CITY COMMISSION MEETING AGENDA

CITY COMMISSION **DAYTON, OHIO** **AUGUST 31, 2016**

6:00 P.M.

I. AGENDA SCHEDULE

<u>Please register to speak</u> 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 Sessions: **Finance Committee Briefing – (B. LaBrier) - 4:30 p.m.**
    and Parking Consultant Report (M. Jones)
    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 31st of the current year).

1. **Purchase Orders:**

<u>WATER</u>

A1. Chemical Services, Inc. (Sodium Hydroxide odor control chemical)
$20,000.00

1. **(Cont'd):**

   A2. Ohio Machinery Company (one CAT brand hydraulic hammer) **17,491.00**

   -Dept. of Water. **Total: $37,491.00**

2. **Dr. Stephen McConnell – Service Agreement –** to provide psychological services for offenders currently on probation – The Municipal Court/Court Administrator. **$15,000.00 (Thru 6/2017)**

3. **EBenefits Solutions, LLC – Service Agreement –** to provide a streamlined year-round approach to benefits administration and open enrollment – Dept. of Human Resources. **$321,227.00 (Thru 8/2019)**

4. **Hazen & Sawyer – Contract Modification –** for a third amendment to cover additional services needed to continue with consultation services and identification of alternatives to lime addition for odor control within the Wastewater Collection System – Dept. of Water/Water Engineering. **$132,000.00 (Thru 12/2017)**

5. **Wright Brothers Aero, Inc. – Contract Modification –** for a first amendment for Porter Services with Wright Brothers Aero, Inc. at the Dayton International Airport – Dept. of Aviation/AP Admin. & Finance. **$23,419.35**

6. **YMCA – Service Agreement –** to complete biometric screenings for City employees – Dept. of Human Resources. **$68,400.00**

B. Construction Contracts:

7. **Saturn Electric – Award of Contract** – for Terminal Drive Lighting Improvements at the Dayton International Airport (14.1% SBE Participation, 10% Goal) – Dept. of Aviation/AP Admin. & Finance. **$831,875.00 (Thru 9/2018)**

IV. LEGISLATION:

Emergency Resolutions – First and Second Reading:

8. **No. 6206-16** Authorizing the City Manager to Enter into the FY2015-2016 Choice Neighborhoods Planning Grant Agreement with the U.S. Department of Housing and Urban Development (HUD), and Declaring an Emergency.

9. **No. 6207-16** Declaring the Official Intent and Reasonable Expectation of the City of Dayton on Behalf of the State of Ohio to Reimburse Its General Fund for the Wayne Avenue Reconstruction Project (OPWC Project Number CD30T) with the Proceeds of Tax Exempt Debt of the State of Ohio, and Declaring an Emergency.

Emergency Ordinance – First Reading:

10. **No. 31511-16** Amending Sections 37.06, 37.10, 115.30 and 115.60; Repealing Existing Sections 37.06, 115.30, 115.60, 115.301, 115.302 and 115.303 of the Revised Code of General Ordinances Relating to Transportation Network Companies, and Declaring an Emergency.

Informal Resolution:

11. **No. 926-16** Recognizing The Human Race Theatre Company on Its Thirtieth Anniversary and Designating It as Dayton's Official Professional Theatre Company.

VI. MISCELLANEOUS:

ORDINANCE NO. 31512-16 LEGISLATION ADDED

RESOLUTION NO. 6208-16

IMPROVEMENT RESOLUTION NO. 3598-16

INFORMAL RESOLUTION NO. 927-16

City Manager's Report

From **5530 - CS/Purchasing**

Date August 31, 2016
Expense Type Purchase Order
Total Amount $37,491.00

Supplier, Vendor, Company, Individual
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

WATER – WATER RECLAMATION

(A1) P1601067 – CHEMICAL SERVICES INC., HARRISON TOWNSHIP, OH

- Sodium Hydroxide odor control chemical.
- This product is required for odor control for sanitary sewer to meet Occupational Safety and Health Administration (OSHA) requirements.
- Pursuant to Section 86 of the City of Dayton Charter, the Department of Water has declared an emergency, the necessary funds have been encumbered, and the supplier has been notified to proceed.
- Chemical Services Inc. is recommended based on the continuity of chemical which is currently being used at Water Reclamation facilities.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Other Equipment Maintenance	55000-3460-1167-54	$20,000.00

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016

BACK

WATER – WATER UTILITY FIELD OPERATIONS

(A2) P1601078 – OHIO MACHINERY COMPANY, TROY, OH

- One (1) CAT brand hydraulic hammer.
- This equipment is required for various City concrete projects, is compatible with existing CAT bulldozers and replaces City unit #1068, which is worn beyond economical repair and will be disposed of in the best interest of the City of Dayton.
- Ohio Machinery Company is recommended as the Original Equipment Manufacturer (OEM) and rates are in accordance with State of Ohio term schedule pricing contract #800055, index #STS515.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016	Motorized Equipment	55000-3445-1412-54	$17,491.00

The aforementioned departments recommend approval of these orders.

City Manager's Report

2.

From **2510 - Municipal Court**

Date **August 31, 2016**

Expense Type **Service Agreement**

Total Amount **$15,000.00 (through 6/2017)**

Supplier, Vendor, Company, Individual

Name **Dr. Stephen McConnell**

Address 4398 E. Entrada Dr.
Beavercreek, Ohio 45431

Fund Source(s)	Fund Code(s)	Fund Amount(s)
General Fund	10000-2510-1159-74	$15,000.00

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

Description

The Dayton Municipal Court is requesting approval of a Professional Services Contract with Dr. Stephen McConnell to provide psychological services for offenders currently on probation.

The Alcohol, Drug Addiction and Mental Health Services Board (ADAMHS) provide revenue to the City of Dayton to fund this contract. The ADAMHS Board FY2017 contract was approved by the City Commission on August 17, 2016. This is an ongoing partnership with Dr. McConnell and ADAMHS Board since 2011.

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

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

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016

CERTIFICATE OF FUNDS

CT161504

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

_____ New Contract X Renewal Contract _____ Change Order

Contract Start Date	07/01/16
Expiration Date	06/30/17
Original Commission Approval	$15,000
Initial Encumbrance	$ 9,000.00
Remaining Commission Approval	$ 6,000.00
Original CT/CF	CT-160142
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	

Required Documentation

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

Amount: $ 9,000.00	Amount:
Fund Code 10000 - 2510 - 1159 - 74 - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: **Dr. Stephen McConnell**

Vendor Address: **4398 E. Entrada Dr.** (Street) **Beavercreek** (City) **OH** (State) **45431** (Zipcode + 4)

Federal ID: 198-34-6927

Commodity Code: 95221

Purpose: Psychological services for offenders through the Probation Department-Revenue from ADAMHS Bd

Fiscal contract from July 1, 2016 through June 30, 2017. ADAMHS Bd. Contract approved by City Commission August 17,2016

Contact Person: Ann Marie Murray Municipal Court / Administration (Department/Division) 8/15/2016 (Date)

Originating Department Director's Signature: Ann Marie Murray

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 appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 8-22-16

CF Prepared by — Date: 8/22/16 — CF/CT Number: CT 161504

PROFESSIONAL SERVICES CONTRACT

This Agreement is entered into this _____ day of _____, 20___, between the City of Dayton, Ohio ("City") and Stephen McConnell, Psy. D. ("Psychological Consultant").

WHERE AS, The Dayton Municipal Court ("Court") demonstrates a need for the Dayton Municipal Court Probation Department to have at its disposal a Psychological Consultant; and

WHERE AS, The Psychological Consultant will provide defendants charged and/or placed on probation for misdemeanor offenses with assessments, forensic evaluations, and individual counseling; and

WHERE AS, The Psychological Consultant must be a certified holder of a Psy. D. and has represented to the Court that he is qualified to provide the services needed by the Court,

NOW, THEREFORE, In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE 1. SCOPE OF SERVICES

Psychological Consultant shall provide four (4) hours of services per week. The services shall include, but not be limited to:

A. Providing psychological evaluations of clients for the Court and Probation Officers.

B. Consulting with Probation Officers regarding clients' psychological diagnosis, prognosis, and treatment options.

C. Overseeing the Probation Department's Life Skills program for those clients with emotional and/or psychological issues/need.

D. Supervising the Probation Department's Anger Management program.

ARTICLE 2. TERM, RENEWALS AND TERMINATION

A. This Agreement shall cover the services provided for the period July 1, 2016 through June 30, 2017, unless terminated earlier or renewed as provided in this Agreement.

B. This Agreement may be renewed for a maximum of two (2) additional one-year periods. However, no such renewal of this Agreement shall be recognized or effective unless it is

reduced to a writing, which makes specific reference to this Agreement, and executed by a duly authorized representative of the City.

C. Either party shall have the right, upon giving thirty (30) days prior written notice to the other party, to terminate this Agreement. In the event of termination, the Court shall pay for the services rendered to the effective date of termination, but shall not be responsible for payment of services performed subsequent to the effective date of termination specified in the notice.

ARTICLE 3. PAYMENT

A. The Court shall pay the Psychological Consultant the sum of Seventy-Five Dollars and Zero Cents ($75.00) per hour for the Services described in Article 1 hereof.

B. The total amount of the remuneration under this Agreement, exclusive of any renewal(s) shall not exceed the sum of Fifteen Thousand Dollars and Zero Cents ($15,000.00).

C. The Psychological Consultant shall invoice the Court, not more frequently than monthly, for payment of the actual Services rendered in accordance with this Agreement. Such invoices shall state the total amount requested and shall contain such supporting documentation and information as the Court may request.

ARTICLE 4. GENERAL PROVISIONS

A. Entire Agreement/Integration

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

B. Waiver

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

D. Non-Discrimination

The Psychological Consultant shall not discriminate against any defendant because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status or handicap with respect to class attendance. It is expressly agreed and understood that Section 35.14 of Revised Code of General Ordinances of the City of Dayton, Ohio, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure of the Psychological Consultant, to comply therewith shall constitute a breach of this Agreement entitling the court, as its option, to terminate this Agreement.

E. Meetings and Evaluation

The Psychological Consultant shall meet with designated Dayton Municipal Court personnel at such times designated by either party to review and discuss performance of this Agreement and/or the services. Psychological Consultant agrees to cooperate with the Dayton Municipal Court in all respects concerning the review and monitoring of the services and/or performance of this Agreement.

F. Notice/Communications

Any written notice or other communication required or permitted by this Agreement shall be made in writing and shall be delivered personally, by express delivery, certified mail or first class U.S. mail. Postage pre-paid, to the respective party at the following address:

To Court: City of Dayton, Ohio
Ann Marie Murray
Court Administrator
301 W. Third St., Rm 365
Dayton, OH 45402

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the Court and Psychological Consultant.

G. Assignment

This Agreement is not assignable, and shall not be assigned by Psychological Consultant without the prior written consent of the Court. Further, Psychological Consultant agrees to obtain the Dayton Municipal Court written approval before subcontracting this Agreement or any substantial portion thereof.

H. Independent Contractor

By executing this Agreement for services, Psychological Consultant acknowledges and agrees he will be providing services to the Court as an "Independent Contractor". As an Independent Contractor for the Court, Psychologist Consultant shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this subsection (G). Psychological Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of the Court, without the express prior written approval of a duly authorized representative of the Court.

Psychological Consultant and his employees, agents or subcontractors, or any other persons retained or hired by him to assist in the performance of the services under this Agreement, are not City employees. Therefore, such persons shall not be entitled to any of the emoluments of employment with the City of Dayton, and Psychological Consultant shall indemnify the City against any and all claims by its employees, agents or subcontractors for such City employee

benefits. Psychological Consultant further understands and agrees that neither he, nor any of his employees, agents, or subcontractors are "public employees" for the purpose of membership in the Ohio Public Employees Retirement System ("OPERS"). Psychological Consultant will be solely responsible to withhold and pay all applicable local, state and federal taxes for its employees.

To the maximum extent permitted by law, the Court and Psychological Consultant, shall maintain the confidentiality and integrity of all victim records, including, interviews/discussion with victims and/or clients, and shall not disclose same to unauthorized persons. Further, Psychological Consultant shall maintain the confidentiality and integrity of all records and matters of the Dayton Municipal Court.

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.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, The Court and Psychological Consultant have caused this Agreement to be executed as of the day and, date first set forth above.

CITY OF DAYTON

_____
City Manager

PSYCHOLOGICAL CONSULTANT

By: _____
Stephen McConnell Psy. D.

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

BACK

City Manager's Report

3

From **5610 - Human Resources**

Date **August 31, 2016**

Expense Type **Service Agreement**

Total Amount **$321,227.00 thru 8/2019**

Supplier, Vendor, Company, Individual

Name **EBenefits Solutions, LLC**

Address **US Steel Tower**
600 Grant Street
Pittsburgh, PA 15219

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Health Care Self Insurance	63000-5610-1159-62	$321,227.00

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

Description

Human Resources (HR) is requesting approval to enter into an Agreement with EBenefits Solutions, LLC in the amount of $321,227.00.

HR in conjunction with our insurance broker, McGohan Brabender, facilitated meetings with four (4) vendors that offer on-line insurance benefit information and open enrollment. Of the four (4), only one vendor, EBenefits met 100% of HR's and IT's selection criteria.

EBenefits will provide a streamlined year-round approach to benefits administration and open enrollment. This system will quickly and accurately transmit the information more efficiently to the vendors for our health, life, long-term disability and dental insurances. Employees will also be able to update their address and phone numbers which will be transmitted immediately to our Banner system for updating along with whatever benefit changes they are making. They will be able to access and review this information with their families and make decisions on their benefits jointly with their spouses and/or partners. The system will improve customer service by allowing employees access 24/7 to their on-line benefit information without needing to meet with HR. EBenefits also has the IRS ACA compliance module for the mandatory reporting that the City is required to do.

The term of the contract is from August 31, 2016 through August 31, 2019 with options for two, one year renewals.

The cost for the first year is $116,409.00, second year $102,409.00 and third year is $102,409.00 for a total amount of $321,227.00.

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

A Certificate of Funds in the amount of $49,803.00 for the funds needed for 2016 is attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT161502

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

x New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	09/01/16
Expiration Date	09/01/19
Original Commission Approval	$ 321,227.00
Initial Encumbrance	$ 49,803.00
Remaining Commission Approval	$ 271,424.00
Original CT/CF	$ -
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

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

Amount: $ 49,803.00	Amount:
Fund Code 63000 - 5610 - 1159 - 62 - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: EBenefits Solutions, LLC

Vendor Address: US Steel Tower, 600 Grant Street, Pittsburgh, PA 15219
Street City State Zipcode + 4

Federal ID: 75-3202760

Commodity Code: 96100

Purpose: On-line benefit enrollment management system for employee benefits. This will allow employees a secure method for on-line enrollment and any benefit changes/updates they need to make. The data will flow to whichever vendor it is applicable; health ins., dental, life and long-term disability. This will provide a streamlined year-round approach to benefits enrollment which will improve customer serive to our employees and their families.

Contact Person: Sue Greaney X4063 Human Resources (Department/Division) 8/19/2016 (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 appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 8-22-16

CF Prepared by: Jeff H. Marshall — Date: 8/19/16 — CF/CT Number: CT161502

SA 8/19/16

eBenefits

AGREEMENT FOR SERVICES

This agreement (the **"Agreement"**) is effective the _____ day of August 2016, between **The City of Dayton** (hereinafter referred to as **"Client"**) and EBenefits Solutions, LLC., (hereinafter referred to as **"Company"**).

Whereas, Company is engaged in providing software solutions for employers providing benefits to their employees, including tools to assist employers in complying with the requirements of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, the "ACA");

Whereas, Client is desirous of engaging a company that can provide software solutions for employee benefits enrollment and administration; and

Whereas Client has requested and Company has agreed to make available the use of certain software and to provide certain services on the terms and conditions set forth in the attached Exhibits, on a non-exclusive basis.

Now, therefore, in consideration of the foregoing recitals, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. This Agreement includes the following **"Exhibits,"** each of which are hereby incorporated by reference and made a part of this Agreement:
    a. Exhibit 1 – General Terms and Conditions
    b. Exhibit 2 – Scope of Service, including Exhibit 2(A) – ACA Compliance Module
    c. Exhibit 3 – Fees and Payment Schedule
    d. Exhibit 4 – Implementation Process
    e. Exhibit 5 – HIPAA Business Associate Addendum

2. As set forth in the attached General Terms and Conditions and other Exhibits to this Agreement, Company shall provide Client and its Covered Employees, access to, and use of, Company's internet portal and software, and provide the Services described in the Exhibits.

3. Any and all notices, requests, demands, or other communications which relate to the other party's failure to perform, or which otherwise affect either party's rights under this Agreement will be deemed properly given when furnished by receipted hand-delivery to the other party, delivered by a receipted express courier or overnight delivery service, or delivered by the U.S. Postal Service (postage prepaid, certified mail, return receipt requested). Sender will address all notices, requests, demands, or other communications to the recipient at the address below.

If to Client, the communication will be sent as follows:

City of Dayton
Attn: Teresa Hanson
101 W. 3rd Street
Dayton, Ohio 45402

If to Company, the communication will be sent as follows:
EBenefits Solutions
U. S. Steel Tower
600 Grant Street, Suite 5600
Pittsburgh, PA 15219

Attention: Kismet Toksu

4. **Conflict and Interpretation.** In the event of any conflict between any provisions of this Agreement for Services, the attached General Terms and Conditions and/or any Exhibit (other than the Business Associate Agreement), schedule, or attachment, the provisions the General Terms and Conditions shall control. The foregoing notwithstanding, in the event of a conflict between the Business Associate Agreement attached as Exhibit 5 and this Agreement for Services or any Exhibit, the Business Associate Agreement shall control.

In Witness Whereof, and intending to be legally bound, Company and Client have each caused this Agreement to be executed by its duly authorized representative.

EBenefits Solutions, LLC.	**City of Dayton**
By: Kismet Toksu Digitally signed by Kismet Toksu DN: cn=Kismet Toksu, o=EBenefits Solutions LLC, an affiliate of UPMC, ou=President, email=ktoksu@ebenefits.com, c=US Date: 2016.08.18 15:55:42 -04'00'	By: _____
Name: Kismet Toksu	Name: _____
Title: President	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM AND CORRECTNESS
CITY ATTORNEY

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

____20____Min. Book____Page____

_____
CLERK OF THE COMMISSION

Proprietary and Confidential – Not for Distribution
Property Of E Benefits Solutions, LLC

EXHIBIT 1
General Terms and Conditions

These General Terms and Conditions shall apply to the System and all Services provided pursuant to the Agreement. In consideration of the mutual undertakings contained in the Agreement, these General Terms and Conditions and the attachments to the Agreement, the Parties agree as follows:

ARTICLE 1: DEFINITIONS.

All capitalized terms shall have the meaning set forth in the Agreement, unless otherwise defined herein.

Acceptance is defined in **Section 4**, below.

Agreement means the Agreement for Services to which these General Terms and Conditions are attached, these General Terms and Conditions, all other exhibits and appendices to the Agreement for Services, and all documents incorporated by reference herein. The foregoing together shall constitute the Agreement.

Application means Company's proprietary software application as specified in the Quotation and as may have been configured for Client's use, as well as all related documentation provided to Client.

Benefit Providers means insurance carriers, health benefit providers, disease management providers, and other third parties that Client authorizes Company to either provide Data or to grant access to Data.

Client means the entity identified as the Client in the Agreement for Services.

Client Elements means Client's trade names, trademarks, service marks, logos, slogans, and trade dress, and all intellectual property rights relating thereto.

Client Site means, individually and collectively, the Client website(s) located through the URL(s) to be provided to Company by Client.

Company means EBenefits Solutions, LLC. and its successors and assigns.

Company's Intellectual Property means the Application, the Documentation, the Portal and all materials provided by or on behalf of Company to Client, and all related intellectual property rights, including, but not limited to, all trade name, trademark, copyright, trade secret and patent rights.

Covered Employee means any employee of Client eligible for benefits offered by Client.

Data means data provided either by or on behalf of Client or a Covered Employee under the Agreement, or created from such data.

Data Center means, individually and collectively, the physical location(s) where Company hosts the System.

Documentation means the description of the features and functionality of the Application attached as **Exhibit 2** to the Agreement.

Normal Work Hours means 8:00 a.m. to 5:00 p.m. U.S. Eastern Time, excluding weekends and those legal holidays observed by Company.

Party means either Company or Client, and *Parties* means Company and Client.

Payment Schedule means the schedule of payments attached as **Exhibit 3**.

Portal means the Company website through which the Services are provided and through which Client and Covered Employees will provide Data.

Quotation means the Proposed Service Fees attached in **Exhibit 3**.

Required URLs means the universal resource locator(s) (URL(s)) provided by Company for use by Client as hyperlinks from the Client Site to the Portal. Client will permit access to the Portal only from the Client Site.

Requirements Document means the document(s) listing the specifications and requirements of the Services, including the manner in which the Services will be provided, as such document(s) may be amended or supplemented from time to time. The Requirements Document will be prepared by Company after reviewing the Plans and consulting with Client. The Requirements Document or portions thereof will be submitted to Client for approval. Upon approval, the Requirements Document will be incorporated by reference into this Agreement. Company shall have no obligation to perform under the Requirements Document until it is approved by Client.

Services means the services to be provided under the Agreement, as described in **Exhibit 2**.

System means, collectively, the Applications, the Portal, and the Third-Party Components.

Term means the term of the Agreement, as specified in these General Terms and Conditions and the attached Payment Schedule.

Third-Party Components means the (i) Third-Party Equipment, Third Party Software, and Services; or (ii) items within the public domain used by Company in providing the Services under the Agreement.

Third Party Equipment means any computer hardware or other equipment located at the Data Center that Company utilizes or permits a Client to utilize, in the performance of the Services.

Third Party Software means any software that Company licenses from an entity that is not a party to the Agreement and which Company utilizes, permits Client to utilize, and/or sublicenses to Client.

Users means Client and Covered Employees and all agents of Client authorized by Client to use the System.

ARTICLE 2: SERVICES.

2.1 *Access and Use of the Application*. During the Term, Client shall have the limited, non-exclusive, and non-transferable right in the United States to (i) access through the Portal and use the Application, configured and hosted by Company, solely for its own internal use, (ii) use the Documentation, make copies of the Documentation and distribute the Documentation to Users only as reasonably required for its own internal use, and (ii) include on the

Client Site the Required URLs referencing and linking to the Portal. Client will use, and permit Users to use, the Application, Documentation and Portal only as contemplated by, and specified in, the Agreement, including, without limitation, these General Terms and Conditions.

2.2 *Implementation Services*. Company shall provide the implementation services as set forth in **Exhibit 4** to the Agreement. The Implementation Services include the implementation of the services listed in **Exhibit 2, "Services Provided by EBenefits Solutions"**.

2.3 *Services*. During the Term, Company shall provide the services set forth in **Exhibit 2** to the Agreement, "Services Provided by EBenefits Solutions".

2.4 *Hosting and Data Retention*. All Data entered by or on behalf of Client or Users, or created based on such Data, will reside on equipment operated by Company or its affiliates. Such Data will be included in Company's standard data backup. Company is responsible for establishing and maintaining adequate operational back-up and disaster recovery provisions and procedures for Data. Client is responsible for establishing and maintaining adequate operational back-up and disaster recovery provisions for its Data.

2.5 *ERISA*. The Parties acknowledge and agree that Company is not intended to be a "Fiduciary" under the terms of the Employment Retirement Income Security Act (29 U.S.C. §1001, et. seq.) or any related regulations (referred to collectively as **"ERISA"**). The Parties further acknowledge and agree that none of the services provided by Company are fiduciary functions and that Company shall have no discretion in the management of any benefit plans offered by Client.

2.6 *Portal; Company's Internet Protocol (IP) address*. Unless otherwise specified, all Services will be provided through the Portal. Elements of the Client Site may be used in the Portal, at Client's discretion, and the Portal may include Client Elements. Copyright notices with the "E Benefits Solutions" name and/or logo may be placed on each page of the Portal. Client acknowledges and agrees that title to and ownership of Company's Intellectual Property are and will remain vested in Company at all times and for all purposes. Client will not knowingly take any action inconsistent with Company's rights in and to Company's Intellectual Property. At Company's reasonable request, Client will assist Company in maintaining the integrity of its rights in and to Company's Intellectual Property, at Company's sole cost and expense. Client will use commercially reasonable efforts to notify Company if Client becomes aware of any threatened or actual conflict with or challenge against any of Company's rights in and to Company's Intellectual Property.

2.7 *Use of Client Elements*. Client grants to Company for the sole purpose of delivering the Services a limited, non-exclusive, right within the United States during the Term to (i) use the Client Elements provided to Company by Client, and (ii) "push," or re-transmit, display, deliver, or direct Users to, any one or more pages from the Client Site to users of the Portal if Client requests that Company do so in order to answer questions from users of the Portal. (The rights granted under this Section will automatically terminate upon the expiration or earlier termination of the Agreement.) Company agrees that title to and ownership of the Client Elements remain at all times with Client. Company will use the Client Elements in accordance with Client's usage guidelines, as provided to Company, including any modifications to such guidelines that are provided to Company from time to time, and exactly in the form, color, and size provided by Client. Client will provide all necessary artwork to Company in an appropriate digital format and at Client's expense. Company will not form any combination marks using one or more of the Client Elements in combination with the marks or logos of Company or any other person or entity. Company will not take any action inconsistent with Client's ownership of the Client Elements. Company will take appropriate measures to maintain, in connection with its use of the Client Elements, the integrity and rights of Client in and to the Client Elements, and will use commercially reasonable efforts to immediately notify Client if Company becomes aware of any threatened or actual conflict with or challenge against one or more Client Elements. Company will not use any Client Element except as contemplated by, and specified in, the Agreement and these General Terms and Conditions. All rights, duties, and obligations set forth in this Section relating to the Client Elements that bind or inure to the benefit of Company will concurrently bind and inure to the benefit of any third party appointed by Company to provide a portion of the Services (including, but not limited to, any third party that may "push" pages from the Client Site to users of the Portal as requested by Client). Company will be responsible for the performance of its third party providers in accordance with the Agreement and these General Terms and Conditions.

2.8 *Not a Tax Return Preparer*. Company does not, and shall not be deemed to provide tax or legal advice in providing the Services. Company will use reasonable efforts to ensure that the Services are current and accurate, but due to rapidly changing tax rates and regulations which require interpretation by Client's qualified tax and legal professionals, Client bears full responsibility to determine the applicability of the output generated by the Services and confirm its accuracy. To the extent that Client elects and receives services related to its reporting obligations under the ACA (including, but not limited to, completion and transmission of IRS Forms 1094-C and 1095-C), the Parties acknowledge and agree that the Company and its officers, directors, and employees are not acting as, are not assuming any obligations as, and are not intended to be, "tax return preparers" under the terms of Section 7701 of the Internal Revenue Code (26 U.S.C. §7701) or any related regulations when performing such services. The parties further acknowledge and agree that Client's information reported on the IRS Form 1094-C and IRS Form 1095-C and transmitted to the IRS is information that does not constitute a substantial portion of any return of tax for the Client.

2.9 *HIPAA Compliance*. Company, in its business operations, will comply with all laws and regulations concerning security and privacy that apply to Company in its performance of its obligations under the Agreement, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder from time to time (referred to collectively as **"HIPAA"**). Additionally, the terms and conditions contained in the EBenefits Business Associate Addendum are hereby incorporated as Exhibit 5.

3.0 CLIENT RESPONSIBILITIES.

3.1 *List of Client Responsibilities*. Included as a part of Exhibit 2, is a summary of "Services Provided by the Client". These Services shall be responsibilities of Client. Client shall perform the obligations set forth in the Exhibits and these terms and conditions, including, without limitation, those specified below.

3.2 *Users*. Client shall provide Company, no less frequently than on the first business day of each month a complete, accurate, and updated electronic file, in a format agreed to by Company and Client, that includes: (a) a list of all persons who are Covered Employees and eligible Users; and (b) a list of all persons who, during the course of the previous month, ceased being Users. Company shall have the right to rely on the completeness and accuracy of these files, and Client shall be responsible for any errors, inaccuracy, or incompleteness.

3.3 *Plan Design*. To the extent required for Company to provide Services, Client shall provide Company detailed descriptions of the plan design for Client's employee benefits plan(s). Throughout the Term, Client shall provide Company with thirty (30) days advance written notice of any changes to any plan design, together with a detailed description of the revised plan design.

3.4 *Data*.

(a) Client shall not import, add, modify or delete Data by any method other than direct data entry through the Portal, without the prior written approval of Company.

(b) Client is responsible for maintaining adequate controls over its processing and Data transmissions, for monitoring the input of such processing and transmissions and for notifying Company of any non-conforming processing and/or transmissions.

(c) Company shall provide a user name and password to each individual that Client identifies as an authorized User. Client is responsible for accurately identifying its authorized Users, and Company shall have the right to assume that all such information it receives directly from Client is correct, up-to-date, and complete.

(d) Client shall be solely responsible for assigning access codes to its employees and agents who will access the System on behalf of Client. It is Client's responsibility to notify Company of any issues that require Data access modifications.

(e) Client shall be solely responsible for identifying the Benefit Providers to which Data and other information provided by Client or other Users may be transmitted by Company, and for determining when such Data transmissions should be discontinued. Company shall discontinue sending/transmitting Data to a Benefit Provider as soon as reasonably practical but in all events within five (5) business days of receipt of written notice from Client that such Data transmission should be discontinued. Company shall have the right to rely on Client's instructions in performing the Services.

(f) Client acknowledges and agrees that Company is not responsible for checking, verifying or editing Data content or completeness or for detecting errors or anomalies, regardless of whether such Data is provided by Client or entered by a User(s). Company shall have the right to rely on the completeness and accuracy of all Data, regardless of whether the Data is provided by or on behalf of Client or a Covered Employee.

(g) Client shall be solely responsible for verifying the accuracy and completeness of all Data provided by Client and/or a User(s). Client must report to Company any inaccuracies or other Data or Systems issues promptly after Client becomes aware of such issues.

3.5 *Notification to Client's Employees*. The Parties acknowledge and agree that Client is responsible for complying with any notifications, including all federal, state, and local notification requirements that may apply to Client. Company shall not be responsible for reviewing any notifications or for advising Client of the completeness, adequacy, timing, or accuracy of any such notifications.

3.6 *Consents*. Client shall be solely responsible for obtaining in a timely manner any consent required under federal or state laws, rules or regulations (including, without limitation, any consent required under HIPAA) for the transmission of Data to Company, the provision of Services to Client and Covered Employees by Company, and Company's provision of Data to any third parties in the performances of the Services (e.g., Benefit Providers). Client represents and warrants that it shall obtain and maintain throughout the Term, all such required consents in a timely manner. Company shall be responsible for obtaining in a timely manner any consent it is required to obtain under federal, state or local laws, rules or regulations.

3.7. *Client Equipment*. Client shall be solely responsible for selecting, purchasing, and maintaining any equipment and computer hardware and/or software required for Client or Users to access the Portal and use the Application.

3.8 *Completion and Filing of Tax Returns and Similar Documents*. Client shall be solely responsible for: (i) providing correct and accurate information as well as any agency information relating to reporting and/or reconciliations necessary for the completion of any tax returns or similar documents; (ii) reviewing content and accuracy of all tax returns and similar documents; (iii) signing, acknowledging, and/or attesting to (as required) all tax returns and similar document; and, if applicable, (iv) directing Company to file or electronically transmit, on Client's behalf, any tax returns, information returns or other similar reports or documents required by applicable federal, state or local laws and regulations. Although Company, as part of its services hereunder, may assist in compiling or otherwise populating the content and information to be included on any such returns, reports or documents, nothing herein shall relieve Client of its responsibility to complete, review, and certify (by signature or attestation) any tax documents and/or make Company a "tax return preparer" within the meaning of Section 7701 of the Internal Revenue Code (26 U.S.C. §7701) or any related regulations.

ARTICLE 4: ACCEPTANCE.

The System, as implemented for Client, shall be deemed accepted as of the earlier of (i) the first date that Client grants access to the System to any Covered Employee; or (ii) thirty (30) days after Company notifies Client that the System implementation is completed, provided that during such thirty (30) day period Client does not notify Company in writing of any material errors or malfunctions in the System that prevents the System from providing the features or functionality set forth in the Documentation (the **"Error Notice"**). In the event that Client provides Company with an Error Notice, Company shall use commercially reasonable efforts to provide Client with a correction or a reasonable workaround. In the event that Company does not provide a correction or a workaround within thirty (30) days of the date Company receives the Error Notice, Client shall have the right to terminate the Agreement upon written notice to Company, which right of termination must be exercised within sixty (60) days of Company's receipt of the Error Notice, unless otherwise agreed by the Parties in writing. Under this Section, Client's right to terminate the Agreement shall be Client's sole and exclusive remedy.

ARTICLE 5: OWNERSHIP OF INFORMATION.

All Data provided by Client to Company shall remain the property of Client. The foregoing notwithstanding, Company shall have a perpetual, full paid-up license to use and disclose solely in furtherance of Company's business, any Data that: (i) either does not include "Protected Health Information" as defined by HIPAA or has been de-identified as required by HIPAA, and (ii) has not been identified by Client in writing as Confidential Information or could not reasonably be expected to be confidential based on the nature of the disclosure. In addition, the business records of Company and all other records, electronic or otherwise, created or maintained by Company in performance of the Agreement will be and remain Company's property, with the exception of those records containing Protected Health Information of Client's employees. All de-identified information created by Company in compliance with the Agreement will belong exclusively to Company. Upon termination of this

agreement, Client shall have access to retrieve data, including employee and benefit information, specific to the Client.

ARTICLE 6: ACCESS.

6.1 *Monitoring Access*. Client will be responsible for assigning and monitoring access to the System by its employees, third party consultants to Client and anyone accessing the System on Client's behalf or utilizing access codes provided to Client, including all Users. It is Client's responsibility to inform Company of any issues that require System or Data access modifications. It is Company's responsibility to inform Client of an improper access to the System by Client's employees, third party consultants or anyone accessing the System on Client's behalf or utilizing access codes provided to Client, including all Users, if, and only if, Company becomes aware of such improper access.

6.2 *Unauthorized Access*. Client shall be allowed to access only its instance of the Application and its Data. Client will not attempt to gain or allow access to any data, files or programs to which it is not entitled under the Agreement and, if such access is obtained, as soon as Client learns of such access Client will destroy such materials or return them to Company and, to the extent Client is unable to do so, will safeguard the same as Company's Confidential Information.

6.3 *Disabling Access*. Company may, in its sole discretion, disable access to the System or applicable portions thereof and notify Client within twenty-four (24) hours of the reason for disabling access, in the event Company determines that Client, anyone affiliated with Client or using access codes assigned to Client (i) is not an authorized user, (ii) is attempting or has attempted to interfere with or disrupt the System or other users of the Application, including by uploading any virus, worm, disabling device, or other unauthorized device, (iii) is attempting or has attempted to copy any Application or gain access to portions of the System which it is not authorized to access, or (iv) is attempting or has attempted to access any portion of any other system maintained by Company for any other client. Upon disabling the System, Company and Client shall work in good faith to re-enable the System as soon as reasonably practical.

ARTICLE 7: PAYMENT TERMS.

7.1 *Fees*. **Exhibit 3** sets forth all fess and payments due under the Agreement.

7.2 *Payment Terms*. Client agrees that Client is solely responsible for the payment of all fees (and taxes if any) relating to the use of the System by or on behalf of Client and Covered Employees. All monthly invoices for Services shall be issued thirty days in advance of the month during which such services are to be rendered. Client agrees to pay all invoiced amounts within forty-five (45) days of the receipt of an invoice. Any invoice outstanding beyond sixty (60) days from the due date shall be subject to a late fee equal to 1.5% per month. Undisputed invoices unpaid beyond ninety (90) days shall be deemed to be a material breach by Client and may result in suspension or termination of Client access to the System and in termination of the Agreement.

ARTICLE 8: COMPANY REPRESENTATIONS AND WARRANTIES.

8.1 *Warranties*. Company represents and warrants that (i) Company has the right to grant Client the licenses provided for under the Agreement; (ii) the Services will be performed in a timely, professional, and workmanlike manner in accordance with applicable commercial standards; and (iii) the Services and System will be provided in the English language.

8.2 *Disclaimer of Warranties*. CLIENT ACKNOWLEDGES THAT (A) COMPANY IS IN NO MANNER RESPONSIBLE FOR ANY ACTION OR INACTION OF ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, HARDWARE, SOFTWARE, OR TELECOMMUNICATIONS VENDORS OR INTERNET SERVICE PROVIDERS; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT APPLY TO ANY SUBCONTRACTORS OF COMPANY; (B) ANY "AUTHORIZATION" BY COMPANY OF ANY SUCH THIRD PARTY DOES NOT CONSTITUTE A REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THIRD PARTY OR ITS PRODUCTS OR SERVICES; AND (C) COMPANY HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, SECURE, ERROR FREE OR WITHOUT DELAY. THE PARTIES ACKNOWLEDGE THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY EITHER PARTY EXCEPT FOR THE LIMITED WARRANTIES MADE IN THE AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY AND ITS AFFILIATES AND THEIR OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, SUPPLIERS, THIRD-PARTY SERVICE PROVIDERS, LICENSORS AND THE LIKE DO NOT MAKE ANY WARRANTY (A) AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES; (B) THAT THE SERVICES WILL BE UNINTERRUPTED, SECURE, ERROR FREE OR WITHOUT DELAY; OR (C) OF ANY OTHER KIND, EXPRESS OR IMPLIED, INCLUDING , BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Except as otherwise explicitly provided herein, neither (i) Company, (ii) any vendor providing equipment, software, or services to Company ("Vendor"), nor (iii) any director, officer, employee, affiliate, or agent of Company or any Vendor, will be liable for any loss, damage, cost, or expense whatsoever, direct or indirect, that may arise out of, or be in any way related to, the use of the System, including, but not limited to: (a) the suspension or termination of, or the inability to use, all or any part of the System; (b) the erroneous transmission of any data or the transmission of any erroneous data; (c) any failure or delay suffered or allegedly suffered by any party in receiving or sending any information; (d) the delivery or transmission of any virus, worm, or other disruptive device; or (e) any other cause in connection with the furnishing of services or notices by Company or the performance, maintenance, or use of, or inability to use, all or any part of the System; provided, however, the foregoing limitation of liability will not apply to the extent such loss, damage, cost or expense arises out of the negligence or willful misconduct of Company. In addition, neither (i) Company, (ii) any vendor providing equipment, software, or services to Company ("Vendor"), nor (iii) any director, officer, employee, affiliate, or agent of Company or any Vendor, will be liable for any loss, damage, cost, or expense whatsoever, direct or indirect, that may arise out of: (a) Client's negligence or willful misconduct; (b) the inaccuracy, incompleteness, or inadequacy of any Data provided by Client and/or User(s); (c) the transmission of any tax returns, information returns or other similar reports or documents required by applicable laws and regulations on behalf of Client and at Client's direction (d) Client's breach or alleged breach of this Agreement including any Client omissions; (e) the use, operation, or combination of the System with unapproved programs, data, or equipment; (f) any modifications to or markings of the System that are not specifically authorized in writing by Company; or (g) the use of the System in a manner for which it was neither designed nor contemplated

ARTICLE 9: SYSTEM AVAILABILITY.

Company will maintain the following Service Level Standards with respect to the System:

9.1 *Availability*. The Portal shall be available no less than an average of 98.0% of the time during Normal Work Hours and an

average of 96.0% of the time outside of Normal Work Hours (as measured at the Portal) measured by Company on an annual basis. The determination of System availability shall not include times when the System is unavailable due to scheduled maintenance or to causes that are beyond Company's reasonable control (including, without limitation, any Force Majeure event, interruption in telecommunication services, failure of Client's or any User's equipment, network, or Internet service provider, power outage, failure, malfunction, or error in any application not provided by Company, or corrupt data provided by Client or any User). In the event that Company fails to meet the service levels contained herein, Client may terminate this Agreement in accordance with the terms contained in Article 12.2.

9.2 *Monitoring; Technical Problems*. Company will monitor the performance and availability of the Portal and provide Client with an annual report of Portal availability. Company will provide Client with contact information for Company's principal business and technical representatives responsible for the performance by Company of its obligations hereunder (including e-mail, phone, pager and fax information, as applicable, for both during and after business hours).

ARTICLE 10: INDEMNIFICATION.

10.1 *Indemnification by Company*. Company shall indemnify, defend and hold Client and its officers, directors, employees, agents, affiliates, subsidiaries, successors, users and assigns harmless from and against any claim that the Application infringes a U.S. copyright, trademark or trade secret (an **"Infringement Claim"**) at its own expense. Company shall defend Client against any Infringement Claim and pay all damage, cost or loss (including without limitation attorney's fees) and amounts that a court finally awards or that Company agrees to in settlement of such claim. Client shall: (i) immediately notify Company in writing of any Infringement Claim; and (ii) allow Company to control, and fully cooperate with Company in, the defense of such claim and all related negotiations. Company shall not be required to indemnify Client for any settlement that Client enters into without Company's prior written consent. If the operation or use of any Application becomes, or in Company's opinion is likely to become, the subject of any claim of infringement of any third party's intellectual property rights, then Company may, at Company's sole discretion and expense, either (a) procure the right for Client to continue to use the Application or (b) replace or modify the Application so that it becomes non-infringing while retaining substantially comparable functionality. If the foregoing is not possible on terms that are commercially reasonable in Company's judgment, then Company may terminate the Agreement upon written notice to Client. Company shall have no obligation to defend, indemnify or hold Client harmless against an Infringement Claim to the extent that such claim is based on Client's access or use of any Application(s) in violation of the terms of the Agreement. This **Section 10.1** states Company's entire obligation to Client regarding Infringement Claims. Company agrees to indemnify, hold harmless and defend Client and its officers, directors, employees, agents, affiliates, subsidiaries, successors, users and assigns from and against any and all damages or losses to person or property incurred in connection with any claim or cause of action by any person or entity who is not a Party to this Agreement to the extent based upon, arising from, or related to (i) the inaccuracy, incompleteness, or inadequacy of any Data or information provided to Client by Company; provided, however, the foregoing shall not apply to the extent that such information is inaccurate, incomplete or inadequate due to information originally provided to Company by Client; (ii) any failure of Company to comply with HIPAA, or any other applicable federal or state law or regulations; or (iii) Company's breach of the terms of this Agreement.

ARTICLE 11: LIMITATION OF LIABILITY.

CLIENT ACKNOWLEDGES THAT (A) CLIENT IS SOLELY RESPONSIBLE FOR COMPLYING WITH ANY FEDERAL, STATE, OR LOCAL NOTIFICATION REQUIREMENTS THAT MAY APPLY TO CLIENT; (B) COMPANY IS IN NO MANNER RESPONSIBLE FOR ANY ACTION OR INACTION OF ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, HARDWARE, SOFTWARE, OR TELECOMMUNICATION VENDORS OR INTERNET SERVICE PROVIDERS; PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO SUBCONTRACTORS OF COMPANY; (C) ANY "AUTHORIZATION" BY COMPANY OF ANY SUCH THIRD PARTY DOES NOT CONSTITUTE A REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THIRD PARTY OR ITS PRODUCTS OR SERVICES; AND (D) COMPANY HAS NOT REPRESENTED OR WARRANTED THAT THE SYSTEM OR THE SERVICES WILL BE UNINTERRUPTED, SECURE, ERROR FREE, OR WITHOUT DELAY. IN NO EVENT SHALL: (i) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) EITHER PARTY'S LIABILITY HEREUNDER EXCEED $50,000. THE FOREGOING LIMITATIONS SHALL NOT APPLY WHERE SUCH DAMAGES ARE AWARDED TO A THIRD PARTY AND SUCH THIRD PARTY'S CLAIM IS COVERED BY AN OBLIGATION OF INDEMNITY UNDER THIS AGREEMENT.

ARTICLE 12: TERM AND TERMINATION.

12.1 *Term and Termination*. The initial Term of the Agreement shall commence on the "go-live" date, as defined in the attached Payment Schedule, and shall last for thirty-six (36) months (the "Initial Term"), unless earlier terminated by the Parties in accordance with this Article 12. The Agreement will automatically renew for an additional thirty-six (36) month term upon the expiration of the Initial Term unless the Parties (1) negotiate a new agreement, or (2) terminate the Agreement in accordance with this Article 12.

12.2 *Immediate Termination*. During the Initial Term of this Agreement, Company may immediately terminate the Agreement upon 180 days advance written notice to Client. After the expiration of the Initial Term of the Agreement and in any subsequent agreement term, either party may immediately terminate the Agreement upon 180 days advanced written notice to the other party. In addition, Company may terminate the Agreement as provided in **Sections 10.1 and 13.4** and Client may terminate the Agreement upon written notice to Company as provided in Section 4, 9.1 and 13.4.

12.3 *Termination by Breach*. Either Party shall have the right to terminate the Agreement if the other Party materially breaches the Agreement. The non-breaching Party electing to terminate the Agreement shall send a notice of termination to the breaching Party specifying each breach with reasonable specificity and the Agreement shall be terminated thirty (30) days following delivery of such notice unless during such thirty (30)) day period either: (i) the breaching Party shall have cured each such breach, or (ii) with respect to a breach which may not reasonably be cured within such thirty (30) day period, the breaching Party and the non-breaching Party have agreed upon a plan to cure the breach (the **"Cure Plan"**), provided that it shall be deemed a material breach of the Agreement if the breaching Party fails to timely provide the cure in accordance with the Cure Plan, in which event the non-breaching Party shall have the right to terminate the Agreement upon written notice to the breaching Party. Termination of the Agreement by the non-breaching Party shall not relieve the breaching Party from liability for any breach of, or other obligations arising under, the Agreement occurring before such termination.

12.4 *Effect of Termination*. **Sections 2.5, 2.6, 2.7, 2.8, 3.5, 3.6, Article 5, Article 7, Article 8, Article 10, Article 11, and Article 13** of these General Terms and Conditions and any other provision contained in the Agreement that, by its nature, is intended to survive the expiration or termination of the Agreement, shall survive the termination or expiration of the Agreement.

ARTICLE 13: GENERAL PROVISIONS.

13.1 *Confidentiality*.

(a) *Confidential Information* means any and all proprietary or confidential business information or Data related to the disclosing Party, or such Party's operations, employees, services, or customers. In addition, Company's Intellectual Property shall be Confidential Information of Company, and the Client's Intellectual Property, the Data and the Client Elements shall be Confidential Information of Client.

(b) Except as provided in the Agreement (including, without limitation, these General Terms and Conditions), each Party shall: (i) not disclose the Confidential Information of the other Party to any third party, other than to its employees, contractors, or agents that have a need to know and a legal duty to protect the Confidential Information; and (ii) use at least a reasonable standard of care, but in no event less than the standard such party uses to protect its own Confidential Information, to prevent disclosure of the other Party's Confidential Information. Except as provided by the Agreement (including, without limitation, these General Terms and Conditions), neither Party shall: (1) use the other Party's Confidential Information; (2) acquire any right in or assert any lien against the other Party's Confidential Information; or (3) refuse to promptly return, provide a copy of, or destroy the other Party's Confidential Information upon request of the other Party. The receiving Party shall immediately notify the disclosing Party upon gaining knowledge of any disclosure, loss, or use of the disclosing Party's Confidential Information in violation of the Agreement (including, without limitation, these General Terms and Conditions). These confidentiality obligations shall survive the termination of the Agreement (including, without limitation, these General Terms and Conditions).

(c). The Parties agree that breach of the confidentiality obligations or misuse of a Party's intellectual property rights will cause continuing, substantial and irreparable injury to the other Party and that the other Party's remedies at law for such breach or misuse will not be adequate. Accordingly, the Parties agree that the affected Party shall be entitled to seek immediate injunctive relief against the breach, misuse or threatened breach or threatened misuse of the foregoing undertakings by the other Party, and that such rights shall be in addition to, and not in limitation of, any other rights or remedies to which the other Party may be entitled at law or equity.

13.2 *Governing Law*. The Agreement (including, without limitation, these General Terms and Conditions) will be governed by and construed in accordance with the laws of the State of Ohio (without regard to any conflict of laws rule or principle that might refer governance or construction of the Agreement to the laws of another jurisdiction). Venue for any action hereunder shall be proper only in the federal and state courts situated in Montgomery County, Ohio, and the Parties hereby consent to the personal jurisdiction of the Ohio state courts and federal courts located in Montgomery County, Ohio.

13.3 *Entire Agreement*. These General Terms and Conditions, the Agreement for Services, and all exhibits or appendices thereto shall constitute the entire agreement between the Parties with respect to the subject matter of the Agreement. There are no understandings or agreements relating to the subject matter of the Agreement that are not fully expressed herein, and no amendment or waiver is valid unless it is in writing and executed by the Party against whom it is sought to be enforced. The Agreement may be amended or modified only by a written instrument that is signed by all Parties. No term or provision in any purchase order, invoice, or other form provided by Client or Company will control the relationship of the Parties or supercede any conflicting term or provision of the Agreement. In the event of any conflict between any provision of these General Terms and Conditions and any provision of the Agreement for Services or any other exhibit or appendix, the provisions of these General Terms and Conditions shall control.

13.4 *Force Majeure*. In the event either Party is prevented from performing, or is unable to perform, any of its obligations under the Agreement due to any cause beyond the reasonable control of the Party invoking this provision, the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence. In the event that a Party's performance is prevented or delayed for more than thirty (30) days, then the other Party may terminate the Agreement by delivery of written notice to the non-performing Party.

13.5 *Severability*. If a court of competent jurisdiction finds any provision of the Agreement to be unenforceable, the remainder of the Agreement will be enforced, with substitution as necessary to give reasonable overall effect to the terms of the Agreement.

13.6 *Injunctive Relief*. The Parties understand and agree that, due to the highly competitive nature of the computer industry, the breach of any covenants set out in the Agreement may cause irreparable injury to Company or Client for which no adequate remedy at law will be available. Therefore, either Company or Client, as the case may be, will be entitled, in addition to such other remedies as it may have hereunder, to seek a temporary restraining order and preliminary injunctive relief for any breach or threatened breach of the Agreement.

13.7 *Business Relationship*. The Agreement will not create any agency, employment, joint venture, partnership, representation, or fiduciary relationship between the Parties. No Party has the authority to nor will a Party attempt to, create any obligation on behalf of another Party as a result of the Agreement.

13.8 *Authority*. Each individual executing the Agreement on behalf of a Party hereby represents and warrants to the other Party that such individual is duly authorized to execute, and deliver the Agreement on behalf of that entity and that such execution and delivery make the Agreement a valid and binding obligation of the entity for all purposes.

13.9 *Dispute Resolution*. Except for a dispute related to claims subject to indemnification under **Article 10**, or as otherwise provided in this **Section 13.9**, neither Party shall resort to legal remedies or commence any formal proceedings to resolve a dispute under the Agreement until the Parties have attempted to resolve the dispute through the escalation process described in this **Section 13.9**. The Party raising a dispute shall submit to the other Party a written notice and supporting material describing all issues and circumstances related to the dispute (a **"Dispute Notice"**). The designated primary representative of each Party shall attempt to resolve the dispute. If the Parties' primary representatives fail to resolve the dispute within fifteen (15) days from receipt of a Dispute Notice, a Senior Vice President (or higher-level officer) of each Party shall attempt to resolve it. If the Senior Vice Presidents (or higher-level officers) of the Parties are unable to resolve the dispute within thirty (30) days from receipt of the Dispute Notice, either Party may commence formal legal proceedings in accordance with **Section 13.2** above to resolve the dispute. This **Section 13.9** shall not be construed to prevent a Party from instituting formal proceedings

earlier than indicated in this **Section 13.9** to: (i) avoid the expiration of any applicable limitations period; (ii) preserve a superior creditor position; or (iii) seek injunctive relief to prevent an irreparable harm, including without limitation, harm caused by a breach of confidentiality.

13.10 *Assignment*. Company shall have the right, upon written approval by Client, such written approval which shall not be unreasonably withheld, to assign any or all of its rights and/or delegate any or all of its obligations under the Agreement, provided that the assignee or delegee, as applicable, agrees to be bound by the terms of the Agreement.

13.11 *Non-Discrimination*. Company 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 advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.

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

13.12 *Political Contributions*. Company affirms and certifies that it complies with Ohio Revised Code §3517.13 limiting political contributions.

13.13 *OPERS*. Company understands and agrees that none of its employees are public employees of the City of Dayton entitled to participate in the Ohio Public Employees Retirement System (OPERS) and agrees that none will make claim for benefits from OPERS.

13.14 *Insurance.* Company shall at its cost and expense obtain and provide, on or before the earlier of the commencement of the Term of this Agreement, and keep in force at all times thereafter, Commercial General Liability Insurance in the aggregate amount of One Million Dollars ($1,000,000.00) for bodily injury, death and property damage. The General Liability Insurance shall be written in the name of Company with Client (and any designee(s) of Clients) named as Additional Insureds.

Exhibit 2
Scope of Service
Responsibilities / Obligations of Company and Client

This document provides a summary of the services provided by EBenefits to City of Dayton. The services are separated into the following groupings for each service or function provided:

Services Provided by EBenefits Solutions
Services Provided by the Client or Other Third Parties:

These are services that we expect to be provided by the Client or a Third-Party Administrator. We may be willing to provide some of these services, based upon the scope of these services. A determination must be made if these services can and should be provided by EBenefits, and at what price.

Note: EBenefits is willing to provide additional, customized services not described in this document on a client-specific basis.

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Plans and Covered Populations

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Plans	✓ Enrollment and coverage maintenance for: — Health care plans (e.g., medical, dental, vision, hearing, Rx, behavioral health) — Group term life, AD&D, and Business Travel Accident Insurances — GVUL or Whole Life Insurance (excluding side fund maximum calculation and monitoring) — Supplemental Life and AD&D Plans — Group Disability Plans (STD, LTD, Salary Continuation) — Section 125 Health Care Flexible Spending Accounts — Section 129 Dependent Care Spending Accounts — Voluntary Benefits such as Group Legal, Group Home and Auto, Voluntary Disability, etc. ✓ Retirement Plan elections — Voluntary/involuntary deductions to 403(b), 401(k), or other pension	✓ Enrollment and coverage maintenance for: — Worker's Compensation Administration — Severance Program Administration — Vacation and other Paid time-off calculations and utilization — Insurance claims adjudication and payment such as medical, dental, etc. — Spending account recordkeeping for the Section 125 Health Care Flexible Spending Accounts and Section 129 Dependent Care Spending Accounts — GVUL or GUL side fund recordkeeping — Voluntary Benefit premium calculations

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Covered Population	✓ Active employees ✓ Inactive employees ✓ Dependents	

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Data Maintenance

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Participant Data Maintenance	✓ Participant data enrollment and changes via Employee Self-Service through the internet ✓ Age-based rules and calculations for benefit or deduction adjustments ✓ Electronic Confirmations ✓ Participant demographic data maintenance via one inbound and one outbound HRIS/Payroll interfaces on a frequency to be determined by the parties ✓ Inactive, data maintenance via HRIS/Payroll/TPA interface	
Dependent Data Maintenance	✓ Dependent data enrollment and changes via Web-based platform ✓ Auto-enrollment and eligibility changes based on changes in coverage or loss of dependent eligibility status ✓ Confirmations	
Beneficiary Data Maintenance	✓ Initial data collection for new beneficiaries via Web-based platform ✓ Ongoing changes via Web-based platform	✓ Verification and approval of absolute assignments
Payroll Data Maintenance		✓ Payroll calculations such as time worked, gross pay amount and gross-to-net calculations

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Event Processing

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Enrollment Services for New Eligible Participants	✓ Web-based Platform Services to include: – Eligibility determination (elapsed time such as # of days, months or years from hire date) – Availability of benefit options and price tags – Personalized online enrollment worksheets – Election entry and dependent data entry – Beneficiary designations – Election editing and automatic error corrections and warnings – Assignment of default coverage(s) ✓ Reporting via interface to HRIS/Payroll and Insurance Carriers / TPAs	✓ New Hire Orientation ✓ PCP eligibility, determination and recordkeeping ✓ Follow-up to obtain specific forms required by providers ✓ HIPAA Certificates of Creditable Coverage and calculation of creditable coverage which can reduce preexisting condition exclusions ✓ Provider directories
Annual Enrollment	✓ Web-based Platform Services to include: – Eligibility determination – Availability of benefit options and price tags – Personalized online enrollment worksheets – Tracking of evidence of insurability – Election entry and dependent data entry – Beneficiary designations – Election editing and automatic error corrections and warnings – Assignment of default coverage(s) ✓ Reporting via interface to HRIS/Payroll and Insurance Carriers / TPAs	✓ PCP eligibility, determination and recordkeeping ✓ Follow-up to obtain specific forms required by providers ✓ Representatives from non-EBenefits products at Open Enrollment Meetings ✓ Provider directories

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Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Coverage Changes during the year (due to employment or family status changes) Can Enrollment changes be automatic to notify EE	✓ Web-based Platform Services to include: – Eligibility determination – Availability of benefit options and price tags – Personalized online enrollment worksheets – Tracking of evidence of insurability – Election entry and dependent data entry – Beneficiary designations – Election editing and automatic error corrections and warnings – Assignment of default coverage(s) ✓ Reporting via interface to HRIS/Payroll and Insurance Carriers / TPAs	✓ PCP eligibility, determination and recordkeeping ✓ Follow-up to obtain specific forms required by providers ✓ Open Enrollment Meetings ✓ Provider directories
Evidence of Insurability (EOI)	✓ Identification of elections requiring EOI ✓ Upon request and subject to an additional implementation fee, an interface file with EOI information for each carrier, assuming that the insurer can accept such information electronically ✓ Auto-assignment of coverage during EOI determination period ✓ Final assignment of coverage based upon approved or unapproved EOI by carrier and use of the Approval Expert by the Client's HR Team	✓ Approval of individual EOI Forms

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Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Termination of Employment	✓ Determination of coverage termination date	✓ HIPAA Certificates
Retirement	✓ Determination of effective date for termination of active coverage ✓ Eligibility determination for retiree health and welfare coverage ✓ Enrollment as newly eligible ✓ Deduction calculations and feeds or reports for pension or retiree billing system(s) ✓ Automatic monitoring of Medicare Eligibility at age 65	✓ Pension Payroll and deduction reconciliation
Death Event (Participant or Survivor)	✓ Determination of effective date for termination of active coverage ✓ Eligibility determination for survivor relating to retiree health and welfare coverage ✓ Enrollment of survivor as newly eligible ✓ Deduction calculations and feeds or reports for pension or retiree billing system(s) ✓ Automatic monitoring of Medicare Eligibility at age 65	

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Leaves of Absence or Layoff	✓ Determination of effective date for termination of active coverage ✓ Eligibility determination for health and welfare coverage extension and pricing ✓ Special enrollment ✓ Deduction calculations and feeds or reports for pension or retiree billing system(s)	✓ Determination of eligibility for Leave of Absence and tracking of duration of leave, including FMLA

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Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Severance	✓ Determination of effective date for termination of active coverage ✓ Eligibility determination for health and welfare coverage extension and pricing ✓ Special enrollment ✓ Deduction calculations and feeds or reports for HRIS/Payroll system	✓ Determination of eligibility for severance ✓ Severance payment calculations
Transfers between Business Units or Affiliates	✓ Eligibility determination for health and welfare coverage changes and pricing ✓ Special enrollment ✓ Deduction calculations and feeds or reports for HRIS/Payroll system	✓ Transfer of historical demographic and enrollment data to new Business Unit or Affiliate
Content	**Services Provided by EBenefits Solutions**	**Services Provided by the Client or other Third Parties**
COBRA Administration		✓ COBRA coverage period tracking ✓ Multiple Qualifying Event determination ✓ COBRA coverage termination processing ✓ COBRA billing ✓ COBRA claims processing

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Participant Services

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Providing Customer Service through Call Center Operation	✓ Online instructions relating to EBenefits enrollment system	✓ General Employer policies such as service awards, time off, severance, tuition assistance, adoption assistance, etc. ✓ Payroll and deduction issues ✓ Internet technical support ✓ Claim approvals and denials
Processing Transactions via Web-based platform	✓ New Eligible Enrollments ✓ Annual Enrollment ✓ Coverage changes ✓ PIN Reset ✓ Participant and dependent data maintenance relating to the benefit plans ✓ Home address and contact information changes	
Processing QMCSOs	✓ Coverage maintenance for dependents entitled to coverage under a Qualified Medical Child Support Order (QMCSO)	
Referrals	✓ Coordination with, and referrals to, third-party administrators	
Customer Service and EBenefits System availability	✓ Support provided during the following times: — 8:00 am to 7:00 pm ET (Monday through Friday) — Closed on EBenefits Holidays (List of Holidays to be provided)	
Issue Resolution and Appeals	✓ Resolving participant issues on decisions made by the EBenefits Center ✓ Providing to the employer background information and documentation relevant to the appeal based on information that is available in the Center	✓ Final decision and communication to participants ✓ Resolving participant issues on decision made by insurance carriers or TPAs ✓ Providing to the employer background information and documentation relevant to appeals on activities / determinations performed by the insurance carriers or TPAs

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Communication Services

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
EBenefits Generated Forms and Materials (materials and postage provided at cost)	✓ Confirmation statement ✓ Beneficiary designation ✓ Common carrier forms that are standard across carriers, such as EOI	✓ HIPAA Certificates ✓ ID Cards ✓ Carrier-specific forms
Other Materials (materials and postage provided at cost)		✓ Insurance materials ✓ TPA materials ✓ Provider directories
Fulfillment (distribution and mailing costs passed along to client at cost)		

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HRIS/Payroll Services

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Data Sources	✓ HR/Payroll system for indicative and financial data relating to active employees ✓ HR/Payroll or other TPA for indicative and financial data relating to retirees, inactive and former employees ✓ EBenefits System for health and welfare coverage and elections	
Indicative Data Maintenance	✓ Changes-only reporting from HRIS/Payroll to the EBenefits System ✓ Frequency = weekly or coincident with HRIS/Payroll frequency ✓ One standard interface file inbound from HRIS/Payroll ✓ One standard interface file outbound to HRIS/Payroll ✓ One standard eligibility file for each insurance carrier or TPA (up to the limit outlined in the proposal and LOI)	
Active and Inactive Employee Payroll Deduction Processing	✓ Changes-only reporting from EBenefits System to HRIS/Payroll ✓ Frequency = consistent with payroll processing frequency ✓ Creation of deduction and coverage transactions specific to Client's HRIS/Payroll	✓ Deduction arrears ✓ Direct billing
Retiree Payroll Deduction Processing		✓ Deduction arrears ✓ Direct billing
File Transmission	✓ FTP	
Client's HRIS/Payroll	✓ Client accesses own systems to research issues	

Management Reporting

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Benefit Plan Management Reporting	✓ Monthly benefit plan management reports, based on EBenefits coverage data, in standard EBenefits format – Headcount, premium/ASO Fee reporting – Retroactivity permitted up to 60 days ✓ Subcategories to include: – Participant type (active, retired, COBRA) – Business Unit or Company as defined by Client's demographic file	

Vendor Management Services

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Eligibility Reporting **Premium Reporting**	✓ Weekly files to health care vendors (standard format) ✓ Monthly reporting to standard non-health care vendors as agreed upon mutually (standard format) ✓ Monthly self-billing premium reports in standard format ✓ EBenefits reports provided to Client for reconciliation purposes	✓ ID Card production ✓ Collection of participant signatures for any purpose
Audit Services	✓ Full-file of covered participants and dependents by plan for audit purposes by Client and insurance carriers/TPAs. Frequency to be mutually agreed upon but not more frequently than quarterly.	

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Government Reporting/Compliance

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Government Reporting	✓ Determination and reporting to Client of participant counts for Form 5500 filing for plans maintained on EBenefits System	
Discrimination Testing		✓ To be completed by Client or TPA
HCFA Data Match Compliance	✓ EBenefits to provide data to Client upon request relating to data which resides on EBenefits Systems	✓ Research of historical data prior to EBenefits implementation

Miscellaneous Services

Content	Services Provided by EBenefits Solutions	Services Provided by the Client or other Third Parties
Client Access to EBenefits System		✓ Hardware and related charges and/or support
Custom or Ad Hoc Reporting	✓ Standard monthly extract file to Client	
Historical Paper Records		✓ Maintenance of paper historical files of any type
Third-party verifications	✓ Coverage verification for insurance carriers or TPAs (for coverage maintained on EBenefits System	

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Exhibit 2A

ACA Compliance Module Scope of Services

Responsibilities / Obligations of Company and Client

This document provides a summary of the ACA compliance services that may be provided by EBenefits to the City of Dayton, Ohio

Services Provided by EBenefits Solutions

1. Uploading of client employee data
2. Customized configuration of client compliance preferences
3. Reporting of employee population after each data load
4. Populating and Providing IRS Forms 1094-C and1095-C

Services Provided by the Client or Other Third Parties:

These are services that we expect to be provided by the Client, Covered Employee or other Third Party. We may be willing to provide some of these services, based upon the scope of these services. A determination must be made if these services can and should be provided by EBenefits, and at what price.

The Client will make a determination on or before September 1, 2016 concerning whether it will need ACA compliance services from EBenefits. The Client will notify EBeneifts in writing of its determination by September 5, 2016. If the Client elects to receive ACA Compliance services from EBenefits, the scope of said services will be as further delineated in the Exhibit 2A, and the charge for these services will be as detailed in Exhibit 3.

NOTE: This ACA Compliance Module Scope of Services is incorporated into the Services Agreement ("Agreement") between Client and Company. Except to the extent expressly provided otherwise in this Scope of Services, all the terms and conditions of the Agreement are incorporated by reference into this Scope of Services.

1. Uploading of client employee data

Content	Services Provided by EBenefits Solutions	Services Provided by the Client, Covered Employee or other Third Party
For every individual employed: Employee ID Social Security Number Last Name First Name Middle Name Address 1 Address 2 City State Postal Zip Code Email Address Subsidiary Company Code Subsidiary Company Name Subsidiary Company Location Federal Employer ID Number Employee Work Status Employee Job Title First Start Date Last Start Date Employee Pay Period Union Classification (if any) Termination Date Leave of Absence (type) Leave of Absence Start date Leave of Absence End date ACA Full time on Hire (Y/N) Employee Classification Hourly Rate of Pay Monthly Pay Medical Plan Coverage Code Monthly Premium Deduction Month (of data) Year (of data) Work hours (for total month)	1 Uploading of client employee data is done on a one-time historical basis and a monthly basis going forward. 2. For integrated clients, any new data not previously in EBenefits' databases will be protected as confidential information or PHI, as appropriate.	– For existing integrated clients, production of data elements required for successful upload process and/or modification of the file by the client, either for historical data purposes or for monthly files going forward. – Ensure monthly census data upload is complete and accurate

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2. Client configuration

Content	Services Provided by EBenefits Solutions	Services Provided by the Client, Covered Employee or other Third Party
Classification Code Descriptions Medical Plan Code Descriptions Minimum Value Determinations Lowest Cost Plan Determination Identification of Legal Entities Total Premiums on an annual basis by plan medical option Rounding Full-time determination Choosing Standard Lookback Periods Determination New Variable Hour or Seasonal Hire Initial Measurement Period Determination Reclassifying after Rehire or Return from Other Leaves of Absence Determination Special Leaves Determination Educational Institutions Non-Calendar Plans Multiemployer Plans	1. Configuration screens will pull forward data from preloaded files or from manual census upload. 2.Summarization of client data reflecting the lowest cost plan option available for each classification. 3.Identification of ACA large employer members with likely independent ACA liability 4.Optional flexibility for rounding up employee average hours between 29 and 30 hours in two different methods. 5.Configuration of Lookback Safe Harbor periods on the basis of the client's preferred length of standard administrative period. 6.Options for counting hours under various regulatory methodologies. 7.Options for counting hours of Employment Break Periods for Educational Institutions under regulatory provided methods. 8.Options to assist client in determining whether any transitional relief may apply.	1. Provide additional data or confirmation, as applicable, as requested through each screen of the configuration process. 2. Select preferred options as accurate and truthful responses, independently and without advice from EBenefits representatives. 3. Verify data is pulling correctly into summary tables and contact account manager with functional issues.

3. Reporting of employee population

Content	Services Provided by EBenefits Solutions	Services Provided by the Client, Covered Employee or other Third Party
		1. Ensure monthly census data upload is accurate and complete. 2. Ensure census data is uploaded every month to update the Dashboard.

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4. Populating and Providing IRS Forms 1094-C and 1095-C

Content	Services Provided by EBenefits Solutions	Services Provided by the Client, Covered Employee or other Third Party
Populating of IRS Forms 1094-C and 1095-C Providing IRS Forms 1094-C and 1095-C	1. Populate the most current IRS 1094-C and 1095-C forms based on analytics from the total of client historical and client monthly data file feeds as submitted by the client. 2. Provide access to client data as an internal control mechanism for period of 7-years. 3. 1095-C: - Translate information about medical plan eligibility and medical plan value, and other plan design offerings to be consistent with codes required by the IRS for form 1095-C employee statement. 4. 1095-C: Capture data on a month-to-month basis to identify offer of coverage for the lowest cost plan with an actuarial value of at least 60%, and enter required codes per month. 5. 1095-C: Provide multiple 1095-C forms for any employee that changes employment between ALE members that are part of the client ALE (Applicable Large Employer). 6. 1095-C: Determine per client data required safe harbor codes when employee is not offered a plan when applicable, and enter required codes per month. 7. 1095-C: Per client information, will include monthly data on enrollment of dependents covered individuals if the client is self-insured, and check the box and enter appropriate information for each individual per month as required. 8. 1095-C: Capture preferred business contact on a per ALE Member basis in case of employee inquiry. 9. 1094-C: – Determine per client data and wizard configuration selections whether any Certifications of Elibility apply, and if so, translate client information into streamlined filing options for 1094-C transmittal, and enter required	1. Providing correct and accurate information source data uploads necessary for the timely completion of any tax returns or similar documents. Provide acceptable and complete historical data (or acceptable and complete instructions for using partial / incomplete or unacceptable historical data), to complete facilitate analysis to population of 1094-C and 1095-Ce IRS forms. Complete wizard configuration including any mid-year changes during the tax year to be captured by 1094-C and 1095-C IRS forms. After December 31st year-end client data file has been uploaded, visit your dashboard, and click on the IRS reporting tab showing the "ALERT" feature. Download IRS instructions (optional) to see updated information from Dept, of Treasury, for your own reference. Complete the IRS questionnaire step to submit correct client specific information not previously captured through the process of wizard configuration. Click to generate IRS tax forms 1094-C and 1095-C. Review all forms drafted and prepopulated for 1094-C and 1095-C. Verify and approve transmittals prior to submission to the appropriate regulatory agency. Direct delivery to employees, 1095-C employee statements with truncated SSN and/or DOB by January 31st of each year. Direct electronic submission of

	codes per month. 10. 1094-C: Group Applicable Large Employer (ALE) members of the client into separate 1094-C transmittal forms. 11. 1094-C: Capture and report client selection of DGE (Designated Government Entity (according to employer information) and transfer appropriate information into the IRS form. 12. 1094-C: Capture and report the number of 1095-C employee statements related to each 1094-C transmittal (according to employer information) 13. 1094-C: Capture and report preferred business contact information in the case of IRS inquiry 14. Alert through the dashboard to visit IRS reporting tab, after client data is received containing information through 12/31 of the tax year, 15. Deliver 1094-C transmittals and 1095-C employee statements in PDF (or appropriate format as required by IRS instructions) batch format after required client selections. 16. Upon direction from the Client, electronically submit IRS Information Returns 1094-C Transmittal and 1095-C Employee Statements with full SSN and/or DOB to IRS by March 31st of each year. Company shall provide to Client in writing an "Electronic Submission" deadline. Client approval and filing direction provided to Company after the Electronic Submission deadline cannot guarantee Company's electronic submission to the IRS by the regulatory deadline. Late files are processed on first available basis with the Client responsible for fines and penalties. 17. [OPTIONAL] Subject to additional fees, 1095-C fulfillment services. In the event fulfillment services are selected, Company shall provide to Client in writing a "Go To Print" deadline. Print file approvals sent after the Go To Print deadline cannot be guaranteed to print and mail by the regulatory deadline. Late files are processed on first available basis with the Client	IRS Information Returns 1094-C Transmittal (with your authorized signature) and 1095-C Employee Statement with full SSN and/or DOB to IRS by March 31st of each year.

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	responsible for fines and penalties.	

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Exhibit 3 – Fees and Payment Schedule

Proposed Service Fees

Standard Features

Services Description	Standard Fees
Implementation 1. System configured and tested for enrollment events and administration of benefits listed in Scope of Services 2. Employee data interface file from and to source system (including current benefits initial load if required) 3. Enrollment deductions file to payroll 4. Carrier/vendor transmittal files listed in Scope of Services 5. Project management 6. Administrator training	One time set up fee: $10,000
Per Month Fee - including: 1. Employee self-service functions, including dependents and beneficiaries 2. Administrator functions, including standard reports 3. Receipt and processing of employee data, weekly (or other if needed) 4. Transmittal of payroll deductions, per payroll cycle (or other if needed) 5. Transmittal to carriers/vendors per agreements with each 6. Administrator support	$3.25 PEPM based on 1,900 benefits eligible employees
Duration of Contract	36 Months

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Optional Features

Services Description	Standard Fees
ACA Compliance Module:	$2,500 one-time setup fee and $1.00 PEPM ongoing based on 1,900 employees
Human Avatar Kate:	$2,500 one-time setup fee and $0.50 PEPM ongoing based on 1,900 benefit eligible employees
Medical Plan Decision Support Tool:	$2,500 one-time setup fee and $0.30 PEPM ongoing based on 1,900 benefit eligible employees

Payment Schedule

Payments will begin the first of the month the system is implemented based on Acceptance as defined in the Terms and Conditions.

Client agrees that Client is solely responsible for the payment of all fees (and taxes if any) relating to the use of the System by or on behalf of Client and Covered Employees. All monthly invoices for Services shall be issued thirty days in advance of the month during which such services are to be rendered. Client agrees to pay all invoiced amounts within thirty (30) days of the receipt of an invoice. Any invoice outstanding beyond thirty (30) days from the due date shall be subject to a late fee equal to 1.5% per month. Invoices unpaid beyond ninety (90) days shall be deemed to be a material breach by Client and may result in suspension or termination of Client access to the System and in termination of the Agreement.

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Exhibit 4
Implementation Process

Analysis

During the Analysis Phase, our project team will:
- Analyze the benefits being offered to employees
- Work with the benefit providers to determine enrollment rules and requirements
- Determine the data requirements of the vendor's systems to ensure a complete and accurate data transfer
- Determine the data requirements of your HRIS system to ensure a complete and accurate data transfer

Planning

During the Planning Phase, our project team will:
- Provide a detailed plan of action for data gathering, program development and implementation timelines
- Gather employee data
- Gather employee communication materials that will be included in the Document Center module

Development

During the development Phase we will:
- Modify the EBenefits™ program to meet the needs and specifications of your organization as well as the benefit providers
- Develop links and security procedures for access to the program
- Import employee communications into the Document Center module
- Create and mail employee communications to announce the new system and process
- Create training for employees on how to use the new EBenefits™ system
- Develop custom reports

Validation

In the Validation Phase, we will work together with you to test and validate:
- The employee interface
- Enrollment rules
- Data transfer to vendors and HR
- Reporting functions

Acceptance of EBenefits™ system

Deployment

In the deployment Phase, our implementation team will:
- Deploy the EBenefits™ website for your organization
- Communicate to employees the benefits of the new enrollment system and provide training on it's use
- Be available for assistance to HR and employees
- Transmission Phase
- The Transmission Phase will consist of:
- Creating data transfer files
- Transmitting enrollment data to HR and vendors

Review

The review Phase will be an opportunity to:
- Review the enrollment process and facilitate any revisions
- Review the data transfer process
- Review interaction between EBenefits™ and your HR staff

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ACA CompModule Setup

Provide File Specs

Receive Historical Data per File Spec from Customer

Provide Administrator Training

Ongoing Service & Support

Review

- Review interaction between EBenefits™ and your HR staff

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Exhibit 5
HIPAA Business Associate Addendum

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4.

City Manager's Report

From **3420 - Water/Water Engineering**

Date **August 31, 2016**

Expense Type **Contract Modification**

Supplier, Vendor, Company, Individual

Total Amount **$132,000.00 (thru 12/2017)**

Name **Hazen & Sawyer**

Address **7870 E. Kemper Road, Suite 300**
Cincinnati, Ohio 45249

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2016 Sanitary Capital Funds	55002-3460-1424-54-SF1107	$132,000.00

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

Description

AS-NEEDED PROFESSIONAL ENGINEERING SERVICES
THIRD AMENDMENT

Permission is requested for a Third Amendment (Amendment) with Hazen and Sawyer in the amount of $132,000.00. This Amendment will cover additional services/work needed to continue with consultation services and identification of alternatives to lime addition for odor control within the Wastewater Collection System.

The original Agreement was approved on November 5, 2014 in the amount of $75,000.00. Amendment No. 1 was approved on July 15, 2015 for $23,000.00. Amendment No. 2 was approved on December 23, 2015 for $75,000.00. This Amendment No. 3 will increase the contract amount to $305,000.00.

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

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT161023

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

_____ New Contract _____ Renewal Contract X Change Order

Contract Start Date	11/5/2014
Expiration Date	12/31/2017
Original Commission Approval	$ 173,000.00
Initial Encumbrance	$ 173,000.00
Remaining Commission Approval	$ -
Original CT/CF	CT14-1023 & CT15-1023
Increase Encumbrance	$ 132,000.00
Decrease Encumbrance	
Remaining Commission Approval	$ -

Required Documentation

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

Amount: $ 132,000.00	Amount:
Fund Code 55002 - 3460 - 1424 - 54 - SF1107 - ____ (Fund, Org, Acct, Prog, Act, Loc)	Fund Code ___ - ___ - ___ - ___ - ___ - ___ (Fund, Org, Acct, Prog, Act, Loc)
Amount:	Amount:
Fund Code ___ - ___ - ___ - ___ - ___ - ___ (Fund, Org, Acct, Prog, Act, Loc)	Fund Code ___ - ___ - ___ - ___ - ___ - ___ (Fund, Org, Acct, Prog, Act, Loc)

Attach additional pages for more FOAPALs

Vendor Name: Hazen & Sawyer

Vendor Address: 7870 East Kemper Road, Suite 300 (Street) Cincinnati (City) OH (State) 45249 (Zipcode + 4)

Federal ID: 13-2904652

Commodity Code: 96895

Purpose: Third Amendment - Professional Services for Odor Control within the Wastewater Collection System.

Contact Person: Lisa Burton-Yates Water/Water Engineering (Department/Division) _____ (Date)

Originating Department Director's Signature: [signature] /FOR

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 appropirated 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.

[signature] — Finance Director Signature 8-22-16 — Date

[signature] — CF Prepared By 8/19/16 — Date CT161023 — CF/CT Number

SA 8/19/16

THIRD AMENDMENT TO THE
AGREEMENT FOR ENGINEERING SERVICES

This Third Amendment is dated this _____ day of _____, 2016, between the City of Dayton, Ohio ("City") and Hazen & Sawyer, 7870 E. Kemper Rd. Ste. 300, Cincinnati, Ohio, 45249 (hereinafter referred to as the "Consultant").

WHEREAS, On November 5, 2014, the Commission of the City of Dayton, Ohio, approved an Agreement for Engineering Services, CT14-1023, ("Agreement") between the City and Consultant; and,

WHEREAS, On July 15, 2015, the Commission of the City of Dayton, Ohio, approved the First Amendment to the Agreement CT14-1023, between the City and Consultant; and,

WHEREAS, On December, 23, 2015, the Commission of the City of Dayton, Ohio approved the Second Amendment to the Agreement CT15-1023, between the City and Consultant; and,

WHEREAS, The City desires additional as-needed consulting services to and Consultant is willing to perform such services for additional compensation.

NOW THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. Article 1, Term, is deleted in its entirety and replaced with the following:

ARTICLE 1 - TERM
The Agreement shall commence upon execution by the city and it shall expire upon expenditure of all funds provided herein or on December 31, 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 11, subsection J.

2. Article 2, Services To Be Performed By Consultant, is deleted in its entirety and replaced with the following:

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONSULTANT
Consultant shall provide all professional services necessary to complete the Services described in Attachments A1, A2 and A3 which are attached hereto and incorporated herein.

3. Article 3, Compensation, is deleted in its entirety and replaced with the following:

ARTICLE 3 - COMPENSATION
City shall pay Consultant a total amount not to exceed Three Hundred Five Thousand Dollars and Zero Cents ($305,000.00), as set forth in Attachments B1, B2 and B3, which are attached hereto and incorporated herein.

4. Except as amended by this Third Amendment, all terms, covenants and conditions contained within the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and Engineer have caused this Third Amendment to be executed, each by a duly authorized representative, on the date first set forth above.

CITY OF DAYTON, OHIO

_____
City Manager

HAZEN & SAWYER

By: _____
W. JAMES GELLNER, PE

Title: VICE PRESIDENT

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

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

_____, 2016

Min./Bk._____ Pg._____

_____
Clerk of the Commission

ATTACHMENT A3
TO
AGREEMENT FOR ENGINEERING SERVICES

City: **City of Dayton, Ohio**
Project: **As-Needed Professional Engineering Services**
Engineer: **Hazen and Sawyer**

SCOPE OF SERVICES

Consultant will provide technical assistance as requested by the City in support of odor / industrial discharge related activities. Anticipated activities include, but are not limited to the following:

- Technical review of information presented related to odor / industrial dischargers.
- Collection system modeling and evaluations.
- Review and comment on documents related to appeals and other procedural communication with industrial dischargers.
- Industrial surcharge / pretreatment limits technical review and input.
- Technical assistance for odor, pretreatment, and collection system as requested by City legal counsel.
- Meetings - Consultant will attend weekly City meetings / conference calls and bi-weekly conference calls with external parties to provide assistance and feedback. Meetings will be attended by Consultant as requested by City.

ATTACHMENT B3
TO
AGREEMENT FOR ENGINEERING SERVICES

City: **City of Dayton, Ohio**
Project: **As-Needed Professional Engineering Services**
Engineer: **Hazen and Sawyer**

COMPENSATION

For additional services performed by Engineer, as set forth in Attachment A3, the City shall pay Consultant as follows:

FEE SCHEDULE

As Needed Technical Service	$120,000.00
Subtotal	$120,000.00
Contingency (10%)	$12,000.00
TOTAL	**$132,000.00**

Consultant will submit monthly invoices to the City which summarize work performed and associated hours. Consultant will be paid on a not to exceed basis, based on actual hours work, direct hourly rates for personnel, and a multiplier of 3.15. Consultant will provide monthly updates on remaining budget for planning / coordination purposes. An additional not to exceed fee of $120,000 is proposed, based on previous resource needs and monthly billings. Final project expenditures will depend on actual services provided.

BACK

City Manager's Report

5

From **3210 - Aviation/AP Admin & Finance**

Date **August 31, 2016**

Expense Type **Contract Modification**

Total Amount **$23,419.35**

Supplier, Vendor, Company, Individual

Name **Wright Brothers Aero, Inc.**

Address **3700 McCauley Drive**
Vandalia, OH 45377

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Aviation Operating	51000-3210-1159-43	$23,419.35

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

Description

The Department of Aviation requests permission to enter into a First Amendment to Agreement for Porter Services ("First Amendment") with Wright Brothers Aero, Inc. ("WBA") at the Dayton International Airport ("Airport").

On March 26, 2014, the City Commission approved an Agreement for Porter Services ("Agreement") with WBA providing personnel for curbside baggage services, wheelchair services, and at times escort services for arriving and departing passengers at the Airport at a rate of $6,175 per month and total of $222,300.00 over the three years.

Under the First Amendment, the rate will be increased to $8,777.15 per month to reflect an increase in personnel wages incurred by WBA to effectively provide the services. This results in an increase of $2,602.15 per month and $23,419.35 total for the remainder of the initial term of the Agreement. This brings the total amount of the contract to $245,719.35. An increase encumbrance of $15,612.90 will occur through the end of 2016. The remaining $7,806.45 will be in 2017. The initial term of the agreement terminates on March 31, 2017.

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

A Certificate of Funds and a copy of the original agreement are attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT 160873
CORD #1

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

_____ New Contract _____ Renewal Contract x Change Order

Contract Start Date	04/01/14
Expiration Date	03/31/17
Original Commission Approval	$ 245,719.35
Initial Encumbrance	$ 203,775.00
Remaining Commission Approval	$ 41,944.35
Original CT/CF	CT16-0873
Increase Encumbrance	$ 15,612.90
Decrease Encumbrance	
Remaining Commission Approval	$ 57,557.25

Required Documentation

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

Amount: $ 15,612.90	Amount:
Fund Code 51000 - 3210 - 1159 - 43 - (Fund / Org / Acct / Prog / Act / Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund / Org / Acct / Prog / Act / Loc)
Amount:	Amount:
Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund / Org / Acct / Prog / Act / Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund / Org / Acct / Prog / Act / Loc)

Attach additional pages for more FOAPALs

Vendor Name: Wright Bros Aero Inc

Vendor Address: 3700 McCauley Dr (Street) Vandalia (City) Ohio (State) 45377 (Zipcode + 4)

Federal ID: 310928112

Commodity Code: 96199

Purpose: Payment for Porter Services provided by vendor at Dayton International Airport.

Contact Person: Cynthia Long/wt Aviation/Properties 454-8201 (Department/Division) 8/8/2016 (Date)

Originating Department Director's Signature: 8/16/16

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 8-22-16

CF Prepared by — Date: 8/19/16 — CF/CT Number: CT160873 CORD #1

SA 8/19/16

FIRST AMENDMENT TO AGREEMENT
FOR PORTER SERVICES

(Wright Brothers Aero, Inc.)

THIS FIRST AMENDMENT is made and entered into this ___ day of _____, 2016 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Wright Brothers Aero, Inc, an Ohio corporation ("Contractor").

WHEREAS, on March 31, 2014, the City and Contractor entered into an agreement ("Agreement") for Contractor to provide Porter Services ("Services") for arriving passengers at the Dayton International Airport ("Airport"); and

WHEREAS, the Contractor recently increased the hourly pay rate for the employees providing these Services at the Airport and as a result has requested an increase in payment for Services.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived by each party, City and Contractor agree to amend the Lease as follows:

1. Article III shall be deleted in its entirety and replaced with the following:

   The City shall pay Contractor a sum not to exceed Eight Thousand Seven Hundred Seventy-Seven Dollars and Fifteen Cents ($8,777.15) per month commencing on July 1, 2016. Subject to written approval by the City, additional hours may be authorized during peak periods ("Peak Services") in an amount not to exceed Five Thousand Dollars ($5,000.00). For purposes of the remainder of this Agreement, the rights and obligations for the Peak Services will be the same as the Services.

   Contractor shall submit monthly invoices for the Services identified above on the last day of each month. Unless disputed, payment shall be made within thirty (30) days of receipt of the Contractor's invoice for payment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WRIGHT BROTHERS AERO, INC.

By: _____

Title: _____

CITY OF DAYTON, OHIO

_____

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

_____

City Attorney

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

_____, 2016

Min. / Bk. _____ Pg. _____

_____

Clerk of the Commission

BACK

City Manager's Report

6.

From **5610 - Human Resources**

Date **August 31, 2016**

Expense Type **Service Agreement**

Total Amount **$68,400.00**

Supplier, Vendor, Company, Individual

Name **YMCA**

Address **118 W. First Street, Suite 300**
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Healthcare Self Insurance	63000-5610-1159-62	$68,400.00

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

Description

The Department of Human Resources requests approval to enter into an agreement with the YMCA to complete biometric screenings for City employees. As part of the Be Well Dayton Wellness Program, the YMCA will complete biometric screenings for City employees at four (4) on-site events, plus at the Health & Safety Fair for both City employees and their spouses. These screenings will be free to all City employees.

The cost of the screenings will not exceed $68,400.00 for the term of the agreement.

The term of the agreement is from August 31, 2016 through December 31, 2016.

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

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT 161501

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

x New Contract ____ Renewal Contract ____ Change Orders

Contract Start Date	08/31/16
Expiration Date	12/31/16
Original Commission Approval	$ 68,400.00
Initial Encumbrance	$ 68,400.00
Remaining Commission Approval	$ -

Original CT/CF	$ -
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

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

Amount: $ 68,400.00	Amount:
Fund Code 63000 - 5610 - 1159 - 62 - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: YMCA of Greater Dayton

Vendor Address: 118 W. First Street, Suite 300, Dayton, OH 45402
Street City State Zipcode + 4

Federal ID: 31-0537517

Commodity Code: 94874

Purpose: As part of the Be Well Dayton Wellness Progrm, the YMCA will complete biometric screenings for City employees at four on-site events. They will also complete biometric screenings at the Health & Safety Fair in October, for both City employees and their spouses.

Contact Person: Sue Greaney X4063 Human Resources (Department/Division) 8/19/2016 (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 appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 8-22-16

CF Prepared by: Jeffrey L. Marshall — Date: 8/19/16 — CF/CT Number: CT 161501

SA 8/19/16

SERVICE AGREEMENT

THIS AGREEMENT is made and entered into at Dayton, Ohio, on the date(s) set forth at the end hereof, by and between the City of Dayton, Ohio, 101 West Third Street, Dayton Ohio 45402, hereinafter referred to as the "City" and YMCA of Greater Dayton, 118 West First Street, Suite 300, Dayton, Ohio 45402, hereinafter referred to as the "Contractor." In consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

WITNESSETH:

WHEREAS, the City is desirous of securing the Work referred to in Exhibit "A" and paying for the work as described in Exhibit "B;" and

WHEREAS, the Contractor is qualified, experienced and willing to perform Work as described herein, when there is an Agreement specifying the rights and duties of each party; and,

WHEREAS, the City and the Contractor mutually desire to perform the obligations embodied in Exhibits "A" and/or "B."

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

ARTICLE ONE: THE WORK

The Contractor agrees to perform the services and furnish all labor, equipment, materials and supplies as delineated in Exhibit A which is made a part hereof as if fully rewritten herein. The Contractor shall conduct the Work in accordance with Exhibit A, and bill for the Work conducted in Exhibit A as provided for in Exhibit B. Exhibit A and Exhibit B are made a part hereof as if fully rewritten herein, and the Contractor agrees to supply the City with those items which are identified in Exhibits A and/or B. The term "Work" as used herein means the performance of all services

and the provision of all labor, materials, equipment or supplies as required in Exhibits A and/or B attached hereto.

ARTICLE TWO: SCHEDULE OF PAYMENTS

The City agrees to pay the Contractor, in exchange for the Work, a sum not to exceed Sixty-Eight Thousand Four Hundred Dollars ($68,400.00) for the term of this Agreement pursuant to the individual billing rate addressed in Exhibit B times the total number of participants at each event. The Contractor agrees to supply the City, with its respective monthly invoices indicating therein the amount due for services rendered and materials supplied for the preceding month, it being specifically understood that compensation shall not accrue until services are rendered and all labor, equipment, materials and supplies are provided to the City pursuant to this Agreement. The Contractor agrees that the above referenced invoices shall be supplied to the Department of Human Resources within five (5) calendar days of the first (1st) day of the month.

ARTICLE THREE: TERM

The term of this Agreement shall be from date of last execution by all parties, and shall terminate on December 31, 2016.

ARTICLE FOUR: CONFLICT OF INTEREST

This Agreement in no way precludes, prevents, or restricts the Contractor from obtaining and working under an additional contractual arrangement(s) with other parties aside from the City, assuming that such other contractual work in no way impedes the Contractor's ability to perform the services required under this

Agreement. The Contractor hereby represents warrants and agrees that at the time of entering into this Agreement, it has no interest in nor shall it acquire any interest, direct or indirect, in any agreement which will impede its ability to perform the required services under this Agreement.

ARTICLE FIVE: ASSIGNMENTS

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

ARTICLE SIX: GOVERNING LAW

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

ARTICLE SEVEN: INTEGRATION AND MODIFICATION

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

ARTICLE EIGHT: SEVERABILITY

If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE NINE: TERMINATION

This Agreement may be terminated by either party only upon notice, in writing, upon the other party no later than at least sixty (60) days in advance of the effective date of the termination. The City may also terminate this Agreement in the event that the City is of the opinion that the Contractor is carrying out the terms of this Agreement in an unreasonable, unprofessional, or unworkmanlike manner. Said termination for this particular reason shall occur upon the provision of a written notice of termination to the Contractor at least thirty (30) calendar days in advance of the date of the proposed termination, stating in the termination notice the reason for said termination. The City, in its sole discretion, may allow the Contractor to cure the reason for the termination provided the cure of the reason is accomplished within thirty (30) days of the date of the forwarding of the termination notice. The parties further agree that should the Contractor become unable for any reason to complete the work called for by virtue of this Agreement, that to the extent applicable, such work as the Contractor has completed upon the date of its inability to continue the terms of this Agreement shall become the property of the City, and further the City shall not be liable to tender and/or pay to the Contractor any further compensation after the date of the Contractor's inability to complete the terms hereof, which date shall be the date of termination unless extended by the City. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor; and

the City may withhold any compensation to the Contractor for the purpose of set-off until such time as the amount of damages due the City from the Contractor is agreed upon or otherwise determined.

ARTICLE TEN: COMPLIANCE

The Contractor agrees to comply with all applicable federal, state, and local laws in the conduct of Work hereunder. The Contractor accepts full responsibility for payment of all unemployment compensation insurance premiums, worker's compensation premiums, all income tax deductions, pension deductions, prevailing wages, if applicable, and any and all other taxes or payroll deductions required for the Contractor and all employees engaged by the Contractor for the performance of the work authorized by this Agreement.

ARTICLE ELEVEN: PERFORMANCE AND DISCIPLINE

Unless otherwise provided in this Agreement or the exhibits attached hereto, the Contractor shall provide and pay for, to the extent applicable, all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out this Agreement. The Contractor shall not permit employment of persons not skilled in tasks assigned to them. The Contractor shall perform all Work in a reasonable, professional and workmanlike manner and all Work shall be of at least the quality provided for in this Agreement.

ARTICLE TWELVE: DAMAGE AND LOSS

The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required elsewhere in this Agreement) to property caused in whole or in part by the Contractor, a subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this Article except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations hereunder. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the City or a security arm of the City as soon as possible after such emergency arises.

ARTICLE THIRTEEN: WORKER'S COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this Agreement Workers' Compensation Insurance for its employees and shall furnish a certificate of Workers' Compensation Insurance for its employees before the execution of this Agreement. No contract between the City and the Contractor shall be created hereby or otherwise exist until a fully executed copy thereof has been served upon the City.

ARTICLE FOURTEEN: NON-DISCRIMINATION

During the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion,

sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. The Contractor will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, Ohio constitutes a material condition of this Agreement as fully as if specifically rewritten herein and that failure of Contractor to comply therewith shall constitute a breach entitling City, at its option, to terminate this Agreement.

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

ARTICLE FIFTEEN: INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall protect, defend, indemnify and hold free and harmless the City, and all other elected officials of the City of Dayton, Ohio, and shall protect, defend, indemnify and hold free and harmless any officers, employees, successors, administrators assigns or agents of same from and against any and all claims, damages, losses, claims of loss, causes of action, penalties, settlements, costs, liabilities and expenses of any kind, including but not

limited to attorney fees, arising out of or resulting from any acts or omissions of the Contractor, its officers, employees, consultants, agents, subcontractors of any tier, successors, assigns or administrators, negligent or otherwise, and regardless of whether such claims, damages, losses, claims of loss, causes of action, penalties, settlements, costs, liabilities or expenses are caused in part by any party indemnified hereunder. The Contractor agrees to be responsible for the payment of all damages, settlements, costs and expenses of any kind, including attorney's fees, incurred by the City while the City defends or pursues any action, cause of action, or claim which arises out the aforementioned acts or omissions. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

In claims against any person or entity indemnified under this Article by an employee of the Contractor, a subcontractor of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or any such subcontractor of any tier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE SIXTEEN: RELATIONSHIP

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with the Contractor in the conduct of the provisions of this Agreement. The Contractor shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any

other liability on the City.

ARTICLE SEVENTEEN: POLITICAL CONTRIBUTIONS

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

ARTICLE EIGHTEEN: OPERS

Contractor understands and agrees that none of its employees are public employees of the City entitled to participate in the Ohio Public Employees Retirement System (OPERS) and agrees that none will make a claim for benefits from OPERS.

ARTICLE NINETEEN: LIABILITY INSURANCE

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Ohio such insurance as will protect the Contractor and the City from claims set forth below which may arise out of or result from the Contractor's operations under this Agreement and for which the Contractor may be legally liable, whether such operations be by the Contractor, by a subcontractor of any tier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness, sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, occupational

sickness, sickness or disease, or death of any person other than the Contractor's employees;

4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
5. claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims involving contractual liability insurance applicable to the Contractor's obligations under the article titled INDEMNIFICATION found herein; and
8. any other claims provided for in Exhibit "A."

The insurance policy required by this Article shall be written for not less than One Million Dollars ($1,000,000.00) for any person injured in any accident and with a total liability of Two Million Dollars ($2,000,000.00) for all persons injured in any one accident and the amount of One Million Dollars ($1,000,000.00) for each accident or occurrence as compensation for damage caused to property of others. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of termination of this Agreement.

Certificates of Insurance acceptable to the City shall be filed with the City prior to commencement of this Agreement. The insurance policies required by this Article shall not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. The insurance policy described in this Section shall name the City as an insured.

ARTICLE TWENTY: NOTICES

Any notices required or authorized to be given shall be deemed to be given when mailed by certified or registered mail, postage prepaid, as follows: if to the City, to the City's address as shown on the face of this Agreement; if to the Contractor, to the Contractor's address as shown on the face of this Agreement.

ARTICLE TWENTY-ONE: HEADINGS

Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

ARTICLE TWENTY-TWO: AUTHORITY TO BIND PRINCIPAL

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

IN WITNESS WHEREOF, the parties have hereunto set their hands this_____ day of August, 2016.

THE CITY OF DAYTON, OHIO

_____
City Manager

APPROVED AS TO FORM AND CORRECTNESS

_____
City Attorney

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

_____, 2016

Min. / Bk. _____ Pg. _____

_____
Clerk of the Commission

YMCA of Greater Dayton

By_____

Print: Dale Brunner

Its: President/CEO

EXHIBIT A

Scope of Services

The City is seeking a qualified vendor to provide health screening services for the City's insured employees including administration of health screening services, provision of confidential test results to each participant, and provision of an aggregate report of data collected to the City.

The City is interested in giving each health screening participant valuable information regarding their cardiovascular health (cholesterol levels, blood pressure, height, weight, BMI) and blood sugar. The City believes that efforts to improve each individual's health and well-being will have a positive effect on their quality of life, and, over time, help maintain or reduce overall health care costs.

It is estimated that approximately 1,900 employees may participate in the health screenings. Screenings shall be conducted at approximately four (4) work locations within the City during September to December of 2016, and at the City's Health and Safety Fair on October 14, 2016.

The successful vendor shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws as applicable to these services.

The City will expect the vendor to perform the services indicated below:

Conduct health screenings at approximately four (4) City work locations, and the City's Health and Safety Fair. Hours of service range from early morning to late evening. No weekends are involved. Vendor shall provide employee privacy during screenings.

Health screenings for all participants shall include the following:

- Waist circumference measurement
- Blood pressure
- Total cholesterol
- HDL Cholesterol
- LDL Cholesterol
- Triglycerides
- A1C

The selected vendor must commit not to share demographic or any other information collected for health screening purposes with any other vendor. The selected vendor must maintain the confidentiality of all personal health information as required by HIPPA at all times.

EXHIBIT B

PRICING SCHEDULE

Item #	Estimated Quantity	Description	Price Each	Price Extended
1	1,900	**Health Screening** *Blood Profile - Finger stick method includes:* Total Cholesterol HDL LDL Triglycerides Total Chol/HDL Ratio A1C Waist Circumference Measurement	36.00	Up to $68,400
		Total Estimated Maximum Cost		$68,400

BUSINESS ASSOCIATE AGREEMENT – HIPAA and HITECH

This "Agreement" is made by and between the YMCA of Greater Dayton, 111 West First Street, Suite 207, Dayton Ohio 45424, (hereinafter "VENDOR" or "Business Associate") and the City of Dayton, Ohio, 101 West Third Street, Dayton Ohio 45401, (hereinafter "Client" or "PLAN SPONSOR"). This Agreement is effective August 15, 2016

WHEREAS, VENDOR and PLAN SPONSOR acknowledge that VENDOR is a Business Associate and Trading Partner of PLAN SPONSOR; and

WHEREAS, VENDOR and PLAN SPONSOR desire to ensure that, with respect to the duties and obligations of the parties under the Agreement, the standards of privacy and security for each Individual are adhered to pursuant to the Health Insurance Portability and Accountability Act of 1996 (referred to herein as "HIPAA") and all applicable federal and state laws, including, but not limited to, the Health Information Technology for Economic and Clinical Health Act, Title XIII, of the American Recovery and Reinvestment Act of 2009 (the "HITECH" Act); and

WHEREAS, by executing this Agreement, the parties agree to abide by the terms and conditions of the Agreement.

NOW, THEREOFRE, in consideration of the promises and the mutual covenants and undertakings set forth in this Agreement, the parties have executed this Agreement through their duly authorized representatives as of the date noted above.

1. Definitions. All capitalized terms contained in this Agreement shall have the meaning ascribed to them in the Agreement. In the event of any conflict between a definition as contained in the Agreement and a definition contained in 45 CFR Parts 160 and 164, the definition contained in 45 CFR Parts 160 and 164 shall govern.

1.1 Business Associate: "Business Associate" shall have the same meaning as the term "Business Associate" in 45 CFR 160.103 and shall mean VENDOR in this Agreement.

1.2 Covered Entity: "Covered Entity" shall have the same meaning as the term "Covered Entity" in 45 CFR 160.103.

1.3 Designated Record Set: "Designated Record Set" shall have the same meaning as the term "Designated Record Set" in 45 CFR 164.501.

1.4 Individual: "Individual"' shall have the same meaning as the term "individual" in 45 CFR 160.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.5 Trading Partner: "Trading Partner" shall mean an entity that assists the Business Associate in performing: (a) a function or activity involving the use or disclosure of individually identifiable health information, including case management, medical management, quality assurance, subrogation, claim investigation and data analysis; or (b) any other function regulated by the HIPAA and/or HITECH regulations.

1.6 Privacy Rule: "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.

1.7 Protected Health Information: "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103.

1.8 Required By Law: "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 160.103.

1.9 Secretary: "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.10 Services: "Services" shall mean the biometric screening services performed by VENDOR as described in the Service Agreement entered into between the PLAN SPONSOR and the VENDOR.

2. **Business Associate Services**: Pursuant to the Service Agreement entered into between PLAN SPONSOR and VENDOR, VENDOR provides Services for PLAN SPONSOR that may involve the use and/or disclosure of Protected Health Information.

3. **Trading Partner Services**: Pursuant to the Service Agreement entered into between PLAN SPONSOR and VENDOR, VENDOR may have contractual arrangements with other entities which provide services to VENDOR in support of the Services that may involve the use and disclosure of Protected Health Information. VENDOR agrees to ensure that any Trading Partner, agent or subcontractor with whom it contracts and provides PHI that is received from or provided on behalf of PLAN SPONSOR shall agree in writing to all applicable terms of this Agreement.

4. **Obligations and Activities of VENDOR**:

(a) VENDOR shall not use or disclose PHI in any manner that would constitute a violation of 45 C.F.R. Parts 160 and 164 if used or disclosed by PLAN SPONSOR.

(b) VENDOR shall not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

(c) VENDOR shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

(d) VENDOR shall mitigate, to the extent practicable, any harmful effect that is known to VENDOR of a use or disclosure of PHI by VENDOR in violation of the requirements of this Agreement.

(e) VENDOR shall report to PLAN SPONSOR any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, including accidental disclosures.

(f) VENDOR shall disclose PHI only to those agents or subcontractors that may be assisting VENDOR in carrying out VENDOR's functions under this Business Associate Agreement. In the event VENDOR is permitted under this Agreement to disclose PHI to such agents or subcontractors, VENDOR shall require that any agent or subcontractor to whom it provides PHI created or received from or by VENDOR on behalf of PLAN SPONSOR, agrees to the same restrictions and conditions that apply through this Agreement to VENDOR with respect to such information.

(g) VENDOR shall provide access, to an Individual in order to meet the requirements under 45 CFR 164.524. In the event an Individual contacts VENDOR directly about accessing PHI, VENDOR shall notify the PLAN SPONSOR of such request within three (3) business days following such request. If PLAN SPONSOR determines that access to the Individual's PHI can only be accommodated through VENDOR, VENDOR shall accommodate the request within fifteen (15) business days following VENDOR's receipt of such request. In the event VENDOR is asked to provide copies of an Individual's PHI, VENDOR shall provide such access by mailing a copy of the PHI in a Designated Record Set.

(h) VENDOR agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by VENDOR on behalf of PLAN SPONSOR, or at the request of the Secretary or designated by the Secretary, during VENDOR's normal business hours for purposes of the Secretary determining PLAN SPONSOR's compliance with the HIPAA and or HITECH.

(i) VENDOR shall document such disclosures of PHI and information related to such disclosures as would be required for PLAN SPONSOR to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. VENDOR shall, at the request of PLAN SPONSOR, provide to PLAN SPONSOR information collected in accordance with this provision of the Agreement within fifteen (15) business days following VENDOR'S receipt of such request, to permit PLAN SPONSOR to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

(j) VENDOR, including VENDOR'S agents and subcontractors, shall:

i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of PLAN SPONSOR, as required by 45 CFR § 164.314, as amended from time to time; and

ii. Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect that information.

5. Breach Notification:

(a) VENDOR agrees to notify PLAN SPONSOR no later than two (2) business days following the discovery of any potentially unauthorized acquisition, access, use or disclosure of Protected Health Information (a "Potential Breach"). Upon notification by VENDOR, PLAN SPONSOR shall perform a risk assessment to determine whether the Potential Breach constitutes a Breach as defined in 45 C.F.R. 164.402.

(b) VENDOR agrees to cooperate fully with PLAN SPONSOR in any investigation and risk assessment of any Potential Breach.

(c). A Potential Breach is considered discovered as of the first day on which the unauthorized acquisition, access, use or disclosure of the Protected Health Information was known, or by exercising reasonable diligence, would have been known by VENDOR, or the first day VENDOR is notified by any Trading Partner, agent or subcontractor of VENDOR that a Potential Breach occurred.

(d) The notice to PLAN SPONSOR shall include:

i. The identification of each Individual whose Protected Health Information has been, or is reasonably believed by VENDOR to have been, accessed, acquired, or disclosed during the Potential Breach;

ii. A description of the types of Protected Health Information that may have been involved in the Potential Breach (such as whether the Individuals' full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved)

iii. A brief description of what happened, including the date of the Potential Breach and the date the Potential Breach was discovered; and

iv. VENDOR shall be responsible for notifying individuals following discovery of Potential Breach no later than 30 days from discovery date

(e) VENDOR shall also provide PLAN SPONSOR with the following information in its notification to PLAN SPONSOR, or as it becomes available, but no later than 30 days after the Potential Breach is discovered:

i. Any steps individuals should take to protect themselves from potential harm resulting from the Potential Breach;

ii. A brief description of what VENDOR is doing to investigate the Potential Breach, to mitigate harm to the Individuals, and to protect against any further Potential Breaches; and

iii. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(f) In the event that a law enforcement official states to VENDOR that notification to PLAN SPONSOR would impede a criminal investigation or cause damage to national security, then VENDOR shall delay the notification to PLAN SPONSOR, but only as specified by the law enforcement official. VENDOR shall provide PLAN SPONSOR with a written statement from the law enforcement official or, if the statement was oral, documentation of the statement made by the law enforcement official, as soon as possible after the statement was made to VENDOR.

(g) In the event that VENDOR fails to notify PLAN SPONSOR as required under this Section 5., VENDOR shall have materially breached this Addendum and shall indemnify and hold PLAN SPONSOR harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against PLAN SPONSOR arising out of VENDOR's failure to timely and adequately notify PLAN SPONSOR of any Potential Breach. This Section shall survive termination of this Addendum.

(h) VENDOR shall educate its employees, directors and officers as necessary and appropriate, regarding compliance with the its internal policies and procedures implemented to meet its duties as a Business Associate under HIPAA and/or HITECH and the importance of immediately reporting to PLAN SPONSOR.

6. **Permitted Uses by VENDOR**: VENDOR shall use PHI only to the extent necessary to perform the Services, and in a manner that such use would not violate HIPAA and/or HITECH if done by PLAN SPONSOR, provided, however, that:

(a) VENDOR may use PHI in its possession for the proper management and administration of VENDOR's operations or to carry out the legal responsibilities of VENDOR.

(b) VENDOR may disclose PHI in its possession for the proper management and administration of VENDOR, provided that disclosures are required by law (as that term is defined by HIPAA) or addressed in this Agreement.

(c) VENDOR may use PHI to provide Data Aggregation services to PLAN SPONSOR as permitted by 42 CFR 164.504(e)(2)(I)(B).

7. **Obligations of PLAN SPONSOR**:

(a) PLAN SPONSOR shall allow VENDOR access to PHI of Individuals necessary for VENDOR to perform the Services under the PLAN SPONSOR Service Agreement entered into between PLAN SPONSOR and VENDOR.

(b) PLAN SPONSOR shall provide VENDOR with any changes in, or revocation of, permission by an Individual to use or disclose such Individual's PHI, if such changes affect VENDOR's permitted or required uses and disclosures.

(c) PLAN SPONSOR shall notify VENDOR of any restriction to the use or disclosure of PHI that PLAN SPONSOR has agreed to in accordance with 45 CFR 164.522.

(d) PLAN SPONSOR shall not request VENDOR to use or disclose PHI in any manner that would not be permissible under HIPAA and/or HITECH if done by PLAN SPONSOR, provided, however, that PLAN SPONSOR may request that VENDOR use or disclose PHI for data aggregation or management and the administrative activities of VENDOR.

8. **Return of Protected Health Information**: At termination of the CLIENT Service Agreement entered into between PLAN SPONSOR and VENDOR, if feasible, VENDOR shall destroy all PHI created or received by VENDOR on behalf of CLIENT, including PHI in the possession of subcontractors or agents of VENDOR. VENDOR shall not retain any copies of such information. In the event that VENDOR determines that destroying the PHI is not feasible, VENDOR shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the destruction of the information infeasible.

9. **Termination**:

(a) This Agreement shall terminate when the underlying relationship between the parties terminates, unless terminated earlier in accordance with paragraph (b) of this Section 9.

(b) Notwithstanding any other provision of this Agreement, PLAN SPONSOR may immediately terminate this Agreement if VENDOR has materially violated its responsibilities regarding PHI under this Agreement.

10. **Miscellaneous**:

(a) This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original.

(b) VENDOR agrees to indemnify, defend and hold the CLIENT, its officers, directors, and employees (hereinafter the "indemnified party") harmless from any alleged claim or

penalty against the indemnified party arising from any allegation of uses and/or disclosures of Protected Health Information in violation of 45 C.F.R. Parts 160 and 164 arising from an alleged use or disclosure of Protected Health Information by the indemnifying party or its agents or subcontractors.

(c) To the extent that any provision of this Agreement is in conflict with any law, regulation, rule or administrative policy of any government entity, this Agreement will have been deemed to have been amended in order to bring it into conformity with these provisions. In addition, the parties agree to amend this Agreement, as appropriate, to conform with any new or revised law or regulation to which a Covered Entity becomes subject, including, but not limited to, the Standards for Electronic Transactions, 45 CFR Parts 160 and 162 and the Health Insurance Reform: Security Standards 45 CFR Parts 160, 162 and 164.

(d) Except as stated in paragraph (c) of this Section 10, this Agreement may be amended only in a written agreement signed by the duly authorized officers of both parties.

(e) This Agreement will be governed in accordance with the jurisdictional requirements of and be executed, delivered, integrated, construed and enforced in accordance with the laws of the State of Ohio.

(f) This Agreement may not be assigned by either party without the prior written consent of the other party. Except for the prohibition on assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefits of the heirs, successors, and assigns of the parties hereto.

(g) The waiver by either party of a breach or a violation of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of same or other provisions hereof. No waiver shall be effective against any party hereto unless in writing signed by that party.

(h) All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by either certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the addresses set forth in the Agreement.

(i) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefits of the remaining provisions of this Agreement.

(j) The responsibilities of this Agreement shall survive the termination of this Agreement indefinitely.

(k) VENDOR and PLAN SPONSOR each ratifies and confirms the terms and conditions of the Agreement which shall remain in full force and effect unless otherwise terminated or amended at a later date, as specified in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first referenced above.

City of Dayton PLAN SPONSOR	YMCA of Greater Dayton Vendor Name
Signature:	Signature:
Name (print):	Name (print): Dale Brunner
Title:	Title: President/CEO

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

No Commission Action Required

BACK

City Manager's Report

7.

From 3210 - Aviation/AP Admin & Finance

Date August 31, 2016

Expense Type Award of Contract

Total Amount $831,875.00 through Sept. 2018

Supplier, Vendor, Company, Individual

Name Saturn Electric

Address 2628 Nordic Road
Dayton, Ohio 45414

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Aviation Capital	51136-3210-1424-43	$831,875.00

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

Description

Terminal Drive Lighting Improvements at the Dayton International Airport
14.1% SBE Participation, 10% Goal

The Dayton International Airport Terminal Drive Lighting Improvements project includes replacement of the existing metal halide cobra head lighting fixtures and poles located between US-40 and Boeing Drive with new poles and decorative high performance led lighting fixtures. It provides new circuit and pathways, including a spare conduit pathway for future data/communication system. It replaces conductors for existing terminal loop lighting and replaces all terminal loop fixtures with new LED fixtures. This project has an overall length of approximately 0.66 miles.

Three (3) bids were received for this project. It is recommended that the project be awarded to the lowest and best bidder, Saturn Electric, Incorporated. The total contract amount is $831,875.00, including the base bid of $736,875.00 and Add Alternate #1, the contingency of $95,000. The time of completion is 120 days. The contract will be awarded at execution and is not expected to be closed until September, 2018.

The Engineers Estimate for this project is $1,039,795.20 as a base bid and contingency. Saturn has satisfied all the criteria of 103.37 Review *of Low Bid* per the City of Dayton Construction and Materials Specifications.

HRC established a SBE goal of 10% and Saturn Electric proposes a SBE utilization of 14.1%.

The project is being funded with $831,875.00 in Aviation Capital. A Certificate of Funds, Tabulation of Bids, HRC recommendation letter and the proposal from the firm recommended for award are attached.

Copy: Public Works/Business Office

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016

CERTIFICATE OF FUNDS

CT161503

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

X New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	08/24/16
Expiration Date	12/31/18
Original Commission Approval	$ 831,875.00
Initial Encumbrance	$ 831,875.00
Remaining Commission Approval	
Original CT/CF	
Increase Encumbrance	$ -
Decrease Encumbrance	
Remaining Commission Approval	$ -

Required Documentation

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

Amount: $ 831,875.00	Amount:
Fund Code 51136 - 3210 - 1424 - 43 - (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: Saturn Electric Inc.

Vendor Address: 2628 Nordic Rd., Dayton Ohio 45414
(Street City State Zipcode + 4)

Federal ID: 311280886

Commodity Code: 96851

Purpose: Terminal Drive Lighting Improvements Project to replace/upgrade existing roadway lighting system and components at the Dayton International Airport.

Contact Person: Gilbert Turner Aviation/Administration (Department/Division) 8/4/2016 (Date)

Originating Department Director's Signature: Gilbert Turner

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 8-22-16

CF Prepared by — Date: 8/19/16 — CF/CT Number: CT 161503

SA 8/19/16

PROJECT: Terminal Drive Lighting Improvements At Dayton International Airport (10% SBE Participation)

BID OPENING: July 7, 2016

ESTIMATED COST: $1,039,759.20

ESTIMATED COMPLETION DATE: 120 Calendar Days

	CONTRACTOR	BASE BID	ALTERNATE NO. 1	10% SBE
1	Saturn Electric, Inc.	$736,875.00	$95,000.00	14.1%
2	J. Ranck Electric, Inc.	$989,730.79	$95,000.00	34.405%
3	York Electric, Inc.	$1,095,363.50	$95,000.00	10%

MEMORANDUM

July 15, 2016

TO: Frederick Stovall, Director
Department of Public Works

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

SUBJECT: **Terminal Drive Lighting Improvements at Dayton International Airport (10% SBE)**

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

	PERCENTAGE OF PARTICIPATION
1. Saturn Electric Inc	
A. MINORITY BUSINESS ENTERPRISE	
B. WOMEN BUSINESS ENTERPRISE	
C. SMALL BUSINESS ENTERPRISE	
Bladecutters Lawn Service	14.10%
D. DAYTON LOCAL SMALL BUSINESS	
E. DISADVANTAGED BUSINESS ENTERPRISE	
F. HUD SECTION 3 BUSINESS ENTERPRISE	
TOTAL PARTICIPATION	14.10% SBE

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

SATURN ELECTRIC, INC.

BID FOR:

TERMINAL DRIVE LIGHT IMPROVEMENTS
AT DAYTON INTERNATIONAL AIRPORT
(10% SBE PARTICIPATION)

BID FORM

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

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

TERMINAL DRIVE LIGHTING IMPROVEMENTS
AT DAYTON INTERNATIONAL AIRPORT

(10% SBE PARTICIPATION)

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

Bid Form (Continued)

TERMINAL DRIVE LIGHTING IMPROVEMENTS AT DAYTON INTERNATIONAL AIRPORT (10% SBE PARTICIPATION)

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTALS
201	CLEARING AND GRUBBING	1	LS	$12,925.00	$12,925.00
202	BOLLARD REMOVED	2	EA	$122.00	$244.00
203	EARTHWORK	1	LS	$17,700.00	$17,700.00
690	SPECIAL-BOLLARD	2	EA	$812.00	$1,624.00
511	CLASS C CONCRETE	0.9	CY	$180.00	$162.00
633	CONTROLLER WORKPAD	1	EA	$340.00	$340.00
633	UNINTERRUPTIBLE POWER SUPPLY	1	EA	$4,880.00	$4,880.00
659	SEEDING AND MULCHING, AS PER PLAN	1000	CY	$11.00	$1,100.00
832	SWPPP	1	LS	$4,800.00	$4,800.00
832	EROSION CONTROL	10,000	EA	$0.72	$7,200.00
614	MAINTENANCE OF TRAFFIC, AS PER PLAN	1	LS	$12,042.00	$12,042.00
614	LAW ENFORCEMENT OFFICER (WITH PATROL CAR) FOR ASSISTANCE DURING CONSTRUCTION OPERATIONS, AS PER PLAN	8	HR	$56.00	$448.00
625	LIGHT POLE, AT 15 B 30	3	EA	$1,900.00	$5,700.00
625	LIGHT POLE, AT 15 BB 30	20	EA	$2,300.00	$46,000.00
625	LIGHT POLE FOUNDATION	21	EA	$1,150.00	$24,150.00
625	GROUND ROD	21	EA	$50.00	$1,050.00
625	LUMINAIRE, CONVENTIONAL, SOLID STATE (LED), AS PER PLAN, PL3 AND PL4	144	EA	$1,420.00	$204,480.00
625	PULL BOX - CONCRETE, 18" SQUARE, 725.06	23	EA	$438.00	$10,074.00

Bid Form (Continued)

TERMINAL DRIVE LIGHTING IMPROVEMENTS AT DAYTON INTERNATIONAL AIRPORT (10% SBE PARTICIPATION)

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTALS
625	TRENCH 24" DEEP	4,000	LF	$6.83	$27,320.00
625	1 -1/2" CONDUIT, EPC-40-PVC	300	LF	$2.95	$885.00
625	2" CONDUIT, EPC-40-PVC	6,400	LF	$3.10	$19,840.00
625	CONDUCTORS, #2 AWG 600V	55,000	LF	$1.34	$73,700.00
625	SPECIAL, DISCONNECT CIRCUIT, TERMINAL DRIVE	1	LS	$2,500.00	$2,500.00
625	SPECIAL, DISCONNECT CIRCUIT, TERMINAL DRIVE	1	LS	$18,150.00	$18,150.00
625	#6 AWG 600 VOLT DISTRIBUTION CABLE	10,260	LF	$0.75	$7,695.00
625	#10 AWG POLE AND BRACKET ARM CABLE	2,450	LF	$0.44	$1,078.00
625	#10 AWG GROUNDING CONDUCTOR	2,450	LF	$0.44	$1,078.00
625	LIGHT POLE REMOVAL	17	EA	$300.00	$5,100.00
625	LIGHT POLE FOUNDATION REMOVAL	17	EA	$500.00	$8,500.00
625	LUMINAIRE REMOVED	132	EA	$80.00	$10,560.00
625	CONDUIT JACKED OR DRILLED, 3", RIGID	500	LF	$34.82	$17,410.00
625	CONCRETE, CONDUIT ENCASING	130	CY	$173.00	$22,490.00
625	LUMINAIRE REMOVAL, AS PER PLAN, GARAGE	17	EA	$80.00	$1,360.00
625	LUMINAIRE, SOLID STATE (LED), MISC, AS PER PLAN,	17	EA	$650.00	$11,050.00
625	SPECIAL, 120V RECEPTACLES, TERMINAL DRIVE LIGHT POLES, AS PER PLAN	1	LS	$1000.00	$1000.00
661	CRUSHED AGGREGATE SLOPE PROTECTION	500	SY	$26.75	$13,375.00
661	DIABOLO NINEBARK	25	EA	$60.00	$1,500.00
661	SEA GREEN JUNIPER	50	EA	$80.00	$4,000.00

Bid Form (Continued)

TERMINAL DRIVE LIGHTING IMPROVEMENTS AT DAYTON INTERNATIONAL AIRPORT (10% SBE PARTICIPATION)

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTALS
661	HUMMINGBIRD SUMMERSWEET	87	EA	$53.00	$4,611.00
661	COMPACT MUGO PINE	59	EA	$83.00	$4,897.00
661	GOLDFINGER CINQUEFOIL	80	EA	$72.00	$5,760.00
661	GOLDEN PEEP FORSYTHIA	120	EA	$50.00	$6,000.00
661	LITTLE PRINCESS SPIREA	100	EA	$48.00	$4,800.00
661	HEAVY METAL SWITCHGRASS	128	EA	$45.00	$5,760.00
661	MAIDEN GRASS	17	EA	$45.00	$765.00
661	PRAIRIE DROPSEED	110	EA	$26.00	$2,860.00
661	FALSE INDIGO	32	EA	$26.00	$832.00
661	SILOAM DOUBLE CLASSIC	120	EA	$20.00	$2,400.00
661	BLACKEYED SUSAN	42	EA	$18.00	$756.00
661	WALKER'S LOW CATMINT	18	EA	$18.00	$324.00
661	AUTUMN FIRE STONECROP	80	EA	$18.00	$1.440.00
661	GREEN SARGENT JUNIPER	105	EA	$52.00	$5,460.00
661	GRO-LOW FRAGRANT SUMAC	160	EA	$54.00	$8,640.00
661	2' DIAMETER FIELDSTONE BOULDER	71	EA	$115.00	$8,165.00
SPEC	IRRIGATION SYSTEM, MATERIALS AND	1	LS	$58,575.00	$58,575.00
623	CONSTRUCTION LAYOUT STAKES AND SURVEYING	1	LS	$1,320.00	$1,320.00
624	MOBILIZATION	1	LS	$10,000.00	$10,000.00

TOTAL BASE BID $ $736,875.00

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

ALTERNATE NO. 1
CONTINGENCY ALLOWANCE

This alternate is for a "**CONTINGENCY ALLOWANCE**" to be used in the event of unforeseen work which must be undertaken to complete this project. The work could be as additional quantities to the bid items or as non-bid items. The amount of this "**ALLOWANCE**" may vary as determined by the Engineer, but shall not exceed the maximum of **$95,000.00**.

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTAL$
SPL	Contingency Allowance	L.S.	L.S.	**$95,000.00**	**$95,000.00**
	TOTAL MAXIMUM ALLOWANCE ALTERNATE NO. 1				**$95,000.00**

Bid Form (Continued)

TERMINAL DRIVE LIGHTING IMPROVEMENTS AT DAYTON INTERNATIONAL AIRPORT (10% SBE PARTICIPATION)

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

DESCRIPTION	CONSIDERATION FOR MATERIALS	CONSIDERATION FOR OBLIGATIONS	$TOTAL
TOTAL BASE BID	$ 588,000.00	$ 148,875.00	$ 736,875.00
TOTAL ALT. NO. 1 (Contingency Allowance)	$ -0-	$ 95,000.00	$ 95,000.00

The time of completion fixed by the City is 120 Days.

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

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

DISCLOSURE OF LITIGATION

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

RESPONSE: YES _____ NO ✔

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

Bidder is

An Individual

Firm Name N/A

Business Address N/A

Telephone N/A

Partnership

Firm Name N/A

Members of Firm and

Their Business Address N/A

Telephone N/A

Corporation

Name SATURN ELECTRIC, INC.

State of Incorporation OHIO

Name and Title of

Officers with Authority

to Sign Contract DOUGLAS KASH - PRESIDENT

Home Office Address PO BOX 13830 DAYTON, OH 45413

Local Address 2628 NORDIC RD. DAYTON, OH 45414

Telephone 937-278-2580 Fax 937-278-0220

E-mail DOUG@SATURN-ELECTRIC.COM

Federal I.D.# 31-1280886

Dated this 7TH day of JULY, 20 16

Bidder: SATURN ELECTRIC, INC.

(Person, Firm, or Corporation)

By: _____

Title: PRESIDENT

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

_____Certified Check

_____Cashier's Check

Amount N/A _____ Dollars

on _____N/A_____ Bank

of _____N/A_____ is Attached

_____
Bidder

Cash in the amount of _____N/A_____
Dollars is attached.

_____
Bidder

BID BOND

AMOUNT $ Ten Percent (10%) of the Total Bid Amount

We, the undersigned, are held and firmly bound unto the City of Dayton, Ohio, in the sum of Ten Percent (10%) of the Total Bid Amount Dollars for the payment of which, well and truly to be made, we hereby, jointly and severally, bind ourselves, our heirs, executors and administrators, firmly by these presents.

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

Signed and sealed at Dayton, Ohio this 7th day of July, 2016.

Saturn Electric, Inc.

Bidder

Great American Insurance Company

Kelsey Freytag

Surety Kelsey Freytag, Attorney-in-Fact

AssuredPartners NL, LLC

Name of Insurance Agency

285 Cozzins Street, Columbus, OH 43215

Address of Insurance Agency

Telephone 614-220-9245 FAX 614-232-0400

GREAT AMERICAN INSURANCE COMPANY®

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

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

No. 0 20730

POWER OF ATTORNEY

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

Name	Address	Limit of Power
MARK NELSON MARY BETH MILLING RANDAL T. NOAH STELLA ADAMS KELSEY FREYTAG G. DALE DERR	ELIZABETH MCDEVITT TIFFIANY GOBICH	ALL OF CINCINNATI, OHIO	ALL $100,000,000

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

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 27TH day of JANUARY, 2016.

Attest

GREAT AMERICAN INSURANCE COMPANY

Assistant Secretary

Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

DAVID C. KITCHIN (877-377-2405)

On this 27TH day of JANUARY, 2016, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

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

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

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

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

CERTIFICATION

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

Signed and sealed this 7th day of July, 2016.

Assistant Secretary

S1029AF (06/15)

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 3)

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

SATURN ELECTRIC, INC meets the following Contractor requirements relating
(company)

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

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

By: _____
(signature)

Title: PRESIDENT

Date: 07/07/2016

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 2 of 3)

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

VACATION	IRA
HOLIDAY PAY	TOOL ALLOWANCE
HEALTH INSURANCE	
DENTAL INSURANCE	
DISABILITY INSURANCE	
LIFE INSURANCE	

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

I.E.C.	

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

BLADECUTTERS LAWN SERVICE	
CENTERVILLE LANDSCAPING	

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 3 of 3)

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

CARDINAL DIVERSITY GROUP

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

STATE OF OHIO,
COUNTY OF MONTGOMERY ,ss:

DOUGLAS KASH being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of SATURN ELECTRIC, INC. ("the Contracting Party").

2. The Contracting Party is a/an (select one):

   ☐ Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.

   ☑ Corporation organized and existing under the laws of the State of OHIO.

   ☐ Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: _____

Title: PRESIDENT

STATE OF OHIO,
COUNTY OF MONTGOMERY ,ss:

Sworn to before me and subscribe in my presence by DOUGLAS KASH
this 7TH day of JULY, 2016

D JONES
D. JONES Notary Public

NOTARIAL SEAL
STATE OF OHIO

D. JONES
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 29, 2019

{00046535.DOC}

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

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

DOUGLAS KASH, being first duly sworn deposes and states that:

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

SATURN ELECTRIC, INC. that
(business or organization name)

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

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

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

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

Sworn to before me and subscribed in my presence
this 7TH day of JULY, 2016

SIGNED

PRESIDENT

NOTARY PUBLIC

NOTARIAL SEAL
STATE OF OHIO

D. JONESTLE
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 29, 2019

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

AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: TERMINAL DR. LIGHTING IMPROVEMENTS (NAME) — DAYTON AIRPORT (LOCATION)

During the performance of this contract:

SATURN ELECTRIC, INC.	PO BOX 13830 DAYTON, OH 45413	937-278-2580/937-278-0220
CONTRACTOR	**ADDRESS**	**TELEPHONE / FAX**

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

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

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

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

The required goals and timetables are as follows:

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

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

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

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

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

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

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

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

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefor.

c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.

e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

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

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

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

CONTRACTOR'S CERTIFICATION

SATURN ELECTRIC, INC. (Contractor)
certifies that:

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

ELECTRICIANS

LANDSCAPERS

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

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

SIGN: _____
(Signature of Authorized Representative of Bidder)

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

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

Project Name: TERMINAL DRIVE LIGHTING IMPROVEMENTS

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

	Please Check One					
Firm Name, Tax I.D. Number and Mailing Address	**Prime Contract Bid** ☐	**Joint Venture Bid** ☐	**Supply or Service Subcontract** ☑	**Construction Subcontract** ☐	**Type of Service or Supply to be Provided**	**Type of Construction Work to be Performed**
Certified Business Firm Name:	BLADECUTTERS LAWN SERVICE					
Tax I.D. Number:	31-1265427					LANDSCAPING
Street Address:	5440 N. DIXIE DR. DAYTON, OH 45414					
City/State/ Zip Code:						
Phone (area code/#): 937-274-9306	E-mail:					

Total $ Amount of PRIME CONTRACTOR'S Base Bid: $736,875.00 Total $ to subcontract $103,700.00 Total % subcontract: 14.1%

PRIME CONTRACTOR'S REPRESENTATIVE	
Print Name:	DOUGLAS KASH
Sign Name:	

Street Address	PO BOX 13830
City/State/Zip	DAYTON, OH 45413

Revised 2/2014

NO WAIVER REQUESTED

WAIVER REQUEST DOCUMENTED ACTIVITY FORM

Date 07/07/2016

Project: TERMINAL DR. LIGHTING IMPROVEMENT **Participation Goal (list only one):** _____

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

Check if completed	Activity Description
	Solicited the interest of all certified **MBE/WBE/SBE/DLSB or HUD3** having the capability to perform the work of the contract. The bidder must solicit this interest at least ten (10) business days before bid submittal deadline in order to allow the **MBE/WBE/SBE/DLSB or HUD3** sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient good faith effort, if it is the sole method of communication used.
	Divided contract work items into economically feasible units to facilitate **MBE/WBE/SBE/DLSB or HUD3** participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
	Negotiated with **MBE/WBE/SBE/DLSB or HUD3** subcontractors, and has taken the subcontractors' price and capabilities, as well as the contract goals, into consideration. Rejected **MBE/WBE/SBE/DLSB or HUD3** as being unqualified only with reasons based on a diligent investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
	Provided interested **MBE/WBE/SBE/DLSB or HUD3** with plans and specifications at no cost, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract at least ten (10) business days of the bid submittal deadline in order to assist them in responding to a solicitation.
	Sought the assistance of the Minority Business Assistance Center (MBAC) or used the services of community organizations, contractors' groups, local, state or federal business assistance offices, or similar organizations to find subcontractors certified as (circle one: **MBE/WBE/SBE/DLSB or HUD3**). Contacting HRC for the certified list will not be deemed as sufficient good faith efforts.
Bidding Company Name:	SATURN ELECTRIC, INC.

BACK

By: Mr. Williams No. 6206-16

A RESOLUTION

Authorizing the City Manager to Enter into the FY2015-2016 Choice Neighborhoods Planning Grant Agreement with the U.S. Department of Housing and Urban Development (HUD), and Declaring an Emergency

WHEREAS, On November 23, 2015, HUD released a Notice of Funding Availability (NOFA) for the FY2015-2016 Choice Neighborhoods Planning Grants Program that assists communities with severely distressed public or HUD-assisted housing in developing a successful neighborhood transformation plan and building the support necessary for that plan to be successfully implemented; and,

WHEREAS, On February 9, 2016, Greater Dayton Premier Management (GDPM), as lead applicant, and the City of Dayton, as co-applicant, submitted an application in order to carry out the objectives of the Choice Neighborhoods Planning Program issued by HUD; and,

WHEREAS, HUD, subject to execution of the attached grant agreement, awarded $1,500,000.00 to the applicants through the grant agreement; and,

WHEREAS, The grant agreement memorializes the agreements made between GDPM, the City of Dayton, and HUD; and,

WHEREAS, The grant agreement incorporates all documents relating to the grant, including the HUD form 1044, FY2015-2016 NOFA, application, and all subsequent documents; and,

WHEREAS, Once the grant agreement is executed, GDPM may request HUD to approve the release of grant funds; and,

WHEREAS, The FY2015-2016 Choice Neighborhoods Planning Grant Agreement must be submitted to the U.S. Department of Housing and Urban Development by September 9, 2016, and for the immediate preservation of the public peace, property, health and safety, it is therefore necessary this resolution take effect on 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 sign the attached FY2015-2016 Choice Neighborhoods Planning Grant Agreement and all other necessary documents.

Section 2. For the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

Adopted by the Commission August 31, 2016

Signed by the Mayor August 31, 2016

Nan Whaley

Mayor of the City of Dayton, Ohio

Attest:

Rashella Lavender

Clerk of Commission

Approved as to form:

Lynn R. Thomas

City Attorney

MEMORANDUM

August 23, 2016

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

FROM: Aaron K. Sorrell, Director AKS
Department of Planning and Community Development

SUBJECT: **Emergency Resolution – Choice Neighborhoods Planning Grant Agreement**

Attached for your review and placement on the August 31, 2016, City Commission Calendar is an Emergency Resolution authorizing the City Manager to execute the FY2015-2016 Choice Neighborhoods Planning Grant Agreement and all other necessary documents related to the grant.

On February 9, 2016, Greater Dayton Premier Management (GDPM), as lead applicant, and the City of Dayton, as co-applicant, submitted an application in order to carry out the objectives of the Choice Neighborhoods Planning Program issued by the U.S. Department of Housing and Urban Development (HUD). HUD awarded $1,500,000.00 to the applicants through the grant agreement.

Due to the time sensitive nature, we are requesting an emergency measure with two readings at one City Commission meeting on August 31, 2016.

If you have any questions or require additional information, please contact Erin Ritter at extension 3816.

AKS/emj
Attachments

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

JUL 29 2016

Ms. Jennifer Heapy
Chief Executive Officer
Greater Dayton Premier Management
400 Wayne Avenue
Dayton, OH 45410

Ms. Shelley Dickstein
City Manager
City of Dayton
101 W. Third Street
Dayton, OH 45402

SUBJECT: Transmittal of FY2015-2016 Choice Neighborhoods Planning Grant Agreement

Dear Ms. Heapy and Ms. Dickstein:

Once again, congratulations on your selection to receive a FY2015-2016 Choice Neighborhoods Planning Grant funding award. Your proposal is one of the best that embodies the goals of the Choice Neighborhoods program and shows your capacity to create a Transformation Plan to transform your selected neighborhood. This letter transmits your Choice Neighborhoods Planning Grant Agreement.

The Office of Public Housing Investments (OPHI) will administer your grant. Your Team Coordinator from the Office of Public Housing Investments is your primary HUD contact person as you implement your Choice Neighborhoods grant and is available to answer any questions you may have. OPHI is located at the following address:

U.S. Department of Housing and Urban Development
Office of Public Housing Investments
451 Seventh Street SW, Room 4130
Washington, DC 20410

The selection of your organization for a Choice Neighborhoods grant does not necessarily mean endorsement of each detail of the plan proposed in your application. The OPHI staff will be working with you in the coming months to ensure that your Transformation Plan is fully developed, maximally effective, and legally and financially sound.

Grant Agreement

Enclosed are one copy of your FY2015-2016 Choice Neighborhoods Planning Grant Agreement and three copies of the Assistance Award/Amendment form (HUD-1044). The Grant Agreement memorializes the agreements made between you and your Co-Applicant(s) (if any), as the Grantees, and HUD, and incorporates all documents relating to the grant, including the FY2015-2016 Notice of Funding Availability (NOFA), your application, and all subsequent documents. The

HUD-1044 serves as the coversheet to the Grant Agreement. In order to execute the Grant Agreement, please do the following:

1. Obtain a Board Resolution authorizing the Lead Grantee's Executive Director/executive officer to sign the form HUD-1044.
2. The Executive Director/executive officer of the Lead Grantee signs and dates each of the three HUD-1044 forms in block 19 of the form.
3. The Executive Director/executive officer for both the Lead Grantee and Co-Grantee(s) (if any) must sign the signature page in the Grant Agreement document. The signatures of the Executive Director/executive officer of the Lead Grantee and the Executive Director/executive officer of any Co-Grantee(s) should be provided on the same signature page (not separate signature pages).
4. The Lead Grantee and any Co-Grantee must also provide documentation in accordance with the "Conducting Business in Accordance with Ethical Standards/Code of Conduct" requirement found in Section III.C.4.f of the General Section to the Department's Fiscal Year 2015 NOFAs for Discretionary Programs Notice. That section requires that grantees, before entering into an agreement with HUD, must submit a copy of their code of conduct, "if the applicant is not listed on the code of conduct website or if the information listed on the website has changed...." See that section for further details. HUD's code of conduct website URL is: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/conduct. If the code(s) of conduct is on the website and information has not changed, please note that when you provide the other Grant Agreement-related documents.
5. Return the signed Grant Agreement, including the HUD-1044s, a copy of the Board Resolution, and the Lead Grantee's and any Co-Grantee's code(s) of conduct documentation to Ms. Chiquita Ward at the address provided earlier in this letter by no later than **Friday, September 9, 2016.**

Once the Grant Agreement, copy of the Board Resolution, and code(s) of conduct documentation are received by HUD, the Assistant Secretary for Public and Indian Housing will sign and date the final signature block on the signature page of the Grant Agreement, which will be the effective date of the Grant Agreement. The original will be kept by the Department and an executed copy will be returned to you to keep in your records and administer accordingly.

Choice Neighborhoods Guidance

Your Choice Neighborhoods Team Coordinator will be your primary source of guidance and information about your Planning Grant. In addition, on the Choice Neighborhoods web site (www.hud.gov/cn) HUD has posted information about accessing LOCCS, Choice Neighborhoods budget and planning guidance as well as, valuable information on mixed-finance development, procurement, and other technical areas. I urge you to familiarize yourself with the website and take advantage of the information posted there.

Drawdown of Funds

Once your Grant Agreement has been executed, you may request HUD to approve the release of grant funds. This will be accomplished through the approval of your Choice Neighborhoods budget. In accordance with the Grant Agreement, eligible costs for reimbursement include those incurred after the written notification of grant award. The official written notification date of your grant award is June 28, 2016. While submission of a budget is not required until September 26, 2016, you are encouraged to submit your Budget and Program

Schedule in advance of that deadline so that HUD may review and discuss it with you. You must use the Choice Neighborhoods Planning Grants Budget form, Parts I, II, and III (for HUD-53421). Part II must include a detailed description of the uses of the grant funds. When the budget request is approved, your Team Coordinator will return a signed copy to you for your files and will have the approved funds spread in LOCCS. At that point, they will be available for drawdown.

Authorization in LOCCS

In order to access grant funds, at least two staff members must be authorized for Choice Neighborhoods in LOCCS, HUD's grant payment system. Banking information also must be submitted to HUD. If you are not familiar with LOCCS, please refer to "Grantee Financial Instructions" which is posted on the Choice Neighborhoods website and which provides detailed information about LOCCS access, banking information, and completion of the Choice Neighborhoods voucher.

Expenditure of FY2016 Choice Neighborhoods Funds

FY2016 Choice Neighborhoods grants are subject to the requirements established under 31 U.S.C. § 1552. In accordance with this statute, all FY2016 funds must be expended by September 30, 2023. **However, the Planning and Action Grant term is three years and funds are expected to be fully expended shortly after the end of the Planning Grant term.** Any funds that are not expended by the statutory deadline will be cancelled and recaptured by the Treasury and thereafter will not be available for obligation or expenditure for any purpose. Given the statutory requirement, you are asked to comply with your Program Schedule, developed in accordance with the time periods for implementation established in the Grant Agreement, and as approved by HUD.

Again, congratulations. Applications for this Choice Neighborhoods grant were competitive, and you should be proud of your accomplishment. Please extend my congratulations to your entire team. We look forward to working jointly with you and your partners in carrying out the transformation of severely distressed public and assisted housing, and we thank you for your participation in the Choice Neighborhoods Initiative.

Sincerely,

Caroline Tatalovich
for
Mindy Turbov
Director, Choice Neighborhoods Program
Office of Public Housing Investments

Enclosures

Assistance Award/Amendment

U.S. Department of Housing
and Urban Development
Office of Administration

1. Assistance Instrument ☐ Cooperative Agreement ☒ Grant	2. Type of Action ☒ Award ☐ Amendment
3. Instrument Number OH5D005CNP115 / 4. Amendment Number	5. Effective Date of this Action / 6. Control Number
7. Name and Address of Recipient **Greater Dayton Premier Management (Dayton MHA)** **400 Wayne Avenue** **Dayton, OH 45410**	8. HUD Administering Office Office of Public Housing Investments Public and Indian Housing 8a. Name of Administrator: Dominique Blom 8b. Telephone Number: 202-402-8500
10. Recipient Project Manager	9. HUD Government Technical Representative
11. Assistance Arrangement ☒ Cost Reimbursement ☐ Cost Sharing ☐ Fixed Price 12. Payment Method ☐ Treasury Check Reimbursement ☐ Advance Check ☒ Automated Clearinghouse	13. HUD Payment Office
14. Assistance Amount Previous HUD Amount $ HUD Amount this action $ 1,500,000 Total HUD Amount $ 1,500,000 Recipient Amount $ Total Instrument Amount $ 1,500,000	15. HUD Accounting and Appropriation Data 15a. Appropriation Number / 15b. Reservation number Amount Previously Obligated $ Obligation by this action $ 1,500,000 Total Obligation $ 1,500,000

16. Description

FY 2015-16 Choice Neighborhoods Planning Grant
(grant type: Planning and Action)

PH Hsg Site(s): DeSoto Bass Courts and Hilltop Homes
Neighborhood: DeSoto Bass
Located in: Dayton, OH

EIN/TIN: 31-6000102

17. ☒ Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office	18. ☐ Recipient is not required to sign this document.
19. Recipient (By Name) Jennifer Heapy	20. HUD (By Name) Lourdes Castro Ramírez
Signature & Title: Chief Executive Officer / Date (mm/dd/yyyy)	Signature & Title: Principal Deputy Assistant Secretary / Date (mm/dd/yyyy): 6/29/16

form HUD-1044 (8/90)
ref. Handbook 2210.17

FY2015-2016 Choice Neighborhoods Planning and Action Grant Agreement

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Exhibit A: For-Profit Subgrantee and Contractor Certifications and Assurances

Exhibit B: Non-Profit Subgrantee Certifications and Assurances

FY2015-2016 Choice Neighborhoods Planning and Action Grant Agreement

This grant agreement ("Grant Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and the Lead and Co-Applicant(s) ("Grantee"). The Grantee received a Choice Neighborhoods Planning and Action Grant award as a result of an application submitted in response to the fiscal year (FY) 2015-2016 Notice of Funding Availability (NOFA), for the creation of a Transformation Plan that is the subject of this Grant Agreement ("Transformation Plan") and that is identified on the fund obligation document (Form HUD-1044).

While the Planning Grant is awarded to the Grantee, only the Lead Applicant identified in the Grantee's Choice Neighborhoods Application ("Lead Grantee") will have access to draw down funds in LOCCS. HUD agrees, subject to the terms of this Grant Agreement, to provide grant funds to the Lead Grantee, in the total amount listed on the Assistance Award/Amendment form (HUD-1044), for the activities described in the Transformation Plan as defined in Article III.

The assistance that is the subject of this Grant Agreement is authorized by, and required to be used in accordance with, Section 24 of the U.S. Housing Act of 1937 and the Consolidated Appropriations Act, 2016 (Public Law 114-113, approved December 18, 2015) ("2016 HUD Appropriations Act"), (collectively the "Choice Neighborhoods Authorization").

The form HUD-1044 and the Exhibits are incorporated into and subject to the terms of this Grant Agreement.

HUD and the Grantee hereby agree to be bound by the following terms and conditions of this Grant Agreement:

ARTICLE I. Choice Neighborhoods Requirements

The Grantee agrees to conduct all activities to be assisted with funds provided under this Grant Agreement in accordance with the following requirements, as such requirements now exist or as they may hereafter be amended (hereafter collectively referred to as the "Choice Neighborhoods Requirements"):

A. the U.S. Housing Act of 1937, as amended (the "1937 Act"), including Section 24 of the 1937 Act, and all implementing regulations, as applicable;

B. the 2016 HUD Appropriations Act, (the Consolidated Appropriations Act, 2016 (Public Law 114-113, approved December 18, 2015);

C. the FY2015-2016 NOFA for the Choice Neighborhoods Initiative Planning Grants published via Grants.gov on November 23, 2015 (the "NOFA") and NOFA Policy Requirements and General Section ("General Section") to HUD's FY2015-2016 NOFAs for Discretionary Programs incorporated therein.

D. 31 U.S.C. § 1552. In accordance with this statute, all FY2016 Choice Neighborhoods funds must be expended by September 30, 2023. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose. **However, in accordance with the Choice Neighborhoods NOFA, the term of this Planning and Action Grant is three years and all funds should be expended shortly after the end of the grant term.**

E. In accordance with section 24(e)(2)(D) of the 1937 Act, Grantees must involve affected residents of the targeted public and/or assisted housing at the beginning and during the planning process. Grantees are required to involve the affected public and/or assisted housing residents in the planning process and implementation of your Transformation Plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant. In addition to the statutory requirement Grantees will be expected to undertake resident and community involvement in a manner and method at least as comprehensive as that described in your grant application.

F. all executive orders applicable to the activities being conducted with funds provided under this Grant Agreement;

G. the terms and requirements of this Grant Agreement, and any amendments or addenda thereto;

H. all other applicable Federal requirements, including, without limitation, those set forth in Appendix A; and

I. all regulations, handbooks, notices, and policies applicable to the activities being conducted with funds provided under this Grant Agreement;

ARTICLE II. Program Overview

A. Choice Neighborhoods is designed to address struggling neighborhoods with distressed public housing or HUD-assisted housing through a comprehensive approach to neighborhood transformation. Local leaders, residents, and other stakeholders, such as public housing authorities, cities, schools, police, business owners, nonprofits, and private developers, come together to create a plan that transforms distressed HUD housing and addresses the challenges in the surrounding neighborhood. The program helps communities transform neighborhoods by revitalizing severely distressed public and/or assisted housing and investing and leveraging investments in well-functioning services, high quality public schools and education programs, high quality early learning programs and services, crime prevention strategies, public assets, public transportation, and improved access to jobs. Choice Neighborhoods is focused on three core goals:

1. **Housing**: Replace distressed public and assisted housing with high-quality mixed-income housing that is well-managed and responsive to the needs of the surrounding neighborhood;
2. **People**: Improve educational outcomes and intergenerational mobility for youth and supports delivered directly to youth and their families; and
3. **Neighborhood**: Create the conditions necessary for public and private reinvestment in distressed neighborhoods to offer the kinds of amenities and assets, including safety, good schools, and commercial activity, that are important to families' choices about their community.

ARTICLE III. Choice Neighborhoods Transformation Plan and Requirements

A. General. The end product of this grant award is the submission to and acceptance by HUD of a Transformation Plan. The Transformation Plan should identify specific, integrated, and effective strategies to implement public and/or assisted housing revitalization, the coordination and design of supportive services, including educational opportunities for children, and neighborhood-level planning to improve a range of neighborhood assets. The Transformation Plan should be created as part of a collaborative planning process that involves neighborhood stakeholders and local governmental entities.

The Transformation Plan should translate the three core goals of Choice Neighborhoods – Housing, People and Neighborhood – into a strategy that will direct investments, demonstrate the commitment among a range of public and private partners to address interdependent neighborhood challenges, utilize data to set and monitor progress toward implementation goals, and engage community stakeholders and residents in meaningful decision-making roles. HUD's acceptance of this plan will be based on the demonstration of a comprehensive and inclusive locally-driven planning process. It is neither an approval nor an endorsement of any of the activities identified in the plan.

This grant also provides funding for Action Activities, as defined in section I.A.3.f of the NOFA. Experience shows that tangible, early actions help communities build momentum for further planning and the eventual transition from planning to implementation of that plan. These actions improve neighborhood confidence, which in turn sustains the community's energy, attracts more engagement and resources, and helps convince skeptical stakeholders that positive change is possible. Action Activities, as defined in section I.A.3.f of the NOFA, are physical improvement, community development, and economic development projects that enhance and accelerate the transformation of the neighborhood. Activities are limited to: reclaiming and recycling vacant property; beautification, placemaking, and community arts projects; homeowner and business façade improvement programs; neighborhood broadband/Wi-Fi; and gap financing for economic development projects. If during the planning process another use is identified, HUD has the discretion to consider whether that use is allowable based on the justification in accordance with the criteria listed in this definition. Action Activities must build upon the planning for the target housing and neighborhood. HUD must review and provide prior approval of all Action Activities.

B. Program Activities. Activities under this Grant Agreement include tasks necessary to develop a Transformation Plan, align investments with this plan, develop the relevant planning and evaluation capacity of the Grantee and its partners, and carry out approved Action Activities. Refer to section III.C.5 of the NOFA for a detailed description of program activities. As stated in section III.C.5.a.2, required activities are:

1. Conduct a household-level needs assessment of the public and/or assisted housing residents in the target development(s) to better design solutions for the children and families of HUD housing within the first 12 months of the Planning Grant. In addition, evaluate existing administrative data (such as the census [including the American Community Survey (ACS)], police reports, healthcare agencies/providers, school reports, research surveys, etc.) to determine whether an assessment of households is required at the neighborhood level.

2. Devise a relocation strategy for residents that need to be displaced during the rehabilitation or reconstruction of the public and/or assisted housing.

3. If not already completed, you must have a formal market assessment conducted by an independent, third party professional of the target neighborhood during the grant period. The conclusions drawn from this study must inform the development of the Transformation Plan.

4. If not already identified, you must select the master developer/housing developer that will implement the housing component of the Transformation Plan before the end of the grant term.

5. Complete a Phase I environmental assessment at the redevelopment site to determine the potential and extent of any needed environmental remediation, in order for a grantee to determine a feasible timeline and budget for the realization of redevelopment efforts.

6. If the redevelopment plan includes the rehabilitation or demolition of any buildings 45 years of age or older, the grantee must contact the State Historic Preservation Officer (SHPO) to determine the potential for negative effects of demolition on historic properties.

7. Propose Action Activities within 18 months of the grant award date and implement approved Action Activities before the end of the grant term.

C. Other eligible activities should be included in the Transformation Plan consistent with section III.C.5.b of the NOFA.

D. Program Requirements. In developing the Transformation Plan and Action Activities, Grantees should evaluate and incorporate the general requirements contained in section III.C.6 of the NOFA as they are applicable to their Transformation Plan.

ARTICLE IV. Deliverables

A. Schedule and Budget. In preparation for creating a Transformation Plan, Grantees must submit the following to HUD within 90 calendar days from the Grant Award Date for HUD's review and approval. HUD reserves the right to require Grantee to make edits to these items to put them in a form and substance acceptable to HUD.

1. A Program Schedule identifying tasks and milestones by date, in accordance with the Choice Neighborhoods NOFA;

2. A Choice Neighborhoods Planning Grant Budget, as described in Article VI; and

3. Any other information or documentation that is not otherwise required under the NOFA or this Grant Agreement but that is requested by HUD to supplement or refine information provided in the Choice Neighborhoods Application or to meet any terms or conditions of the Grant Agreement.

B. The Grantee must submit documents that assist in the development of the Action Activities Proposal and Transformation Plan to HUD during the term of the Planning Grant. HUD may provide comments and guidance on these draft documents, which the Grantee should use in drafting the Action Activities Proposal and Transformation Plan. The documents that are required are:

1. Outline with Content. The Grantee must provide an update to HUD showing at a minimum the outline with some of the content that will be in the Transformation Plan no later than 12 months after the Grant Award Date.

2. Draft Action Activities Proposal. The Grantee must submit a draft of its Action Activities Proposal to HUD no later than 16 months after the Grant Award Date.

3. Action Activities Proposal and Draft Transformation Plan. The Grantee must submit the Action Activities Proposal and a draft Transformation Plan to HUD no later than 18 months after the Grant Award Date.

4. Transformation Plan. The Grantee must submit a final Transformation Plan to HUD no later than 24 months after the Grant Award Date.

C. All other required information or submissions as requested by HUD pursuant to paragraph (A)(3) of this Article must be submitted in accordance with the Reporting Requirements as described in Article XII, in a form and substance acceptable to HUD.

D. Time Extensions. All requests for extensions of the time periods for the deliverables listed above should be requested by the Grantee in advance of the deadline date. All requests for extensions must be made in writing, and will be reviewed and approved or disapproved by the Deputy Assistant Secretary for the Office of Public Housing Investments or her designee.

ARTICLE V. Changes to the Grantee's Plan

A. Changes Requiring Prior HUD Approval. If the following activities in the application are to be modified or amended, the Grantee must request and obtain prior written HUD approval:

1. Program Schedule. The Grantee must inform HUD immediately, in writing, of any problems, delays or adverse conditions that will impair materially the Grantee's ability to comply with the Program Schedule, and include a statement of action taken, or proposed to be taken, and any assistance needed to resolve the situation. HUD must approve any proposed changes to the Program Schedule that would significantly modify a date or time period.

2. Changes in an activity within any Budget Line Item (BLI) in LOCCS that are greater than 10 percent of the approved Choice Neighborhoods Budget;

3. An extension of the period of availability of the Choice Neighborhoods Grant funds provided under this Grant Agreement, not to go beyond the statutory timeframes;

4. Any material changes to the contract between the Grantee and the Planning Coordinator, if applicable; and

5. Any loss or replacement of committed funds which were identified for purposes of rating and ranking the leverage section of the grant.

ARTICLE VI. Choice Neighborhoods Budget and Funding Requests

A. Budget. The Grantee must ensure that funds provided under this Grant Agreement are expended in accordance with the Choice Neighborhoods Requirements and a Choice

Neighborhoods Budget. The Choice Neighborhoods Budget allocates all Choice Neighborhoods Grant funds into Budget Line Items. The Choice Neighborhoods Budget will serve as the primary budget and may be subject to revision.

B. Budget Form. Each budget submitted in accordance with paragraph (A) of this Article must be submitted on the Choice Neighborhoods Planning Grant budget form (HUD-53421), Parts I, II, and III. Part I must be signed and dated by the executive officer of the Lead Grantee and Part II must include a detailed description of the uses of the grant funds. Part III shows the match and leverage funds committed to the planning process. Grantees must track their leveraged fund expenditures and will report this information in the quarterly report.

C. Pre-Grant Agreement Execution Costs. After the execution of this Grant Agreement, the Grantee may include in its Choice Neighborhoods Budget, and the Lead Grantee may draw down funds for, costs that were incurred prior to execution of this Grant Agreement, provided that such costs were incurred after the Grant Award Date, are directly associated with the activities to be funded under this Choice Neighborhoods Grant, and are approved as reasonable and eligible by HUD. Choice Neighborhoods Transformation Grant funds cannot be used to pay for any activities carried out on or before the Grant Award Date.

D. Early Action Activities and Action Activities. The Lead Grantee may request Choice Neighborhoods Grant funds for Early Action Activities and Action Activities costs by submitting the Choice Neighborhoods Budget to HUD. HUD will not release any funding for Action Activities until HUD approves the Action Activities Proposal. Funds may be drawn down for eligible costs (as defined in the NOFA), subject to receiving HUD approval and, as applicable, subject to conducting an environmental review in accordance with 24 CFR part 58.

E. Administration, Fees and Costs.

1. Cost Controls. The Grantee will comply with HUD guidance and policies that establish reasonable costs for administration, management improvements/capacity building, planning, technical assistance, fees and costs, and Action Activities.

2. Lobbying. The Grantee hereby certifies that no funds provided under this Grant Agreement will be expended for lobbying activities, as prohibited by Section 319 of Public Law 101-121 (which prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government), and implemented for HUD at 24 CFR part 87, as the same may be amended from time to time. The Grantee will disclose promptly any commitment or expenditure of non-appropriated funds for lobbying activities if those activities would be prohibited if paid with appropriated funds.

F. Program Income. Program Income is defined in 2 CFR § 200.80, or successor regulation. If the Grantee receives program income from the Early Action Activities or Action Activities (e.g. sale of acquired land):

1. prior to grant closeout program income must be reinvested in the development or neighborhood and used for Choice Neighborhoods eligible purposes, unless otherwise approved by HUD.

2. after grant closeout, program income must be reinvested in the development or neighborhood and used for Choice Neighborhoods eligible purposes. Before the grant is closed out, Grantee must submit a plan for how program income will be reinvested, in a form and substance that is acceptable to HUD for HUD's review and approval. HUD will determine with the Grantee what the sources of program income are. The language of this provision shall survive grant close-out and termination of this Grant Agreement.

ARTICLE VII. Project Drawdowns

A. LOCCS Payment System. Consistent with 2 CFR Part 200, the Lead Grantee will request all drawdowns of Choice Neighborhoods Grant funds under the Line of Credit Control System (LOCCS), unless and until another payment system is designated by HUD. The Lead Grantee will comply with all rules, guidelines, and notices established for Choice Neighborhoods under LOCCS, or any substitute system, in connection with any drawdown of Choice Neighborhoods Grant funds. If HUD designates a different payment system, it will be based upon the provisions of 2 CFR § 200.305.

B. Drawdowns.

1. The Grantee may draw down Choice Neighborhoods Grant funds for a Budget Line Item (BLI) in an amount up to the amount of that BLI that HUD has approved and made available for drawdown.

2. Any request for funds in excess of 10 percent of the entire grant amount in any month must be manually reviewed and approved by HUD. The Grantee must submit copies of the invoices supporting the drawdown amount to the Team Coordinator.

C. Drawdown Consequences of Default.

1. Withholding of Payments. HUD may withhold payments in accordance with 2 CFR § 200.338.

2. Grantee Representations. Each drawdown request by the Grantee will constitute, and be deemed to be, a representation that the Grantee is not in default under this Grant Agreement (except as the Grantee previously may have disclosed to HUD in writing).

3. Overdue Reports. HUD may elect to suspend draws under this Grant Agreement during any period in which the Grantee has failed to file with HUD any quarterly report.

ARTICLE VIII. Matching and Leveraged Funds

A. Match Requirements. In accordance with section 24(c) of the 1937 Act (42 U.S.C. 1437v(c)), Grantee must have secured a match in the amount of 5 percent of the grant amount in cash or in-kind donations.

B. Match Donations and Leverage Resources. Grantee shall keep documentation on matching and leveraged funds during the term of this Grant Agreement and shall provide this documentation in a format acceptable to HUD upon request by HUD, until the closeout of this grant. The documentation should show that the funds are secured and the Grantee should keep records showing how those funds have been expended over time.

ARTICLE IX. Grantees, Subgrantees and Contractors

A. General Grantee Responsibilities.

1. Planning Team. The Grantee agrees to promptly assemble a competent planning team, if the Grantee has not already, to assist in working with the Grantee's partners and collaborators and coordinating all phases of the planning process. In the event of a default under the terms of this Grant Agreement, HUD reserves the right to require a Grantee to procure a planning coordinator in order for the Grantee to meet the performance standards detailed in this agreement.

2. Choice Neighborhoods Requirements. The Grantee shall ensure that any entity to which it makes grant funds available will comply with the Choice Neighborhoods Requirements.

3. Required Certifications.
   a. The Grantee must ensure that all subgrantees and contractors execute an original document in the form of Exhibit A or B, as appropriate, to this Grant Agreement at the time the Grantee executes any contract with any subgrantee or contractor to provide goods or services under this Grant Agreement. The Grantee will retain the executed original certification together with the executed contract documents.
   b. Grantees that are public housing authorities (PHA Grantee) must ensure that the requirements contained in the General Conditions for Non-Construction Form (Form 5370-C) are included in any solicitation in connection with non-construction contracts that will be made by the PHA Grantee and paid for with assistance under this Grant Agreement. Such conditions must also be included in any non-construction contract entered into by the PHA Grantee.
   c. Certifications required by 2 CFR 200.415.

4. Economic Opportunities for Low- and Very Low-income Persons (Section 3).
   a. The Grantee shall comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u, and HUD's implementing regulations at 24 CFR Part 135 to ensure, to the greatest extent feasible, that training, employment, contracting and other economic opportunities will be directed to

low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low-and very low-income persons in the area in which the project is located.

B. Administrative Requirements for Grantees.

1. Public housing authority, local government, Indian tribe, and non-profit entity grantees are subject to 2 CFR Part 200.

C. Administrative Requirements for Subgrantees and Related Agreements.

1. Public housing authority, local government, Indian tribe, and non-profit subgrantees are subject to the requirements of 2 CFR Part 200.

2. For-profit subgrantees are subject to the requirements of 2 CFR Part 200, Subparts A-E. The Grantee is responsible for establishing audit requirements consistent with 2 CFR 200.501(h).

3. Suspension and Debarment. Grantees are subject to the requirements of 2 CFR 200.212

4. Grantee Responsibilities Regarding Subgrantees. Grantees will be responsible for:
   a. ensuring that subgrantees are aware of the requirements imposed upon them by Federal statutes, regulations, and this Grant Agreement;
   b. ensuring that all subgrant agreements include any clauses required by Federal statutes and their implementing regulations and executive orders; and
   c. monitoring subgrantees' performance to ensure compliance with this Grant Agreement.

D. Administrative Requirements for Contractors and Subcontractors and Related Contracts.

1. Grantee's procurement of contractors or subcontractors. Consultant and Professional Services. Grantees that obtain professional or consultant services from persons who are not officers or employees of the Grantee (i.e., independent contractors) are subject to 2 CFR Part 200.459. However, if the Grantee can demonstrate to HUD that the services to be provided by the contractor or subcontractor only from that one source, the Grantee may request HUD approval to select the entity under a sole source procurement pursuant to 2 CFR 200.230(f).

2. Trigger for the Submission of Contracts. Contracts must be submitted to HUD for prior approval if required by 2 CFR Part 200, Subpart D, or if requested by HUD. Any modification of a contract that must be submitted to HUD for prior approval if required or requested is also subject HUD's written approval before the execution of the modification.

3. Suspension and Debarment. Grantees must comply with 2 CFR 200.212

ARTICLE X. No Third Party Rights

The Grantee and HUD are the sole parties to this Grant Agreement and do not intend to create any third party beneficiaries to this Grant Agreement. Notwithstanding the provisions set forth in this Grant Agreement concerning consultations with residents and dissemination of information to residents, nothing in this Grant Agreement may be construed as conferring the status of third party beneficiary upon the residents; and in no event shall any entity other than the Grantee have direct rights to the Choice Neighborhoods funds provided for under this Grant Agreement.

ARTICLE XI. Conflict of Interest

A. Prohibition. The Grantee shall comply with the conflict of interest requirements in 2 CFR 200.318. No person who is an employee, agent, officer of the Grantee or member of his or immediate family, or his or her partner, or an organization which employs or is about to employ any of the parties indicated herein and who exercises any functions or responsibilities with respect to activities assisted under this Choice Neighborhoods Grant may have a direct interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder.

B. HUD-Approved Exception.

1. Standard. HUD may grant an exception to the exclusion in paragraph (A) of this Article on a case-by-case basis when it determines that such an exception will serve to further the purposes of Choice Neighborhoods and its effective and efficient administration.

2. Procedure. HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:
   a. an assurance that there has been public disclosure of the conflict;
   b. a description of how the public disclosure was made; and
   c. an opinion of the Grantee's attorney that the interest for which the exception is sought does not violate State or local laws.

3. Consideration of Relevant Factors. In determining whether to grant a requested exception under paragraph (B) of this Article, HUD will consider the cumulative effect of the following factors, where applicable:
   a. whether the exception would provide a significant cost benefit or an essential degree of expertise to the Transformation Plan that would otherwise not be available;
   b. whether an opportunity was provided for open competitive bidding or negotiation;
   c. whether the person affected is a member of a group or class intended to be the beneficiaries of the Transformation Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;
e. whether the interest or benefit was present before the affected person was in a position as described in paragraph (A) of this Article;
f. whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
g. any other relevant considerations.

ARTICLE XII. Reporting Requirements

A. Quarterly Report.

1. The Grantee will submit to HUD a Quarterly Report on the 15th day of the month after the calendar quarter. The first report will be due in October 2016. If the due date falls on a Saturday, Sunday, or Federal Holiday, the report is due the next business day. In the Quarterly Report the Grantee will report the progress of their grant for the previous quarter, including but not limited to progress against their schedule and budget, expenditures to date, and a narrative statement on their progress, progress on financing leverage secured to date for the planning grant and Action Activities as well as leverage for the implementation of the plan. The Grantee should also include, as appropriate, best practices and lessons learned from the date of the prior Quarterly Report.

2. Failure to submit to HUD a timely Quarterly Report may result in a suspension of Choice Neighborhoods Grant funds in LOCCS until such time as the report is received and approved by HUD, and/or any other default remedy authorized by Article XIV.

B. Obligations and Expenditures. The Grantee must enter cumulative obligation and expenditure data into LOCCS by the due dates established by HUD, whether or not there has been any change in the cumulative amounts since the end of the last quarter.

C. Additional Information Requests. Subject to paragraph (D) of this Article, the Grantee will comply with all other reporting requirements from time to time established by HUD, in its sole discretion, in connection with the Choice Neighborhoods Program. The Grantee will:

1. fully cooperate with all reasonable information gathering requests made by HUD or contractors of HUD in the course of authorized evaluations of the Choice Neighborhoods Program; and

2. if requested, submit any post-closeout reports, in the forms prescribed by HUD, for a reasonable period of years as designated by HUD.

D. Additional Requirements. The Grantee agrees to comply with all other terms and conditions HUD may establish to administer, monitor, or evaluate the Choice Neighborhoods Program in an effective and efficient manner. Notwithstanding the foregoing, however, except as

provided in Article XIV, HUD hereafter will not establish any additional terms and conditions without:

1. consideration of the burden imposed on the Grantee by such conditions or requirements;

2. consideration of the availability of less burdensome conditions or requirements; and

3. in the case of a term or condition applicable solely to the Grantee, consulting in advance with the Grantee.

ARTICLE XIII. Technical Assistance

A. Site Visits. The Grantee acknowledges and agrees that HUD, or its designees, may conduct site visits and inspections as deemed necessary by HUD based upon the Grantee's needs in creating the Action Activities Proposal or Transformation Plan or the needs of the Choice Neighborhoods Program. Technical assistance site visits may be provided by HUD or its designees:

   1. in response to requests from the Grantee; or

   2. based upon demonstrated needs of the Choice Neighborhoods Program; or

   3. as provided in paragraph (B) of this Article.

B. HUD Assessment. HUD representatives will visit the site and make an assessment of any technical assistance and/or training that the Grantee may require for the creation of the Action Activities Proposal or Transformation Plan. HUD will consult with the Grantee in determining the Grantee's specific technical assistance and training needs and will carry out subsequent on-site assessments as necessary.

C. Technical Assistance Provider. If HUD determines, in its discretion, that technical assistance and/or training is necessary for the creation of the Transformation Plan, it will assign a technical assistance provider to work with the Grantee for this purpose.

D. Grantee Training/Technical Assistance. The Grantee agrees to use its best efforts to attend any training and to accept any technical assistance provided or sponsored by HUD.

ARTICLE XIV. Unsatisfactory Performance/Default

A. In accordance with Section 24(i) of the 1937 Act, if the Grantee defaults under this grant agreement, HUD may withdraw any unobligated grant amounts and may pursue other actions as described in this Article. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for Choice Neighborhoods assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the planning process

of the original Grantee. This section applies to all Grantees regardless of their status as a local government, PHA, for-profit, or other entity.

B. Default. Each of the following events or occurrences, to the extent it constitutes a material breach or occurrence, may constitute a default by the Grantee under this Grant Agreement, as determined by HUD in its sole discretion:

1. use of funds provided under this Grant Agreement for any purpose, in any manner or at any time, other than as authorized by this Grant Agreement;

2. failure to comply with the Choice Neighborhoods Requirements or any other Federal, State, or local laws, regulations or requirements applicable in creating the Action Activities Proposal or Transformation Plan;

3. failure to make any submission under Article IV, perform any obligation, or otherwise fail to proceed in a manner consistent with the Action Activities Proposal or Transformation Plan, (including, without limitation, failure to accomplish an activity by the date specified in the Program Schedule);

4. any material misrepresentation in any of the required submissions, including, without limit, any misrepresentations in any of the submissions required by Article IV; or

5. failure to comply with, or any material breach of, any other requirements, conditions or terms of this Grant Agreement.

C. Notice of Default and Action(s) to Cure.

1. General. HUD will give the Grantee written notice of any default. The notice will give the Grantee the opportunity to cure such default within 30 days of the date of the notice, or to demonstrate within this time period, by submitting substantial evidence satisfactory to HUD, that it is not in default. If the default is not able to be cured within the 30-day period, the Grantee will demonstrate, to HUD's satisfaction, that the Grantee has taken actions necessary to cure the default and that the default is curable within 90 days from the date of the default notice. Additionally, the Grantee must agree to carry out such cure diligently and to complete the cure within the 90-day period.

2. Immediate Default. Notwithstanding the provisions of paragraph (C)(1) of this Article, HUD in its sole discretion may place the Grantee into immediate default for not being in compliance with its Program Schedule or for non-compliance with Choice Neighborhoods Requirements once written notification of default has been provided to the Grantee. At that time, HUD may immediately begin imposing consequences of default, including specifically the suspension of draws of the Choice Neighborhoods grant.

3. Imminent Threat. Notwithstanding the provisions of subparagraph (C)(1) of this Article concerning the opportunity to cure defaults, if HUD reasonably determines that there is

an imminent threat that the Grantee will expend additional Choice Neighborhoods Grant funds in violation of the provisions of this Grant Agreement, HUD may implement the remedial action provided for under subparagraph (C)(4) of this Article to prevent any such unauthorized expenditure until such time as the Grantee has complied with the cure provisions set forth above. HUD will implement such remedial action by written notice set forth either in the notice of default given under paragraph (C)(1) of this Article or by subsequent written notice to the Grantee. An imminent threat is not an immediate default.

4. Consequences of Default. If the Grantee fails to cure all defaults specified in the notice of default within the time periods set forth in paragraph (C)(1) of this Article, or fails to diligently pursue or complete any cure as provided in paragraph (C)(1), HUD may take any of the following remedial actions, upon written notice to the Grantee:
   a. requiring a Grantee in default to provide evidence to HUD of acceptable performance over such period of time as specified by HUD and to obtain written approval from HUD to proceed to the next phase of activities;
   b. requiring additional, more detailed financial reports;
   c. requiring additional project monitoring;
   d. requiring the Grantee (or subgrantee) to obtain technical or management assistance;
   e. establishing additional prior approvals;
   f. require the Grantee, within a time period established by HUD, to prepare a revised Program Schedule, obtain HUD's approval thereto, and follow such revised Program Schedule to complete the activities under the Grant Agreement;
   g. require the Grantee, within a time period established by HUD, to revise any activity under the Grant Agreement in order to successfully complete the activities under the Grant Agreement in a manner satisfactory to HUD, including, without limitation, exclusion or revision of affected activities, revision of the Choice Neighborhoods Budget as necessary, and substitution of other eligible activities;
   h. require submission of additional documentation before any additional request for funds will be approved;
   i. temporarily suspend the Grantee's authority to draw down Choice Neighborhoods Grant funds for affected activities, or at HUD's sole discretion for all activities, pending action to cure the defaults;
   j. disallow use of Choice Neighborhoods Grant funds for all or part of the cost of the activity or action not in compliance;
   k. recover amounts determined by HUD to have been improperly expended, including any property obtained by the Grantee with such grant funds;
   l. require reimbursement by the Grantee for Choice Neighborhoods Grant funds determined by HUD to have been improperly expended;
   m. make arrangements satisfactory to HUD, in its sole discretion, for use of an entity other than the Grantee to carry out activities assisted under the Grant Agreement, including requiring the Grantee to assign any outstanding contracts obligating grant funds to another entity.

5. Additional Enforcement Actions. If HUD determines that the remedial actions taken by HUD under paragraph (C)(4) of this Article have not been effective in curing the default,

or if the Grantee has not complied with the requirements imposed by HUD under paragraph (C)(4) and has not otherwise cured the default, or if HUD exercises its discretion under subparagraph (C)(2) of this Article to institute any of the following actions, HUD may take any of the following remedial or enforcement actions (in addition to any of the remedies permitted under paragraph (C) of this Article upon written notice to the Grantee):

a. reduce the Choice Neighborhoods Grant in the amount affected by the default;
b. terminate the Choice Neighborhoods Grant as to all further activities and initiate close-out procedures;
c. recapture any Choice Neighborhoods Grant funds not obligated by the Grantee.
   i. If the basis for the Grantee's default is its failure to comply with the reasonable time periods established by HUD under Article IV, HUD shall, in accordance with section 24(i) of the 1937 Act, and unless otherwise approved by HUD under paragraph (C)(3) of this Article, recapture any Choice Neighborhoods Grant funds not obligated by the Grantee.
   ii. If the Grantee fails to comply with the reasonable time periods established in Article IV, HUD may take into account whether factors beyond the Grantee's control are the cause of the delay.
d. take action against the Grantee under 24 CFR part 24 and Executive Order 12549 with respect to future HUD or Federal grant awards; and
e. take any other available legal or equitable remedial action, including, but not limited to, any remedial actions available under a PHA's ACC and/or premised on HUD's interest in the housing development established in the relevant Declaration of Trust or Declaration of Restrictive Covenants or housing assistance contract, as applicable.

6. Delinquent Federal Debts. Consistent with the purposes and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), Grantees with an outstanding federal debt must provide to HUD a negotiated repayment schedule which is not delinquent or have made other arrangements satisfactory to HUD. If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the Grantee, but offer the award to the next eligible Grantee. Applicants selected for funding, or awarded funds, must report to HUD changes in status of current agreements covering federal debt. If a previously agreed-upon payment schedule has not been adhered to or a new agreement with the federal agency to which the debt is owed has not been signed, the Grantee will be considered to be in default under this Agreement.

ARTICLE XV. Grant Award Date

The Grant Award Date is June 28, 2016. Except for Quarterly Reports, which are due according to the dates in Article XII, all deliverables in the Grant Agreement are based on the Grant Award Date.

ARTICLE XVI. Funding Obligation Date, Date of Funding Availability and Effective Date

The date of obligation by HUD of the funding to the Grantee under this Grant Agreement is the date HUD signed the form HUD-1044. The date of fund availability for this Grant Agreement is the date that the Lead Grantee signs the HUD-1044. The effective date of the Grant Agreement is the date that HUD signs the signature page of the Grant Agreement.

ARTICLE XVII. Project Close-Out

A. Termination of Disbursements Letter. Within 90 days after completion of all grant-funded activities and HUD's approval of the Transformation Plan, the Grantee must initiate close-out, in accordance with procedures established by HUD, by submitting a Termination of Disbursements letter, which states that:

1. The Grantee has completed all activities to be performed using Choice Neighborhoods Planning Grant funds;

2. All requirements of the Grant Agreement have been met;

3. All obligated Choice Neighborhoods grant funds have been disbursed;

4. The Grantee will abide by any continuing Federal requirements; and

5. At HUD's option, the Grantee may delay initiation of close-out until the resolution of any HUD monitoring findings. If HUD exercises this option, the Grantee must promptly resolve the findings.

B. Preliminary Closeout Materials. The Grantee must submit the following Preliminary Close-Out Materials along with the Termination of Disbursements Letter:

1. Final Choice Neighborhoods Budget;

2. Actual Choice Neighborhoods Cost Certificate (ACNCC) (Form HUD-50163), which summarizes the information on the Financial Status Report and serves as the document that officially closes out the grant.

C. HUD Review of Preliminary Close-Out Materials. HUD will review Preliminary Close-Out Materials to confirm that:

1. The amounts on the final Choice Neighborhoods Budget and ACNCC agree as to funds approved, obligated and expended.

2. The amount of funds approved and disbursed on the ACNCC agrees with HUD records in LOCCS.

3. If HUD disbursed more funds than the Grantee expended, the Grantee will immediately remit to HUD the excess funds, without waiting for completion of the final audit.

D. Final Audit. Following HUD approval of the Preliminary Close-Out Materials, the Grantee must conduct a final audit of the Planning Grant in accordance with the requirements of 2 CFR Part 200, Subpart F and forward the audit to HUD for approval.

E. Cost Certificate. Upon receipt of the final audit, the designated HUD official will execute the ACNCC or successor form once HUD determines to its satisfaction that:

1. the expenditure of funds provided under this Grant Agreement was allowable and reasonable, as determined by the final audit;

2. the activities to be completed using Choice Neighborhoods Grant funds were completed, as required by the Grant Agreement; and

3. all Federal requirements, were satisfied.

F. Final Close-Out. Following execution of the ACNCC, any funds remaining in the Planning Grant will be recaptured by HUD. A Post-Audit Date will be entered into LOCCS and the grant will be closed.

G. Close-Out Procedures on the Choice Neighborhoods Website. Grantees must follow the detailed Close-Out Procedures for the Choice Neighborhoods program, as posted to the Choice Neighborhoods website, including procedures for the Final Choice Neighborhoods Close-Out Approval.

ARTICLE XVIII. Points of Contact

Any correspondence related to this Grant Agreement should be directed to the following points of contact for HUD, the Lead Grantee, and any other Grantees:

For the U.S. Department of Housing and Urban Development:

Ms. Dominique Blom
Deputy Assistant Secretary, Office of Public Housing Investments
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 4130
Washington, DC 20410

For the Lead Grantee:
Ms. Jennifer Heapy
Chief Executive Officer
Greater Dayton Premier Management
400 Wayne Avenue
Dayton, OH 45410

For the Co-Grantee:
Ms. Shelley Dickstein
City Manager
City of Dayton
101 W. Third Street
Dayton, OH 45402

Article XIX. Signature Page.

_____
Ms. Jennifer Heapy
Chief Executive Officer
Greater Dayton Premier Management

_____
Date

_____
Ms. Shelley Dickstein
City Manager
City of Dayton

_____
Date

APPROVED AS TO FORM AND CORRECTNESS
CITY ATTORNEY

_____
Lourdes Castro Ramírez
Principal Deputy Assistant Secretary
for Public and Indian Housing
U.S. Department of Housing and Urban Development

_____
Date

Appendix A

Additional statutory, regulatory, and other requirements with which Grantee must comply as applicable include:

1. Fair Housing Certifications, as the same maybe amended from time to time, and any additional Fair Housing requirements that may become applicable:

   A. the Fair Housing Act (42 U.S.C. §§ 3601-19) and regulations pursuant thereto 24 CFR part 100;

   B. Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107);

   C. the fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 108);

   D. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and regulations pursuant thereto (24 CFR part 1) relating to nondiscrimination in housing;

   E. the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 CFR part 146);

   F. the prohibitions against discrimination on the basis of disability, including requirements that the Grantee make reasonable modifications and accommodations and make units accessible, under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and regulations issued pursuant thereto (24 CFR part 8);

   G. the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and its implementing regulation at 28 CFR part 36; and

   H. the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151) and regulations issued pursuant thereto (24 CFR part 40).

   I. Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a Grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any Federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, email and web pages) facsimile machines, copiers and telephones. When developing, procuring, maintaining or using EIT, grantees must ensure that the EIT allows:

      1. Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

2. Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data and comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

2. Finance and Accounting

A. Commingling of Grant Funds. The Grantee agrees that, in its recordkeeping, it will not commingle Choice Neighborhoods Grant funds with funds from any other sources including, but not limited to, other HUD program funds or funds from other Federal, State or local government agencies. (Such other funds may be used to carry out the Transformation Plan, so long as they are not commingled in the Grantee's recordkeeping.)

B. Duplication of Funding. The Grantee will ensure that Choice Neighborhoods Grant funds are not used to duplicate work that is funded with any other HUD funds, funds from any other Federal program, or from any other funding source identified under the Transformation Plan, and will establish controls to assure non-duplication of funding.

3. Recordkeeping

A. Recordkeeping Authorities. The Grantee will comply with and be subject to all Federal recordkeeping requirements, including, but not limited to 2 CFR 200.333:

B. Recordkeeping Requirements. Grantees must retain records in accordance with the requirements of paragraph (A) above, including, but not limited to:

1. the amount and disbursement of funds received under this Choice Neighborhoods Grant, including sufficient records that document the reasonableness and necessity of each expenditure;
2. the amount and nature of any other assistance, including cash, services, or other items contributed to assist in the development of the Transformation Plan or contributed as a condition of receiving this Choice Neighborhoods Grant;
3. any other proceeds received for, or otherwise used in connection with, the Transformation Plan; and

C. Access to Records. For the purpose of audit, examination, monitoring, and evaluation, the Grantee will give HUD (including any duly authorized representatives and the Inspector General) access, and will ensure that any participating party will give HUD such access, to any books, documents, papers, and records of the Grantee, or such participating party, that are pertinent to assistance received under this Choice Neighborhoods Grant or under the Transformation Plan, including all records required to be kept by paragraph (B) above.

4. Reporting

   A. Compliance with the Federal Funding Accountability and Transparency Act of 2006 (31 USC 6101 note), (Public Law 109-282) (Transparency Act), as amended. Please refer to www.fsrs.gov for complete information on requirements under the Transparency Act and OMB guidance.

   B. Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417), hereafter referred to as "Section 872." OMB is in the process of issuing regulations regarding federal agency implementation of section 872 requirements.

5. Eminent Domain. Section 408 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016 (P.L. 114-113), prohibits the use of funds to support any federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use.

For-Profit Subgrantee and Contractor
Certifications and Assurances

The Department of Housing and Urban Development (HUD) requires that all for-profit Subgrantees and Contractors on Choice Neighborhoods projects sign this "Certifications and Assurances" form certifying that they will comply with the specific federal requirements described below. The parties who must sign a "Certifications and Assurances" form are defined below:

- **Subgrantees:** These are for-profit organizations to which the Grantee has awarded a grant from the Choice Neighborhoods grant that the Grantee received from HUD. The subgrantee is accountable to the Grantee for the use of the funds provided, but the Grantee is ultimately accountable to HUD.
- **Contractors:** This includes any for-profit contractor, consultant, service provider, or supplier that the Housing Authority contracts with for goods or services on any Choice Neighborhoods project.

Certification and Assurance: The subgrantee or contractor executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and for-profit Subgrantees or Contractors:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee or Contractor	Name and Contract Number:	
Signature of Authorized Certifying Official:	Title:	Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than $10,000 or imprisoned for not more than five years, or both.

Return this form to:

Grantee Name_____

Address_____

City, State, Zip Code_____

Non-Profit Subgrantee
Certifications and Assurances

The Department of Housing and Urban Development (HUD) requires that all non-profit Subgrantees on Choice Neighborhoods projects sign this "Certifications and Assurances" form certifying that they will comply with the specific federal requirements described below. The parties who must sign a "Certifications and Assurances" form are defined below:

- **Subgrantees:** These are non-profit organizations to which the Grantee has awarded a grant from the Choice Neighborhoods grant that the Granteee received from HUD. The subgrantee is accountable to the Grantee for the use of the funds provided, but the Grantee is ultimately accountable to HUD.

****

Certification and Assurance: The subgrantee executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and Subgrantees in accordance with 24CFR Part 84 and Appendix A to Part 84.

1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

    i) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

ii) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

iii) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

iv) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, as follows:

6) Equal Employment Opportunity-All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

7) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)-All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.

8) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)-When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to

laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

9) Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)-Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10) Rights to Inventions Made Under a Contract or Agreement- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

11) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended-Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

12) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

13) Debarment and Suspension (E.O.s 12549 and 12689)-No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

14) Drug-Free Workplace Requirements-The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee	Name and Contract Number:	
Signature of Authorized Certifying Official:	Title:	Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than $10,000 or imprisoned for not more than five years, or both.

Return this form to:

Grantee Name_____

Address_____

City, State, Zip Code_____

BACK

By Mr. Joseph No. 6207-16

A RESOLUTION

Declaring the Official Intent and Reasonable Expectation of the City of Dayton on Behalf of the State of Ohio to Reimburse Its General Fund for the Wayne Avenue Reconstruction Project (OPWC Project Number CD30T) with the Proceeds of Tax Exempt Debt of the State of Ohio, and declaring an Emergency.

WHEREAS, The City of Dayton intends to seek reimbursement of project costs from the Ohio Public Works Commission ("OPWC") in connection with the Wayne Avenue Reconstruction project; and

WHEREAS, OPWC requires that the City adopt a resolution declaring the City's official intent in order to receive reimbursement; and

WHEREAS, OPWC requires that the resolution declaring the City's official intent to seek reimbursement be effective immediately upon adoption; now, therefore,

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

Section 1. That the City of Dayton reasonably expects to receive a reimbursement for the Wayne Avenue reconstruction project ("Project") as set forth in Appendix A of the Project Agreement for the Project with the proceeds of bonds to be issued by the State of Ohio.

Section 2. That the maximum aggregate principal amount of bonds, other than for costs of issuance, expected to be issued by the State of Ohio for reimbursement to the City of Dayton is $1,095,000.00.

Section 3. That the Clerk of the Commission is hereby directed to file a copy of this Resolution with the City of Dayton Department of Public Works for the inspection and examination of all persons interested therein and to deliver a copy of this Resolution to the Ohio Public Works Commission.

Section 4. That this Commission finds and determines that all formal actions of the City of Dayton concerning and relating to the adoption of this Resolution were taken in an open meeting of this Commission and that all deliberations of this Commission and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 5. That for the reason stated in the preamble hereof, the Commission declares this Resolution to be an emergency measure which shall be effective immediately upon its adoption.

Adopted by the Commission.....August 31....., 2016

Signed by the Mayor.....August 31....., 2016

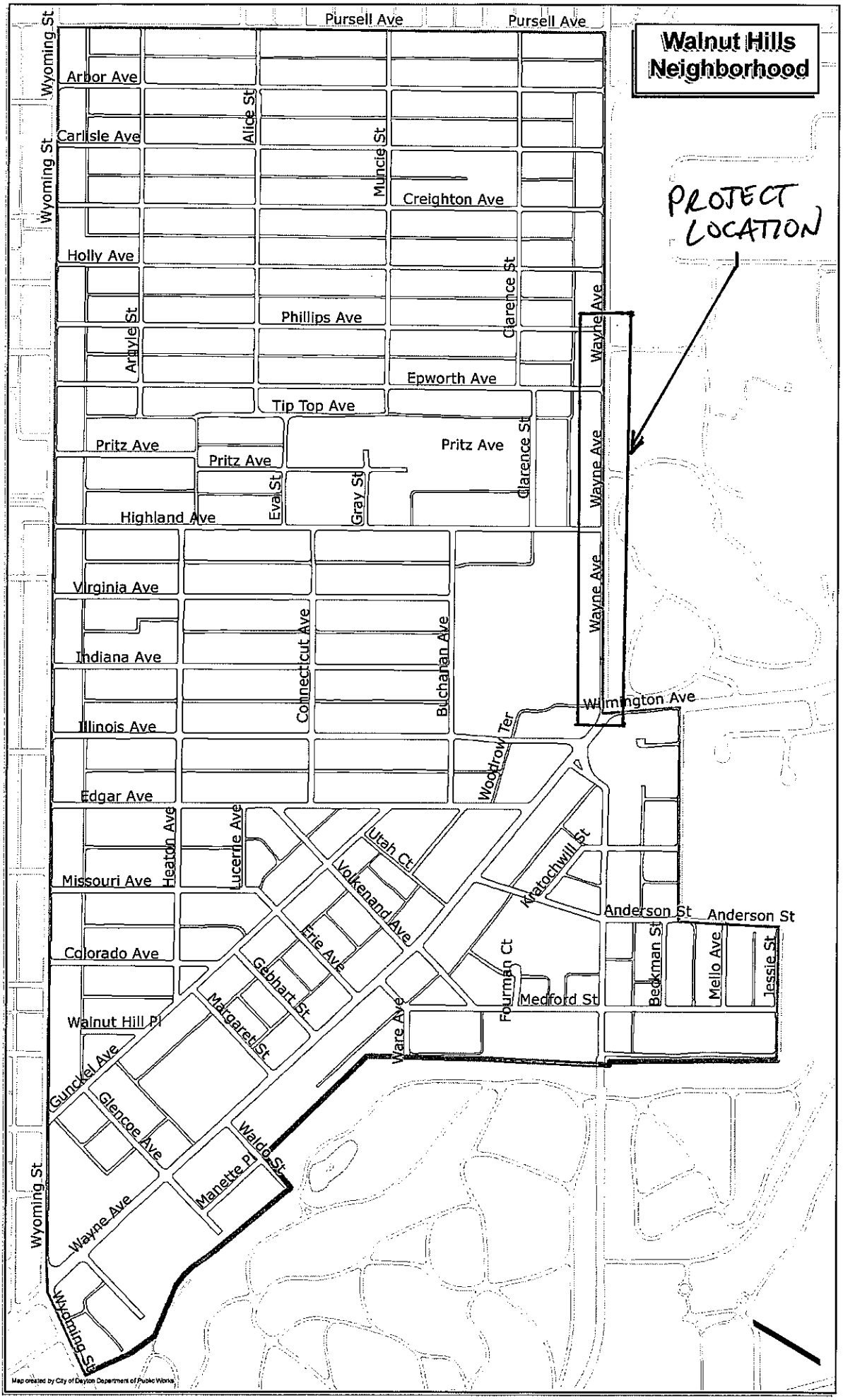
Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney


Walnut Hills Neighborhood
PROJECT LOCATION
Pursell Ave
Pursell Ave
Wyoming St
Wyoming St
Wyoming St
Wyoming St
Arbor Ave
Carlisle Ave
Alice St
Muncie St
Creighton Ave
Holly Ave
Clarence St
Wayne Ave
Phillips Ave
Argyle St
Epworth Ave
Tip Top Ave
Pritz Ave
Pritz Ave
Pritz Ave
Clarence St
Wayne Ave
Evai St
Gray St
Highland Ave
Wayne Ave
Virginia Ave
Connecticut Ave
Buchanan Ave
Indiana Ave
Wilmington Ave
Illinois Ave
Woodrow Ter
Edgar Ave
Heaton Ave
Lucerne Ave
Utah Ct
Volkenand Ave
Kratochwill St
Missouri Ave
Anderson St
Anderson St
Erie Ave
Colorado Ave
Gebhart St
Fourman Ct
Medford St
Beckman St
Mello Ave
Jessie St
Walnut Hill Pl
Margaret St
Ware Ave
Gunckel Ave
Glencoe Ave
Waldo St
Manette Pl
Wayne Ave
Wyoming St
Map created by City of Dayton Department of Public Works

MEMORANDUM

August 22, 2016

TO: Shelley Dickstein
City Manager

FROM: Stephen Finke, Deputy Director
Department of Public Works SJF

SUBJECT: Wayne Avenue Reconstruction
Resolution of Intent for Project Reimbursement

Attached are an original and a copy of a Resolution declaring the City's intention of seeking reimbursement from the Ohio Public Works Commission (OPWC) for costs incurred with the Wayne Avenue Reconstruction project. The Resolution is required since a portion of the City's award of funding is in the form of a loan. Please present this Resolution to the City Commission at its August 31, 2016 meeting as an emergency (two readings at one meeting). The Department of Law has reviewed and approved the document as to form.

A copy of Resolution No. 6126-15, which authorizes the City to execute documents related to this project, a copy of OPWC's award letter and request for legislation are attached.

If you have any questions, please contact me at 3839.

SJF/kgs

Attachments

Cc: Mr. Parlette
Ms. Clements

Finance

The Ohio Public Works Commission
65 East State Street, Suite 312, Columbus, Ohio 43215-4213

Commission Chair Michael Keenan Director Michael Miller
Commissioners Patrick Ginnetti G. Courtney Haning Thomas Hitchcock Randy Riley Tom Waniewski William Woodard

July 1, 2016

Shelley Dickstein
Interim City Manager
City of Dayton
101 West Third Street
Dayton, OH 45402-

Re: Project No. CD29T/CD30T

Dear Ms. Dickstein:

Your request for financial assistance has been approved for the project entitled Wayne Avenue Reconstruction in the amount of $1,095,000. The enclosed Project Agreement defines your responsibilities in accepting this financial assistance. Please adhere to the following:

- Review the document carefully to be sure you understand your responsibilities and to check that it accurately describes your project. If there are errors or information please contact us.
- Changes to officers may be noted in a transmittal letter.
- Do not separate the pages of the Agreement.
- Sign both copies of the Agreement and have your signature witnessed.
- Return one copy of the Agreement to us and retain one for your records.
- Use the above referenced project number in your correspondence with our office as it will help expedite our ability to respond.

Do not proceed with construction or purchase of materials until the following has been completed:

- Return one executed copy of the Agreement.
- Prepare and forward a Request to Proceed to our office once bidding is complete.
- Receive a Notice to Proceed from us.

The Project Manager named in the Agreement will receive a separate mailing pertaining to our program requirements detailed on our web site at http://www.pwc.state.oh.us/ including the Request to Proceed, contractual requirements for bid documents, and reporting of in-kind or force account contributions.

If you have questions, please contact your Program Representative, Donna Kirkbride, at 614/644-1942.

Respectfully,

Michael Miller
Director

cc: District Committee

OHIO PUBLIC WORKS FOR YOU

The Ohio Public Works Commission
65 East State Street, Suite 312, Columbus, Ohio 43215-4213

Commission Chair Michael Keenan Director Michael Miller

Commissioners Patrick Ginnetti G. Courtney Haning Thomas Hitchcock
Randy Riley Tom Waniewski William Woodard

CITY OF DAYTON
FINANCE DIRECTOR'S OFC
2016 JUL -6 PM 1:11

July 1, 2016

C. LaShea Smith
Finance Director
City of Dayton
101 West Third Street
Dayton, OH 45402-

Re: Project No. CD29T/CD30T

Dear Ms. Smith:

City of Dayton's request for financial assistance has been approved for the project entitled Wayne Avenue Reconstruction in the amount of $1,095,000. The project's Chief Executive Officer, Shelley Dickstein, has been mailed the Agreement for review, execution and return to our office. You may view the Agreement on our web site at http://www.pwc.state.oh.us/.

As the Chief Fiscal Officer designated in the Project Agreement, your role in carrying out the project is important. The following information is available on our web site on the Chief Financial Officers Page (Financial Tab) to assist you.

- Instructions for the completion of Appendix E describe how to complete the Appendix E (disbursement form) that is attached to the Agreement. This three-page form must always be signed by the three authorized authorities. If any of the authorities change we must be notified in writing. The disbursement process is also described in Section VI of the Project Agreement entitled "Disbursements". Your local share of this project will be the percentage of actual costs approved by the Commission based on the Participation Percentages as defined in Section I of the Agreement.

- Auditor of State Technical Bulletin 2002-04 explains the accounting methods to be used for Commission funded projects.

- W-9 and Vendor Information forms are only required for those vendors who have not done business with the State of Ohio, and if you'll be requesting us to pay your vendors directly.

- A sample "Payment Confirmation letter" which will be mailed to you for all disbursements made for this project. Letters are mailed monthly during the third week for the prior month's activity. Review your letters carefully and advise us of any errors or omissions. Please note that for grant/loan combinations there will be a letter for funds disbursed under the grant number and a separate letter for funds disbursed under the loan. Grant funds are typically drawn on first but exceptions apply, especially if the loan serves as a portion of or all of the required local match.

In addition to the above information on our web site we have enclosed various loan documents as follows: Loan Guidance, Instruction for Declaring Official Intent, Notification of Disbursement Method, and Sample Resolution. *Also enclosed is the Promissory Note which you must sign and return to the OPWC Loan Officer, Abbey DeHart.*

For projects administered by the Ohio Department of Transportation (ODOT) there is a separate disbursement relationship between the Commission and ODOT. Our office provides ODOT with the Project Agreement which ODOT uses as a "letter of credit" in place of the local subdivision's actual cash payment or "escrow deposit". If your subdivision has already deposited funds to an escrow account with ODOT, they will refund the amount of funds offset by the Commission to the local subdivision.

To facilitate timely payments for this project your vendors are encouraged to enroll in the Ohio Shared Services' EFT Program. This program can reduce processing time by 2-3 business days in that disbursements are completed electronically to your vendor's bank account. The vendor may apply for EFT through our web site's CFO Page (referenced above) which provides the link to Ohio Shared Services. Questions should be directed to them at 877/6[illegible]

We will not make a disbursement to any vendor unless we have received and authorized a Request to Proceed. We recommend that you meet with your Project Manager to discuss the Request to Proceed, disbursement process, and your responsibilities.

If you have questions, contact your Program Representative, Donna Kirkbride, at 614/644-1942. Please reference your project number when calling or writing to us in order to expedite service.

Respectfully,

Michael Miller
Director

Enclosures (5)

BACK

DRAFT

1st Reading 10.
3/5/11-16

BY..... NO.....

AN ORDINANCE

Amending Sections 37.06, 37.10, 115.30 and 115.60; Repealing Existing Sections 37.06, 115.30, 115.60, 115.301, 115.302 and 115.303 of the Revised Code of General Ordinances Relating to Transportation Network Companies; and Declaring an Emergency.

WHEREAS, Ohio House Bill 237, as codified in § 4925.09 of the Ohio Revised Code, determined that the regulation of transportation network companies, transportation network company drivers, and transportation network company services is a matter of general statewide interest that requires statewide regulation; and,

WHEREAS, R.C. § 4925.09 authorizes the operator of a public-use airport to adopt reasonable regulations applicable to transportation network companies providing services at the public use airport; and,

WHEREAS, The City Manager has determined that changes to the Revised Code of General Ordinances are necessary to modify the regulations regarding off-airport concerns, taxicabs and other transportation companies operating within the City of Dayton to reflect the changes in state law; and,

WHEREAS, For the immediate preservation of the public peace, property, health and safety and the usual daily operation of the various City departments, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore

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

Section 1. That existing Section 37.06 of the Revised Code of General Ordinances of the City of Dayton is hereby amended to read as follows:

Sec. 37.06. - Off-airport businesses; off-airport taxi services; passenger shuttle services; Transportation Network Companies.

(A) Fees and charges shall be imposed on certain off-airport business and operators using the airport. The Director of the Department of Aviation shall be authorized to establish operating agreements or permits with off-airport businesses and operators. Such agreements or permits shall establish, at a minimum, operating rules, regulations, and procedures to be followed when operating courtesy vehicles/service on the airport, insurance requirements and fees.

(B) A designated drop-off and pick-up area for passengers that arrive in a courtesy vehicle shall be established for off-airport businesses to the charges set forth in § 37.07.

(C) Off-airport taxi services. No off-airport taxi services, other than those services which have a nonexclusive or exclusive operating agreement or permit with the city, shall be permitted to loiter or pick-up passengers at the airport, unless the pick-up or drop-off has been prearranged by the passenger and taxi service operator. For purposes of this division,

"off-airport taxi services" shall include limousine services or any other service that is used to transport people for hire and not specifically identified elsewhere.

(D) Passenger shuttle services. No passenger shuttle services, other than those which have a nonexclusive or exclusive operating agreement or permit with the city, shall be permitted to loiter or pick-up passengers at the airport. For purposes of this division, "passenger shuttle services" shall be buses and vans designed and used to transport fewer than nine passengers and operating between the airport and any commercial establishment or private residence within or without the city, and excluding any authorized vehicles or courtesy vehicles. The Director of the Department of Aviation shall be authorized to establish operating agreements or permits with passenger shuttle service operators. Such agreements or permits shall establish, at a minimum, operating rules, regulations, and procedures to be followed when operating passenger shuttle service vehicles on the airport, insurance requirements and the maximum fees to be charged for such services.

(E) No Transportation Network Company or Transportation Network Company driver, other than those who have a non-exclusive or exclusive Transportation Network Company Operating Permit with the City shall be permitted to loiter, pick-up or drop-off passengers at the airport.

Section 2. That existing Section 37.10 of the Revised Code of General Ordinances of the City of Dayton is amended to add the following definition:

Transportation Network Companies. Any corporation, partnership, association, limited liability company, proprietorship, or any other entity lawfully operating pursuant to Ohio Revised Code Chapter 4935 that uses a digital network to connect transportation network company riders to transportation network company drivers who provide transportation network company services.

Section 3. That Section 115.30 of the Revised Code of General Ordinances of the City of Dayton is hereby amended to read as follows:

(A) "Taxicab" shall mean a vehicle operated for compensation, including donations, which receives passengers at a place within the city, to be driven to a destination either within or without the city, over any streets which may be available for such travel. The place at which such passengers are received may be:

(1) A fixed base from which the taxicab operates;

(2) A place designated by a telephone call or other communication received at the base from which such taxicab operates;

(3) A taxicab stand;

(4) A place previously arranged with the passenger; or

(5) Any place when hailed while en route.

Drivers of or for any Transportation Network Company that has not paid the Annual Privilege Fee shall be considered taxicabs. Drivers of or for any Transportation Network Company that fail to display a City-issued registration tag while in service shall be considered taxicabs.

(B) "Transportation Network Company" shall mean a company, including participating drivers, that uses an online-enabled platform to connect passengers with

drivers, whether the service is referred to as ride-sharing, ride-booking, for-hire car service, or some other term.

(C) "In Service" shall mean the driver of a Transportation Network Company is available to respond to a request and/or responding to a request for transport from an online-enabled platform.

Section 4. That Section 115.60 of the Revised Code of General Ordinances of the City of Dayton is hereby amended to read as follows:

The provisions in §§ 115.30 through 115.598, of this Code, are enacted by the City Commission of the City of Dayton solely and exclusively for the purpose of regulating taxicab operators, taxicab independent operator and/or drivers, while engaged in the business of operating taxicabs or other vehicles in and upon the public streets and highways of the City of Dayton, and nothing therein shall be interpreted or construed so as to give any right or cause of action against the city, its officials, officers, agents, employees, and representatives regarding the enforcement, non-enforcement, or any action or actions as a result thereof.

Section 5. That existing Sections 37.06, 115.30, 115.60, 115.301, 115.302 and 115.303 of the Revised Code of General Ordinances of the City of Dayton are hereby repealed.

Section 6. That 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....., 2016

SIGNED BY THE MAYOR....., 2016

_____
Mayor of the City of Dayton, Ohio

ATTEST:

_____
Clerk of Commission

APPROVED AS TO FORM:

_____
City Attorney

MEMORANDUM

August 23, 2016

TO: Shelley Dickstein
City Manager

FROM: Terrence G. Slaybaugh
Director of Aviation

SUBJECT: Airport Ordinance – Addition of Transportation Network Companies (TNC) Operating Permit

Transportation Network Companies (TNC's), such as Uber, are now regulated to operate in the state of Ohio per House Bill 237 effective March 23, 2016, which is codified as Ohio Revised Code § 4925.09. Section 4925.09(2) provides the authority for airports in the state of Ohio to determine individual policies for operation of TNC's at their respective airports.

We are recommending that Section 37 – Department of Aviation of the City of Dayton Revised Code of General Ordinances be updated with the following language:

Section 37.06 - Add the name "Transportation Network Companies (TNC)" to the title
Section 37.06 – Add the following:
"(E) No TNC or TNC driver, other than those who have a non-exclusive or exclusive Transportation Network Company Operating Permit with the City shall be permitted to loiter, pick-up or drop-off passengers at the airport"
Section 37.10 – Add the following definition:
"Transportation Network Companies (TNC) includes a corporation, partnership, association, limited liability company, proprietorship, or any other entity lawfully operating pursuant to Ohio Revised Code Chapter 4935 that uses a digital network to connect transportation network company riders to transportation network company drivers who provide transportation network company services."

House Bill 237 specifically pre-empts local legislation regarding transportation network companies. We are recommending that the following sections of the Revised Code of General Ordinance of the City of Dayton be removed to reconcile the Revised Code of General Ordinances with the current state law:

Section 115.30 (A) – Delete last sentence referencing "Transportation Network Company"
Section 115.30 (B) – Add the sentence:
"Transportation Network Companies are regulated by the State of Ohio, and codified as Ohio Revised Code § 4925.09."
Section 115.30 (C) – Delete
Section 115.301 through Section 115.303 – Delete
Section 115.60 – Delete language "and transportation network companies and their drivers".

If you have any questions or need additional information, please contact me at 454-8212.

TGS/ses

cc: T. Clements
Mr. Turner
Ms. Spees

BACK

By Mr. Mims

No. 926-16

AN INFORMAL RESOLUTION

Recognizing The Human Race Theatre Company on Its Thirtieth Anniversary
and Designating It as Dayton's Official Professional Theatre Company

WHEREAS, The Human Race Theatre Company was formed in 1986 in Dayton, Ohio as a locally based professional theatre company, dedicated to producing a high-quality theatre experience in Dayton using Actors' Equity Association actors (local, regional and national artists); and

WHEREAS, In its history, The Human Race Theatre Company has offered hundreds of locally produced professional theatre performances, has become recognized nationally as an incubator of new works, and has opened the world of professional theatre to thousands of audience members from throughout the Greater Dayton region; and

WHEREAS, The Human Race Theatre Company was the first theatre company to be recognized with the Governor's Award for Arts Administration in 2010 and two of its Resident Artists, Michael Lippert and Joe Deer, have each received the Governor's Award for Arts Education; and

WHEREAS, The Human Race Theatre Company since 2010 has performed curriculum-based programs for over 45,000 school-age children, has employed over 1,100 artists-70 percent of whom are Ohioans, and has had more than 150,000 people attend performances; and

WHEREAS, The Human Races Theatre Company's 2016-2017 30th Anniversary Season will include productions of *Sweeney Todd: The Demon Barber of Fleet Street, Hail Mary!, On Golden Pond*, the world premiere of *26 Pebbles*, a drama based on the 2012 Sandy Hook killings, and *Family Ties*, a new comedy based on the popular 80's television sitcom; and

WHEREAS, The Human Race Theatre Company's first 30 years is only the precursor of continued growth, development, involvement in Dayton and the region, and service as an educational resource for the community; now therefore,

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

SECTION 1: That The Human Race Theatre Company is recognized for it 30-year commitment to bringing professional theatre to Dayton.

SECTION 2. That the Dayton City Commission designates the Human Race Theatre Company as "Dayton's Official Professional Theatre Company".

ADOPTED BY THE COMMISSION August 31, 2016

SIGNED BY THE MAYOR August 31, 2016

Nan Whaley

MAYOR, CITY OF DAYTON, OHIO

ATTEST:

Rachelle Lavender

Clerk of Commission

APPROVED AS TO FORM:

Lynn R. Tomalis

City Attorney

BACK

By Ms. Whaley No. 31512-16

AN ORDINANCE

Petitioning the County Commissioners of Montgomery County, Ohio, for Annexation of Six Tracts of Land to the City of Dayton, Consisting of Real Property Owned by the City of Dayton and Contiguous to and Necessary to the Continued Operation of the Dayton International Airport, and Declaring an Emergency.

WHEREAS, The City of Dayton (the "City") has an interest in annexing certain tracts of land that it owns into the City; and

WHEREAS, The City currently owns approximately 409.972 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-1 and depicted on the annexation plat attached hereto as Exhibit B-1, both of which are incorporated herein by reference ("Property A"); and

WHEREAS, The City also currently owns approximately 9.719 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-2 and depicted on the annexation plat attached hereto as Exhibit B-2, both of which are incorporated herein by reference ("Property B"); and

WHEREAS, The City also currently owns approximately 7.165 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-3 and depicted on the annexation plat attached hereto as Exhibit B-3, both of which are incorporated herein by reference ("Property C"); and

WHEREAS, The City also currently owns approximately 6.888 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-4 and depicted on the annexation plat attached hereto as Exhibit B-4, both of which are incorporated herein by reference ("Property D"); and

WHEREAS, The City also currently owns approximately 5.711 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-5 and depicted on the annexation plat attached hereto as Exhibit B-5, both of which are incorporated herein by reference ("Property E"); and

WHEREAS, The City also currently owns approximately 33.531 acres of property, consisting of land that has previously been purchased using Federal Aviation Administration funds and that is necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport, which property is located in Butler Township, said property described in the legal description attached hereto as Exhibit A-6 and depicted on the annexation plat attached hereto as Exhibit B-6, both of which are incorporated herein by reference ("Property F") (Property A, Property B, Property C, Property D, Property E, and Property F are hereinafter collectively referred to as "the Property"); and

WHEREAS, The City desires to annex the Property to ensure continued operation of, and uniform maintenance and municipal services to, the Dayton International Airport; and

WHEREAS, Annexation of the Property is authorized by Ohio Revised Code section 709.19(F) as territory contiguous to the City of Dayton that is "necessary to the continued operation of the international airport"; and

WHEREAS, Annexation of the Property pursuant to Ohio Revised Code sections 709.19(F) and 709.16, the municipally-owned territory annexation procedure, must be initiated by "an ordinance authorizing the annexation to be made and directing the…city director of law of the municipal corporation, or someone to be named in the ordinance, to prosecute the proceedings necessary to effect it," and the subsequent filing of a "petition setting forth that, under an ordinance of the legislative authority of the municipal corporation, the territory described in the petition was authorized to be annexed to the municipal corporation," pursuant to Ohio Revised Code sections 709.14 through 709.16; and

WHEREAS, The proposed Annexation Petitions to be filed with the Board of Commissioners of Montgomery County are attached hereto as Exhibit C-1 through C-6 inclusive; now, therefore,

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

Section 1. That the City Commission considers annexation of the Property to be necessary to the continued operation of the international airport commonly referred to as the Dayton International Airport and hereby authorizes annexation of the

Property, as described in Exhibits A-1 through A-6 inclusive and depicted in Exhibits B-1 through B-6 inclusive, to be made by the City of Dayton.

Section 2. That the City Law Director's office is hereby directed to petition the Montgomery County Board of Commissioners for annexation of the Property, the form of such petition to be substantially similar to the Annexation Petitions attached hereto as Exhibits C-1 through C-6, and to prosecute the proceedings necessary to effectuate the proposed annexation.

Section 3. That this Commission further hereby authorizes and directs the Mayor, the City Manager, the Director of Law, the Director of Finance, the Clerk of the Commission, or other appropriate officers of the City to take any other actions as may be appropriate to implement this Ordinance.

Section 4. That this Ordinance is declared an emergency for the "immediate preservation of the public peace, property, health or safety" in the City of Dayton as the annexation of the Property is necessary to the continued operation of the international airport and shall take effect immediately in accordance with Section 42 of the City of Dayton Charter.

Passed by the Commission.....August 31....., 2016

Signed by the Mayor.....August 31....., 2016

Nan Whaley

Mayor of the City of Dayton, Ohio

Attest:

Rashella Lawendon

Clerk of the Commission

Approved as to form:

Lynn R. Thomalsson for

City Attorney