



## CITY COMMISSION MEETING AGENDA

CITY COMMISSION

DAYTON, OHIO

AUGUST 17, 2016

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6:00 P.M.

### I. AGENDA SCHEDULE

**Please register to speak on items 9, 11 and 13 with the Clerk of the Commission.**

**(Sign-up sheets at entrance of Commission Chambers.)**

1. Call Meeting to Order
  2. Invocation
  3. Pledge of Allegiance
  4. Roll Call
  5. Approval of Minutes
  6. Communications and Petitions Distribution (if any)
  7. Special Awards/Recognition
  8. Discussion of City Manager's Recommendations (See Section II)
  9. Citizen Comments on City Manager's Recommendations
  10. City Commission Action on City Manager's Recommendations
  11. Public Hearing: N/A
  12. Discussion Item: N/A
  13. Comments by Citizens - Please register to speak with the Clerk of Commission - (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
  14. Comments by City Manager
  15. Comments by City Commission
  16. Work Session: **CityWide Development Corporation, Economic Development, and Planning & Community Development Update – 4:30 p.m.**  
**(S. Budd, F. Weber and A. Sorrell)**  
**City Manager's Large Conference Room**
  17. Miscellaneous (See Section VI)
- 

### II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

#### **A. Purchase Orders, Agreements and Contracts:**

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

#### **1. Purchase Orders:**

##### **AVIATION**

**A1. Aviation Insurance Managers, Inc. (Aviation Liability Insurance)**

**\$132,600.00**

1. (Cont'd):

**CENTRAL SERVICES**

**B1. Mobile Tek Consulting** (28 Mobile Microsoft Surface Tablets, 17 Brother Pocketjet Mobile Printers and related items) **\$53,152.00**

**FIRE**

**C1. USI Midwest LLC** (Ambulance Attendants Errors and Omissions Liability Insurance) **36,115.00**

**WATER**

**D1. Triad Technologies LLC** (suction pipes and discharge hoses) **22,179.29**  
-Depts. of Aviation, Central Services, Fire and Water. **Total: \$244,046.29**

2. **Amec Foster Wheeler Environment & Infrastructure, Inc. – Service Agreement** – for Triad Groundwater Investigations – Department of Water/Environmental Protection. **\$960,000.00**  
**(Thru 8/2018)**

3. **Service Agreement** – for Depository Agreements with local financial institutions:  
**Fifth Third Bank**                      **Huntington National Bank**  
**Key Bank**                                **PNC Bank**  
**U.S. Bank**  
-Dept. of Finance/Tax & Accounting. **N/A**

4. **Miller Pipeline – Service Agreement** – to extend off-duty police officer services of traffic control and security during the repair and/or rehabilitation of gas lines in various locations within the municipal corporation limits – Dept. of Police. **\$33,950.00**

5. **Woolpert, Inc. – Service Agreement** – for the Planimetric Mapping Project – Dept. of Water. **\$186,791.00**  
**(Thru 2/2017)**

**C. Revenue to the City:**

6. **Alcohol, Drug Addiction & Mental Health Services Board – Service Agreement** – for a Memorandum of Understanding to provide funding for a Specialized Probation Officer assigned to the Mental Health Court – The Municipal Court/Court Administrator. **\$56,484.00**  
**(Thru 6/30/17)**  
**(Revenue to the City)**

7. **Alcohol, Drug Addiction & Mental Health Services Board – Service Agreement** – for a Memorandum of Understanding to provide funding for psychological services provided to probationers – The Municipal Court/Court Administrator. **\$15,000.00**  
**(Thru 6/30/17)**  
**(Revenue to the City)**

**D. Neighborhood Agreements:**

8. **Friends of Levitt Pavilion Dayton and Mortimer & Mimi Levitt Foundation – Development Agreement** – for a Tri-Party Agreement for the design, construction, and operation of a permanent Levitt venue at the site of the existing Dave Hall Plaza – Dept. of Public Works/Civil Engineering. **N/A**

**E. Other – Contributions, Etc.:**

9. **Montgomery County Land Reutilization Corporation – Other** – for a Land Banking Agreement to hold title and manage the real property commonly known as 34 N. Main Street – Department of Planning & Community Development. **\$250,000.00**  
**(Thru 2021)**

**IV. LEGISLATION:**

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

10. **No. 31506-16** Authorizing the Purchase of Twenty-Seven (27) Parcels of Real Property Located at 117 West Fourth Street and 45 South Ludlow Street for the Purpose of Community and Economic Development, and Declaring an Emergency.

**Emergency Resolution – First Reading:**

11. **No. 6205-16** Authorizing the City Manager to Accept a Grant in the Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Montgomery County Land Reutilization Corporation, and Declaring an Emergency.

**Resolutions – Second Reading:**

12. **No. 6202-16** Declaring the Intention of the Commission to Vacate Bank Street from 57 Feet South of the South Right of Way Line of West Third Street to West Fourth Street.
13. **No. 6203-16** Declaring the Intention of the Commission to Vacate Cline Street from Warren Street to Nathan Place.

14. **No. 6204-16** Declaring the Intention of the Commission to Vacate West Fourth Street from Cedar Avenue to Bank Street, Cedar Avenue from West Fourth Street to the I 75 LA ROW, and the Alley South of West Fourth Street from the I 75 LA ROW to Bank Street.

**VI. MISCELLANEOUS:**

**ORDINANCE NO. 31507-16**

**RESOLUTION NO. 6206-16**

**IMPROVEMENT RESOLUTION NO. 3598-16**

**INFORMAL RESOLUTION NO. 926-16**



# City Manager's Report

1.

From **5530 - CS/Purchasing**

Date **August 17, 2016**

Expense Type **Purchase Order**

Supplier, Vendor, Company, Individual

Total Amount **\$244,046.29**

Name **See Below**

Address **See Below**

Fund Source(s)	Fund Code(s)	Fund Amount(s)
See below	See below	See below

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

## Description

### AVIATION

#### (A1) P1601048 – AVIATION INSURANCE MANAGERS, INC., UNIONTOWN, OH

- Aviation Liability Insurance.
- This insurance is required to finance liability risks associated with operations of Dayton's Department of Aviation and extends various forms of coverage with limits up to \$100,000,000.00 per occurrence and in the aggregate.
- This order establishes a firm fixed premium rate for an additional one year renewal at the City's sole discretion. Premium rate is less than 1% above rates of expiring (two year) policy.
- Nine possible bidders were solicited and one bid was received.
- The Department of Aviation recommends acceptance of the sole bid.

#### Fiscal

Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Insurance – Contractual	51000-3210-1181-43	\$66,300.00
2017	Insurance – Contractual	51000-3210-1181-43	\$66,300.00

### Signatures/Approval

Division \_\_\_\_\_

**Approved by City Commission**

Department \_\_\_\_\_

Clerk \_\_\_\_\_

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

Date \_\_\_\_\_

CENTRAL SERVICES – INFORMATION TECHNOLOGY(B1) P1601050 – MOBILE TEK CONSULTING, CINCINNATI, OH

- Twenty-eight (28) Mobile Microsoft Surface Tablets, seventeen (17) Brother Pocketjet Mobile Printers and related items.
- These goods are required to implement the Enterprise Land Management System (“ELMS”) project using Accela Automation.
- Rates are in accordance with State of Ohio term schedule contract pricing #534363, index #STS033.
- The Department of Central Services recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Computer Hardware	40018-5560-1413-65	\$53,152.00

FIRE(C1) P1601049 – USI MIDWEST LLC, NORFOLK, VA

- Ambulance Attendants Errors and Omissions Liability Insurance.
- This insurance is required to finance risks associated with Dayton Fire Department Emergency Medical Service operations with limits up to \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate. Premium rate is approximately .5% lower than expiring policy.
- Three possible bidders were solicited and two bids were received.
- The Department of Fire recommends acceptance of the low bid.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Insurance - Contractual	10000-9980-1181-99	\$36,115.00

WATER – WATER SUPPLY & TREATMENT(D1) P1601047 – TRIAD TECHNOLOGIES LLC., VANDALIA, OH

- Suction pipes and discharge hoses.
- These goods are required to replace the equipment beyond economical repair for trash pumpers used to dewater and annually clean ponds and channels.
- Four possible bidders were solicited and two bids were received.
- The Department of Water recommends acceptance of the low bid.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Supplies and Materials	53000-3430-1301-54	\$22,179.29

The aforementioned departments recommend approval of these orders.

CITY OF DAYTON, OHIO - PURCHASING DIVISION - BID TABULATION  
 For: Ambulance Attendants Errors & Omissions Liability Insurance  
 Dept./Div.: Fire  
 Requisition No.: 075FDOP6

No.:				1	2
BIDDER NAME & STREET ADDRESS:				Capitol Specialty Insurance Co.	Colony Insurance Co.
CITY:				Dayton	Dayton
STATE & ZIP:				OH	OH
Recommended for Award				x	
QUALIFIES FOR LOCAL PREFERENCE?				NO	NO
QUALIFIES FOR CERTIFIED PREFERENCE?				NO	NO
LOCAL / CERTIFIED PREFERENCE A FACTOR IN AWARD?				NO	NO
Item No./	ITEM DESCRIPTION	UM		UNIT /EXT	UNIT /EXT
	Ambulance Attendants Errors & Omissions Liability Insurance			\$36,115.00	\$68,749.00
			TERMS: F.O.B.: DELIVERY:		

● = lowest bid X = vendor selected for award  
 THE FOLLOWING VENDORS WERE SOLICITED BUT DID NOT BID:  
 Hiscox, Inc.

CITY OF DAYTON, OHIO - PURCHASING DIVISION - BID TABULATION

For: Suction pipes and discharge hoses

Dept./Div.: Water/Water Supply & Treatment

Requisition No.:123WTWS6

<b>BIDDER NAME &amp; STREET ADDRESS:</b>			<b>No.:</b>		<b>1</b>	<b>2</b>
			Reliable Industrial Products Co		Triad Technologies	
			<b>CITY:</b>		Harrison Township	Vandalia
			<b>STATE &amp; ZIP:</b>		OH 45414	OH 45377
			<b>Recommended for Award</b>			x
<b>QUALIFIES FOR LOCAL PREFERENCE?</b>			NO		NO	NO
<b>QUALIFIES FOR CERTIFIED PREFERENCE?</b>			NO		NO	NO
<b>LOCAL / CERTIFIED PREFERENCE A FACTOR IN AWARD?</b>			NO		NO	NO
Item No./quantity	ITEM DESCRIPTION	U/M		UNIT /EXT	UNIT /EXT	
Please Read all bid responses to ensure that all information received from vendor is reviewed and used in the evaluation process						
<b>Suction pipes and discharge hoses</b>						
1	Suction pipes and discharge hoses	EA		\$22,476.00	\$22,179.29	
		<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>				

● = lowest bid X = vendor selected for award

THE FOLLOWING VENDORS WERE SOLICITED BUT DID NOT BID:

1. U.S. Hose Inc. 2. Hosecraft USA



# City Manager's Report

2.

From 3470 - Water/Environmental Protection

Date August 17, 2016

Expense Type Service Agreement

Total Amount \$960,000.00 (through 08/2018)

Supplier, Vendor, Company, Individual

Name Amec Foster Wheeler Environment & Infrastructure, Inc.

Address 521 Byers Road, Suite 204  
Miamisburg, OH 45342

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016 Source Water Protection Fund	53997-3470-1159-55	\$300,000.00
2017 Source Water Protection Fund	53997-3470-1159-55	\$420,000.00
2018 Source Water Protection Fund	53997-3470-1159-55	\$240,000.00

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

Description

## TRIAD GROUNDWATER INVESTIGATIONS

The Department of Water requests permission to enter into an Agreement with Amec Foster Wheeler Environment & Infrastructure, Inc. in the amount of \$960,000 for the ongoing protection of the City's drinking water supply. In response to existing aquifer contamination as well as potential spills and releases, services will include identification, delineation, remediation and monitoring of impacted groundwater prior to migration within the well fields. The Agreement specifies that services including necessary equipment such as drilling rigs and remediation and sampling instrumentation will be provided by qualified technical personnel within forty-eight (48) hours of notification.

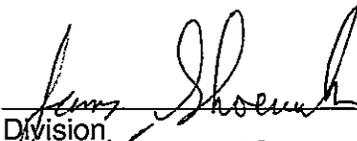
In response to RFP No. 16010D, one proposal was received on April 29, 2016. A selection committee evaluated the proposal. Amec Foster Wheeler Environment & Infrastructure, Inc. was accepted and selected for services associated with Triad Groundwater Investigations.

This is a two-year contract with a third-year option.

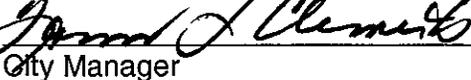
The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on August 10, 2018.

The Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds is attached.

  
for MDS  
Division

  
Department

  
City Manager

Signatures/Approval

Approved by City Commission

Clerk

Date



**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Dayton, Ohio, a municipal corporation existing under and by virtue of the constitution and laws of the State of Ohio (hereinafter referred to as the "City"), and Amec Foster Wheeler Environment & Infrastructure, Inc. 521 Byers Rd, Suite 204, Miamisburg, Ohio 45342 (hereinafter referred to as the "Consultant").

**WITNESSETH THAT:**

**WHEREAS**, The City desires the capabilities to perform comprehensive groundwater investigations, emergency response, water quality monitoring and interim remedial measures in response to potential adverse impacts to the groundwater and the City's drinking water supply; and,

**WHEREAS**, Consultant is willing to perform such professional services and represents that its staff is fully qualified to perform such services and will provide the necessary equipment within forty-eight (48) hours of notification; and,

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

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and benefit to be derived by the parties from the execution of this Agreement, the City and Consultant hereby agree as follows:

**ARTICLE 1. TERM.**

The Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds provided herein or on July 31, 2018, whichever date is earlier. At the City's discretion, an option may be exercised to extend the Agreement for a third year at the established rates.

**ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT.**

Consultant shall provide all professional services ("Services") necessary to complete the work described in an Attachment A, Scope of Services, which is attached hereto and incorporated herein.

**ARTICLE 3. COMPENSATION.**

Total remuneration shall not exceed Nine Hundred Sixty Thousand Dollars and Zero Cents (\$960,000.00) for the Services provided at the cost as presented in Attachment B, which is attached hereto and incorporated herein. Consultant 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, Services provided during the invoice period and

associated receipts. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

City's standard Terms for Payment are 30 days from date of invoice once the project is complete, unless otherwise negotiated.

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

The City will furnish Consultant, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement as presented in Attachment C, which is attached hereto and incorporated herein.

**ARTICLE 5. STANDARD OF CARE.**

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

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

**ARTICLE 6. INDEMNIFICATION.**

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

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

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any negligent acts, errors, or omissions of Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible

for any damages or additional costs incurred by the failure of Consultant to perform its duties as set forth in this Agreement; nor will the City, by participating in meetings and consultations with Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, or be liable for decisions relative to design, environmental remediation, assessments, or specifications, such responsibility remains that of Consultant.

Regardless of completion of the Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

#### **ARTICLE 7. INSURANCE.**

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

- (1) General Liability Insurance, having a combined single limit of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate.
- (2) Automobile Liability Insurance, having a combined single limit of One Million Dollars (\$1,000,000) for each person and One Million Dollars (\$1,000,000) for each accident.
- (3) Employers' Liability Insurance, having a limit of Five Hundred Thousand Dollars (\$500,000) for each occurrence.
- (4) Professional Liability Insurance, having a limit of One Million Dollars (\$1,000,000) annual aggregate.
- (5) Consultant shall maintain errors and omissions insurance in the amount of One Million Dollars (\$1,000,000).
- (6) Environmental Impairment Liability Insurance, having a minimum amount of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage and ten (10) days' notice of cancellation for failure to pay premiums. The City's examination of, or failure to request or demand, any evidence of insurance hereunder will not constitute a waiver of any requirement of this Article, and the existence of any insurance will not limit Consultant's obligations under provisions hereof.

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

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

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

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

## **ARTICLE 9. TERMINATION.**

This Agreement may be terminated in the event of or under any of the following circumstances:

1. A receiver for Consultant's assets is appointed by a court of competent jurisdiction.
2. Consultant is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Consultant's failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Consultant to remedy such failure within thirty (30) days from the date of written notice from City.
4. Consultant's violation of any applicable federal, state, or local law applicable to the Project and construction thereof or Services required by this Agreement.
5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Consultant desires to terminate this Agreement.
6. The City may terminate this contract at any time upon thirty (30) days written notice to the Consultant.

Any such termination shall not relieve the Consultant of any liability to the City for damages sustained by virtue of any breach by the Consultant. The City will be under no further monetary obligation or commitment to the Consultant. In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

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

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

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

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

**B. GOVERNING LAW AND VENUE**

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

**C. COMMUNICATIONS**

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

Consultant: Amec Foster Wheeler Environment & Infrastructure, Inc.  
521 Byers Rd., Suite 204  
Miamisburg, OH 45342  
Attention: Paul Stork, Office Manager

City: City of Dayton, Department of Water  
320 West Monument Avenue  
Dayton, Ohio 45402  
Attention: Jim Shoemaker, Division of Environmental Management

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

**D. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

**E. WAIVER**

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

**F. SEVERABILITY**

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

**G. INDEPENDENT CONTRACTOR**

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

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

Consultant acknowledges its employees are not public employees for the purposes of Ohio Public Employee Retirement System ("OPERS") membership.

**H. ASSIGNMENT**

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

**I. THIRD PARTY RIGHTS**

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

**J. AMENDMENT**

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

K. POLITICAL CONTRIBUTIONS

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

L. INTEGRATION

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

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

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

CITY OF DAYTON, OHIO

Amec Foster Wheeler Environmental & Infrastructure, Inc.

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

By: *R. J. [Signature]*

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

Its: *Project Manager*

APPROVED AS TO FORM AND CORRECTNESS:

*[Signature]*  
City Attorney *BMF*

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

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

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

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

**ATTACHMENT A  
TO  
AGREEMENT FOR CONSULTING SERVICES  
Scope of Services**

**City:** City of Dayton, Ohio  
**Project:** Triad Groundwater Investigations  
**Consultant:** Amec Foster Wheeler Environment and Infrastructure, Inc.

**Scope of Work / Project Requirements.** Emergency response and time-critical groundwater investigations are initiated in response to spills and releases which have impacted or have the potential to impact groundwater and the City's drinking water supply. Other investigations are performed to enhance our understanding of the groundwater quality and underlying deposits by defining the lateral and vertical distribution of existing groundwater contamination and to determine the appropriate mitigation remedy.

The City's Consultant must be able to respond to episodes of groundwater contamination, under the direction of the Division of Environmental Management (DEM), within forty-eight (48) hours of notification. The Consultant must be able to interpret geological and groundwater quality issues based on available information and make sound turn-key decisions that are in the best interest of the Water Department and consistent with the Triad Approach. The Consultant and drilling crew must be familiar with the buried valley deposits that underlie the Miami Valley and Southwest Ohio and have extensive experience in delineating groundwater contaminant plumes by vertically profiling water quality via slotted hollow stem auger (preferred in the upper aquifer) or roto sonic drilling techniques.

The Consultant will also submit memorandums summarizing the investigations, perform soil and groundwater sampling, monitoring water levels through "snapshot" events, collect soil samples, and drilling and installing monitoring wells via conventional methods (standard hollow stem auger drilling). Additionally, the Consultant will provide comprehensive review of remediation sites in the Source Water Protection Area, Phase 1 and 2 Environmental Site Assessments (ESA), Brownfield sites, and reports associated with the Ohio Voluntary Action Program. The Consultant will also perform water quality and water level monitoring to over 300 existing monitoring wells. Lastly, the Consultant will perform risk assessment inspections of selected businesses and industrial sites in the SWPA.

**A. Locations**

Locations will include, but are not limited to the City's Multi-Jurisdictional Source Water Protection Areas. Information regarding Dayton's Source Water Protection Program (SWPP) and Source Water Protection Areas (SWPA) can be viewed at <http://www.daytonwater.org/index.php?page=SWPAMap>. All Triad groundwater investigations are anticipated to occur within the Great Miami Buried Valley Aquifer System (GMBVA) or the limestone and shale formations which make up the valley walls surrounding the GMBVA.

**B. Utility Clearance**

The Consultant will be required to field locate all existing utilities prior to set-up at each location. Upon initial notification of an emergency response groundwater investigation, the Consultant will contact the Ohio Utilities Protection Service (OUPS). All other entities that may have underground utilities in the area and are non-members of OUPS shall be notified by the Consultant.

### C. Health and Safety

Due to the potential to encounter groundwater contamination, the Consultant shall have a complete health and safety plan for all onsite personnel including subcontractors. At a minimum, this plan will address onsite monitoring, personal protective equipment and action levels to be utilized by all onsite personnel. The Consultant will provide the City with a Health and Safety Plan prior to the start of each investigation.

### D. Borehole Advancement

For conventional auger: "Screen" which is welded to a conventional auger will not be acceptable.

All borings shall be advanced for the primary purpose of vertical characterization of groundwater contamination and monitoring well installation. The drilling method employed must be slotted hollow stem auger (SHSA) or rotosonic. The drilling method must be compatible with the collection of representative groundwater samples at discreet intervals (see Groundwater Sampling).

The SHSA is the preferred method and must be capable of drilling and performing vertical aquifer sampling to depths of up to 100 feet. The lower five feet of auger must be laser or machine slotted. SHSAs must have new O-ring seals separating five-foot auger sections. Augers found to be in poor condition will be rejected. To promote discreet and representative interval samples, the lead slotted auger must have a Teflon plug. As a result no split spoon samples will be required during vertical sampling under this method.

However, SHSA borings may be gamma logged to confirm lithology.

Rotosonic drilling is required for all borings greater than 100 feet and will include continuous core sampling. The introduction of water into the borehole during rotosonic drilling will not be acceptable except as a result of extreme drilling conditions and must be approved by DEM. Any water added to the borehole must be accurately measured and evacuated prior to interval development.

NOTE: Non-vertical profiling borings will be drilled via a conventional hollow stem auger. Continuous split spoon (two-foot spoons) sampling will be performed until the desired depth is drilled. Soil samples will be collected at two depths during borehole advancement based on results of headspace readings; and one at the groundwater interface. If the subsurface is known to contain old foundations, the rotosonic drilling method may be employed.

### E. Drilling Fluids

If the rotosonic drilling method is used, it must be dry-drilled unless extreme drilling conditions are encountered which necessitates the introduction of water to the borehole. Any water added to the borehole must be pre-approved by DEM. A totalizer, or similar measuring instrument, will be used to record the amount of water added. Any water added to the hole must be evacuated prior to collecting vertical profile samples. Drilling water shall be obtained directly from a designated City production well or a pre-tested water source.

### F. Vertical Aquifer Sampling

Groundwater samples shall be collected during borehole advancement of all borings. This method of subsurface exploration is intended to provide a qualitative vertical characterization of groundwater contamination. Onsite laboratory results will supplement the lithologic information to determine appropriate screen length and depth.

Groundwater samples will be collected at "first water" (approximately five feet into the saturated deposits), above all low-permeability layers/lenses and at 10-foot intervals in permeable deposits. Sampling intervals must be no more than five feet in length.

To promote discreet interval samples, the submersible pump must have an inflatable packer above the pump to eliminate water from above the selected interval from entering the intended sampling zone. (Note that new O-ring seals should prevent any water from entering the zone and are required for screened hollow stem auger drilling— see Borehole Advancement.)

Each sampling interval shall be developed by slight overpumping from a submersible pump until water is less than 25 NTUs. Temperature, pH and specific conductivity will be measured on a groundwater fraction from each sampling interval to assure proper development. Development water shall be containerized and transported by the Consultant to a site designated by the City.

The Consultant shall sample each interval using a low flow-purge submersible pump. The Consultant shall collect two sets of VOA vials for onsite analysis and one set for the City. The Consultant shall properly label each sample container (including those set aside for the City) and store them on ice. The Consultant shall arrange a schedule with the City's commercial laboratory for pick-up/delivery at the drilling site or will arrange for the samples to be dropped off at the laboratory before 5 pm each day.

#### G. Onsite Laboratory Analyses

All vertical samples shall be analyzed onsite for volatile organic compounds via a mobile laboratory. The mobile laboratory shall be self-contained and equipped with a gas chromatograph (GC), a generator and associated support equipment. The GC shall employ a photoionization detector and flame ionization detector.

The GC shall be calibrated, at least one hour prior to the first analysis, using mixtures or standard mixtures applicable to the compounds to be quantified for the day. Periodic checks will be performed each day to demonstrate consistency in instrument calibration. Results for key petroleum and chlorinated ethene hydrocarbons must be available within 45 minutes from the time the sample was collected.

The following chlorinated ethene and petroleum hydrocarbon compounds require detection limits of two micrograms per liter (ug/l) or less: tetrachloroethylene (PCE), trichloroethylene (TCE), trans 1,2 dichloroethylene (trans 1,2 DCE), cis 1,2 dichloroethylene (cis 1,2 DCE), 1,1 dichloroethylene (1,1 DCE), vinyl chloride, benzene, toluene, ethylbenzene and xylene. The City may require the Consultant to identify the presence of chlorinated ethane compounds such as 1,1,1 trichloroethane (1,1,1 TCA), 1,1 dichloroethane (1,1 DCA) and 1,2 dichloroethane (1,2 DCA).

#### H. Soil Sampling and Analysis

All non-vertical profile drilling will include the collection of soil samples during borehole advancement. Soil samples will be collected at two depths during borehole advancement based on results of headspace readings; and one at the groundwater interface. The Consultant will submit the soil samples to an Ohio Voluntary Action Program certified laboratory. The analytical parameters will be site specific.

#### I. Holes Abandoned for Cause

If the City determines that, for reasons beyond the control of the Consultant, it is necessary to stop drilling, or the hole is lost before the objective or desired depth is reached and further attempts to save or complete the hole are not practical, the hole will be ordered abandoned for cause. The Consultant shall abandon the hole as described under Borehole/Well Abandonment. The Consultant will be paid for work completed including the footage drilled.

#### J. Defective Holes

If the City determines that the hole is lost due to, negligence, incompetence or malpractice on the part of the Consultant or his subcontractors, or to the use of defective or unsuitable equipment, the City will notify the Consultant and order the hole abandoned. The Consultant, at his own expense, will abandon the hole as described under Borehole/Well Abandonment. The Consultant will not be paid for any footage in any hole abandoned because of defects caused by the Consultant or his subcontractors. The Consultant shall drill a new hole at an alternate site in the immediate area as approved by the City.

#### K. Soil Containment

With the exception of drilling activities along City right-of-ways, a temporary catchment pit shall be excavated and double lined with polypropylene prior to the commencement of drilling. The pit shall be located downslope of the borehole and will be of suitable size to contain all auger cuttings and development and decon water. Where access prohibits, a double lined (temporary) above ground catchment may be constructed and used in lieu of catchment pits. Following site completion, all liquids shall be pumped from the pit, containerized and transported to a site designated by the City. The Consultant shall collect a composite sample of the pit soils to be analyzed for VOCs (Method 8260). If analytical results indicate levels below Ohio Voluntary Action Program (OVAP) Single Chemical Generic standards (dependent on the existing use of the property, i.e. residential or commercial/industrial), the Consultant will remove the polypropylene liner and backfill the pit level with the surface. If analytical results indicate contamination above OVAP standards, the contractor will be responsible for proper transportation and disposal costs. The Consultant will first transport the drums to a temporary staging area located at Ottawa Yards. For wells drilled along City right-of-ways or on private property where catchment pits are prohibited, all auger cuttings and/or bailer material shall be contained in 55-gallon drums. Upon site completion, the Consultant shall provide proper transport to a temporary staging area as designated by the City. When the investigation has been completed, the Consultant will collect an appropriate number of drum samples for proper disposal. Any excavated areas left open or obstacles which may be potentially dangerous to the public will be adequately fenced, taped and/or barricaded to clearly identify any physical hazards. This may include the use of caution lights.

#### L. Decontamination

This item covers the work, materials and equipment necessary for cleaning all drilling, logging and sampling equipment.

All equipment shall be washed and cleaned prior to going onsite. All equipment to be introduced to the borehole must be cleaned prior to introduction. Equipment to be cleaned will include (but not necessarily be limited to) well casings, well screens, rods, drill bits, pumps, samplers, logging tools, drive casings and augers. The decontamination process consists of hosing the drilling equipment with a high-pressure hot water rinse.

All sampling tools shall be cleaned prior to use including at a minimum, rods, bits, pumps, samplers, hand tools, and logging tools. Any tools that come in contact with the soil or groundwater during the drilling process shall be cleaned.

The Consultant must provide all equipment necessary for this cleaning process, including clean water and a mobile hot water high-pressure washer, as necessary. All water used in the decontamination process shall be containerized and transported by the Consultant to a site designated by the City. Equipment and procedures used by the Consultant for the cleaning of drilling and sampling equipment must be approved by the City.

#### M. Well Construction

All borings shall be completed using 2-inch, schedule 40, flush joint threaded PVC casing and screen. It is anticipated that screen slot size will be 0.010 inch and screen length will be 10 feet. However, screen lengths of five (5) feet should be on hand during the project. Centralizers will be used to center casing and screen in the borehole and to ensure an even distribution of filter pack and seals around the casing and screen for wells greater than 80 feet. Centralizers shall be placed at the bottom and near the top of the screen with one centralizer placed at every 25 feet of casing. No centralizer will be placed just below land surface.

#### N. Well Completion

For all wells, and depending on the percentage of fines in the proposed interval, either sand or gravel pack or naturally caved-in formation shall be installed or allowed to collapse around the well screen to a depth of three to five feet above the top of the screen. One foot of fine sand shall be placed immediately above the sand or natural pack. Each well shall have a two to four foot bentonite seal (bentonite pellets) above the fine sand and a bentonite/cement slurry tremie-grouted from the top of the bentonite seal to the frost line.

After the slurry has settled, 4,000 psi air-entrained concrete (4%-6% air) shall be used to fill the annular space above the slurry, to secure a 4-inch or 8-inch square protective casing and to construct a 54-inch square concrete pad. (Note: Concrete pads securing flush mount vaults shall be 36" by 36".) The pad shall slope away from the casing in all directions. For stick-up wells, three 6-inch steel guard posts will be installed near the edge of the pad and will be secured in concrete poured separately from the "pour" used to construct the pad. Wells installed along City right-of-ways and on private property will be completed in a flush mount vault level with the surface. Flush mount vaults must offer a high security locking system requiring a key and specialized opening tool.

The Consultant will cut a V-shaped notch into the top of the casing to represent the measuring point for each well installed.

#### O. Well Development

The well shall be developed until the water is free from sand, silt, and turbidity. The Consultant shall develop the well by first extracting sediment via a submersible or centrifugal pump and vacuum hose, then pumping at rates no greater than eight gallons per minute. If this method does not allow for timely development, the Consultant may adopt a mechanical surging (surge block) method. Air lift pumps or any other pumping method where air comes in contact with the water will not be an acceptable method of development unless authorized by DEM.

The Consultant shall furnish a pump, generator, and any other necessary appurtenances. Development water shall be containerized and transported by the Consultant to a site designated by the City.

The Consultant will provide a non-potable water tank of at least 500 gallons to containerize development water. Physical and chemical parameters including temperature, pH, specific conductance and turbidity of the water shall be measured during well development. Development will be considered complete when the pH, temperature, and specific conductance of the discharge water have stabilized or until a maximum of ten well volumes are removed, and the turbidity of the water is less than 25 nephelometric turbidity units (NTUs) as verified by a nephelometer.

Once the well is completely and properly developed, a sample shall be collected and analyzed on site for VOCs and priority pollutant metals (filtered). Additional samples will be collected for the City and properly stored on site.

P. Downhole Gamma Logging

SHSA borings may be gamma logged prior to well installation to provide supplemental stratigraphic information. Qualified personnel must perform the gamma ray logging. The equipment must meet the DEM's approval. Documentation must be provided to show the equipment has been calibrated immediately prior to use on this project and recalibrated on a monthly basis or as needed (whichever is more frequent) throughout the project.

Q. Restoration

The area surrounding the monitoring wells, abandoned holes and any other work sites shall be returned to the original condition and to the satisfaction of the City. This includes removal or replacement of trees, large rocks or metal, the placement of topsoil, seeding or the placement of sod. This also includes the leveling and grading of dirt or gravel roads.

R. Survey

A complete survey will be required on all wells. This will include both a horizontal and a vertical (NAVD 88) survey. The City will provide information regarding existing USGS benchmarks and the City's GPS monuments.

Each well will require an X and Y coordinate (State Plane) and two Z coordinates. The vertical survey will include top-of-well-casing (TOWC) elevation, taken at the "measuring point", and a surface elevation.

S. Well Sampling Events

The Consultant will sample 30 investigation wells on a quarterly basis. The Consultant will properly purge at least three well volumes from each well prior to sampling. Purge water will be contained via a water tank or drums. If drums are used, a representative number of samples will be collected and analyzed for non-hazardous waste disposal. The Consultant will deliver the well samples and associated chain of custodies to a local commercial laboratory under a City purchase order. If a water tank is used to contain purge water, the Consultant will transport the tank to a designated sanitary pump station for disposal. The well samples will be analyzed for VOCs (Method 8260).

T. Memorandums

After the completion of field activities, the following information will be submitted to the City in the form of a Draft Memorandum (for each investigation):

1. Project location map.
2. Executive Summary.
3. Summary of activities.
4. Findings, conclusions, and supporting conceptual maps (potentiometric and iso-concentration), cross-sections, summary tables and laboratory reports.
5. Boring/well logs.
6. Well construction diagrams including well depth, screen location, screen length, slot size, vertical distribution and amount of sand or gravel pack, and vertical distribution and amount of cement/bentonite.
7. Well development logs and sampling procedures.

Following DEM review, the Consultant will submit a final memorandum.

U. Meetings and Report Preparation

The Consultant shall attend monthly meetings and weekly conference calls with the City to facilitate rapid and efficient project execution. In addition, the Consultant shall keep the City informed regarding activities and findings on a daily basis during investigations. Following the completion of each investigation, the Consultant will submit to the City a draft memorandum summarizing site activities and findings, maps, cross-sections, pictures, and tables for review. The Consultant will submit three copies of the final memorandum to the City.

#### **ADDITIONAL REQUIREMENTS**

- A. The Consultant will apply for and obtain all necessary permits, manifest, and file any other necessary paperwork.
- B. The Consultant will be responsible for erosion control requirements relative to drainage ditches, waterways and the City's Municipal Separate Storm Sewer System (MS4) including but not limited to silt fencing and catch basin protection.
- C. To ensure compliance with the regulations pertaining to all work necessary, a representative of the Consultant will be *onsite* at all times when subcontractors are working.
- D. The Consultant and subcontractor(s) are required to comply with all applicable regulations including, but not limited to Occupational Safety and Health Administration (OSHA), American National Standard Institute (ANSI), American Petroleum Institute (API), Environmental Protection Agency (EPA), National Fire Protection Association (NFPA), and the Ohio Department of Natural Resources (ODNR), pertaining to all work associated with this project. The Consultant is responsible for ensuring that all personnel including all onsite subcontractors comply with all health and safety requirements.
- E. All samples, to be analyzed by the City's commercial laboratory, will be taken in accordance with US EPA and Ohio EPA guidelines and regulations. A chain of custody is to be completed for each non-mobile laboratory sample taken.
- F. In the event that 55-gallon drums or roll-off boxes are used to contain auger cuttings, rotasonic cores, or "catchment pit" material, the Consultant will be responsible for appropriate packaging, labeling, transportation, and proper disposal. The Consultant may be asked to transport material to a temporary staging area located at Ottawa Yards. (The Consultant will be escorted by DEM personnel to gain entry into Ottawa Yards.) The Consultant will conform to all applicable transportation regulations. Additionally, the Consultant will be responsible for spill clean-up associated with these activities.
- G. All memorandums will be submitted to the City in draft form. The City reserves the right to request changes and/or modifications of the draft memorandums prior to the acceptance of any final memorandums.
- H. All work which does not conform to the specifications will not be accepted. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause found to exist prior to final acceptance of the work will be corrected or removed immediately and completed or replaced in an acceptable manner at the Consultant's expense.
- I. All equipment proposed for use during the project shall be of appropriate design and properly maintained to conduct the work and to produce a satisfactory result. Equipment used on any portion of the project shall be utilized such that no damage to public roadways or adjacent property will result from its use.

- J. The result of all services under this contract will be “exclusive property” of the City of Dayton and all documents (including without limitation, all writings, drawings, blueprints, pictures, recordings, notes, data reports, computer or machine-readable data (including groundwater modeling information) and all copies or reproductions thereof, or other information received or generated in the performance of this agreement) shall be delivered to the City, and shall be maintained as strictly confidential and not disclosed to others, including individuals, corporations, or government agencies, either before or after the termination of this agreement, except as expressly authorized in writing by the City of Dayton, Ohio.
- K. All work will be charged to the City based on time and materials not to exceed the total amount specified in the proposal and Purchase Order. The City reserves the right to delete and/or modify the work required as deemed necessary within the scope of the total money available.

**ATTACHMENT B  
TO  
AGREEMENT FOR CONSULTING SERVICES**

**City:** City of Dayton, Ohio  
**Project:** Triad Groundwater Investigations and Groundwater – Surface Water Interaction Studies  
**Consultant:** Amec Foster Wheeler Environment and Infrastructure, Inc.

**COMPENSATION**

1. The total “Not-To-Exceed” fee for performance of the Scope of Services, as outlined in Attachment A to this Agreement, is FOUR HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$480,000.00) for 2016 and FOUR HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$480,000.00) for 2017. This amount includes all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including expenses.

The Fee Schedule for personnel is as follows:

**AMEC FOSTER WHEELER FEE SCHEDULE**

\*\*\*\*\*

Amec Foster Wheeler’s labor fee schedule for services provided on a time and materials basis is provided below. This rate schedule will remain in effect for the term of the contract (including option year three), but the categorization of personnel may be adjusted if so warranted by increases in qualifications and experience. Court appearances, depositions, and other similar litigation support will be charged at 1.5 times the standard rate.

Principal Scientist/Principal Engineer	\$150.00/hr.
Senior Project Manager/Senior Scientist II	\$135.00/hr.
Assistant Project Manager/Senior Scientist I	\$110.00/hr.
Project Scientist	\$90.00/hr.
Senior Technician II	\$85.00/hr.
Staff II Scientist	\$80.00/hr.
Senior Technician I	\$75.00/hr.
Staff I Scientist	\$70.00/hr.
CADD/Draftsperson	\$65.00/hr.

Technician II	\$60.00/hr.
Project Administrator	\$60.00/hr.
Technician I	\$50.00/hr.

The "Not-To-Exceed" fee for the term of this Agreement, and any option year, is subdivided into the following categories:

<b>Shallow and Deep Groundwater Investigations</b>	<b>\$378,000.00</b>
<b>Water Quality and Water Level Monitoring</b>	<b>\$19,000.00</b>
<b>Risk Assessment Inspections</b>	<b>\$63,000.00</b>
<b>Contingency/Miscellaneous</b>	<b>\$20,000.00</b>
<b>TOTAL</b>	<b>\$480,000.00</b>

2. The City shall remit payment to Consultant within thirty (30) days from receipt of a monthly invoice detailing the Services rendered and the percent complete of the scope of services described in Attachment A. All invoices for non-lump sum, reimbursable type payments shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents pertaining in whole or in part to the performance of the Services and shall be clearly identified and readily accessible to City. However, Consultant does not have to furnish such supporting documentation with its invoice, unless requested by the City.
3. Consultant shall keep its records related to the matters covered by this Agreement in compliance and conformity with generally accepted accounting practices. At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City all of its records with respect to all matters covered herein, and will permit the City, at its expense, to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and other data pertaining in whole or part to matters covered within this Agreement. In performing any independent audit, Consultant shall require the auditor to reasonably comply with all applicable City rules and regulations governing such procedures.

**ATTACHMENT C  
TO  
AGREEMENT FOR CONSULTING SERVICES**

**City:** City of Dayton, Ohio  
**Project:** Triad Groundwater Investigations  
**Consultant:** Amec Foster Wheeler Environment and Infrastructure, Inc.

**CITY'S RESPONSIBILITIES**

The city will furnish, as required by the work and not at the expense of Consultant, the following item:

1. The services of at least one of the City's employees or staff.



# City Manager's Report

3.

From 5320 - Finance/Tax & Accounting

Date August 17, 2016

Expense Type Service Agreement

Supplier, Vendor, Company, Individual

Total Amount \$0.00

Name See Below

Address Various

Fund Source(s)	Fund Code(s)	Fund Amount(s)
N/A	N/A	0.00

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

### Description

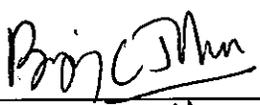
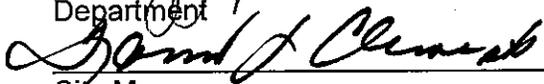
The Department of Finance requests City Commission approval to enter into Depository Agreements with local financial institutions. These Agreements will enable the City to invest City active funds (checking account) and interim funds (certificates of deposit) at the institutions on a competitive basis. All deposits will be collateralized.

In June of 2016, six (6) banks were solicited by written communication and five (5) responded. The amounts applied for by the institutions represent the maximum possible deposits; however, the City's Investment Policy restricts the amount a public depository may hold on deposit. A single institution with the highest credit rating would be able to hold no more than 10% of the City's portfolio in active and interim funds.

Institution	Active Funds	Interim Funds
Fifth Third Bank	30% of Bank's assets	30% of Bank's assets
Huntington National Bank	\$25,000,000	\$25,000,000
Key Bank	\$50,000,000	\$50,000,000
PNC Bank	30% of Bank's assets	30% of Bank's assets
U.S. Bank	30% of Bank's assets	30% of Bank's assets

The term of each agreement is for five years beginning August 23, 2016 and ending August 22, 2021.

The Department of Law has reviewed and approved each agreement for form and correctness. A Certificate of Funds is not required.

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

### Signatures/Approval

Approved by City Commission

Clerk

Date

# MEMORANDUM



August 5, 2016

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

**FROM:** C. LaShea Lofton, Director  
Department of Finance

A handwritten signature in black ink, appearing to read "C. Lofton", is written over the printed name of the sender.

**SUBJECT:** Depository Agreements with Local Banks

The Department of Finance is requesting City Commission approval to enter into Depository Agreements with various local banks. Depository Agreements are required by Chapter 135 of the Ohio Revised Code and must be renewed every five (5) years. Depository Agreements enable the City to invest City active funds (checking account) and interim funds (certificates of deposit) at institutions on a competitive basis. The term of each agreement shall commence on August 23, 2016 and end August 22, 2021.

In June of 2016, six (6) banks were solicited by written communication to submit Depository Agreements (Fifth Third Bank, Huntington National Bank, Key Bank, JP Morgan Chase, PNC Bank, and U.S. Bank) and one (1) bank, JP Morgan Chase did not respond. The maximum dollar amount of City funds each bank requested to hold on deposit is as follows:

<u>Institution</u>	<u>Active Funds</u>	<u>Interim Funds</u>
Fifth Third Bank	30% of Bank's assets	30% of Bank's assets
Huntington National Bank	\$25,000,000	\$25,000,000
Key Bank	\$50,000,000	\$50,000,000
PNC Bank	30% of Bank's assets	30% of Bank's assets
U.S. Bank	30% of Bank's assets	30% of Bank's assets

These maximum amounts are deposit authorizations and do not relate to the amount of cash the City may have on deposit at a given time. The City's Investment Policy restricts the amount a public depository may hold in deposits. A single institution with the highest credit rating would be able to hold no more than 10% of the City's portfolio in active and interim funds.

The Department of Law has reviewed the Agreements for form and correctness. Please contact me at ext. 3578 if you have any questions.

CLL/lw

c: Mr. B. John  
Mr. B. Smith  
File

**DEPOSITORY AGREEMENT FOR ACTIVE,  
INTERIM AND/OR INACTIVE PUBLIC FUNDS**

Agreement made as of the 29<sup>th</sup> day of June, 2016 between Fifth Third Bank ("Bank") and City of Dayton ("Depositor"). Depositor hereby confirms that it has designated Bank as a public depository of its active, interim and/or inactive deposits for the period of designation from August 24<sup>th</sup>, 2016 to August 23<sup>rd</sup>, 2021.

**ACTIVE DEPOSITS**

Bank agrees to accept Active deposits during the period of designation subject to the Bank's posted rules and regulations from time to time in effect for commercial accounts. Bank agrees that the sums deposited to the credit of Depositor's Active commercial accounts may be drawn against and paid by check executed by such authorized person(s). Bank must be notified in writing if designated person(s) change.

**INTERIM AND/OR INACTIVE DEPOSITS**

Whenever any Interim and/or Inactive deposits of Depositor are awarded to and accepted by the Bank pursuant to Chapter 135. of the Ohio Revised Code, the Interim and/or Inactive moneys shall be evidenced by an interest bearing account or certificate of deposit at rates agreed upon by Bank and Depositor.

The total amount thus awarded under this agreement is **ALL FUNDS**, which does not exceed the limitations set forth under Chapter 135 of the Ohio Revised Code, or thirty percent (30%) of the Bank's total assets.

Bank agrees to secure its obligation under this Agreement and its other obligations as a public depository of Depositor's Active, Interim, and/or Inactive deposits by depositing with Bank of New York as safekeeping agent eligible securities in the amount and in the manner required. Depositor hereby authorizes Bank on a continuing basis during the term of designation to substitute securities for those then deposited with such trustee, provided only that the securities being deposited be eligible securities having a current market value equal to or greater than the current market value of the securities for which they are to be substituted. Each such substitution may be made without prior notice to or the approval of Depositor.

Bank may charge all applicable fees assessable against depository accounts pursuant to its fee schedule currently in force or as hereafter amended.

**City of Dayton**

Official: \_\_\_\_\_

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

Title: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS  
*[Signature]*  
CITY ATTORNEY  
LSB

**Fifth Third Bank**

By: *[Signature]*

Name: Scott Mumpower

Title: Vice President

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

20 Min. Book      Page     

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CLERK OF THE COMMISSION

**For Internal Use Only:**

Account Number(s): \_\_\_\_\_  
\_\_\_\_\_



**AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS  
OHIO**

This Agreement is entered into this 24th day of May, 2016 by and between The Huntington National Bank, a national banking institution organized under the laws of the United States (hereinafter referred to as the "Financial Institution") and City of Dayton of Dayton, Ohio (hereinafter referred to as the "Subdivision").

WHEREAS, The Huntington National Bank is a financial institution located and doing business within Dayton, Montgomery County, Ohio, having as of December 31, 2015 capital funds as defined by Section 135.01(c) of the Ohio Revised Code of Five billion, nine hundred and sixty-six million, seven hundred and eighty-three thousand Dollars (\$5,966,783,000.00) and total assets of Seventy billion, eight hundred and seventy-nine million, seven hundred and seventy-eight thousand Dollars (\$70,879,778,000.00); and

WHEREAS, Financial Institution has in writing proposed to the Subdivision that for the period commencing August 24, 2016 through August 23, 2021 inclusive, the Financial Institution will accept for deposit and safekeeping the following:

(a) The maximum sum of \$25,000,000.00 or any part thereof of the active deposits of said Subdivision; and

(b) The maximum sum of \$25,000,000.00 or any part thereof of the interim deposits of said Subdivision,

(c) The maximum sum of \$0.00 or any part thereof of the inactive deposits of said Subdivision,

(d) The total sum of such active, interim, and inactive deposits totals \$50,000,000.00.

as these terms are defined in Section 135.01 of the Ohio Revised Code; and

WHEREAS, said Financial Institution has also, in said written proposal, and pursuant to the Uniform Depository Act of Ohio, offered to pledge and deposit with the Treasurer of the Subdivision or designated trustee, as security for the repayment of all public moneys to be deposited in the Financial Institution by said Subdivision, (a) security of the kind specified in Section 135.18 or 135.181 and any other sections of the Ohio Revised Code specifying eligible security, in a sum equal to the minimum amount of security required by Section 135.18 or 135.181 of the Ohio Revised Code, or (b) surety company bond or bonds in a sum required by said Uniform Depository Act; and

WHEREAS, the said Subdivision has accepted the said proposal of said Financial Institution, in whole or in part, and has selected said Financial Institution as one of its depositories for the period or periods of time set forth above, and awarded to it, as such depository, a deposit or deposits of money at the rate of interest for such inactive and interim deposits set forth in its proposal for the deposit of public moneys; and

WHEREAS, the total of such active, interim and inactive deposits awarded does not exceed the limit set by Section 135.03 of the Revised Code of 30% of the total assets of the Financial Institution.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Designation.** For and during the period of time beginning August 24, 2016 and ending August 23, 2021 both inclusive, Subdivision will and does designate said Financial Institution as a depository of money belonging to it in the amounts set forth above.

2. **Active Deposits.** Said Financial Institution further covenants and agrees that any or all of the money awarded to or deposited with it as active funds, may at any time be drawn against by check of Subdivision executed by such authorized person(s) or officer(s) and according to such procedure as said Subdivision may designate and prescribe.

3. **Interim Deposits.** Interim deposits shall be held in time deposit account(s) maturing in seven (7) or more days but in no event more than one year from date of deposit.

4. **Inactive Deposits.** Said Financial Institution hereby agrees to receive from said Subdivision, the sums set forth above, of the moneys of said Subdivision coming into the hands of the Treasurer of said Subdivision, in an account or accounts. Inactive deposits shall be held in time deposit account(s), each of which shall mature not later than the end of the period of designation and which may be payable upon written notice to be given a specified period before the date of repayment.

5. **Pledge of Securities.** Said Financial Institution further agrees that to secure the performance of its obligations hereunder, under said proposal and under the observance of all requirements of law applying to such deposits, depositories, contracts, and bonds, it will forthwith pledge for the benefit of said Subdivision and to its satisfaction, and to the satisfaction of the legal adviser of said Subdivision as to form, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount of such moneys as is at such time insured by the Federal Deposit Insurance Corporation, or by any agency or instrumentality of the federal government, under the provisions of Section 135.18 or 135.181 of the Revised Code; or a surety company bond or bonds in the sum required by Section 135.18 or 135.181 of the Revised Code. The said Financial Institution will offer the following security to secure said award:

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Deposits shall be collateralized in accordance with Section 135.181 Ohio Revised Code.

6. **Statements.** Said Financial Institution shall file with the Treasurer of Subdivision as of the last business day of each month during any time that a part of the award is on deposit a statement showing the balance of such active moneys in its possession.

7. **Use of Deposits.** Financial Institution is allowed the full use, for its lawful and proper purposes of the daily balance, of deposits of the moneys coming into the hands of the Treasurer of said Subdivision as such Treasurer, in the Treasurer's account(s) in said Financial Institution; all pursuant and subject to the Uniform Depository Act of Ohio, herein referred to, and all amendments or supplements thereto, and to the terms of said Financial Institution's proposal and all within the limits and under and subject to the terms, conditions and stipulations set forth in this Agreement.

8. **Surety.** The securities deposited, and the surety bond, or both, shall be and are surety and bond for the compliance by said Financial Institution with each and all of the provisions, terms, limitations, conditions and stipulations hereinbefore mentioned, and for the performance hereof by said Financial Institution.

9. **Amendment of State or Federal Law.** This Agreement shall become null and void whenever by amendment or amendments of any state or federal law or the amendment or adoption of any valid regulations, thereunder, of the United States are changed or amended, the terms of the designation, lawful at the beginning of any period of designation, cause to be unlawful, during such period and if such change of law or regulation requires, the period of designation shall be limited so as not to extend beyond the date when such change becomes effective.

10. **Assignment.** Neither party may assign or transfer this Agreement without the written consent of the other party; provided however, that Financial Institution may assign or transfer this Agreement to any successor, subsidiary, parent or affiliate of Financial Institution, or pursuant to any merger, sale, consolidation or other internal reorganization of Financial Institution upon the giving of notice to the Subdivision.

11. Rules & Regulations: Entire Agreement. The rules and regulations published by the Financial Institution from time to time shall govern the accounts established by the Subdivision, except as expressly provided herein. This Agreement, and any agreement, documents and instruments executed and delivered pursuant thereto or in connection herewith, or incorporated herein by reference, contains the entire agreement of the parties hereto and as contemplated thereby and supersedes all prior discussions, understandings or agreements between the parties hereto.

12. Severability. If at any time any provision of the Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.

13. Notices. All notices, requests, demands or other communications and deliveries required or authorized under this Agreement shall (a) be in writing, (b) be sent by certified or registered mail, return receipt requested, by personal delivery or by overnight courier service, to the parties respective addresses on the first page hereto and to the attention of the person executing this Agreement, or to such other address and/or person as a party may designate by written notice to the other party, and (c) be effective when deposited with the United States Postal Service if sent by mail, when actually delivered if sent by personal delivery, or when deposited with the carrier if sent by overnight courier.

14. Termination. Notwithstanding the period of designation, either party may terminate this agreement by giving written notice to the other party no later than thirty (30) calendar days before the effective day of the termination.

15. Amendment. This Agreement may not be amended or modified except in a writing signed by both parties.

IN WITNESS WHEREOF, the said parties have hereunto set their hands by their duly authorized officers.

Financial Institution:

THE HUNTINGTON NATIONAL BANK

By: Michael J. Mestemaker Date: 5/24/16

Michael J. Mestemaker  
Vice President

Subdivision:

City of Dayton

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

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

Title: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS  
John R. Wansel  
CITY ATTORNEY

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

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CLERK OF THE COMMISSION

Report of Condition  
Consolidating Domestic and  
Foreign Subsidiaries of  
**The Huntington National Bank**

of Columbus in the State of Ohio, at the close of business on December 31, 2015, as filed with the Office of the Comptroller of the Currency.  
Charter Number 7745  
Comptroller of the Currency Central District

Report of Condition  
(in thousands of dollars)

**Assets**

Cash and balances due from depository institutions		
Non-interest bearing balances and currency and coin	\$	620,399
Interest Bearing Balances		229,618
Securities:		
Held-to-maturity securities		6,159,590
Available-for-sale securities		8,425,945
Federal funds sold and securities purchased under agreements to resell		
Federal funds sold in domestic offices		0
Securities purchased under agreements to resell		0
Loans and lease financing receivables:		
Loans and leases held for sale		474,622
Loans and leases net of unearned income	\$	50,323,197
Less: Allowance for loan and lease losses		(594,620)
Loans and leases, net of unearned income and allowance		49,728,577
Trading Assets		250,705
Premises and fixed assets (including capitalized leases)		617,710
Other real estate owned		27,341
Direct and indirect investments in real estate ventures		501,971
Intangible assets:		
Goodwill		623,021
Other intangible assets		235,780
Other assets		2,984,499
Total Assets	\$	<u>70,879,778</u>

**Liabilities**

Deposits:		
In domestic offices		\$ 56,090,169
Non-interest bearing	\$	7,119,846
Interest bearing		48,970,323
In foreign offices, Edge and Agreement subsidiaries, and IBFs		267,409
Interest bearing		267,409
Federal funds purchased and securities sold under agreements to repurchase		
Federal funds purchased in domestic offices		225,000
Securities sold under agreements to repurchase		376,272
Trading Liabilities		119,975
Other borrowed money		5,788,337
Subordinated notes and debentures		676,428
Other liabilities		986,057
Total Liabilities		<u>64,529,647</u>
Minority interest in consolidated subsidiaries		383,348
<b>Equity Capital</b>		
Common stock		39,999
Surplus		5,841,204
Retained Earnings		294,520
Accumulated other comprehensive income		(208,940)
Total Equity Capital		<u>5,966,783</u>
Total Liabilities and Equity Capital	\$	<u>70,879,778</u>

I, Howell D. McCullough III, Executive Vice President of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Howell D. McCullough III  
January 29, 2016

We, the undersigned directors, attest to the correctness of this Report of Condition. We declare that this has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Directors:  
Stephen D. Steinour  
Jonathan A. Levy  
Steven G. Elliott

**MEMORANDUM OF AGREEMENT**  
**FOR ACTIVE, INTERIM AND/OR INACTIVE DEPOSITS**

Agreement made as of \_\_\_\_\_ day of \_\_\_\_\_ month 2016 between **KeyBank National Association**, (The Bank) and **The City of Dayton, Ohio** (The Depositor). Depositor hereby confirms that it has designated KeyBank as a Public Depository for its Active, Interim and/or Inactive deposits for the period of designation from **August 23, 2016 through August 24, 2021**, both dates inclusive, in the total amount of **\$50,000,000.00**.

**ACTIVE DEPOSITS**

- Bank agrees to accept active deposits during the period of designation subject to the Bank's posted rules and regulations from time to time in effect for commercial accounts. Bank agrees to keep such sums on deposit pending payment by depositor.
- Bank agrees that the sums deposited to the credit of Depositor's active commercial accounts may be drawn against and paid by check executed by such authorized persons. Depository must be notified in writing if designated persons change.
- Bank agrees to supply Depositor's Treasurer each month only during the period of designation a statement of the daily activity in the Depositor's accounts.

**INTERIM AND/OR INACTIVE DEPOSIT**

- Whenever any Interim and/or Inactive deposits of Depositor are awarded to and accepted by the Bank pursuant to Chapter 135 of the Ohio Revised Code; the Interim/Inactive moneys shall be evidenced by the Bank's interest bearing Certificates of Deposit. Such rates may be agreed upon by Bank and Depositor before issuance of said Certificates.

**PLEGGED COLLATERAL -- OHIO REVISED CODE CHAPTER 135**  
**(Pooled Securities (ORC 135.181))**

- The Bank agrees to secure its obligation under this Agreement and its other obligations as a Public Depository of Depositor's Active, Interim and/or Inactive deposits by depositing with Safekeeping Trustees, Federal Reserve Bank of Boston and/or Bank of New York, New York, eligible securities in the amount and in the manner required by the Ohio Uniform Depository Act and the provisions of the Ohio Revised Corp (ORC Chapter 135.181).
- Each political subdivision holds an undivided security interest in the Pooled Assets in the proportion its deposits bear to the Bank's total deposits secured by the Pool. KeyBank's pool of pledged securities is maintained at a minimum of 105% of public deposits. This coverage is in addition to the \$250,000 per depositor FDIC Insurance. This amount does not exceed 30% of the Bank's total deposits. In addition, the Depositor hereby authorizes the Bank on a continuing basis during the term of designation to substitute securities for those then deposited with such Trustees, provided only that the securities being deposited are eligible securities with a current market value equal to or greater than the current market value of the securities for which they are to be substituted. Each such substitution may be made without any prior notice to the approval of the Depositor.

**City of Dayton**  
Form # 01-000177

**KEYBANK NATIONAL ASSOCIATION**

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

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CLERK OF THE COMMISSION

# APPLICATION FOR DEPOSIT OF PUBLIC MONEYS

(R.C. 135.06, 135.08, 135.10)

To the Council of the City of Dayton, Montgomery County, Ohio.

The undersigned, PNC Bank, National Association, a national banking association organized under the laws of the United States of America hereby makes application to be designated as a depository for inactive and/or interim and/or active funds belonging to said City of Dayton for a period of five years beginning August 23, 2016 in the total amount of Seven Hundred Million and 00/100 Dollars (\$700,000,000.00), which amount is not to exceed thirty percent of the applicant's total assets of Three Hundred Fifty Billion Six Hundred Forty Three Million Six Thousand and 00/100 Dollars (\$350,643,006,000.00), as revealed by the financial statement attached hereto.

The maximum amount of such public moneys which this applicant desires to receive and have on deposit as inactive deposits at any one time during the period covered by this designation is a total of Zero and 00/100 Dollars (\$0.00), to be held.

Rate of Interest: Market Rate at time of quotations for all maturities.

The maximum amount of such public moneys which this applicant desires to receive and have on deposit as interim deposits at any one time during the period covered by this designation is a total of Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00), to be held in various deposit amounts with terms and rates set at time of issuance.

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The maximum of such public moneys which this applicant desires to receive and have on deposit as active deposits at any one time during the period covered by this designation is Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00).

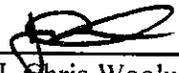
This application is accompanied by a financial statement of the applicant in such detail as to show the capital funds of the applicant as of the date of its latest report to the superintendent of banks or comptroller of the currency, adjusted to show any changes therein made prior to the date of the application.

The undersigned bank, if designated as said depository, will comply in all respects with the laws of Ohio relative to the deposit of such funds and will furnish as security for funds deposited over the amount insured by the Federal Deposit Insurance Corporation, eligible securities in accordance with Section 135.181 of the Uniform Depository Act of Ohio (Pooled Assets).

IN WITNESS WHEREOF, we have by authority of our board of directors, caused our corporate seal to be hereunto affixed and these presents to be signed by our Vice President this 11<sup>th</sup> day of July, 2016.

PNC Bank, National Association

BY: \_\_\_\_\_

  
J. Chris Woolums  
Vice President

## MEMORANDUM OF AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS

WHEREAS, PNC BANK, NATIONAL ASSOCIATION, a national banking association organized under the laws of United States of America located and doing business within the Montgomery County, Ohio, hereinafter referred to as the "Bank", having capital funds as defined by Section 135.01(c) of the Revised Code of Twenty Eight Billion Five Hundred Seventy Five Million Four Hundred Eighty Five Thousand and 00/100 Dollars (\$28,575,485,000.00) and thirty percent (30%) assets of Three Hundred Fifty Billion Six Hundred Forty Three Million Six Thousand and 00/100 Dollars (\$350,643,006,000.00) as shown in the financial statement attached to the application or applications of the Bank, has in writing proposed to the City of Dayton, that for the full time beginning August 23, 2016 and ending August 22, 2021, both inclusive, it will accept for deposit and safekeeping the maximum sum of Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00) or any part thereof of the active deposits of the City of Dayton; it will accept for deposit and safekeeping the maximum sum of Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00) or any part thereof of the interim deposits of said subdivision; and it will accept for deposit and safekeeping the maximum sum of Zero Million and 00/100 Dollars (\$0.00) of the inactive deposits of the said subdivision as active, interim, and inactive deposits, as defined in Section 135.01 of the Revised Code;

WHEREAS, said Bank has also, in said written proposal, and pursuant to the Uniform Depository Act of Ohio, offered to pledge and deposit with the Finance Director of the subdivision or designated Trustee as security for the repayment of all public moneys to be deposited in the Bank by said City of Dayton, security of the kind specified in Section 135.18 and any other sections of the Revised Code of Ohio specifying eligible security, in a sum equal to the minimum amount of security required by Section 135.18 of the Revised Code of Ohio, or surety company bond or bonds in a sum required by said Uniform Depository Act; and

WHEREAS, the said City of Dayton has accepted the said proposal of said Bank, either as the whole or part of the amount of deposit proposed for; and has selected said Bank as one of its depositories for and during the period or periods of time as follows for the sum herein set forth; Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00) for the period beginning August 23, 2016 and ending August 22, 2021 as active deposits, and Three Hundred Fifty Million and 00/100 Dollars (\$350,000,000.00) for the period beginning August 23, 2016 and ending August 22, 2021 as interim deposits, and Zero Million and 00/100 Dollars (\$0.00) for the period beginning August 23, 2016 and ending August 22, 2021 as inactive deposits, and both dates inclusive; and awarded to it, as such depository, a deposit or deposits of money at the rate of interest for such inactive and interim deposits set forth in its applications for the deposit of public moneys; the total of which active, interim, and inactive deposits awarded totals Seven Hundred Million and 00/100 Dollars (\$700,000,000.00) a total which does not exceed the limit set by Section 135.03, of the Revised Code of thirty percent (30%) of the Bank's assets;

NOW, therefore, in consideration of said acceptance and award on the part of said acceptance and award on the part of said City of Dayton, and in consideration of the deposit and use, as aforesaid, of said moneys of said City of Dayton said Bank now hereby agrees to receive from said City of Dayton the sum of Seven Hundred Million and 00/100 Dollars (\$700,000,000.00) of the moneys of said City of Dayton coming into the hands of the Finance Director of said City of Dayton as such Finance Director, in an account or accounts known as the Active, Interim and/or Inactive Deposit Account or Accounts, which deposits shall be made pursuant to the provisions of Section 19 of the Federal Reserve Act, together with amendments by the Board of Governors of the Federal Reserve System, as to notice, etc.

Said Bank further agrees that to secure the performance of its obligations hereunder and under said proposal, the observance of all requirements of law applying to such deposits, depositories, contracts, and bonds, it will forthwith pledge to and deposit with the Finance Director or designated Trustee to said City of Dayton for the benefit of said City of Dayton and to its satisfaction, and to the satisfaction of the legal advisor of said City of Dayton, as to form, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount of such moneys as is at such time insured by the Federal Deposit Insurance Corporation, or by any agency or instrumentality of federal government, under the provisions of Section 135.18 of the Revised Code; or a surety company bond or bonds in the sum required by Section 135.18 of the Revised Code. The said Bank will offer the following security to secure said award.

Type of securities deposited or security offered:

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Eligible securities in accordance with Section 135.181 of the Uniform Depository Act of Ohio (POOLED ASSETS).

Said Bank further covenants and agrees that any or all of the money awarded to or deposited with it as active funds, any time be drawn against by check of the City of Dayton executed by such authorized person(s) or officer(s) and according to such procedure as said City of Dayton may designate and prescribe; such interim deposits shall be evidenced by certificate of deposit maturing in thirty or more days, but in no event more than one year from date of deposit; such inactive deposits shall be evidenced by certificates of deposit, each of which shall mature not later than the end of the period of designation, and may provide on its face that the amount of such deposit is payable upon written notice to be given a specified period before the date of repayment.

Said Bank also agrees to file with the Finance Director of City of Dayton on the last business day of each month during any time that a part of the award is on deposit a statement showing the balance of such active, interim, and inactive moneys in its possession, and said City of Dayton in consideration of the agreements of said Bank, heretofore set forth, agrees that for and during the period of time beginning August 23, 2016 and ending August 22, 2021 both inclusive it will and does designate said Bank as a depository of money belonging to it in the amounts set forth above and that it will, during said term, allow the same Bank the full use, for its lawful and proper purposes of the daily balances, of deposits of the moneys coming into the hands of the Finance Director of said City of Dayton in the Finance Director's Account in said Bank, as aforesaid; all pursuant and subject to the Uniform Depository Act of Ohio, herein referred to, and all amendments or supplements thereto, and to the terms of said Bank's proposal, and all within the limits and under and subject to the terms, conditions and stipulations in this agreement set forth. The securities deposited, and the surety bond, or both, shall be and are surety and bond for the compliance by said Bank with each and all of the provisions, terms, limitations, conditions,

and stipulations herein before mentioned, and for the performance hereof said Bank. It is further agreed that this contract shall become null and void whenever by amendment or amendments of any state or federal law or the amendment or adoption of any valid regulations there under, of the United States are changed or amended, the terms of the designation, lawful at the beginning of any period of designation, cause to be unlawful, during such period if such change of law or regulation requires, the period of designation shall be limited so as not to extend beyond the date when such change becomes effective.

IN WITNESS WHEREOF, the said parties have hereunto set their hands by their duly authorized officers of said parties, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PNCBANK, National Association**

BY: \_\_\_\_\_  
*J. Chris Woolums, Vice President*

**CITY OF DAYTON**

BY: \_\_\_\_\_  
*Name Title of Office Held*

BY: \_\_\_\_\_  
*Name Title of Office Held*

**APPROVED AS TO FORM AND CORRECTNESS**  
*[Signature]*  
**CITY ATTORNEY**

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

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CLERK OF THE COMMISSION

**APPLICATION FOR DEPOSIT OF PUBLIC FUNDS**

TO: **CITY OF DAYTON**

**MONTGOMERY COUNTY, OHIO**

**U. S. Bank, N.A.** which is located and doing business in **Montgomery County, Ohio** through an office in the **City of Dayton**, hereby applies to be designated as a depository for Active and Interim/Inactive Funds belonging to the **City of Dayton** from **August 23, 2016** through **August 22, 2021** inclusive.

The total amount applied for as specified below will be **All Eligible Deposits** which amount, in addition to those public funds held under Sections 135.01 through 135.33 of the Ohio Revised Code, is not in excess of thirty percent (30%) of its total assets of \$423,203,763,000.00 as revealed by the financial statements attached hereto.

The maximum amount of public moneys which the applicant desires to receive and have on deposit as active funds at any one time during the period covered by this offer is **All Eligible Deposits**.

The maximum amount of such public moneys which the applicant desires to receive and have on hand as interim/inactive deposits at any one time during the period is a total of **All Eligible Deposits**.

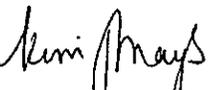
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For interim deposits the bank will issue liquid depository accounts or Certificates of Deposit during the period of designation in the amount desired. Interest will be payable at the maturity thereof, or at the time of withdrawal prior thereto. Interest rates are subject to change from time to time. Current interest rate quotations are available from the bank during normal business hours.

This application is accompanied by the required financial statement of the applicant under the oath of Joseph V. Murphy-V.P. and Assistant Controller and in such detail to show the assets and the capital funds of the applicant as of the date of its latest report to the Office of the Comptroller of the Currency adjusted to show any changes therein made after the report, but prior to the date of this application.

U S Bank, N.A., if subsequently designated as a depository, will comply in all respects with the laws, regulations and rules of Ohio and the United States relative to the deposit of such funds and will furnish, at the bank's option, security for funds as provided under either Section 135.18 or 135.181.

U. S. Bank, N.A.

By:   
Kim J. Mays, Vice President

**MEMORANDUM OF AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS**

This is an agreement between **U. S. Bank, N.A.**, a National bank located and doing business in **Montgomery County, Ohio** through an office located in the **City of Dayton** and whereby the **City of Dayton** accepts the bank's offer to serve as public depository during the period from **August 23, 2016** through **August 22, 2021** inclusive. Therefore, under this agreement the sub-division will appoint U S Bank, N.A. as its depositories and will deposit funds as enumerated below:

- A) **City of Dayton** will deposit active funds and the bank will accept a maximum of **All Eligible Deposits** or any part thereof. For the service of making active funds accessible by demand, check, draft or other similar instrument, the bank may charge a reasonable fee as enumerated under Section 135.16 of the Ohio Revised Code.
- b) **City of Dayton** will deposit and the bank will accept as interim/inactive deposits a maximum **All Eligible Deposits** or any part thereof. The bank will issue Certificates of Deposit during the period of designation in the amount desired. U S Bank, N.A., will bid competitive rates of the customer's interim deposits.

For interim deposits, the interest payable on Certificates of Deposit will be at the maturity thereof or at the time of withdrawal prior thereto. Also, for interim deposits, the interest rates are subject to change from time to time. If a deposit is renewed, it shall carry the then prevailing interest rate at that time on that type of deposit.

The total amount thus awarded under this agreement totals **All Eligible Deposits** which does not exceed the limitations set forth under Chapter 135 of thirty percent (30%) of total assets.

~~The bank will secure all public deposits at the bank's option under either Section 135.18 or Section 135.181, in an amount sufficient to meet the requirements of Chapter 135.~~

On the last business day of each month during the period that any funds awarded pursuant to this agreement are on deposit with the bank, the bank will furnish a statement showing the balance of such active moneys in its possession. The bank may charge a reasonable fee for providing monthly statements under this agreement.

The bank agrees that it will comply with all the requirements of the Ohio Revised Code, Chapter 135 and any amendments thereto. The bank also further agrees that it will abide by any state and federal laws, rules or regulations or any amendments thereunder. If any such laws, rules or regulations are changed or amended during the terms of the designation as public depository, and if the change of laws, rules or regulations will cause this agreement to become unlawful, at the bank's option, this agreement shall be limited so as not to extend beyond the date when such change becomes effective.

As part of this agreement, the depositor agrees to be subject to the rules which govern the account in which the depositor's funds are deposited. Also, the depositor agrees to provide the bank the names and signatures of those persons authorized to execute drafts on and to make withdrawals from the accounts, and to provide such documentation establishing these persons authority as the bank may request.

**City of Dayton**

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

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

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

**U. S. Bank, N.A.**

*Kim J. Mays*  
Kim J. Mays, CTP  
Vice President

**APPROVED AS TO FORM AND CORRECTNESS**

*[Signature]*

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

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CLERK OF THE COMMISSION



# City Manager's Report

4.

**From** 6210 - Police Director

**Date** August 17, 2016

**Expense Type** Service Agreement

**Total Amount** \$33,950.00

**Supplier, Vendor, Company, Individual**

**Name** Miller Pipeline  
**Address** 11990 Peters Pike  
Tipp City, Ohio 45371

Fund Source(s)	Fund Code(s)	Fund Amount(s)
General Fund	10000-6210-22611-71	\$33,950.00

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

**Description**

Miller Pipeline is requesting to extend off-duty police officer services of traffic control and security during the repair and/or rehabilitation of gas lines in various locations within the municipal corporation limits of the City of Dayton. The First Amendment to the contract will increase policing services from 105 officer hours to 550 officer hours by extending the contract duration and adding an additional officer. The contract period will remain effective June 29th, 2016 through September 30, 2016.

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

The Certificate of Revenue is attached.

**Signatures/Approval**

*Approved by City Commission*

Division \_\_\_\_\_  
*Mark G. Ecton*  
Department \_\_\_\_\_  
*James L. Chenevix*  
City Manager

\_\_\_\_\_  
Clerk  
\_\_\_\_\_  
Date



## MEMORANDUM

---

August 5, 2016

TO: Shelley Dickstein  
City Manager

FROM: Richard S. Biehl  
Director and Chief of Police

**SUBJECT: Commission Calendar Item**

Miller Pipeline requested on July 28, 2016 to extend their police overtime services contract. The Law Department was immediately contacted and drafted the Amendment to extend the end date from July 31, 2016 to September 30, 2016.

The customer was contacted and provided signature, as well as an additional payment for services provided. Since the contract will now exceed \$10,000 Commission approval is necessary prior to final execution.

If any additional information is needed please contact Major Matt Carper at x1081 or Lt. Col. Mark Ecton at x 1082.

Attachment: City Manager's Report, 1 certificate of revenue form, original contract

\_\_\_\_\_ Signed copies released/hand carried/mailed by Finance.

RSB/mb

# CERTIFICATE OF REVENUE

## TO BE COMPLETED BY THE DEPARTMENT

**Customer Information:** Name Miller Pipeline LLC  
Address 11990 Peters Pike  
City Tipp City State Ohio Zip+4 45371 -       
Customer # 351959522 Address Location # P-1  
Federal ID# 35-1959522

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

**Contract Information:** Contract Start Date 6/29/2016 Contract Expiration Date 9/30/2016

**Billing Information:** Rate: Officer rate \$61.72- X      Arrears      Pre-bill - X      Estimate  
Sgt rate \$71.58  
Lt. Rate \$83.01  
Night Dif rate \$1.20  
Vehicle \$13.00

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) Prepaid \$1,620.15 + Invoicing Monthly + NTE \$33,950.00

Rate Change Date n/a      Rate Change Amount n/a

A. Description of Services (wording on invoice): To provide traffic control and security for workers during the replacement of gas line June 29, 2016 through September 30, 2016 beginning at Main & Norman and continuing in various locations within the municipal corporation limits of the City of Dayton, Ohio.

Departmental Approval Max G Sctor

## TO BE COMPLETED BY FINANCE

Revenue Contract Number 5-9522-1 Auditor Kera Brown Date 6/8/16

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 AG Joffe

**FIRST AMENDMENT TO AGREEMENT  
BETWEEN MILLER PIPELINE  
AND THE CITY OF DAYTON, OH**

This First Amendment to the original Agreement (hereinafter "Agreement") between the Miller Pipeline and the City of Dayton, Ohio (hereinafter "City"), is effective \_\_\_\_\_, 2016.

**WHEREAS**, the Miller Pipeline and the City entered into the Agreement effective June 29, 2016 ("Original Agreement"); and

**WHEREAS**, the parties now desire to amend the Agreement to extend the performance of the Agreement through September 30, 2016. The parties have agreed upon terms and conditions under which the Agreement shall be amended and further desire to reduce such terms and conditions to writing.

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

Replace **Section 1, Section 9** and **Exhibit A** with the following:

**Section 1.** Subject to Sections 2 and 3, the City agrees to make available certain police personnel to perform the police-related functions which are further explained in Exhibit A attached hereto and incorporated herein, from June 29, 2016 through September 30, 2016.

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

**Section 9.** This Agreement shall be for the period of Wednesday, June 29, 2016 through Friday, September 30, 2016.

**Exhibit A**

1. Scope of Services/Event Information
  - A. To provide traffic control and security for workers during the replacement of gas line June 29, 2016 through September 30, 2016 beginning at Main & Norman and continuing in various locations within the municipal corporation limits of the City of Dayton, Ohio.
2. Payment/Cost/Method of Payment
  - A. PAYMENT

Contractor shall pay \$61.72 per hour for each police officer; \$71.58 per hour for each police sergeant; and \$83.01 per hour for each police lieutenant; \$1.20 per hour additional for night differential and \$13.00 per vehicle per hour, when applicable.

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

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

B. ESTIMATED COST: Not to EXCEED \$33,950.00 (based on est. 550 officer hours @ \$61.72 per hr)

C. METHOD OF PAYMENT: Prepaid ( \$1,620.15) + Invoiced

3. Contractor's Authorized Representative/Contact

NAME: Shannon Louden  
ADDRESS: 11990 Peters Pike  
Tipp City, Ohio 45371  
EMAIL: [slouden@millerpipeline.com](mailto:slouden@millerpipeline.com)

4. Officers Assigned to Event, Rank: 1 Officer

Contractor and the City agree, except as modified by this First Amendment, the Agreement shall remain in full force and effect.

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

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

**CITY OF DAYTON**

**MILLER PIPELINE**

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

\_\_\_\_\_  
Shannon Louden, Foreman

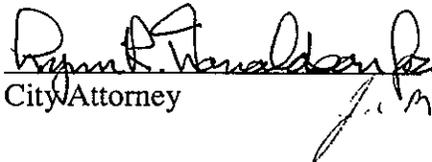
Phone: (614) 484-9233

Federal I.D. Number: 31-0883529

**APPROVED BY:**

\_\_\_\_\_  
Director and Chief of Police

**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



# City Manager's Report

**From** 3421 - Water/WIMS

**Date** August 17, 2016

**Expense Type** Service Agreement

**Supplier, Vendor, Company, Individual**

**Total Amount** \$186,791.00 (through 2/2017)

**Name** Woolpert, Inc

**Address** 4454 Idea Center Boulevard  
Dayton, Ohio 45430

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016 Water Technology Fund	53100-3421-1414-54 TF1601	\$50,000.00
2016 Sanitary Technology Fund	55100-3421-1414-54 TF1601	\$50,000.00
2016 Storm Technology Fund	58100-3421-1414-54 TF1601	\$70,471.00
2016 DIA Airport Operations Fund	51000-3210-1151-43	\$16,320.00

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

**Description**

## PLANIMETRIC MAPPING PROJECT

The Department of Water requests permission to enter into an Agreement with Woolpert, Inc. in the amount of \$186,791.00 for services for the Planimetric Mapping Project. This project consists of feature data collection to capture current structures (manmade and natural). The last update of the base map was done in 2000. Features on the base map include roadways, highways, streets, edge of pavement, curbs, building footprints, bike trails, bodies of water, and bridges. In addition, Aviation will receive features specific to the Wright Brothers Airport. The base map update will be used by all City Departments, for the purposes of infrastructure management, water utilities planning, environmental planning and issue mitigation, transportation, logistics and public safety.

In early 2015, the City of Dayton issued an Intergovernmental Agreement for the Montgomery County Engineers office Orthoimagery Aerial Photographs Project. Woolpert, Inc. is nearing completion of that project and the City of Dayton can benefit from the additional Planimetric Mapping Project services Woolpert, Inc. can provide based on the state-term pricing as covered by the Ohio Statewide Imagery Program (OSIP) (CSP#0A1078).

The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on February 28, 2017.

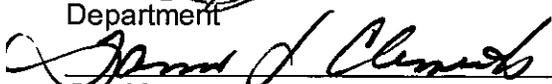
The Agreement has been reviewed by the Law Department as to form and correctness. A Certificate of Funds for the total contract amount and a copy of the Agreement are attached.

**Signatures/Approval**

*Approved by City Commission*

Division \_\_\_\_\_

Department \_\_\_\_\_

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

Clerk \_\_\_\_\_

Date \_\_\_\_\_



## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, dated this \_\_\_\_ day of \_\_\_\_\_, 2016 is between the City of Dayton, Ohio (“City”) and Woolpert, Inc. (“Consultant”), 4454 Idea Center Boulevard, Dayton, Ohio 45430.

### **WITNESSETH:**

**WHEREAS**, The City wishes to utilize extended services related to the Ohio Statewide Imagery Program (OSIP) for a Planimetric Mapping Project; and

**WHEREAS**, Consultant was selected by the State of Ohio to perform such services, setting forth that it is experienced and qualified to provide the services, and willing to provide such professional services to the City, a copy of which response is attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, Consultant is qualified and available to provide the Services to the City.

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

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

This Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds provided herein or on February 28, 2017, whichever date is earlier. The City, however, reserves the right to extend the term of this Agreement to a later date by mutual written agreement, as described in Article 10.

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

Consultant shall provide all professional services for the Dayton Planimetric Mapping Project, hereinafter referred to as the Project, described in Exhibit A. Consultant shall have no liability for defects in the Services attributable to Consultant’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City or third parties retained by City. The final documents and media, including compiled data, become the property of City upon payment.

In performing the Services, Consultant shall utilize the services of competent and, where appropriate, licensed professionals, and warrant and represent that all Services will be performed in accordance with that standard of care ordinarily exercised by members of the same profession currently practicing under similar circumstances and in accordance with all applicable federal, state, local, and other laws, ordinances, codes, and regulations.

#### **ARTICLE 3. COMPENSATION**

The City shall pay Consultant a sum not to exceed ONE HUNDRED EIGHTY-SIX THOUSAND SEVEN HUNDRED NINETY-ONE DOLLARS AND ZERO CENTS (\$186,791.00) for all services to be provided by Consultant pursuant to this Agreement. Consultant shall submit invoices for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

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

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

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

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

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

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

Consultant shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees, from and against all claims, losses, damages, and expenses, which shall include reasonable attorney's fees, for bodily injury, death, or third party damage to the extent such claims, losses, damages, or expenses are caused by Consultant's negligent or willful acts, errors, or omissions.

To the fullest extent permitted by law: (1) Consultant's liability to the City for all claims, losses, damages, and expenses resulting in any way from the performance or non-performance of the Services shall not exceed the total compensation actually received by Consultant under this Agreement; and, (2) neither party to this Agreement shall be liable to the other party for any special, incidental, indirect or consequential damages of any kind, that may result from this Agreement.

This Article 6 shall survive termination of this Agreement.

#### **ARTICLE 7. INSURANCE**

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

- (1) General liability insurance, having a limit of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate.
- (2) 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
- (3) Employer's liability insurance, having a limit of Five Hundred Thousand Dollars (\$500,000) for each occurrence.
- (4) Professional liability insurance, having a limit of One Million Dollars (\$1,000,000) annual aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Consultant's legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage and ten (10) days' notice for cancellation for non-payment of premiums. In the event of a claim, Consultant shall make copies of applicable insurance policies available for review by the City.

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

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

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

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

## **ARTICLE 9. TERMINATION**

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

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

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

## **ARTICLE 10. STANDARD TERMS**

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

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

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

### **B. GOVERNING LAW**

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

### **C. COMMUNICATIONS**

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

Consultant: Woolpert, Inc.  
4454 Idea Center Boulevard  
Dayton, Ohio 45430  
Attention: Mr. Brian Stevens, Project Manager

City: City of Dayton, Department of Water  
320 West Monument Avenue  
Dayton, Ohio 45402  
Attention: Mr. Steve Hill, GIS Coordinator

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

#### **D. EQUAL EMPLOYMENT OPPORTUNITY**

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

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

#### **E. WAIVER**

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

#### **F. SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

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

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

Consultant, its employees and any persons retained or hired by Consultant to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of

Dayton. Further, Consultant shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

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

#### **H. ASSIGNMENT**

Neither party shall not assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Consultant from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

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

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

#### **J. AMENDMENT**

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

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

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

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

#### **L. INTEGRATION**

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

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

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

CITY OF DAYTON, OHIO

WOOLPERT, INC.

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

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

Title: \_\_\_\_\_

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

APPROVED:

\_\_\_\_\_  
Director, Department of Water

APPROVED AS TO FORM  
AND CORRECTNESS:

  
City Attorney

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

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

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

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

EXHIBIT A

WOOLPERT, INC.



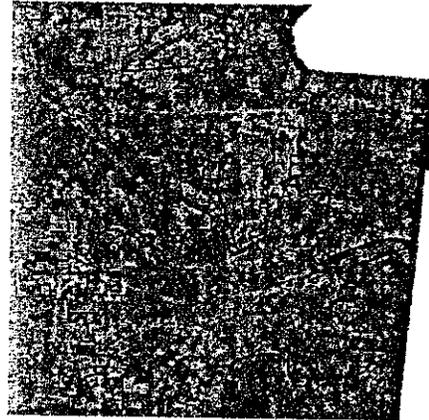
May 2, 2016

Mr. Steve Hill, GISP  
GIS Coordinator  
City of Dayton  
Water Department  
GIS Services  
320 W. Monument Ave.  
Dayton, Ohio 45402

**RE: 2016 City of Dayton Planimetric Mapping Project**

Dear Mr. Hill:

Woolpert is pleased to submit our scope and fee proposal for the 2016 City of Dayton Planimetric Mapping Project. The proposed planimetric base mapping will be contracted through the Ohio Statewide Imagery Program (CSP#0A1078) under the Landuse/Landcover Category.

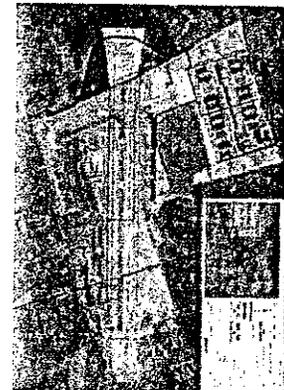


### Project Boundary

The image to the right depicts the 2016 City of Dayton Project Boundary in red. In addition to Dayton Proper, the Dayton International Airport and the Wright Brothers Airport are also included in this project. Area totals are as follows, City of Dayton (~52.0 square miles), the Dayton International Airport (~4.75 square miles) and the Wright Brothers Airport (~1.0-square miles). In total, the project area is comprised of approximately 57.75 square miles.

### Aerial Imagery

Woolpert will use the newly acquired 2016 4-band, 8-bit aerial imagery for Montgomery County, Ohio for the creation of the planimetric features. This aerial imagery was acquired at a 3-inch pixel resolution during leaf-off conditions, has an average sidelap of 30% and supports the generation of project area wide 1"=50' scale planimetric mapping and optional updating of existing 2-foot contours.



Woolpert, Inc. . . . .  
4454 Idea Center Boulevard . . . . .  
Dayton, Ohio 45430-1500 . . . . .  
937.461.5660 . . . . .

## Ground Control

Woolpert utilized a combination of existing ground control established for previous projects and new control where needed to support 1"=50' scale base mapping. Woolpert will supply a control diagram to the City of Dayton depicting the locations of the new horizontal and vertical GPS control points. Each new control point (if necessary) will consist of a photo identifiable point (i.e. north edge of sidewalk at east edge of paved driveway).

## Planimetric Mapping

Woolpert will produce project area wide (+/-57.75 square miles plus a 50' buffer) 1"=50' scale planimetric mapping of selected base map features via traditional stereo compilation and automated feature extraction. Features to be collected include: streets and alleys, building outlines (100 square feet and larger), bridges, railroads, trails/bike-paths and hydrographic features. The hydrographic features to be extracted include: streams, rivers, ponds, lakes and reservoirs. Streams and rivers will be digitized in the direction of flow and those greater than 8-feet in width will be depicted with both edges collected and provided as closed polygons. Streams under 8-feet in width will be shown as a single line. Standing water bodies that are identified as permanent will be collected. Ditches will not be collected. Lakes and ponds will be collected as closed polygons.

The following is the complete list of features to be collected. Each feature type may have one attribute and domain value assigned. This attribute and domain value will be the same for every entity of that feature type.

### BASE FEATURES

#### BUILDINGS AND STRUCTURES

- 101 BLDG
- 102 SEC STRUCTURE (TRAILERS IF NEEDED)
- 103 BLDG FOUNDATION (under construction)

#### ROADWAYS/RAILROADS

- 201 BRIDGES & OVERPASSES
- 202 EDGE PAV ROAD
- 203 EDGE UNPAV ROAD
- 204 CURB ROAD
- 208 TRAIL/BIKEPATH
- 214 RR (CL)

#### ROADWAYS/RAILROADS (Continued)

- 235 PAVED ALLEY
- 236 UNPAVED ALLEY
- 256 RR BRIDGE
- 262 TRAIL/BIKEPATH BRIDGE

#### HYDROLOGY

- 502 STREAM/RIVER SGL LINE
- 519 STREAM/RIVER CENTERLINE
- 520 LAKES
- 522 STREAM/RIVER DOUBLE LINE
- 548 POND

The building outlines will be created through automated feature extraction. After creation, these outlines will undergo multiple quality control processes, once by the remote sensing group that created the outlines and the second review will occur during stereo collection of the other planimetric features. The building outlines will be superimposed over the stereo imagery allowing for both content and accuracy review of the data. Any building that intersects the 50' corporation buffer will be collected in its entirety when practical.

Roadways will be collected from edge of pavement to edge of pavement, paint lines will not be used to define edge of road or traveled way. Curbs will be collected for roadways and will be duplicated for use as edge of pavement to complete roadway polygons.

All features excluding building outlines will be collected through traditional stereo compilation techniques. Technicians will display the new 2016 stereo imagery in DAT/EM's Summit Evolution software and in tandem with Bentley's MicroStation, will extract the remaining features.

In addition to the base mapping features described above, the following will also be produced for the Wright Brothers Airport (not included for the Dayton International Airport):

- |                                   |                         |
|-----------------------------------|-------------------------|
| -Aircraft Gate Stand              | -Stopway                |
| -Air Operations Area (not on ALP) | -Taxiwayelement         |
| -Apron                            | -TaxiwayHoldingPosition |
| -Bridge                           | -TaxiwayIntersection    |
| -Building                         | -Tower                  |
| -ConstructionArea                 | -MarkingArea            |
| -Fence                            | -MarkingLine            |
| -Gate                             | -Runway                 |
| -Parking Lot                      | -RunwayCenterline       |
| -RailroadCenterLine               | -RunwayElement          |
| -Road Segment (Edge of road)      | -RunwayEnd              |
| -Passenger Loading Bridge         |                         |
| -RunwayBlastPad                   |                         |
| -RunwayIntersection               |                         |
| -RunwayLabel                      |                         |
| -Shoulder                         |                         |
| -Sidewalk                         |                         |

## Deliverables

Woolpert will deliver the data in ESRI file geodatabase format. The features listed above will be put in the appropriate feature classes as defined by the City of Dayton's current standard (excluding the ALP dataset for the Wright Brothers Airport). Data will be polylines and polygons as appropriate, in some cases, roadway features may be duplicated. An example would be curbing polyline and road edge of pavement polygon.

## Schedule

The project will be initiated August 1, 2016 and completed on or before February 28, 2017.

## Estimated Fee

City of Dayton Areas (approximately 57.75 square miles in size)

Planimetric Base Mapping Features (Dayton).....	\$170,471.00
Planimetric Base Mapping Features (Dayton Airport).....	\$9,110.00
Planimetric Base Mapping Features (Wright Brothers Airport).....	\$7,210.00

The estimated fees above may be reduced provided there is an increase in the number of Montgomery County municipalities participating in Planimetric Mapping Projects.

We appreciate the opportunity to present this price proposal and look forward to working with you and your team. If you have any questions or need further clarification regarding the above, please call me at 614.827.6155. I can also be reached via my e-mail address: [brian.stevens@woolpert.com](mailto:brian.stevens@woolpert.com).

Sincerely,

**WOOLPERT, INC.**



Brian Stevens, CP, GISP  
Project Manager



# City Manager's Report

6.

From 2510 - Municipal Court

Date August 17, 2016

Expense Type Service Agreement

Total Amount \$56,484.00 (through 6/30/17)

Supplier, Vendor, Company, Individual

Name Alcohol, Drug Addiction & Mental Health Services Board

Address 409 E. Monument Avenue  
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Specialized Probation Officer	22114-2510-22606-74	\$56,484.00

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

Description

## MEMORANDUM OF UNDERSTANDING

The Dayton Municipal Court is requesting approval of a Memorandum of Understanding with the Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS) to provide funding for a Specialized Probation Officer assigned to the Mental Health Court.

The Dayton Regional Mental Health Court provides services for all seven Municipal Courts within Montgomery County.

The Court has received funding from ADAMHS since 2008 for the Specialized Probation Officer.

Term of this fiscal contract is one year effective July 1, 2016 through June 30, 2017.

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

A signed Certificate of Revenue is attached.

Signatures/Approval

Municipal Court  
Division

Ann Marie Murray  
Department

Ann Marie Murray  
City Manager

Approved by City Commission

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

# CERTIFICATE OF REVENUE

## TO BE COMPLETED BY THE DEPARTMENT

**Customer Information:** Name Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS)  
Address 409 E. Monument Ave.  
City Dayton State Ohio Zip+4 45402 -       
Customer # @00003795 Address Location # 01  
Federal ID# 31-6060172

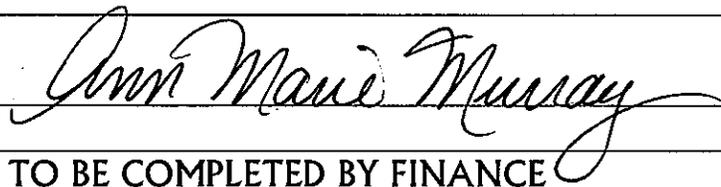
**Revenue Information:** Fund 22114 Org 2510 Rev 22606 Prog 74 Actv     

**Contract Information:** Contract Start Date 7/01/16 Contract Expiration Date 6/30/17

**Billing Information:** Rate: See below Arrears      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)       
Annual (1<sup>st</sup> month of billing) \$56,484.00  
Other (explain)       
Rate Change Date      Rate Change Amount     

**Description of Services (wording on invoice):** to provide funding for a Specialized Probation Officer assigned to the Dayton Regional Mental Health Court.

Departmental Approval



## TO BE COMPLETED BY FINANCE

City Reference Number 11-3795-1 Auditor Ken Brown Date 9/3/16

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





# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**ALCOHOL DRUG ADDICTION AND MENTAL HEALTH  
SERVICES BOARD FOR MONTGOMERY COUNTY**

**AND**

**DAYTON MUNICIPAL COURT**

**FOR**

**SPECIALIZED PROBATION OFFICER**

**SFY17**

**JUNE 22, 2016**

**ADAMHS BOARD**

**409 E. MONUMENT AVE. SUITE 102, DAYTON, OHIO 45402**

## AGREEMENT

This Agreement, made and entered into at Dayton, Montgomery County, Ohio between the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County, hereinafter referred to as "Board" and Dayton Municipal Court, hereinafter referred to as "Court" for the provision of a Specialized Probation Officer for countywide Mental Health Court. In consideration of the mutual covenants and Agreements contained herein, the parties hereto agree as follows:

### TERMS OF AGREEMENT

**1. Term:**

The term of this Agreement shall commence on July 1, 2016 and shall conclude on June 30, 2017 unless sooner terminated as hereinafter provided.

**2. Payment for Services:**

Board shall allocate \$56,484.00 to fund the Specialized Probation Officer assigned to the countywide Mental Health Court of the Dayton Municipal Court for the SFY17 period.

Any Court employee who handles or is responsible for the handling of funds from the Board shall be bonded by a reputable fidelity insurance carrier.

**3. Dayton Municipal Court's Probation Department:**

1. Employ a full time Specialized Probation Officer to provide court supervision of those individuals who are eligible and/or participate in the countywide Mental Health Court for the period July 1, 2016 through June 30, 2017.
2. Ensure the assigned Specialized Probation Officer coordinates access to other probation services and other designated services for the identified offender(s).
3. Actively participate in agreed upon meetings, case conferences, and other activities identified by the Mental Health Court Roundtable Members, including collaboration with the offender and his/her mental health treatment team, in order to assist with the offender's Recovery and Supervision Plan.
4. Ensure that the Specialized Probation Officer and other Probation staff, as applicable, participate in ongoing training and consultation regarding serving the offenders assigned to the Mental Health Court.
5. Ensure access to the assigned Court data to assist with outcome studies and/or evaluation of the Mental Health Court.

**4. Confidentiality of Consumer Information and HIPAA Compliance:**

The Court agrees that any consumer protected health information that it receives or generates shall be treated in such a manner as to assure confidentiality. The Agency further agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other applicable or superseding federal or state regulations adopted in furtherance of maintaining privacy of protected health information.

The parties shall cooperate in implementing requirements imposed upon them by HIPAA. Each party shall take necessary reasonable steps to comply with HIPAA requirements, including the following:

1. If one of the parties agrees to use or disclose protected health information on behalf of the other party, both parties will enter into a business associate agreement prior to such use or disclosure. The elements of such agreements shall conform to HIPAA requirements.

Upon request of the Board, the Provider shall distribute the Board's HIPAA notice to consumers who have received or will receive services funded through the Board from the Provider.

2. The parties shall cooperate in determining how information will be transmitted to conform with requirements related to electronic data interchange (EDI). If necessary, the parties will enter into a Trading Partner Agreement, which defines the duties of the parties for EDI transmissions.

The parties shall cooperate in assessing joint security issues in order to allow the parties to conform to security requirements. If necessary, the parties will enter into appropriate agreements in accordance with HIPAA requirements which will address joint security issues.

**5. Subcontracting:**

The Court shall not subcontract for any part of its Program without the written consent of Board. The Board agrees that any consent shall not be unreasonably withheld.

In the event of any such subcontract, the Agreement shall be in writing and shall have the consent of the Board endorsed thereon. Any subcontract shall incorporate the Court's contract with the Board by reference and have a copy attached thereto as an exhibit.

The Court shall advise any subcontractor of the policies and procedures of the Board and call its attention to the fact that the terms of this contract require cooperation with other Agencies of the Board as well as with other Agencies of the city, county and district to assure coordination of programs and services in meeting the needs of the community, to prevent duplication of services and to promote a high standard of service, efficiency and economy.

The Court agrees to cooperate with Board's designated agencies to carry out the statutory duties and responsibilities imposed upon Board by R.C. 340 and R.C. 3793.

**6. Assignment of Monies Due:**

The Court's claim for monies due hereunder is non-assignable except with the written consent of the Board. Any assignment of monies due hereunder which was made without such consent is void and the assignee in such case shall not acquire any rights against the Board.

**7. Non-Discrimination:**

The Court shall not discriminate in its provision of services to persons under this Agreement on the basis of race, color, sex, creed, sexual orientation, religion, national origin, HIV status, inability to pay, or disability. The Court shall render services to such persons in the same manner, in accordance with the same standards, and within the same time availability as offered all persons.

**8. Drug Free Workplace Policy:**

The Court shall develop and implement a drug free workplace policy in compliance with the Federal Drug Free Workplace Act of 1988.

**9. Fiscal Accountability:**

Court agrees that all funds which it receives hereunder shall be subject to both a financial and a compliance audit. Court's auditor shall provide a copy of its audit of the Court directly to Board, Court hereby waives any privilege or confidentiality, and should Board request, Court's auditor shall meet with the Executive Director of the Board, or his designee, for the purpose of discussing the results of the audit.

The Executive Director of the Board will meet with the auditor upon the completion of the audit for the purpose of receiving and reviewing the audit report. Court agrees to make such modification to its financial records and record-keeping processes as may be recommended by the auditor and thereafter required by the Board.

**10. Agreement to Perform:**

The parties, for themselves, their successors and assigns do hereby agree to the full performance of the covenants herein contained.

**11. Notices:**

Any notice required to be given by either party hereto to the other by the terms hereof, must either be served upon the Executive Director or in the Executive Director's absence, upon the

Dayton Municipal Court (Specialized PO)  
BOARD RESOLUTION #16-015

person in charge, personally, or be sent to the other party by certified or registered mail thereon, after the term of this Agreement, or any extension thereof, has concluded.

**12. Claims by Either Party against the Other:**

If either the Court or the Board believes it has a claim of any nature whatsoever against the other, it shall give the other party written notice of the amount and nature of such claim within 15 days (or such other time limit as may otherwise be expressly set forth in the Agreement) of the occurrence of the event upon which such claim is based, or within 15 days of receipt of actual notice.

**13. Law Applicable:**

The laws of the State of Ohio shall govern all matters relating to the validity, performance, interpretation, or construction of this Agreement or the breach thereof.

**14. Amendment:**

The Court and the Board agree that this Agreement shall only be modified in writing signed by both parties.

**15. Evaluation:**

All parties to this agreement will evaluate the services provided by the Specialized Probation Officer annually so that data-driven decisions may be made to modify/change the Specialized Probation Officer position or this Memorandum of Agreement.

Each party shall be responsible for the actions of their respective employees and agents in the provision of services hereunder, and no party shall bear responsibility for the acts or omission of any other party in the provision of services hereunder.

**16. Settlement of Accounts:**

Court agrees that within forty-five (45) days of the conclusion of the term of this Agreement, whether by termination notice from Board or by the expiration of the term, it will return to Board any funds which have been advanced to it but which remain unspent and unencumbered.

In the event that the financial and compliance audit indicates there are any additional funds owed to Board by the Court or that there are any funds owed to the Court from Board, said money shall be paid within seven (7) days of the issuance of the auditor's report.





# City Manager's Report

7

From 2510 - Municipal Court

Date August 17, 2016

Expense Type Service Agreement

Total Amount \$15,000.00 (through 6/30/17)

Supplier, Vendor, Company, Individual

Name Alcohol, Drug Addiction & Mental Health Services Board

Address 409 E. Monument Avenue,  
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
General Operating	10000-2510-22606-74	\$15,000.00

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

Description

## MEMORANDUM OF UNDERSTANDING

The Dayton Municipal Court is requesting approval of a Memorandum of Understanding with the Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS) to provide funding for psychological services provided to probationers conducted by (Vendor) Dr. Stephen McConnell.

The Court has received funding from ADAMHS since 2010 for these services.

Term of this fiscal contract is one year effective July 1, 2016 through June 30, 2017.

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

A signed Certificate of Revenue is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

Clerk

Date

# CERTIFICATE OF REVENUE

## TO BE COMPLETED BY THE DEPARTMENT

**Customer Information:** Name Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS)  
Address 409 E. Monument Ave.  
City Dayton State Ohio Zip+4 45402 -  
Customer # @00003795 Address Location # 01  
Federal ID# 31-6060172

**Revenue Information:** Fund 10000 Orgn 2510 Rev 22606 Prog 74 Actv \_\_\_\_\_

**Contract Information:** Contract Start Date 7/01/16 Contract Expiration Date 6/30/17

**Billing Information:** Rate: See below Arrears \_\_\_\_\_ 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) \_\_\_\_\_  
Annual (1<sup>st</sup> month of billing) \$15,000  
Other (explain) \_\_\_\_\_  
Rate Change Date \_\_\_\_\_ Rate Change Amount \_\_\_\_\_

**Description of Services (wording on invoice):** to provide funding for psychological services provided to probationers conducted by (Vendor) Dr. Stephen McConnell.

Departmental Approval

Ann Marie Murray

## TO BE COMPLETED BY FINANCE

City Reference Number 11-3795-2 Auditor Kera Brown Date 8/8/16

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

[Signature]



# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**ALCOHOL DRUG ADDICTION AND MENTAL HEALTH  
SERVICES BOARD FOR MONTGOMERY COUNTY**

**AND**

**DAYTON MUNICIPAL COURT**

**FOR**

**FORENSIC**

**SFY17**

**JUNE 22, 2016  
ADAMHS BOARD  
409 E. MONUMENT AVE. SUITE 102, DAYTON, OHIO 45402**

## AGREEMENT

This Agreement, made and entered into at Dayton, Montgomery County, Ohio between the Alcohol, Drug Addiction and Mental Health Services Board for Montgomery County, hereinafter referred to as "Board" and Dayton Municipal Court, hereinafter referred to as "Court." In consideration of the mutual covenants and Agreements contained herein, the parties hereto agree as follows:

### TERMS OF AGREEMENT

**1. Term:**

The term of this Agreement shall commence on July 1, 2016 and shall conclude on June 30, 2017 unless sooner terminated as hereinafter provided.

**2. Payment for Services:**

Board shall allocate \$15,000.00 for the purposes of funding psychological services at the court. Any Court employee who handles or is responsible for the handling of funds from the Board shall be bonded by a reputable fidelity insurance carrier.

**3. Delivery of Services:**

The Court agrees to carry on the Programs in a prompt and diligent manner so as to insure the uninterrupted delivery of services. The Court agrees that it will deliver the services in a skillful, professional and expeditious manner, with a sufficient number of properly trained employees, the proper equipment, facilities and supplies and all other things necessary to insure the uniform, efficient and skillful delivery of services in a manner which will enable the Court to accomplish the Program in conformity with the representations contained in the Grant Proposal.

**4. Liability and Responsibility:**

The Court hereby assumes the entire responsibility and liability for any and all claims, damages or injury of any kind or nature whatever (including death resulting there from) made by any person, caused by, resulting from, arising out of or occurring or relating to the services offered in this Agreement.

**5. Expenditure of Allocation:**

The Court shall use these funds only for the purpose stated in the Proposal.

**6. Disbursement Procedure:**

Payment will be disbursed quarterly on a cost reimbursement basis. All invoices submitted to Board must be itemized invoices, detailing a full accounting of all expenses incurred during the previous quarter for the services rendered under this Agreement.

**7. Verification and Inspection:**

Court shall, if requested by the Board, permit the Executive Director of the Board, or his designee, access to the premises upon which the Program is being carried out, during normal business hours, and promptly furnish to the Board any books, records, reports or any other data which may be necessary, in the opinion of the Executive Director or the Board, to assure the Board of the proper implementation of the Program.

**8. Acceptance of the Program:**

No partial payment made under this Agreement shall be conclusive evidence of the Board's approval of the services rendered by the Court, in whole or in part.

**9. Improper Expenditure:**

Court shall not use any funds allocated to it by the Board for any purpose that does not appear in the application for funding. No part of these funds (federal, state, or local levy) shall be used for partisan political purposes of any kind by any person or Court involved in the administration of the Programs under this Agreement.

It is further agreed that in the event that the Board determines that the Court has made an improper expenditure, the Court shall, upon demand therefore by the Board, immediately replace the funds improperly spent. In the event that the funds are not immediately replaced, the Board may reduce any remaining allocations to the Court by an amount equal to the expenditure and any such action taken by the Board shall not be deemed to be a waiver of any other remedy available to the Board by the terms of this Agreement. The Board's determination that an expenditure is improper shall be conclusive as long as it is consistent with the Rules of the Department; the Board's Policies, the State and County Auditor's Rules and Regulations, and State and Federal law, rules and regulations.

**10. Compensation of Court's Employees:**

It is expressly understood that employees of the Court are not employees of the Board or of the State of Ohio.

**11. Equal Opportunity.**

The Court agrees to comply with the Equal Opportunity Act and the guidelines and directives promulgated by the Departments if any, in the recruitment and/or employment of all Court personnel or consultants; the Court agreeing that it will not discriminate against any applicant

Dayton Municipal Court (Forensic)  
BOARD RESOLUTION #16-014

for employment, employees or consultants because of race, religion, color, sex, age, sexual orientation, disability, national origin or HIV status.

**12. Confidentiality of Consumer Information and HIPAA Compliance:**

The Court agrees that any consumer protected health information that it receives or generates shall be treated in such a manner as to assure confidentiality. The Agency further agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other applicable or superseding federal or state regulations adopted in furtherance of maintaining privacy of protected health information.

The parties shall cooperate in implementing requirements imposed upon them by HIPAA. Each party shall take necessary reasonable steps to comply with HIPAA requirements, including the following:

1. If one of the parties agrees to use or disclose protected health information on behalf of the other party, both parties will enter into a business associate agreement prior to such use or disclosure. The elements of such agreements shall conform to HIPAA requirements.

Upon request of the Board, the Provider shall distribute the Board's HIPAA notice to consumers who have received or will receive services funded through the Board from the Provider.

2. The parties shall cooperate in determining how information will be transmitted to conform with requirements related to electronic data interchange (EDI). If necessary, the parties will enter into a Trading Partner Agreement, which defines the duties of the parties for EDI transmissions.

The parties shall cooperate in assessing joint security issues in order to allow the parties to conform to security requirements. If necessary, the parties will enter into appropriate agreements in accordance with HIPAA requirements which will address joint security issues.

**13. Subcontracting:**

The Court shall not subcontract for any part of its Program without the written consent of Board. The Board agrees that any consent shall not be unreasonably withheld.

In the event of any such subcontract, the Agreement shall be in writing and shall have the consent of the Board endorsed thereon. Any subcontract shall incorporate the Court's contract with the Board by reference and have a copy attached thereto as an exhibit.

The Court shall advise any subcontractor of the policies and procedures of the Board and call its attention to the fact that the terms of this contract require cooperation with other Agencies of the Board as well as with other Agencies of the city, county and district to assure coordination of

Dayton Municipal Court (Forensic)  
BOARD RESOLUTION #16-014

programs and services in meeting the needs of the community, to prevent duplication of services and to promote a high standard of service, efficiency and economy.

The Court agrees to cooperate with Board's designated agencies to carry out the statutory duties and responsibilities imposed upon Board by R.C. 340 and R.C. 3793.

**14. Assignment of Monies Due:**

The Court's claim for monies due hereunder is non-assignable except with the written consent of the Board. Any assignment of monies due hereunder which was made without such consent is void and the assignee in such case shall not acquire any rights against the Board.

**15. Non-Discrimination:**

The Court shall not discriminate in its provision of services to persons under this Agreement on the basis of race, color, sex, creed, sexual orientation, religion, national origin, HIV status, inability to pay, or disability. The Court shall render services to such persons in the same manner, in accordance with the same standards, and within the same time availability as offered all persons.

**16. Drug Free Workplace Policy:**

The Court shall develop and implement a drug free workplace policy in compliance with the Federal Drug Free Workplace Act of 1988.

**17. Fiscal Accountability:**

Court agrees that all funds which it receives hereunder shall be subject to both a financial and a compliance audit. Court's auditor shall provide a copy of its audit of the Court directly to Board, Court hereby waives any privilege or confidentiality, and should Board request, Court's auditor shall meet with the Executive Director of the Board, or his designee, for the purpose of discussing the results of the audit.

The Executive Director of the Board will meet with the auditor upon the completion of the audit for the purpose of receiving and reviewing the audit report. Court agrees to make such modification to its financial records and record-keeping processes as may be recommended by the auditor and thereafter required by the Board.

**18. Agreement to Perform:**

The parties, for themselves, their successors and assigns do hereby agree to the full performance of the covenants herein contained.

**19. Notices:**

Any notice required to be given by either party hereto to the other by the terms hereof, must either be served upon the Executive Director or in the Executive Director's absence, upon the person in charge, personally, or be sent to the other party by certified or registered mail thereon, after the term of this Agreement, or any extension thereof, has concluded.

**20. Claims by Either Party against the Other:**

If either the Court or the Board believes it has a claim of any nature whatsoever against the other, it shall give the other party written notice of the amount and nature of such claim within 15 days (or such other time limit as may otherwise be expressly set forth in the Agreement) of the occurrence of the event upon which such claim is based, or within 15 days of receipt of actual notice.

**21. Law Applicable:**

The laws of the State of Ohio shall govern all matters relating to the validity, performance, interpretation, or construction of this Agreement or the breach thereof.

**22. Amendment:**

The Court and the Board agree that this Agreement shall only be modified in writing signed by both parties.

**23. Unused Allocation:**

The balance of the Board's allocation to the Court as specified previously in this Agreement, which has not been accrued or expended at the conclusion of this Agreement as stated in paragraph 1 shall be reconciled by Court and returned to Board.

**24. Settlement of Accounts:**

Court agrees that within forty-five (45) days of the conclusion of the term of this Agreement, whether by termination notice from Board or by the expiration of the term, it will return to Board any funds which have been advanced to it but which remain unspent and unencumbered.

In the event that the financial and compliance audit indicates there are any additional funds owed to Board by the Court or that there are any funds owed to the Court from Board, said money shall be paid within seven (7) days of the issuance of the auditor's report.



# City Manager's Report

8



From 6450 - PW/Civil Engineering

Date August 17, 2016

Expense Type Development Agreement

Total Amount N/A

**Supplier, Vendor, Company, Individual**

Name Friends of Levitt Pavilion Dayton  
Address 2312 Far Hills Avenue, Suite 194 Dayton, OH 45419

Mortimer & Mimi Levitt Foundation.  
1910 West Sunset Boulevard, Suite 600 Los Angeles, CA 90026

Fund Source(s)	Fund Code(s)	Fund Amount(s)
N/A	N/A	N/A

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

**Description**

**Tri-Party Agreement – Friends of Levitt Pavilion Dayton and Mortimer & Mimi Levitt Foundation**

The Department of Public Works requests approval to enter into a Tri-Party Agreement with Friends of Levitt Pavilion Dayton and the Mortimer & Mimi Levitt Foundation for the design, construction, and operation of a permanent Levitt venue at the site of the existing Dave Hall Plaza.

The Mortimer & Mimi Levitt Foundation owns the publication and trademark rights associated with the Levitt name and sponsors Levitt venues across the country. The Levitt venues are managed, programmed, and supported by local Friends of Levitt non-profits – in this case Friends of Levitt Pavilion Dayton. The Levitt venue will be located on property owned by the City of Dayton, at existing Dave Hall Plaza. The City will manage the design and construction of the Levitt venue.

The City is providing partial funding for the design, construction, and construction administration for the building of the Levitt venue; Friends of Levitt Pavilion Foundation has committed to raising private funds for the construction of the Levitt venue; and the Mortimer and Mimi Levitt Foundation has committed funding for the operation, program support, and capacity building grants during the agreement term.

The Tri-Party Agreement commences upon execution and the term of the agreement is 50 years.

The Department of Law has approved the Tri-Party Agreement as to form and correctness.

A copy of the Tri-Party Agreement is attached.

**Signatures/Approval**

*Approved by City Commission*

Division \_\_\_\_\_

Department \_\_\_\_\_

*[Signature]*  
City Manager

Clerk \_\_\_\_\_

Date \_\_\_\_\_

**LEVITT TRI-PARTY AGREEMENT  
FOR DEVELOPMENT AND OPERATION OF A LEVITT PAVILION  
FRIENDS OF LEVITT PAVILION/CITY/MORTIMER & MIMI LEVITT FOUNDATION**

THIS AGREEMENT ("**Agreement**") is made and entered into as of the Date of Countersignature set forth on the City's signature page below (the "**Effective Date**"), by and among the CITY OF DAYTON, OHIO, an Ohio municipal corporation (the "**City**"), FRIENDS OF LEVITT PAVILION DAYTON, an Ohio non-profit corporation ("**Levitt Dayton**"), and the MORTIMER & MIMI LEVITT FOUNDATION, a New York not-for-profit corporation (the "**Foundation**"). Levitt Dayton and the Foundation are referred to herein individually as a "**Levitt Party**" or collectively as the "**Levitt Parties**." The City, Levitt Dayton, and the Foundation are referred to herein individually as a "**Party**" or collectively as the "**Parties**."

**RECITALS.**

A. The Foundation is a private family foundation founded in 1963 by Mortimer and Mimi Levitt to support the arts, culture and education. Today, the main philanthropy of the Foundation is to support access to the performing arts for the benefit of the public through various programs, including the development and support of outdoor performance venues, each individually known as Levitt Pavilion or Levitt Shell ("**Levitt Venue(s)**") across the United States; and

B. The Foundation is the owner of rights of publicity and trademark rights associated with the LEVITT name and mark, the LEVITT FOUNDATION mark, the LEVITT FOUNDATION & Design mark, the LEVITT PAVILION and LEVITT SHELL marks and the LEVITT PAVILIONS & Design mark (collectively "**LEVITT Name and Marks**") in connection with, *inter alia*, its programs and the Levitt Network (defined below); and

C. Levitt Venues are a growing national network of outdoor performance venues with free programming for the benefit of the public. Levitt Venues are publicly owned facilities located in public spaces, typically parks, with locations across the United States, including Westport, Connecticut; Los Angeles and Pasadena, California; Bethlehem, Pennsylvania; Memphis, Tennessee; Arlington, Texas; and Denver, Colorado, which is scheduled to open in 2017; as well as other locations in early stages of development (collectively, the "**Levitt Network**"). Levitt Venues are reflective of their respective communities and connected by their common purpose of providing free performances and professional concerts for the benefit of the public, mutual support, national recognition, and the assistance they receive from the Foundation; and

D. Each Levitt Venue is managed, programmed and supported by a local Friends of Levitt 501(c)(3) non-profit organization that operates according to the best practices and standards set forth by the Foundation. Friends of Levitt organizations are connected by their common purpose of providing a minimum of fifty (50) free performances and professional concerts annually for the benefit of the public, mutual support, national recognition, and the assistance they receive from the Foundation; and

E. Levitt Dayton has been organized and incorporated as an Ohio non-profit corporation to program, and raise funds for such programming, and to operate a Levitt Venue to be constructed within

the Property (defined below), and to raise funds for the construction of a Levitt Venue consistent with the requirements of this Agreement; and

F. Dave Hall Plaza (the "Site") is a property owned by the City and is located on South Main Street between Fourth and Fifth Streets in downtown Dayton, Ohio. The Site is approximately three (3) acres in size.

G. The Parties believe that the Site is an ideal location for the development and operation of a Levitt Venue, and the Levitt Parties have determined that the Site meets all of their site requirements for developing and operating a Levitt Venue; and

H. The City intends to improve and maintain public areas in the Site within the Property for free public use and benefit; and

I. The Parties recognize that the design of the Site and Levitt Pavilion (defined below) is required to meet the minimum requirements of the Site and Structure Requirements (defined below). The estimated cost to meet such minimum requirements is \$5,000,000 ("Project Cost"), which includes the cost of Sound and Lighting Equipment (defined below) for the Levitt Pavilion. However, the Parties recognize that actual costs may meet the cost estimate stated above or may be higher or lower depending on the bids received. The Parties further recognize that the City Contribution (defined below) toward the Project Cost will not exceed the amount stated in Paragraph K even if actual costs are higher than anticipated. In the event that actual costs exceed \$5,000,000, the Parties will meet to discuss options available and determine whether to proceed. If the Parties fail to reach satisfactory terms, the Parties may opt out and this Agreement may be terminated without incurring any additional costs or liability to any of the Parties. In the event the bids come in lower than the estimated cost of \$5,000,000, the City Contribution will remain as stated in Paragraph K.

J. The City recognizes the benefits of the Levitt Pavilion at the Property which will expand the arts in the community and will positively activate a public space, and the City desires to partner and assist the Levitt Parties in the construction and maintenance of the Levitt Pavilion in accordance with the terms of this Agreement; and

K. The City will provide funding not to exceed \$1,000,000 ("City Contribution") to partially fund the design, construction, and construction administration of the Facilities (defined below), including the Levitt Pavilion, within the Property. Notwithstanding the foregoing, it is agreed that the City Contribution is contingent upon Levitt Dayton securing the necessary funds as set forth in Paragraphs L and M to complete the design, construction, and construction administration of the Facilities, including the Levitt Pavilion and the Sound and Lighting Equipment; and

L. Levitt Dayton has committed to raising private funds at a minimum amount of \$3,500,000 ("Private Funds") to partially fund the design, construction and construction administration of the Facilities, including the Levitt Pavilion. Such funds will be raised by Levitt Dayton, and together with the funds to be provided by the Foundation as set forth in Paragraph M shall be paid to the City, and used by the City in designing and constructing the Facilities, including the Levitt Pavilion. Further, such funds raised by Levitt Dayton shall cover the cost and installation of the Sound and Lighting Equipment for the Levitt Pavilion as more fully described below. To ensure the Levitt Pavilion is properly designed and constructed to meet the requirements of the Sound and Lighting Equipment, Levitt Dayton

agrees to coordinate with the City and its consultants during all phases of the project as to the product data and specific requirements of the Sound and Lighting Equipment; and

M. The Foundation desires to provide funding to Levitt Dayton, in the amount of \$500,000 as described in Section 5(a) below, to partially fund the design, construction, and operation of the Levitt Pavilion to provide free performances and professional concerts for the benefit of the public as outlined in this Agreement and to allow Levitt Dayton to use the LEVITT Name and Marks; and

N. Design and construction of the Facilities, including the Levitt Pavilion, will proceed in accordance with the construction agreements for the Facilities, including the Levitt Pavilion, to be entered into by the City subsequent to this Agreement (the "Other Agreements"); and

O. The Parties believe that the Levitt Pavilion will generate favorable exposure and serve as a recreational and social occasion for the enjoyment of the entire community as well as produce revenue for Levitt Dayton to support operations at the Facilities.

**NOW, THEREFORE**, in consideration of the above recitals and the mutual promises contained herein, and for the purpose of setting forth the relationship between the Levitt Parties and the relationship between the Levitt Parties and the City, it is mutually agreed by the Parties as follows:

1. **KEY DEFINITIONS.** As used in this Agreement:

(a) "Applicable Law" shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including: (i) the constitutions, laws, and rules and regulations of the United States of America and the State of Ohio and the Americans with Disabilities Act, the Americans with Disabilities Act Accessibility Guidelines, and any other federal or state laws requiring access for the disabled to public accommodations; (ii) the City Charter and the Revised Code of Ordinances of Dayton, Ohio (collectively, the "City Code"), as either may be amended from time to time; (iii) rules, regulations, policies and procedures promulgated by the City's Parks and Recreation Department (the "Department") governing the public's utilization of City parks (unless expressly modified or waived in this Agreement); (iv) any rules, regulations, policies and procedures promulgated by other City departments and agencies and applicable to actions and activities of the Levitt Parties under this Agreement; (v) any legislation enacted by the Commission of the City of Dayton; (vi) any court order, judgment, or decree applicable to this Agreement, the Site, the Property, the Levitt Pavilion, or the Levitt Parties; and (vii) any federal, state, or local administrative decision applicable to this Agreement, the Site, the Property, the Levitt Pavilion, or the Levitt Parties.

(b) "Director" shall mean the City of Dayton Director of Public Works or the Director's designated representative.

(c) "Facilities" shall mean all permanent improvements and fixtures presently existing, or as may be constructed, expanded, or renovated in the future, on, below or above ground within the boundaries of the Property, including the Levitt Pavilion and amenities, including walkways, public restrooms, parking areas and landscaping, to accommodate public use of and access to the Levitt Pavilion as defined in Section 1(f).

(d) **"Levitt Events"** shall mean collectively the Levitt Fundraising Events and each Series.

(e) **"Levitt Fundraising Events"** shall refer to the six (6) or fewer events during each calendar year, that Levitt Dayton has first priority to use the Property, including the Levitt Pavilion, as described in Section 9(a).

(f) **"Levitt Pavilion"** shall mean the permanent, outdoor amphitheater to be built by the City in accordance with this Agreement at the location approximately shown on **Exhibit A**, attached hereto and incorporated herein by reference. The Levitt Pavilion will consist of a covered stage, a green room, dressing rooms, storage space, interior non-public bathrooms, exterior signage as described in Section 7(d), and other elements, including exterior public bathrooms, as set forth herein and as further described in the Levitt Site and Structure Requirements attached hereto as **Exhibit B** (the **"Site and Structure Requirements"**).

(g) **"Non-Levitt Event"** shall have the meaning given to such term in Section 9(b).

(h) **"Personal Property"** means any furniture, vehicles, supplies, removable fixtures, including Sound and Lighting Equipment and other equipment used for the operation of the Facilities, including the Levitt Pavilion.

(i) **"Project Cost"** is the estimated \$5,000,000 cost to design and build the Facilities, including the Levitt Pavilion. The estimated cost of \$5,000,000 includes the Sound and Lighting Equipment defined in Section 1(m).

(j) **"Property"** shall mean that portion of the Site containing the Levitt Pavilion and surrounding lawn area as conceptually depicted in **Exhibit A**. The geographical area of the Property will be further defined by the Parties during the design and construction process and shall comply with the requirements of the Site and Structure Requirements. Once the geographical area of the Property is so defined, the activities of Levitt Dayton contemplated under this Agreement may not be conducted or extended beyond such geographical area without the written consent of the Foundation and the City.

(k) **"Real Property"** means all property comprising the Facilities, including the Levitt Pavilion, together with all real improvements located thereon and all appurtenances and fixtures which are permanently attached thereto, whether now existing or hereafter acquired or constructed.

(l) **"Series"** shall mean the annual concert series to be presented by Levitt Dayton consisting of a minimum of fifty (50) concerts free of charge to the public meeting the requirements set forth in Section 8(b).

(m) **"Sound and Lighting Equipment"** shall mean any piece of production equipment that can be removed from the venue for storage during the off-season (cables, speakers, monitors, mics, sound boards, light cans, etc.); estimated purchase price is \$400,000 to \$500,000.

## 2. STATUS AND AUTHORITY OF LEVITT PARTIES.

(a) Status. The City and Levitt Dayton acknowledge and agree that the status of Levitt Dayton shall be that of a private, non-profit corporation cooperatively working with the City as an independent entity solely for the purposes set forth in this Agreement, and that the status of the Foundation shall be that of a private foundation and not-for-profit corporation cooperatively working with the City and Levitt Dayton for the purpose of providing funding and assistance as set forth in this Agreement.

(b) Authority. The scope of authority that the Levitt Parties may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. The Levitt Parties shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and any of the Levitt Parties.

(c) Contracts. The authority delegated under this Agreement shall not be construed to grant the Levitt Parties the right or power to bind, or to impose any liability upon, the City through any contracts or agreements a Levitt Party may make, unless the prior, written approval of the City Manager is obtained, and the Commission of the City of Dayton, if necessary. All contracts or agreements made by a Levitt Party shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, a Levitt Party through any contracts or agreements the City may make, unless the prior, written approval of the applicable Levitt Party is obtained.

(d) Non-profit Status. Levitt Dayton has received a ruling and determination letter from the Internal Revenue Service, issued by the United States Department of Treasury, stating that Levitt Dayton is an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Levitt Dayton shall at all times while this Agreement is in effect take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a non-profit corporation that qualifies as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code (or any successor provision).

### **3. TERM.**

This Agreement shall commence as of the Effective Date and shall expire fifty (50) calendar years later (the "Term"), unless otherwise sooner terminated as provided in this Agreement.

### **4. PERSONNEL.**

Levitt Dayton Employees. All employees hired or retained by Levitt Dayton to work at the Levitt Pavilion or to perform the services described in this Agreement shall be employees of Levitt Dayton ("Levitt Dayton Employees"). Levitt Dayton shall have the sole authority to hire, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all Levitt Dayton Employees, without regard to City personnel classification and pay plans and rules and regulations, but otherwise in conformance with all laws governing private employers. Under no circumstances shall Levitt Dayton Employees be regarded as employees of the City or the Foundation; however, all Levitt Dayton Employees are expected to comply with the terms and conditions of this Agreement. Levitt

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

**5. DESIGN AND CONSTRUCTION OF FACILITIES AND CONSTRUCTION FUNDING.**

(a) Funding. The Foundation shall provide to Levitt Dayton \$500,000 for Levitt Dayton to use to pay a portion of the Project Cost (the "Capital Grant") as follows:

(i) the Foundation shall provide to Levitt Dayton \$50,000 as the first payment of the Capital Grant, to be used solely for direct design costs, upon Levitt Dayton evidencing to the reasonable satisfaction of the Foundation that Levitt Dayton has received cash contributions equal to twenty-five percent (25%) of the Private Funds; and

(ii) the Foundation shall provide to Levitt Dayton \$250,000 as the second payment of the Capital Grant upon (a) Levitt Dayton evidencing to the reasonable satisfaction of the Foundation that Levitt Dayton has received all of the Private Funds; and

(iii) the Foundation shall provide to Levitt Dayton \$200,000 as the third payment of the Capital Grant upon installation of the Sound and Lighting Equipment at the Levitt Pavilion.

(b) Use of Funds. Levitt Dayton and the City agree that the Capital Grant, the City Contribution, and the Private Funds shall be used solely for the design, construction and construction administration of the Facilities, along with the Sound and Lighting Equipment, and not for any other purposes.

(c) Fundraising Reports. Levitt Dayton shall provide to the Foundation and the City a monthly written report on the status of its fundraising efforts, including expenses and the amounts of actual cash contributions and pledges, including payment schedule of such pledges, beginning one (1) month following the Effective Date.

(d) Design and Construction.

(i) Once the City is in receipt of the funds described in Section 5(a)(i), the Parties agree that a design firm will be chosen in accordance with the City's standard RFP process and will be subject to the mutual written approval of the Parties.

(ii) Upon selection of the design firm, the City will enter into an agreement with the chosen design firm to develop design development documents, construction documents, schedule and budget of the Facilities, including the Levitt Pavilion, for the Parties' approval of the final design and Site Plan (the "Plan"). The Parties will be engaged throughout the development of the Plan and each Party must approve the final version of the Plan in writing prior to the commencement of construction of the Facilities. Following approval of the final version of the Plan by all Parties, subsequent changes to the Plan will require the mutual written approval of Levitt Dayton, the Director, and the Foundation.

(iii) The City shall have no obligation to award any bids for any construction, enter into any Other Agreements, disburse funds or commence construction of the Facilities until (a) Levitt Dayton has provided to the City the minimum amount of \$1,750,000 of the Private Funds; (b) Levitt Dayton evidencing to the reasonable satisfaction of the City that all remaining Private Funds have been or will be pledged in writing and deemed collectible by July 1, 2017; and (c) Levitt Dayton committing to a payment schedule, as mutually determined by the City and Levitt Dayton, for Levitt Dayton to provide to the City the remaining Private Funds.

(iv) The City shall fully construct the Facilities in accordance with the Plan and the terms of this Agreement using the City Contribution, the Capital Grant, and the Private Funds. The City, in accordance with state laws and standard City process, agrees to solicit, review and accept competitive proposals and/or competitive bids and enter into one (1) or more contracts for the construction of the Facilities, including the Levitt Pavilion. The City shall be solely responsible for assuring that all phases of construction are properly contracted and performed and that the work done and the materials used are in conformance with all Applicable Laws that govern the performance of the work, including (to the extent applicable) the requirements of the Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

(v) Levitt Dayton will provide the Foundation with a proposed timeline and benchmarks for the design and construction of the Facilities no later than January 1, 2017. Levitt Dayton will notify the Foundation of any changes to the timeline and benchmarks in writing as soon as such changes are known.

(vi) The City will provide monthly written construction status reports to Levitt Dayton. Levitt Dayton will provide the Foundation with a copy of each monthly construction status report as provided to Levitt Dayton by the City.

(vii) The inventory of Sound and Lighting Equipment for the Levitt Pavilion shall be determined by Levitt Dayton in collaboration with the City and shall be approved in writing by the Foundation. The Sound and Lighting Equipment shall meet the high production standards established by Levitt Venues in operation. Such equipment shall be the property of or leased directly to Levitt Dayton during the Term of this Agreement.

(viii) The City and Levitt Dayton agree to not do anything which would violate the Site and Structure Requirements as set forth by the Foundation. Notwithstanding the previous sentence, changes to the Facilities, including the Levitt Pavilion, require the mutual written approval of Levitt Dayton, the Director, and the Foundation.

(ix) Subsequent to the completion of construction of the Facilities, no Party shall construct any permanent improvements on the Property, as shown on Exhibit A, or make any permanent changes to the Facilities without the prior written approval of the other Parties. Any such permanent improvements or permanent changes shall be in accordance with the terms of this Agreement.

## **6. OWNERSHIP OF REAL AND PERSONAL PROPERTY.**

(a) Real Property. All Real Property within the Facilities, including the Levitt Pavilion, shall be and shall at all times remain the sole and exclusive property of the City. Levitt Dayton shall not permanently affix anything on or in the Property, including the Levitt Pavilion, that does not thereby become the property of the City pursuant to this Section 6(a). Levitt Dayton shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in the Property or the Facilities or any part of the Property or the Facilities. At the expiration of the Term or earlier termination of this Agreement, Levitt Dayton shall deliver the Facilities, including the Levitt Pavilion, to the City in substantially the same condition as the Facilities, including the Levitt Pavilion, was at the completion of its construction, ordinary wear and tear excepted.

(b) Personal Property. All items of Personal Property donated to the City or which are purchased in whole or in part with funds expressly provided by the City for such purpose shall be the property of the City, whether now existing or hereafter acquired or constructed, shall be and shall at all times remain the sole and exclusive property of the City. Any Personal Property, including the Sound and Lighting Equipment (not under lease), acquired by Levitt Dayton, by gift or with funds, shall be held in legal ownership by Levitt Dayton during the Term of this Agreement ("**Levitt Dayton Property**"). In the interest of faithfully conforming to the terms and spirit of this Agreement and subject to any restrictions imposed on any gifts, Levitt Dayton may, from time to time (as Levitt Dayton determines to be prudent and warranted), replace, lend, or dispose of Levitt Dayton Property, through sale, purchase, trade or loan. At the expiration of the Term or earlier termination of this Agreement, all Levitt Dayton Property shall remain the property of Levitt Dayton.

(c) Rental Fees to Third Parties. During the Term, Levitt Dayton may charge a rental fee, including a fee for lighting and sound technicians, as reasonably determined by Levitt Dayton, to any third party, including the City, that requests the use of any Levitt Dayton Property for any Non-Levitt Event (defined below).

## **7. USE OF LEVITT NAME AND MARKS; OFFICIAL NAME OF LEVITT PAVILION.**

(a) The Foundation hereby grants Levitt Dayton a non-exclusive, nontransferable, royalty-free license to use the LEVITT Name and Marks in connection with the operations of Levitt Dayton, the Facilities, including the Levitt Pavilion, and the Property as specified herein.

(b) The official name of the Levitt Pavilion shall be "Levitt Pavilion Dayton" (the "Name") during the Term stated in Section 3. The City may, in its discretion, change the Name prior to expiration of the Term if: (i) this Agreement is terminated prior to the end of the Term as a result of default by one (1) or more Levitt Parties; or (ii) if this Agreement is terminated by reason of Levitt Dayton's failure to timely obtain and provide to the City the Private Funds as required in this Agreement. If prior to the expiration of said Term stated in Section 3, the Foundation requests in writing that the Name no longer be used, Levitt Dayton and the City shall no longer use the Name.

(c) The Parties agree that wherever the Name appears for publicity, marketing, advertising, community outreach, fundraising, merchandise, formal communications with artists, signage, and any other use of the Name in the public realm:

(i) Referring to the Levitt Pavilion as “the Pavilion,” regardless of the media of communication, is not acceptable; and

(ii) Wherever the Name appears, including electronic communications, print materials, signage, and merchandise, “Levitt” shall be larger or of equal size to “Pavilion;” and

(iii) The Name may, wherever used, be shortened to appear as “Levitt Pavilion” or “Levitt Dayton” except as specified herein.

(d) During the period described in Section 7(b), signage with the name “Levitt Pavilion Dayton” or “Levitt Pavilion” shall be affixed to the stage of the Levitt Pavilion (once such is constructed) in a prominent manner visible to the audience while viewing performances (the “Sign”). The Sign shall be designed for optimal capture on film and for photography. Placement, size, and material of the Sign shall be agreed upon in writing by Levitt Dayton, the Foundation, and the City. Materials used for display of the Sign shall be durable to withstand inclement weather conditions. The City shall be responsible for maintaining the Sign so it remains in good condition and repair at all times. The Name shall be the only name of an entity permanently affixed to the exterior of the Levitt Pavilion, including the stage and roof of the Levitt Pavilion. At no time may the Sign be partially or fully covered.

(e) Throughout the Term, Levitt Dayton and the City, either separately or together, will not offer or allow any third party signage on the Facilities or the Property, whether permanent or temporary, of any size or prominence equal to or greater than the Sign.

(f) Throughout the Term, the Name shall be included:

(i) In all print and electronic communications regarding the Levitt Pavilion, Levitt Events, and Non-Levitt Events taking place at the Facilities and the Property including each Party’s website, publicity, press releases, media relations, advertising, marketing, fundraising, events, community outreach, artist relations, social media, and e-newsletters; and

(ii) In all Levitt Dayton-initiated and Levitt Dayton-solicited radio and television spots and all radio and television spots pertaining to Levitt Events and Non-Levitt Events initiated and solicited by any Party; and

(iii) On the homepage of and throughout Levitt Dayton’s website promoting the Levitt Pavilion and Levitt Events; and

(iv) In the Levitt Dayton logo; and

(v) On all signage referring to the Levitt Pavilion; and

(vi) On all merchandise produced or caused to be produced by Levitt Dayton related to the Levitt Pavilion and Levitt Events irrespective of whether such merchandise is intended to be given away or sold; and

(vii) On any other items produced by Levitt Dayton which would customarily contain the Name.

(g) Each of Levitt Dayton and the City shall use, and shall require users, promoters, exhibitors and all other persons or entities contracting with Levitt Dayton or the City for use of the Facilities for ticketed or non-ticketed events to use, the Name in all promotional activities and efforts associated with producing such events, including publicity, press releases, media relations, advertising, marketing, and social media.

(h) Levitt Dayton shall be responsible, at its cost, for compliance with the terms of this Agreement regarding its use of the Name and for providing oversight to ensure that the Name is used in compliance with the terms of this Agreement and is not used in a detrimental manner or in any manner not compliant with community standards of good taste.

(i) Levitt Dayton acknowledges the Foundation's exclusive ownership of the LEVITT Name and Marks, agrees that it will do nothing inconsistent with such ownership and that Levitt Dayton's use of the LEVITT Name and Marks shall inure to the benefit of the Foundation. Levitt Dayton agrees that nothing in this Agreement shall give Levitt Dayton any right, title or interest in the LEVITT Name and Marks other than the right to use the LEVITT Name and Marks in accordance with this Agreement, and Levitt Dayton agrees that it will not challenge the Foundation's title to the LEVITT Name and Marks or challenge the validity of the LEVITT Name and Marks during the Term and thereafter.

(j) Levitt Dayton agrees as follows: (i) to comply with any and all guidelines provided by the Foundation concerning Levitt Dayton's use of the LEVITT Name and Marks, which may be modified from time to time by the Foundation; (ii) to cooperate with the Foundation in facilitating the Foundation's control of Levitt Dayton's use of the LEVITT Name and Marks; (iii) to permit the Foundation to inspect Levitt Dayton's uses of the LEVITT Name and Marks upon reasonable notice by the Foundation to Levitt CITY; and (iv) to supply the Foundation with specimens showing Levitt Dayton's use of the LEVITT Name and Marks, as may be reasonably requested from time to time by the Foundation. Levitt Dayton agrees that the nature and quality of all goods and services offered by Levitt Dayton in connection with the LEVITT Name and Marks shall be advertised, offered and provided in a high quality manner and consistent with the quality control standards established by the Foundation.

(k) Upon termination of this Agreement or request of the Foundation as set forth in Section 7(b), Levitt Dayton agrees to immediately discontinue all use of the LEVITT Name and Marks and any term confusingly similar thereto, and to delete the same from its corporate or business name, to cooperate with the Foundation or its appointed agent to apply to the appropriate authorities to cancel recording of this Agreement from all government records, to destroy all printed material bearing the LEVITT Name and Marks, and that all rights in the LEVITT Name and Marks and the good will connected therewith shall remain the property of the Foundation.

(l) Nothing herein shall limit the Foundation's right to offer any programs, performances, events, goods or services of any kind under the LEVITT Name and Marks.

**8. FOUNDATION CONTRIBUTION; LEVITT DAYTON OBLIGATIONS; PARTICIPATION IN LEVITT NETWORK; BEST PRACTICES.**

(a) Foundation Contribution.

(i) In consideration of the agreement of Levitt Dayton to provide free concerts to the public at the Levitt Pavilion as described in Section 8(b), the Foundation hereby pledges to provide funding to Levitt Dayton in the amount of \$1,250,000, payable as follows:

(1) A \$500,000 grant as specified in Sections 5(a)(i), (ii) and (iii) shall be made to Levitt Dayton upon (a) Levitt Dayton meeting the terms of Sections 5(a)(i), (ii) and (iii), as applicable, and (b) execution of this Agreement by all Parties.

(2) \$750,000 in grants for operational and program support shall be made to Levitt Dayton over the first five (5) calendar years of operation as follows: YEAR 1 - \$200,000; YEAR 2 - \$200,000; YEAR 3 - \$150,000; YEAR 4 - \$100,000; YEAR 5 - \$100,000 (collectively, the "Initial Five Years"). YEAR 1 shall be defined as the first calendar year during which a Series is presented to the public; for the avoidance of doubt, if the first calendar year during which a Series is presented to the public occurs in calendar year 2018, YEAR 1 shall mean calendar year 2018, YEAR 2 shall mean calendar year 2019, YEAR 3 shall mean calendar year 2020, YEAR 4 shall mean calendar year 2021, and YEAR 5 shall mean calendar year 2022. Each annual grant for operational and program support provided to Levitt Dayton during the Initial Five Years shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15. Levitt Dayton's receipt of this funding shall be subject to Levitt Dayton completing required reports, as provided by the Foundation, and submitting supporting documents as requested by the Foundation, and Levitt Dayton being in compliance with the terms of this Agreement.

(ii) In addition, prior to the Initial Five Years, Levitt Dayton will be eligible to receive grants for a capital campaign consultant, capital campaign materials, board development, and staff professional development. The award of any such grants shall be at the discretion of the Foundation and subject to (a) Levitt Dayton meeting the applicable grant requirements set forth by the Foundation and (b) execution of this Agreement by all Parties.

(iii) In addition, the Foundation hereby pledges to provide funding to Levitt Dayton of up to \$50,000 in additional grants for capacity building in each of the Initial Five Years subject to Levitt Dayton meeting the applicable grant requirements set forth by the Foundation and being in compliance with the terms of this Agreement. Capacity building grants provided to Levitt Dayton during the Initial Five Years shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15.

(iv) In addition, after the Initial Five Years, the Foundation hereby pledges to provide Levitt Dayton \$100,000 for operational and program support, plus up to \$50,000 in capacity building grants, in each calendar year of the Term following the Initial Five Years, which shall be disbursed in three (3) payments per calendar year on March 15, July 15, and November 15. Such funding following the Initial Five Years is subject to Levitt Dayton completing required reports, as provided by the Foundation, and submitting supporting documents as requested by the Foundation, meeting the applicable grant requirements set forth by the Foundation, and being in compliance with the terms and conditions of this Agreement. Further, such funding following the Initial Five Years is contingent upon a letter of understanding signed by the Levitt Parties on every fifth anniversary of the Effective Date (the "Letter") confirming that (a) both Levitt Parties desire to continue their relationship as outlined in this Agreement; (b) both Levitt Parties have complied with the terms and conditions of this Agreement during the previous period; (c) the expressed terms of this Agreement regarding use, management,

maintenance, and name of the Levitt Pavilion and Property remain the same and in effect; and (d) when applicable, within one (1) year prior to the expiration of this Agreement, a renewed agreement between the Parties is executed.

Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that any terms in the Letter that depart from the express terms of this Agreement, including the exhibits hereto, shall not be imposed upon the City without the City's consent and an amendment to this Agreement. Further, if compliance with any terms to the Letter would require alterations to the Site, the Property, or the Facilities or impose new or modified obligations on the City, or reduce any rights and benefits to the City, or reduce the amount of funding to be provided by the Foundation per the terms of this Agreement, such changes shall not be applicable to the Parties or this Agreement.

(v) The funding described in this Section 8(a) shall be paid directly to Levitt Dayton by the Foundation and shall be contingent upon Levitt Dayton operating in accordance with the terms and conditions of this Agreement and the Other Agreements, and at all times maintaining its status as a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code. Levitt Dayton acknowledges and understands that not satisfying all terms and conditions of this Agreement, including the timely submission of any required reports and documents in form and content acceptable to the Foundation, may delay or forfeit the delivery of any funds pledged to Levitt Dayton by the Foundation. The Parties agree that any failure by Levitt Dayton to comply with Sections 8(d), 8(e)(i)(3-4), and 8(e)(ii)(1-5, 7) will result in the delay of delivery of any remaining funds pledged to Levitt Dayton by the Foundation as specified in this Section 8(a) for that calendar year, until such time that Levitt Dayton has complied with such terms. The Parties also agree that any failure by Levitt Dayton to comply with Sections 8(b)(i-ix), 8(e)(i)(5) and 8(e)(ii)(6) will result in forfeiture of any remaining funds pledged to Levitt Dayton by the Foundation as specified in this Section 8(a) for that calendar year.

(b) Concert Series. During the Term of this Agreement, Levitt Dayton agrees, at its cost, to present at the Levitt Pavilion an annual concert series consisting of a minimum of fifty (50) concerts free of charge to the public ("Series"), which shall meet the following criteria:

(i) Each Series shall take place over a minimum of ten (10) consecutive weeks, which may be divided into a minimum of four (4) consecutive weeks during one (1) season of the year and the remaining number of consecutive weeks in another season of the same year.

(ii) A minimum of forty (40) concerts within each Series shall be presented a minimum of three (3) days per week of the Series, with at least one (1) concert taking place on Monday, Tuesday, Wednesday, Thursday or Friday and at least one (1) concert taking place on Saturday or Sunday.

(iii) On days when two (2) concerts are presented, there shall be a minimum of three (3) hours between the start times of each concert. Only up to two (2) concerts presented on one (1) day will be counted towards the required minimum of fifty (50) concerts of each Series.

(iv) Every concert of each Series shall be family-friendly and appropriate for all ages.

(v) Each Series shall represent a broad array of music genres and cultures as well as be reflective of the community served.

(vi) Up to ten (10) concerts of each Series may feature acts geared towards children age ten (10) and under.

(vii) Each of the minimum fifty (50) concerts of each Series shall feature a different act so a minimum of fifty (50) unique concerts are presented annually.

(viii) Each of the fifty (50) acts of each Series must be of professional status and paid for their performance.

(ix) In YEAR 1, and only YEAR 1, Levitt Dayton may present a minimum of thirty (30) free concerts, in accordance with the terms set forth in this Section 8(b), based upon the date of completion of construction of the Facilities. Levitt Dayton and the City shall each make a good faith effort to encourage and facilitate the completion of the construction of the Facilities, per the Other Agreements, in order to allow Levitt Dayton to present fifty (50) free concerts in YEAR 1. Beginning in YEAR 2 and throughout the Term of this Agreement, Levitt Dayton shall present a minimum of fifty (50) free concerts in accordance with the terms set forth in this Section 8(b).

(x) If there is a weather event which prevents one (1) or more of the fifty (50) free concerts of a Series from being presented and rescheduled, the Parties agree that this will be considered a force majeure event and will still qualify as one (1) of the fifty (50) free concerts required.

(c) Promotion. Throughout the Term, Levitt Dayton shall, at its cost, actively create awareness of the Levitt Pavilion, promote each Series and maintain stellar reputations for the Levitt Pavilion and Series through marketing, advertising, community outreach, and publicity efforts utilizing standard best practices and appropriate current technology.

(d) Production. Levitt Dayton shall, at its cost, produce the Series using high quality sound and lighting equipment and a professional production crew to ensure presentation of each Series meets the high production standards established by Levitt Venues currently in operation, providing a high quality concert experience for both Series performers and attendees.

(e) Participation in the Levitt Network. Levitt Dayton acknowledges and agrees as to its inclusion and participation in the Levitt Network as coordinated under the auspices of the Foundation, including the Foundation's marketing, advertising, publicity, programming, and fundraising efforts. Throughout the Term, Levitt Dayton agrees to participate in the Levitt Network as a grantee that receives funding and assistance from the Foundation including Levitt program initiatives, Levitt Network growth, communications efforts for the Levitt Network, and reporting requirements set forth by the Foundation as outlined in this Agreement. Levitt Dayton further agrees and acknowledges that receipt of funding from the Foundation as described in Section 8(a) is contingent upon Levitt Dayton operating in accordance with the terms and conditions of this Agreement, including the best practices and standards set forth by the Foundation as outlined in Section 8(g).

(i) Recognition. During the Term, Levitt Dayton agrees to acknowledge the Foundation and recognize Levitt Dayton's participation in the Levitt Network as follows:

(1) Levitt Dayton shall provide notification to the Foundation regarding the date of the Levitt Pavilion's opening ceremony no later than sixty (60) days prior to such ceremony. Content and timing of press releases and public announcements of the Levitt Pavilion's opening ceremony shall be determined collaboratively by the Levitt Parties; and

(2) Levitt Dayton shall maintain one (1) website dedicated to both the Series and the Levitt Pavilion. The domain name for such website shall be [www.levittdayton.org](http://www.levittdayton.org). Levitt Dayton shall point the following domain names, registered in the name of or assigned to Levitt Dayton, to [www.levittdayton.org](http://www.levittdayton.org):

- (A) [www.levittdayton.com](http://www.levittdayton.com)
- (B) [www.levittpaviliondayton.org](http://www.levittpaviliondayton.org)
- (C) [www.levittpaviliondayton.com](http://www.levittpaviliondayton.com)

Levitt Dayton's website shall not link to any web pages or internet sites that are political, religious, indecent, scandalous, immoral or illegal in nature or could reasonably be deemed offensive or not compliant with community standards of good taste.

(3) The Foundation logo shall appear clearly on all Levitt Dayton collateral materials including brochures, flyers, and banners and in electronic communications including digital screens, e-newsletters, e-blasts, the Levitt Dayton website, and social media, where Levitt Dayton, Series, and Levitt Pavilion supporters and/or sponsors are recognized and acknowledged. When appearing on the Levitt Dayton website, the Foundation logo shall link to [www.levitt.org](http://www.levitt.org). Throughout the Term when Levitt Dayton uses the Foundation logo, Levitt Dayton shall present that logo without alteration by Levitt Dayton. In instances when supporter and/or sponsor names are listed instead of logos, then "Mortimer & Mimi Levitt Foundation" shall be listed and linked to [www.levitt.org](http://www.levitt.org). The Foundation logo and/or name shall always appear in the highest dollar amount and/or recognition category. In the event there is a title Series sponsor (first tier recognition with only that sole sponsor), the Foundation logo and/or name shall appear in the second tier category of Series supporters and/or sponsors; and

(4) A section dedicated to the Foundation and the Levitt Network shall appear on the About page, or comparable page should an About page not exist, of the Levitt Dayton website. Content for this section will be provided and updated annually by the Foundation. This section shall include the Foundation logo which shall link to [www.levitt.org](http://www.levitt.org); and

(5) Levitt Dayton shall include a paragraph regarding Levitt Dayton's participation in the Levitt Network in the Series brochure, or comparable collateral material should a brochure not be printed. Such paragraph shall be legible and the Foundation logo shall appear clearly next to such paragraph. Content for such paragraph will be provided by the Foundation annually; and

(6) When present at the Facilities, representatives of the Foundation shall have the opportunity to address the audience from the Levitt Pavilion stage, including at the Levitt Pavilion's opening ceremony and during Levitt Events; and

(7) Levitt Dayton shall provide the Foundation with a high resolution, most current version of the Levitt Dayton logo.

(ii) Reporting and Data Collection. During the Term, Levitt Dayton shall meet the annual reporting requirements of the Foundation and participate in the Foundation's annual collection of Levitt Network data as set forth below. Failure to comply with such reporting requirements will result in delay or forfeiture of funds in that calendar year as specified in Section 8(a)(v).

(1) Levitt Dayton shall submit annual financial statements showing the organization's actual income and expenses for the previous year and approved budget for the current year to the Foundation no later than March 1; and

(2) In years when a financial audit is conducted for the previous year, Levitt Dayton shall submit a copy of the financial audit for the previous year to the Foundation or advise the Foundation that no audit was conducted for the previous year no later than June 30; and

(3) Levitt Dayton shall complete the annual Levitt Network survey report, to be provided by the Foundation, for the previous year and submit such to the Foundation along with required supporting documents no later than March 1; and

(4) Levitt Dayton shall complete triannual reports, to be provided by the Foundation, and submit such to the Foundation prior to each triannual disbursement of funds; and

(5) At times when Levitt Dayton has updated its current or drafted a new strategic plan, Levitt Dayton shall submit a copy to the Foundation with its following triannual report; and

(6) Levitt Dayton shall cooperate with the Foundation regarding the collection of on-site audience surveys during each Series per the parameters set by the Foundation; and

(7) Levitt Dayton shall participate in the Foundation's initiatives pertaining to collection of data regarding social and economic impact of the Levitt Network.

(iii) Foundation Fundraising Activities.

(1) Levitt Dayton and the Foundation acknowledge and agree that, from time to time (a) the Foundation may, in its discretion, periodically evaluate or otherwise consider options for securing sponsorship support of the Foundation itself, the Foundation's programs, and/or the Levitt Network; (b) in the course of developing and/or evaluating such options, the Foundation may, in its discretion, acknowledge and reference to third parties its historic and ongoing support and involvement with one (1) or more participants in the Levitt Network, including Levitt Dayton; and (c) the Foundation shall be free in its discretion to conclude any sponsorship arrangements that are specific to the Foundation itself and its programs, and that no further consents, permissions or approvals from Levitt Dayton shall be required of the Foundation in order to so proceed. Notwithstanding the foregoing, the Foundation and Levitt Dayton also agree that, to the extent that the Foundation in the course of discussing potential sponsorship arrangements receives an expression

of interest from a potential sponsor interested in sponsoring the activities of the Levitt Network as a whole or other subset of organizations within the Levitt Network, including Levitt Dayton, then the Foundation shall so advise Levitt Dayton of such sponsorship opportunity, which shall be coordinated by the Foundation, and Levitt Dayton may then consider its participation in such sponsorship opportunity in its sole discretion.

(2) Levitt Dayton acknowledges that the Foundation collects donations through print and electronic communications in support of the Foundation itself and the Foundation's programs, though the Foundation shall not send direct mail solicitations for support of the Foundation itself to any individual in the Dayton metro area, unless such individual is a current donor of the Foundation, has an existing relationship with the Foundation or is connected to the Foundation through a board member or national advisory council member, in which case Levitt Dayton shall be notified by the Foundation and shall inform the Foundation whether Levitt Dayton has an existing relationship with such individual. Levitt Dayton further acknowledges that the Foundation promotes community support of Levitt Venues and agrees that the Foundation may collect donations on behalf of Levitt Dayton. Upon receipt of a donation provided to the Foundation for support and enhancement of programs and activities conducted by Levitt Dayton, the Foundation shall provide such funds and donor information to Levitt Dayton.

(f) Foundation Obligations. During the Term, the Foundation shall maintain a website dedicated to the Foundation and its mission and activities. A link to Levitt Dayton shall appear on the Locations drop down menu on all pages of the Foundation website. Such link shall point to a page describing Levitt Dayton and the Facilities similar to the content currently used to describe the other Levitt Venues and locations on the Foundation website, including display of the Levitt Dayton logo and a link to the Levitt Dayton website. Content for such page will be collaboratively developed by Levitt Dayton and the Foundation. Further, the Foundation shall acknowledge the existence of Levitt Dayton and the Levitt Pavilion in all print, electronic communications and other media including press releases, publicity, advertising, and marketing describing, discussing and promoting the Levitt Network.

(g) Best Practices. Throughout the Term, Levitt Dayton agrees to operate in accordance with the best practices and standards set forth by the Foundation as follows:

(i) Open Lawn Setting. Levitt Dayton acknowledges that all Levitt Venues have an open lawn setting with no permanent seating and agrees that there will be no material changes to the Property or the Facilities that will alter the open lawn in front of the Levitt Pavilion. Levitt Dayton acknowledges that the open lawn setting creates a welcoming atmosphere for all Series attendees and in this spirit, hospitality areas for donors, sponsors, elected officials, and similar groups of designated importance, shall be set up at the sides or rear areas of the lawn so the front and center areas of the lawn remain open to all Series attendees. Levitt Dayton further agrees that the footprint of the open lawn in front of the Levitt Pavilion will not be decreased for any reason, including new public amenities.

(ii) Outside Food and Beverage. Levitt Dayton acknowledges that Series attendees represent a range of socioeconomic groups and agrees that at no time will Series attendees be prohibited from bringing outside food and beverages to the Series.

(iii) Fundraising. Levitt Dayton acknowledges that Series attendees represent a range of socioeconomic groups and that everyone regardless of ability to pay should feel

welcome to attend the Series and in this spirit, Levitt Dayton agrees that while it will collect donations on-site during the Series, it will not promote a suggested donation of a specific amount on-site during the Series.

(iv) Sponsors. Levitt Dayton agrees that it will not permit sponsors for any of its events, including the Series and ticketed events, and it will not permit advertising, promotional products and marketing materials at the Property, including the Facilities and the Levitt Pavilion, in any capacity that promote the sale or use of any of the following: (i) firearms, (ii) pornography, (iii) tobacco, and (iv) illegal activities. Further Levitt Dayton agrees that it will not permit any alcohol sponsor to be a title Series sponsor, including beer, wine, and liquor as well as any alcohol-focused stores or brands of any kind.

(v) Artist Relations. Levitt Dayton acknowledges that a priority of the Levitt Network is to maintain its artist-friendly reputation and in this spirit, Levitt Dayton agrees to provide hospitality for Series performers as well as a designated area for Series performers to sell merchandise immediately before, during and after their concert with the ability to keep 100% of their sales, unless Levitt Dayton is providing staff for artist merchandise sales, in which case an appropriate percentage may be deducted.

(vi) Levitt National Tour. Levitt Dayton acknowledges that its participation in the Levitt Network through program initiatives celebrates the common purpose and shared mission of Friends of Levitt organizations and highlights the impact of the Levitt Network in communities across the country and in this spirit, Levitt Dayton agrees to its participation in the Levitt National Tour (the "Tour") as part of the Series in years when a Tour is scheduled. The Foundation will inform Levitt Dayton as to whether a Tour will occur no later than February 1 of the year such Tour is taking place. The Tour will feature an artist ("Tour Artist") who will perform at multiple Levitt Venues, and may perform at other sites funded by the Foundation, within a designated timeframe. The Tour Artist shall be selected through the collective participation of the Levitt Network in collaboration with the Foundation as follows: Friends of Levitt organizations shall submit suggestions for the Tour Artist for the following year no later than March 31 of the current year; the Foundation shall compile and provide such suggestions, along with the Foundation's suggestions, to the Levitt Network no later than April 5; the Levitt Network shall provide feedback regarding Tour Artist suggestions to the Foundation no later than April 30; the Foundation shall then confirm the Tour Artist and coordinate Tour logistics with the Levitt Network. Levitt Dayton agrees that it will use its best efforts to schedule its Tour concert on a Friday, Saturday or Sunday. Levitt Dayton agrees to recognize the Foundation as the lead sponsor of the Tour, as well as any Tour sponsors secured by the Foundation. Levitt Dayton will refrain from securing any additional sponsor(s) for its Tour concert at the Levitt Pavilion until after February 1 of the year such Tour is taking place and any such additional sponsorship(s) shall be in accordance with the Tour sponsor agreement(s) as secured by the Foundation. Levitt Dayton further agrees to participate in all Foundation-led promotional efforts to support the Tour. The Foundation will cover the following Tour expenses: the artist fee, promotion and non-typical production costs.

(vii) Sharing Experience, Expertise and Knowledge. Levitt Dayton acknowledges that shared information amongst the Levitt Network strengthens each Friends of Levitt organization and reflects the collaborative ethos of the Levitt Network. Levitt Dayton further acknowledges that its experience and expertise in developing and operating the Levitt Pavilion is valuable knowledge for other Friends of Levitt organizations as well as individuals, from both the public

and private sectors, either contemplating or committed to developing a Levitt Venue in their city and in this spirit, Levitt Dayton agrees to be an ambassador for the Foundation and a contributor to the Levitt Network by sharing its experience, expertise and knowledge with such individuals and with other Friends of Levitt organizations.

(viii) Professional Staffing. Levitt Dayton acknowledges that to successfully execute the terms and conditions of this Agreement, including all aspects of Series production, outreach, marketing and audience development, and fundraising year-round to support Levitt Dayton's operations and programming, a professional staff of a minimum of four (4) year-round, full-time employees is highly recommended by the Foundation based on the history and experiences of other Friends of Levitt organizations. Levitt Dayton agrees to maintain at all times a professional staff of a minimum of three (3) year-round employees, including two (2) full-time, one (1) of which must be an Executive Director, and one (1) full-time equivalent.

(ix) Board Support. To contribute to the ongoing financial stability of Levitt Dayton and achieve 100% board giving every year, each member of Levitt Dayton's board of directors shall annually provide a direct personal contribution to Levitt Dayton, independent of support for fundraising events, in-kind donations, professional services provided, sponsorships secured, and gifts solicited.

(x) Availability of Levitt Pavilion for Use by Other Groups. Levitt Dayton acknowledges that Levitt Venues are designed for use by groups other than Friends of Levitt organizations and in this spirit, Levitt Dayton agrees to make known the availability of the Facilities, including the Levitt Pavilion, for use by other groups on Levitt Dayton's website in an easy to find and user-friendly manner.

## **9. LEVITT EVENTS; NON- LEVITT EVENTS.**

(a) Events. The City hereby grants Levitt Dayton the right to use the Facilities, including the Levitt Pavilion, and the Property rent free for each Series and the Levitt Fundraising Events (defined below) during the Term, with this right commencing upon completion of the construction of the Facilities.

(i) First Priority. Following completion of construction of the Facilities, subject to Section 9(c), Levitt Dayton will have first priority to use the Facilities, including the Levitt Pavilion, and the Property on ninety (90) separate days during each calendar year beginning on May 15 and concluding on September 15 of each calendar year (the "**Series Months**") for the purposes of preparing for, including setup and breakdown days and times, and presenting a minimum of fifty (50) free concerts to the public and other events, including up to six (6) ticketed events, for the purpose for which is to raise awareness and funds to support Levitt Dayton and the Series (the "**Levitt Fundraising Events**" and, together with the Series, the "**Levitt Events**"). Levitt Dayton agrees to work collaboratively with all other events currently scheduled at the Site in such a manner not to interfere with previously scheduled events. Further, Levitt Dayton may use the Facilities, including the Levitt Pavilion, and the Property for Levitt Events outside of the Series Months upon written approval of the Director, which shall not be unreasonably withheld.

(ii) Levitt Series Schedule. Levitt Dayton will submit to the Director its proposed schedule of dates and times (but not performers/artists) for the Levitt Events, including the extra days for setup and breakdown (the "**Levitt Series Schedule**"), no later than December 31 of each calendar year for the following calendar year. Once the Levitt Series Schedule is submitted, the Facilities and the Property shall be considered booked for use by Levitt Dayton on the dates set forth in the Levitt Series Schedule. The Parties acknowledge that scheduling for YEAR 1 will depend on the progress of the Facilities construction, and will make good faith efforts to communicate and establish the Levitt Series Schedule for YEAR 1 as construction allows.

(iii) Changes to Levitt Events. Levitt Dayton and the Director may, at any time upon written mutual agreement, alter the Series Months without the necessity of modifying this Agreement. Further, should Levitt Dayton discover that a previously scheduled date is no longer needed for a Levitt Event, Levitt Dayton will notify the Director in writing and will make such date available for use by third parties for a Non-Levitt Event.

(iv) Production. Levitt Dayton shall supervise and coordinate setup and breakdown of Levitt Events, including sound equipment, lights, volunteers, stagehands, and the like.

(b) Non-Levitt Events. The Facilities, including the Levitt Pavilion, and the Property shall remain an available performance venue and event space to third parties at times when Levitt Events are not scheduled. The City shall be responsible for the coordination of use of the Facilities and the Property by third parties at times when Levitt Events are not scheduled ("**Non-Levitt Events**"). The City shall have the right to perform and furnish management services to operate and manage the Facilities and the Property year-round and promote the availability of the Facilities and the Property for Non-Levitt Events. The City shall perform such services in such a manner so as not to interfere with the Levitt Events and the activities of Levitt Dayton, including conferring with Levitt Dayton prior to booking and confirming a Non-Levitt Event. The City shall maintain a master schedule of all Non-Levitt Events to include all pending and confirmed Non-Levitt Events. Such schedule shall be provided to Levitt Dayton at a minimum on a monthly basis. Nothing in this Agreement shall prohibit Levitt Dayton from utilizing the Levitt Pavilion for a Non-Levitt Event provided that it does so consistently with the terms of this Agreement.

(c) Unavailable for Event Usage. Notwithstanding anything to the contrary contained herein, the City reserves the right to prohibit use of the Facilities and the Property for Levitt Events due to planned or anticipated work or rest periods at the Site or by mutual agreement of the City and Levitt Dayton. The City agrees to consult with Levitt Dayton when determining any dates or times the Facilities and the Property may be unavailable for use and will, at minimum, make the Facilities and the Property available for a minimum of ninety (90) separate dates during the Series Months for Levitt Dayton to prepare for, including setup and breakdown days and times, and to present the Levitt Events. Following completion of construction of the Levitt Pavilion, the City agrees to notify Levitt Dayton in writing, on or before October 1 of each calendar year, of any dates or times during the following calendar year that the Facilities and the Property will be unavailable for Levitt Events due to planned or anticipated work or rest periods at the Site. In addition, the City reserves the right to prohibit the use of the Facilities and the Property for Levitt Events at any time due to an unforeseen emergency.

(d) Advertising and Promotional Services. Levitt Dayton shall engage in such advertising and promotional activities as may be calculated to develop the full potential of the Facilities

and the Property and the cultivation of broad community support. The City agrees to advertise and promote the availability of the Facilities, including the Levitt Pavilion, and the Property as it does for similar City-owned facilities and event spaces. Levitt Dayton and the City agree that they shall not permit Sponsorships (defined below), advertising, promotional products and marketing materials within the Facilities and the Property or associated with Levitt Events or Non-Levitt Events in any capacity that promote the sale or use of any of the following: (i) firearms, (ii) pornography, (iii) tobacco, and (iv) illegal activities.

(e) Cooperation. Levitt Dayton and the City agree to work cooperatively prior to the first Levitt Event in 2018 in order to adequately prepare for such Levitt Event. Further, Levitt Dayton and the City agree to work cooperatively throughout the Term regarding security, street closings, parking, public toilets, and public safety issues relating to Levitt Events at the Facilities and the Property. Levitt Dayton and the City agree to meet as necessary to discuss and resolve any public safety issues that arise or are anticipated to arise during Levitt Events. The City shall provide access to and shall not charge Levitt Dayton for use of water, sewer, and electricity during Levitt Events.

(f) Security and Public Safety. Levitt Dayton shall develop and implement safety policies and programs, consistent with applicable City standards and policies, to help assure the safety of the general public and employees, officers, officials, contractors, and other agents of Levitt Dayton and the City during Levitt Events, and shall, upon request, provide a copy of the policies and programs, and any amendments thereto, to the Director. Levitt Dayton shall maintain and, upon request of the Director, submit to the Director incident reports, including reports of criminal acts, property damage, and personal injury. Any incidents which involve an insurance claim under Section 18 shall be promptly reported by Levitt Dayton to the Director. Levitt Dayton shall be solely responsible for engaging all security and public safety personnel needed for Levitt Events consistent with applicable City standards and policies.

(g) General Maintenance and Repair. The City agrees that it shall be responsible to provide maintenance and repair to the Facilities, including the Levitt Pavilion, in accordance with City policies and procedures. Levitt Dayton shall provide, at its own expense, for all cleaning and sanitation for the Facilities and the Property, including janitorial services, non-public restroom cleaning, and replacement of non-public restroom supplies as needed. Levitt Dayton shall provide, at its own expense, for all maintenance and repair to the Sound and Lighting Equipment. Levitt Dayton agrees to timely remove equipment in accordance with the Levitt Series Schedule to restore the Facilities and the Property to the condition it was in immediately prior to Levitt Events. Levitt Dayton shall report any and all damages to the Facilities and the Property in writing immediately to the Director. Any person found by Levitt Dayton to be causing damage to the Facilities or the Property shall be immediately reported to law enforcement.

(h) Contracting. Levitt Dayton may contract with third party vendors and service providers to perform activities and services which Levitt Dayton is obligated to perform under this Agreement. Unless a specific waiver is granted in writing by the Director, all such vendors and service providers shall be subject to each and every provision of this Agreement that would apply to such activity or service were it performed by Levitt Dayton, including insurance and indemnification requirements. Further, no such contract shall relieve Levitt Dayton from ensuring that all required activities and services are timely and satisfactorily performed. Compliance with the terms and restrictions of this Section 9(i) is the responsibility of Levitt Dayton. Levitt Dayton shall, upon request,

promptly provide the Director with a copy of any written contract or agreement for work or services provided at the Facilities and the Property.

(i) Other Services. The Parties acknowledge and agree that for any service or action which is reasonably necessary for the smooth and efficient year-round operation and management of the Facilities and the Property and which is not specifically designated the responsibility of either the City or Levitt Dayton under this Agreement, the City and Levitt Dayton shall cooperate and coordinate in an effort to evaluate such needs and the associated costs and to develop a strategy and plan to fulfill any such necessary service or action.

#### **10. MAINTENANCE, REPAIR, AND CAPITAL IMPROVEMENTS OBLIGATIONS OF CITY.**

(a) Structural and Exterior Elements. The City will, at its own expense, maintain, repair and replace (as necessary) structural elements of the Facilities, including foundations, roof and roof supports, structural walls, ceiling and floor structural elements, exterior windows and window frames, exterior doors and door frames, exterior handles and locks, and similar or related features and paved areas within the Property (“**Structural and Exterior Elements**”).

(b) Interior Elements. The City will, at its own expense, maintain, repair and replace (as necessary) all interior elements of the Facilities, including windows and window frames; doors and door frames; handles and locks; cabinets and counters; carpet, floor tiles, and other flooring; interior paints and stains; non-structural walls; woodwork, wall paneling and tiles, drywall, and plastering; plumbing items, including sinks, toilets, urinals, and associated above floor or below ceiling pipes and drains; light switches, plugs, and lighting; ceiling tiles; all built in or attached electrical fans; drinking fountains; fences and similar perimeter structures; and items of similar character or use (“**Interior Elements**”).

(c) Systems. The City will, at its own expense, maintain, repair and replace (as necessary) heating and air conditioning, water, sewer, drainage, electrical, plumbing, natural gas, fire protection, and telephone systems, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, meters, and associated equipment and appurtenances (“**Systems**”) located at or in the Facilities and the Property. Notwithstanding the previous sentence, Levitt Dayton agrees to be responsible for charges relating to monthly phone service as set forth in Section 17.

(d) Property Grounds Maintenance. The City will, at its own expense, maintain the grounds of the Property, including maintenance of pathways, public lighting, the lawn and landscaping, and trash and litter removal (“**Grounds Maintenance**”). After each and every Levitt Event and Non-Levitt Event, the City shall remove trash and debris from the Facilities, the Property and immediately adjacent areas including walkways, public restrooms, and landscape areas. The City will provide temporary garbage carts, cans, and recycling containers as needed throughout the Property during Levitt Events and Non-Levitt Events. As soon as necessary and practicable following each Levitt Event and Non-Levitt Event, the City will remove such temporary containers and dispose of trash and recycling in dumpsters for ultimate removal by the City from the Site.

(e) Public Restrooms. Levitt Dayton shall provide, at its own expense, for cleaning, sanitizing, and supplying public restrooms permanently located within the Property during Levitt Events and Non-Levitt Events and in a manner collaboratively determined by the City and Levitt Dayton when

Levitt Events and Non-Levitt Events are not in session. Levitt Dayton shall be responsible for any non-structural repair and maintenance issues and replacement of items (as necessary) that arise with regard to public restrooms permanently located within the Property and the City shall be responsible for any Structural and Exterior Elements, Interior Elements, and Systems with respect to the public restrooms.

(f) Inspection and Repair. The City or its contractors and agents shall have the right to enter into or on the Facilities and the Property at all reasonable times to inspect the Facilities and the Property and/or take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in Sections 10(a–e). Except for emergency situations, the City will make every reasonable effort to timely notify Levitt Dayton of any pending work and to coordinate such work so as to minimize any disruption to Levitt Dayton’s activities, including Levitt Events, at the Facilities and the Property.

(g) Process. Levitt Dayton will annually by January 15 of each calendar year during the Term provide to the City a schedule of proposed capital improvements and capital equipment purchases for the purpose of allowing the City to consider such projects and appropriate funds as necessary.

(h) Emergency. In the event of an existing or imminent emergency where the Facilities or public safety are at substantial risk or neighboring property or residents are at substantial risk due to unsafe or unhealthy conditions in the Facilities or in the Property, Levitt Dayton shall have the right (not the obligation) upon notice to the City and with the City’s consent, to make capital expenditures at the Facilities for emergency repair; funds expended for such emergency repair shall be reimbursed to Levitt Dayton by the City within thirty (30) days.

(i) Assignment and Contracting. The City shall have the right to assign and/or contract/subcontract its obligations under this Section 10. Contractors shall be required to exercise the same degree of care, skill, and diligence in the performance of these obligations as would be required of the City.

## **11. GENERAL OPERATIONAL REQUIREMENTS.**

(a) Days and Hours of Operation. The lawn area within the Property shall be open to the general public during Site hours except during times when Levitt Events or Non-Levitt Events are taking place, including rehearsal, load-in and load-out, setup and breakdown times. The Levitt Pavilion, exclusive of service, storage, dressing rooms, green rooms, non-public restrooms, and other non-public areas, shall be open to the general public during Site hours except during times when Levitt Events or Non-Levitt Events are taking place, including rehearsal, load-in and load-out, setup and breakdown times. In addition, any public restrooms located within the Property shall be open to the general public at the sole discretion of the Director, but in all instances during Levitt Events and Non-Levitt Events at the Facilities and the Property. Service, storage, dressing rooms, green rooms, non-public restrooms and other non-public areas of the Levitt Pavilion shall not be accessible to the general public.

(b) Rules and Regulations. The public’s right to use the lawn area within the Property and the public areas of the Levitt Pavilion shall be subject to any City rules and regulations, except to the extent expressly modified in this Agreement.

(c) City Access. The City shall, at all reasonable times, have access to the Levitt Pavilion for the purposes of visitation and inspection; provided, however, that twenty-four (24) hours' notice shall be provided by the City to Levitt Dayton prior to the City visiting or inspecting storage areas within the Levitt Pavilion that are exclusively used by Levitt Dayton. Notwithstanding the foregoing, notice shall not be required in the event of an emergency.

**12. STORAGE SPACE.**

The Facilities shall include climate-controlled, secure storage space for the year-round exclusive use of Levitt Dayton. The City will maintain the physical structure of the storage space and the maintenance relating to the climate-controlled nature of the storage space.

**13. CONCESSIONS; ALCOHOL.**

(a) Concessions. Levitt Dayton shall have the exclusive right to conduct on its own, or contract with third parties to provide for, the operation of concessions for selling food, non-alcoholic beverages, alcoholic beverages (subject to the terms of Section 13(b)), and merchandise at the Facilities and the Property during Levitt Events. In addition, Levitt Dayton shall have the exclusive right to itself provide for, or enter into contracts with vendors allowing for, the sale and service of food, beverages and merchandise from mobile facilities, such as food trucks, food carts and tents or canopies within the Property during Levitt Events. All proceeds of all concessions sales shall be paid to, and retained by, Levitt Dayton. Levitt Dayton may establish a fair and uniform set of fees and charges to be collected from vendors for the right to provide food, beverage and merchandise sales and service in and to the Facilities and the Property under its vendor contracts. The City shall not allow or permit any sales of food, beverages or merchandise at the Facilities and the Property other than by Levitt Dayton and its vendors during Levitt Events. All concession agreements shall contain a provision that the agreements may be suspended or terminated, as appropriate, if it is determined by the Director that the concessionaire has (i) failed to comply with applicable health and safety laws (local, state and federal), (ii) failed to pay applicable taxes, fees, fines or charges (local, state or federal), (iii) failed to obtain all necessary permits and pay associated fees, or (iv) failed to substantially conform with other Applicable Law, including applicable licensing requirements.

(b) Alcohol. Levitt Dayton may obtain or contract with a third-party vendor to obtain a liquor license for the Facilities and the Property in order to serve and/or sell alcoholic beverages at the Facilities and the Property during Levitt Events. Levitt Dayton, its contractors and other users of the Facilities and the Property may serve and/or sell alcoholic beverages at the Facilities and the Property subject to (i) Levitt Dayton or its third-party vendor obtaining any required governmental approvals and licenses for the service or sale of alcoholic beverages and (ii) Levitt Dayton or its third-party vendor obtaining and maintaining liquor liability insurance as reasonably required by the Director.

(c) Vendors. Vendors at Levitt Events shall be liable to the City for any damages the vendors, their employees, agents, or contractors caused to the Site or are otherwise caused by the operation or activities of the vendors' businesses, and this obligation shall be written into all contracts between Levitt Dayton and such vendors. Vehicles permitted in the Property to support the vendors' businesses must be driven on hard surfaces, and any costs incurred by the City to repair damage to turf, vegetation or Site amenities caused by vendors' vehicles shall be paid by such vendor.

**14. GIFTS AND SPONSORSHIPS; GRANTS.**

(a) Gifts and Sponsorships. Levitt Dayton shall have the right to accept and utilize, for the benefit and use of Levitt Dayton, gifts, donations, and contributions of money and personal property from individuals and for-profit and non-profit entities ("Gifts") and money and personal property provided by individuals and for-profit and non-profit entities with certain benefits, recognition, or naming rights being a condition of providing the money or personal property ("Sponsorships"). Levitt Dayton may, in its discretion, refuse to accept any Gift or Sponsorship if Levitt Dayton determines that such Gift or Sponsorship would not be in the best interests of Levitt Dayton. Levitt Dayton shall develop policies regarding the solicitation and use of Gifts and Sponsorships; the acceptability of and compliance with any terms and conditions of Gifts or Sponsorships; any formal recognition, acknowledgments, or memorials associated with Gifts or Sponsorships, including signs at the Facilities and the Property and the naming of Facilities or features in the Property (provided, however, that the Levitt Pavilion shall not be re-named). These policies and Levitt Dayton's implementation of these policies must be in conformance with the terms and conditions of this Agreement and Applicable Law. Levitt Dayton agrees that it shall not permit Sponsorships within the Property that promote the sale or use of any of the following: (i) firearms; (ii) pornography; (iii) tobacco; and (iv) illegal activities.

No capital equipment or gifts to be gifted to the City shall be acquired by Levitt Dayton without consent and approval of the Commission of the City of Dayton. Any assets to be gifted to the City for use at or in connection with the Facilities shall remain the property of the City but may be used or managed by Levitt Dayton to the extent necessary or appropriate in filling Levitt Dayton responsibilities.

(b) Grants. Levitt Dayton shall have the right to apply for, accept and utilize, for the benefit and use of Levitt Dayton, grants and other governmental or private financial assistance ("Grants"), subject to compliance with Applicable Law.

(c) Cooperation. Levitt Dayton and the City agree to collaborate and support each other's efforts to obtain Gifts, Sponsorships and Grants for the operation and improvement of the Facilities and the Property and the support and enhancement of programs and activities conducted by Levitt Dayton at the Facilities and the Property. Any matching funds requirement of a Gift or Grant shall be the responsibility of Levitt Dayton unless the Commission of the City of Dayton has approved the matching funds requirement through the appropriate legislative action in advance of the proposal and appropriated its share of the matching funds. Any Gift, Sponsorship or Grant that requires that certain covenants, conservation easements, or other restrictions be imposed on the Facilities and the Property in whole or part, as a condition of obtaining the Gift, Sponsorship or Grant must be pre-approved in writing by the Director.

(d) Compliance. For all Gifts, Sponsorships, and Grants accepted and utilized by Levitt Dayton, including any donations of money and grant money received by the City for the Facilities and the Property and turned over to Levitt Dayton, Levitt Dayton shall be responsible for complying with the terms and conditions of those Gifts, Sponsorships, and Grants.

**15. NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS.**

(a) Names and Logos of the City. The City grants to Levitt Dayton the non-exclusive right to use the names and logos of the City, including City departments in connection with Levitt Dayton's activities at the Facilities and the Property. In no event shall Levitt Dayton represent or indicate, by the particular use of a name or logo, that the City is engaged in any joint venture with Levitt Dayton with respect to Levitt Dayton's activities at the Facilities and the Property. No other intellectual property rights of the City other than those expressly identified herein are being licensed by the City for use by Levitt Dayton.

(b) Names and Logos of Levitt Parties. The Levitt Parties grant to the City the non-exclusive right to use the names and logos of the Levitt Parties in connection with their association with and use of the Facilities and the Property; provided, the City may not use the name of the Levitt Parties or any logos, trademarks, or trade names owned by or licensed to the Levitt Parties without the prior written approval of the applicable Levitt Party. Levitt Dayton grants to the City the non-exclusive right to use the names and logos of Levitt Dayton's sponsors and affiliates (if any); provided, the City may not use any logos, trademarks, or trade names owned by or licensed to Levitt Dayton's sponsors or their affiliates without the prior written approval of Levitt Dayton, which may be withheld as Levitt Dayton deems appropriate. In no event shall the City represent or indicate, by the particular use of a name or logo, that any of the Levitt Parties is a partner with the City or engaged in any joint venture with the City with respect to the Levitt Parties' association with and use of the Facilities and the Property. No other intellectual property rights of the Levitt Parties (or their affiliates' or sponsors') other than those expressly identified herein are being licensed by the Levitt Parties for use by the City.

(c) Photographic Rights Retained. The City and the Levitt Parties acknowledge and agree that each Party shall have a right to make its own photographs, audio and video recordings in the Facilities and the Property during the Levitt Events and Non-Levitt Events for that Party's sole use for customary advertising and publicity and other non-commercial uses; provided, however, that the Parties shall not engage in photographing or recording in violation of copyright laws. The Parties acknowledge that in some circumstances an agreement between Levitt Dayton and a third party appearing at the Levitt Pavilion for a Levitt Event or an agreement between the City and a third party appearing at the Levitt Pavilion for a Non-Levitt Event will disallow or restrict photographing or recording, and in such circumstances the Parties will abide by those terms. Levitt Dayton agrees to use its best efforts to secure necessary permissions from any third party appearing at the Levitt Pavilion for a Levitt Event for which a Party has interest in making its own photographs, audio and video recordings at least forty-five (45) days prior to such appearance. If Levitt Dayton is unable to secure such necessary permission at least forty-five (45) days prior to such appearance after using its best efforts, Levitt Dayton agrees to provide the Foundation with the contact information for the third party at least forty-five (45) days prior to the appearance and consents to the Foundation contacting the third party to secure the necessary permissions as discussed herein. The City agrees to use its best efforts to secure necessary permissions from any third party appearing at the Levitt Pavilion for a Non-Levitt Event for which a Levitt Party has interest in making its own photographs, audio and video recordings at least forty-five (45) days prior to such appearance. If the City is unable to secure such necessary permission at least forty-five (45) days prior to such appearance after using its best efforts, the City agrees to provide such Levitt Party with the contact information for the third party at least forty-five (45) days prior to the appearance and consents to the Levitt Party contacting the third party to secure the necessary permissions as discussed herein.

**16. COST AND EXPENSES; FUNDING.**

(a) Cost and Expenses. Levitt Dayton agrees that it shall pay, at its sole cost and expense, all costs and expenses incurred for all activities and obligations to be performed by Levitt Dayton under this Agreement.

(b) Levitt Dayton Funding. In order for Levitt Dayton to perform the activities and obligations required of it under this Agreement and achieve and continue the public purposes of its mission as set forth in this Agreement, Levitt Dayton shall retain all of the following funds:

(i) Any and all funds generated during, for, or from Levitt Events at the Facilities and the Property including Gifts, Sponsorships, Grants, concessions, admission fees, and other Levitt Dayton revenue generating activities; and

(ii) Any funds designated for receipt by Levitt Dayton that are generated during, for, or from Non-Levitt Events at the Facilities and the Property including concessions, rent of equipment, technician fees, payment of incidental expenses, and other revenue generating activities; and

(iii) Donations of money or grants made to the City for the use and benefit of Levitt Dayton shall be transferred to the control of Levitt Dayton, or its fiduciary The Dayton Foundation through the date the Levitt Pavilion opens or June 1, 2018 whichever is earlier, unless the donor or grantor has provided to the contrary, in which event the City agrees to use such donations for the benefit of Levitt Dayton in its discretion in collaboration with Levitt Dayton.

**17. UTILITIES.**

Starting with the first day of occupancy of the Facilities and the Property by Levitt Dayton, Levitt Dayton shall provide, at its own expense, the following utilities at the Levitt Pavilion as reasonably needed for all activities and obligations to be performed by Levitt Dayton under this Agreement: wifi, telephone service and email service. Starting with the first day of occupancy of the Facilities and the Property by Levitt Dayton, the City shall provide year-round, at its own expense, the following utilities as reasonably needed to operate and maintain the Facilities and the Property: water, sewer, electricity, and gas.

**18. INSURANCE.**

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

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

(4) Errors and Omissions Insurance in the amount of \$1,000,000.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Levitt Dayton pursuant to this Section 18 shall be furnished to the City and the Foundation. All such insurance policies shall name the Foundation as an additional insured on the original policy and all renewals or replacements during the Term of this Agreement. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Levitt Dayton's legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City and the Foundation in the event of cancellation or diminution of coverage. In the event of a claim, Levitt Dayton shall make copies of applicable insurance policies available for review by the City and the Foundation.

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

**19. DAMAGE AND REPAIR.**

The City shall obtain replacement cost insurance for damage by fire, flood, windstorm, or casualty to the Facilities. If the Facilities, or any portion thereof, is damaged or destroyed during the Term of this Agreement by fire, flood, windstorm, or other casualty, or any other cause, Levitt Dayton shall give prompt notice to the City and the Foundation. The City shall, to the extent that there are sufficient insurance proceeds, including any applicable deductible with due diligence, repair, rebuild, or replace the Facilities so that after such repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds, as prior to such damage or destruction. Levitt Dayton shall provide to the Foundation a written estimated schedule for repairing, rebuilding or replacing the Facilities as agreed to between the City and Levitt Dayton within thirty (30) days of such damage by fire or casualty occurrence. If the City fails to undertake such work within ninety (90) days after notice of the fire or other casualty, or fails to complete the work diligently, within a reasonable time agreed to between the City and Levitt Dayton, the Levitt Parties may, at their option, terminate this Agreement by written notice, signed by both Levitt Parties, to the City effective as of the date sent. If the repairing, rebuilding, or replacing of the Facilities is not completed within one (1) year of the fire or casualty occurrence, the Term shall be automatically extended by the amount of time equal to the date of the fire or casualty occurrence through the date of completion of repair, rebuild, or replacement of the Facilities. Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, no Party shall have any obligations for repairing, rebuilding, or replacing the Facilities in the event all or a substantial part of the Facilities shall be destroyed or damaged by fire or other casualty. Further, notwithstanding anything to the contrary contained herein, no Party shall be liable to any other Party for any failure, delay, or interruption in performing its obligations under this Agreement due to damage to the Facilities caused by fire or other casualty.

**20. INDEMNIFICATION.**

(a) To the maximum extent permitted by law, Levitt Dayton hereby agrees to indemnify, hold harmless and defend the City and the Foundation, each Party's respective appointed and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors, and assigns (collectively, "Indemnified Party"), in both its public and private capacities, from and against any and all claims, liabilities, suits, demands or causes of action, obligations, losses or damages of any nature

whatsoever, government charges or fines, costs and expenses, including reasonable attorneys' and accountants' fees and costs, to which the Indemnified Party may become subject on account of, arising out of, or related to any act, omission, conduct or activity of Levitt Dayton or any of its officers, directors, employees, volunteers, agents, affiliates, successors or assigns, on account of, arising out of or related to this Agreement or the activities contemplated hereunder. The provisions of this Section 20(a) shall survive the Term of this Agreement.

(b) To the maximum extent permitted by law, the Foundation hereby agrees to indemnify, hold harmless and defend Levitt Dayton and the City, each Party's respective appointed and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors, and assigns (collectively, "Indemnified Party"), in both its public and private capacities, from and against any and all claims, liabilities, suits, demands or causes of action, obligations, losses or damages of any nature whatsoever, government charges or fines, costs and expenses, including reasonable attorneys' and accountants' fees and costs, to which the Indemnified Party may become subject on account of, arising out of, or related to any act, omission, conduct or activity of the Foundation or any of its officers, directors, employees, volunteers, agents, affiliates, successors or assigns, on account of, arising out of or related to this Agreement or the activities contemplated hereunder. The provisions of this Section 20(b) shall survive the Term of this Agreement.

**21. PATENT, TRADEMARK AND COPYRIGHT INDEMNIFICATION.**

Levitt Dayton agrees to secure and maintain, or cause to be secured and maintained, licenses for the use of musical works, videos, and other matters protected by intellectual property rights which are used at the Facilities and the Property for Levitt Events (including licenses from ASCAP, BMI, and SESAC). Levitt Dayton agrees to protect, defend, indemnify and hold harmless the City and the Foundation, including those parties' respective appointed and elected officials, officers, directors, employees, volunteers, agents, affiliates, successors and assigns, as applicable, against any and all claims or lawsuits based on the violation of any intellectual property right which arises out of Levitt Events at the Facilities and the Property.

**22. CLAIMS.**

In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against a Party related in any way to this Agreement or the actions or activities of a Party related in any way to this Agreement, written notice thereof shall be given to the other Parties, within five (5) days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the subject Party.

**23. TAXES; LICENSES; LIENS; DEBTS.**

(a) Taxes. Levitt Dayton shall collect and remit all sales taxes and other taxes as required by law (local, state, and federal) which arise from goods or services sold by Levitt Dayton, shall promptly pay all such taxes and excise and license fees of whatever nature applicable to this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) Licenses. Levitt Dayton shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of its obligations under this Agreement. The Director will endeavor to facilitate Levitt Dayton's effort to obtain any such license, permit, or other authorization.

(c) Liens. Levitt Dayton shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for Levitt Dayton.

(d) Debts. Levitt Dayton shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its obligations under this Agreement and shall not permit the same to become delinquent.

(e) Final Adjudication. Levitt Dayton may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity.

#### **24. REPORTS AND AUDITS.**

Levitt Dayton shall comply with the following reporting and auditing requirements:

(a) Levitt Dayton shall provide to the Director on or before February 1 of each year of the Term a written report of its activities undertaken, contributions and sponsorships received, revenues generated, and expenditures incurred pursuant to this Agreement during the preceding calendar year. This annual written report shall be signed by an authorized representative of Levitt Dayton and the Board Treasurer for Levitt Dayton. The first written report shall be due on or before February 1, 2017.

(b) Upon City request, Levitt Dayton agrees that any duly authorized representative of the City shall, at City's own expense and until three (3) years after termination of this Agreement, have the right to perform whatever audit or check the City may require, including a financial audit and a check for compliance with this Agreement. Upon request, Levitt Dayton shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to any services provided under this Agreement.

#### **25. NON-DISCRIMINATION.**

The Levitt Parties each agree to comply with all Applicable Laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability in connection with membership on such Parties' boards, access to the Facilities and the Property, and participation in any public program at the Facilities and the Property. In connection with the performance of its obligations under this Agreement, Levitt Dayton agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender

variance, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter.

Levitt Dayton and the Foundation 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.

## **26. ENVIRONMENTAL COMPLIANCE.**

In the performance of its obligations under this Agreement, Levitt Dayton shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("**Environmental Laws**"). Within ten (10) days of receipt of an invoice, Levitt Dayton shall promptly reimburse the City for any fines or penalties levied against the City because of Levitt Dayton's failure to comply with any Environmental Laws as and if required by this Section 26. Levitt Dayton shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials (defined below) on, under, in, above, to, or from the Facilities and the Property except in strict compliance with the Environmental Laws. Levitt Dayton shall not introduce Hazardous Materials into the Facilities plumbing systems or otherwise release or discharge Hazardous Materials on the Facilities and the Property in violation of the Environmental Laws. Levitt Dayton shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City property in violation of the Environmental Laws. If Levitt Dayton uses, stores, generates, or disposes of on, under, in, above, to, or from the Facilities and the Property any Hazardous Materials, or if the Facilities and the Property shall become contaminated in any manner for which Levitt Dayton is legally liable, Levitt Dayton shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses arising during or after the Term and arising as a result of the contamination by Levitt Dayton. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, restoration, or remediation mandated by a federal, state, or local agency or political subdivision. Without limiting the foregoing, if Levitt Dayton causes or permits the presence of any Hazardous Materials in the Facilities and the Property that results in contamination of the Facilities and the Property, Levitt Dayton shall promptly, at its sole expense, take any and all necessary actions to return the Facilities and the Property, as the case may be, to the condition existing prior to the presence of any Hazardous Materials. Levitt Dayton shall obtain the Director's and City Attorney's prior written approval for any remedial action. The indemnity obligations of Levitt Dayton under this Section 26 shall survive the expiration or termination of this Agreement. As used herein, "**Hazardous Materials**" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under Environmental Laws, including asbestos, polychlorobiphenyls and petroleum and its derivatives.

**27. TERMINATION.**

(a) Levitt Party Default. In the event that a Levitt Party shall default or breach, on its part, in the performance or fulfillment of one (1) or more material term(s), promise(s), or condition(s) of this Agreement ("**Levitt Party Default**"), and shall fail to cure such Levitt Party Default within ninety (90) days following delivery of written notice from the Director or non-defaulting Levitt Party specifying the Levitt Party Default (subject to extension as provided in Section 27(c)), the City or non-defaulting Levitt Party may terminate this Agreement. Any such notice from the City to a Levitt Party specifying a Levitt Party Default shall be sent to all Parties.

(b) City Default. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one (1) or more material term(s), promise(s), or condition(s) of this Agreement ("**City Default**"), and shall fail to cure such City Default within ninety (90) days following delivery of written notice from a Levitt Party specifying the City Default (subject to extension as provided in Section 27(c)), the Levitt Party may, provided the subject Levitt Party has the prior written approval of the other Levitt Party, terminate this Agreement. Any such notice from a Levitt Party to the City specifying a City Default shall be sent to all Parties.

(c) Extension of Cure Period. Notwithstanding anything to the contrary contained in this Agreement, the time to cure any Levitt Party Default or City Default will be extended so long as the defaulting Party has commenced the cure and (i) the nature of the default is such that it cannot be cured within ninety (90) days and (ii) the defaulting Party continues to diligently pursue the cure to completion. The deadline for any cure under this Section 27 shall not excuse the obligation of any defaulting Party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to the Facilities and the Property or neighboring property or any existing or imminent threat to public health and safety.

(d) Failure to Comply with Other Agreements. Any of the Parties may terminate this Agreement in the event a Party fails to comply with the material term(s), promise(s), or condition(s) of the Other Agreements, provided each Levitt Party has the prior written approval of the other Levitt Party as long as such approval is not unreasonably withheld. Without limiting the generality of the foregoing, this Agreement may be terminated by a Party if a Party fails to timely raise or contribute funds as required by the terms of this Agreement.

(e) Effect of Termination. Upon termination of this Agreement, the Facilities and the Property, other than the Levitt Dayton Property, shall remain the property of the City. Levitt Dayton shall take all reasonable measures to turn over the Facilities and the Property, other than the Levitt Dayton Property, in a timely manner. Any public funds that have not been used by Levitt Dayton under this Agreement and are not needed to cover Levitt Dayton's remaining obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including funds held by Levitt Dayton as endowment, if any) and all Levitt Dayton Property shall be used or distributed by Levitt Dayton consistent with the duties and obligations of Levitt Dayton towards the donors of any such funds or of any personal property and in accordance with Levitt Dayton's certificate of formation and bylaws.

**28. GENERAL PROVISIONS.**

(a) Consents and Approvals. All consents or approvals of the Levitt Parties, the City and the Director set out herein shall not be unreasonably withheld, conditioned or delayed unless otherwise expressly specified. All consents and approvals required or permitted herein by any Party shall be given in writing. An approval by the Director or by any other employee or agent of the City does not waive compliance with this Agreement by the Levitt Parties or establish a standard of performance other than that required by this Agreement, except to the extent that the Director pursuant to the terms of this Agreement is given the power to waive or approve compliance with the terms of this Agreement. The Director is not authorized to vary the terms of this Agreement, except as to matters in this Agreement where the Director is expressly given the right to approve thereof.

(b) Good Faith and Non-disparagement. The City and the Levitt Parties agree to work diligently and in good faith to perform and fulfill their respective duties and obligations and achieve the purposes of this Agreement and to resolve any unforeseen issues or disputes under this Agreement as quickly and fairly as possible. The Parties also recognize the need to maintain continued harmonious relationships with their funders, affiliates, directors, employees, the public, and the communities in which they conduct their activities. The Parties therefore agree not to make or publish any critical, denigrating, or disparaging written or oral statements about each other, or their respective directors, officers, employees, volunteers, agents, affiliates, successors, and assigns. The provisions of this Section 28(b) shall survive the Term of this Agreement.

(c) Assignment. The Parties shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the other Parties.

(d) Contracting or Subcontracting. Any obligation that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every applicable provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract.

(e) Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of another Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

(f) Dispute Resolution. Claims between the City and Levitt Dayton (a demand by either Party seeking relief with respect to the terms of the Agreement) or other matters in controversy arising out of or related to the Agreement (hereinafter "Claim(s)") may be subject to informal negotiation between Levitt Dayton and the City. Claims must be initiated by written notice to the other Party. Claims must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Party first recognizes the condition giving rise to the Claim, whichever is later. After submission of a Claim, the Director and a representative from Levitt Dayton shall meet within a reasonable amount of time to discuss and negotiate the Claim. If informal negotiation fails to resolve the matter within thirty (30) days of submission of the Claim, either Party may give written demand for mediation. The Director and Levitt Dayton may designate a mutually agreed upon independent mediator that is not an entity related to or otherwise retained or employed by the City or Levitt Dayton or any entity related to either of them to mediate such Claim. In the event an agreement

on the mediator is not made, they will jointly file a request with the Montgomery County Court of Common Pleas to appoint an experienced impartial mediator for that purpose. Such mediation session must take place, absent extraordinary circumstances or a mutually agreed decision to continue the mediation session to a later date, within ten (10) days of the appointment of the mediator. The mediation must not last more than eight (8) hours in length and the City and Levitt Dayton shall share equally the cost of the mediation. Should mediation fail, the Party may pursue all remedies available to it under this Agreement or at law and in equity.

(g) Funds Appropriations. Notwithstanding any provision of this Agreement to the contrary, any financial obligation of the City, if any, under this Agreement is contingent upon all funds necessary for the performance of this Agreement being budgeted, appropriated, approved and authorized by the Commission of the City of Dayton, and otherwise made available. If funds are not budgeted or appropriated for any fiscal year for services under the terms of this Agreement, this Agreement will impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage may accrue to the benefit of the Levitt Parties, its successors, or assignees, for any further payments.

(h) Rights and Remedies Cumulative. All rights, options and remedies of the Parties contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Parties shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

(i) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of Ohio, without regard to applicable conflict of laws principles. Venue for any legal action relating to this Agreement shall lie in Montgomery County, Ohio.

(j) No Personal Liability. No appointed or elected officials, officers, directors, employees, volunteers, agents or affiliates of a Party shall be charged personally or held contractually liable to the other Parties or their officials, officers, directors, employees, volunteers, agents, affiliates, or successor and assigns under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(k) Force Majeure. No Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of force majeure. "Force majeure" shall mean causes beyond the reasonable control of a Party, including weather conditions, acts of God or the public enemy, terrorism, war, epidemic, national or local calamity, sabotage, strikes, fire or other casualty, or action of government authorities. With the exception of canceled concerts due to inclement weather during the Series, written notice of any claim of a Party's inability to perform or comply due to force majeure must be promptly given to the other Parties.

(l) No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other entity or third person on such agreements. It is

the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(m) No Joint Venture. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between Levitt Dayton and the Foundation. All contracts or agreements made by a Levitt Party shall be in its own name. Each Levitt Party shall have no authority to bind, or to impose liability upon, the other Levitt Party through any contracts or agreements such Levitt Party may make, unless the prior, written approval of the other Levitt Party is obtained.

(n) Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing and shall be deemed delivered upon receipt, if delivered personally or by electronic mail with confirmation of receipt or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to Levitt Dayton: Friends of Levitt Pavilion Dayton  
2312 Far Hills Ave., Suite 194  
Dayton, Ohio 45419  
Attn: D. Jeffrey Ireland  
E-mail: djireland@ficlaw.com

If to the Foundation: Mortimer & Mimi Levitt Foundation  
1910 W. Sunset Blvd, Suite 600  
Los Angeles, CA 90026  
Attn: Sharon Yazowski  
E-mail: sharon@levitt.org

If to the City: City of Dayton, Ohio  
101 West Third Street  
Dayton, Ohio 45401  
Attn: Director of Public Works

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties. Postage or delivery charges must be paid by the Party giving notice.

(o) Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

(p) Amendment. Except as expressly provided in this Agreement, this Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

(q) Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due

diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

(r) Technological Advances. Levitt Dayton and the Foundation acknowledge that technological advances are likely to occur during the Term and agree to implement the terms of this Agreement utilizing appropriate and customary current technology throughout the Term of this Agreement.

(s) Political Contributions. Levitt Dayton and the Foundation each affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

(t) Time. Except as otherwise provided herein, all time limits provided for herein shall run from the Effective Date. Time is of the essence in this Agreement. If the final day of any period of time set forth in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of Ohio, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or such legal holiday.

(u) No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

(v) Headings for Convenience; Words of Inclusion. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement. Words of inclusion herein shall not be construed as terms of limitation, so that references to included matters shall be regarded as non-exclusive, non-characterizing illustrations. Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by the way of example only and without in any way limiting the generality of the clause or concept referred to."

(w) Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by Applicable Law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

(x) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance by the Commission of the City of Dayton and it has been fully executed by all signatories of the Parties.

(y) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) Agreement.

(z) Electronic Signatures and Electronic Records. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the

admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The Parties have executed this Agreement in multiple counterparts.

**FRIENDS OF LEVITT PAVILION DAYTON**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**MORTIMER & MIMI LEVITT FOUNDATION**

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

Printed Name: \_\_\_\_\_

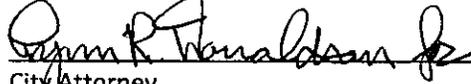
Title: \_\_\_\_\_

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

**CITY OF DAYTON, OHIO**

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

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
City Attorney *RRD*

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

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

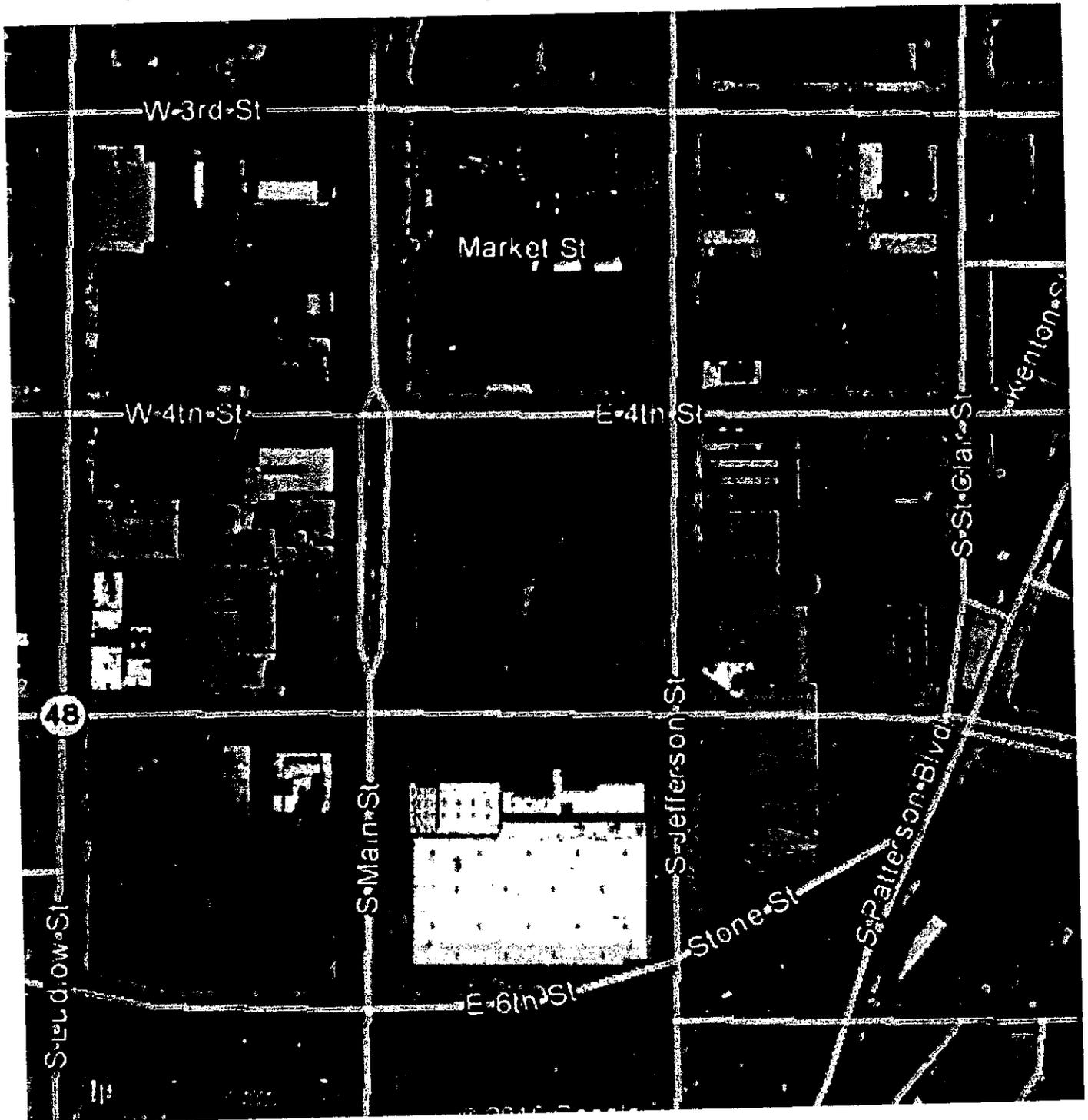
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\_\_\_\_\_  
Clerk of the Commission

**EXHIBIT A**  
**LOCATION MAP**

# Location of Proposed Levitt Pavilion

Downtown Dayton in the block bounded by Main, Fourth, Jefferson and Ludlow Streets – located directly across the street from the Dayton Convention Center.



**EXHIBIT B**  
**SITE AND STRUCTURE REQUIREMENTS**



## Levitt Foundation Site & Structure Requirements

### **Site Requirements**

The site requirements for developing a Levitt Pavilion have been designed to create a quality musical experience at a first-rate facility in an aesthetically pleasing and welcoming environment. These requirements reflect the high professional standards that artists and audiences can expect of all Levitt venues. Each element creates an inviting, outdoor performing arts venue that becomes an integral part of community life in your city.

The following site requirements of the Mortimer & Mimi Levitt Foundation are the basis for funding eligibility for Friends of Levitt organizations.

### Seating Capacity

The site must be a minimum of two acres in size designed to accommodate an audience capacity of approximately 5,000 people in an open lawn setting. If permanent seating is required, either because of City codes or ADA requirements, it must be located on the sides or at the back of the lawn, such that access and views to the front of the stage are open to all.

### Parking and Public Transportation

The site must have access to adequate parking and Friends of Levitt must develop a parking plan. Adjoining land, existing surface parking, street parking, parking lots and parking garages in the immediate area within reasonable walking distance are all acceptable options. Private parking spaces that are not normally available to the public may be included in the parking plan if a long-term written agreement with Friends of Levitt and the owner of such private parking spaces permits use during concerts. Immediate access to good quality, well-utilized public transportation can be considered when developing the parking plan. Prior to funding, Friends of Levitt must provide a plan to the City that assures adequate available parking and public transportation, if applicable.

### Landscaping

The site must either have a natural bowl or be graded as a gradual upslope away from the stage to achieve optimum viewing throughout the lawn area. The site must be open with porous borders and no fencing surrounding the site or lawn area nor have any physical barriers to access. Attractive landscaping, appropriate to the site and venue, should include walkways and plantings to enhance a casual and relaxed ambiance. An underground sprinkler system is recommended to maintain four to five inches of topsoil and healthy grass. The site must meet ADA standards.

### Access/Load-in

The venue must be accessible by large vehicles to accommodate load-in and load-out of production equipment. The access way should be concrete and a minimum of 10 feet wide.

### Lighting

Sufficient lighting for safety, at the venue site and in parking areas and along walkways, is required. Ambient lighting at the site is highly recommended. There should also be ample lighting for Friends of Levitt booths, food and beverage vendors, and merchandise vendors. This may require an additional 100 to 150 amps dedicated to grounds lighting.

### Vendor Accommodations

To the sides and back of the lawn, there should be designated areas designed to accommodate Friends of Levitt booths, food and beverage vendors, and merchandise vendors. Such accommodations to include lighting, as mentioned previously, flat surfaces and ample electricity. Vendor areas should be in front of the venue, so vendors and individuals at the booths have views of the stage.

### Public Restrooms

Access to public restrooms is required for Levitt concerts and events. Restrooms may be located at the site or in a nearby building, as long as the facilities are within reasonable walking distance for children and seniors. Restrooms in the backstage area of the venue are only for the use of Levitt personnel and performers.

### Hospitality Area

To ensure successful relationships with Friends of Levitt supporters, a designated hospitality area is required. The hospitality area should be located at either the back of the lawn or the sides of the lawn, so the center and front areas of the lawn remain open to everyone. Throughout the concert season, the hospitality area provides a space for Friends of Levitt to host donors, elected officials, and key stakeholders and for funders and sponsors to entertain their guests. The hospitality area should have, at minimum, a concrete pad to comfortably accommodate tables and chairs for at least 100 individuals and electrical capacity to support catering and sufficient lighting for safety.

### WiFi

Free WiFi capability throughout the venue lawn area is recommended.

### **Structure Requirements**

Whether new construction or renovation of an existing facility, the venue must be designed to include the following basic requirements and must meet ADA standards for accessible design:

- Open air stage with roof – minimum 50 feet wide at the front and 30 feet deep at the center, with minimum approximate square footage of 1,100 square feet; roof must cover at least 70% of stage.
- A minimum of two dressing rooms, at least 130 square feet per room, each equipped with built-in counters, proper lighting, and mirrors for make-up application, and a minimum of one full-length mirror in each dressing room.
- A minimum of two ADA accessible bathrooms located within the backstage area; such bathrooms are only for the use of Levitt personnel and performers and not for use by the general public.

- One artist green room of a minimum of 270 square feet, equipped with built-in counters and kitchenette.
- Climate-control system for all rooms in backstage area.
- Secure and climate-controlled storage space, a minimum of 300 square feet, for sound and lighting equipment.
- Telephone system.
- WiFi capability.
- Standard electrical power for an outdoor performing arts venue – a minimum of 500 amps dedicated to sound and lighting with each system on a separate circuit.
- Overhead beams, lighting grids, and/or side trusses to accommodate professional lighting.
- Prominent permanent, horizontal signage naming the structure “Levitt Pavilion for the Performing Arts” or “Levitt Pavilion City Name” or “Levitt Pavilion” visible to the audience.
- Concrete pad, minimum 8 feet by 8 feet, for a front of house sound station in the lawn area.
- Underground, water-proof duct for conduit to accommodate the front of house station.
- Height of stage between 36 inches and 40 inches to create an intimate environment for the audience and to allow children to experience performers close-up.
- Digital screens, visible to the audience, installed as part of the venue to highlight sponsors and supporters and showcase promotional pieces before and after concerts.

The following design elements are recommended based on the experiences of existing Friends of Levitt organizations. Incorporating these elements into the design of your venue will contribute to successful operations. Recommended venue design elements include:

- Backstage area to include an office, large enough to be functional, for use by Friends of Levitt staff either year-round or specifically during the concert season.
- Backstage area to include one or more showers for performers who travel directly, often long distances, from one engagement to the next.

Friends of Levitt should consult with other arts nonprofits, local schools and universities, other community organizations, concert promoters, various City departments, and other entities that will likely use the venue to ensure the venue is designed to accommodate their use needs as well.

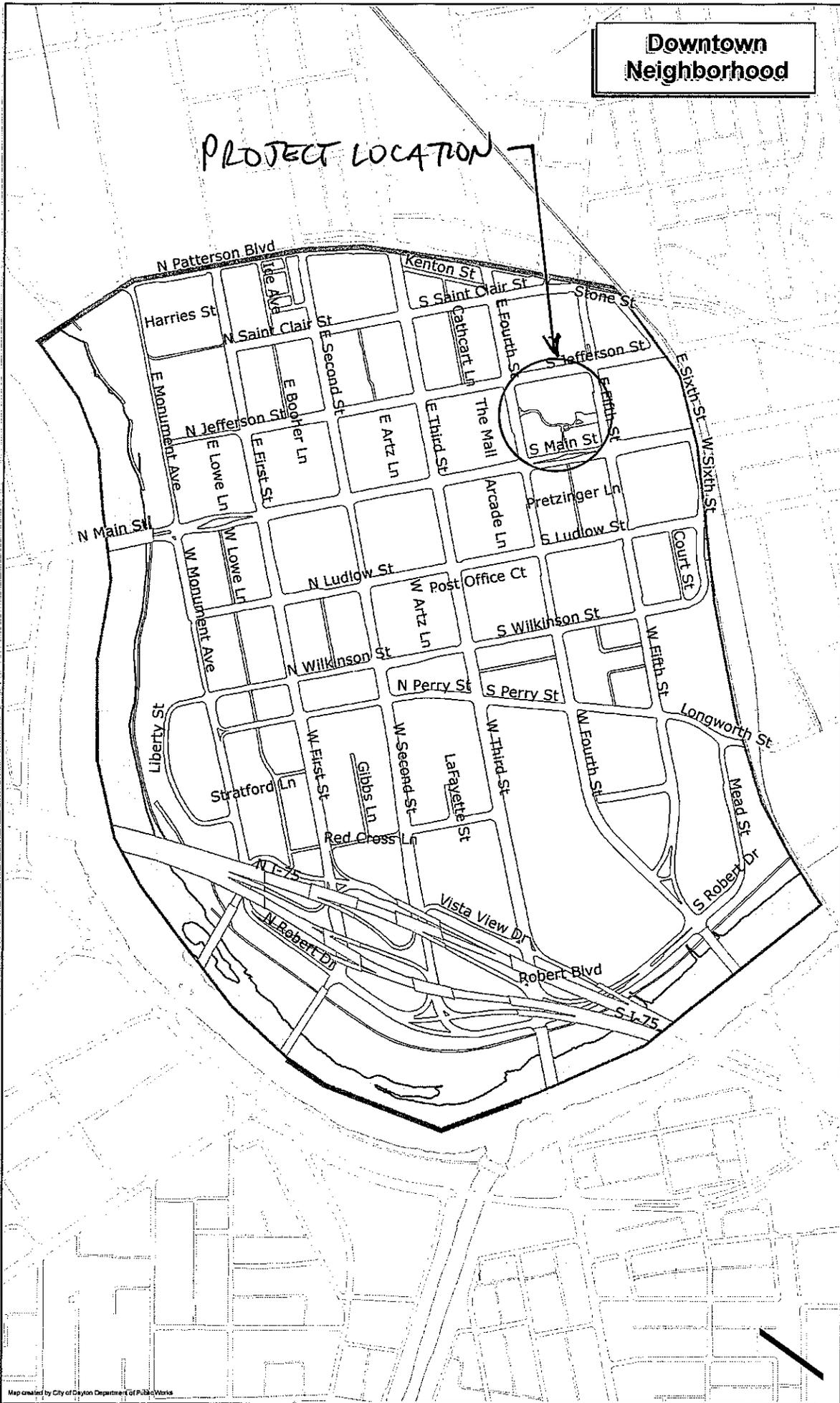
All design components shall be installed to meet or exceed local building codes. The architectural plans shall be acceptable to the Levitt Foundation. The architect of record for the project and Friends of Levitt shall coordinate with the Levitt Foundation to ensure all site and structure requirements are met.

### **Lighting and Sound**

State-of-the-art lighting and sound systems appropriate to the standards of the Levitt Foundation are required. LED lights are highly recommended. It is also highly recommended that recording equipment be included in the sound system. Site plans should include a concrete pad, minimum 8 feet by 8 feet, for a front of house sound station in the lawn area. The exact spot will be the optimal location for highest quality sound production. An acoustician should be consulted to determine the “sweet spot” of your venue site. An underground, waterproof duct for conduit to accommodate the front of house station is required. The duct should be deep enough to allow growth of grass directly above.

**Downtown  
Neighborhood**

PROJECT LOCATION





# City Manager's Report

9.

From 2380 - Planning & CD Director

Date August 17, 2016

Expense Type Other, (See Description Below)

Total Amount \$250,000.00 (Through 2021)

**Supplier, Vendor, Company, Individual**

Name Montgomery County Land Reutilization Corporation

Address 130 W. Second St., Suite 1425  
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
General Fund Capital (CD Projects)	40024-2380-1159-31	\$250,000.00

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

**Description**

**Land Banking Agreement – 34 N. Main Street**

Approval is requested to enter into a Land Banking Agreement with the Montgomery County Land Reutilization Corporation (Land Bank) to hold title and manage the real property commonly known as 34 North Main Street. We are seeking authorization of up to \$250,000.00 which represents 5-years of utility costs, assessments and a contingency for unexpected maintenance needs.

Under Ohio laws, the Land Bank can hold property tax-free, thus lowering the cost to the City. Under the Agreement the Land Bank will hold and manage the property in its current state, will ensure the building is secure and sidewalks are maintained during inclement weather. The Land Bank will hold the property for up to five years while the City issues a Request for Proposals for a qualified developer. We anticipate the RFP will be released within the next 90 – 120 days.

The Department of Law has reviewed and approved the Agreement as to form and correctness. The property will be transferred to the Land Bank upon execution of this agreement.

A Certificate of Funds in the amount of \$25,000.00 is attached. This represents anticipated utility costs for the remainder of 2016 and funds to remove debris and remnants from the previous owner.

**Signatures/Approval**

Division

Department

City Manager

*Approved by City Commission*

Clerk

Date

# CERTIFICATE OF FUNDS

CT161487

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

**NO DRAFT DOCUMENTS PERMITTED**

         New Contract                     
           Renewal Contract                     
           Change Order:

Contract Start Date	Execution by the City
Expiration Date	12/31/21
Original Commission Approval	\$ 250,000.00
Initial Encumbrance	\$ 25,000.00
Remaining Commission Approval	\$ 225,000.00
Original CT/CF	
Increase Encumbrance	
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

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

Amount: \$ <u>25,000.00</u> Fund Code <u>40024 - 2380 - 1159 - 31 -      </u> <small style="display: flex; justify-content: space-between; font-size: 8px;"> <span>Fund    Org    Acct    Prog    Act    Loc</span> </small>	Amount: <u>                    </u> Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: 8px;"> <span>Fund    Org    Acct    Prog    Act    Loc</span> </small>
Amount: <u>                    </u> Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: 8px;"> <span>Fund    Org    Acct    Prog    Act    Loc</span> </small>	Amount: <u>                    </u> Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: flex; justify-content: space-between; font-size: 8px;"> <span>Fund    Org    Acct    Prog    Act    Loc</span> </small>

Attach additional pages for more FOAPALS

Vendor Name: Montgomery County Land Reutilization Corporation

Vendor Address: 130 W. Second Street                      Dayton                      OH                      45402  

Street                      City                      State                      Zip code + 4

Federal ID: 453258410

Commodity Code: 97160

Purpose: To provide landbanking and property management services for the property located at 34 N. Main Street.

Contact Person: Aaron K. Sorrell                      Planning & Community Development                      8/4/2016  

Department/Division                      Date

Originating Department Director's Signature:

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

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

Finance Director Signature                       8-9-16                                            

Date                      Date                      CF/CT Number

CF Prepared by                       8/8/16                                          

SA 8/4/16  
VEW

CT161487

**MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION  
LAND BANKING AGREEMENT  
"34 NORTH MAIN STREET"**

THIS LAND BANKING AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit, having an address of 130 W. Second Street, Suite 1425, Dayton, Ohio 45402 (the "Land Bank"), and the CITY OF DAYTON, MONTGOMERY COUNTY, OHIO, an Ohio political subdivision (the "Participant"), under the following circumstances:

A. In August of 1961, O.R.C. Section 1724.01 became effective and provided for the establishment of county land reutilization corporations for the purpose of facilitating the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for whose benefit the corporation is organized and the purpose of promoting economic and housing development in the county.

B. Pursuant to O.R.C. Section 1724.02, the Land Bank has, among other powers, the power to do all acts and things necessary or convenient to carry out the purposes of O.R.C. Section 1724.01.

C. Participant has requested that the Land Bank temporarily hold title to the real property commonly known as 34 North Main Street as described on Exhibit A to this Agreement (the "Property") in connection with the Land Bank's Land Banking Program.

D. The Property will be held by the Land Bank pursuant to the terms and conditions in this Agreement and will be conveyed from the Land Bank to Participant as provided in this Agreement.

For and in consideration of the mutual promises, covenants and agreements in this Agreement, the parties agree as follows:

1. Conveyance to Land Bank. Participant will transfer to the Land Bank fee simple title to the Property by general warranty deed, and the Land Bank agrees to accept title to the Property subject to the terms and conditions of this Agreement. Participant will ensure that, at the time of conveyance, the Property is vacant and free of all tenants and other occupants. The Land Bank's obligation to accept the Property will be conditioned upon Participant's full compliance with this Agreement.

2. Use of Property and Right of Entry. During the period that the Land Bank holds title to the Property, the Property will not be used or occupied by Participant or any of its directors, officers, managers, members, employees, contractors or agents or any third parties for any purpose, and no business or other operations may be conducted from or at the Property. Notwithstanding the foregoing, the Land Bank grants to Participant and its employees, agents, architects, engineers, surveyors, contractors and other professionals a license to enter the

Property for the purpose of undertaking inspections, surveys, sampling and/or testing of any structure on the Property and/or soil on the Property as Participant deems appropriate and for the purpose of assessing possible redevelopment or demolition of some or all of the structures on the Property. In addition, if Participant is obligated by this Agreement to maintain or repair or make replacements to the Property, the Land Bank grants to Participant a license to enter the Property for the purpose of completing such maintenance, repairs and replacements. Participant may undertake any other investigations with respect to the zoning and use of the Property as Participant deems appropriate. Before entering the Property for purposes of any inspections, surveys, sampling or testing, Participant will give the Land Bank prior notice of the planned date of entry and details regarding the inspections, sampling or testing to be done. The Land Bank will have the right to be present during any such inspections, surveys, sampling or testing.

3. Conveyance to Participant.

(a) Timing of Conveyance. The Land Bank will convey fee simple title to the Property to Participant on a date five (5) years after the date of delivery of the general warranty deed to the Land Bank (the "First Conveyance Date"). The date that is five (5) years after the First Conveyance Date will be the "Conveyance Deadline." The period from the First Conveyance Date to the Conveyance Deadline is called the "Land Banking Period." If, before the Conveyance Deadline, litigation or any other legal proceeding is commenced or threatened with respect to the Property, or if any violation of legal requirements is asserted by any governmental authority or agency, and regardless of whether or not the foregoing results from Participant's acts or breach of this Agreement, the Land Bank has the right to convey the Property to Participant before the Conveyance Deadline and without direction by Participant, and Participant will accept title to the Property.

(b) Deed. The Land Bank's conveyance of the Property to Participant will be by limited warranty deed, unless, at the time of the Land Bank's acquisition of the Property, Participant obtained an owner's title insurance policy from a title company satisfactory to the Land Bank and insuring the Land Bank's fee simple interest in the Property in an amount equal to the purchase price or other amount agreed to by the Land Bank and Participant (the "Owner's Title Policy"). If Participant provides an Owner's Title Policy, the Land Bank will convey the Property to Participant by a general warranty deed. Notwithstanding anything to the contrary in this Agreement or otherwise, the Land Bank's liability under a general warranty deed will be limited to title insurance proceeds actually received by the Land Bank under the Owner's Title Policy. The terms and conditions of this Section 3 will survive the transfer of the Property to Participant without limitation.

(c) Reimbursement of Expenses. Land Bank funds expended on the acquisition, maintenance, administration, and disposition of the Property (individually or in total) pursuant to this Agreement that are not reimbursed by Participant are considered an investment, and will be recovered from Participant upon the conveyance of the Property to Participant. If the Participant is unable to dispose of the Property within the

Land Banking Period, the Land Bank will have the right at its sole discretion of returning the Property to Participant while retaining its investment interest associated with its acquisition, maintenance, administration, and disposition of the Property. Upon the transfer of the Property, Participant will give the Land Bank a promissory note in an amount equal to the Land Bank's investment, and Participant will grant to the Land Bank a mortgage on the Property to secure the note. The Land Bank will account for all of its costs.

4. Participant Representations and Warranties. Participant makes the below representations and warranties to the Land Bank, and these representations and warranties will survive the conveyance of the Property from the Land Bank to Participant without limitation. Participant acknowledges that the Land Bank is entering into this Agreement based on the truth and completeness of Participant's representations and warranties. As used in this Agreement, the "Property" includes all buildings, structures and improvements situated on the real estate, if applicable. Participant acknowledges, represents, warrants and covenants to Seller as follows:

(a) Legal Status and Authority. Participant is an Ohio municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Ohio and has full power and authority to execute, deliver and carry out this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. The individual executing this Agreement on Participant's behalf has the authority to bind Participant to this Agreement. The execution and delivery of, and consummation of the transactions contemplated by, this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of, any agreement or instrument to which Participant is now a party or subject or otherwise affecting the Property.

(b) Title to Property. Participant is the owner of fee simple title to the Property, and there are no liens or encumbrances affecting the Property and no leases, licenses, occupancy agreements or other legal or equitable interests in the Property held by third parties other than those referenced at items \_\_\_\_\_ [insert applicable item numbers from title commitment] in Schedule B-2 of the title commitment issued by \_\_\_\_\_ [insert title company name] and having commitment/order number \_\_\_\_\_ [insert title commitment/order number] (the "Title Commitment"). Participant understands and agrees that if any liens, leases, agreements or other encumbrances were missed by the title company and not referenced in the Title Commitment, the Land Bank will have no liability with respect to the same, and Participant will accept title to the Property subject to the missed items.

(c) Legal Compliance. The Property is not in violation or alleged violation of any legal requirement affecting the Property, including without limitation, any violation or alleged violation of any building, subdivision, environmental or other codes, laws, ordinances, statutes, regulations, rules or orders of authorities having jurisdiction in these matters.

(d) Litigation and Legal Proceedings. There is no pending or, to the best of Participant's knowledge, threatened (1) condemnation or eminent domain proceeding affecting the Property, and Participant has no knowledge that any such action is presently contemplated, or (2) litigation or governmental proceeding affecting the Property, and there is no basis for assertion of any claim, suit or action against Participant or the Property based on the use of the Property or the occurrence of any action or event thereon or associated therewith. If any such legal or administrative actions, suits or proceedings or any unresolved arbitrations directly or indirectly concerning the Property, or any portion of the Property or interest in the Property are commenced, Participant will immediately provide the Land Bank with written notice of the action, suit or proceeding.

(e) Environmental Matters. The Property is not in violation of any Environmental Law (as defined below), no Hazardous Materials (as defined below) have been used, generated, stored, or disposed of on, under or about the Property in violation of Environmental Laws or transported to or from the Property in violation of Environmental Laws, and Participant has not received any notice from any governmental agency or authority of any investigation or proceeding by such agency or authority concerning the presence or alleged presence of Hazardous Materials on the Property or any notice from any party related to the presence or alleged presence of Hazardous Materials on the Property or migrating from or onto the Property. The term "Environmental Law" includes any federal, state or local law, ordinance, regulation, directive or order pertaining to health, industrial hygiene, waste disposal, or the environment, including, without limitation, the Comprehensive Environmental Response, Liability and Compensation Act, 42 U.S.C. § 9601 et seq., the federal Superfund Amendments and Reauthorization Act, the Federal Resource Conservation and Recovery Act, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability for Hazardous Materials. The term "Hazardous Materials" includes, without limitation, all hazardous, toxic or dangerous substances, wastes and materials, pollutants and contaminants classified as such under any Environmental Law.

(f) As-Is Condition. Participant represents, warrants and acknowledges that neither the Land Bank nor its directors, officers, employees, agents, contractors or representatives (collectively, the "Land Bank Parties") have made any representations or warranties to Participant or its directors, officers, managers, members, partners, principals, employees, agents, contractors or representatives (collectively, "Participant Parties") about any matters concerning the Property, verbally or in writing, and the Land Bank Parties disclaim any and all representations and warranties. Subject to the Land Bank's obligations in Section 5, Participant will accept the Property in its as-is condition and subject to all defects, patent or latent and whether known or unknown at the time of the Land Bank's acceptance of the Property.

5. Maintenance and Repairs; Demolition. Participant will have sole and complete responsibility for maintaining, and for making all repairs and replacements to, the Property and will maintain the Property in good and safe condition and repair and in compliance with all applicable legal requirements. If there are buildings or other structures at the Property, Participant will at all times keep the Property secured from unauthorized entry and boarded as needed, according to the local code or as otherwise required by the Land Bank. Participant agrees that the Land Bank will have no responsibility or liability for maintenance, repairs or replacements or for any break-ins, vandalism of, or damage to, the Property. *[OR IF RESPONSIBILITIES ARE SHARED: Participant will be responsible for those capital items, repairs and replacements that are designated as its responsibility pursuant to the Maintenance and Repair Schedule to this Agreement. Participant will undertake this obligation in a good and workmanlike manner and in compliance with all applicable legal requirements. The Land Bank will be responsible only for the maintenance that is designated as its responsibility pursuant to the Maintenance and Repair Schedule. The Land Bank will undertake its obligations in a good and workmanlike manner and in compliance with all applicable legal requirements. Other than as expressly stated in the Maintenance and Repair Schedule or as otherwise agreed to by the Land Bank, the Land Bank will have no responsibility or liability for capital repairs or replacements or for any break-ins, vandalism of, or damage to, the Property. With respect to capital repairs and replacements that are the responsibility of the Participant under the terms of this Agreement and which the Land Bank agrees to manage on Participants' behalf, Participant will pay all costs of materials and labor and an administrative fee to the Land Bank of 10% of such costs (the "Administrative Fee") plus the set fee stated on the Maintenance and Repair Schedule (the "Maintenance Fee"). For each calendar year or other twelve-month period during which the Land Bank holds title to the Property, the parties will prepare and agree to a budget of costs and expenses related to the operation and maintenance of the Property and anticipated repairs and replacements, and the Maintenance Fee will be based on this budget.]* If Participant desires to undertake demolition of any improvements at the Property, Participant will provide to the Land Bank a detailed description of the demolition plans, information about the demolition contractor and proof of insurance covering the demolition activities. The Land Bank will have the right to approve the plans, contractor and insurance, and such approval will not be unreasonably withheld. Participant will be responsible for obtaining all permits and approvals required in connection with the demolition, will comply with all legal requirements applicable to the demolition work and ensure that the work is done in a safe manner.

6. Utilities and Property Services. All accounts for utilities, trash and other services to the Property will remain in the name of Participant, and Participant will be solely responsible for payment of all charges to these accounts, which will be paid when due. If charges to Participant's account are not timely paid, Participant will be responsible for all late charges. All damages, risks, losses, costs and liabilities of all kind related to the termination of utility services at the Property will be Participant's sole responsibility.

7. Property Contracts. The service contracts and agreements listed in the Property Contracts Schedule to this Agreement are in effect with respect to the Property (collectively, the "Property Contracts"), and Participant intends to continue the Property Contracts in effect during the period

the Land Bank holds title to the Property. Notwithstanding the transfer of the Property to the Land Bank, Participant agrees that the Land Bank will not assume any obligations or liability under the Property Contracts. If Participant elects to continue the Property Contracts, then until the Land Bank conveys the Property to Participant, Participant will make all payments and perform all obligations pursuant to the Property Contracts, and Participant will indemnify, defend and hold harmless the Land Bank from and against all claims, liabilities, causes of action, damages, costs and expenses arising from or related to, whether directly or indirectly, the Property Contracts.

8. Taxes and Assessments. Participant understands that while title to the Property is held by the Land Bank, the Property is exempt from real estate taxes but not assessments. Participant further understands that upon the transfer of the Property to Participant, the Property will no longer be exempt from real estate taxes (unless Participant otherwise obtains an exemption), and Participant will receive bills for real estate taxes and assessments, including those charges that may have accumulated before the Land Bank took title.

9. Land Bank Covenants. During the period the Land Bank holds title to the Property, the Land Bank will not initiate any change in the zoning of the Property or voluntarily convey the Property or any interest in the Property to any third party without Participant's prior written consent. Notwithstanding the foregoing, the Land Bank will not be in breach of this Agreement, or liable to Participant in any manner, as the result of any actions or omissions that are initiated or taken by third parties, and the Land Bank will not be required to take any actions in response to the same. The Land Bank will be excused from performance of any of its obligations if performance is not reasonably possible or practical as the result of any circumstance or event outside of the Land Bank's reasonable control, including without limitation, the enactment or enforcement of any legal requirements, inability to reasonably obtain labor, materials, equipment or supplies, explosions, fire, wind damage or other casualty, acts of God.

10. Costs and Fees.

(a) Land Banking Fee. Participant will not be charged a Land Banking Fee

(b) Other Costs and Fees. In addition to the Land Banking Fee, Participant will pay those costs, expenses, fees and charges that are designated as Participant's responsibility on the attached Fee Schedule, which may include (a) those arising from or associated with the Land Bank's acquisition of the Property and the conveyance of the Property to Participant, such as closing and escrow charges, title examination, commitment and policy charges and premiums, conveyance fees and transfer taxes owed to Montgomery County, if any, (b) the cost of insurance maintained by the Land Bank with respect to the Property, (c) charges owed to third parties for maintenance, repairs or replacements, (d) real estate assessments, and (d) other Land Bank fees provided for in this Agreement. Participant will deliver to the Land Bank within five days of the Land Bank's request proof of payment of any costs, expenses, fees or charges that are to be paid directly to vendors, contractors and service providers. The Land Bank will pay

those costs, expenses, fees and charges, if any, that are designated as its responsibility on the attached Fee Schedule.

11. Events of Default. There will be an Event of Default under this Agreement if any one or more of the following occur:

(a) Any representation or warranty by Participant is untrue or misleading.

(b) Participant fails to pay any amount owed pursuant to this Agreement within five days of the due date stated in this Agreement, or if there is no due date stated in this Agreement, within fifteen days following written notice from Land Bank of the amount due.

(c) Participant fails to maintain the insurance Participant is required by this Agreement to maintain.

(d) Except as provided in (c) above, and unless a shorter performance or cure period is elsewhere provided in this Agreement for a particular obligation, Participant fails to perform or observe any other term, condition or obligation in this Agreement for a period of thirty days after written notice from the Land Bank provided, however, that if the nature of the cure is such that more than thirty days are reasonably required to complete the cure, then Participant will have additional time as reasonably needed so long as Participant promptly commences and diligently completes the cure within a reasonable time.

(e) All or substantially all of Participant's assets are attached or levied under execution (and Participant does not discharge the same within thirty days thereafter), or a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Participant (and Participant fails to secure a stay or discharge thereof within thirty days thereafter), or Participant is insolvent and unable to pay its debts as they become due, or Participant makes a general assignment for the benefit of creditors, or Participant takes the benefit of any insolvency action or law, or the appointment of a receiver or trustee in bankruptcy for Participant or its assets if such receivership has not been vacated or set aside within thirty days thereafter.

12. Remedies. Upon the occurrence of any Event of Default, the Land Bank will have the following rights and remedies, in addition to those available at law or in equity, any one or more of which may be exercised without notice:

(a) The Land Bank may terminate this Agreement and immediately convey the Property to Participant, which Participant will unconditionally accept, and the Land Bank will be relieved of all obligations pursuant to this Agreement.

(b) The Land Bank may institute an action, suit or proceeding in equity for the specific performance of any provisions in this Agreement or for injunctive relief.

(c) After the occurrence of an Event of Default, and until Participant accepts the conveyance of title to the Property, the Land Bank may, but will not be obligated to, perform any of Participant's obligations under this Agreement and use, operate, manage, preserve, control and otherwise deal with the Property, without interference from Participant.

(d) The Land Bank may collect, receive, sue for and recover in its own name and without interference from Participant, all rents, profits and proceeds derived from the Property and may deduct therefrom all costs, expenses and liabilities incurred by the Land Bank in controlling the same and in using, operating, managing, preserving and controlling the Property. The foregoing remedy will include the right of the Land Bank to sell the Property and retain all proceeds from the sale, provided that the Land Bank will not exercise the right of sale unless it has notified Participant in writing of its default pursuant to Section 11, and thereafter, Participant fails to accept the conveyance of the Property within fifteen days after notice from the Land Bank of the Land Bank's intent to sell the Property.

(e) The Land Bank may charge interest in the amount of five percent (5%) per annum on all costs, expenses, fees and charges incurred by the Land Bank in connection with Participant's default or an Event of Default, which interest will accrue from the date the cost, expense, charge or fee is incurred until paid by Participant. The Land Bank may sue Participant to recover all costs, expenses, charges, fees and damages and interest thereon and court costs and reasonable attorneys' fees.

13. Rights Cumulative. The Land Bank's rights and remedies will be separate, distinct and cumulative, and none of them will be exclusive of the others. The Land Bank will have all rights and remedies now or hereafter existing at law or in equity or by statute, in addition to those stated in this Agreement, and the Land Bank may pursue its rights and remedies concurrently or in any sequence. If Participant does not comply with this Agreement, no remedy of law will provide adequate relief to the Land Bank, and the Land Bank will be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.

14. Indemnity. To the extent permitted by law, the Land Bank and Participant will each be responsible for any claim or cause of action made against it arising out of the performance of its duties under this Agreement, and neither party will be required or responsible to indemnify, defend, or hold harmless the other for any such claim or cause of action. Each party will obtain for itself insurance or other security for the performance of this Agreement. Nothing in this Agreement will be construed to waive any immunity of Participant or the Land Bank. Further, with respect to the Land Bank specifically, except as expressly stated in this Agreement, the Land Bank will have no duty, obligation, liability or responsibility for the control, care, operation, management, repair, replacement or restoration of the Property, or any waste committed on the Property or any dangerous or defective condition of the Property or any vandalism or break-ins at the Property. In addition, except for the Land Bank's own negligence, the Land Bank will have no liability or responsibility for any negligence in the management, upkeep, or repair of the Property. The terms and conditions of this Section will survive the

conveyance of the Property from the Land Bank to Participant or any termination or expiration of this Agreement without limitation.

15. Insurance.

- (a) Liability Coverage. During the period the Land Bank holds title to the Property, the Land Bank will maintain commercial general liability insurance against claims for bodily injury, personal injury, death or property damage, occurring in, on, under or about the Property in amounts and in form and substance satisfactory to the Land Bank. Participant will ensure that any contractors and other third parties performing any work at the Property will maintain commercial general liability insurance including broad form coverage against claims for personal injury, bodily injury, death, property damage and contractual damage occurring on, in or about the Property in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00.
- (b) Property Damage Coverage. During the period the Land Bank holds title to the Property, Land Bank will maintain insurance against loss or damage to the Property, including all buildings, structures and improvements to the Property (collectively, the "Improvements") by fire, windstorm and against loss and damage by such other, further and additional risks and with such deductibles as directed by Participant.
- (c) Flood Insurance. If the Improvements or any part of the Improvements are situated in an area now or subsequently designated by FEMA as a special flood hazard area, the Land Bank will maintain flood insurance in an amount directed by Participant, or a higher minimum amount as required by FEMA or other applicable law.
- (d) Builder's Risk. During the period of any construction, renovation or alteration of the Improvements, at the Participant's request, the Land Bank will maintain a builder's risk form or "course of construction" insurance policy in an amount and upon terms as directed by Participant.
- (e) Other Insurance. Participant may require such other insurance on the Property and Improvements against other insurable hazards, casualties or matters.
- (f) Insurance Carriers. All insurance required by Participant will be provided for under valid and enforceable policies issued by financially responsible insurers authorized to do business in Ohio, with deductibles designated by Participant. All deductibles will be reasonably acceptable to the Land Bank, and all coverages and policies will be in form and substance reasonably acceptable to the Land Bank. Except as required by this Agreement, Participant will be solely responsible for determining the types of insurance coverage to be maintained and the policy limits and deductible amounts. The Land Bank will have no liability or responsibility whatsoever with respect to such matters.

(g) Payment; Failure to Furnish. All insurance costs and expenses paid by the Land Bank will be reimbursed by Participant at times as provided in the Fee Schedule.

16. Damage or Destruction. In the event of any damage or destruction to the Property, the Land Bank or Participant may elect to terminate this Agreement by written notice to the other. Upon termination, the Land Bank will be relieved of all obligations under this Agreement. The Land Bank will have no liability or responsibility for any damage or destruction or for the repair or restoration of the Property; provided that, if this Agreement is terminated and Participant is not in breach or default of this Agreement and there is no Event of Default, then the Land Bank will reasonably cooperate with Participant with respect to making claims on any applicable insurance to the extent the Land Bank is deemed to hold any rights to such insurance, and any proceeds payable to the Land Bank will be assigned to Participant less the Land Bank's costs incurred in making the claim. If neither the Land Bank nor Participant terminates this Agreement, they will work together to develop and plan for the restoration and repair of the Property or the demolition of one or more improvements at the Property, which will be put in writing, and all repairs and restorations will be undertaken in compliance with the plan and applicable legal requirements.

17. No Assignment or Liens. Neither the Land Bank nor Participant will assign this Agreement or encumber or transfer any interest in this Agreement or the Property without the other's prior written approval, which may be given or withheld in such party's sole discretion. Notwithstanding any assignment of Participant's interest in this Agreement, Participant will remain fully and primarily liable for the performance of all Participant obligations under this Agreement. If any liens are placed on the Property or any interest in the Property as the result of either party's acts or omissions, the responsible party will promptly take all actions necessary to remove the lien. The Land Bank's conveyance of the Property to Participant will be subject to all liens and encumbrances, if any, arising from the acts or omissions of Participant or any Participant Parties.

18. Notices. All notices and other communications given under this Agreement will be in writing, and will be deemed sufficiently given when personally delivered or when deposited in the United States Mail, postage prepaid, certified or registered, or when delivered by a nationally recognized overnight delivery service and addressed as follows (or to such person, or to such other address, of which the Land Bank or Participant has given written notice as provided in this Section):

If to Land Bank:           Montgomery County Land Reutilization Corporation  
130 West Second Street, Suite 1425  
Dayton, OH 45402  
Attention: Susie Crabill  
[Scrabill@MCLandbank.com](mailto:Scrabill@MCLandbank.com)  
(937)-531-7034

If to Participant: City of Dayton  
101 West Third Street, Sixth Floor  
Dayton, OH 45401  
Attention: Aaron Sorrell  
[Aaron.sorrell@daytonohio.gov](mailto:Aaron.sorrell@daytonohio.gov)  
(937)-333-3681

Any notice or other communication mailed as provided above will be deemed effectively given on the date of delivery, if delivered by hand, or on the date received or refused if sent by overnight express delivery or if sent by U.S. Mail.

19. Interpretation. The titles to the sections and paragraphs in this Agreement are for reference only and do not limit in any way the contents of this Agreement and will not be considered in the interpretation of the sections or paragraphs. Any words in this Agreement that are used in one gender will be read and construed to mean or include the other gender wherever they would so apply. Any words in this Agreement that are used in the singular will be read and construed to mean and to include the plural wherever they would so apply, and vice versa.

20. Time. Time is of the essence with respect to Participant's obligations under this Agreement.

21. Survival. The terms, conditions and covenants of this Agreement will not be merged with either the deed by which the Land Bank acquires title to the Property or the deed by which Participant acquires title to the Property, and all terms, conditions and covenants will survive any termination of this Agreement.

22. Severability. If any term or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any term or provision of this Agreement that is held invalid or unenforceable by a court of competent jurisdiction only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

23. Binding Effect. This Agreement will be binding upon and inure to the benefit of the Land Bank, Participant, their respective successors and assigns.

24. Complete Agreement. This Agreement supersedes all other agreements and understandings between the parties, oral or written, and constitutes the entire agreement between the parties with respect to the subject matter covered by this Agreement. No amendment or modification will be effective unless it is in writing and signed by the Land Bank and Participant and dated subsequent to the date of this Agreement. This Agreement will be governed by the laws of the State of Ohio.

Executed effective as of the date first stated in this Agreement.

**CITY OF DAYTON, OHIO**

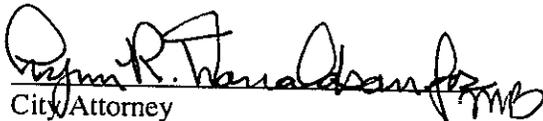
**MONTGOMERY COUNTY  
LAND REUTILIZATION CORPORATION**

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

By: \_\_\_\_\_  
Michael Grauwelman  
Executive Director

**APPROVED AS TO FORM  
AND CORRECTNESS:**

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

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

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

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

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

**EXHIBIT A**

**Legal Description of Property**

1. 34 N. Main Street
  - a. Parcel ID Numbers:
    - i. R72 00208 0001
    - ii. R72 00208 0002
    - iii. R72 00208 0003
    - iv. R72 00208 0004
    - v. R72 00208 0005

**FEE SCHEDULE**

Check if applicable	Fee Name	Amount of Fee
X	Property Acquisition Fee	N/A
N/A	Annual Land Banking Fee	N/A
X	Closing and escrow charges	Actual
X	Title examination and commitment	See Note 1 Below
X	Title policy charges and premiums	Actual
X	Conveyance fees and transfer taxes	Actual
X	Insurances Costs	Actual
X	Recording costs	Actual
X	Maintenance, repair, replacement, etc. – Administrative Fee/Maintenance Fee	Actual

**NOTES:**

1. The Land Bank shall conduct an initial investigation (title search, ownership, liens, etc.) of the Property to determine project feasibility. This investigation, review and the costs shall be at the expense of the Land Bank. However, additional legal and/or other expenses are identified in excess of \$2,000, these will be paid by the Participant.
2. All administrative expenses such as assessments, insurance, etc., shall be paid for by the Participant.
3. If during the Land Banking Period capital repairs and replacements are required that are beyond normal maintenance that are not Participant's responsibility pursuant to the Agreement, the parties will jointly determine: if the item is a capital repair and replacement or maintenance; with whom the financial responsibility resides; and the steps necessary to correct the issue(s). In no case, whether maintenance or otherwise, shall the Land Bank be responsible for more than \$10,000 per year in costs associated with the Property.

**MAINTENANCE AND REPAIR SCHEDULE**

<b>Item of Work</b>	<b>Participant Responsible</b>	<b>Land Bank Responsible</b>
Mowing and landscaping		X
Snow removal		X
HVAC	N/A	N/A
Fire Suppression, Security systems	N/A	N/A
Elevator	N/A	N/A
Roof and roof membrane	Capital Repair	Maintenance
Building security	Capital Repair	Maintenance
Building Structural	Capital Repair	Maintenance

1. The Property buildings will be maintained cold and dark (without utility service, heat, light, or conditioning) and in “as is where is condition”. These terms are intended to indicate that the Property buildings:
  - a. will not be occupied during the time they are banked;
  - b. Property building systems (electrical, plumbing, lighting, fire suppression, mechanical and utility etc.) will be shut down, and are not intended to be reused in the future;
  - c. Security, structural integrity, and safe exterior finishes are the maintenance priority.

In order to establish a maintenance plan acceptable to the parties an \*assessment of the buildings on the Property has been undertaken to determine, as can be reasonably accomplished, what capital repairs and maintenance the Participant will need to address to protect the public safety, and the integrity / condition of the buildings. The Participant and Land Bank will share equally in the cost of the assessment, which shall be billed to the Participant upon its completion. The assessment will be procured and managed by the Land Bank, and the Participant will provide access to the Property whenever possible.

2. All capital repairs and maintenance identified in the assessments as “Immediate Concern”, “Potential Concern within 5 years”, and “Future Concerns”, and all other capital maintenance and repairs identified in future investigations will be paid for and made by the Participant at its sole expense upon the acquisition of the parcels comprising the Property by Land Bank unless mutually agreed to by the parties.
3. Upon completion of the Participant’s capital repairs and replacements, the Land Bank will maintain the structure to keep it in stable condition and from further degradation.

\*This assessment has been completed, but was not comprehensive due to building access limitations. Upon the acquisition of the parcels comprising the Property, the parties agree to undertake those investigations listed in the building assessments as “further investigation needed”. These investigations will be undertaken and paid for equally by the parties.

By Ms. Whaley

No 31506-16

### AN ORDINANCE

Authorizing the Purchase of Twenty-Seven (27) Parcels of Real Property located at 117 West Fourth Street and 45 South Ludlow Street for the Purpose of Community and Economic Development, and Declaring an Emergency.

WHEREAS, The City of Dayton desires to provide housing and economic development opportunities for Dayton's residents; and

WHEREAS, It is found to be in the best interest of the City of Dayton to purchase the twenty-seven (27) parcels described herein from the seller for the purpose of future redevelopment; and,

WHEREAS, In order to complete this transaction in a timely manner, and to begin development on the site, and for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance take effect at an early date; now, therefore,

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

Section 1. That the City Manager is authorized to enter into a Contract for Sale and Purchase for an amount not to exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00) to facilitate the future redevelopment of the real estate described in Section 2 and to accept a Limited Warranty Deed conveying said real estate for redevelopment.

Section 2. That the real property to be acquired shall be the following County Auditor's parcels, as further described in Exhibit A attached hereto:

R72 00501 0016,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40

R72 00501 0043,44

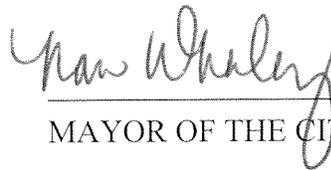
Section 3. That the real estate described above shall be purchased for the purposes set forth in the various preambles of this ordinance and for the consideration to be paid from the following accounts:

Fund: 40024-2380-1421-31 (\$450,000.00)

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

Passed by the Commission.....**August 17,**....., 2016

Signed by the Mayor.....**August 17**....., 2016



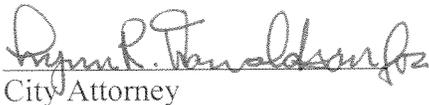
\_\_\_\_\_  
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:



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

Approved as to form:



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

## EXHIBIT A

### TRACT I

Situate in the City of Dayton, County of Montgomery, State of Ohio and being part of lots numbered one hundred seventy-six (176) and one hundred seventy-five (175) of the revised and consecutive numbers of lots on the plat of said city, more particularly described as follows:

Beginning at the southeast corner of Lot No. 176, thence north with the east line of Lot No. 176 a distance of one hundred forty-six (146) feet, thence west by a parallel line to the south line of Lot No. 176, a distance of ninety six (96) feet, thence north by a parallel line to the west line of Lot No. 176 a distance of 52.51 feet to the north line of Lot No. 176; thence west with the north line of Lot No. 176 and 175 a distance of seventy (70) feet; thence south by a parallel line to the east line of Lot No. 175 a distance of 198.8 feet, to the south line of Lot No. 175, thence east 166.0 feet set to the point of beginning.

Parcel No. R72 00501 0016

Parcel No. R72 00501 0017

Parcel No. R72 00501 0018, (R72 00501 0019, cons.)

Parcel No. R72 00501 0020, (R72 00501 0021, 42, 41, cons.)

Parcel No. R72 00501 0022

Parcel No. R72 00501 0023

Parcel No. R72 00501 0024, (R72 00501 0025, 43 cons.)

### TRACT II

Situate in the City of Dayton, County of Montgomery, State of Ohio and being all of Lots No. 173, 174 and part of Lots 175 and 162 of the revised and consecutive numbers of lots as shown on the plat of the city of Dayton and being more particularly described as follows:

Parcel A:

Beginning at the intersection of the north line of 66 foot West Fourth Street with the east line of 99 foot South Wilkinson Street, and point being also the southwest corner of said Lot No. 173 as conveyed to the United States Government by deed recorded in Deed Book 896, Page 300 of the Montgomery County Deed Records;

Thence with the said east line Wilkinson Street and the west line of said Lot 173 in a northerly direction for 215.37 feet to the northwest corner of a vacated 16.57 foot alley, said point being also the southwest corner of Lot No. 164 of the revised and consecutive numbers of lots as shown on the plat of the City of Dayton as conveyed to the United States Government by deed recorded in Deed Book 326, Pages 249 and 251 of the Deed Records of Montgomery County;

Thence with the north line of said vacated alley and the south line of Lot No. 164 and its easterly extension, said easterly extension being the south line of Lot No. 163 and Pt. Lot 162 as

conveyed to the United States Government by deed recorded in Deed Book 326, Pages 249 and 251 and Deed Book 326, Page 352 of the Montgomery County Deed Records, in an easterly direction for 232.76 feet to a point;

Thence in a southerly direction with the west line of land conveyed to the Evening New Publishing Company by deed recorded in Deed Book 460, Page 547 and the east line of land conveyed to the United States Government by deed recorded in Deed Book 896, Page 602, both in the Deed Records of Montgomery County for a distance of 215.37 feet to a point on the south line of said Pt. Lot No. 175 and the said north line of 99 foot West Fourth Street;

Thence with the said north line of West Fourth Street and the said south line of West Fourth Street and the said south line of Pt. Lot No. 175 and its westerly extension, said westerly extension being the south line of said Lots No. 174 and 173, in a westerly direction for 232.76 feet to the place of beginning.

Containing **50.130 square feet**, more or less.

Parcel No. R72 00501 0026 (R72 00501 0027 thru 40, cons.)

Parcel No. R72 00501 0044

Parcel B:

Beginning at the intersection of the south line of 108.9 foot West Third Street, with the west line of 24 foot Post Office Court;

Thence with the said south line of West Third Street in a westerly direction for 33.17 feet to a point;

Thence in a southerly direction across said Pt. Lot No. 162 for a distance of 198.80 feet to a point on the north line of 16.57 foot Arcade Lane;

Thence in an easterly direction with the said north line of Arcade Lane for a distance of 31.67 feet to a point on the west line of 24 Post Office Court;

Thence with the said west line of Post Office Court in a northerly direction for a distance of 50.20 feet to a point;

Thence at an angle of  $90^{\circ}07'$  with the west line of Post Office Court and in an easterly direction for 1.50 feet to a point;

Thence at an angle of  $89^{\circ}53'$  to the last described line and with the west line of Post Office Court in a northerly direction for a distance of 148.60 feet to the place of beginning.

Containing **6.519 square feet**, more or less.

Parcel No. R72 00501 0007 (R72 00501 0045, cons.)

**TRACT III:**

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being a 10 foot private alley abutting on and adjacent to the west side of the following described premises conveyed by warranty deed of even date herewith by said grantor to said grantee:

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being part of In-lot number 176 of the revised and consecutive numbers of lots on the plat of the City of Dayton, bounded and described as follows:

Beginning at a point on the west line of Ludlow Street in said City, 51 feet northwardly from the southeast corner of said In-lot number 176 and thence running northwardly along the west line of said Ludlow Street 85 feet more or less to a point 52 feet southwardly from the northeast corner of said In-lot number 176; thence westwardly on a line parallel with Fourth Street 96 feet more or less to a point in the east line of a 10 foot alley; thence southwardly along the east line of said alley 85 feet more or less to a point; thence eastwardly on a line parallel with Fourth Street 96 feet more or less to the place of beginning.

Parcel No. R72 00501 0023 (cons., formerly R72 00501 0015)



**CONTRACT FOR SALE AND PURCHASE  
(Former Dayton Daily News Site)**

**THIS CONTRACT FOR SALE AND PURCHASE** (this "Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **THE CITY OF DAYTON, OHIO**, a municipal corporation ("Buyer"), and **STEVE RAUCH, INC.** ("Seller").

**WHEREAS**, Seller desires to sell and Buyer desires to acquire the Property, as hereinafter defined; and

**WHEREAS**, Buyer has agreed to purchase and Seller has agreed to sell the Property, as hereinafter defined, but only on the terms and subject to the conditions hereinafter set forth.

**NOW THEREFORE**, for and in consideration of the premises hereof, the sums of money to be paid hereunder, the mutual covenants herein contained, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do covenant, stipulate and agree as follows, to wit:

1. Incorporation. The above recitals and all Exhibits referred to in this Contract are incorporated into and made a part of this Contract.

2. Description of Property. The property which is to be sold and conveyed by Seller and purchased and accepted by Buyer pursuant to this Contract consists of the real property located at 117 West Fourth Street and 45 South Ludlow Street, Dayton, Ohio, being more particularly described in Exhibit "A" attached hereto, and all improvements, tenements, hereditaments, rights, privileges and easements thereunto belonging and all other rights of Seller relating in any way thereto (collectively, the "Property"). The property consists of the following tax parcels:

R72 00501 0016,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40

R72 00501 0043,44

3. Agreement to Sell and Purchase. Seller hereby agrees to sell and convey and Buyer hereby agrees to purchase and accept the Property upon the terms and subject to the conditions set forth in this Contract. Buyer agrees to cooperate with Seller to accommodate ten (10) off street parking spaces immediately adjacent to the 1908 building in order to facilitate the redevelopment of the 1908 building.

4. Consideration and Method of Payment. Subject to credits, adjustments and prorations for which provisions are hereinafter made in this Contract, consideration from Buyer for purchase of the Property shall be **FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00)** (the "Purchase Payment") or such greater or lesser amount as may be necessary to complete the payment of the Purchase Payment after credits, adjustments and prorations, will be paid to Seller by Buyer at the closing.

5. Title. Within ten (10) days after the Effective Date, Buyer may obtain, at Buyer's expense, a title commitment (the "Commitment") for an ALTA Owner's Title Insurance Policy (the "Title Policy") from a title company of Buyer's choice (the "Title Company"). If Buyer finds title to be unacceptable in Buyer's sole discretion, Buyer shall notify Seller in writing of the defect(s) within five (5) days of receipt of the Commitment. If Buyer has given Seller timely written notice of defect(s), Seller shall have ten (10) days to cure any title defect(s) (the "Title Cure Period"). However, Seller shall have no duty or

Scope of Work – Fourth & Ludlow

obligation whatsoever to cure any title defect(s). If Seller is unwilling in its sole discretion or fails to cure any title defect(s) within the Title Cure Period, Buyer shall have the option of either: (i) closing and accepting the title "as is," without reduction in the Purchase Price and without any claim against Seller therefor; or (ii) canceling this Contract, whereupon both parties shall be released from all further obligations under this Contract unless otherwise provided for in this Contract. Any title matters to which Buyer does not object or which Buyer elects to take title subject to at Closing shall be defined as "Permitted Exceptions."

6. Inspections. Buyer and its agents shall have ten (10) days following the Effective Date (the "Inspection Period") to undertake and complete its inspections as follows:

- a. The physical condition of the Property;
- b. A determination of governmental laws, ordinances and regulations affecting the present and future use of the Property;
- c. A determination of the existence of any Contaminant (as hereinafter defined) on, in or under the Property. Buyer, at its own cost and expense, shall be responsible for obtaining any desired environmental assessment, audit or testing regarding the Property, which assessment(s), audit(s) or testing shall be completed within the Inspection Period;
- d. A title search, survey, and otherwise satisfy itself with the state of title to the Property; and
- e. A review of such other matters relating to the Property as Buyer may deem appropriate.

Seller shall, during the Inspection Period, (i) provide Buyer and Buyer's agents with reasonable access to the Property and all buildings, tenements and other improvements situated thereon as is reasonably necessary to carry out Buyer's inspections, and (ii) shall otherwise make reasonable efforts to cooperate with Buyer's inspection. No soil borings or other invasive tests shall be conducted on the Property without Seller's prior written consent, which consent may be withheld in Seller's sole discretion. Notwithstanding anything herein to the contrary, copies of any reports, tests, lab results and findings obtained by Buyer with respect to the Property during Buyer's due diligence shall be provided and certified to Seller within five (5) days of Buyer's receipt of same. Seller shall not be obligated to cure any defects revealed by Buyer's inspections. The Property is being sold AS IS.

Buyer shall be responsible for returning the Property to the condition existing prior to its inspections prior to the end of the Inspection Period. Buyer shall be responsible for any personal injury or property damage caused solely by the negligent acts or omissions by or through itself, its agents, employees, or contractors arising from or related to Buyer's inspection activities on the Property, and this responsibility shall survive the closing of the purchase and sale contemplated by this Contract or the earlier termination of this Contract.

In the event that Buyer's inspections reveal any condition that Buyer deems unsatisfactory, Buyer shall have the option of:

- a. Providing notice to Seller, no later than the final day of Inspection Period, of Buyer's intent to terminate this Contract, in which case this Contract, and all rights and obligations of the

parties contained herein, shall terminate and extinguish (other than Buyer's responsibility in the immediately preceding paragraph), and the Deposit shall be refunded to Buyer; or

- b. Accepting the Property subject to such condition(s).

In the event Buyer fails to duly notify Seller, within the Inspection Period, of any condition revealed which Buyer deems unsatisfactory, in Buyer's reasonable opinion, Buyer shall be deemed to have waived the provisions of this Paragraph 7, and shall be obligated to proceed with the purchase of the Property in accordance with the terms and conditions of this Contract.

7. Closing. The transaction contemplated in this Contract will be closed and the Deed from Seller to Buyer and other closing documents set forth in Paragraph 9 will be executed and delivered fifteen (15) days after the end of the Inspection Period, but in no event later than August 19, 2016 (the "Closing Date"). The closing will take place on the specified Closing as may be agreed upon by Buyer and Seller. Buyer agrees to accept title to the Property subject to any taxes or assessments due, both current and delinquent, to the Montgomery County Treasurer ("Permitted Exception").

8. Obligations at Closing.

- a. Seller will execute and deliver to Buyer, as applicable, at closing:

- (1) A duly executed Limited Warranty Deed conveying fee simple title to the Land, and any applicable portions of the Property susceptible of being conveyed by deed, free and clear of all liens, encumbrances, and exceptions except for the Permitted Exceptions and Montgomery County tax lien.
- (2) An Owner's Affidavit from Seller in favor of the Title Company as reasonably requested by the Title Company.
- (3) A release for every lien levied by Seller or any other person upon the Property, except any taxes or assessments due to the Montgomery County Treasurer. Seller shall also deliver a certified copy of the order of dismissal with prejudice of any litigation filed by Seller regarding the Property.
- (4) A copy of all records in Seller's possession pertaining to the Property.
- (5) A duly executed Closing Statement.
- (6) A duly executed Certification of Non-Foreign status as required by Section 1445 of the Internal Revenue Code, or documentation satisfactory to Buyer and Escrow Agent that Seller and the Purchase Price for the Property are not subject to withholding in accordance with requirements of the Internal Revenue Code.
- (7) Such other documents duly executed in recordable form, as are contemplated herein or reasonably required to consummate the purchase and sale contemplated herein.

- b. Buyer will deliver at closing:

- (1) A check for the balance of the Purchase Price, after adjustments, pro-rations and similar matters, as set forth on the Closing Statement.
- (2) A duly executed Closing Statement.
- (3) Such other documents duly executed by Buyer as are contemplated herein or reasonably required by to consummate the purchase and sale contemplated herein.

9. Closing Costs. Except as otherwise provided in this Contract, Seller will pay the following closing costs in connection with closing the sale and purchase of the Property: (a) preparation and recording of any instruments required to correct any title objections that Seller agrees to correct, and (b) Seller's attorneys' fees. Except as otherwise provided in this Contract, Buyer will pay the following closing costs in connection with closing the sale and purchase of the Property: (a) the cost of the Survey, if any, (b) the cost of the Commitment and Title Policy, if any, (c) any governmental approvals, and the like, (d) the cost of any environmental testing or reports on the Property, (e) Buyer's attorneys' fees, (f) documentary, intangible or other security related taxes, if any, imposed or any property obtained by Buyer, and (g) any other closing costs which are not specified as the responsibility of Seller.

10. Possession; Transfer of Property. Possession of the Property will be delivered by Seller to Buyer at the time of closing hereunder on the Closing Date.

11. Land Exchange. Seller may elect to exchange, for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, fee title in the Property. Buyer hereby agrees to cooperate with Seller and Seller's efforts to affect a like kind land exchange and to perform any and all actions that may be required of Buyer, as Seller's transferee, under Section 1031 of the Internal Revenue Code and regulations promulgated thereunder. Seller expressly reserves the right to assign its rights, but not its obligations, hereunder to a Qualified Intermediary as provided in IRC Reg. 1.1031(k)-1(g)(4) on or before the closing date, and the right to allocate the value of the property between the underlying land and improvements in its sole discretion.

12. Default. In the event Seller defaults hereunder or fails to perform any of the covenants of this Contract on its part to be performed within the time or times specified herein, Buyer may terminate this Contract or sue for specific performance. In the event Buyer defaults hereunder or fails to perform any of the covenants of this Contract on its part to be performed within the time or times specified herein, Seller will have the right to (i) terminate this Contract or (ii) exercise all remedies allowed at law or in equity on account of said breach.

13. Assignability. Buyer shall not assign this Contract without first obtaining the express written consent of Seller. Seller shall not unreasonably withhold its consent to assignment provided, however, that Buyer shall not be permitted to assign this Contract to a competitor of Seller or to any person who intends to use the Property for illegal, immoral or nuisance purposes. Seller may freely assign this Contract.

14. Time of Essence. It is expressly agreed by both Seller and Buyer that time is of the essence of this Contract and in the performance of all conditions, covenants, requirements, obligations and warranties to be performed or satisfied by the parties hereto. Waiver of performance or satisfaction of timely performance or satisfaction of any condition, covenant, requirement, obligation or warranty by



be permitted to participate in all negotiations and proceedings with respect thereto, provided Buyer elects to proceed to close hereunder.

21. Risk of Loss. Until closing, Seller has the risk of loss or damage to the Property. If any loss or damage to the Property occurs prior to closing, Buyer may, at its option, either (a) terminate this Contract, or (b) accept the Property without a reduction in the Purchase Price.

22. Severability. Each part of this Agreement is intended to be several. If any term, covenant, condition or provision hereof is found to be unlawful or invalid or unenforceable for any reason whatsoever, such illegality or invalidity or unenforceability shall not affect the legality, validity, or enforceability of the remaining parts of this Agreement, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the illegal, invalid or unenforceable part had not been included.

23. Contingency. Notwithstanding anything herein to the contrary, in the event Buyer fails to execute this Contract within seven (7) business days of such time as Seller tenders the Contract to Buyer for its execution, then negotiations shall be deemed terminated and this Contract shall be of no further force or effect.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed as of the day and year first above written.

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

**“BUYER”  
THE CITY OF DAYTON, OHIO**

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

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

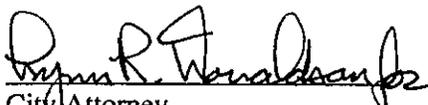
Min./Bk. \_\_\_\_\_ Page \_\_\_\_\_

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

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

**APPROVED AS TO FORM  
AND CORRECTNESS:**

**“SELLER”  
STEVE RAUCH, INC**

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

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

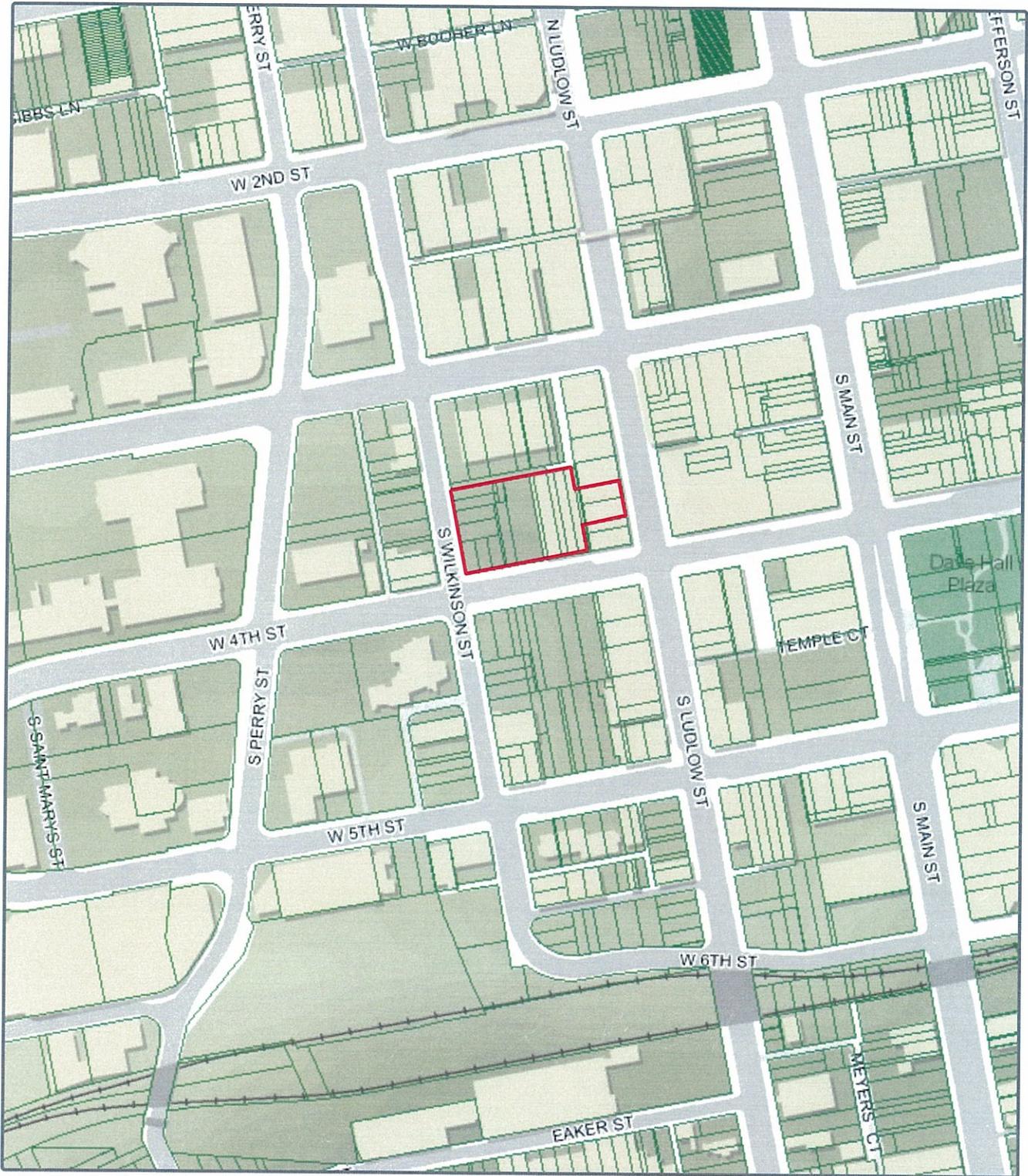
Its: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

\*Approved Legal Description will be attached\*

Dayton, OH



*Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.*

Map Scale  
**1 inch = 348 feet**  
7/14/2016

1<sup>st</sup> Reading  
6205-16

11.

By:.....

No. ....

**A RESOLUTION**

Authorizing the City Manager to Accept a Grant in the Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Montgomery County Land Reutilization Corporation, and Declaring an Emergency.

WHEREAS, The Montgomery County Land Reutilization Corporation (MCLRC) has been organized to facilitate the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within Montgomery County; and

WHEREAS, The MCLRC seeks to assist communities in their redevelopment efforts through a planning grant program; and

WHEREAS, The City applied to the MCLRC for a planning grant to augment the HUD Choice Neighborhood Planning Grant application; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance take effect at an early date; now, therefore,

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

Section 1. That the City Manager or designee is authorized to execute the attached Planning Grant Agreement with the Montgomery County Land Reutilization Corporation and all other necessary documents.

Section 2. For the reasons stated in the preamble hereof, the Commission declares this Resolution to be an emergency measure that shall take effect immediately upon its passage.

Passed by the Commission ....., 2016

Signed by the Mayor ....., 2016

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

Attest:

---

Clerk of the Commission

Approved as to form:

  
City Attorney

**MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION  
PLANNING GRANT AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2016, by and between MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit, having an address of 130 West Second Street, Dayton, Ohio (“MCLRC”), and City of Dayton, Ohio (“Participant”).

WITNESSETH:

WHEREAS, in August of 1961, O.R.C. Section 1724.01 became effective and provided for the establishment of county land reutilization corporations for the purpose of facilitating the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for whose benefit the corporation is organized for the purpose of promoting economic and housing development in the county; and

WHEREAS, pursuant to O.R.C. Section 1724.02, MCLRC has, among other powers, the power to do all acts and things necessary or convenient to carry out the purposes of O.R.C. Section 1724.01; and

WHEREAS, MCLRC has developed a Planning Grant Program to further the development of plans and strategies within the communities to guide their redevelopment efforts; and

WHEREAS, Participant has requested that MCLRC extend funds for use by Participant to develop a plan (the “Project”) with respect to property within Participant’s community and located in Montgomery County, Ohio and more particularly identified and described in “Attachment A” to this Agreement (the “Project Area”); and

WHEREAS, MCLRC and Participant are desirous of mutually cooperating to complete the Project on the terms and conditions stated in this Agreement, and for the purposes provided in "Attachment A"; and

WHEREAS, Participant has sufficient management capability needed to assume the primary administration of the Project, and agreed to involving the MCLRC in its efforts; and

WHEREAS, in light of the foregoing, MCLRC is willing to extend grant funds to Participant for the Project on the terms and conditions stated in this Agreement; and

WHEREAS, on January 26, 2016 by approved motion, MCLRC's Board of Directors (the "Board") approved a grant to Participant in the amount of \$50,000.00 (the "Grant Funds"), from the Land Bank Fund, to provide funding support for the Project; and

WHEREAS, MCLRC's Executive Director (the "Director") has authority to enter into agreements with Participant on behalf of MCLRC for the purpose of extending grants for use in connection with the Project.

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

1. MCLRC agrees to extend to Participant a grant (the "Grant") in the total principal sum of Fifty-Thousand Dollars (\$50,000.00) (the "Grant Funds"), which Participant agrees to use solely and exclusively for developing a plan for the Project Area. No funds will be provided to reimburse the expenses associated with Participant's staff or its services in support of the Project. Participant will assume the responsibility for administering the Project and will complete the same within one year following the approval of the grant by the MCLRC Board of

Directors, unless provided otherwise by its Director, and in compliance with all applicable legal requirements. Before awarding the contract for the Project, Participant will provide to MCLRC both the Request for Proposal issued for the Project and an explanation of the Participant's basis for selecting the contractor. MCLRC will have the right to approve the contractor prior to Participant's award, which approval shall not be unreasonably withheld. Participant further agrees that it will certify the total costs of the Project, including the amount of the MCLRC Grant Funds required in connection with the Project, which shall be submitted with supporting documentation to MCLRC for reimbursement. Participant will for five years following the award of the grant provide written notice annually (January) to the MCLRC of the status of the Project's development and / or the implementation thereof.

2. Upon the parties' signature of this Agreement, MCLRC agrees to provide to Participant the full amount of the Grant Funds on a reimbursement basis, which shall be matched by Participant in an amount equal to twenty-five percent (25%) of the cost of the Project. Participant agrees to deliver to MCLRC copies of invoices, checks, bills and other supporting documentation detailing the work that has been completed as of the date of the reimbursement request, and documentation supporting the amount of monies expended by Participant in the furtherance of the Project. The detail in these statements will include the date of each expenditure, name of the persons or businesses paid, goods or services for which payment was made, and any other information reasonably requested by the Director. Upon completion of the Project, Participant will deliver to the Director a report certifying Participant's expenditures for the total Project.

3. The Grant Funds are to be used solely for the development of a plan. If MCLRC determines that any portion of the Grant Funds were used for any purpose other than for the Project and in accordance with this Agreement, then Participant will repay MCLRC the amount improperly expended within fourteen (14) calendar days after written notice to it by MCLRC that such an improper expenditure has occurred. MCLRC will state in the notice the amount that it believes has been misapplied.

4. Participant agrees that it will maintain all documentation, financial records and other evidence of activities related to the Project, consistent with the records retention requirements of the Ohio Revised Code, for a period of four (4) years after the completion or termination of the Project. After this four (4) year retention period, Participant must notify MCLRC, in writing, of its intent to destroy said records. MCLRC reserves the right to extend the retention period for such records, and if it decides to do so, it will notify Participant in writing. Otherwise, MCLRC will issue to Participant a written Certificate of Records Disposal, it being understood that no records in Participant's possession will be destroyed until Participant has received a Certificate of Records Disposal. Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work comprising the Project of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

5. Under no circumstances will MCLRC be responsible or liable to any person or business for, or on account of, any disbursement of, or failure to disburse, the Grant Funds or any

part thereof, and no contractor, subcontractor, vendor, material supplier, laborer or other party will have a right or claim against MCLRC under this Agreement or in connection with the administration of the Grant.

6. MCLRC will have no duties or obligations whatsoever in connection with the work to be performed pursuant to this Agreement and will have no other obligations except to reimburse the Grant Funds subject to and in accordance with the terms and conditions of this Agreement. MCLRC will not be responsible for the performance or default by Participant or any contractor, subcontractor, vendor, material supplier or other party and will not be responsible in any manner with respect to the completion, protection or correction of any work performed as part of the Project or the payment of any costs or expenses incurred in connection with the Project or any other obligations of Participant. Except as expressly stated in this Agreement, nothing in this Agreement or otherwise will be construed as any warranty or representation of any kind by MCLRC with respect to the Project or otherwise.

7. The parties agree that this Agreement will not be assigned by Participant.

8. During the performance of this Agreement, Participant will not discriminate against any employee or applicant for employment, or any person or business entity considered for engagement by Participant in connection with the Project, because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Participant will ensure that applicants are employed, that employees are treated during employment and that persons and businesses engaged in the Project are treated, without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action will

include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Participant and all persons claiming through Participant agree not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

9. No remedy provided in this Agreement is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy given to MCLRC under this Agreement or now or hereafter existing at law or in equity.

10. No delay or omission of MCLRC in exercising or enforcing any of its rights, powers, privileges, discretion or remedies will constitute a waiver thereof, and no waiver by MCLRC of any default of Participant under this Agreement will operate as a waiver of any other default. No term or provision of this Agreement will be waived except with the prior written consent of MCLRC.

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

12. This Agreement contains the entire agreement of the parties with respect to the subject matter addressed in this Agreement. This Agreement will supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. This Agreement will not be modified in any manner except by an instrument, in writing, signed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

13. This Agreement and any modifications, amendments, or alterations, are governed, construed, and enforced under the laws of the State of Ohio.

14. The signatures to this Agreement will act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

[Signature page follows immediately]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

MONTGOMERY COUNTY LAND  
REUTILIZATION CORPORATION

By: \_\_\_\_\_  
Michael J. Grauwelman  
Executive Director

City of Dayton, Ohio

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

Title: \_\_\_\_\_

APPROVED AS TO FORM AND CORRECTNESS  
  
CITY ATTORNEY

BY .. **Mr. Williams** .....

NO ..... **6202-16** .....

## A RESOLUTION

Declaring the Intention of the Commission to Vacate Bank Street from 57 Feet South of the South Right of Way Line of West Third Street to West Fourth Street.

WHEREAS, The vacation of Bank Street from 57 feet south of the south right of way line of West Third Street to West Fourth Street as described herein will enable the abutting property owners to develop this property; and

WHEREAS, The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the Commission hereby declares its intention to vacate Bank Street from 57 feet south of the south right of way line of West Third Street to West Fourth Street, being more particularly bounded and described in as follows:

Being all of the 50 foot Bank Street from 57 feet south of the south right of way line of the 66 foot West Third Street to the 50 foot West Fourth Street.

The vacation shall be subject to the following conditions:

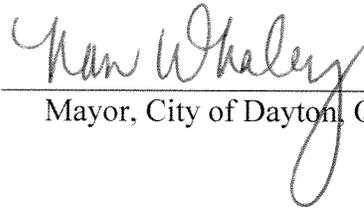
- A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.
- B. The street openings at West Fourth Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
- C. City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing 6-inch water main and 8-inch sanitary sewer. With written consent from the Department of Water, these facilities may be relocated or abandoned at the expense of the applicant.
- D. Time Warner Cable shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from Time Warner Cable, these facilities may be relocated or abandoned at the expense of the applicant.
- E. Vectren shall retain an easement over, under, and through the vacated area for its existing 6-inch wrought iron gas main. With

written consent from Vectren, these facilities may be relocated or abandoned at the expense of the applicant.

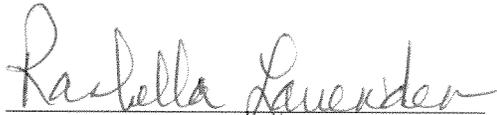
- F. DP&L shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from DP&L, these facilities may be relocated or abandoned at the expense of the applicant.
- G. The applicant shall contact Miami Valley Lighting to remove the City of Dayton from billing for street lights within the vacated area.

Adopted by the Commission ..... **August 17** ....., 2016

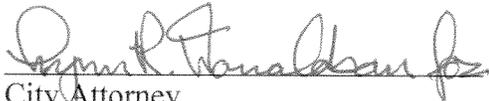
Signed by the Mayor ..... **August 17** ....., 2016

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

Attest:

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

Approved as to form:

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

# MEMORANDUM



July 29, 2016

**TO:** Shelley Dickstein  
City Manager

**FROM:** Stephen Finke, Deputy Director  
Department of Public Works *sf*

**SUBJECT:** The Vacation of Bank Street from 57' South of the South Right of  
Way Line of West Third Street to West Fourth Street

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21133 requesting the vacation was received from the Miami Conservancy District on May 16, 2016. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact me at 3839.

JRW

Attachments

cc: Mr. Parlette  
Ms. Clements  
Department of Planning  
Department of Law  
Clerk of Commission  
Secretary / Board of Revision of Assessments

CHECK OF PETITION

**Bank Street from 57' South of the South Right of Way Line of West Third  
Street to West Fourth Street**

Checked 5/20/16 by Joseph Weinel

Total Frontage	922.00	lin. ft.
Frontage signed	922.00	lin. ft.
Frontage not signed	0.00	lin. ft.
Percentage signed	100.0%	

<b>Name of Owner</b>	<b>Lot No.</b>	<b>Frontage</b>	<b>B.P.I.</b>
City of Dayton	7037	100.00	85-01-21,29,45-48
	PT 7037	100.00	85-1-25
	7038	106.25	85-01-28
	PT 7038	35.00	85-1-34
	7039	64.25	85-1-44
	10916	45.00	85-1-33
	10917	45.00	85-1-32
	10918	45.00	85-1-31
	10919	45.00	85-1-30
	10920	100.00	85-1-36,37,53,54
	10921	100.00	85-1-38,49,50
Miami Conservancy District		135.50	85-1-51



# City of Dayton City Plan Board

## Decision Memorandum

August 13, 2015

Mr. Joe Weinel  
City of Dayton  
Department of Public Works  
101 West Third Street  
Dayton, OH 45402

**Re: V-005-2015 – Public Way Vacation – Bank Street from 57' South of the South Right of Way Line of West Third Street to West Fourth Street**

Meeting Date: August 11, 2015

Decision: Established Conditions

The City Plan Board found the proposed vacation (map attached) met the criteria cited in R.C.G.O. Section 150.445 (B). The Plan Board established the following conditions for the vacation:

1. An easement shall be reserved for any existing Time Warner Cable facilities.
2. An easement shall be reserved for existing Vectren facilities, which currently include a 6" wrought iron gas main extending approximately 90 feet south from West Third Street.
3. An easement shall be reserved for any existing DP&L facilities.
4. The area shall be marked in a manner acceptable to the City of Dayton Division of Civil Engineering to indicate that it is not public right-of-way.
5. The street openings at West Fourth Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the date the vacation receives final approval and to City of Dayton standards.
6. The applicant shall contact Miami Valley Lighting to remove the City of Dayton from billing for street lights within the vacated area.
7. An easement shall be retained for existing Water Engineering maintained facilities, currently a 6" water main and 8" sanitary sewer. The easement boundaries shall be ten feet west of the 6" water main and ten feet east of the 8" sanitary sewer.

**In order to complete the vacation of this right-of-way, you must pursue the vacation request through the petition process, or process the request through Common Pleas Court. Either method of pursuing the vacation requested can take a minimum of three to four months to complete.**

Please contact Tony Kroeger at 333-3673 or [tony.kroeger@daytonohio.gov](mailto:tony.kroeger@daytonohio.gov) if you have any questions.



# City of Dayton

## City Plan Board

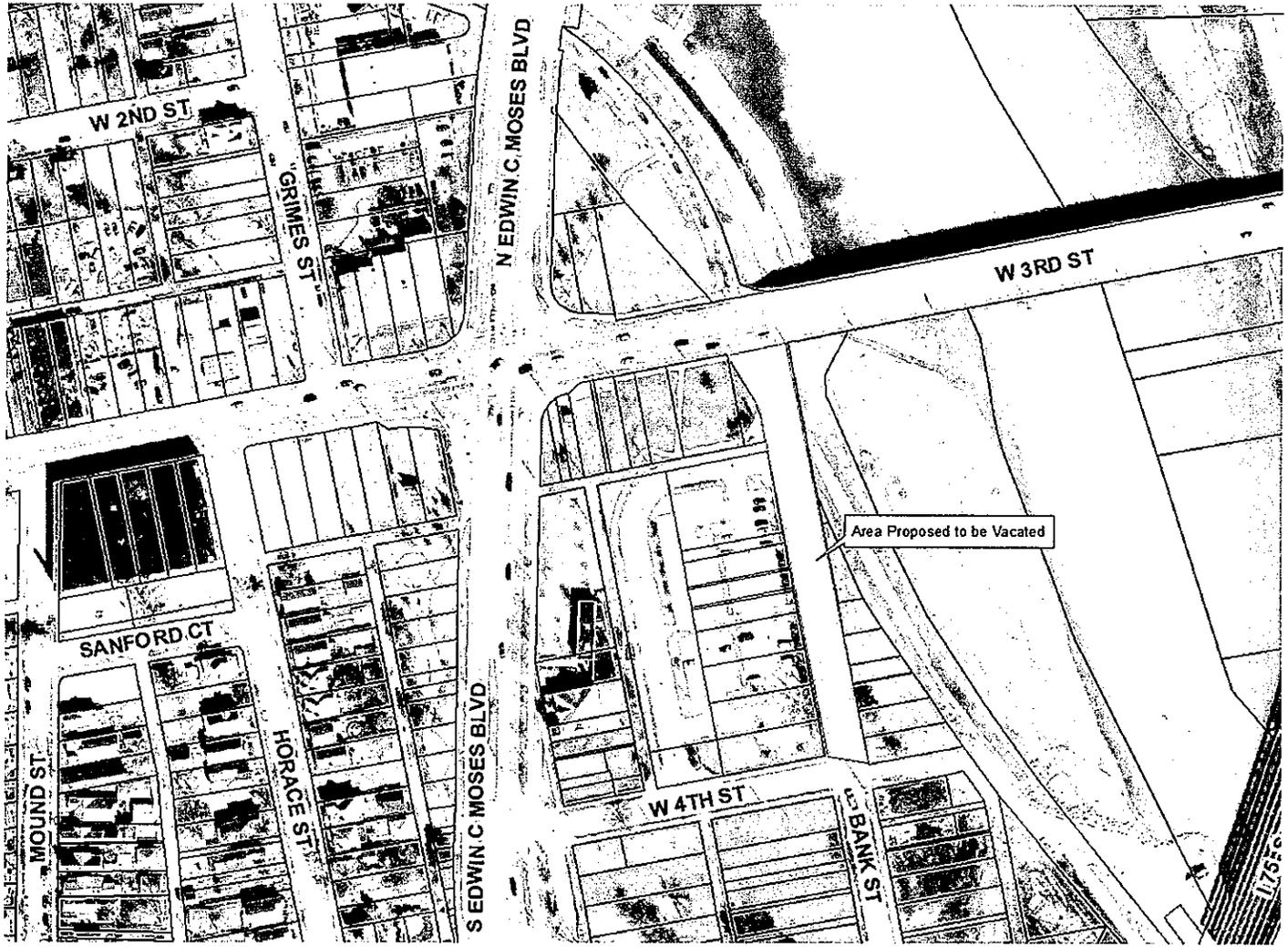
### Decision Memorandum

Sincerely,

*Ann Schenking*

Ann Schenking, Secretary  
City Plan Board

c: Decision Memorandum Distribution List



BY . . . **Mr. Joseph** . . . . .

NO . . . . . **6203-16** . . . . .

A RESOLUTION

Declaring the Intention of the Commission to Vacate  
Cline Street from Warren Street to Nathan Place.

WHEREAS, The vacation of Cline Street from Warren Street to Nathan Place as described herein will enable the abutting property owner to consolidate this property; and

WHEREAS, The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the Commission hereby declares its intention to vacate Cline Street from Warren Street to Nathan Place, being more particularly bounded and described as follows:

Being all of the 49.5 foot Cline Street from the 66 foot Warren Street to the 49.5 foot Nathan Place.

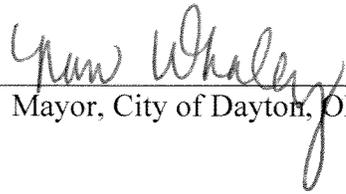
The vacation shall be subject to the following conditions:

- A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.
- B. The street openings at Warren Street and Nathan Place shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
- C. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing 15-inch storm sewer, 4-inch water main, and 8-inch sanitary sewer. With written consent from the Department of Water, these facilities may be relocated or abandoned at the expense of the applicant.
- D. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial and underground facilities.

With written consent from AT&T, these facilities may be relocated or abandoned at the expense of the applicant.

Adopted by the Commission ..... **August 17** ....., 2016

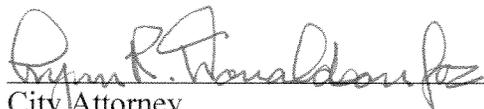
Signed by the Mayor ..... **August 17** ....., 2016

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

Attest:

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

Approved as to form:

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

# MEMORANDUM



July 29, 2016

**TO:** Shelley Dickstein  
City Manager

**FROM:** Stephen Finke, Deputy Director  
Department of Public Works 47

**SUBJECT:** The Vacation of Cline Street from Warren Street to Nathan Place

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21150 requesting the vacation was received from Miami Valley Hospital on June 30, 2016. The vacation will enable the abutting property owner to develop this property.

If you have any additional questions, please contact me at 3839.

JRW

Attachments

cc: Ms. Clements  
Mr. Parlette  
Department of Planning  
Department of Law  
Clerk of Commission  
Secretary / Board of Revision of Assessments

CHECK OF PETITION

**Cline Street from Warren Street to Nathan Place**

Checked 7/11/16 by Joseph Weinel

Total Frontage	300.30	lin. ft.
Frontage signed	300.30	lin. ft.
Frontage not signed	0.00	lin. ft.
Percentage signed	100.0%	

<b>Name of Owner</b>	<b>Lot No.</b>	<b>Frontage</b>	<b>B.P.I.</b>
Miami Valley	1688	60.00	19-04-51
Hospital	3377	88.50	19-04-55
	5068	135.75	19-04-56,120
	77726	16.05	19-13-05



# City of Dayton City Plan Board

## Decision Memorandum

February 10, 2016

Mr. Buddy LaChance  
Miami Valley Hospital Real Estate Services  
110 North Main Street  
Suite 1250  
Dayton, OH 45402

**Re: V-001-2016 – Public Way Vacation – Cline Street from Warren Street to Nathan Place**

Meeting Date: February 9, 2016

Decision: Established Conditions

The City Plan Board found the proposed vacation (map attached) met the criteria cited in R.C.G.O. Section 150.445 (B) and therefore established the following conditions:

1. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial and underground facilities. With written consent from AT&T, these facilities may be relocated or abandoned at the expense of the applicant.
2. An easement shall be retained for existing Water Department maintained facilities on Cline Street: 15" storm sewer, 4" water main, and 8" sanitary sewer. The easement boundaries shall be 10-feet north of the 15" storm sewer and 10-feet south of the 8" sanitary sewer.
3. The area shall be marked in a manner acceptable to the City Engineer to indicate that it is not public right-of-way.
4. The street openings at Warren Street and Nathan Place shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the date the vacation receives final approval and to City of Dayton standards.

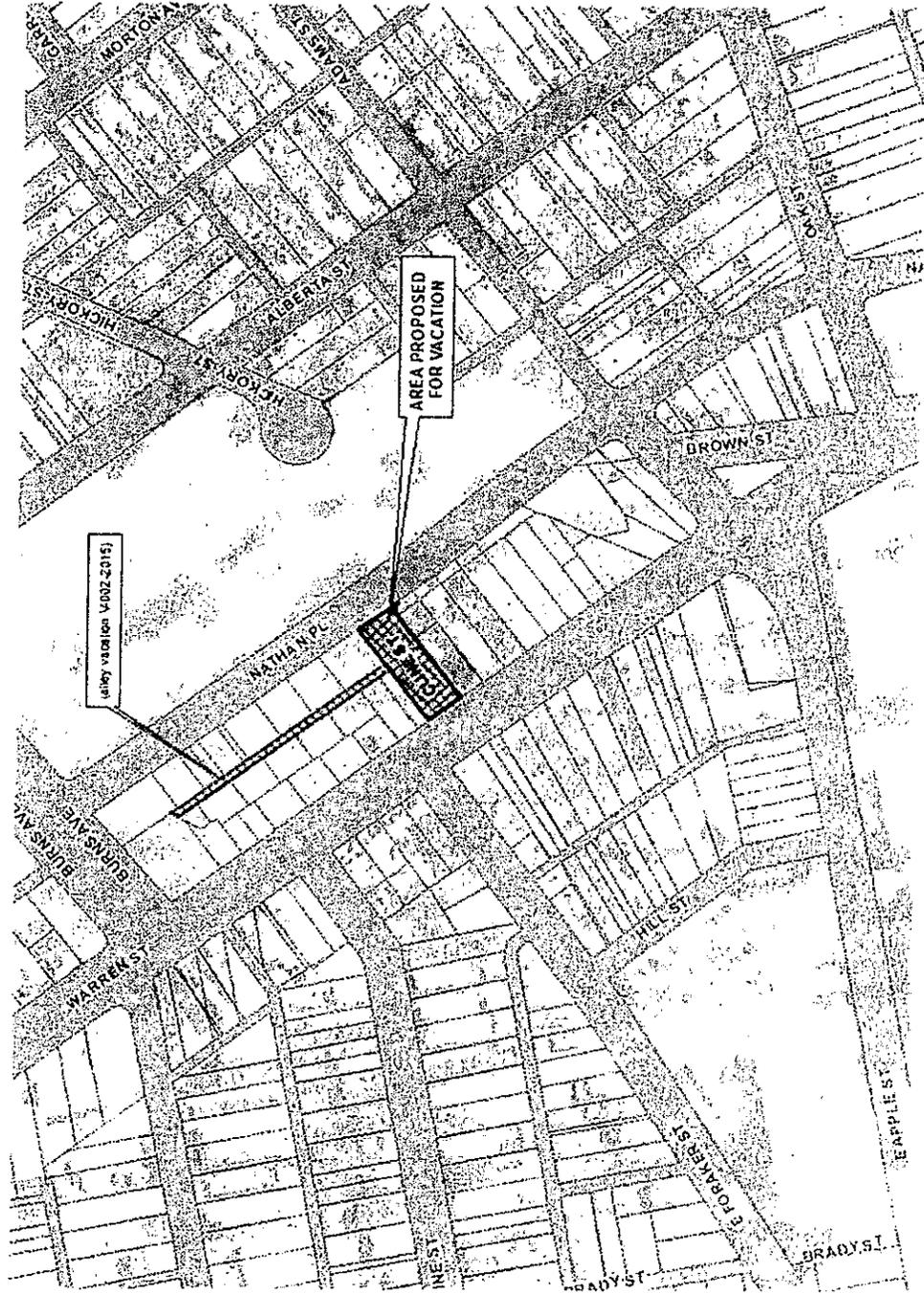
**In order to complete the vacation of this right-of-way, you must pursue the vacation request through the petition process, or process the request through Common Pleas Court. Either method of pursuing the vacation requested can take a minimum of three to four months to complete.**

Please contact Tony Kroeger at 937-333-3673 or [tony.kroeger@daytonohio.gov](mailto:tony.kroeger@daytonohio.gov) if you have any questions.

Sincerely,

  
Ann Schenking, Secretary  
City Plan Board

V-001-2016



BY . . . **Mr. Mims** . . . . .

NO . . . **6204-16** . . . . .

A RESOLUTION

Declaring the Intention of the Commission to Vacate West Fourth Street from Cedar Avenue to Bank Street, Cedar Avenue from West Fourth Street to the I 75 LA ROW, and the Alley South of West Fourth Street from the I 75 LA ROW to Bank Street.

WHEREAS, The vacation of West Fourth Street from Cedar Avenue to Bank Street, Cedar Avenue from West Fourth Street to the I 75 LA ROW, and the alley south of West Fourth Street from the I 75 LA ROW to Bank Street as described herein will enable the abutting property owners to develop this property; and

WHEREAS, The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the Commission hereby declares its intention to vacate West Fourth Street from Cedar Avenue to Bank Street, Cedar Avenue from West Fourth Street to the I 75 LA ROW and the alley south of West Fourth Street from the I 75 LA ROW to Bank Street, being more particularly bounded and described as follows:

Being all of the 50 foot West Fourth Street from the 18 foot Cedar Avenue to the 50 foot Bank Street, all of the 18 foot Cedar Avenue from the 50 foot West Fourth Street to the I 75 LA ROW, and all of the 16.5 foot alley south of West Fourth Street from the I 75 LA ROW to the 50 foot Bank Street.

The vacation shall be subject to the following conditions:

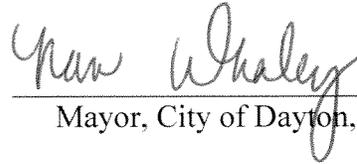
- A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.
- B. The alley mouth at Bank Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
- C. The street openings at Bank Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
- D. City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing 6-inch water main. With written consent from the Department of Water,

these facilities may be relocated or abandoned at the expense of the applicant.

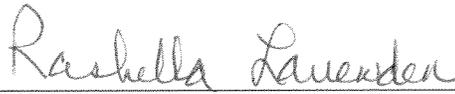
- E. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial and underground facilities. With written consent from AT&T, these facilities may be relocated or abandoned at the expense of the applicant.
  
- F. DP&L shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from DP&L, these facilities may be relocated or abandoned at the expense of the applicant.

Adopted by the Commission . . . . . **August 17** . . . . ., 2016

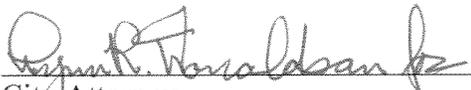
Signed by the Mayor . . . . . **August 17** . . . . ., 2016

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

Attest:

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

Approved as to form:

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

# MEMORANDUM



July 29, 2016

**TO:** Shelley Dickstein  
City Manager

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

**SUBJECT:** The Vacation of West Fourth Street from Cedar Avenue to Bank Street, Cedar Avenue from West Fourth Street to the I 75 LA ROW and the Alley South of West Fourth Street from the I 75 LA ROW to Bank Street

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21135 requesting the vacation was received from the Miami Conservancy District on May 16, 2016. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact me at 3839.

JRW

## Attachments

cc: Mr. Parlette  
Ms. Clements  
Department of Planning  
Department of Law  
Clerk of Commission  
Secretary / Board of Revision of Assessments

CHECK OF PETITION

**West Fourth Street from Cedar Avenue to Bank Street,  
Cedar Avenue from West Fourth Street to I 75 LA ROW and  
Alley South of West Fourth Street from the I75 LA ROW to Bank Street**

Checked 5/20/16 by Joseph Weinel

Total Frontage	922.00	lin. ft.
Frontage signed	922.00	lin. ft.
Frontage not signed	0.00	lin. ft.
Percentage signed	100.0%	

<b>Name of Owner</b>	<b>Lot No.</b>	<b>Frontage</b>	<b>B.P.I.</b>
City of Dayton	7037	100.00	85-01-21,29,45-48
	PT 7037	100.00	85-1-25
	7038	106.25	85-01-28
	PT 7038	35.00	85-1-34
	7039	64.25	85-1-44
	10916	45.00	85-1-33
	10917	45.00	85-1-32
	10918	45.00	85-1-31
	10919	45.00	85-1-30
	10920	100.00	85-1-36,37,53,54
	10921	100.00	85-1-38,49,50
Miami Conservancy District		135.50	85-1-51



# City of Dayton City Plan Board

## Decision Memorandum

December 9, 2015

Mr. Steve Finke  
City of Dayton Department of Public Works  
101 West Third Street  
Dayton, OH 45402

**Re: V-009-2015 – Public Way Vacation:**

- **West Fourth Street from Cedar Avenue to Bank Street.**
- **Cedar Avenue from West Fourth Street to I 75 LA ROW.**
- **Alley South of West Fourth Street from the I75 LA ROW to Bank Street**

Meeting Date: December 8, 2015

Decision: Established Conditions

The City Plan Board found the proposed vacation (map attached) met the criteria cited in R.C.G.O. Section 150.445 (B). The Plan Board established the following conditions:

1. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial and underground facilities. With written consent from AT&T, these facilities may be relocated or abandoned at the expense of the applicant.
2. DP&L shall retain an easement over, under, and through the vacated area for its existing aerial and underground facilities. With written consent from DP&L, these facilities may be relocated or abandoned at the expense of the applicant.
3. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.
4. The alley mouth at Bank Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of date the vacation receives final approval and to City of Dayton standards.
5. The street opening at Bank Street shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the days of date the vacation receives final approval and to City of Dayton standards.
6. An easement needs to be retained for the existing 6" water main on West 4<sup>th</sup> Street from Bank Street to Cedar Avenue and on Cedar Avenue all the way south to I75 LA ROW. The easement needs to be 20-feet wide with the sewer centered in the easement.

**In order to complete the vacation of this right-of-way, you must pursue the vacation request through the petition process, or process the request through Common Pleas Court. Either method of pursuing the vacation requested can take a minimum of three to four months to complete.**



# City of Dayton City Plan Board

## Decision Memorandum

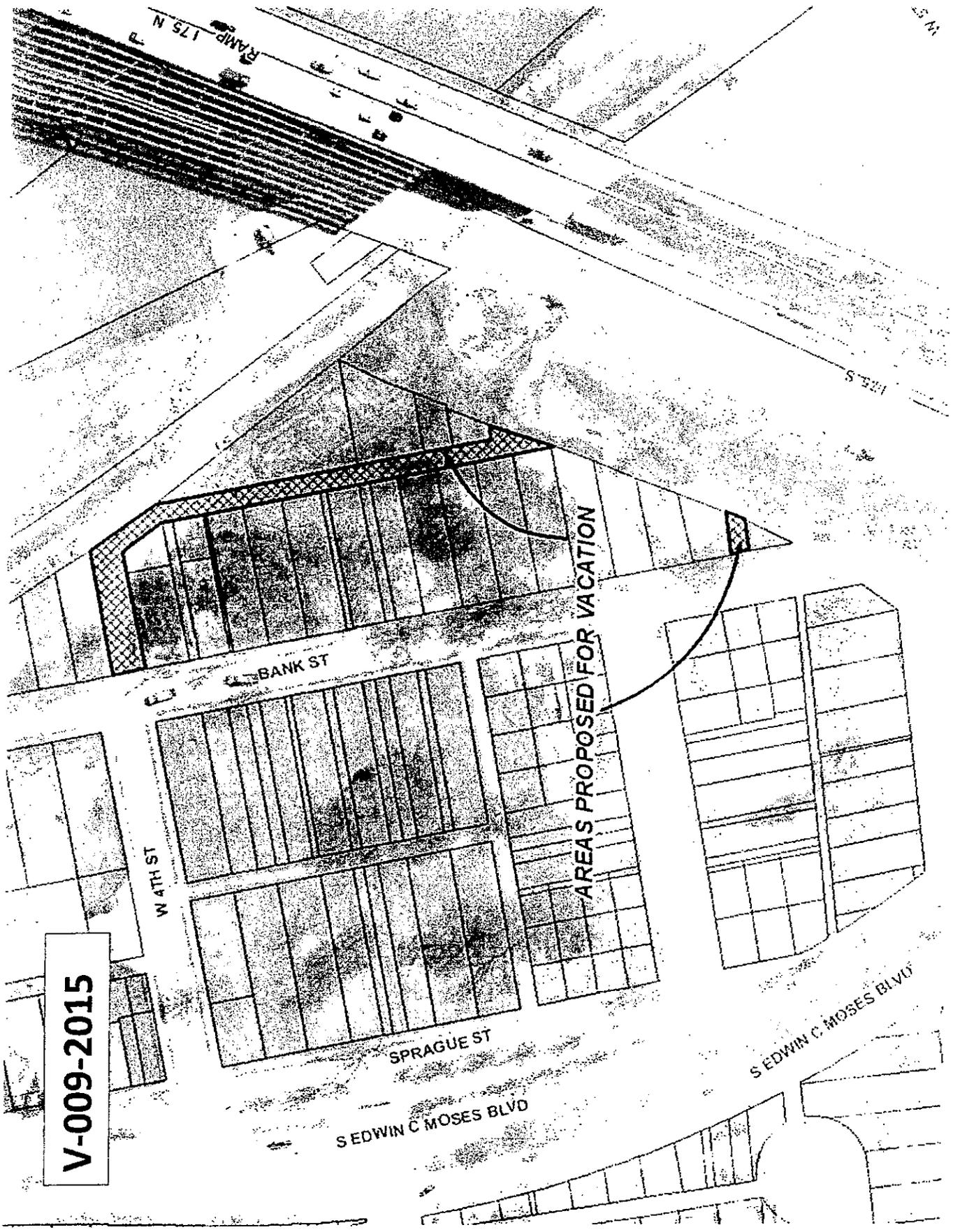
Please contact Tony Kroeger at 937-333-3673 or [tony.kroeger@daytonohio.gov](mailto:tony.kroeger@daytonohio.gov) if you have any questions.

Sincerely,

Ann Schenking, Secretary  
City Plan Board

c: Decision Memorandum Distribution List

V-009-2015



AREAS PROPOSED FOR VACATION

RAMP 175 N

BANK ST

W 4TH ST

SPRAGUE ST

S EDWIN C MOSES BLVD

S EDWIN C MOSES BLVD