:

**AIR CARGO ACCESS IMPROVEMENT PROJECTS MANAGEMENT AND FINANCING AGREEMENT**

The Department of Aviation requests permission to enter into an agreement with the Montgomery County Transportation Improvement District (TID) in the amount of \$150,000 for Phase 1 professional services related to proposed infrastructure improvements to roadways, water, sewer, and storm water systems at the Dayton International Airport (Airport).

There are two improvement projects under the contract. The first project is the design, engineering and construction of certain transportation improvements on and near Concorde Drive beginning at US-40 and continuing for approximately 3,000 feet (Project A).

The second project is the design, engineering and construction of certain new roadway improvements, on and near Concorde Drive beginning at the terminus of Project A and continuing up to and including Freight Drive (Project B).

Both Project A and Project B will consist of two phases: the design phase (Phase 1) and the construction Phase (Phase 2). Phase 1 is being funded with \$100,000 in Aviation Customer Facility Charge Funds and \$250,000 in ED/GE grant funds that will be assigned to the TID under a separate agreement. The TID will receive a \$25,000 Phase 1 Management Fee for each Project.

A budget for Phase 2 of each project will be created at the conclusion of Phase 1.

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

A Certificate of Funds is attached.

Approved Affirmative Action Program on File  Yes  No  NA

Approved by City Commission

Clerk

Date

Division \_\_\_\_\_  
  
 Department \_\_\_\_\_  
  
 City Manager \_\_\_\_\_



**AIR CARGO ACCESS IMPROVEMENT PROJECTS  
MANAGEMENT AND FINANCING AGREEMENT**

THIS AIR CARGO ACCESS IMPROVEMENT PROJECTS MANAGEMENT AND FINANCING AGREEMENT (this "**Agreement**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016 (the "**Effective Date**"), by and between THE CITY OF DAYTON, OHIO a municipality duly organized and validly existing under the laws of the State of Ohio (the "**City**"), and the MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation district and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "**District**") (the City and the District are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**"), under the following circumstances:

- A. In order to improve safety and access to properties that are anticipated to be developed in the future within the Dayton International Airport, the City desires to engage the District to cause the design, engineering, and construction, on a turnkey basis, of: (i) certain new roadway and related improvements, including without limitation storm water and water and sewer improvements, on and near Concorde Drive beginning at US-40 and continuing for approximately 3,000 feet ("**Project A**"); and (ii) certain new roadway improvements, on and near Concorde Drive beginning at the terminus of Project A and continuing up to and including Freight Drive ("**Project B**", and together with Project A, the "**Projects**", a visual representation of which is set forth in the Scopes (as defined below));
- B. The Parties agree that the City will receive material economic benefit from the completion of the Projects;
- C. The Parties acknowledge that each of the Projects shall be comprised of two phases: the design phase ("**Phase I**") and the construction phase ("**Phase II**");
- D. This Agreement relates to and is executed in contemplation that the District, the Board of County Commissioners of Montgomery County, Ohio (the "**County**"), the Dayton-Montgomery County Port Authority, and the City, desire to negotiate and enter into a Strategic Enhancement of Economic Development Program (SEED Program) in connection with the Dayton International Airport; and
- E. The Parties desire to support the Projects by entering into this Agreement to set forth in more detail each of their respective obligations with respect to the Projects, and, therefore, the Commission of the City of Dayton and the District, acting pursuant to Resolution No. 2016-31 adopted by its Board of Trustees on May 16, 2016, have each authorized the execution of this Agreement.

NOW THEREFORE, in consideration of the above, and based upon the mutual promises contained below, the Parties agree as follows:

1. **Project A.**

A. *General.* The Parties hereby agree to cooperate to develop and implement Project A as set forth in this Agreement. The Parties anticipate that Project A will be a design/build project and the District will deliver Project A to the City on a turnkey basis.

B. *Scope.* The scope of Project A, including Phase I and Phase II, is set forth on Exhibit A-1 (the "**Project A Scope**"). The Parties acknowledge that they may further develop or modify the Project A Scope or add additional tasks thereto during the course of the development of Project A by amending the Project A Scope in a writing executed by all Parties.

C. *Schedule.* The schedule for completing Project A is set forth on Exhibit A-2 (the "**Project A Schedule**"). The Parties may further develop or modify the Project A Schedule during the course of the development and implementation of Project A by amending the Project A Schedule in a writing executed by all Parties; provided, however that the Parties agree to use their reasonable commercial efforts to adhere to such schedule and to fulfill all their obligations under this Agreement so the Project A Schedule is met.

D. *District Management Fee.* The City hereby agrees to pay \$25,000 to the District (from funds other than those identified on Exhibit E) (the "**Project A District Phase I Management Fee**") within thirty (30) days after execution of this Agreement for the Phase I Tasks and the "District Management Services" related to Project A set forth in Section 6.C. In the event the Parties proceed to Phase II of Project A, the City hereby agrees to pay the District three percent (3%) of the amount identified as the Phase II portion of the Budget for Project A (from funds other than those identified on Exhibit E) simultaneously with the delivery of the Phase II Commencement Notice (as defined in Section 4 below) for Project A for the District's activities to be undertaken in connection with Phase II of Project A.

## 2. **Project B.**

A. *General.* The Parties hereby agree to cooperate to develop and implement Project B as set forth in this Agreement. The Parties anticipate that Project B will be a design/build project and the District will deliver Project B to the City on a turnkey basis.

B. *Scope.* The scope of Project B, including Phase I and Phase II, is set forth on Exhibit B-1 (the "**Project B Scope**", and together with the Project A Scope, the "**Scopes**"). The Parties acknowledge that they may further develop or modify the Project B Scope or add additional tasks thereto during the course of the development of Project B by amending the Project B Scope in a writing executed by all Parties.

C. *Schedule.* The schedule for completing Project B is set forth on Exhibit B-2 (the "**Project B Schedule**", and together with the Project A Schedule, the "**Schedules**"). The Parties may further develop or modify the Project B Schedule during the course of the development and implementation of Project B by amending the Project B Schedule in a writing executed by all Parties; provided, however that the Parties agree to use their

reasonable commercial efforts to adhere to such schedule and to fulfill all their obligations under this Agreement so the Project B Schedule is met.

D. *District Management Fee.* The City hereby agrees to pay \$25,000 to the District (from funds other than those identified in on Exhibit E) (the “**Project B District Phase I Management Fee**”) within thirty (30) days after execution of this Agreement for the Phase I Tasks and the “District Management Services” related to Project B set forth in Section 6.C. In the event the Parties proceed to Phase II of Project B, the City hereby agrees to pay the District three percent (3%) of the amount identified as the Phase II portion of the Budget for Project B (from funds other than those identified on Exhibit E) simultaneously with the delivery of the Phase II Commencement Notice for Project B for the District’s activities to be undertaken in connection with Phase II of Project B.

3. **Projects Budget.** The initial Phase I budget for Project A and Project B is set forth on Exhibit C (the “**Phase I Budget**”, and together with the Phase II Budget (as defined in Section 6.B.vi below), the “**Budget**”). Prior to proceeding to Phase II of a Project, the Parties will enter into an amendment to this Agreement that sets forth the Phase II Budget for such Project. The Parties acknowledge that they may further develop or modify the Budget during the course of the development of either or both Projects by amending the Budget in a writing executed by all Parties.

4. **Phase II of the Projects.** The Parties will only proceed to Phase II of a Project upon written notification by the City’s Director of Aviation that the City desires to proceed to Phase II of such Project (a “**Phase II Commencement Notice**”). The Parties’ respective rights and obligations related to construction of the Projects during Phase II are set forth on Exhibit D attached hereto.

5. **Funding for the Projects.** The Parties intend to fund Phase I and Phase II of the Projects as set forth on Exhibit E attached hereto, as such Exhibit may be amended by the Parties from time to time.

#### 6. **Specific Phase I Provisions.**

A. *Effective Date and Termination.* In order to provide for efficient administration of the Projects, the Parties agree that Phase I of both Projects and the related Phase I Tasks (defined below) shall be commenced simultaneously and run concurrently. Phase I of each Project shall begin on the Effective Date and will terminate upon the earlier of: (i) the date both Parties have completed their respective obligations under such Phase I; provided, however, any obligations not completed by a Party may be waived (in writing) by the other Parties; and (ii) the date both Parties agree, in writing, to terminate a Project.

B. *Phase I Tasks.* During Phase I of each Project, the Parties will cooperate to perform the following tasks (the “**Phase I Tasks**”):

- (i) Perform the preliminary engineering and related documentation, up to completion of Stage 2 Plans, for the Projects, including as related to the related roadway improvements and water and sewer improvements, as applicable;

(ii) The City will ensure all FAA notification and Part 77 requirements are met;

(iii) Conduct necessary traffic studies and provide for temporary access to US-40;

(iv) The District will coordinate signalization issues as required between the Ohio Department of Transportation, the City of Vandalia and the City;

(v) Obtain necessary easements for right-of-way necessary for each of the Projects;

(vi) Develop the Phase II budget for each Project (the "**Phase II Budget**");

(vii) Identify all tasks necessary to complete Phase II of each Project; and

(viii) The District will provide and arrange for the provision of all architectural/engineering plans and designs, specifications, estimates of material quantities, and any other documents necessary to support each Project and will let (contingent on receipt of the applicable Phase II Commencement Notice) each Project in accordance with the District's policies with regards to procurement. All such plans and documents will be certified by a fully qualified licensed professional engineer. The District will provide to the City the complete plan submittal package that each entity submitting a quote will receive (the "**Plan Submittal Package**"). The City will review the Plan Submittal Package and if the City requests changes to the Plan Submittal Package, the District will modify the Plan Submittal Package to accommodate the City's requested changes. Upon the City's approval of the Plan Submittal Package, the District will advertise each Project, will conduct the procurement, and following receipt of the applicable Phase II Commencement Notice, will award the contract to qualified contractors approved by the City (the "**Contractors**"). The City hereby authorizes the District to contract with the Contractors.

C. *Specific District Management Services.* During Phase I of each Project the District will provide all necessary project planning, project coordination, strategy development, and project supervision for Phase I (the "**District Management Services**"). The District Management Services will include:

(i) **Project Supervision.** All activities related to Phase I will be performed under the general supervision and direction of the District. The District shall provide, or provide for, all monitoring activities sufficient to ensure compliance with the Scopes.

(ii) **Payments.** The District will pay all invoices for services accomplishing Phase I Tasks, including, but not limited to engineering services

and out-of-pocket project costs specifically related to the accomplishment of the Projects (the "**Third Party Services and Costs**") so long as such Third Party Services and Costs are satisfactory and such invoices are within the Budget. The District will keep the City apprised of the progress of Phase I of each Project as compared to such Budget at Progress Meetings (described below) and will provide the City such supporting information as the City reasonably requests on a timely basis.

D. Provisions Related to the District Fee. In the event either or both of the Projects is terminated prior to the District completing the Phase I Tasks for such Project, then the Parties shall meet to identify what amount of the Project A District Phase I Management Fee or Project B District Phase I Management Fee, as applicable, if any, was not earned by the District – based upon the time and effort performed by the District and the accomplishment to date of the applicable Phase I Tasks (the "**Unearned Project Fees**"). If the Parties cannot agree on the amount of the Unearned Project Fees, the matter will be conclusively determined by arbitration conducted by one arbitrator selected by the Airport Director. Such arbitrator shall be independent of the City and have substantial experience in public financing and construction matters. The Parties shall each bear their own costs and expenses in connection with such arbitration. The District shall repay any Unearned Project Fees to the City within thirty (30) days after the agreement or determination of the amount of the Unearned Project Fees.

7. **District Payment Obligations.** Notwithstanding any provision of this Agreement, it is understood and agreed that the District shall have no pecuniary obligations under this Agreement or any related agreement and no obligation of the District hereunder or thereunder shall constitute a general debt or a pledge of the general credit of the District.

8. **Work Product Transfer.** The District agrees to transfer to the City for its own benefit and use, all of the District's ownership and intellectual property interest, including without limitation all copyright interests in all drawings, specifications, and other documents and electronic data furnished by the District to the City under this Agreement (the "**Work Product**"); provided, however, that the City hereby grants to the District a limited, irrevocable, fully-paid-up license to use the Work Product in connection with such other uses as may be within the District's purposes. Use of the Work Product is at the City's sole risk without liability or legal exposure to the District or anyone working by or through the District.

9. **City Obligations.** The City shall throughout the performance of this Agreement perform the activities provided for in this Agreement, cooperate and coordinate with and assist the District, join with the District in signing and granting any applications or permits or other documents necessary to complete the Projects. The City shall perform its responsibilities, obligations, and services, including its reviews and approvals of the District's submissions and recommendations, in a timely manner so as not to delay or interfere with the District's performance of its obligations under this Agreement or to have a negative impact on the Schedules. The City shall be responsible for timely making all necessary approvals for the activities under this Agreement.



**13. Fiscal Officer Certifications.** The Fiscal Officer of each Party hereby certifies that the monies required to meet the obligations of his or her respective Party during the current fiscal year under this Agreement have been appropriated lawfully for that purpose, and are in the treasury of such Party or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of each respective Party covenants that any requirement herein of an expenditure of his or her Party monies in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. The certifications in this Section 13 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

**14. Additional Parties to the Agreement.** The Parties acknowledge and agree that additional parties may be added to this Agreement by the unanimous consent of the Parties by having such governmental agencies enter into an acknowledgement to this Agreement (the "**Acknowledgement**"). Each Acknowledgement shall set forth for such Party: (a) the information required by Section 11 hereof (Notices); and (b) if required, a fiscal officer's certificate pursuant to Sections 5705.41 and 5705.44 of the Ohio Revised Code. Each such additional party shall be deemed to be a Party under this Agreement.

**15. Assignment and Binding Nature.** This Agreement may not be assigned without the prior written consent of the non-assigning Parties. The provisions of this Agreement shall be binding upon the successors and permitted assigns of the Parties.

**16. Remedies.** Except with respect to any dispute related to Unearned Project Fees, which shall be resolved pursuant to Section 6.D., any disputes, controversies or claims arising under or relating to this Agreement or the breach, termination or invalidation thereof or the Services provided pursuant to this Agreement shall, upon written notice, be referred to the City Manager and the Executive Director of the District who will confer in good faith for a period of at least thirty (30) days to attempt to resolve the matter. If the City Manager and the Executive Director are unable to resolve the matter within this thirty-day period, each Party may take such actions permitted by law or this Agreement in order to resolve such dispute.

**17. Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**18. Construction and Interpretation.** No Party shall be deemed to be the draftsman of this Agreement, and it shall not be interpreted or construed in favor of or against any Party. Words in the singular shall include the plural, and vice versa, and words in the masculine shall include the feminine and/or neuter, and vice versa, where the context so requires for a reasonable interpretation of this Agreement. All Exhibits referred to in and attached to this Agreement are incorporated by reference.

19. **Miscellaneous.** The District hereby affirms and certifies that it complies with Ohio Revised Code 3517.13 limiting political contributions. Each of the Parties agrees to comply with all applicable Federal, State and local laws, rules, orders and regulations in performing its obligations hereunder. This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of any of the Parties other than in their official capacity, and no member of the Commission of the City, District Board of Trustees, the Commission of the County, and no City, District or County official executing this Agreement, shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and completely replaces and supersedes the Existing Agreement. The waiver, by any Party hereof of any breach of any provision of this Agreement shall not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

20. **Equal Employment Opportunity and Non-Discrimination.** The District 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.

*[Remainder of Page Intentionally Blank. Signature Page Follows.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

CITY OF DAYTON, OHIO

CITY OF DAYTON FISCAL OFFICER  
(Section 13 only)

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

\_\_\_\_\_

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

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

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

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

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

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

APPROVED AS TO FORM  
AND CORRECTNESS

  
\_\_\_\_\_  
City Attorney *SAB LJB*

MONTGOMERY COUNTY TRANSPORTATION  
IMPROVEMENT DISTRICT

MONTGOMERY COUNTY TRANSPORTATION  
IMPROVEMENT DISTRICT, FISCAL OFFICER  
(Section 13 only)

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

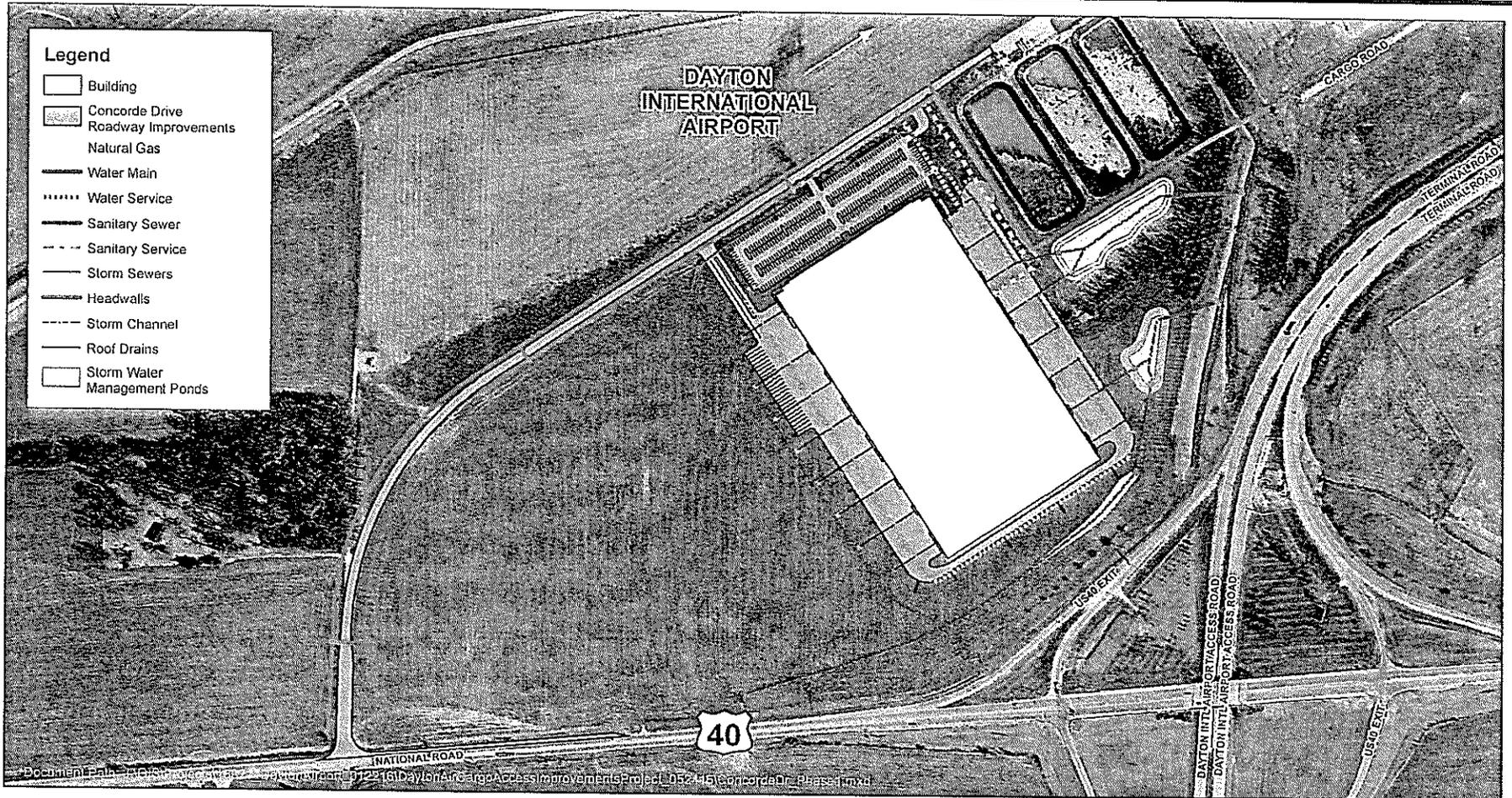
\_\_\_\_\_

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

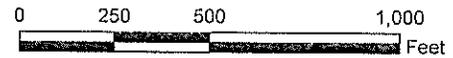
By: \_\_\_\_\_

**Project A Scope**

**SEE ATTACHED MAP.**



**Concorde Drive & Intersection Improvement Project**



For further information please contact: Jeff Koehn, IBI Group  
 23 Triangle Park Drive Suite 2300, Cincinnati, Ohio 45246  
 513-842-3144 ext. 232 • jeff.koehn@ibigroup.com •  
 www.ibigroup.com



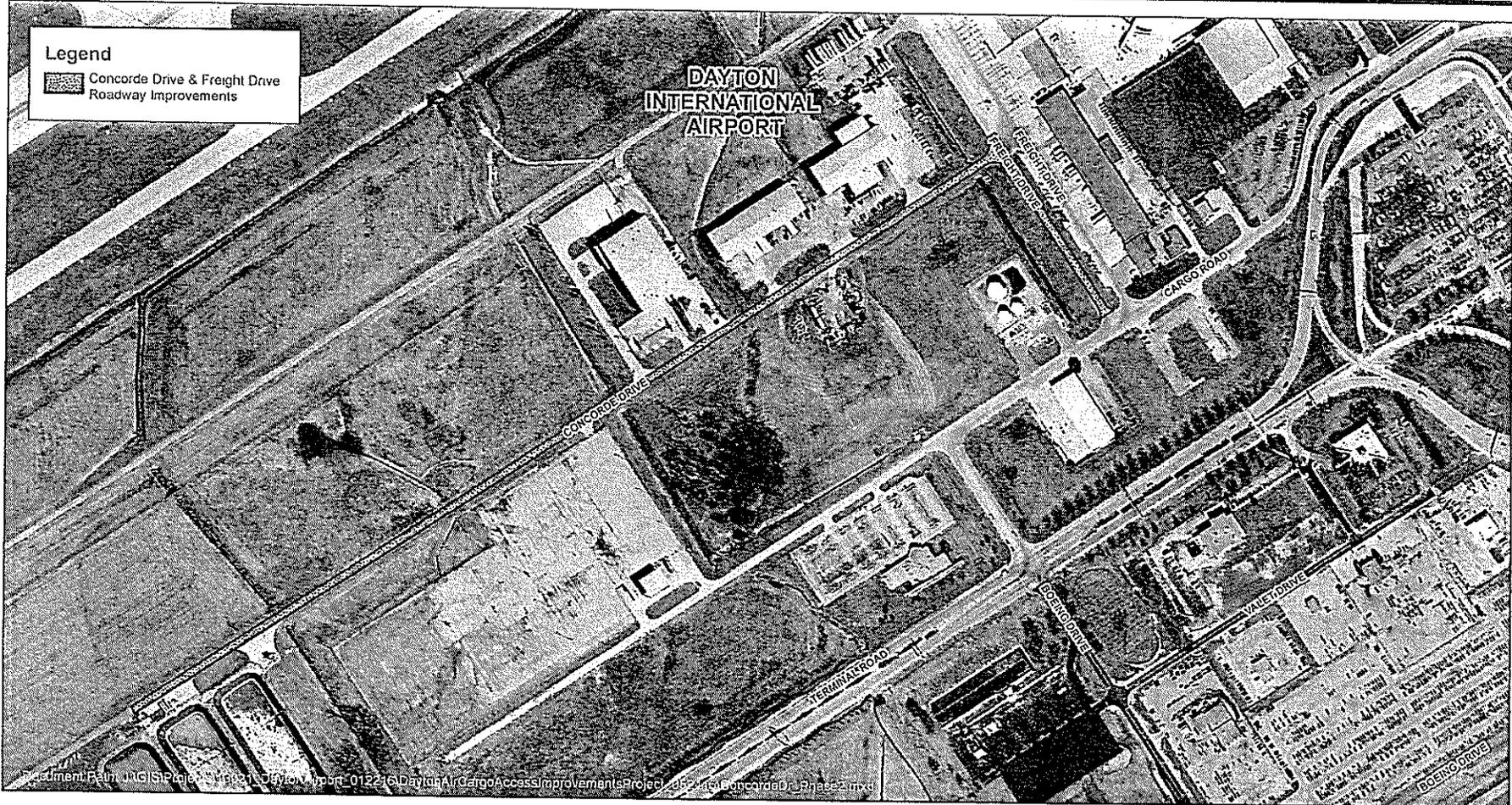
Date: 5/26/2016

**Project A Schedule**

<b>SCHEDULE MILESTONE</b>	<b>TARGET DATE</b>
Surveying & Preliminary Plans	June 17, 2016
Final Plans & Bid Documents	July 1, 2016
Bids Received & Phase II Financing Plan	July 15, 2016
Decision on Phase II	July 22, 2016

**Project B Scope**

**SEE ATTACHED MAP.**



**Legend**  
 Concorde Drive & Freight Drive  
 Roadway Improvements

**DAYTON  
 INTERNATIONAL  
 AIRPORT**

\\adment\Path\GIS\Projects\Support\Dayton\Airport\_012216\DaytonAI\_CargoAccessImprovementsProject\_052216\ConcordeDr\_Phase2.mxd



**Concorde Drive & Freight Drive  
 Improvement Project**



For further information please contact: Jeff Koehn, IBI Group  
 23 Trianglo Park Drive Suite 2300, Cincinnati, Ohio 45246  
 513-942-3141 ext. 232 • jeff.koehn@ibigroup.com •  
 www.ibigroup.com

Date: 5/26/2016

**Project B Schedule**

<b>SCHEDULE MILESTONE</b>	<b>TARGET DATE</b>
Surveying & Preliminary Plans	June 17, 2016
Final Plans & Bid Documents	July 1, 2016
Bids Received & Phase II Financing Plan	July 15, 2016
Decision on Phase II	July 22, 2016

**EXHIBIT C**

**Phase I Budget**

<b>DESIGN TASK</b>	<b>NOT TO EXCEED</b>
US 40 Intersection & Temporary Signal	\$ 109,000
On-Site Roadways & Utilities	\$ 129,500
Permits, Coordination & Contingencies	<u>\$ 111,500</u>
<b>TOTAL</b>	<b>\$ 350,000</b>

Engineering design funds may be provided by the assignment of \$250,000 of the Montgomery County 2016 ED/GE Program Grant for Project Gloss and other funds available to the City of Dayton.

**Phase II Matters**

If the Parties proceed to Phase II of a Project, the following terms and conditions shall apply to Phase II of such Project:

1. **Contracting.** The District will enter into contracts or otherwise arrange for the provision of all products and services necessary to complete the Project including without limitation any contracts derived from the quote process described in Section 6.B. of the Agreement, including, but not limited to any arrangement for appraisal fees or other consultants (collectively, the "**Contracts**"). The costs and expenses related to such Contracts, including without limitation the cost of the insurance required pursuant to paragraph 8 below, shall be referred to as the "**Phase II Costs**". The District will provide a copy of each written Contract to the City after execution of such Contract.
2. **Work under the Contracts.** During construction, the District will determine, in its sole discretion, whether the work done under the Contracts is sufficient and completed in accordance with the Contracts. The District will cause each of the Contracts for construction of the Project to provide that all rights of the District under such Contract, including the ability to dispute amounts paid, will be assigned to the City following construction completion.
3. **Performance Bonds and Contractor Insurance Requirements.** The District shall require any contractors submitting a quote to supply a bond and the selected Contractor to provide a performance bond and a separate payment bond (or other alternatives acceptable to the District and the City) in the full amount of the construction cost estimate. The Parties shall both be named as obligees on the bonds. The District shall also require that the selected Contractor have and maintain a commercial and general liability insurance policy with minimum coverage amounts of at least \$2,000,000 per occurrence with a deductible of not more than \$10,000. The District shall also require that each selected Contractor and each subcontractor maintain during the life of its contract and subcontract, workers compensation insurance pursuant to Ohio law, public liability insurance with minimum coverage amounts of \$2,000,000 per occurrence, and property damage insurance with minimum coverage amounts of \$2,000,000 per occurrence. The District may impose additional insurance obligations upon the Contractor in the District's discretion or at the request of the City. All such policies shall name the Parties as additional insureds via broad form endorsement on a primary and non-contributory basis, and shall be issued by carriers with a *Best's Insurance Reports* policyholder's rating, to the extent commercially reasonable, of "A" (but in any event, not less than "A-") and a financial size category of "X" or better. All policies shall contain provisions for thirty days' written notice to the District and the City prior to expiration or cancellation.
4. **Project Supervision.** All activities related to the Project will be performed under the general supervision and direction of the District. The District shall provide or provide for inspection and monitoring activities sufficient to ensure compliance with the applicable Scope, all written specifications for the Project, and any Contracts.

5. **Contract Administration.** The District shall administer all Contracts including monitoring the performance of all parties under the Contracts. The District will work to resolve any disputes, complaints or claims related to the Contracts and must obtain the consent of the City if the resolution of such dispute, complaint or claim either (a) exceeds \$50,000, or (b) together with all previous change orders and resolutions of disputes, complaints or claims, causes the contingency line item in the Budget to be exceeded. The District shall administer all change orders under any of the Contracts. The District must obtain the consent of the City for any change order that either: (a) exceeds \$50,000, or (b) together with all other previous change orders and resolutions of disputes, complaints or claims, causes the contingency line item in the Budget to be exceeded. The District will maintain all required documentation for the Contracts including all change orders.
6. **Payments.** The District will pay all third party invoices for services performed or goods supplied for Phase II of the Project so long as the services performed or goods provided pursuant to such invoice are satisfactory and such invoices are within the Budget. The District will keep the City apprised of the progress of the Project as compared to the Budget at the Progress Meetings and will provide the City such supporting information as the City reasonably requests on a timely basis.
7. **Construction Completion.** The District shall, with the City, conduct a final inspection of the construction of the Project when the Contractor indicates that the construction of the Project has been completed. The District and the City shall determine the need for any corrective or additional work and create the punch list detailing the additional work. The District shall provide the punch list to the Contractor (and any applicable subcontractors) in writing along with a specified time frame or specified date for completion of the prescribed work. Upon completion of construction of the Project, the District will arrange for obtaining all necessary approvals/consents from any regulatory bodies (the "**Consents**"). Any Consents that are to be provided by the City shall be provided promptly. Upon completion of the punch list and obtaining the Consents, the construction of the Project will be completed ("**Construction Completion**"). Within thirty (30) days after Construction Completion, the District will sign any documents necessary to assign to the City all transferable warranties (if any) relating to services, materials or equipment incorporated into the Project, including without limitation any warranties under the Contracts. The City's exclusive remedy with respect to such services, materials and equipment shall be under such warranties.
8. **Insurance.**
  - a. The District shall obtain and maintain comprehensive general accident and public liability insurance with coverage limits in the minimum amounts as to death or bodily injury and as to property damage with respect to the Project and its construction in amounts the District and the City shall determine from time to time. Each insurance policy obtained and maintained by the District hereunder shall name the City as an additional insured. The District shall provide to the City, upon request, certificates of insurance or other evidence reasonably satisfactory to the City that the insurance required hereunder has been obtained and in full force and effect. The cost of such insurance related to the Project shall be a Phase II Cost.

- b. Every all-risk property insurance policy carried by the District with respect to the Project shall (if it can be so written and either does not result in a material additional premium or the other Party pays on demand any additional premium) include provisions denying to the insurer subrogation rights against the other Party to the extent such rights have been waived by the insured prior to the occurrence of damage or loss.
  
- c. Neither Party hereto shall be liable to the other Party or to anyone claiming through the other Party or to any insurance company (by way of subrogation or otherwise) insuring the other Party for any business interruption or for any loss or damage to the Project or site thereof, or other tangible property thereon, or injury to or death of persons occurring on or about the Project, the site thereof, or in any manner growing out of or connected with District's or the City's use, construction or occupancy of the Project, or the rights of the Parties hereunder, even though such business interruption, loss, damage, injury or death might have been occasioned by the negligence of such Party, its agents or employees, or to the extent of recovery under any insurance carried covering such business interruption, loss, damage, injury or death. If available, each insurance policy carried by the Parties hereto shall contain a clause to the effect that the foregoing waiver shall not affect the right of the insured party to recover under such policy. If such waiver clause is available, then any additional premium charged for such waiver shall be paid by the Party benefited.

**Funding of the Projects**

The Parties intend to fund Phase I and Phase II of the Projects as follows:

1. The City has applied for an Economic Development/Government Equity (ED/GE) Program grant for the purposes of Phase I of the Projects (the "**City ED/GE Grant**"). Effective upon receipt of the City ED/GE Grant, the City will assign to the District \$250,000 of the City ED/GE Grant funds (the "**Assigned ED/GE Funds**"). During the existence of the Projects, the District will use the Assigned ED/GE Funds to pay for Third Party Services and Costs related to the Phase I Tasks and/or Phase II.
2. The District has applied for: (a) up to \$250,000 of project support for the Projects pursuant to the Ohio Department of Transportation TID Grant Program (the "**ODOT TID Grant**"); (b) up to \$660,000 of project support for the Projects pursuant to the Jobs Ohio Roadwork Development (629) Grant Program (the "**629 Funds**"); and (c) up to \$350,000 of project support for the Projects pursuant to an ODOT Division of Jobs & Commerce grant (the "**Jobs & Commerce Grant**", and collectively with the ODOT TID Grant and the 629 Funds, the "**Grant Funds**"). The City acknowledges and agrees that the City shall be responsible for all costs of the Projects in excess of the Assigned ED/GE Funds and any Grant Funds awarded in connection with the Projects.
3. As part of Phase I of each Project, the Parties will work together to identify all costs and expenses anticipated to be incurred in connection with Phase II of each Project (including the Phase II Costs under the Contracts), and the Parties will determine the amount the City will advance to the District concurrently with the delivery of the Phase II Commencement Notice for each Project (for each Project, the "**Phase II Advance**"). The Parties anticipate that the Phase II Advance for each Project will be that amount necessary, when aggregated with the Assigned ED/GE Funds and the Grant Funds (taking into account any restrictions related to such funds), to allow the District to effectively cash-flow initial outlays under the Contracts for the applicable Project.
4. As of the Effective Date, the Parties anticipate utilizing the available funding sources as set forth in the sources and uses portion of the Budget. However, the District will determine, in its sole discretion, but with the consultation of the City, the method and sequencing of the utilization of funds available to the District for the Projects hereunder, including allocation of available funds between the Projects (and any specific allocation to Phase I or Phase II of a Project), with the goals of achieving efficient fund allocation and maximization of reimbursement from Grant Funds and other third party sources. Notwithstanding the foregoing, the District will honor any fund-use restrictions identified by the City in connection with the City's funding of Phase I planning activities and set forth in the sources and uses portion of the Budget.

6.

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Human Relations Council  
Director's Office

Code 40003-1400-1153-54

(CHECK ONE)

Fund Title Facilities General Capital Fund

Purchase Order       Lease Agreement

Amount \$ 25,600.00 (through 12/31/16)

Price Agreement       Estimate of Cost

Supplier/Vendor/Company/Individual:

Award of Contract       Payment of Voucher

NAME Patrick Hansford

Other Professional Services Agreement

ADDRESS DBA Patrick Hansford Associates  
193 Cherry Drive  
Centerville, OH 45459

Justification and description of purchase, contract or payment:

**RENOVATION OF THE HUMAN RELATIONS COUNCIL OFFICES**

Approval is requested to enter into an Agreement in the amount of \$25,600.00 with Patrick Hansford DBA Patrick Hansford Associates for services that include, but are not limited to, redesigning the configuration of the current Human Relations Council offices. We had a previous contract which expired on 3/31/16.

The Human Relations Council has experienced significant growth in the last three years and the existing space is not adequate for the current staffing levels. The offices currently occupy approximately 6,500 square feet and due to its growth the HRC needs to re-organize and renovate its offices. The reconfiguration will include the offices for the current programs and will add the offices of the Minority Business Assistance Center (MBAC). Patrick Hansford Associates will develop the schematic design and the necessary construction drawings to publicly bid the project and to provide bidding/negotiations and construction administration services.

Co-location of the Human Relations Council and MBAC eliminates the need to rent additional space to accommodate staff; and co-location of staff improves communication among staff, enhances service delivery effectiveness and efficiency, and encourages staff partnership and collaboration.

Three Bids were received for this project on December 19, 2014. After evaluating the bids, Patrick Hansford Associates' bid was the lowest. This company is a certified Small Business Enterprise in the City of Dayton Procurement Enhancement Program (PEP).

This agreement shall be in effect upon execution and expire on December 31, 2016.

The Department of Law has reviewed and approved the agreement as to form and correctness. A Certificate of Funds in the amount of \$25,600.00 is attached.

Approved Affirmative Action Program on File     Yes     NO     NA

Approved by City Commission

Division FOR CC  
[Signature]

Clerk

Department  
[Signature]

Date

City Manager



## **AGREEMENT**

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, is between the City of Dayton, Ohio, a municipal corporation of the State of Ohio ("City") and Patrick Hansford Associates, a for profit corporation organized under the laws of the State of Ohio, ("Contractor").

### **WITNESSETH THAT:**

**WHEREAS**, the Human Relations Council ("HRC") has experienced significant growth in the last three years;

**WHEREAS**, the existing space is not adequate for the current staffing levels and will not accommodate growth;

**WHEREAS**, co-location eliminates the need to rent additional space to accommodate staff;

**WHEREAS**, co-location of staff improves communication among staff, enhances service delivery effectiveness and efficiency, and encourages staff partnership and collaboration;

**WHEREAS**, the parties entered into an Agreement on the 20<sup>th</sup> day of October, 2015, which expired on the 31<sup>st</sup> day of March, 2016;

**WHEREAS**, the unexpended funds from the prior Agreement will be used to fund the current Agreement;

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

### **ARTICLE 1. SCOPE OF SERVICES**

Contractor shall provide services as described in Exhibit A, attached hereto and made a part hereof, in a manner satisfactory to the City. These services shall be provided to minority, women-owned, small, and disadvantaged businesses.

Services shall include, but are not limited to, designing the reconfiguration of the current HRC offices.

Contractor shall exercise the same degree of care, skill and diligence in the performance of services to be provided under this Agreement as is ordinarily possessed and exercised by a professional under similar circumstances.

### **ARTICLE 2. TERM OF CONTRACT**

This Agreement shall commence upon City Commission approval and shall terminate December 31, 2016, or at such time all work is completed under Exhibit A, whichever date occurs first.

### **ARTICLE 3. PAYMENT**

The City shall pay an amount not to exceed Twenty-Five Thousand Six Hundred Dollars and Zero Cents (\$25,600.00) to Contractor for the services to be performed pursuant to this Agreement, as reflected in Exhibit A. The City will determine allowable and allocable costs in accordance with the OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" codified at 2 CFR Part 225 (together with Appendices A-D) and any other applicable federal, state, or local laws or regulations.

### **ARTICLE 4. INDEPENDENT CONTRACTOR**

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

Contractor and his employees, agents or subcontractors, or any other persons retained or hired by him to assist in the performance of the services under this Agreement, are not City employees. Therefore, such persons shall not be entitled to any of the emoluments of employment with the City of Dayton, and Contractor shall indemnify the City against any and all claims by its employees, agents, or subcontractors for such City employee benefits. Contractor further understands and agrees that neither he, nor any of this employees, agents, or subcontractors are "public employees" for the purpose of membership in the Ohio Public Employees Retirement System ("OPERS"). Contractor will be solely responsible to withhold and pay all applicable local, state and federal taxes for its employees.

### **ARTICLE 5. 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 City's written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement.

### **ARTICLE 6. SUBCONTRACTING**

Contractor may not subcontract any of the services agreed to in this Agreement without the express written consent of the City. All sub-contractors are subject to the same terms, conditions and covenants contained in this Agreement. Contractor is responsible for making direct payments to all sub-contractors for any and all services provided by such contractor.

### **ARTICLE 7. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION**

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or gender identity 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.

It is expressly agreed and understood by Contractor that Section 35.14, 35.15 and 35.16 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of the 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.

## **ARTICLE 8. RECORDS TO BE MAINTAINED BY CONTRACTOR**

Contractor shall keep accurate and complete records as required by generally accepted accounting principles of all services provided. All costs and expenditures related to the services and this Agreement shall be supported by properly executed invoices, contracts, vouchers or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified, and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City and/or its designees all of its records, with respect to all matters covered under this Agreement, and will permit the City and/or its designees to audit, examine, and make excerpts or transcripts for such records. In performing any independent audit, Contractor shall require the auditor to comply with all applicable City rules and regulations governing such procedures.

The Federal and State Government, including the Comptroller General of the United States and the Attorney General of the State of Ohio, along with the City, has the right to examine or audit relevant financial records for a period not to exceed four (4) years after the expiration of the terms of this Agreement. The City and Contractor must maintain an established accounting system that complies with generally accepted accounting principles. Records related to disputes arising out of this Agreement shall be maintained and made available until such disputes have been resolved.

As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

Contractor agrees that they shall take appropriate measures to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information (SSI) that may come into their possession as a result of this Agreement.

## **ARTICLE 9. INDEMNIFICATION AND INSURANCE**

A. Contractor shall defend, indemnify and hold harmless the City and its elected officials, officers, employees, and representatives from and against all claims, losses, damages, or expenses (including reasonable attorney's fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of the Agreement, and/or the acts, errors, omissions or wrongful conduct of the Contractor or its employees, agents and representatives.

B. During the performance of this Agreement, Contractor shall, at its expense, maintain with an insurance company authorized to do business in the State of Ohio and having at least an "A" rating from A.M. Best, the following insurance:

1. Automobile liability insurance, with a combined single limit of One Million Dollars (\$1,000,000) for each person and One Million Dollars (\$1,000,000) for each accident; and

2. General/Comprehensive liability insurance, with a combined single limit of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the Aggregate; and
3. Professional Liability Insurance, with a minimum annual aggregate of One Million Dollars (\$1,000,000); and
4. Workers' Compensation Insurance, in such amounts as required by law.

All policies of insurance required herein, but excluding Workers' Compensation Insurance, shall name City, its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that the City be notified thirty (30) days in advance of any termination or diminution of coverage.

Within thirty (30) days of the execution of this Agreement, Contractor shall furnish the City with copies of certificates of insurance demonstrating compliance with the insurance requirements contained herein.

#### **ARTICLE 10.           TERMINATION**

The City or Contractor may terminate this Agreement, upon giving written notice of termination to the other party at least thirty (30) days prior to the effective date of termination, or at any time upon mutual written agreement. The notice shall state the date upon which such action is effective. In the event that this Agreement is terminated, Contractor shall be paid for all work and services provided and all supplies and materials procured up to the date of termination specified within the notice, and the City shall have no other responsibility to Contractor.

#### **ARTICLE 11.           PROJECT REPORTING**

Refer to Exhibit A.

This Article shall survive termination or expiration of this Agreement.

#### **ARTICLE 12.           GENERAL PROVISIONS**

##### **A. Amendment**

The City or Contractor may request to amend this Agreement at any time. Upon mutual agreement to amend this Agreement, the amendment shall be reduced to writing, which shall make specific reference to this Agreement, be signed by a duly authorized representative of the City and Contractor, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

## **B. Waiver**

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

## **C. Notices and Communications**

Any written notices, invoices, or other communication required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by email, sent by express deliver, 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:

### City of Dayton:

City of Dayton  
Human Relations Council  
ATTN: Catherine Crosby  
371 W. 2<sup>nd</sup> Street, Ste. 100  
Dayton, OH 45402  
(937) 333-1403 Office  
(937) 222-4589 Fax  
[catherine.crosby@daytonohio.gov](mailto:catherine.crosby@daytonohio.gov)

### Patrick Hansford

Dbas: Patrick Hansford Associates  
ATTN: Patrick Hansford, Owner  
193 Cherry Drive  
Centerville, OH 45459  
State of Ohio Registered Architect #A-90-09448  
Expiration Date: 12/31/17  
(937) 438-9919  
[phansford@woh.rr.com](mailto:phansford@woh.rr.com)

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

## **D. Conflict of Interest**

This Agreement shall not be interpreted or constructed as to preclude, prevent or restrict Contractor from agreeing or otherwise contracting with parties aside from the City; provided, however, that such other contract work in no way impedes Contractor's ability to perform the services required under this Agreement.

Contractor represents that no member of the governing body of the City and no other officer, official agent, or employee of the City has any personal financial interest, direct or indirect, in Contractor's business. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would cause conflict in any manner or degree with the performance of this Agreement. Contractor will immediately report the discovery of any potential conflict of interest to the City.

**E. Entire Agreement/Integration**

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

**F. Political Contributions**

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

**[Remainder of this page intentionally left blank.]**

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

**THE CITY OF DAYTON, OHIO**

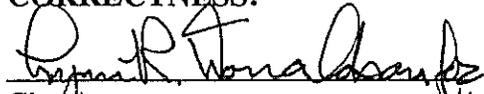
**PATRICK HANSFORD ASSOCIATES**

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

\_\_\_\_\_  
By: Patrick Hansford

Print: \_\_\_\_\_

**APPROVED AS TO FORM AND  
CORRECTNESS:**

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

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

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

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

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



Vendor: 268669852 Generate ID:  HRC Appv: M HRC Exp Date: 31-JAN-2017 HRC Exempt: L  
Corporation:   
Last Name: Hansford First Name: Patrick Middle Name:

Vendor Maintenance | Additional Information | Vendor Types | Address | E-mail | Taxes Collected

Start Date: 07-JAN-2011 Termination Date:  Last Activity Date: 20-JAN-2016

Address Defaults	
Procurement	Accounts Payable
Type Code: MA	Type Code: BI
Sequence: 1	Sequence: 1

Contact: Patrick Hansford  
Area Code: 937 Phone Number: 438-9919 Extension:   
Collects Taxes: Collects No Taxes

Owner ID:   
Check Vendor:   
Discount Code:   
Order Hold Code:   
Payment Hold Code:   
Vendor Text:



## MEMORANDUM

---

DATE: June 8, 2016

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

FROM: Catherine Crosby, Executive Director  
Human Relations Council

RE: Patrick Hansford Contract

---

Attached please find a City Manger's Report, Certificate of Funds, and a copy of the contract for the above referenced individual. We are requesting this be placed on the June 22, 2016 City Manager's Calendar.

This contract is for redesigning the configuration of the current Human Relations Council. We had a previous contract which expired on March 31, 2016 but the work has not been completed.

If you have any questions, please call me at x1395. Thank you.

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager Date June 22, 2016

FROM: Public Works/Civil Engineering Code 41458-6450-1424-54  
*Department/Division*

(CHECK ONE) Fund Title Curb Ramp Installation  
Amount \$ \$225,000.00

Purchase Order       Lease Agreement      Supplier/Vendor/Company/Individual:  
 Price Agreement       Estimate of Cost      NAME Adleta, Inc.  
 Award of Contract       Payment of Voucher      ADDRESS 389 S. Wayne Avenue  
 Other \_\_\_\_\_ Cincinnati, Ohio 45215

Justification and description of purchase, contract or payment:

**2016 CURB RAMP REPLACEMENT**  
**(15% MBE PARTICIPATION GOAL/15.75% MBE ACHIEVED)**  
**(5% WBE PARTICIPATION GOAL/9% WBE ACHIEVED)**

This project consists of the installation of ADA compliant concrete curb ramps (wheelchair ramps) throughout the City of Dayton.

Three bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, Adleta, Inc., in the amount of \$225,000.00. This amount includes the Base Bid in the amount of \$222,199.80 and Alternate No. 1 Contingency Allowance in the amount of \$2,800.20. The estimated cost for the project was \$225,000.00. The time bid for completion is November 1, 2016.

This project is being funded using Curb Ramp Installation Funds.

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

Approved Affirmative Action Program on File       Yes       No       NA

Approved by City Commission

\_\_\_\_\_  
Clerk  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Division  
[Signature]  
Department  
[Signature]  
City Manager

# CERTIFICATE OF FUNDS

CT161454

## SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X NEW CONTRACT

RENEWAL CONTRACT

CHANGE ORDER

Contract Start Date	June 22, 2016
Expiration Date	June 22, 2018
Original Commission Approval	\$ 225,000.00
Initial Encumbrance	\$ 225,000.00
Remaining Commission Approval	\$ -
Original CT/CF	\$ -
Increase Encumbrance	\$ -
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

### Required Documentation

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

<b>Amount:</b> \$ 225,000.00	<b>Amount:</b> _____
Fund Code 41458 - 6450 - 1424 - 54 - _____ - _____ <small>Fund Org Acct Prog Act Loc</small>	Fund Code _____ - _____ - _____ - _____ - _____ - _____ <small>Fund Org Acct Prog Act Loc</small>
<b>Amount:</b> _____	<b>Amount:</b> _____
Fund Code _____ - _____ - _____ - _____ - _____ - _____ <small>Fund Org Acct Prog Act Loc</small>	Fund Code _____ - _____ - _____ - _____ - _____ - _____ <small>Fund Org Acct Prog Act Loc</small>

Attach additional pages for more FOAPALS

Vendor Name: Adleta, Inc. 513.554.1469

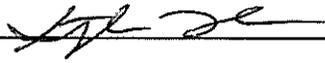
Vendor Address: 389 S. Wayne Avenue Cincinnati OH 45215  
Street City State Zipcode + 4

Federal ID: 31-1128085

Commodity Code: 74521

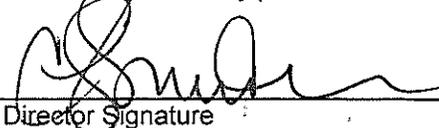
Purpose: 2016 Curb Ramp Replacement (15% MBE and 5% WBE Participation)

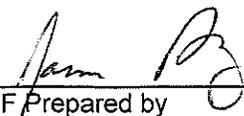
Contact Person: Stephen Finke, Deputy Director Public Works/Civil Eng. 333-3839  
Department/Division Phone Number

Originating Department Director's Signature:  6/9/16  
Date

## 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:  6-14-16  
Date

CF Prepared by:  6/14/2016 CT161454  
Date CF/CT Number





## MEMORANDUM

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June 5, 2016

TO: Frederick Stovall, Director  
Department of Public Works

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

SUBJECT: **2016 Curb Ramp Replacement 15% MBE & 5% WBE**

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

RECOMMENDED RANK ORDER	PERCENTAGE OF PARTICIPATION
1. Adleta	
A. MINORITY BUSINESS ENTERPRISE Tall View Palladium	15.75%
B. WOMEN BUSINESS ENTERPRISE Security Fence	9.00%
C. SMALL BUSINESS ENTERPRISE	
D. DAYTON LOCAL SMALL BUSINESS	
E. DISADVANTAGED BUSINESS ENTERPRISE	
F. HUD SECTION 3 BUSINESS ENTERPRISE	
TOTAL PARTICIPATION	<hr/> 15.75% MBE 9.00% WBE

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

# **ADLETA CONSTRUCTION**

P. O. BOX 15872

CINCINNATI, OHIO 45215

PHONE: (513) 554-1469

FAX: (513) 821-0266

April 25<sup>th</sup>, 2016

City of Dayton  
Attn: Vicki Kraft  
371 West Second Street, Suite 100  
Dayton, OH 45402-1417

Re: 2016 Curb Ramp Replacement

Please see the following responses to your questions regarding the above referenced bid.

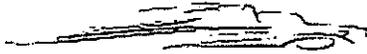
1. 2016 Curb Ramp Replacement
2. Adleta, Inc., 389 S. Wayne Avenue, Cincinnati, OH 45215
3. Adleta bid to self-perform all work except for the listed subcontracting to Tall View Palladium in the amounts of \$ 35,000.00 for construction labor and Security Fence \$ 20,000.00 for traffic loop installation.
4. Breakdown was supplied on bid documents.
5. Material = \$106,073.80 and Labor = \$116,126.00
6. No profit or mark-up on materials.
7. 1 Tandem will be used for Excavation of Dirt & Soil

Please contact us if you require any further information. Thank you for your consideration.

Sincerely,



Mary Lee Holthaus  
Adleta, Inc.



TALL VIEW PALLADIUM INC.  
2734 ARMSTRONG LANE  
DAYTON, OHIO 45414  
937 263-8586  
937 220-9912  
tallviewpalladium@sbcglobal.net

May 10, 2016

**RE: 2016 Curb Ramp Replacement**

Tall View Palladium has agreed to subcontract with Adleta, Inc. on the above referenced project. Listed below is our scope of work we will perform.

Furnish and Haul Materials

DESCRIPTION	ESTIMATED QUANTITY	UNIT	Rate PRICE	TOTAL COST
Laborer	707.07	Hour	\$49.50	\$35,000.00

MATERIAL COSTS \$0.00

George D. Tuck, III  
President

**SECURITY**  
**FENCE GROUP, INC.**  
 CERTIFIED DBE/SBE/EDGE/WBE/EOE

Date: April 25, 2016

#1 Name of Job: City of Dayton 2016 Curb Ramp Replacement  
 #2 Name & Address of Subcontractor: Security Fence Group, Inc. 4260 Dane Avenue Cincinnati, Ohio 45223  
 Contact: Christine Frankenstein 513-681-3700 - Dayton: Dan Wackerman 937-424-3000  
 #3, 4, 5, 6 & 7 See Breakdown Below

<u>Item #</u>	<u>Description</u>	<u>Qty.</u>	<u>Mat</u>	<u>Labor</u>	<u>Markup</u>	<u>Cost</u>	<u>Total</u>
12	Detector Loops	14.00 EA	\$180.00	\$643.50	\$116.50	\$1,165.00	\$16,310.00
13	Detector Loop Tie In	14.00 EA	\$45.00	\$34.20	\$10.90	\$109.00	\$1,526.00
	Mobilization	1.00 EA	\$500.00	\$1,000.00	\$500.00	\$2,164.00	\$2,164.00
							\$20,000.00

Cincinnati Location  
 4260 Dane Avenue  
 Cincinnati, OH 45223  
 513-681-3700

Dayton Location - Electric  
 1500 Farr Drive Suite 2  
 Dayton, OH 45404  
 937-424-3000

Dayton Location  
 5848 Poe Avenue  
 Dayton OH 45414  
 937-898-7008



**BID FORM**

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

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

**2016 CURB RAMP REPLACEMENT**  
**(15% MBE AND 5% WBE PARTICIPATION)**

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

**Bid Form (Continued)**

**2016 CURB RAMP REPLACEMENT  
(15% MBE & 5% WBE PARTICIPATION)**

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>EST. QUANT.</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
201	Tree Removed, Size 6" to 18"	1	EA.	<u>848<sup>00</sup></u>	<u>848<sup>00</sup></u>
202	Wood Pole Removed	1	EA.	<u>265<sup>00</sup></u>	<u>265<sup>00</sup></u>
202	Concrete Walk & Curb Ramp Removed	14,000	S.F.	<u>2<sup>33</sup></u>	<u>32,620<sup>00</sup></u>
202	Curb Removed	100	L.F.	<u>7<sup>31</sup></u>	<u>731<sup>00</sup></u>
203	Excavation not including Embankment Construction	15	C.Y.	<u>73<sup>09</sup></u>	<u>1,096<sup>35</sup></u>
304	Aggregate Base	75	C.Y.	<u>41<sup>78</sup></u>	<u>3,133<sup>50</sup></u>
403	Asphalt Concrete	20	TONS	<u>155<sup>90</sup></u>	<u>3,118<sup>00</sup></u>
608	Concrete Curb Ramp, 7"	10,000	S.F.	<u>10<sup>80</sup></u>	<u>108,000<sup>00</sup></u>
608	Concrete Walk	4,000	S.F.	<u>8<sup>86</sup></u>	<u>35,440<sup>00</sup></u>
609	Curb, Type Straight and Circular, Nonreinforced Barrier, and/or Combination Curb and Gutter	100	L.F.	<u>43<sup>92</sup></u>	<u>4,392<sup>00</sup></u>
614	Maintaining Traffic	1	Lump	<u>5,300<sup>00</sup></u>	<u>5,300<sup>00</sup></u>
632	Detector Loops	14	EA.	<u>1,234<sup>90</sup></u>	<u>17,288<sup>60</sup></u>
632	Detector Loop Tie-Ins	14	EA.	<u>115<sup>50</sup></u>	<u>1,617<sup>00</sup></u>
653	Topsoil, Furnished and Placed	35	C.Y.	<u>51<sup>65</sup></u>	<u>1,807<sup>75</sup></u>
659	Seeding & Mulching	75	S.Y.	<u>1<sup>96</sup></u>	<u>147<sup>00</sup></u>
836	Catch Basin Adjusted to Grade	2	EA.	<u>780<sup>00</sup></u>	<u>1,560<sup>00</sup></u>
836	Manhole Adjusted to Grade	5	EA.	<u>780<sup>00</sup></u>	<u>3,900<sup>00</sup></u>
846	Valve Box Adjusted to Grade	2	EA.	<u>467<sup>80</sup></u>	<u>935<sup>60</sup></u>
<b>TOTAL BASE BID</b>				<u>\$ 222,199<sup>80</sup></u>	

In determining the lowest and best bid the City Commission may give consideration to the following alternate bids:

**ALTERNATE NO. 1**  
**CONTINGENCY ALLOWANCE**

The Alternate for a "CONTINGENCY ALLOWANCE" to be used in the event of unforeseen work which must be undertaken to complete this project. The work could be as additional quantities to the bid items or as non-bid items.

<u>ITEM</u>		<u>EST.</u>		<u>UNIT</u>		<u>TOTAL \$</u>
<u>NO.</u>	<u>DESCRIPTION</u>	<u>QUANT.</u>	<u>UNIT</u>	<u>PRICE</u>		
SPL	Contingency	1	LUMP	<u>\$ 50,000.00</u>		<u>\$ 50,000.00</u>
<b>TOTAL ALTERNATE NO. 1</b>						<u>\$ 50,000.00</u>

**Bid Form (Continued)**

**2016 CURB RAMP REPLACEMENT**  
**(15% MBE & 5% WBE PARTICIPATION)**

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

<u>DESCRIPTION</u>	<u>CONSIDERATION FOR MATERIALS</u>	<u>CONSIDERATION FOR OBLIGATIONS</u>	<u>TOTAL \$</u>
TOTAL BASE BID	\$ 111,099 <sup>90</sup> -	\$ 111,099 <sup>90</sup> -	\$ 222,199 <sup>80</sup> -
TOTAL ALT. NO. 1 (CONTINGENCY ALLOWANCE)	\$ -0-	\$ 50,000.00	\$ 50,000.00

The time of completion fixed by the City is November 1, 2016.

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

NAME

ADDRESS

"No Person or Party other than the bidder is interested in this Bid"

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## DISCLOSURE OF LITIGATION

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

RESPONSE: YES \_\_\_\_\_ NO

If your response is "YES" please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.

Bidder is

An Individual  
Firm Name

\_\_\_\_\_

Business Address

\_\_\_\_\_

Telephone

\_\_\_\_\_

Partnership  
Firm Name

\_\_\_\_\_

Members of Firm and  
Their Business Address

\_\_\_\_\_

\_\_\_\_\_

Telephone

\_\_\_\_\_

Corporation  
Name

Adieta, Inc

State of Incorporation

Ohio

Name and Title of  
Officers with Authority  
to Sign Contract

Robert L. Adieta - Pres & Treas  
Mary Lee Holtzhaus - Corp Secy  
Robert L. Adieta II, Tim Adieta &  
Robert B. Dunn, Jr - Vice Pres.

Home Office Address

389 S. Wayne Avenue, Cinti, Oh 45215

Local Address

" " "

Telephone (513) 554-1469 Fax (513) 554-1221

E-mail estimating@adietaconstruction.com

Federal I.D.# 31-1128085

Dated this 21<sup>st</sup> day of April, 2016

Bidder: Adieta, Inc  
(Person, Firm, or Corporation)

By: [Signature]

Title: Vice President

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

\_\_\_\_\_ Certified Check

\_\_\_\_\_ Cashier's Check

Amount \_\_\_\_\_ Dollars  
on \_\_\_\_\_ Bank  
of \_\_\_\_\_ is Attached.

\_\_\_\_\_  
Bidder

Cash in the amount of \_\_\_\_\_  
Dollars is attached.

\_\_\_\_\_  
Bidder

**BID BOND**

Amount \$ 27,219<sup>98</sup>

We, the undersigned, are held and firmly bound unto the City of Dayton, Ohio in the sum of \$27,219<sup>98</sup> Dollars, for the payment of which well and truly to be made, we hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, if the Bid attached hereto is accepted and the Contract award to the bidder, \_\_\_\_\_ named therein, and the said bidder shall within ten (10) days after being notified that said contract has been awarded to the bidder, enter into a Contract in the form acceptable to the Director and give bond in a form to be furnished by the Director, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed and sealed at Dayton, Ohio, this 21<sup>st</sup> day of April, 2016.

ADOLETA INC.

[Signature]

Bidder Tim Adleta  
Vice President

GRIST AMERICAN INSURANCE COMPANY

[Signature]

ROULETTE IN ARM Surety ATTORNEY-IN-FACT

USI INSURANCE SERVICES, LLC

Name of Insurance Agency

312 ERM STREET, SUITE 2400

CINCINNATI, OHIO 45202

Address of Insurance Agency

Telephone 513 852-6302 FAX 513 852-6460

**GREAT AMERICAN INSURANCE COMPANY®**

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than SIX

No. 0 20694

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
PAULETTE M. AERNI	ALL OF	ALL
THOMAS D. CASSADY	CINCINNATI, OHIO	\$100,000,000
THOMAS W. CHATHAM		
ANNE TIERNEY		
RICHARD A. DAVIS		
PAUL J. SCHUELER, JR.		

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 4TH day of AUGUST, 2015

Attest

GREAT AMERICAN INSURANCE COMPANY



*Stephen C. Beraha*  
Assistant Secretary

*David C. Kitchin*  
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

DAVID C. KITCHIN (877-377-2405)

On this 4TH day of AUGUST, 2015, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



**Susan A. Kohorst**  
Notary Public, State of Ohio  
My Commission Expires 05-18-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

*RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.*

*RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.*

**CERTIFICATION**

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 21<sup>st</sup> day of APRIL, 2016.



*Stephen C. Beraha*  
Assistant Secretary

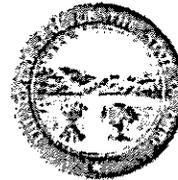
Office of Risk Assessment  
50 West Town Street  
Third Floor - Suite 300  
Columbus, Ohio 43215  
(614)644-2658  
Fax(614)644-3256  
www.insurance.ohio.gov

**Ohio Department of Insurance**

John R. Kasich - Governor

Mary Taylor - Lt. Governor/Director

**Certificate of Compliance**



Issued 06/25/2015

Effective 07/01/2015

Expires 06/30/2016

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

**GREAT AMERICAN INSURANCE COMPANY**

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

**Section 3929.01 (A)**

Accident & Health

Aircraft

Allied Lines

Boiler & Machinery

Burglary & Theft

Collectively Renewable A & H

Commercial Auto - Liability

Commercial Auto - No Fault

Commercial Auto - Physical Damage

Credit

Credit Accident & Health

Earthquake

Fidelity

Financial Guaranty

Fire

Glass

Group Accident & Health

Guaranteed Renewable A & H

Inland Marine

Medical Malpractice

Multiple Peril - Commercial

Multiple Peril - Farmowners

Multiple Peril - Homeowners

Noncancellable A & H

Nonrenew- Stated Reasons (A&H)

Ocean Marine

Other

Other Accident only

Other Liability

Private Passenger Auto - Liability

Private Passenger Auto - No Fault

Private Passenger Auto - Physical Damage

Surety

Workers Compensation

GREAT AMERICAN INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2014 that it has admitted assets in the amount of \$5,811,739,783, liabilities in the amount of \$4,398,173,784, and surplus of at least \$1,413,566,000.

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

*Mary Taylor*

Mary Taylor, Lt. Governor/Director



**GREAT AMERICAN**  
INSURANCE GROUP

301 E. Fourth Street  
Cincinnati OH 45202-4201

GreatAmericanInsurance.com

**GREAT AMERICAN INSURANCE COMPANY**

**STATEMENT OF ASSETS, LIABILITIES AND CAPITAL & SURPLUS  
AS OF DECEMBER 31, 2015**

ADMITTED ASSETS		LIABILITIES, CAPITAL AND SURPLUS	
Bonds.....	\$ 2,842,228,170	Unpaid losses and loss expenses.....	\$ 2,676,827,729
Stocks.....	1,256,319,950	Reserve for underwriting expenses.....	242,739,292
Mortgage loans on real estate.....	204,662,776	Federal and foreign income taxes.....	20,328,865
Real estate (net of encumbrances).....	53,840,509	Reserve for unearned premiums.....	1,035,241,813
Cash and short-term investments.....	258,763,137	Ceded reinsurance premiums payable.....	84,209,225
Other invested assets.....	185,622,033	Funds held under reinsurance treaties.....	427,512,111
Receivable for securities.....	3,975,235	Payable for securities.....	21,258,805
Investment income due and accrued.....	25,818,346	Retroactive reinsurance ceded.....	(111,922,415)
Agents' and premium balances.....	488,996,581	Other liabilities.....	163,810,002
Reinsurance recoverable on loss and loss expense payments.....	54,133,772	Total liabilities.....	4,560,005,427
Net deferred tax asset.....	161,408,528	Capital stock.....	\$ 15,440,600
Receivable from affiliates.....	7,203,633	Paid in surplus.....	330,446,307
Receivable from Federal Crop Insurance Corporation.....	369,812,390	Special surplus funds.....	111,922,415
Company owned life insurance.....	149,687,860	Unassigned funds.....	1,093,096,277
Funds held as collateral.....	6,585,786	Policyholders' surplus.....	1,550,905,509
Prepaid Revenues.....	15,880,109		
Other admitted assets.....	25,972,211		
<b>Total.....</b>	<b>\$ 6,110,911,026</b>	<b>Total.....</b>	<b>\$ 6,110,911,026</b>

Securities have been valued on the basis prescribed by the National Association of Insurance Commissioners.

STATE OF OHIO

SS.

COUNTY OF HAMILTON

Robert J. Schwartz, Vice President and Controller, and Stephen Beraha, Assistant Vice President and Assistant Secretary, being duly sworn, each for himself deposes and says that they are the above described officers of the Great American Insurance Company of Cincinnati, Ohio; that said Company is a corporation duly organized, existing and engaged in business as a Surety by virtue of the laws of the State of Ohio and has duly complied with all the requirements of the laws of said state applicable to said Company and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under Public Law 97-258 enacted September 13, 1982 (96 Stat. 1047 as amended; 31 U.S.C. 9304-9308); that to the best of their knowledge and belief the above statement is a full, true and correct Statement of the Assets, Liabilities and Capital & Surplus of the said Company as of December 31, 2015.

Subscribed and sworn to before me

this 16th day of February, 2016.



*Jennifer A. Meyer*  
Public Notary  
Notary Public, State of Ohio  
My Commission Expires 11-08-2016

*R. J. Schwartz*  
Controller  
*Stephen Beraha*  
Assistant Secretary

CITY OF DAYTON, OHIO  
Department of Public Works

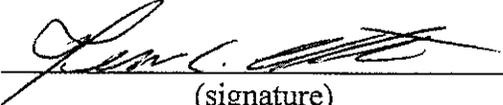
Responsible Contractor Bidding Requirements  
(Form 1 of 3)

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

Adieta, LLC meets the following Contractor requirements relating  
(company)

to this City of Dayton construction project (check all that apply):

- Comply with all City of Dayton income tax obligations and requirements
- Maintain worker's compensation insurance for all employees as required by the State of Ohio
- Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project
- Comply with the State of Ohio Bureau of Worker's Compensation Drug Free Workplace Policy
- Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By:   
(signature)

Title: Vice President

Date: 4-21-16

CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 2 of 3)

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

Prevailing Wage  
Fringe Benefits

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

N/A

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

Security Fence  
Tall View Palladium

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CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 3 of 3)

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

Tall View Palladium


**CITY OF DAYTON  
CONTRACTOR NON-COLLUSION AFFIDAVIT  
TO BE NOTARIZED AND SUBMITTED WITH BID FORM**

STATE OF Ohio )  
COUNTY OF Hamilton ) SS:

Tim Adelta, being first duly sworn deposes and states that:

(1) He/she is Vice President of  
(owner, partner, officer, representative, or agent)

Adelta, Inc that  
(business or organization name)

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

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

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

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

Sworn to before me and subscribed in my presence

this 21<sup>st</sup> day of April, 2016.

Mary Lee Holthaus  
NOTARY PUBLIC

[Signature]  
SIGNED  
Vice President  
TITLE



Mary Lee Holthaus  
Notary Public, State of Ohio  
My Commission Expires 10-03-2016

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

STATE OF OHIO,  
COUNTY OF Hamilton, ss:

Tim Adieta being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of Adieta, Inc ("the Contracting Party").
2. The Contracting Party is a/an (select one):
  - Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.
  - Corporation organized and existing under the laws of the State of Ohio.
  - Labor organization.
3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: [Signature]  
Title: Vice President

STATE OF OHIO,  
COUNTY OF Hamilton, ss:

Sworn to before me and subscribe in my presence by Tim Adieta  
this 21<sup>st</sup> day of April, 2016



Mary Lee Holthaus  
Notary Public, State of Ohio  
My Commission Expires 10-03-2016

[Signature]  
Notary Public

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

AFFIRMATIVE ACTION PROGRAM  
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: City of Dayton - 2016 Curb Ramp Replacement  
NAME LOCATION

During the performance of this contract:

Adelta, Inc 389 S. Wayne Ave (513) 554-1409  
CONTRACTOR City, Oh 45215 (513) 554-1221  
ADDRESS TELEPHONE / FAX

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

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

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

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

The required goals and timetables are as follows:

	Goals of Minority Worker Utilization Expressed in Percentage Terms
From 1/1/2000 to Present	11.5%
	Goals of Female Worker Utilization Expressed in Percentage Terms
From 4/1/80 to Present	6.9%

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

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

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

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

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

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

- a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.
- b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefor.

- c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
- e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.
- f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.
- g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.
- h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.
- i) The contractor shall validate all tests and other selection requirements.
- j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.
- k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.
- l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.
- m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

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

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.

**Part II: Contractor's Certification.** A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

**CONTRACTOR'S CERTIFICATION**

Adieta, Inc \_\_\_\_\_ (Contractor)  
certifies that:

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

Laborers \_\_\_\_\_  
Cement Masons \_\_\_\_\_  
Operators \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

SIGN:

[Signature] \_\_\_\_\_  
(Signature of Authorized Representative of Bidder) Tim Adieta  
Vice President

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



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

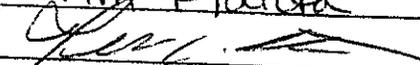
Project Name:

City of Dayton - 2010 Curb Ramp Replacement

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

Firm Name, Tax I.D. Number and Mailing Address	Please Check One				Type of Service or Supply to be Provided	Type of Construction Work to be Performed
	Prime Contract Bid	Joint Venture Bid	Supply or Service Subcontract	Construction Subcontract		
Certified Business Firm Name	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Tax I.D. Number:	Tall View Palladium, Inc.					Construction labor
Street Address:	31-1614989					
City/State/ Zip Code:	2734 Armstrong Lane					
Phone (area code/#):	Dayton, Ohio 45414					
E-mail:	tallviewpalladium@sbcglobal.net					
	937-263-8586					

Total \$ Amount of PRIME CONTRACTOR'S Base Bid: \$ 222,199<sup>80</sup> Total \$ to subcontract: \$ 35,000<sup>00</sup> Total % subcontract: 15.75%

PRIME CONTRACTOR'S REPRESENTATIVE	
Print Name:	Tim Adista
Sign Name:	

Street Address	389 S. Wayne Avenue
City/State/Zip	Cincinnati, Ohio 45215

N/A

**WAIVER REQUEST DOCUMENTED ACTIVITY FORM**

Date \_\_\_\_\_

Project: \_\_\_\_\_

Participation Goal (list only one): \_\_\_\_\_

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 bid if you are requesting a waiver of any goal.**

Check if completed	Activity Description
	Solicited the interest of all certified <b>MBE/WBE/SBE/DLSB or HUD3</b> having the capability to perform the work of the contract. The bidder must solicit this interest at least ten (10) business days before bid submittal deadline in order to allow the <b>MBE/WBE/SBE/DLSB or HUD3</b> sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient good faith effort, if it is the sole method of communication used.
	Divided contract work items into economically feasible units to facilitate <b>MBE/WBE/SBE/DLSB or HUD3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
	Negotiated with <b>MBE/WBE/SBE/DLSB or HUD3</b> subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration. Rejected <b>MBE/WBE/SBE/DLSB or HUD3</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.
	Provided interested <b>MBE/WBE/SBE/DLSB or HUD3</b> with plans and specifications at no cost, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract at least ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.
	Sought the assistance of the Minority Business Assistance Center (MBAC) or used the services of community organizations, contractors' groups, local, state or federal business assistance offices, or similar organizations to find subcontractors certified as (circle one: <b>MBE/WBE/SBE/DLSB or HUD3</b> ). Contacting HRC for the certified list will not be deemed as sufficient good faith efforts.
Bidding Company Name:	

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

Project Name:

City of Dayton - 2016 Curb Ramp Replacement

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

Please Check One						
Firm Name, Tax I.D. Number and Mailing Address	Prime Contract Bid <input type="checkbox"/>	Joint Venture Bid <input type="checkbox"/>	Supply or Service Subcontract <input type="checkbox"/>	Construction Subcontract <input checked="" type="checkbox"/>	Type of Service or Supply to be Provided	Type of Construction Work to be Performed
Certified Business Firm Name: <u>Security Fence Group, Inc.</u>						Traffic Loop Installation
Tax I.D. Number: <u>31-1276340</u>						
Street Address: <u>4260 Dane Street</u>						
City/State/ Zip Code: <u>Cincinnati, Ohio 45223</u>						
Phone (area code/#): <u>513-681-3700</u>	E-mail: <u>acase@sfence.com</u>					
Total \$ Amount of PRIME CONTRACTOR'S Base Bid: <u>\$222,199<sup>80</sup></u>			Total \$ to subcontract: <u>\$20,000<sup>00</sup></u>		Total % subcontract: <u>9%</u>	
<b>PRIME CONTRACTOR'S REPRESENTATIVE</b>						
Print Name: <u>Tim Adeta</u>	Street Address: <u>389 S. Wayne Avenue</u>					
Sign Name: <u>[Signature]</u>	City/State/Zip: <u>Cincinnati, Oh 45215</u>					

N/A

**WAIVER REQUEST DOCUMENTED ACTIVITY FORM**

Date \_\_\_\_\_

Project: \_\_\_\_\_ Participation Goal (list only one): \_\_\_\_\_

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 bid if you are requesting a waiver of any goal.**

Check if completed	Activity Description
	Solicited the interest of all certified <b>MBE/WBE/SBE/DLSB or HUD3</b> having the capability to perform the work of the contract. The bidder must solicit this interest at least ten (10) business days before bid submittal deadline in order to allow the <b>MBE/WBE/SBE/DLSB or HUD3</b> sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient good faith effort, if it is the sole method of communication used.
	Divided contract work items into economically feasible units to facilitate <b>MBE/WBE/SBE/DLSB or HUD3</b> participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
	Negotiated with <b>MBE/WBE/SBE/DLSB or HUD3</b> subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration. Rejected <b>MBE/WBE/SBE/DLSB or HUD3</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.
	Provided interested <b>MBE/WBE/SBE/DLSB or HUD3</b> with plans and specifications at no cost, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract at least ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.
	Sought the assistance of the Minority Business Assistance Center (MBAC) or used the services of community organizations, contractors' groups, local, state or federal business assistance offices, or similar organizations to find subcontractors certified as (circle one: <b>MBE/WBE/SBE/DLSB or HUD3</b> ). Contacting HRC for the certified list will not be deemed as sufficient good faith efforts.
Bidding Company Name:	

**South Park Neighborhood**

Main Road	Side Road	Corner
Wayne	Adams	NW
Wayne	Bradford	NW
Wayne	Bradford	SW
Wayne	Hickory	NW
Wayne	Hickory	SW
Wayne	Buckeye	NW
Wayne	Buckeye	SW

**Belmont Neighborhood**

Main Road	Side Road	Corner
Patterson	Whittier	NE
Patterson	Whittier	SE
Patterson	Whittier	NW
Patterson	Whittier	SW
Patterson	Dwight	SE
Patterson	Dwight	SW
Patterson	Grace	NE
Patterson	Grace	SE
Patterson	Grace	NW
Patterson	Grace	SW
Patterson	Kingston	NE
Patterson	Kingston	SE
Patterson	Kingston	NW
Patterson	Kingston	SW
Patterson	Hazel	NE
Patterson	Hazel	SE
Patterson	Hazel	NW
Patterson	Hazel	SW
Donald	Lansing	NE
Donald	Lansing	NW
Donald	Lansing	SE
Donald	Lansing	SW
Donald	Lake Shore	NW
Donald	Revere	NE
Donald	Revere	NW
Donald	Revere	SE
Donald	Revere	SW
Martel	Ashland	NW
Martel	Ashland	NE
Watervliet	Mapleview	SE
Watervliet	Mapleview	SW
Mapleview	Velma	NE
Mapleview	Velma	SE
Mapleview	Velma	SW
Mapleview	Velma	SW
Mapleview	Velma	SW
Lausing	Bellaire	SE
Reading	Mershon	SE
Reading	Meriline	NE
Reading	Meriline	SE
Reading	Meriline	NW
Reading	Meriline	SW
Reading	Ward Hill	SE
Reading	Russet	NW
Woodbine	Russet	SW
Woodbine	Meriline	NE
Woodbine	Meriline	NW
Woodbine	Meriline	SW
Woodbine	Mershon	NW

**Fairview Neighborhood**

Main Road	Side Road	Corner
Hillcrest	Benson	SE
Hillcrest	Benson	SW
Hillcrest	Lynn	NE
Hillcrest	Lynn	NW
Hillcrest	Elsmere	NE
Hillcrest	Elsmere	NW
Hillcrest	Elsmere	SW
Hillcrest	Malvern	NE
Hillcrest	Malvern	NW

**Residence Park Neighborhood (cont.)**

Main Road	Side Road	Corner
Sayre	Oakridge	NW
Sayre	Oakridge	Island (N)
Sayre	Oakridge	Island (S)
Cleverly	Hoover	SE
Cleverly	Hoover	SW
Cleverly	Oakridge	NE
Cleverly	Oakridge	NW
Cleverly	Oakridge	Island (NE)
Cleverly	Oakridge	Island (NW)
Cleverly	Oakridge	SE
Cleverly	Oakridge	SW
Cleverly	Sylvan	NW
Cleverly	Sylvan	Island
Whitmore	Circle	NE
Whitmore	Circle	NW
Sylvan	Laurel	SE
Sylvan	Laurel	SW
Sylvan	Geneva	NE
Sylvan	Geneva	SE
Sylvan	Geneva	NW
Sylvan	Geneva	SW
Sylvan	Elmhurst	NE
Sylvan	Elmhurst	SE
Sylvan	Elmhurst	NW
Sylvan	Elmhurst	SW
Sylvan	Almond	NE
Sylvan	Almond	SE
Sylvan	Almond	NW
Sylvan	Almond	SW
Sylvan	Circle	NE (1)
Sylvan	Circle	NE (2)
Sylvan	Circle	SE
Oakridge	Gettysburg	NE
Oakridge	Gettysburg	SE
Oakridge	Gettysburg	NW
Oakridge	Gettysburg	SW
Oakridge	Marvine	NE
Oakridge	Marvine	NW
Oakridge	Verona	SW
Oakridge	Elmhurst	NE
Oakridge	Elmhurst	SE
Oakridge	Elmhurst	E Boulevard (2 Each)
Oakridge	Elmhurst	W Boulevard (2 Each)
Oakridge	Almond	NE
Oakridge	Almond	NW
Oakridge	Almond	E Boulevard
Oakridge	Almond	W Boulevard
Oakridge	Almond	SW
Almond	Kammer	NE
Almond	Kammer	NW
Almond	Kuendinger	SW

**Burkhardt/Wright View Neighborhood**

Main Road	Side Road	Corner
E. Third	Philadelphia	NE
E. Third	Philadelphia	SE
E. Third	Philadelphia	NW
E. Third	Philadelphia	SW
E. Third	Monmouth	NE
E. Third	Monmouth	SE
E. Third	Monmouth	NW
E. Third	Monmouth	SW
E. Third	Jersey	NE
E. Third	Jersey	SE
E. Third	Jersey	NW
E. Third	Jersey	SW
E. Third	Irwin	NE
E. Third	Irwin	SE
E. Third	Irwin	SW
E. Third	Harbine	SE
E. Third	Harbine	NW
E. Third	Harbine	SW
E. Third	S. Hedges	SE
E. Third	S. Hedges	SW
E. Third	Drury	SE
E. Third	Drury	SW
E. Third	Sperling	SE
E. Third	Sperling	NW
E. Third	Sperling	SW
E. Third	Westview	NE
E. Fourth	Wright	NE
E. Fourth	Wright	SE
E. Fourth	Wright	NW
E. Fourth	Delmar	SW
E. Fourth	Garland	SE
E. Fourth	Garland	SW
E. Fourth	Sperling	SE
E. Fourth	Sperling	NW
E. Fourth	Sperling	SW
N. Smithville	E. Third	NE
N. Smithville	E. Third	SE
N. Smithville	Murray Hill	NW
N. Smithville	Murray Hill	SW
N. Smithville	E. Second	SE
N. Smithville	Woodley	SW

**Westwood Neighborhood**

Main Road	Side Road	Corner
Hoover	Brooklyn	NE
Hoover	Brooklyn	SE
Hoover	Brooklyn	NW
Hoover	Brooklyn	SW
Hoover	Shoop	NE
Hoover	Shoop	SE
Hoover	Shoop	NW
Hoover	Shoop	SW
Hoover	Gramont	NE
Hoover	Gramont	SE
Hoover	Gramont	NW
Hoover	Gramont	SW
Hoover	Anna	NE
Hoover	Anna	SE
Hoover	Anna	NW
Hoover	Anna	SW
Hoover	Evergreen	NE
Hoover	Evergreen	NW
Hoover	Lorenze	SW
Hoover	Cedarhurst	NE
Hoover	Cedarhurst	S (Remove Only)
Hoover	Maplehurst	NE
Hoover	Maplehurst	NW
Hoover	Maplehurst	S (Remove Only)
Hoover	N. Kilmer	SW

**Residence Park Neighborhood**

Main Road	Side Road	Corner
N. Gettysburg	Shenandoah	NE
N. Gettysburg	Shenandoah	SE
N. Gettysburg	Kammer	NE
N. Gettysburg	Kammer	SE
N. Gettysburg	Vina Villa	NE
N. Gettysburg	Vina Villa	SE
N. Gettysburg	Hoover	SE
N. Gettysburg	Hoover	NW
N. Gettysburg	Hoover	SW
Hoover	Geneva	SE
Hoover	Geneva	SW
Sayre	Oakridge	NE

**BOLD FACE DENOTES LOOP DETECTOR LOCATIONS**

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Aviation  
Department/Division

Code 51137-3210-29601-43 (infrastructure)  
51000-3213-23203-43 (lease payments)

(CHECK ONE)

Fund Title 2016 CFC Concorde & Freight Dr. Rehab; DIA  
Airport Operations  
Amount \$ \$1,500,000 infrastructure revenue to the City;  
\$5,902,109.93 lease payment revenue to the  
City for 49 years.

- Purchase Order
- Price Agreement
- Award of Contract
- Other Ground Lease and Development Agreement (PAD 1)
- Lease Agreement
- Estimate of Cost
- Payment of Voucher

Supplier/Vendor/Company/Individual:  
NAME NP Dayton Building 1, LLC  
ADDRESS 5015 NW Canal Street, Suite 200  
Riverside, Missouri 64150

Justification and description of purchase, contract or payment:

**GROUND LEASE AND DEVELOPMENT AGREEMENT (PAD 1)**

The Department of Aviation requests permission to enter into a lease and development agreement with NP Dayton Building 1, LLC in the amount of \$7,402,109.33 for a 39-acre development site located at the Dayton International Airport (Airport).

NP Dayton Building 1, LLC will enter into a 49-year and 11-month lease for the premises and will construct a commercial building on the premises. Lease payments will begin the sooner of either receipt of a Certificate of Occupancy for the building or twelve months after NP Dayton Building 1, LLC receives all necessary permits to construct the building. Lease payments to the City are \$9,853.27 per month, for total term revenue of \$5,902,109.93. The leased premises will be appraised every five years and the lease adjusted for increases in the fair market value of the premises. Upon construction of the building NP Dayton Building 1, LLC will have the option to purchase the premises for the fair market value of the property.

As additional consideration NP Dayton Building 1, LLC will pay the City \$1,500,000 in support of infrastructure improvements the City agrees to undertake at the Airport. These infrastructure improvements include utility and roadway improvements as depicted on the attached Exhibits C and D. The infrastructure improvements will be further detailed and financed under a separate contract with the Montgomery County Transportation Improvement District.

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

Certificates of Revenue are attached.

Approved Affirmative Action Program on File  Yes  No  NA

Approved by City Commission

Clerk

Date

Division  
[Signature]  
Department  
[Signature]  
City Manager

# CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

*Customer Information:* Name NP Dayton Building 1, LLC  
Address 5015 NW Canal Street, Suite 200  
City Riverside State MO Zip+4 64150 -       
Customer # 311825523 Address Location # A1  
Federal ID# 37-1825523

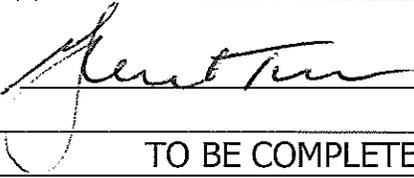
*Revenue Information:* Fund 51137 Organization 3210 Revenue 29601 Program 43

*Contract Information:* Contract Start Date 6/22/2016 Contract Expiration Date 5/21/2066

*Billing Information:* Rate: \$1,500,000 Arrears      Pre-bill X  
Monthly (1<sup>st</sup> month of billing)       
Quarterly (1<sup>st</sup> month of quarter)       
Semi-annual (1<sup>st</sup> month of half)       
Annual (1<sup>st</sup> month of billing)       
Other (explain) \$1,500,000 lump sum payment due no later than 10/28/2016.  
Rate Change Date n/a Rate Change Amount     

*Description of Services (wording on invoice):*     

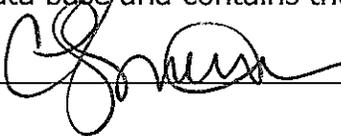
One-time payment in support of infrastructure to be constructed at the Dayton International Airport.

Departmental Approval 

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-5523-3 Auditor  Date 6/13/2016

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

Director of Finance  6-14-16

# CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

*Customer Information:* Name NP Dayton Building 1, LLC  
Address 5015 NW Canal Street, Suite 200  
City Riverside State MO Zip+4 64150 -       
Customer # 371825523 Address Location # A1  
Federal ID# 37-1825523

*Revenue Information:* Fund 51000 Organization 3213 Revenue 23203 Program 43

*Contract Information:* Contract Start Date 6/22/2016 Contract Expiration Date 5/21/2066

*Billing Information:* Rate: \$9,853.27 Arrears      Pre-bill X

Monthly (1<sup>st</sup> month of billing) June 2017

Quarterly (1<sup>st</sup> month of quarter)     

Semi-annual (1<sup>st</sup> month of half)     

Annual (1<sup>st</sup> month of billing)     

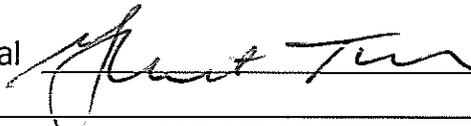
Other (explain)     

Rate Change Date 6/1/2022 Rate Change Amount      Fair market value as determined by appraisal     

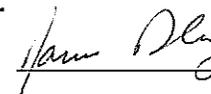
*Description of Services (wording on invoice):*     

Ground Lease at Dayton International Airport (1,698,840 sq ft @ \$.0696/year)

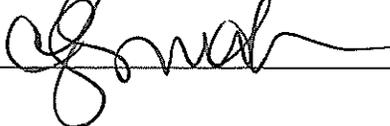
Effective 6/22/2016

Departmental Approval 

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-5523-1 Auditor  Date 6/13/2016

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

Director of Finance  6-14-16

# CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

*Customer Information:* Name NP Dayton Building 1, LLC  
Address 5015 NW Canal Street, Suite 200  
City Riverside State MO Zip+4 64150 -   
Customer # 371825523 Address Location # A1  
Federal ID# 37-1825523

*Revenue Information:* Fund 51000 Organization 3213 Revenue 23207 Program 43

*Contract Information:* Contract Start Date \_\_\_\_\_ Contract Expiration Date \_\_\_\_\_

*Billing Information:* Rate: N/A Arrears X Pre-bill \_\_\_\_\_  
Monthly (1<sup>st</sup> month of billing) \_\_\_\_\_  
Quarterly (1<sup>st</sup> month of quarter) \_\_\_\_\_  
Semi-annual (1<sup>st</sup> month of half) January/June (Property Taxes)  
Annual (1<sup>st</sup> month of billing) \_\_\_\_\_  
Other (explain) \_\_\_\_\_  
Rate Change Date N/A Rate Change Amount N/A

*Description of Services (wording on invoice):* \_\_\_\_\_

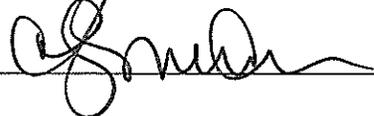
Cost of Property Taxes at the Dayton Intl. Airport \_\_\_\_\_

Departmental Approval 

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-5523-2 Auditor  Date 6/13/2016

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

Director of Finance  6-14-16

## GROUND LEASE AND DEVELOPMENT AGREEMENT (PAD 1)

THIS GROUND LEASE AND DEVELOPMENT AGREEMENT (“Lease”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”), between the City of Dayton, Ohio (“Lessor”), a municipal corporation in and of the State of Ohio, and NP Dayton Building 1, LLC (“Lessee”), a Missouri limited liability company authorized to conduct business in the State of Ohio.

### WITNESSETH THAT:

**WHEREAS**, Lessor owns and operates the improved real property, known and referred to as the James M. Cox Dayton International Airport (“Airport”), situated in the City of Dayton, County of Montgomery, State of Ohio;

**WHEREAS**, Lessee desires to lease certain space at the Airport for the construction of two commercial buildings; and

**WHEREAS**, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee certain unimproved land upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, **IT IS AGREED AS FOLLOWS:**

### ARTICLE I - REPRESENTATIONS

- A. Lessor owns the Premises (as this term is defined in Article II) and, to its actual knowledge and belief, the Premises are free of liens, encumbrances and other matters that would materially and adversely affect title.
- B. Except as otherwise set forth herein, Lessee acknowledges that the entire cost for development and construction of the Project (as this term is defined in Article III) shall be borne by Lessee. To this end, Lessee represents that it has or will secure all the financing in an amount sufficient to undertake and complete the Project.

### ARTICLE II - LEASED REAL PROPERTY

Lessor leases to Lessee approximately 39 acres [(1,698,840 square feet)] of unimproved real property located at the Airport (“Premises”) for the exclusive use by the Lessee. Specifically, the Premises leased hereunder are depicted in Exhibit A, which is attached hereto and incorporated herein. Lessee accepts the Premises “as-is”, and Lessor shall have no obligation to remediate, cure or correct any issues or problems with the Premises. By execution hereof, Lessee acknowledges that Lessor has made no representation or warranty as to the Premises, including its fitness or suitability for the Project or intended use(s).

### ARTICLE III – DUE DILIGENCE PERIOD; DEVELOPMENT OF PREMISES AND INFRASTRUCTURE IMPROVEMENTS

- A. Lessee shall, for a period of ninety (90) days (the “**Due Diligence Period**”) following the Effective Date, have the right to inspect the legal and physical condition of the Premises, including but not limited to title and zoning, and Lessee shall have the right to conduct review and planning activities, including, without limitation, site reviewing, engineering, surveying, environmental audits, inspections, photographing, rock borings, soil tests, and utility locating; provided, however, Lessee shall not be permitted to perform invasive tests without Lessor’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. If Lessee determines during the Due Diligence Period that it does not desire to continue leasing the Premises, Lessee shall have the right to terminate this Lease, upon written notice to Lessor, at any time on or prior to expiration of the Due Diligence Period. Lessee shall indemnify and hold Lessor harmless from and against any and all (i) damage caused to the Premises or any other property by Lessee or its agents or contractors, (ii) loss, damage or injury to any person or property to the extent resulting directly or indirectly from any hazard or other condition created by Lessee or its agents or contractors, (iii) any injury to Lessee or any of its agents or contractors, or any person arising out of the exercise of Lessee’s rights under this Lease, and (iv) any expenses incurred by or for Lessee, in connection with such planning or other activities. This indemnification provision shall survive any termination of this Lease.
- B. Lessee shall construct, at its full expense, one commercial building on the Premises, as the same is generally described on Exhibit B, attached hereto and incorporated herein, complete with related facilities and improvements including, but not necessarily limited to: landscaping, walkways, automobile parking, and other amenities and facilities necessary or required (“**Project**”). All Project construction shall be performed in accordance with all federal, state and local statutes, laws, and zoning, building and fire code requirements. All required permits shall be at Lessee’s full cost and responsibility.
- C. Within thirty (30) days after the expiration of the Due Diligence Period, Lessee shall submit preliminary Project plans and specifications and a tentative Project construction schedule to Lessor for approval. Within ninety (90) days after Lessor's approval of the preliminaries, Lessee shall submit detailed working Project plans and specifications to Lessor for approval. It is understood and agreed that Lessor shall have fifteen (15) business days from the date of its receipt of the plans and specifications to review same, and grant or deny approval as required hereunder.
- D. Lessee shall commence Project construction activities not later than ninety (90) days after receipt of any and all approvals, permits, and consents required from Lessor and all other applicable governmental entities for the Project or its construction, and shall continue with all reasonable dispatch to complete the Project in accordance with the approved working Project plans and specifications, subject to delays in construction due to causes beyond the control of Lessee. Lessee shall not make any material alterations, additions and/or deletions to the working Project plans and specifications without Lessor's advance written approval.

- E. Lessor shall, during the period of construction, have the right, but not the obligation, to enter the Premises upon reasonable notice to Lessee for the purpose of inspecting any and all construction work, workmanship, materials, and installations involved in, or incidental to, the Project construction in a reasonable manner. Lessor shall have the right, but not the obligation, to submit any concerns emanating from such entries/review to the Lessee for rectification.
- F. Upon completion of the Project, Lessee shall provide to Lessor a certified copy of the "as built" Project plans and specifications.
- G. Lessor shall, at Lessor's cost, provide for the installation or extension of underground duct systems and water and sewer lines to the boundary of the Premises as described on Exhibit C, attached hereto and incorporated herein, which installation and extension shall be complete by no later than the date occurring one hundred eighty (180) days following the expiration of the Due Diligence Period. Upon written request to the Director of Aviation or his designee, Lessor agrees to provide information at its disposal to Lessee regarding the status, condition, structure, infrastructure, routing of utilities, and other such pertinent information pertaining to the Premises as may be needed for development of the Project.
- H. Lessor shall, at Lessor's cost, construct roadway improvements to Concorde Drive such that the same shall be extended to the boundary of the Premises, as further stated in the attached Exhibit D, which extension of Concorde Drive shall be completed no later than the date occurring one hundred eighty (180) days following the expiration of the Due Diligence Period.
- I. Title to all improvements constructed on the Premises by Lessee (or on behalf of Lessee) are and shall be deemed vested in, and such improvements belong and shall be deemed to belong to and are and shall be deemed to be owned by Lessee for all purposes including, without limitation, income tax and real property tax purposes. Subject to Article XIV, any improvements remaining on the Premises at the expiration or termination of this Lease or termination of Lessee's right to possession pursuant to Article XVIII (collectively, the "Expiration Date"), shall become the property of Lessor, and Lessor shall thereupon be entitled to possession thereof without any consideration or cost to Lessor. Upon the Expiration Date, Lessee shall promptly surrender the Premises and the improvements thereon to Lessor in good condition, subject to normal wear and tear, and Lessee shall deliver actual possession and ownership of the Premises and the improvements thereon to Lessor by bill of sale or other evidence of transfer satisfactory to Lessor. Subject to Article VI, Section J, nothing in this Lease shall require or shall be construed to mean that, as between Lessor and Lessee, Lessee has any obligation to cause any improvements to be located on the Premises at the end of the Term.

#### **ARTICLE IV - USE OF PREMISES**

- A. Subject to compliance with the terms and conditions of this Lease including, without limitation, subparagraph B of this Article IV and Article V, Lessee may conduct any legal use within the Premises; provided, that Lessee shall be prohibited from using the Premises

to conduct the commercial business activities of a fixed based operator.

- B. Lessee shall not do or permit anything to be done on or about the Premises that will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority. Further, Lessee shall not use or permit others to use the Premises for any improper, immoral or unlawful purpose.

#### **ARTICLE V – FEDERAL REQUIREMENTS**

The Premises leased hereunder are subject to, and Lessee shall comply with, the following provisions, reservations and restrictions:

- A. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise as may be inherent in the operation of any aircraft now known or hereafter used for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from, or operating from the Airport.
- B. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements, as amended, or any similar regulations which may hereinafter be enacted, regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
- C. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.
- D. Lessee agrees to comply with the notification and review requirements covered in 14 CFR Part 77 (FAA Form 7460-1) for any structure or building planned on the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises; Lessor shall file a notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) prior to the commencement of construction of any facility, structure or other item on the Premises.
- E. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

- F. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer the use of the Premises in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.
- G. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, without interference or hindrance.
- H. The Lease shall be subordinate to the provisions of and requirements of any existing or future agreements between Lessor and the United States, relative to the development, operation, or maintenance of the Airport.
- I. The aforesaid covenants and agreements shall run with the land, as hereinafter described, for the benefit of the City of Dayton and its successors and assigns in the ownership and operation of the Airport.
- J. Lessor will, by agreement with the FAA, commit all proceeds from the lease of the Premises to the development, maintenance and operations of the City's airport system, in conformance with the FAA's revenue use policy.

#### **ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSEE**

- A. Lessee shall, at its expense, provide for the complete and proper maintenance of the Premises and any structures or other improvements constructed thereon. For purposes of this Lease, maintenance activities to be performed and completed by Lessee include, but are not necessarily limited to, the following:
  - 1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all paved or asphalt surfaces located on the Premises;
  - 2. Mowing, planting and maintenance of grass areas and landscaping to the Premises lease line;
  - 3. Maintenance of all utility lines serving the buildings to the lease line or metering point, whichever is larger;
  - 4. Maintenance of storm drainage structures and storm lines on the Premises and sanitary sewer lines serving the Premises;
  - 5. Maintenance, testing and service of any fire suppression system(s) and fire alarm system(s) within the improvements in accordance with all applicable codes and requirements; and
  - 6. Complete interior and exterior, including structural, maintenance.
- B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to,

the Federal Aviation Administration (“FAA”), Transportation Security Administration, Environmental Protection Agency, Ohio Environmental Protection Agency, and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with the City’s Stormwater Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorization required. Upon request by Lessor, Lessee shall furnish to Lessor any and all permits or certificates required under this Lease.

- C. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein. Lessee’s obligations hereunder shall survive the expiration or termination of this Lease.
- D. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and all refuse created during Project construction and the conduct of Lessee’s occupation of the Premises, and shall provide for the complete and proper removal and disposal away from the Premises of same. Piling of boxes, cartons, barrels, construction debris and other similar items in an unsightly or unsafe manner on or about the Premises, which may produce substantial attractants for hazardous wildlife as described in FAA Advisory Circular 150/5200-33B (or any amendments or successors thereto), is forbidden.
- E. The storage, handling, use and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling, use and disposal of same.
- F. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises, subject to any current and future security restrictions.
- G. In addition to rents and fees, Lessee shall, at its expense, pay all real property taxes, assessments, and impositions that are now and may be levied or imposed upon the Premises and any real, leasehold, and personal properties or improvements, buildings, or structures situated or placed thereon. Lessor will promptly notify and bill Lessee for any such real property taxes, assessments, and impositions due, and Lessee shall pay the amount invoiced to Lessor within thirty (30) days after receipt of the invoice. Lessee shall be permitted to protest or contest, in a manner specified by Lessor, the validity or amount of any such real property tax, assessment, or imposition. Lessor retains the sole right and obligation to file such protest or contest with the proper taxing authority; however, Lessee shall provide all necessary information and required legal or appraisal services relating to

such protest or contest to Lessor at Lessee's sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee's right to protest or contest taxes, assessments and impositions hereunder does not relieve Lessee of the obligation to pay such taxes, assessments, and impositions to Lessor unless Lessor receives a waiver from the applicable taxing authorities. The Premises are subject to a pre-1994 Community Reinvestment Area tax abatement, which provides for a 15-year, 100% real property tax abatement on the assessed value attributable to new commercial and industrial improvements constructed upon the Premises. Lessee shall cooperate with Lessor in order to qualify the new commercial and industrial improvements to be constructed by the Lessee for such abatement.

- H. Lessee shall have all utility accounts for the Premises separately metered and placed in its name. Lessee shall pay when due all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such utility service. Lessee shall notify Lessor immediately upon termination of any utility account. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to the improvements during the Lessee's tenancy, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a Five Percent (5%) administrative charge.
- I. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of the buildings (but not the roof), its name in neatly arranged electric, neon or other type sign or signs; with the size and type of sign or signs subject to Lessor's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed.
- J. Lessee may, without the consent of Lessor, make minor alterations and changes to the Premises and any structures constructed thereon as Lessee may, at any time during the term hereof, find necessary or convenient for its use of the Premises. Any additions, alterations, demolition or changes to the Premises and improvements of a material, substantial or structural nature, shall be permitted under this Lease, with the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed.

#### **ARTICLE VII – ADDITIONS, CHANGES, AND ALTERATIONS BY LESSEE**

From time to time during the term of this lease, Lessee, at its sole expense, may make additions to and alterations in any of the improvements now or hereafter located on the Premises provided however, that such additions or alterations shall not materially impair the strength or value of the improvements at the time located thereon, and shall be in conformity with all applicable laws, building ordinances, and regulations and shall first be approved by the Director of Aviation, such

approval not to be unreasonably withheld. .

#### ARTICLE VIII - TERM

- A. This Lease shall begin on the Effective Date. The “**Commencement Date**” of this Lease shall be the earlier of: (i) the date that the Project is fully constructed and Lessee receives a conditional or final Certificate of Occupancy for the first commercial building located upon the Premises, and (ii) the date which is twelve (12) months following the receipt by Lessee of any and all permits and approvals necessary to commence the construction of the Project. The “**Term**” of this Lease shall commence on the Effective Date and terminate on the date occurring forty-nine (49) years and eleven (11) months following the Effective Date. If the Commencement Date has not occurred on or prior to twenty-four (24) months following the Effective Date, this Lease shall be automatically terminated.
- B. Effective upon Lessee’s completion of the Project and at any time thereafter on or prior to the end of the twelfth (12<sup>th</sup>) month following the Commencement Date (the “Option Period”), provided Lessee is in compliance with the terms of this Lease, Lessee shall have the option (the “**Option**”) to purchase the Lessor’s fee simple interest in the Premises upon the terms and conditions set forth in the Real Estate Sale Contract, attached hereto as Exhibit E (the “**Contract**”).

Lessee shall elect such Option by providing written notice of the same to Lessor during the Option Period, in which event Lessor and Lessee shall each promptly execute the Contract.

#### ARTICLE IX - RENTALS

- A. During the term of this Lease, Lessee shall pay to Lessor the following rental amounts and other consideration for the Premises:
1. Within thirty (30) days after the expiration of the Due Diligence Period, Lessee shall pay Lessor One Million Five Hundred Thousand Dollars (\$1,500,000.00) in support of the infrastructure improvements Lessor will make to the Premises and surrounding site (“**Infrastructure Payment**”), which Infrastructure Payment shall be non-refundable including, without limitation, in the event this Lease is subsequently terminated.
  2. From the Effective Date to the Commencement Date, Lessee shall pay to Lessor rent in the amount of \$0.00 Dollars per year.
  3. From the Commencement Date and for the ensuing five (5) year period, Lessee shall pay to Lessor annual rent equal to \$0.0696 multiplied by the actual square footage of the Premises.
  4. Lessor will obtain an appraisal of the leased premises every five (5) years. If the fair market value of the leased premises has not increased since the

previous appraisal, then beginning on the first (1<sup>st</sup>) day of the sixth (6<sup>th</sup>) year following the Commencement Date, and thereafter on each five-year anniversary, the rent to be paid for the succeeding five (5) year period shall be increased for the next ensuing five (5) year period by three percent (3%). If the fair market value of the leased premises has increased then the rent will be increased to reflect the increase in value. Each successive rental rate increase shall be the comparison of the most recent calendar year to the fifth preceding calendar year. In no event shall Lessee be entitled to a decrease in the rental rate.

- B. All rent due under this Lease shall be paid in equal monthly installments, due in advance on the first day of the month and without notice, and sent to Lessor at the following address:

City of Dayton, Ohio  
P.O. Box 632094  
Cincinnati, OH 45202

or such other address as Lessor may specify in writing.

- C. Lessee shall make the Infrastructure Payment to Lessor in one lump sum, sent to Lessor at the address stated in paragraph B above.
- C. Without waiving any other right or action available to Lessor in the event of default in payment of rents, fees, charges or any other financial obligation hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any amount(s) due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of one percent (1%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

#### **ARTICLE X - RIGHTS AND OBLIGATIONS OF LESSOR**

- A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport, the Premises and facilities thereon, which Lessee agrees to observe and obey.
- B. Lessor's Director of Aviation and his duly authorized representatives shall have the right to enter the Premises for the purposes of inspecting the Premises and evaluating and inspecting Project construction activities and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport. Except for emergencies or when required by law, Lessor agrees to provide twenty four (24) hours' notice to Lessee of its intent to enter the Premises, except during construction, during which period, no notice is required.
- C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee's covenants contained herein.

- D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise as long as said easements would not adversely affect Lessee's use of the Premises for the purposes stated herein. All costs associated with granting said easements or executing activities for which said easements are granted shall be borne by Lessor or others; no cost shall be transferred to Lessee.
- E. If Lessee fails to provide and maintain trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the costs of said services plus a Five Percent (5%) administrative fee, which Lessee agrees to pay.

#### **ARTICLE XI - NON-DISCRIMINATION**

- A. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained or otherwise operated on the Premises described in this Lease for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended, superseded or modified.
- B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations as may be amended, superseded or modified.
- C. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and to re-enter and repossess the Premises and facilities thereon and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing in this Article shall prevent Lessee from exhausting all administrative and/or judicial remedies available to Lessee in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

## ARTICLE XII - INDEMNIFICATION

- A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, Project construction and/or the use or occupancy of the Premises, and/or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, and/or Lessee's exercise of any right granted herein, and/or Lessee's performance or breach or default in the performance of any obligation to be performed pursuant to this Lease, and/or any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors and/or employees. It is agreed that no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the negligence or willful misconduct of Lessor, its agents or employees.
- B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or encumbrance or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled and discharged of record or bonded over, and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof. If Lessee shall fail to cause the same to be cancelled and discharged of record or bonded over within sixty (60) days, then, in addition to any other right or remedy available to Lessor, Lessor shall be entitled, but not obligated, to discharge the lien or encumbrance either by paying the amount claimed to be due or by procuring the discharge by deposit or by bonding proceedings. All amounts paid by Lessor and all of its costs and expenses in connection with the actions taken by Lessor, including court costs, reasonable attorneys' fees, and interest at the rate of twelve percent (12%) per annum, shall be deemed to be additional rent under this Lease and shall be paid by Lessee to Lessor promptly upon demand by Lessor.
- C. Lessor shall not be liable to Lessee or its subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, or caused by any third-person using the Airport, or caused by any third person navigating any aircraft on or over the Airport.
- D. The obligations of Lessee under this Article shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.
- E. Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by

law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

- F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

### ARTICLE XIII - INSURANCE

- A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease commencing on the Effective Date unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an "A" rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):

Commercial Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insured, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. All Risk Property Insurance:

- i. Lessee shall obtain an "All Risk Property" policy, including improvements and betterments covering damage to building, in the amount of full replacement value of the improvements and betterments on the Premises. Lessor is to be named as a loss payee on said policy or policies of insurance.

- ii. Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.

When Lessee undertakes the Project or any improvement, construction or repair project on or to the Premises, an "All Risk Blanket Builders Risk Insurance" shall be provided by Lessee to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, faulty workmanship or materials, extra expense, and loss of use of property. The Lessor shall be named as loss payee on said policy or policies of insurance.

- B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor's request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XVI unless proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee's contractors, shall provide for a minimum of ten (10) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.
- C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate, except that Lessor may not terminate this Lease. In such instances, reasonable attorney's fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.
- D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors' liabilities and

responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

- E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.
- F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

#### **ARTICLE XIV – DAMAGE OR DESTRUCTION AND DISPOSITION OF COMMERCIAL BUILDINGS**

- A. If a building or any other improvements located on the Premises are damaged, in whole or in part, by fire or other casualty, Lessee shall, at Lessee's expense and as soon as reasonably possible, either (i) repair the damage, or (ii) remove the building and remaining improvements and return the Premises to arable land as originally tendered to Lessee.
- B. Intentionally Deleted.
- C. Upon termination of this Lease, Lessee at its option may choose to remove any improvements and return the Premises to arable land as originally tendered to Lessee. Lessee shall execute this option of removal by providing written notice to the Director of Aviation of its intention to remove the improvements no later than six (6) months prior to the termination of this Lease.
- D. If Lessee does not timely exercise the removal option, then upon termination of this Lease, title and ownership of improvements made on or to the Premises shall revert to the Lessor free and clear of any liens, mortgage(s) or other encumbrances other than the following "Permitted Encumbrances:" (a) taxes and assessments, which are a lien on the Premises and but not yet due and payable; (b) applicable zoning and other government laws, ordinances and regulations of any kind or nature; (c) easements, covenants, conditions and restrictions of record as of the Effective Date and those created after the Effective Date which were approved, in advance, by the Lessor; and (d) liens and other encumbrances created by Lessor. Lessee shall take all actions and execute any and all documents necessary to transfer title and ownership of the improvements to Lessor as provided above, and Lessor shall not be required to pay Lessee for such transfer of the

improvements in the manner required herein. Notwithstanding anything to the contrary, Lessee shall be entitled to remove any and all trade fixtures, equipment and other personal property of Lessee situated on the Premises. Until the expiration or earlier termination of this Lease, title to the improvements and all other items installed thereon and any repair, addition, alteration or replacement thereto shall remain Lessee's property.

#### **ARTICLE XV - ASSIGNMENT AND SUBLETTING**

- A. Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee may assign this Lease to any affiliate of Lessee or to the Dayton Montgomery County Port Authority in connection with any financing of the Project without the consent of Lessor. For the purposes of this Lease, "affiliate" shall mean any entity controlled by Lessee, controlling Lessee, or under common control of Lessee.
- B. Lessee may, without the consent of Lessor, sublease any portion of the Premises and/or the Project in Lessee's normal course of business and consistent with the use of Project as contemplated hereby.
- C. Any sale, assignment, sublease or transfer in violation hereof shall be void.

#### **ARTICLE XVI - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS**

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

#### **ARTICLE XVII - TERMINATION BY LESSEE**

- A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:
  - 1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof used by Lessee and necessary for Lessee's operations on the Airport, for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations at and from the Premises; or
  - 2. Lessor's default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease, if the Lessor fails to commence the remedying of such default within the thirty (30) day period.

## **ARTICLE XVIII - TERMINATION BY LESSOR**

- A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:
1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
  2. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction;
  3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.
  4. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessee fails to cure such default within thirty (30) days after Lessor notifies Lessee in writing of the default;
  5. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owing hereunder, and Lessee fails to cure such default within thirty (30) days from receipt of written notice to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.
  6. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation, or if by reason of the nature of such violation the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee fails to commence the remedying of such violation within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

## **ARTICLE XIX - HOLDING OVER**

In the event Lessee holds over and remains in possession of the Premises and rights granted herein after expiration or termination of this Lease and without any written renewal thereof, such holding over shall not operate as a renewal or extension of this Lease, but shall only create a tenancy from month to month that may be terminated at any time by Lessor or Lessee. During

such hold over period, Lessee agrees to pay a building rent, which amount shall be based on the rental during the immediately preceding portion of the term, increased by a factor of one hundred fifty percent (150%).

#### **ARTICLE XX - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

#### **ARTICLE XXI - WAIVER**

- A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent or other payments with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by a duly authorized representative of Lessor or Lessee, as the case may be.
- B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

#### **ARTICLE XXII – CONDEMNATION**

- A. If the entire Premises is condemned and taken for public use, this Lease shall automatically terminate on such date that the title shall vest in the condemnor. Rent and any additional fees and charges under this Lease shall be prorated as of the date of such termination; and upon termination, Lessee shall satisfy and cause to be released any mortgages, liens, or other encumbrances placed or suffered to be placed on the Premises by Lessee.
- B. Any award or compensation paid on account of any taking or condemnation described herein shall be equitably divided between Lessor and Lessee, taking into consideration each party's respective interest in the Premises and improvements thereon.

## ARTICLE XXIII – LEASEHOLD MORTGAGES

- A. Lessee shall have the right to mortgage its leasehold interest under this Lease, provided that (1) Lessee invests one hundred percent (100%) of the proceeds from the mortgage financing on improving, renovating and/or equipping the Premises, (2) the maturity of the debt secured by such mortgage must be a date that is prior to the expiration of the term of this Lease, (3) such mortgage must be subordinate to this Lease and Lessor's fee interest in the Premises, and (4) prior to executing any such mortgage, Lessee shall deliver to the Lessor written notice thereof, which notice shall include a copy of same along with the name and address of each intended mortgagee and any other documentation or materials reasonably requested by Lessor to demonstrate compliance with this Article XXIII. Any such leasehold mortgage which complies with the foregoing is referred to herein as a "Permitted Leasehold Mortgage," and a mortgagee under a Permitted Leasehold Mortgage is referred to herein as a "Leasehold Mortgagee." Lessor shall not be deemed to have any notice of any such mortgage, until and unless the written notice required by this Article has been delivered to Lessor. At the request of the Lessee or the Leasehold Mortgagee, Lessor will join in executing the appropriate documents (i.e. estoppel agreement) to the extent reasonably necessary to protect the Leasehold Mortgagee's interest under the Permitted Leasehold Mortgage and in such form as is reasonably acceptable to Lessor; provided, however, Lessor shall not subordinate this Lease or its fee simple interest in the Premises in connection with any such mortgage.
- B. Concurrent with any notice from Lessor to Lessee of a failure, breach or default by Lessee in the performance or observance of any of the terms, conditions or agreements in this Lease, Lessor shall give written notice thereof to each Leasehold Mortgagee, and each such Leasehold Mortgagee shall have the right (but not the obligation) to cure such default. Lessor shall not take any action with respect to such failure, breach or default for a period of thirty (30) days after receipt of such written notice by each Leasehold Mortgagee with respect to any such default capable of being cured by the payment of money and for a period of forty five (45) days after receipt of such written notice by each such Leasehold Mortgagee with respect to any other default (provided that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such forty five (45) day period because of the nature of such default or because any such Leasehold Mortgagee requires time to obtain possession of the Premises in order to cure the default, if each such Leasehold Mortgagee shall proceed promptly to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity). Upon the written request of any Leasehold Mortgagee or prospective Leasehold Mortgagee, and for the exclusive benefit of said Leasehold Mortgagee, Lessor will promptly deliver to said Leasehold Mortgagee such form of Lessor's consent and waiver as may be reasonably required to assure such mortgagee that Lessor will comply with this Article XXIII. Lessor shall accept any cure by a Leasehold Mortgagee of a default by Lessee under this Lease as if the same had been performed by Lessee; provided, however, no Leasehold Mortgagee shall be obligated to cure any default by Lessee or any other matter.

## ARTICLE XXIV – ESTOPPEL CERTIFICATES

Lessor and Lessee each agree to furnish, at any time and from time to time, so long as this Lease shall remain in effect, upon not less than fifteen (15) days prior written request by the other party, a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified, stating the modifications), (ii) that the dates to which the rent and other charges have been paid in advance, if any, (iii) that to the best knowledge of Lessee, there are no defaults under the Lease by Lessor or Lessee, as the case may be, except such defaults as may be specified in such statement, and (iv) that, in the case of Lessor to its best knowledge, it is not in default under any mortgage or deed of trust encumbering the Premises and that in the case of Lessee, to its best knowledge it is not in default under any leasehold mortgage encumbering Lessee's leasehold interest under this Lease, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchasers of Lessor's or Lessee's respective interests or any prospective mortgagee, holder of any mortgage, or assignee of any mortgage upon Lessee's interest in the Premises.

## ARTICLE XXV – GENERAL PROVISIONS

- A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's Director of Aviation, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld. Where a response is required to be provided by Lessor, such response shall be provided in writing no later than thirty (30) days after the Lessor's receipt of the request for response.
- B. Notices to Lessor provided for in this Lease shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation  
James M. Cox Dayton International Airport  
3600 Terminal Drive, Suite 300  
Vandalia, Ohio 45377

or such other address as Lessor shall direct in writing.

- C. Notices to Lessee provided for in this Lease shall be sufficient if sent by certified mail, postage prepaid, addressed to:

NP Dayton Building 1, LLC  
Attn: Nathaniel Hagedorn  
5015 NW Canal Street, Suite 200  
Riverside, Missouri 64150

or such other address as Lessee shall direct in writing.

- D. This Lease merges all prior negotiations and understandings and there are no other agreements and understandings, oral or otherwise, between the parties pertaining to the Premises. This Lease and any written agreement hereafter made between the parties hereto shall be binding upon Lessee only when fully executed by an officer or authorized representative of both parties. A signed copy of this Lease shall be mailed or delivered to Lessee after execution thereof by Lessor.
- E. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.
- F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.
- G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.
- H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.
- I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.
- J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
- K. This Lease 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.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

WITNESSED BY:

NP DAYTON BUILDING 1, LLC

\_\_\_\_\_

\_\_\_\_\_

Manager

WITNESSED BY:

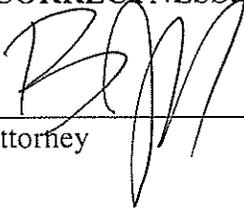
CITY OF DAYTON, OHIO

\_\_\_\_\_

\_\_\_\_\_

City Manager

APPROVED AS TO FORM  
AND CORRECTNESS:

  
\_\_\_\_\_  
City Attorney *J.C.M.*

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

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

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

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

**EXHIBIT A**

**Depiction of Premises**

**[TO BE ATTACHED]**

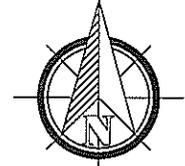


DEFINING THE CITIES  
OF TOMORROW

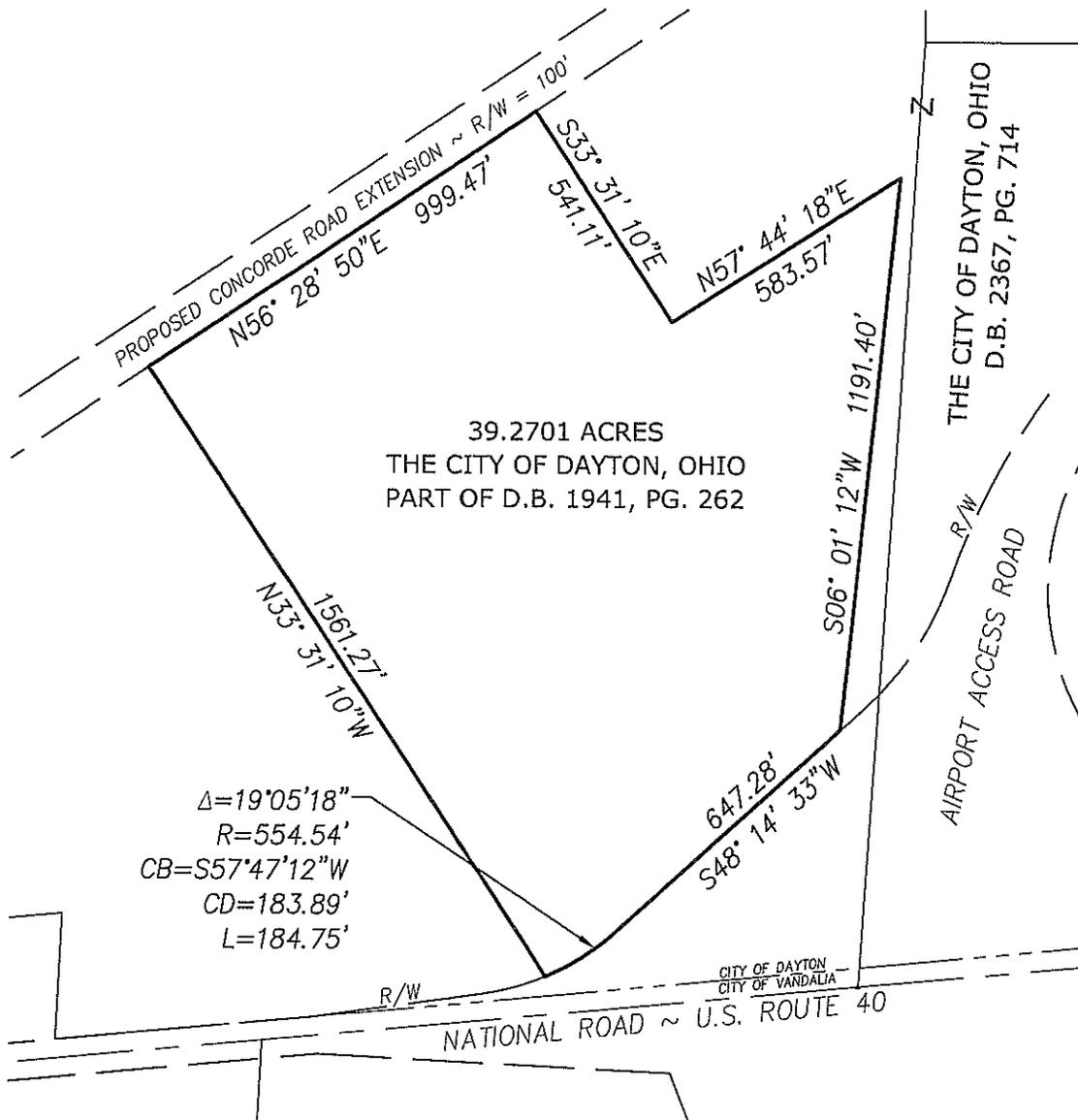
23 Triangle Park Drive  
Cincinnati, OH 45246  
Contact: Pat Finn  
513-942-3141 ext. 243  
Fax: 513-881-2263  
www.ibigroup.com

**PROPOSED PARCEL**  
39.2701 ACRES  
THE CITY OF DAYTON, OHIO  
PART OF D.B. 1941, PG. 262  
SECTION 18, TOWN 3, RANGE 6E  
MONTGOMERY COUNTY, OHIO

BEARINGS ARE BASED ON GPS  
OBSERVATIONS OF MONTGOMERY  
COUNTY CONTROL MONUMENTS



GRAPHIC SCALE  
0 200 400  
( IN FEET )  
1 inch = 400 ft.



**EXHIBIT B**

**Description of Project**

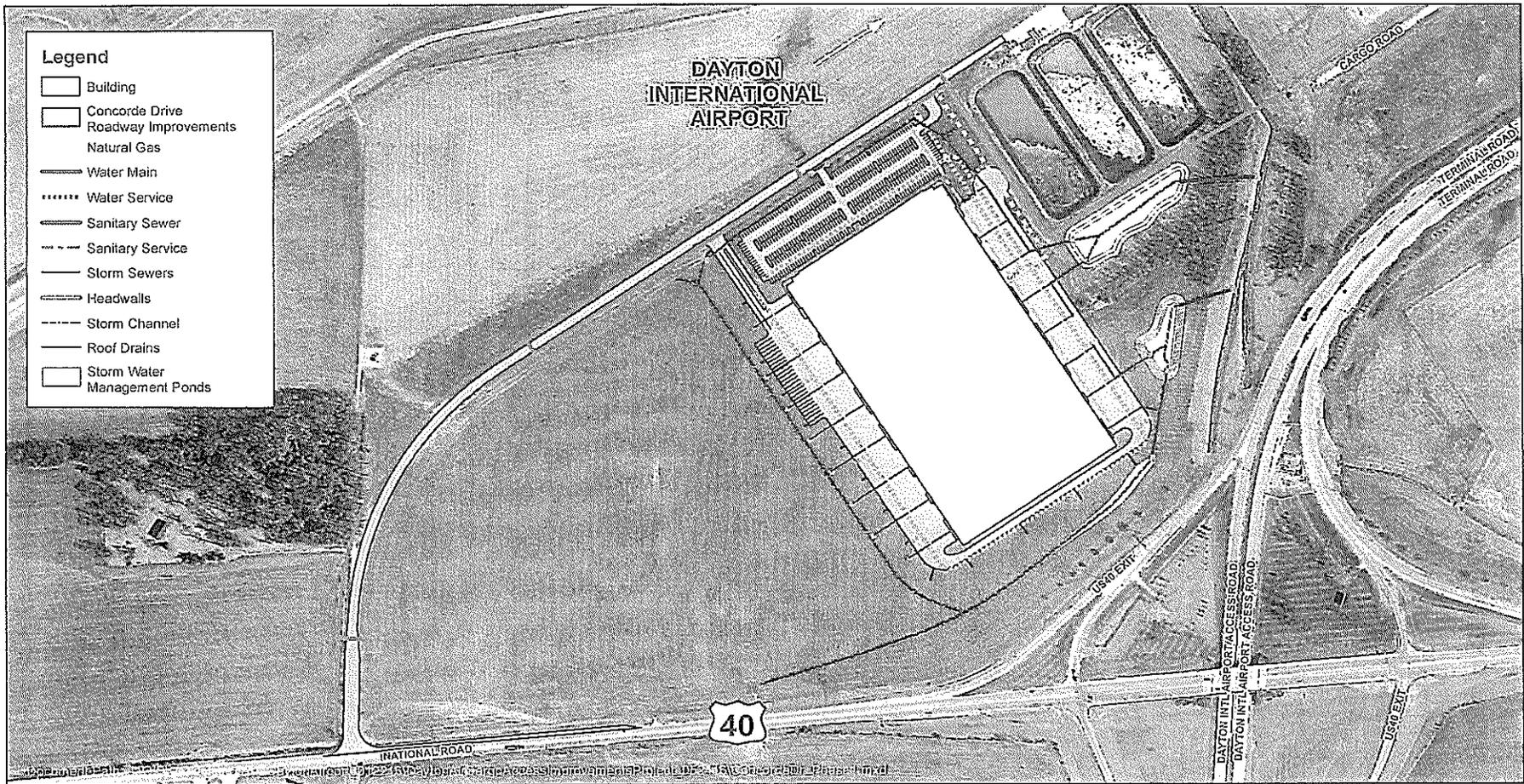


**EXHIBIT C**

**Depiction of Utilities**

**Legend**

-  Building
-  Concorde Drive Roadway Improvements
-  Natural Gas
-  Water Main
-  Water Service
-  Sanitary Sewer
-  Sanitary Service
-  Storm Sewers
-  Headwalls
-  Storm Channel
-  Roof Drains
-  Storm Water Management Ponds



**Concorde Drive & Intersection Improvement Project**

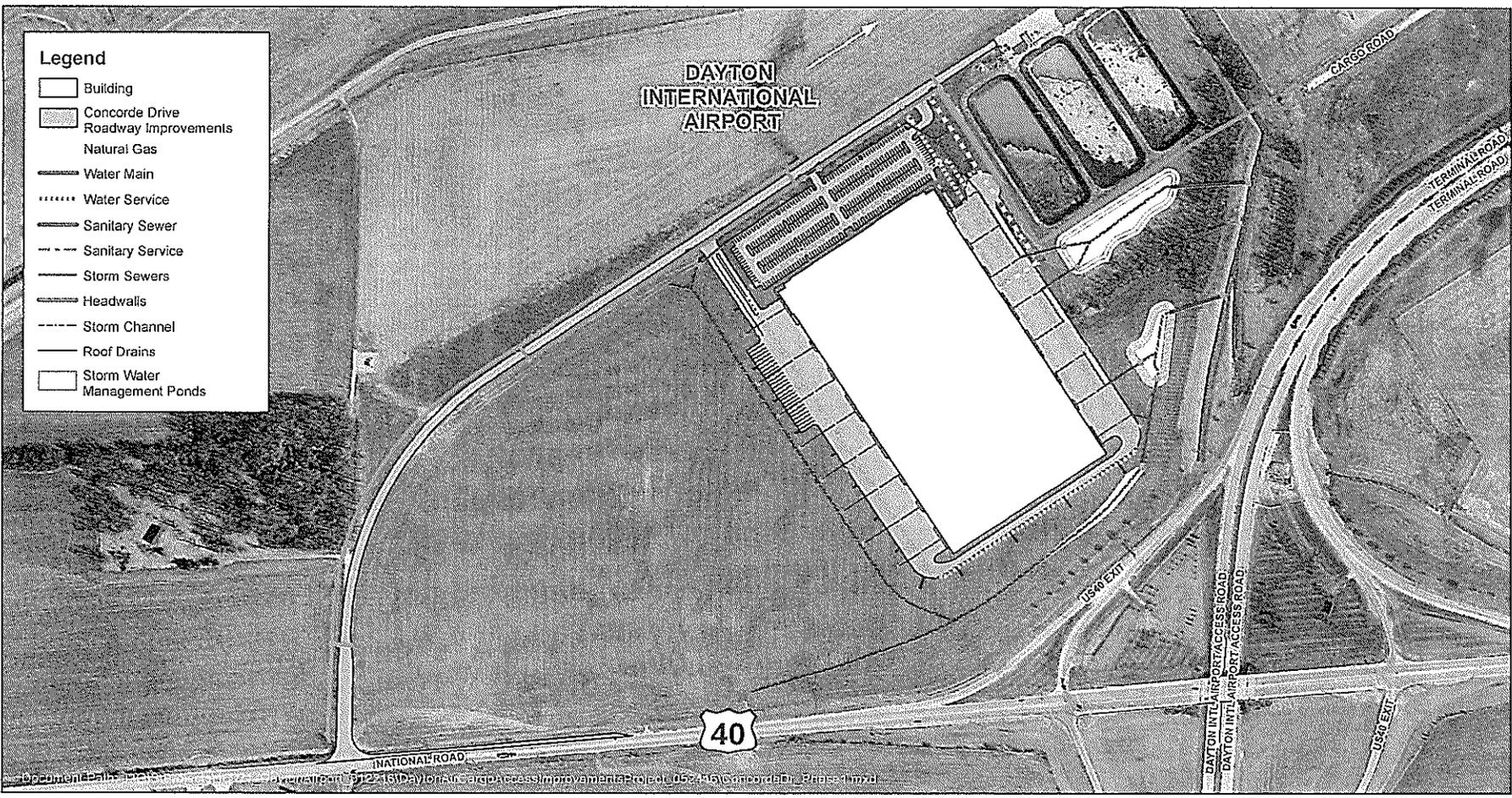


For further information please contact: Jeff Koehn, IBI Group  
 23 Triangle Park Drive Suite 2300, Cincinnati, Ohio 45246  
 513-942-3141 ext. 232 • jeff.koehn@ibigroup.com •  
 www.ibigroup.com

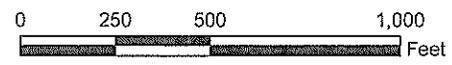
Date: 5/26/2016

**EXHIBIT D**

**Depiction of Concorde Drive Improvements**



**Concorde Drive & Intersection Improvement Project**



For further information please contact: Jeff Koehn, IBI Group  
 23 Trianglo Park Drive Suite 2300, Cincinnati, Ohio 45246  
 513-942-3141 ext. 232 • jeff.koehn@bigroup.com • www.bigroup.com

Date: 5/26/2016

## EXHIBIT E

### Real Estate Sale Contract

#### REAL ESTATE SALE CONTRACT

THIS REAL ESTATE SALE CONTRACT (this “**Contract**”) is made as of the Effective Date (as defined below) by and between NP Dayton 1, LLC, Missouri limited liability company (“**Buyer**”), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio (“**Seller**”).

WITNESSETH:

1. Subject Property. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, that certain real property currently leased by Seller to Buyer pursuant to that certain Ground Lease dated \_\_\_\_\_, 2016 (“**Ground Lease**”), as more particularly described in Exhibit A, attached hereto and incorporated herein (all hereinafter referred to as the “**Subject Property**”).

2. Purchase Price. The “**Purchase Price**” for the Subject Property shall be Thirty-Three Thousand and 00/100 Dollars (\$33,000.00) per acre, which is the fair market value of the Subject Property as of the date of the Ground Lease as determined by an appraisal. If the appraisal is more than six (6) months old then Seller will obtain confirmation from the appraiser that the fair market value is unchanged. If necessary, the Purchase Price shall be adjusted to reflect fair market value at the time this Contract is executed. Buyer agrees to pay the Purchase Price as follows:

(a) Five Thousand and 00/100 Dollars (\$5,000.00) (the “**Earnest Deposit**”) to be delivered to Escrow Agent (as hereinafter defined) within five (5) business days following the Effective Date, in the form of a check payable to, and to be deposited in escrow with, \_\_\_\_\_ (the “**Escrow Agent**”), which Earnest Deposit shall be nonrefundable unless Seller fails to close or Buyer terminates this Contract in accordance with the terms of Section 5 or Section 10 of this Contract, and the Earnest Deposit shall be fully applicable to the Purchase Price at Closing;

(b) On the Closing Date (as defined in Section 3), Buyer shall deliver the balance of the Purchase Price (i.e. less the Earnest Deposit) to the Escrow Agent for distribution to Seller, by cashier’s or certified check or by wire transfer in immediately-available funds, and subject to any prorations set forth in this Contract.

3. Closing: Costs at Closing.

(a) Subject to the terms and conditions hereof, the Closing shall occur no later than fifteen (15) days following the expiration of the Title Review Period (the “**Closing Date**”).

(b) On the Closing Date, the parties shall pay any and all closing costs as follows:

(i) The costs of any escrow charges, or similar costs, charged by Escrow Agent, shall be evenly split among Buyer and Seller.

(ii) Any costs related to the recording of the deed shall be paid by Buyer.

(iii) The costs of releasing any and all liens, judgments, and other encumbrances, as well as any recording costs in connection therewith, shall be paid by Seller, except to the extent such liens, judgments, or other encumbrances arise as a result of the act or omission of Buyer or its agents or employees, in which case such costs shall be paid by Buyer.

(iv) All survey costs and other due diligence costs and expenses shall be paid by Buyer.

(v) The base premium of the basic Title Policy (as defined herein below) shall be paid by Seller, and Buyer shall pay any other title costs including, without limitation, costs related to the Title Commitment, extended coverage, any endorsements to the Title Policy, and any lender's title policy.

(vi) The cost of any transfer tax associated with the sale of the Subject Property shall be paid by Seller.

(vii) Except as otherwise specifically set forth herein, any costs attributable only to one party, such as each party's attorneys' fees, shall be paid by such party.

(viii) Any and all other costs or expenses not otherwise addressed in this Contract shall be paid by the parties as the same is customary in the Dayton, Ohio metropolitan area.

4. Taxes. Pursuant to the Ground Lease, Buyer is responsible for all taxes, general and special, against the Subject Property which are due and have accrued before the Closing Date. Further, Buyer shall assume all of such taxes and assessments becoming due and accruing on the Closing Date and thereafter. Accordingly, there shall be no proration of any such tax or assessment.

5. Title Review Period. During the period ending thirty (30) days following the Effective Date ("Title Review Period"), Buyer may, at its own cost and expense, review the state of title to the Subject Property and cause a title company of its choice (the "Title Company") to issue a commitment (the "Title Commitment") for an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price ("Title Policy"). On or prior to the expiration of the Title Review Period, Buyer may provide Seller with written notice of its objection to any exceptions to title to the Subject Property other than (i) any exceptions existing on the Effective Date of the Ground Lease, and (ii) any exceptions arising as a result of the act or omission of Buyer or its agents or employees, all of which shall be deemed Permitted Exceptions, and (iii) the standard printed survey exceptions, unless Buyer provides, at its own cost and expense, a survey sufficient to cause the Title Company to remove same. Upon receipt of such written objections, Seller

shall have the right but not the obligation to remove, discharge or correct such liens, encumbrances or objections and shall have a period of thirty (30) days after receipt of notice thereof in which to do so (and, if necessary, the Closing Date shall be extended therefore). If Seller shall be unwilling or unable to remove or discharge such liens, encumbrances or objections within such period, then Buyer may, at its option, no later than five (5) days after Seller notifies Buyer of Seller's unwillingness or inability, either terminate this Contract and receive a refund of its Earnest Deposit or accept title in its then-existing condition, in which case all such exceptions shall be deemed Permitted Exceptions. The foregoing notwithstanding, Buyer acknowledges that Seller may place of record such utility and aviation easements affecting the Property as may be reasonably necessary in connection with the operation of the Airport or the development of parcels surrounding the Subject Property, and Buyer shall cooperate with Seller in connection with the same. Notwithstanding any provisions of this Contract to the contrary, Seller agrees that it shall deliver to the Title Company an owners' affidavit and other documents reasonably necessary for the Title Company to deliver to Buyer the Title Policy with certain standard exceptions deleted therefrom or endorsements made thereto which are customarily deleted or endorsed based upon such owners' affidavit; provided, however, Seller may limit and qualify any statements made therein to Seller's actual knowledge, without any independent investigation, and further exclude any matters arising out of or resulting from the act or omission of Buyer, as the party in possession of the Subject Property pursuant to the Ground Lease, or any party acting on behalf of or at the request of Buyer. Seller shall not be deemed in default of its obligation hereunder if the Title Company is unable or unwilling to remove the standard exceptions or issue any requested endorsements with such limitations and qualifications in the owners' affidavit.

6. Closing Condition. Buyer's obligation to close the transaction set forth herein shall be subject to, and conditioned upon, the satisfaction of the following "**Closing Condition**": no condition, event, or circumstance has occurred since the expiration of the Title Review Period, not caused or permitted by Buyer, that materially adversely affects the state of title to the Subject Property. In the event that the aforementioned Closing Condition is not satisfied as of the Closing Date, Buyer shall have the right to terminate this Contract on the Closing Date, in which event the Earnest Deposit shall be immediately returned to Buyer, and the parties shall have no further obligations hereunder each to the other.

7. Closing Documents. Seller shall deliver to Buyer on the Closing Date at the office of the Escrow Agent a Quitclaim Deed ("**Deed**"), in a form reasonably acceptable to Buyer and the Title Company, properly executed and quitclaiming Seller's right, title and interest in and to the Subject Property, subject only to the Permitted Exceptions and the following restrictions and reservations, which shall run with the land:

(a) The City of Dayton reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise as may be inherent in the operation of any aircraft now known or hereafter used for navigation of or flight in said airspace, and for use of said airspace for landing at, taking off from, or operating from the Airport.

(b) The City of Dayton reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements, as amended, or any similar regulations which may hereinafter be enacted, regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.

(c) Buyer expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

(d) Buyer agrees to comply with the notification and review requirements covered in 14 CFR Part 77 (FAA Form 7460-1) for any structure or building planned on the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises; Lessor shall file a notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) prior to the commencement of construction of any facility, structure or other item on the Premises.

(e) Buyer expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

(f) Buyer expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer the use of the Premises in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

(g) The City of Dayton reserves the right to further develop or improve the landing area of the Airport as it sees fit, without interference or hindrance.

(h) The land shall be subordinate to the provisions of and requirements of any existing or future agreements between the City of Dayton and the United States, relative to the development, operation, or maintenance of the Airport.

(i) The aforesaid covenants and agreements shall run with the land, as hereinafter described, for the benefit of the City of Dayton and its successors and assigns in the ownership and operation of the Airport.

(j) The City of Dayton will, by agreement with the FAA, commit all proceeds from the lease of the Premises to the development, maintenance and operations of the City's airport system, in conformance with the FAA's revenue use policy.

8. Condemnation. Seller represents that it has no actual knowledge of any pending or threatened condemnation, eminent domain or equivalent proceeding or action which would affect the Subject Property. If, after the Effective Date and before the date and time of Closing, Seller obtains actual knowledge that any such proceeding or action is commenced or threatened against the Subject Property or the owner(s) thereof, Seller shall provide Buyer with written notice thereof promptly after Seller has knowledge thereof and Buyer shall have the option of continuing with this Contract and receiving all proceeds of such action or proceedings (or sale in lieu thereof), or terminating this Contract by written notice to Seller within ten (10) days after receiving such written notice from Seller. If this Contract is so terminated, the Earnest Deposit shall be immediately returned to Buyer and the parties shall have no further obligations each to the other.

9. Foreign Investment in Real Property Tax Act and Tax Reform Act Reporting. Seller agrees to execute and deliver any instrument, affidavit and statement and to perform any acts reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act.

10. Breach at or prior to Closing.

(a) If Buyer should fail to consummate the transaction contemplated in this Contract for any reason other than a default by Seller under this Contract, or the exercise by Buyer of a right to terminate this Contract as provided herein, then the Earnest Deposit shall be paid to Seller as total liquidated damages (due to the difficulty and inconvenience of measuring actual damages and the fact that the Earnest Deposit represents as fair an approximation of actual damages as the parties can now determine) and in full satisfaction of all of Buyer's obligations hereunder.

(b) If Buyer has performed all of its obligations under this Contract and Seller breaches its obligations hereunder, then Buyer may, as its exclusive remedies: (i) specifically enforce the terms of this Contract, or if specific performance is not available to Buyer for any reason, receive from Seller reimbursement of all of Buyer's actual costs in connection with this Contract, and its activities in connection herewith, or (ii) terminate this Contract, in either of which case the entire Earnest Deposit shall be immediately returned to Buyer.

11. AS IS. Buyer hereby acknowledges that Buyer has made or will make its decision to purchase the Subject Property solely in reliance upon Buyer's own inspection and review of the Subject Property including, without limitation, its possession and occupancy of the Subject Property as lessee under the Ground Lease. Buyer agrees to accept the physical condition of the Subject Property "as is", "where is", "with all faults", and without express or implied warranties of any nature whatsoever. The warranties being disclaimed include, without limitation, implied warranties of merchantability, habitability, tenantability and fitness for a particular purpose.

12. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed made when delivered in person, or by delivery service, electronic mail, or confirmed

telecopier transmission or when mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Buyer: NP Dayton Building 1, LLC  
Attn: Nathaniel Hagedorn, CEO  
5015 NW Canal Street, Ste. 200  
Riverside, MO 64150  
Phone: (816) 888-7381  
Fax: (816) 888-7399  
nathaniel@northpointkc.com

with a copy to:

Timothy C. Klink, Esq.  
Polsinelli PC  
900 W. 48<sup>th</sup> Place, Ste. 900  
Kansas City, MO 64112  
Phone: (816) 572-4644  
Fax: (816) 572-5093  
tklink@polsinelli.com

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Miscellaneous. This Contract (i) supersedes any letter of intent or prior agreement between the Buyer and Seller and constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning the sale contemplated hereunder, (ii) shall be governed by the laws of the State of Ohio, with exclusive venue for any litigation in Montgomery County, Ohio, and if in federal court, in the United State District Court for the Southern District of Ohio, (iii), may be assigned by Buyer with the prior written consent Seller, which consent shall not be unreasonably withheld, conditioned, or delayed and (iv) shall not be modified or amended other than by a written instrument executed by both parties hereto. Notwithstanding the foregoing, Buyer may assign this Contract to any affiliate of Buyer or to the Dayton Montgomery County Port Authority. For the purposes of this Contract, "affiliate" shall mean any entity controlled by Buyer, controlling Buyer, or under common control of Buyer.

14. Attorneys' Fees. In case a lawsuit shall be brought because of the breach or alleged breach of any agreement or obligation contained in this Contract on the part of either party to be kept or performed, each party shall be responsible for its own attorneys' fees and expenses in connection with such lawsuit.

15. Partial Invalidity. If any provisions of this Contract or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the Effective Date.

BUYER:

**NP Dayton Building 1, LLC**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

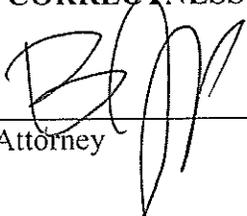
SELLER:

**City of Dayton, Ohio**

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
\_\_\_\_\_  
City Attorney *J.C.M.*

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

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

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

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

**EXHIBIT A**

**Legal Description**

**PROPOSED PARCEL  
DAYTON AIRPORT  
39.2701 ACRES**

Situated in the State of Ohio, County of Montgomery, City of Dayton, Section 18, Township 3, Range 6 East, being part of a parcel conveyed to The City of Dayton Ohio by deed recorded in Deed Book 1941, Page 262, all references herein being to the records located in the Recorder's Office, Montgomery County, Ohio and being more particularly described as follows;

Beginning for **REFERENCE** in a 1" Iron Pin Found in the intersection of the centerline of right of way of Peters Pike and the centerline of right of way of National Road (U.S. Route 40); thence In said centerline of right of way of National Road (U.S. Route 40), South 84° 55' 37" West, 2,594.74 feet to a point in the easterly line of said City of Dayton Ohio (D.B. 1941, Pg. 262); thence

Leaving said centerline of right of way of National Road (U.S. Route 40) and in said easterly line of City of Dayton Ohio (D.B. 1941, Pg. 262), North 03° 51' 30" East, 544.70 feet to a point; thence

Leaving said easterly line of City of Dayton Ohio (D.B. 1941, Pg. 262), North 86° 08' 30" West, 77.94 feet to a point in the westerly right of way line of Airport Access Road as shown in the drawings known as Ohio Department of Transportation, MOT-70-14.20 (North Part) and being the **TRUE PLACE OF BEGINNING** of the proposed parcel herein described; thence the following 7 courses:

1. In said westerly right of way line of Airport Access Road, South 48° 14' 33" West, 647.28 feet to a point; thence
2. Continuing in said westerly right of way line of Airport Access Road in a curve to the left having a radius of 554.54 feet, a delta angle of 19° 05' 18" and an arc length of 184.75 feet subtended by a chord which bears South 57° 47' 12" West, 183.89 feet to a point; thence
3. Leaving said westerly right of way line of Airport Access Road, North 33° 31' 10" West, 1,561.27 feet to a point in the proposed southerly right of way line of Concorde Road; thence
4. In said proposed southerly right of way line of Concorde Drive, North 56° 28' 50" East, 999.47 feet to a point; thence
5. Leaving said proposed southerly right of way line of Concorde Road, South 33° 31' 10" East, 541.11 feet to a point; thence
6. North 57° 44' 18" East, 583.57 feet to a point; thence
7. South 06° 01' 12" West, 1,191.40 feet to the **TRUE PLACE OF BEGINNING** of the proposed parcel herein described.

Containing **1,710,606 square feet** or **39.2701 acres**.



and shall be binding on all parties, even though all the parties did not sign the original or the same counterpart signature page. Hand signatures transmitted by fax or electronic mail such as PDF are also permitted as binding signatures to this Contract.

[Remainder of Page Intentionally Blank]

Contract shall not be affected thereby and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

16. Commission and Consulting Fees. Each party hereto represents and warrants to the other that no persons or entities are entitled to a brokerage commission, finder's fee, or other compensation with respect to the transactions contemplated hereby.

17. Right to Exchange Real Property. Either party, through the use of a qualified intermediary, may transfer or acquire the Subject Property through a tax free exchange, deferred exchange or reverse exchange of real property pursuant to Section 1031 of the Internal Revenue Code; provided, however (i) in no event shall any such exchange, or the exchanging party's inability to complete any such exchange, impair or otherwise affect the Closing Date, and (ii) the non-exchanging party shall have no obligation or liability to the exchanging party or any other person or entity in any respect for any matters in connection with any such exchange other than payment of the Purchase Price in exchange for the conveyance to Buyer of fee simple title to the Subject Property by deed subject only to those matters permitted under this Contract.

18. Waiver of Jury Trial. BUYER AND SELLER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BUYER AND SELLER ENTERING INTO THIS CONTRACT.

19. Legal Holidays and Business Days. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the State of Ohio are generally closed for observance thereof. As used herein, the term "business day" shall mean a day which is not a Saturday, Sunday or legal holiday.

20. Construction of Contract. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Both Seller and Buyer have contributed or had the opportunity to contribute substantially and materially to the preparation of this Contract.

21. Effective Date. The "**Effective Date**" of this Contract shall be the date this Contract is fully executed by the last of Seller and Buyer to sign.

22. Time is of the Essence. Time is of the essence of this Agreement.

23. Execution in Counterparts, Electronic Mail and Fax. This Contract may be executed in several counterparts. All counterparts so executed shall constitute one agreement

CITY OF DAYTON  
CITY MANAGER'S REPORT

TO: City Manager

Date June 22, 2016

FROM: Planning and Community Development  
Division of Land Use Planning

Code 28188-2340-1159-53-PL1895

Fund Title RTA Community Projects

(CHECK ONE)

Amount \$ \$12,000.00 (thru 6/30/18)

Supplier/Vendor/Company/Individual:

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

NAME CityWide Development Corporation

ADDRESS 8 N. Main Street  
Dayton, Ohio 45402

Justification and description of purchase, contract or payment:

**2015 RTA Community Grants Program – CityWide for the Sugarcreek Bus Shelter Project**

The Department of Planning and Community Development requests approval of a \$12,000.00 Subrecipient Agreement with CityWide Development Corporation for the installation of a RTA bus shelter located on South Gettysburg Avenue at Beerman Street. RTA awarded the City of Dayton \$12,000.00 through the 2015 Community Grant Fund Program. CityWide Development Corporation will be responsible for implementing the project and providing the required 20% local match of \$3,000.00. Sugarcreek Packing Company will maintain the bus shelter for its useful life, which RTA considers to be eight years (96 months) from installation. The total project cost is \$15,000.00.

This Agreement shall commence upon execution by the City and it shall terminate on June 30, 2018.

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

A Certificate of Funds and location map are attached.

Approved Affirmative Action Program on File  Yes

Approved by City Commission

Clerk

Date

No       NA

*Brian J. ...*  
Division

*R. K. ...*  
Department

*James D. Clements*  
City Manager



## SUBRECIPIENT AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between the CITY OF DAYTON, OHIO, hereinafter referred to as "CITY," and CITYWIDE DEVELOPMENT CORPORATION hereinafter referred to as "CITYWIDE".

### WITNESSETH THAT:

WHEREAS, the Greater Dayton Regional Transit Authority ("RTA") provided RTA Community Grants to local governments for transit-related capital improvements; and,

WHEREAS, the CITY applied for a grant, on behalf of CITYWIDE, for the installation of a bus stop shelter on the southbound side of Gettysburg Avenue at Beerman Street for the Citywide/Sugarcreek RTA Bus Shelter Project ("Project"); and,

WHEREAS, the CITY received a RTA Community Grant in the amount of TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00) for the installation of said bus stop shelter; and,

WHEREAS, CITYWIDE desires to be the implementing agency for the installation of the bus stop shelter, and agrees to assume responsibility for all costs and expenses related thereto, which exceed the RTA Community Grant award;

**NOW, THEREFORE,** in consideration of the mutual promises and covenants hereinafter set forth, the parties mutually agree as follows:

#### **1. SCOPE OF WORK AND BUDGET**

CITYWIDE shall be responsible for installation of the bus stop shelter on the southbound side of South Gettysburg Street Project. Exhibit A contains the "Scope of Work and Budget" for the Project and is attached hereto and incorporated within.

CITYWIDE shall enter into and administer all construction, procurement and professional contracts and agreements for the Project. In undertaking and completing the Project, CITYWIDE agrees to comply with provisions of the Grant Agreement as if the terms and conditions of said Grant Agreement were specifically re-written herein, including the provisions related to bidding and award of contracts for the Project (see Exhibit B attached hereto, RTA Grant Agreement and Exhibit C attached hereto, RTA Policy and Standards Manual, Small Purchase Procedure). The Scope of Work and Budget contained in the Grant Agreement are superceded by the Scope of Work and Budget attached to this Agreement as Exhibit A.

In completing the Project, CITYWIDE shall comply and require all contractors and/or subcontractors to comply with all federal, state and local laws, regulations, orders, guidelines and codes.

2. **MAINTENANCE OF IMPROVEMENTS**

On southbound Gettysburg Avenue at Beerman Street, CITYWIDE agrees to comply with all provisions of the Grant Agreement related to the continued maintenance, repair, and upkeep of the bus stop shelter. The CITY shall have the right, at anytime during the life of the improvements, to inspect improvements to ensure compliance with this Section.

3. **GRANT OF FUNDS**

The CITY shall make available to CITYWIDE its RTA Community Grant funds in an amount not to exceed TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00) or eighty percent (80%) of total Project cost, whichever is less, for the sole and express purpose of completing the Project identified herein. Said funds shall be used for the purposes identified in the Grant Agreement, specifically to offset the costs incurred in completing the Project. It is agreed that CITYWIDE shall provide the required twenty percent (20%) Project match of total Project cost and shall assume complete responsibility for all Project costs and expenses exceeding TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00).

CITYWIDE shall invoice the CITY for those Project costs and expenses for which reimbursement is sought pursuant to this Agreement. Upon approval of the submitted invoice, the CITY shall pay for the Project costs and expenses. Payments made by the CITY shall not exceed, in total, TWELVE THOUSAND DOLLARS AND ZERO CENTS (\$12,000.00) or eighty percent (80%) of total Project cost, whichever is less.

All invoices shall detail the work or services performed and/or materials acquired and contain supporting information from the work/service/materials supplier substantiating the invoice amount. CITYWIDE agrees to provide the CITY with photographs that clearly display the improvements obtained through the Project (before and after photographs). Upon request, CITYWIDE shall furnish such other information and/or documentation as the CITY may request to substantiate the invoiced amount. All invoices will be verified by appropriate CITY staff for accuracy and compliance with the terms and conditions of this Agreement.

The CITY shall tender payment of all verified and approved invoices within thirty (30) days from receipt thereof. In the event an invoice(s) is not approved, the invoice(s) will be returned to CITYWIDE for correction and/or additional documentation, with payment to be withheld until the City approves the invoice.

4. **MONITORING AND EVALUATION**

CITYWIDE agrees that the CITY, RTA, or their agents shall monitor, evaluate and may provide guidance and direction to CITYWIDE in the conduct of the work and activities to be performed under the terms of this Agreement.

5. **ENCUMBRANCE AND DISBURSEMENTS FOR PROJECT**

Disbursements of funds by CITYWIDE shall be made for merchandise or services that have been properly budgeted and authorized for the Project, which are accompanied by an invoice, contract, purchase order or other authorization properly approved. Disbursements shall be made after certification by CITYWIDE that it received the merchandise and/or services. All disbursements are to be made by check. No checks are to be payable to Cash. All checks shall be pre-numbered.

No funds are to be encumbered for the payment of costs incurred prior to the order to proceed, or costs incurred with respect to any action of CITYWIDE after the CITY has requested that CITYWIDE furnish data concerning such action prior to proceeding further, unless and until CITYWIDE is thereafter advised in writing that the City does not object to so proceeding.

6. **RECORDS**

All cost and expenditures for the Project shall be supported by properly executed payroll, time records, invoices, contracts, vouchers or other accounting documents pertaining in whole or part to this Agreement, which shall be clearly identified and readily accessible to the CITY and/or RTA. At any time during normal business hours, and as often as the CITY may deem necessary, CITYWIDE shall make available to the CITY all of its records related to this Agreement. CITYWIDE shall also permit the CITY to audit, examine and make excerpts or transcripts from such records and to have audits made of all contract(s), invoice(s), materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or part to matters covered by this Agreement.

CITYWIDE shall provide to the CITY, within ten (10) days after the first day of each month unless otherwise specified or directed by the CITY, such records and documentation as the CITY may request in order to file its monthly reports in accordance with the reporting requirements set forth in the Grant Agreement.

7. **RETENTION OF RECORDS**

CITYWIDE shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all work and services funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records pertaining to this Agreement, which commences prior to the expiration of the three-year period, then CITYWIDE shall retain such records until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

8. **NON-DISCRIMINATION**

CITYWIDE 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.

It is expressly agreed and understood by CITYWIDE 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 CITYWIDE to comply therewith shall constitute a breach of this Agreement entitling the CITY, at its option, to terminate this Agreement.

CITYWIDE shall also comply with applicable federal and state laws concerning non-discrimination, equal opportunity, accessibility, drug and alcohol free facilities and use of debarred, suspended or ineligible contractors.

RTA has an overall Disadvantaged Business Enterprise (DBE) goal of 10% and CITYWIDE shall make a "Good Faith" effort to involve DBEs in the Project. Said "Good Faith" effort could include but is not limited to conducting market research to identify DBE contractors and/or suppliers; soliciting through all reasonable and available means the interest of certified DBEs; attend pre-bid meetings, business matchmaking events; posting of Notices of Sources Sought, etc. To that end, CITYWIDE shall provide documentation to the CITY pertaining to how it complied with RTA's DBE goal.

9. **TERMINATION**

This Agreement may be terminated by the CITY upon giving written notice of termination to CITYWIDE at least thirty (30) days prior to the effective date of such termination. Notwithstanding the foregoing, in the event the Grant Agreement is terminated by RTA for any reason, the CITY may immediately terminate this Agreement.

In the event this Agreement is terminated, the CITY shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination.

10. **CONFLICT OF INTEREST**

No member of the governing body of the City of Dayton, Ohio and no officers, officials, agents or employees of the CITY, State of Ohio or government of the United States of America, shall have any personal financial interest, direct or indirect, in this contract. CITYWIDE shall take appropriate steps to ensure compliance.

11. **INDEMNIFICATION**

CITYWIDE agrees to 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 (including reasonable attorney's fees) 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 CITYWIDE or its employees, contractors,

subcontractors, agents and representatives.

12. **AMENDMENT OR MODIFICATION**

CITY may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of the CITY and CITYWIDE, approved by the CITY's Director of Planning and Community Development and if required or applicable, approved by the Commission of the City of Dayton, Ohio.

13. **ENTIRE AGREEMENT/INTEGRATION**

This Agreement represents the entire and integrated agreement between the CITY and CITYWIDE. 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.

14. **SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

15. **WAIVER**

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

16. **NOTICES**

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

Nicole Steele, Project Manager  
Citywide Development Corporation  
8 N. Main Street  
Dayton OH 45402  
[NSteele@citywidedev.com](mailto:NSteele@citywidedev.com)  
937-853-2559

Ken Marcellus, Community Development Specialist II  
City of Dayton  
Department of Planning and Community Development  
101 West Third Street  
Dayton, Ohio 45402  
[ken.marcellus@daytonohio.gov](mailto:ken.marcellus@daytonohio.gov)  
937-333-7381

Nothing contained in this Section shall be construed to restrict the transmission of routine communication between representatives of the CITY and CITYWIDE.

17. **ASSIGNMENT**

CITYWIDE shall not assign any rights or duties under this Agreement without the prior written consent of the CITY. Unless otherwise stated in the CITY's written consent of an assignment, no assignment will release or discharge CITYWIDE from any obligation under this Agreement. Nothing contained in this section shall prevent CITYWIDE from employing independent consultants, associates, and subcontractors to assist in the performance of the work and services required under this Agreement.

18. **INDEPENDENT CONTRACTOR**

The parties hereby agree that, at all times, CITYWIDE shall be an independent contractor. As an independent contractor, the parties hereby agree that the relationship between the parties shall not be held out or constructed 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.

CITYWIDE 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. CITYWIDE is not a "public employee" for the purpose of Ohio Public Employees Retirement System membership. Further, CITYWIDE shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all local, state and federal taxes.

19. **POLITICAL CONTRIBUTIONS**

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

20. **TERM**

This Agreement shall commence upon execution by the CITY and shall terminate on June 30, 2018, unless extended for an additional period by an amendment to this Agreement.

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

**CITY OF DAYTON, OHIO**

**CITYWIDE DEVELOPMENT CORPORATION**

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

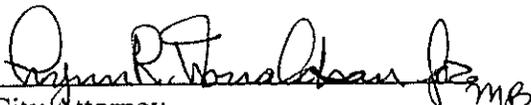
By: \_\_\_\_\_

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND  
CORRECTNESS:**

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

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

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

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

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

EXHIBIT A  
SCOPE OF WORK AND BUDGET  
2015 COMMUNITY GRANTS PROGRAM  
CITYWIDE/SUGARCREEK RTA BUS SHELTER

<b>Project Resources</b>	<b>Cost Estimate</b>	<b>RTA Grant</b>	<b>Citywide Match</b>
Brasco hip slim line bus shelter (or similar)	\$5,000.00	\$4,000.00	\$1,000.00
1 Brasco 34 gallon trash receptacle with dome top lid (or similar	\$600.00	\$480.00	\$120.00
Existing fencing alterations (Allied Fence	\$3,000.00	\$2,400.00	\$600.00
Foundation/concrete	\$2,500.00	\$2,000.00	\$500.00
Installation	\$3,900.00	\$3,120.00	\$780.00
<b>TOTAL</b>	<b>\$15,000.00</b>	<b>\$12,000.00</b>	<b>\$3,000.00</b>
Total Grant Request	\$15,000.00		
Match (20%) by Citywide	3,000.00		

BY.....

NO.....

**A RESOLUTION**

Accepting the 2016 Community Development Grant from the Ohio Environmental Protection Agency in an Amount Not to Exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) on Behalf of the City of Dayton; and Declaring an Emergency.

**WHEREAS**, The Ohio Environmental Protection Agency ("Ohio EPA") administers a 2016 Community Development Grant program; and,

**WHEREAS**, The City of Dayton submitted a 2016 Community Development Grant application seeking funding to support the Lime Reclamation Expansion Project; and,

**WHEREAS**, Ohio EPA approved the City's grant application and will award the City a 2016 Community Development Grant in an amount not to exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) with the City matching the grant in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) subject to the City's acceptance; and,

**WHEREAS**, The acceptance date of this grant is June 30, 2016, therefore it is necessary for the immediate preservation of the public peace, property, health and safety 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 this Commission approves the submission of the grant application and supporting documents to the Ohio EPA.

Section 2. That the City Manager or her designee is authorized to execute any and all documents and agreements on behalf of the City of Dayton, which are necessary to accept a 2016 Community Development Grant in the amount not to exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00).

Section 3. That the City Manager or her designee is hereby authorized and directed to take such actions as are necessary to achieve the goals of the grant.

Section 4. 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, CITY OF DAYTON, OHIO

Attest:

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

Approved as to form:

  
City Attorney

# MEMORANDUM



June 17, 2016

**TO:** Shelley Dickstein  
City Manager

**FROM:** Barbara Doseck  
City Attorney

A handwritten signature in black ink, appearing to read "BDoseck", is written over the name "Barbara Doseck" in the "FROM:" field.

**SUBJECT: RESOLUTION ACCEPTING  
COMMUNITY DEVELOPMENT  
GRANT FROM OHIO EPA**

Attached is a resolution authorizing the acceptance of a grant from the Ohio EPA in an amount not to exceed \$250,000.00. The grant requires a \$250,000.00 match from the City. The match is occurring through current work on the Lime Reclamation Facility.

If you have any questions please call Bridget Findley 333-4111 or Lorrie Brown 333-3165.

C: Mike Powell  
Lorrie Brown  
Phil Van Atta

Attachment: Resolution

/bmf

1<sup>st</sup> And 2<sup>nd</sup> Reading 11.

6196-16

BY.....

NO.....

**A RESOLUTION**

Authorizing the City Manager to Accept Funding from the Economic Development and Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, on Behalf of the City of Dayton; and Declaring an Emergency.

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

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

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

**WHEREAS**, By Resolution No. 16-0671, passed by the Board on May 17, 2016, the City of Dayton was awarded an amount not to exceed Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) in ED/GE funding for the project(s) identified in the City's ED/GE Spring 2016 funding cycle application; and

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

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

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

APPROVED PROJECTS/FUNDING FROM SPRING 2016 FUND

STP Products Manufacturing Company

\$350,000.00

**Section 2.** That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION ....., 2016

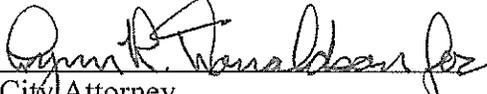
SIGNED BY THE MAYOR ....., 2016

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

Attest:

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

Approved as to form:

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



## MEMORANDUM

June 17, 2016

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

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

**SUBJECT:** ED/GE Legislation

On April 1, 2016, the Department of Economic Development submitted application to the Montgomery County ED/GE Spring 2016 program for funding Project Gloss, now known as STP Products Manufacturing Company. The committee awarded funding of \$350,000 to the project on May 1, 2016.

The company will establish its business operations at the Dayton International Airport and lease an approximately 570,000 square foot building to be constructed. The project will consist of infrastructure and roadway improvements, tenant improvements, relocation expenses and installation of old and new machinery and equipment. The project will retain 350 new jobs within three years with an average annual salary of \$28,500.

Attached is legislation authorizing the acceptance of funding from the ED/GE program. The City Manager is authorized to accept funding and execute all documents and agreements associated with the project.

In order to meet the critical deadlines for securing financial commitments, we are requesting that this resolution be passed as an **emergency with two readings at one meeting**.

If you have any questions, please contact me x3621.

c: Tammi Clements  
Joe Parlette  
Terry Slaybaugh