

ORDINANCE NO. 7063

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ACQUIRE THE NECESSARY EASEMENTS FOR THE RIVERVIEW AVENUE ROADWAY IMPROVEMENT PROJECT BETWEEN LINDEN AVENUE AND LOWER MIAMISBURG ROAD AND DECLARING AN EMERGENCY.

WHEREAS, the Riverview Avenue Roadway Improvement Project is needed for the safety of the traveling public as soon as it can possibly be implemented, and

WHEREAS, it is necessary to acquire said easements as soon as possible so that construction can take place in its entirety.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to acquire the necessary easements as identified in Exhibit "A" for the Riverview Avenue Roadway Improvement Project, at a cost not to exceed sixty-two thousand dollars (\$62,000)

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the easements are needed as soon as possible to remain on schedule for the upcoming construction season, therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Mayor Michelle L. Collins  
Michelle L. Collins, Mayor

**EASEMENTS  
EXHIBIT "A"**

**RIVERVIEW AVENUE ROADWAY  
IMPROVEMENT PROJECT**

**02/01/2024**

PARCEL	OWNER	ADDRESS	AUDITOR'S PARCEL	OWNER'S RECORD	AREA
3-SH 3-U	EDWARD S. LEMANSKI AND JO ANN LEMANSKI	583 S. RIVERVIEW AVE	K46 00341 0013	DMF 94-164C12	0.016 0.040
5-SH	ELLEN HOLLON	575 S. RIVERVIEW AVE	K46 00341 0085	DMF 99-092D10	0.008
6-SH	ROBERTA B. CRANK	563 S. RIVERVIEW AVE	K46 00341 0011	IR DEED02-115040	0.007
8-SH	KODI MCDANIEL	557 S. RIVERVIEW AVE	K46 00341 0010	IR DEED17-037384	0.008
9-SH	JUAN C. PARTRIDGE AND PAMELA K. PARTRIDGE	551 S. RIVERVIEW AVE	K46 00341 0013	IR DEED18-007136	0.008
10-SH	MELISSA A. SMITH	545 S. RIVERVIEW AVE	K46 00341 0008	IR DEED21-048229	0.007
12-SH	DAVID L. HAMBY	539 S. RIVERVIEW AVE	K46 00341 0007	DMF 00-0534A06	0.008
13-SH	PHILLIP E. BERRY AND ORITA S. BERRY	535 S. RIVERVIEW AVE	K46 00341 0006	IR DEED02-162143	0.005
14-SH	LINDA BRYANT	529 S. RIVERVIEW AVE	K46 00341 0005	DMF 99-0815D12	0.007
15-SH 15-CH	DERRICK BACH	522 S. RIVERVIEW AVE	K46 00341 0032	IR DEED13-009116	0.004 0.013
16-SH	ROBIN MOYER	515 S. RIVERVIEW AVE	K46 00341 0004;0003;0002	IR DEED07-027710	0.037
17-SH 17-CH	JENNY L. BROWN	514 S. RIVERVIEW AVE	K46 00341 0033	IR DEED05-030727	0.034 0.026
19-SH	SUZANNE E. WILLIAMS AND VERNON TROY DEUTH	507 S. RIVERVIEW AVE	K46 00341 0058	IR DEED20-071693	0.011
20-SH	SCOTT L. ASTOR	431 S. RIVERVIEW AVE	K46 00340 0016	IR DEED07-079543	0.008
22-SH	GLENN W. LAYMAN AND VEONA LAYMAN	404 S. RIVERVIEW AVE	K46 00340 0018	DMF 89-0541A01	0.023
44-SH	RANDY DOUGLAS PREWITT	234 S. RIVERVIEW AVE	K46 00328 0031	IR DEED04-087792	0.022
45-U	LIFEPOINT COMMUNITY CHURCH	215 S. RIVERVIEW AVE	K46 00328 0033	IR DEED15-056762	0.001
46-SH	WILLIAM M. RISON	228 S. RIVERVIEW AVE	K46 00328 0030	DMF 94-0247D04	0.015
47-SH	CLARK L. CAMPBELL	220 S. RIVERVIEW AVE	K46 00328 0029	IR DEED18-030349	0.016
48-SH	TINA M. COMBS	210 S. RIVERVIEW AVE	K46 00328 0028	IR DEED12-016901	0.013
49-SH	JEFFREY A THATCHER AND SHERI THATCHER	205 S. RIVERVIEW AVE	K46 00328 0026	IR DEED07-042740	0.002
50-SH 50-CH	DYLAN R. GOERTE MILLER	204 S. RIVERVIEW AVE	K46 00328 0027	IR DEED15-048069	0.017 0.026
51-SH	JERRY HUTSELL	150 S. RIVERVIEW AVE	K46 00328 0023	IR DEED02-075920	0.082
52-SH1 52-SH2	MATTHEW W. UELLEN AND FREDESWINDA RAMOS	151 S. RIVERVIEW AVE	K46 00328 0024	DMF 99-419C12	0.005 0.002
54-SH	DANA L. BROCKMAN	110 S. RIVERVIEW AVE	K46 00328 0060	IR DEED09-076687	0.022
55-SH	WENDY NAPIER	129 S. RIVERVIEW AVE	K46 00723 0004	IR DEED19-026428	0.003

SH = STANDARD HIGHWAY EASEMENT  
U = UTILITY EASEMENT  
CH = CHANNEL EASEMENT

ORDINANCE NO. 7064

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROJECT SUPPORT AGREEMENT WITH THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT (TID) FOR THE TID TO ACT AS THE LOCAL PUBLIC AGENCY ON BEHALF OF THE CITY AND THE MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT (JEDD) FOR AN OHIO DEPARTMENT OF TRANSPORTATION (ODOT) PROJECT FURTHER DESCRIBED AS PID #108619 LOCATED AT THE I-75 EXIT 44 INTERCHANGE AND DECLARING AN EMERGENCY.

WHEREAS, the City and JEDD desire to use Surface Transportation Program funds obtained by the TID from the Miami Valley Regional Planning Commission to install sidewalk, pedestrian lighting, and retaining wall improvements at the I-75 Exit 44 interchange, known as ODOT PID #108619, in the City of Miamisburg; and

WHEREAS, for the project to move forward, ODOT obligates the TID to be the Local Public Agency (LPA) for the project; and

WHEREAS, for the TID to serve as the LPA, the City and JEDD are obligated to enter into a Project Support Agreement outlining the conditions related thereto; and

WHEREAS, because the JEDD is also a funding source for the project, the TID requires the City of Miamisburg and the JEDD to jointly enter into the Project Support Agreement; and

WHEREAS, it is necessary to immediately enter into this Project Support Agreement to ensure the project moves forward on schedule.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a Project Support Agreement with the TID related to the proposed improvements at the I-75 Exit 44 interchange known as PID #108619. The Project Support Agreement shall be substantially similar to the terms and conditions in the draft agreement included herein as Exhibit A.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare to allow the commencement of the proposed project in accordance with the project schedule as dictated by ODOT. Therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

EXHIBIT A

I-75/SR-725 Pedestrian Improvements Project Support Agreement

## **I-75/SR-725 PEDESTRIAN IMPROVEMENTS PROJECT SUPPORT AGREEMENT**

**THIS I-75/SR-725 PEDESTRIAN IMPROVEMENTS PROJECT SUPPORT AGREEMENT** (this “**Agreement**”) is made and entered into as of the **8TH** day of **JANUARY**, 2024 (the “**Effective Date**”), by and between the **CITY OF MIAMISBURG, OHIO**, an Ohio municipal corporation (the “**City**”), the **MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT**, an Ohio body corporate and politic (the “**JEDD**”), and the **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT**, a transportation district and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “**TID**”) (the City, the JEDD, and the TID are sometimes referred to herein individually as “**Party**” and collectively as “**Parties**”), under the following circumstances:

- A. The City and the JEDD (together the “**Local Jurisdictions**”) desire to induce the Ohio Department of Transportation (“**ODOT**”) to add to ODOT PID 108619 the installation of certain sidewalk and related pedestrian lighting and retaining wall improvements (the “**Project**”);
- B. The TID has obtained a grant to support the Project in the amount of up to \$2,116,000 from the Miami Valley Regional Planning Commission (MVRPC) in connection with its Surface Transportation Program;
- C. In order for ODOT to proceed with the Project, the TID will be required to act as the Local Public Agency (LPA) as set forth in the Preliminary Legislation attached hereto as **Exhibit A** (the “**ODOT Legislation**”); and
- D. The TID is willing to act as the LPA, provided the Local Jurisdictions provide the protections to the TID as set forth in this Agreement.

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

1. **The Project.** Provided the Local Jurisdictions comply with their obligations in this Agreement, the TID will serve as the LPA for the Project as set forth in the ODOT Legislation. It is the intention of the Parties that the TID act as a pass-through for the Local Jurisdictions related to the Project, and that the TID will have no direct monetary obligation to ODOT or otherwise in connection with the Project. As such, the Local Jurisdictions agree that they will be fully responsible for any payments required to be made by the TID in connection with the Project and/or under the ODOT Legislation, as fully as through the Local Jurisdictions were original parties thereto, including without limitation any local match requirement (the “**Project Payment Obligations**”); provided, however, that each of the Local Jurisdictions will be responsible for 50% of the Project Payment Obligations. The TID will invoice the Local Jurisdictions for Project Payment Obligations from time to time. The Local Jurisdictions will pay each invoice upon receipt. The TID will not approve any voluntary change order related to the Project without the consent of the Local Jurisdictions.

2. **Maintenance Obligations.** Upon completion of the Project, and unless otherwise agreed by ODOT, the City shall: (a) provide adequate maintenance for the sidewalk and related pedestrian lighting and retaining walls in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; and (b) provide ample financial provisions, as necessary, for the maintenance of the sidewalk and related pedestrian lighting and retaining walls.

3. **TID Fees and Expenses.** The Local Jurisdictions agree to pay the TID a fee of \$25,000 as compensation for the TID's activities under this Agreement. Each Local Jurisdiction will pay 50% of the fee within thirty (30) days following the Effective Date. In addition, each of the Local Jurisdictions will be responsible for 50% of the TID's out-of-pocket expenses related to the preparation and negotiation of this Agreement, not to exceed \$5,000 in the aggregate.

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

5. **Local Jurisdiction Cooperation.** The Local Jurisdictions will throughout the performance of this Agreement perform the activities provided for in this Agreement, cooperate and coordinate with and assist the TID, join with the TID in signing and granting any applications or permits or other documents necessary to complete the Project. Each Local Jurisdiction will perform its responsibilities, obligations, and services, including its reviews and approvals of the TID's submissions and recommendations, in a timely manner so as not to delay or interfere with the TID's performance of its obligations under this Agreement.

6. **Disclaimer of Warranties/Limitation of Liability.** **THE LOCAL JURISDICTIONS AGREE THAT THE TID DOES NOT GUARANTEE OR WARRANT THE SERVICES PROVIDED BY THE TID HEREUNDER OR THE COMPLETION OF THE PROJECT. ALL TID SERVICES ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE TID DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN NO EVENT WILL THE TID BE LIABLE OR RESPONSIBLE TO ANY LOCAL JURISDICTION FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. EXCEPT TO THE EXTENT OF INSURANCE PROCEEDS ACTUALLY RECEIVED, IF ANY, IN NO EVENT WILL THE TID'S TOTAL LIABILITY HEREUNDER EXCEED THE FEES (NOT INCLUDING ANY FEES PAID TO THE TID TO REIMBURSE THE TID FOR EXPENSES INCURRED BY THE TID) ACTUALLY COLLECTED BY THE TID FROM THE LOCAL JURISDICTIONS HEREUNDER.**

7. **Fiscal Officer Certification.** The Fiscal Officer of each Local Jurisdiction hereby certifies that the monies required to meet the obligations of the Local Jurisdiction during the current fiscal year under this Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Local Jurisdiction or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of each Local Jurisdiction covenants that any requirement herein of an expenditure of its Local Jurisdiction monies in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. The certifications in this Section 7 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

8. **Miscellaneous.** This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties. All covenants, obligations and agreements of the Parties

contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of any of the Parties other than in their official capacity, will be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein. The waiver, by any Party hereof of any breach of any provision of this Agreement will not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

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



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

**CITY OF MIAMISBURG, OHIO**

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

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

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

**MIAMI CROSSING JOINT ECONOMIC  
DEVELOPMENT DISTRICT**

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

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

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

**MONTGOMERY COUNTY  
TRANSPORTATION IMPROVEMENT  
DISTRICT**

By:   
Vanessa A. Glotfelter, Executive Director

**CITY OF MIAMISBURG, OHIO FISCAL  
OFFICER (Section 7 only)**

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

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

**MIAMI CROSSING JOINT ECONOMIC  
DEVELOPMENT DISTRICT FISCAL  
OFFICER (Section 7 only)**

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

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

ORDINANCE NO. 7065

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO THE PHASE II ADDENDUM TO THE 2023 MIAMISBURG PROJECTS MANAGEMENT AND FINANCING AGREEMENT WITH THE MONTGOMERY COUNTY TRANSPORTATION DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to finance and construct improvements known as the Sycamore Trails Improvement Project; and

WHEREAS, the City has utilized the Montgomery County Transportation Improvement District, and the Project Management and Financing Agreement successfully on various projects since 2017; and

WHEREAS, the City desires to engage the TID to manage and construct improvements within the park under the terms of the PMFA; and

WHEREAS, the City desires to proceed with Phase II of the project as described in the Agreement or subsequent amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The PMFA Phase II Addendum is hereby determined to be necessary for the Sycamore Trails Improvement Project

Section 2.

The City Manager is hereby authorized to make changes to finalize the draft agreement included with this ordinance, in agreement with the Transportation Improvement District, as needed, so long as modifications do not substantially alter the intent, responsibilities of either party, or financial liability for the City.

Section 3.

The City Manager is hereby authorized to execute the Project Management and Financing Agreement and addendum for Phase II of the Sycamore Trails Improvement Project.

Section 4.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Mayor Michelle L. Collins  
Michelle L. Collins, Mayor

## “Exhibit A”

### PHASE II ADDENDUM – SYCAMORE TRAILS PROJECT

THIS PHASE II ADDENDUM – SYCAMORE TRAILS PROJECT (this “**Addendum**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between the CITY OF MIAMISBURG, OHIO (the “**City**”), and the MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation district and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “**TID**”) (the City and the TID are sometimes referred to herein individually as “**Party**” and collectively as “**Parties**”), under the following circumstances:

- A. On or about October 16, 2023, the Parties entered into that certain Sycamore Trails Project Management and Financing Agreement (the “**PMFA**”);
- B. The Parties now desire to proceed to Phase II as contemplated by Section 7 of the PMFA; and
- C. The City and the TID, acting pursuant to Resolution No. 2024-\_\_\_\_ adopted by its Board of Trustees on \_\_\_\_\_, 2024, have each authorized the execution of this Addendum.

NOW THEREFORE, the Parties agree as follows:

#### 1. **Phase II of the Project.**

- A. Generally. The Parties hereby agree to proceed to Phase II of the Project, and the City hereby engages the TID to manage and contract for the construction of the Project. This Addendum is the “Phase II Addendum” for purposes of Section 7 of the PMFA.
- B. Scope. The scope of Phase II is attached hereto as Exhibit A (the “**Phase II Scope**”). The City will ensure that the TID is timely provided all design and engineering documents necessary to complete Phase II in accordance with the Phase II Scope.
- C. Budget. The budget for Phase II is attached hereto as Exhibit B (the “**Phase II Budget**”).
- D. Schedule. The schedule for Phase II is attached hereto as Exhibit C (the “**Phase II Schedule**”). The Parties may modify the Phase II Schedule by the mutually written agreement of the Executive Director of the TID and the City Manager. The Parties agree to use their reasonable commercial efforts to adhere to the Phase II Schedule.

#### 2. **Funding for Phase II of the Project.**

- A. As a general matter, the City is obligated to fund the amounts designated as the City’s responsibility in the Phase II Budget, whether via borrowing or an alternative source of funds (the “**City Phase II Payment Obligations**”). Notwithstanding anything to the contrary, the TID will not be obligated to provide for any products or services related to the Project in excess of the funds actually received by the TID from the City, less the TID Management Fees.
- B. The City will fulfill its payment obligations hereunder and as set forth in the Phase II Budget by timely depositing the amounts of such obligations with the TID (the “**Deposit**”).

The TID will deposit the Deposit in a segregated fund for the benefit of the Project (the “**Deposit Fund**”) and the TID will use the Deposit Fund solely to accomplish the Project. Within forty-five (45) days after Construction Completion, the TID will deliver the balance of the Deposit Fund, if any, to the City.

- C. As contemplated in the PMFA, in addition to the City Phase II Payment Obligations, the City hereby agrees to pay the TID an amount equal to four percent (4%) of the City Phase II Payment Obligations, upon receipt of the TID’s invoice therefor following the letting of any Contract (as defined in Section 3.A. below) by the TID for Phase II.

### 3. **Specific Phase II Provisions.**

- A. *Contracting.* The TID will enter into contracts or otherwise arrange for the provision of all products and services necessary to complete Phase II in accordance with the TID’s policies with regards to procurement (collectively, the “**Contracts**”). The costs and expenses related to such Contracts, including without limitation the cost of the insurance required pursuant to Section 3.H. below, will be referred to as the “**Phase II Costs**”. The TID will provide a copy of each written Contract to the City upon request.
- B. *Work under the Contracts.* During construction, the TID will inspect and determine, in its sole discretion, whether the work done under the Contracts is sufficient and completed in accordance with the Contracts.
- C. *Performance Bonds and Contractor Insurance Requirements.* The TID will require any contractors submitting a quote to supply a bond and the selected contractor to provide a performance bond and a separate payment bond (or other alternatives acceptable to the TID) in the full amount of the construction cost estimate. The Parties will both be named as obligees on the bonds. The TID will also require that the selected contractor have and maintain a commercial and general liability insurance policy with minimum coverage amounts of at least \$2,000,000 per occurrence with a deductible of not more than \$10,000. The TID will also require that each selected contractor and each subcontractor maintain during the life of its contract and subcontract, workers compensation insurance pursuant to Ohio law, public liability insurance with minimum coverage amounts of \$2,000,000 per occurrence, and property damage insurance with minimum coverage amounts of \$2,000,000 per occurrence. The TID may impose additional insurance obligations upon the contractor in the TID’s discretion or at the request of the City. All such policies will name the Parties as additional insureds via broad form endorsement on a primary and non-contributory basis and will be issued by carriers with a *Best’s Insurance Reports* policyholder’s rating, to the extent commercially reasonable, of “A” (but in any event, not less than “A-”) and a financial size category of “X” or better. All policies will contain provisions for thirty (30) days’ written notice to the TID and the City prior to expiration or cancellation.
- D. *Project Supervision.* All activities related to Phase II will be performed under the general supervision and direction of the TID. The TID will provide or provide for inspection and monitoring activities sufficient to ensure compliance with the Phase II Scope and any Contracts.
- E. *Contract Administration.* The TID will administer all Contracts including monitoring the performance of all parties under the Contracts. The TID will work to resolve any disputes, complaints or claims related to the Contracts. The TID shall administer all change orders

under any of the Contracts. The TID must obtain the consent of the City for any change order that causes the contingency line item in the budget to be exceeded. The TID will maintain all required documentation for the Contracts including all change orders.

- F. *Payments.* The TID will pay all third-party invoices for services performed or goods supplied for Phase II so long as the services performed or goods provided pursuant to such invoice are satisfactory and such invoices are within the budget. The TID will keep the City apprised of the progress of the Project as compared to the budget at the Progress Meetings and will provide the City such supporting information as the City reasonably requests on a timely basis.
  - G. *Construction Completion.* The TID will, with the City, conduct a final inspection of the construction of the Project when the contractor indicates that the construction has been substantially completed. The TID and the City will determine the need for any corrective or additional work and create a punch list detailing the additional work. The TID will provide the punch list to the contractor (and any applicable subcontractors) in writing along with a specified time frame or specified date for completion of the prescribed work. Upon final completion of construction of the Project, the TID will arrange for obtaining all necessary approvals/consents from any regulatory bodies (the “Consents”). Upon completion of the punch list and obtaining the Consents, the construction of the Project will be completed (“Construction Completion”). Within thirty (30) days after Construction Completion, the TID will sign any documents necessary to assign to the City and/or its designee all transferable warranties (if any) relating to services, materials or equipment incorporated into the Project, including without limitation any warranties under the Contracts.
  - H. *Insurance.* The TID will obtain and maintain comprehensive general accident and public liability insurance with coverage limits in the minimum amounts as to death or bodily injury and as to property damage with respect to the Project and its construction in amounts the TID determines from time to time. Each insurance policy obtained and maintained by the TID hereunder will name the City as an additional insured. The TID will provide the City, upon request, certificates of insurance or other evidence reasonably satisfactory to the City that the insurance required hereunder has been obtained and in full force and effect. The cost of such insurance related to the Project will be a Phase II Cost.
- 4. **Powers.** Pursuant to Section 715.02 of the Ohio Revised Code, the City hereby grants the TID the right to exercise the City’s powers in connection with the TID’s activities in support of Phase II of the Project; provided, however, the TID shall only exercise such powers as are necessary to accomplish the specific objectives of the PMFA as modified hereby.
  - 5. **Fiscal Officer Certifications.** The Fiscal Officer of the City hereby certifies that the monies required to meet the obligations of the City during the current fiscal year under this Addendum are in the process of collection and upon collection will be credited to the appropriate fund, free from any previous encumbrance. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of the City covenants that any requirement herein of an expenditure of City monies in any future fiscal year will be included, as a fixed charge, in the annual appropriation measure which is submitted for approval for that future fiscal year. The certifications in Section 5 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.
  - 6. **City Obligations.** The City will throughout the performance of this Addendum perform the activities provided for in this Addendum, cooperate and coordinate with and assist the TID in order

to complete Phase II, join with the TID in signing any applications or other documents necessary to complete Phase II. The City will perform its responsibilities, obligations, and services, including its reviews and approvals of the TID's submissions and recommendations, in a timely manner so as not to delay or interfere with the TID's performance of its obligations under this Addendum or to have a negative impact on the Phase II Schedule. The City will be responsible for timely making all necessary approvals for the activities under this Addendum.

7. **TID Payment Obligations.** Notwithstanding any provision of this Addendum, it is understood and agreed that the TID will have no pecuniary obligations under the PMFA as amended by this Addendum or any related agreement and no obligation of the TID hereunder or thereunder will constitute a general debt or a pledge of the general credit of the TID.
8. **Miscellaneous.** Terms used but not otherwise defined herein will have the meanings set forth in the PMFA. Except as set forth in this Addendum, the PMFA remains in full force and effect and is hereby ratified in its entirety. In the event of a conflict between the terms of this Addendum and the terms of the PMFA, the applicable terms of this Addendum will govern and control. This Addendum will be construed under the laws of the State of Ohio. This Addendum may be executed in any number of counterparts, each of which will be deemed an original and together will constitute a single instrument. Delivery of an executed counterpart of a signature page to this Addendum by facsimile, email or other electronic means is effective as delivery of a manually executed counterpart of this Addendum. The headings of the clauses contained herein are solely for the convenience of the parties and do not constitute a part hereof.

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

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

**CITY OF MIAMISBURG, OHIO**

**CITY OF MIAMISBURG, OHIO FISCAL OFFICER**  
(Section 5 only)

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

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

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

**MONTGOMERY COUNTY TRANSPORTATION  
IMPROVEMENT DISTRICT**

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

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



**Exhibit A**

Phase II Scope

## Exhibit B

### Phase II Budget

#### SYCAMORE TRAILS PARK PROJECT

#### EXHIBIT B - PHASE II BUDGET

Note: Includes and amends Phase I Budget

1/29/2024

#### SOURCES & USES

##### SOURCES

##### AMOUNT

City of Miamisburg \$ 9,809,644

**TOTAL \$ 9,809,644**

##### USES

##### AMOUNT

Initial Construction Ph.1	\$ 440,000	* See notes below
Equipment	\$ 1,030,000	** See notes below
Construction Ph.2	\$ 7,725,000	***Estimated, See notes below
Contingencies	\$ 250,000	
TID Phase I Management Fee	\$ 50,000	
TID Phase II Management Fee	\$ 309,000	4% of construction
Third Party & Legal Ph I	\$ 644	
Third Party & Legal Ph II	\$ 5,000	Est.
<b>TOTAL</b>	<b>\$ 9,809,644</b>	

\*Tree Clearing \$117,000

DWA Grant (South Playground) \$230,000

DWA Maue Playground Relocation \$93,000

\*\* Shelter Restroom Buildings (2) - \$532,000

North Playground Equipment - \$413,000

South Shelter - \$85,000

\*\*\*Double Jay bid - \$6,888,628 (scope to be reduced to estimated \$6,437,000)

Elec & Lighting - \$863,190 (scope to be reduced to estimated \$813,000)

Additional Tree Clearing - \$50,000 est.

Disc Golf Construction - \$75,000 est.

Pond Construction - \$350,000 est.

**Exhibit C**

Phase II Schedule

ORDINANCE NO. 7066

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH CHAMPLIN ARCHITECTURE FOR DESIGN, ANALYSIS, AND CONCEPT PLANNING FOR THE SYCAMORE TRAILS AQUATIC CENTER, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg has solicited and received professional services proposals for the design, analysis and concept planning at the Sycamore Trails Aquatic Center; and

WHEREAS, the City of Miamisburg intends to enter into a professional services agreement for the completion of the work contained herein the Request for Proposals; and

WHEREAS, the proposals have been thoroughly reviewed by staff; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to execute a professional services agreement with Champlin Architecture upon the terms in the Request for Proposal documents and all attached thereto.

Section 2.

The City Manager is hereby authorized to make changes to finalize the draft agreement included with this ordinance, in agreement with Champlin Architecture, as needed, so long as modifications do not substantially alter the intent, responsibilities of either party, or financial liability for the City.

Section 3.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

"Exhibit A – The RFP"



# REQUEST FOR PROPOSAL

## Professional Services for Pool Design, Planning, Architecture & Engineering Services

### City of Miamisburg

10 North First Street  
Miamisburg, OH 45342

(937)866-3303  
[play@cityofmiamisburg.com](mailto:play@cityofmiamisburg.com)



CITY OF MIAMISBURG  
PARKS & RECREATION

[www.playmiamisburg.com](http://www.playmiamisburg.com)



# Request for Proposals

## Pool Design, Planning, Architecture & Engineering Services

### Invitation

The City of Miamisburg is seeking proposals from a qualified park planning, architectural, design or engineering firm with experience in the Aquatics industry to prepare updates for the Sycamore Trails Aquatic Center, a premier asset for the City of Miamisburg Parks and Recreation Department. Interested firms will be tasked with providing concept plans, conduct community engagement, and perform aquatic design, architecture, and engineering elements for the facility.

### Interested Parties

Should your firm be interested in submitting a proposal, please indicate as such by emailing Ryan Davis, Parks and Recreation Director at [Ryan.Davis@cityofmiamisburg.com](mailto:Ryan.Davis@cityofmiamisburg.com). You will be sent a zipped file of attachments to accompany this request for proposal packet providing some background on the project. A pre-proposal meeting is scheduled for **10:30 a.m. (EST) on Tuesday, November 28, 2023** at the Miamisburg City Council Chambers and will also be available for virtual participation.

### Submission of Proposals

Four (4) copies of the proposal documents shall be sealed and submitted to the City Manager's Office, 10 North First Street, Miamisburg Ohio 45342. Sealed proposals must be received by **2:00 p.m. (EST) on Tuesday, December 19, 2023** at the City Manager's Office located at 10 North First Street, Miamisburg, OH 45342. Proposals received after this time will not be accepted. Digitally formatted proposals will be accepted, provided they are received by the dates above, with hard copies to follow.

Proposals will be considered from professional firms that demonstrate experience and success in developing designs, plans and projects, that have been or plan to be completed for aquatic centers, municipal recreation centers, recreational areas, or park systems.

### Background – Sycamore Trails Aquatic Center

Constructed in the early 1990's and opened to the public in July 1996, the Sycamore Trails Aquatic Center has served as the Miamisburg community's premier summer recreation destination since. The Aquatic Center was built after the City's original pool, located in what is now Community Park, was put out of service, and the Department of Energy funded construction of the new facility within Sycamore Trails Park. The original pool was opened in 1937, as part of a WPA project. As a continued investment to the nearly 85 years of public swimming opportunities to the community, a new Splash Pad was constructed and opened in 2023. The facility is open Memorial Day through Labor Day each year, and is funded through General Fund Support, Daily Admissions, Rentals, Memberships and conducts a range of programming opportunities, such as learn to swim lessons, aqua Zumba and more.

Prior to 2022, discussions about water loss at the facility occurred occasionally, but without accurate data to assess whether water use was part of routine operations or was more than usual, these conversations did not lead to any concrete action. In 2022 annual meter readings began to be monitored at the facility, establishing a baseline of water loss. Also in 2022, as the pool began to fill and operate, water was discovered running from an 'unmarked' pipe in the storm catch basin on the Northwest corner of the property. This line was not on any of the plan sets in possession of the City, but after tested showed elevated chlorine readings, it was confirmed to be pool water. Public Works staff as well as external contractors were brought in to camera various lines to locate the leak, which were all unsuccessful. In the fall of 2022, Frye Mechanical was contracted to pressure test lines, camera lines and make repairs as deemed appropriate. This work identified multiple areas where joints had come apart, or drain lines were no longer connected to the pipes they were originally tapped into. This work identified and repaired approximately 7-8 areas where water was leaving the system. Upon filling the pool in May of 2023, water was still noted as running from the storm catch basin, prompting further investigation, camera work and evaluation. At around the same time, a new water meter was installed as a part of a City-wide meter replacement program and provided more accurate and real-time, hourly water usage data. Prioritizing providing services to the public, the department continued with operations in 2023, monitoring water loss and its impact on the facility, City water supply and demand, and environmental conditions. This monitoring demonstrated during the 2023 season, the facility used approximately 100,000-110,000 gallons of water per day, on average. In June 2023, the department contracted with American Leak Detectors out of Louisville, KY to identify and repair leaks. Upon investigation that occurred in early July they identified approximately six areas of concern. At the conclusion of the season, American Leak Detectors identified multiple areas of concern. Their excavation and investigation showed pipe failure (blow outs of pipe segments) and joint failure (breaks within joints). Once these areas were exposed, additional areas of concern were noted, and upon investigation indications of glue failure within multiple joints became evident (deterioration or holes within glued seams). The glue failure indicated the situation was likely a system-wide condition. Repairs were completed to these six areas and the pool was filled and operated for 5 days to measure the amount of water loss, with the major pipe and joint failures repaired. This test indicated water loss was not impacted by the work completed, and likely due to the repairs completed increased pressure within the system causing additional leaking. This test revealed a daily usage of nearly 110,000 gallons and the pool was drained and winterized.

After discussions with Council, the City desires to contract with a professional design, engineering and/or architecture firm to provide a range of analysis, planning, design, engineering/architectural review to develop viable concept plans for future construction. The scope of this design will be to evaluate the possibility and cost/benefit of a pipe replacement project compared to a redesign of the site (through an updated concept plan).

The City contracted with Counsilman Hunsaker to provide a Pool Audit in fall 2023 as well. This report is forthcoming and will be incorporated into any recommendations for either direction forward, pipe replacement or facility redesign. The scope of Counsilman Hunsaker's audit includes preparing a commentary on the existing condition of the pool structure and finishes, recirculating system, piping, fittings, and valves, filtration system, mechanical and overflow recovery system, water chemistry treatment system, pump, flow meters, gauges, and controls, etc., and deck equipment. The audit will also review the pool(s) for deficiencies regarding current local health code, federal law, and industry standards and prepare a general commentary on support spaces including the bather preparation area and equipment areas specifically focusing on relevant health code standards and the requirements for these spaces. The report will provide an overview commentary on the existing condition of facility systems including deck surface - deck drainage, mechanical spaces, accessibility provision - A.D.A, and a specific commentary on any necessary repairs, replacement or restoration of the pool systems, including identification of issues requiring further intensive evaluation and analysis.

A major park improvement project is scheduled to begin in Sycamore Trails Park in 2024, which will impact the surrounding area. The intent is that the park improvement project will be complete sometime in 2025.

The overall desire for this scope of work is to identify viable solutions in the first half of 2024, with a clear understanding of costs, and potential timelines for next steps, depending on the solutions decided upon, factoring time and costs for construction document design, permitting, health department review, and construction.

The City of Miamisburg is located in southwestern Ohio between Cincinnati and Dayton, and it is adjacent to I-75 which is a major north/south transportation corridor. The area consistently ranks as one of the highest population growth areas in Ohio. The City's incorporated area includes approximately 12.2 square miles with a population of 19,923. There are currently 3 housing developments in the process of development which will add approximately 622 rooftops to the Miamisburg community.

The City of Miamisburg Parks and Recreation Department is responsible for more than 500 acres of parks and public green spaces. The department operates and maintains 19 neighborhood and community parks, 2 sports complexes, one eighteen-hole golf course and one nine-hole golf course, a skate park, 9.6 miles of biking/walking paths, a family aquatic center, a community center, and 12 other municipal buildings.

A wide range of services, programs and facilities for all ages are operated by 24 full-time, 14 part-time staff, 166 seasonal staff, and the Hampton Golf Management Company. The department works closely with various citizen committees, civic and youth sports organizations, and the Miamisburg School District. In addition to the Miamisburg community, the Parks and Recreation Department



provides services to Miami township residents which has a service area population of an additional 26,100.

### **Scope of Services – Pool Design, Planning, Architecture & Engineering Services**

A general description of the scope services includes the following. For ease of reference, the scope below shall refer to 'contractor', which is meant to reference selected firm, and/or subcontractor of selected firm with appropriate designation, background and/or expertise.

- 1) Evaluation of pipe replacement option
  - a. Contractor shall design/engineer a pipe replacement option.
    - i. All existing piping related to the pool circulation system will be replaced and scope shall include any ancillary impacts deemed necessary from this mechanical update, i.e. pumps, flow meters, filtration systems, etc.
  - b. Provide cost estimate and construction timeline estimates for scope of work deemed necessary.
- 2) Concept plan of re-designed aquatic center
  - a. Contractor shall design a concept plan for the facility that includes pool/water features with appropriate filtration and circulation systems, decking, mechanical impacts such as pumps, flow meters, filtration systems, chemical injection systems, etc. and all related MEP, architectural or civil engineering and site development impacts as required by health department, building or other related codes.
  - b. The concept plan should assume the structural components of the restroom buildings and splash pad shall remain. Relevant updates to these areas would be considered appropriate. (See exhibit A and B)
  - c. The concept development planning work should include a public input component described below.
  - d. Provide construction cost estimates for scope of work mutually agreed upon.
  - e. Operational Cost Impacts – With department staff, develop operational modeling, staffing and cost impacts assessment associated with proposed concept plan.
    - i. Operational plan should include bather capacity, facility capacity, operational costs for mechanical and circulation systems, chemicals, etc.
  - f. Implementation Plan – Develop a timeline for construction based on concept plan that identifies relevant design steps, construction-ready document development, permitting, health department or other required approvals and construction timetables.
  - g. Concept designs, basic schematic designs for mechanical systems, structures as well as concept plan renderings to be provided within the scope of a concept plan.

The scope of work must include the details presented in the foregoing "Scope of Services." However, it is the contractor's option and responsibility to present any additional elements as are appropriate

and desirable for the project to be agreed upon by both parties prior to execution. The contractor should note the City is interested in proposals for improvements that will align, generally, with current level of services, with a desire to take advantage of efficiencies possible through site development, operations or mechanical functions. The concept plan should generally match theming and site development in alignment with Sycamore Trails Park Improvement project, creating a comprehensive site design for Sycamore Trails Park.

### **Public Input Component Expectations**

The public input component shall include the following elements. It is the contractor's option and responsibility to present any additional elements as are appropriate and desirable for the project to be agreed upon by both parties prior to execution.

- 1) Meet with pool redevelopment committee to discuss outcomes, strategies and approaches.
  - 2) Gather input from community stakeholders to establish goals and objectives shaping the facility's redesign, potential components, and cost parameters. Input should be gathered minimally from the following groups:
    - a. City Council
    - b. Parks & Recreation Advisory Board
    - c. City & Department Staff
    - d. Pool Redevelopment committee
    - e. Public Input (details of how this is done to be determined through step 1 above).
- Contractor's proposal to include cost for this input based on their professional recommendation, noting this is an optional service to be mutually agreed upon prior to execution.

### **General Instructions**

Sealed proposals will be accepted until **2:00 p.m. (EST), Tuesday, December 19, 2023**, at the City Manager's Office, 10 North First Street, Miamisburg, Ohio 45342. Proposals received after that time will not be accepted. Proposals shall be sealed in a package clearly marked with the proposer's name and "PROPOSAL FOR POOL DESIGN, ARCHITECTURE AND ENGINEERING SERVICES, 2023". Proposals received after this time will not be accepted. Digitally formatted proposals will be accepted, sent to the attention of Ryan Davis by emailing [Ryan.Davis@CityofMiamisburg.com](mailto:Ryan.Davis@CityofMiamisburg.com), provided they are received by the dates above, with hard copies to follow.

Whether delivered by U.S. mail, personal delivery, carrier, or via email, the proposer assumes the responsibility for ensuring the proposal is submitted on time at the specified location. Only proposals received by the specified time and date will be considered. All proposals and accompanying documentation shall become the property of the Owner. Submission of a proposal constitutes proposer's acceptance of the procedures, evaluation criteria and RFP instructions. The City reserves the right to solicit additional information or proposal clarification from anyone submitting a proposal, should the City deem such information necessary.

The City will answer questions in writing. Correspondence will be shared with all known firms indicating interest in this process. Firms shall indicate their interest in correspondence to Ryan Davis, Parks and Recreation Director as indicated below. Any questions regarding the RFP must be submitted in writing via U.S. mail or electronic mail and should be addressed to:

Ryan Davis, CPRE, Director  
Miamisburg Parks and Recreation Department  
10 North First Street, Miamisburg, Ohio 45342  
[ryan.davis@cityofmiamisburg.com](mailto:ryan.davis@cityofmiamisburg.com)

The City reserves the right to change the submission deadline or to issue amendments to the RFP anytime or to cancel or reissue the RFP at any time without penalty. The City reserves the right to accept or reject any and all proposals or parts and to waive any technicalities or irregularities as determined by the City. Further, the City is not liable for any costs incurred by the proposer including, but not limited to the costs for the preparation of the RFP and attendance at any presentation or meeting with Project Team representatives.

The City will not be responsible for any error or omission in the information provided, nor for the failure of the proposer to determine the full extent of the effort necessary to provide the requested services. The proposal shall be prepared and submitted in accordance with the provisions of the RFP instructions and specifications. Any alteration, omission, addition, variance or limitation of, from, or to a proposal will be sufficient grounds for non-acceptance of the proposal.

### **Pre-Proposal Meeting**

All interested firms are required to attend a pre-proposal meeting. The purpose of the meeting is to provide an overview of the project and explain any critical elements to the RFP process. The pre-proposal meeting will be held in person and can be made available for virtual participation upon request.

#### **Pre-Proposal Meeting**

Date: Tuesday, November 28, 2023  
Time: 10:30 am EST  
Place: Civic Center Council Room  
10 N. First St.  
Miamisburg, Ohio 45342  
RSVP: Ryan Davis, CPRE  
Parks & Recreation Director  
[Ryan.Davis@cityofmiamisburg.com](mailto:Ryan.Davis@cityofmiamisburg.com)

The pre-proposal meeting will also be available for virtual participation, interested parties must indicate their intent to participate by RSVP, and indication of virtual participation preference.

### **Proposal Format**

Proposals shall be relevant, concise and include samples of previous work. To facilitate the evaluation process, the following format will be required:

### **Technical Proposal**

1. Cover page with title, firm's name, telephone number, mailing address, e-mail, and web address.
2. Brief Description of the Firm:
  - A. Name of business and office location
  - B. Length of time in business
  - C. Total number of local and other employees
  - D. Name of principals and areas of expertise
  - E. Professional services provided by the firm
3. Project Team
  - A. List the individuals who will do the work on this project. Provide the following information for each team member:
    - a. Team Assignment
    - b. General and professional qualifications
    - c. Project experience directly relevant to this project
    - d. Indicate current workload and certify that no project team member will be substituted without prior approval from the City of Miamisburg.
4. Sub-consultants
  - A. List any firm that will act as a sub-consultant to your firm, its specialty areas, location of office, and firm's experience related to this project. Provide information regarding prior projects on which sub-consultants have worked with your firm. Indicate current workload and certify that no sub-consultant will be substituted without prior approval from the City of Miamisburg.
5. Relevant Project Experience
  - A. Include brief description of projects completed by the firm and/or project team in the past five years that directly relate to this project. Description of the projects should include:
    - a. Brief descriptions of similar or related projects completed within the past five years by the project team. Description of the projects shall also include:

- i. Name of client, contact person and contact information.
- ii. Visual representation of the project
- iii. Completion date, if applicable
- iv. Total cost of services provided

6. Process Approach

- A. Provide a detailed approach allowing the review team to understand the process you would recommend being taken for each portion of this proposal.
  - a. List number of proposed meetings/sessions and where in the planning process they would occur.
  - b. Proposed process for soliciting public and/or stakeholder input.
  - c. List of the visual and electronic material that will be utilized and provided to communicate the process and results of the plan.
- B. Timetable for completing each portion of the project.
- C. Sample copies of similar work prepared for a minimum of three other clients.
- D. Additional information that may help the City in considering the team for selection.

7. Intended Deliverables

- A. Provide a detailed list of deliverables, tasks or documents to be provided by consultant to the City at/by the conclusion of the project based on understanding of the scope of services
- B. Additional information that may help the City in considering the firm for selection.

8. Professional References

- A. The proposer shall include at least three current public sector client references that include the client's contact name and title, organization's name, address, telephone number, and e-mail address.

9. Legal Actions or Lawsuits

- A. The proposer shall make known to the City any outstanding lawsuits, legal actions or conflicts of interest which would affect its ability to perform the contract.

10. Amount of insurance coverage the firm has in each of the following categories:

- A. General Liability
- B. Professional Liability
- C. Workman's Compensation



### **Cost of Service Proposal**

1. The consultant shall submit a lump sum, not to exceed fee based on the scope of services as stated above. Firms may provide for any or all of the scopes outlined below.
  - A. Proposal should include cost of services, based on the understanding of the scope of services. Cost of services are to be considered in the following formats, the first as all scopes of work included in a single contract, the following three if each scope portion was performed individually, assisting the City to understand the cost of each portion of work.
    - a. Based on the scope of work, total project costs
      - i. Based on the scope of work, cost for the evaluation of pipe replacement option
      - ii. Based on the scope of work, cost for the concept plan development
      - iii. Based on the scope of work, cost for the public input component
  - B. Proposals should include an hourly fee for each member of the Project Team members for work requested outside the stated scope of services, reimbursables, and a proposed payment schedule. (Proposed fee should include costs for four (4) hard copies of the final report with colored graphics, and an executive summary to be delivered to the city along with a digital format of all materials and renderings which can be used to print additional copies).
  - C. Indicate the basis and approach regarding the fee structure for the scope of services.
  - D. Fee proposal shall be signed by an authorized representative of the company.

### **Submission of Proposal**

Proposer shall submit a detailed response to the RFP requirements and scope of services and shall be signed by an authorized representative of the company. Four (4) copies of proposal documents shall be submitted to the City Manager's Office, 10 North First Street, Miamisburg, Ohio 45342. Proposals shall be sealed in a package clearly marked with the proposer's name and "PROPOSAL FOR POOL DESIGN, ARCHITECTURE AND ENGINEERING SERVICES, 2023". Proposals received after this time will not be accepted. Digitally formatted proposals will be accepted, sent to the attention of Ryan Davis by emailing [Ryan.Davis@CityofMiamisburg.com](mailto:Ryan.Davis@CityofMiamisburg.com), provided they are received by the dates above, with hard copies to follow.

## **Additional Information**

Additional information may be obtained by emailing Parks & Recreation Director, Ryan Davis at [ryan.davis@cityofmiamisburg.com](mailto:ryan.davis@cityofmiamisburg.com) or by calling (937) 847-6473 between the hours of 8:00 AM and 5:00 P.M., Monday through Friday.

## **Miscellaneous**

As a condition for selection, the Consultant is required to agree to the following, the items listed are important to the City in terms of selection and/or will be an integral part of an agreement between the Consultant and the City.

## **Terms and Conditions**

- **Ability to Accept or Reject:** The City reserves the right to accept or reject any or all proposals.
- **Ability to Award Project Scope(s) Separately:** The City reserves the right to select any or all portions of the project proposal from the firm.
- **Right to Interview:** The city reserves the right to interview firms as necessary prior to selection.
- **Reimbursement for Services Prior to Selection:** There will be no reimbursement for costs incurred by the Consultant prior to selection of the Consultant by City staff.
- **Alterations in Scope:** The consulting firm must provide all necessary labor, equipment, and materials necessary for completing the work unless otherwise agreed to in writing. Any alterations in scope, after selection, must be agreed to in writing by both parties.
- **Equal Opportunity Employer:** The consulting firm must assure the City of Miamisburg that it is an equal opportunity employer and that it does not and will not discriminate in any fashion in regard to race, sex, national origin, political affiliation, disability (handicap), and age where protected by law, or any other non-merit or non-occupational related factors.
- **Late Proposals:** Proposals received after submission deadline will be considered void or unacceptable. City of Miamisburg is not responsible for delay of receipt such as the non-delivery of U.S. mail, e-mail or by carrier. The date/time stamp in the City Manager's office shall be the official time of receipt.
- **Altering Proposals:** Proposals cannot be altered or amended after the submission deadline. Any alteration, or erasure made before the opening time of proposals must be initialed by the signer of the proposal, guaranteeing authenticity.
- **Withdrawal of Proposal:** A proposal may not be withdrawn or canceled by the offer proposer without written permission of the City of Miamisburg.
- **Reading of Proposals:** Proposals will be received and publicly acknowledged in the Miamisburg City Council Chambers on Tuesday, December 19, 2023 at approximately 2:05p.m. EST. Proposers, their representatives and interested persons are not required to, but may be present.

- **Sales Tax:** City of Miamisburg is exempt by law from payment of Ohio Sales tax and Federal Excise Tax.
- **Conflict of Interest:** No City of Miamisburg public official shall have interest in the contract.
- **Ethics:** The proposer shall not offer or accept gifts of value nor enter into any business arrangement with any employee, official or agent of the City of Miamisburg.
- **Addenda:** Any interpretations, corrections, or changes to the RFP will be made by addenda. Sole issuing authority of addenda shall be vested by the City of Miamisburg Parks and Recreation Director. Addenda will be mailed to all who are known to have received a copy of this RFP. Proposers shall acknowledge receipt of all addenda.
- **Law Compliance:** Proposals must comply with all federal, state, county and local laws concerning this type of service.
- **Required Documentation:** The proposer shall provide all documentation required by this RFP. Failure to provide this information may result in rejection of the proposer's proposal.
- **Indemnification:** The successful proposer shall defend, indemnify and hold harmless the City of Miamisburg and all its officers, agents, employees and volunteers from all suits, actions or other claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligence, or act or fault of the successful proposer, or any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from the proposal award. The successful proposer shall pay any judgment with costs that may be obtained against the City of Miamisburg growing out of such injury or damage.
- **Patents/Copyrights:** The successful proposer agrees to protect the City of Miamisburg from claims involving infringements of patents or copyrights.
- **Contract Administrator:** The City of Miamisburg contract administrator is the Parks and Recreation Director with designated responsibility to ensure compliance with contract requirements, such as, but not limited to, acceptance, inspection, and delivery. The contract administrator will serve as liaison between the City of Miamisburg and the successful proposer.
- **Silence of Specification:** The apparent silence of these specifications as to any detail or to the apparent omission of a detail concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
- **Public Record:** All submitted information relating to this proposal shall become part of the public record. Proposers may identify in their proposals what information they deem to be proprietary information. The final determination of whether information is subject to Ohio's public records laws shall be made by the City's legal counsel.



## Exhibit A – Site Overview



### Areas Identified Below



## Exhibit B – Site Overview Detail

In considering concept planning, three areas of the site are intended to remain outlined below. These areas encompass the bathhouses, staff offices, concessions area and splash pad. Updates may be recommended for these areas, but the intent would be to re-use these buildings and amenities in the future concept. All other structures, elements, equipment and features are able to be re-thought, should the concept plan necessitate it.



"Exhibit B– Draft Agreement"

**CITY OF MIAMISBURG  
PARKS AND RECREATION DEPARTMENT**

**Agreement for  
Professional Services for Pool Design, Planning,  
Architecture & Engineering Services for the  
Sycamore Trails Aquatic Center**

**City of Miamisburg, Ohio**  
**AGREEMENT FOR PROFESSIONAL SERVICES INDEX**

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**Agreement For  
Professional Services to Complete  
Pool Design, Planning, Architecture & Engineering Services for the Sycamore Trails Aquatic Center**

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of Miamisburg, Ohio, hereinafter referred to as the City, and Champlin Architecture, hereinafter referred to as the Consultant.

FOR THE PURPOSE of providing Professional Services for completion of the Pool Design, Planning, Architecture & Engineering Services for the Sycamore Trails Aquatic Center, hereinafter referred to as the “Plan”.

THE CITY AND CONSULTANT do hereby mutually agree to the following:

**ARTICLE 1 – SERVICES AND RESPONSIBILITIES**

- 1.1 Employment of the Consultant.** In consideration of the mutual promised contained in the Agreement, the City engages the Consultant to render professional services as described in Exhibit “A” attached hereto and made part hereof, in accordance with all the terms and conditions contained in this Agreement.
- 1.2 Scope of Services.** Services will be provided by the Consultant as set forth in Exhibit “A” and will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 1.3 Responsibility of the Consultant.**
  - (a) Consultant shall procure and maintain, during the course of this Agreement, the following insurance: professional liability, comprehensive general liability, automobile liability, and workers compensation. The minimum limits of liability insurance covering Consultant’s negligent act, errors and omissions, and those of its agents and employees, shall be an amount not less than \$1,000,000. Such insurance shall not be modified except upon written consent of the City. A certificate(s) of insurance acceptable to the City showing limits of liability and deductible amounts shall be submitted to the City.
  - (b) Consultant shall designate Mike Murphy as Project Manager and all communications should be directed to that individual. Prior to changing such designation, Consultant shall first obtain written approval from the City. The language of this item does not restrict the firms of The Kleingers Group, Counsilman-Hunsaker, Heapy Engineering, Conger or PROS Consulting from communicating directly with City representatives regarding the project.
  - (c) Consultant’s subconsultants are set forth in “Exhibit B” attached hereto and made a part hereof. Any modifications to “Exhibit B” either by adding, deleting or changing subconsultants, or Plan personnel shall require the written consent of the City.



**1.4 Responsibility of the City.** The City shall cooperate with the Consultant by placing at the firm's disposal all available information concerning the Plans, including the following reports:

1. Base maps and aerial photographs of the site
2. Any available plans or documents relevant to the project
3. Any Department policy and procedures or Use Agreements as needed
4. City and department organizational charts
5. Any and all documents related to the operations, maintenance, infrastructure, such as current plans, past evaluations or the like
6. Parks and Recreation operating, and capital budgets for the past five (5) years as needed for operational analysis
7. The City is also committed to providing staff support, as needed throughout the project, and any additional documentation not listed which may provide value to the Consultant in the execution of the scope of services.

## **ARTICLE 2 – COMPENSATION AND METHOD OF PAYMENT**

**2.1 Compensation.** All compensation for services rendered by the Consultant shall be rendered on a monthly basis with total compensation for professional services not to exceed \$171,890.

**2.2 Method of Payment.** Monthly invoices will be received and paid for work completed. Generally, payment applications may be submitted to the City during the first week of each month for work completed in the previous month. The City shall pay the Consultant for services rendered within three (3) weeks of receipt of invoice.

## **ARTICLE 3 – CHANGES TO THE SCOPE OF SERVICES**

The City may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A sample change order form is attached hereto as "Exhibit C". If such changes cause an increase or decrease in the Consultant's cost or time required for performances of any services under this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be submitted in writing thirty (30) days from the date of receipt by the Consultant of the notification of change.

## **ARTICLE 4 – TERMINATION OF THE AGREEMENT**

The City may, by written notice to the Consultant, terminate this contract in whole or in part within thirty (30) days notice, either for the City's convenience or because of the failure of the Consultant to fulfill its contract obligations. Upon receipt of such, the Consultant shall: (1) immediately discontinue all service affected (unless the notice directs otherwise), and (2) deliver to the City copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this contract, whether completed or in progress. This Agreement may be

terminated in whole or in part by the Consultant in the event of substantial failure by the City to fulfill its obligations.

## **ARTICLE 5 – ASSURANCES**

- 5.1 Solicitations for Subconsultants.** In solicitation either by competitive bidding or negotiation made by the Consultant for work to be performed under a contract or subcontract, each potential subconsultant or subcontractor shall be notified by the Consultant of the Consultant's obligations under this contract and any regulations relative to nondiscrimination.
- 5.2 Examination of Records.** The Consultant agrees that duly authorized representatives of the City shall until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions or services related to this Agreement.
- 5.3 Ownership of Documents and Other Data.** Original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement, or any change orders are and will remain the property of the City unless otherwise agreed to by both parties. The City may use such documents for other purposes without further compensation to the Consultant; however, any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant.
- 5.4 Indemnification.** The Consultant and its agents, partners, employees and subconsultants shall be liable to and hereby agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees against all claims, damages, losses, liens, cause of action, suits, judgments, and expenses arising out of negligent performance of professional services caused by the error, omission or negligent act of the Consultant or anyone employed by the Consultant in the performance of this Agreement.
- 5.5 Independent Contractor.** The Consultant shall be an independent contractor and not an agent of the City and shall direct and supervise the professional services as set forth in "Exhibit A" required by this Contract and shall be responsible for all means, methods, techniques, and sequences and proceedings associated with the work and shall be responsible for the acts and omissions of its employees, agents and other persons performing any of the work under a contract with the Consultant.
- 5.6 Exclusive Use of Services – Confidentiality.** The services agreed to be provided by the Consultant within this Agreement are for the exclusive use of the City and Consultant and shall not engage in conflict of interest nor appropriate City work product or information except for knowledge in the public domain for the benefit of any third parties without City consent or if disclosure is reasonably necessary for the Consultant to defend itself from any legal action or claim.
- 5.7 Sole Agreement.** This Agreement contains all the understandings of the parties.
- 5.8 Caption.** Paragraph captions are for the convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.



**5.9 Timeliness of Performance.** The Consultant will perform the specified professional services within five (5) months from the execution of the contract using due and reasonable diligence consistent with sound professional practices. The five-month period implies the timely decision making and participation by the City in the process. The proposed work schedule of any meetings can be adjusted, as appropriate to better meet the needs of the City upon written agreement by both parties.

**5.10 Notices.** Any notice to given under this Agreement shall be in writing and shall be deemed to have been given when personally served or when mailed by certified or registered mail, and addressed as follows:

CITY:  
Ryan Davis  
Director of Parks and Recreation  
City of Miamisburg  
10 North First Street  
Miamisburg, Ohio 45342

CONSULTANT:  
Mike Murphy  
Principal in Charge  
Champlin Architecture  
10 South Patterson Blvd.  
Dayton, Ohio 45402

**5.11 Controlling Law.** This Agreement is to be governed by the law of the State of Ohio.

## **ARTICLE 6 – SUSPENSION OF WORK**

The City may order the Consultant, in writing, to suspend all or any part of the work for such period of time as the City may determine to be appropriate for the convenience of the City. If the performance of all or any part of the work is, for any unreasonable period of time, suspended or delayed be an act of the City in the administration of this Agreement, or by its failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have suspended or delayed for any other cause, including the fault or negligence of the Consultant, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

## **ARTICLE 7 – INTERESTS AND BENEFITS**

**7.1 Interest of Consultant.** The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be knowingly employed by the Consultant or any subconsultants or with any company that would be a supplier of equipment or construction and inspection services for this Plan absent advance disclosure to and approval by the City.

**7.2 Interest of City Members and Others.** No officer, member or employee of the City and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the under taking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

## ARTICLE 8 – ASSIGNABILITY

The Consultant shall not assign any interest in this contract and shall not transfer any interest in the same without prior written consent of the City thereto; provided however, that claims for money due or to become due to the Consultant from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

IN WITNESSES WHEREOF, the City and the Consultant have executed this AGREEMENT as of the date first written.

FOR THE CONSULTANT

FOR THE CITY

By \_\_\_\_\_  
Mike Murphy, Champlin Architecture

By \_\_\_\_\_  
Keith D. Johnson, City Manager

Attested: \_\_\_\_\_

Attested: \_\_\_\_\_

## **EXHIBIT A**

Exhibit A includes the RFP Document published by the City of Miamisburg as well as the Proposal Submission by the Consultant, hereto attached.

## **EXHIBIT B**

### **MIAMISBURG PARKS AND RECREATION DEPARTMENT STRATEGIC MASTER PLAN CONSULTANT SUBCONSULTANTS**

#### **Provided Services**

Aquatic Design  
Landscape Architecture & Civil Engineering  
MEP Engineering  
Operations Management & Planning  
Cost Estimating

#### **Subconsultant**

Counsleman-Hunsaker  
The Kleinger's Group  
Heapy  
PROS Consulting  
Conger

## EXHIBIT C CHANGE ORDER

Order No: \_\_\_\_\_

Date: \_\_\_\_\_ 2024

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

Name of Plan: \_\_\_\_\_

Owner: \_\_\_\_\_

Consultant: \_\_\_\_\_

The following changes are hereby made to the subject Agreement:

---

The Consultant's fee will be (increased) (decreased) by \$ \_\_\_\_\_ & \_\_\_\_\_ calendar days. The date for completion of all work will be \_\_\_\_\_ 2024.

Request by: \_\_\_\_\_

Approved by: \_\_\_\_\_

Accepted by: \_\_\_\_\_

City of Miamisburg by its \_\_\_\_\_

## **EXHIBIT D**

### **Listing of Professionals by Hour & Support Staff**

As listed in Proposal Pricing Submission

**EXHIBIT E CONTRACT ATTACHMENT**

**DELINQUENT PERSONAL PROPERTY TAX STATEMENT (O.R.C. SECTION 5719.042)**

I, \_\_\_\_\_, \_\_\_\_\_ Name  
Title

of \_\_\_\_\_ affirm that at the time that I submitted the bid for \_\_\_\_\_ to the City  
of Miamisburg on \_\_\_\_\_, 2024 that \_\_\_\_\_ was/was not  
charged with delinquent Personal Property Taxes by the County Auditor.

(If Personal Property Taxes are delinquent, complete the following section). The amount of delinquent  
Personal Property Taxes due \_\_\_\_\_  
County are \_\_\_\_\_ and unpaid penalties and interest are \_\_\_\_\_.

Signature

\_\_\_\_\_

Company

\_\_\_\_\_

\_\_\_\_\_

Date Before me appeared \_\_\_\_\_ on this day of \_\_\_\_\_, 2024.

Notary

\_\_\_\_\_

## EXHIBIT F

As listed in Proposal Submission



ORDINANCE NO. 7067

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A FACILITY USE AGREEMENT WITH THE MIAMISBURG HISTORICAL SOCIETY AND DECLARING AN EMERGENCY.

WHEREAS, the city owns the building known as the Historical Society Headquarters, located at 35 S. Fifth Street, the Daniel Gebhart Tavern Museum located at Old Main and Lock Street, the Jacob Kercher Pioneer Home located at Old Main and Lock Street, and the Carnegie Building located at 426 E. Central Ave.; and

WHEREAS, the Miamisburg Historical Society has long been party to agreements authorizing its use of various City facilities; and

WHEREAS, the Miamisburg Historical Society has expressed interest in access to utilize the upstairs (first floor) portion of the Carnegie building as well as extend its agreed use terms for existing agreed upon spaces; and

WHEREAS, the City is supportive of the value the Miamisburg Historical Society provides to the community in the preservation of our local history and educating the community on our rich past.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a Facility Use Agreement (Lease) with the Miamisburg Historical Society for the use of various City owned facilities, attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to ensure a clear understanding and permission to utilize and continue utilizing said spaces for the continuity of the historical society operations and functions, this measure shall take effect and be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

## **Exhibit "A"**

### **Lease Agreement**

This Lease agreement entered on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Miamisburg, an Ohio Municipal Corporation, hereinafter referred to as "City", and the Miamisburg Historical Society, hereinafter referred to as "Society".

#### **WITNESSTH:**

Whereas, the city owns the building known as the Historical Society Headquarters, located at 35 S. Fifth Street, Miamisburg OH 45342, the Daniel Gebhart Tavern Museum located at Old Main and Lock Street, Miamisburg OH 45342, the Jacob Kercher Pioneer Home located at Old Main and Lock Street, Miamisburg OH 45342, and the first floor (top level) of the Carnegie Building located at 426 E. Central Ave., Miamisburg, OH 45342 hereinafter referred to as "leased premises".

Whereas, the Society desires to rent the buildings and property in the condition it presently exists, even if damaged or defective, without modification and without any express or implied warranties for purposes contained herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN CONTAINED, THE CITY AND THE SOCIETY AGREE AS FOLLOWS.

#### **SECTION 1: USE**

The leased premises shall be used as headquarters for the operation of the Society's organization located at 35 S. Fifth Street; as a museum and training center located at the Gebhart and Kercher Cabin Complex; and as a storage, display and program space located in the first (top) floor of the Carnegie Building.

#### **SECTION 2: TERM OF USE**

The term of this lease for the Historical Society Headquarters, Gebhart Tavern and Jacob Kercher Cabin shall be for a period of three (3) years beginning on the 15<sup>th</sup> day of February 2024 and ending the 14<sup>th</sup> day of February 2027.

The term of this lease for the Carnegie Building is for an initial period of one year, beginning on the 15<sup>th</sup> day of February 2024 and ending on the 14<sup>th</sup> day of February 2025. During this initial lease period, both parties agree to work together to develop space utilization, maintenance, improvement and/or development plans for the facility. If, after this initial lease period, both parties agree to continue with the lease of this space, it may be extended for a period of two (2) years ending on the 14<sup>th</sup> day of February 2027 upon written agreement of the parties, in alignment with the other facilities in this lease.

The term of this lease may be renewed for a period of up to one additional three (3) year term ending on the 14<sup>th</sup> day of February 2030 upon written agreement of the parties, executed within 90 days of the end of the existing term. Should no action be taken within 90 days, the lease may continue on a month-to-month basis until action is taken by either party to terminate the lease or renew upon mutual written agreement.

### **SECTION 3: LEASE PAYMENT**

The Society shall pay rent at the rate of one dollar (\$1.00) per year due on or before the fifteenth day of February. The terms and conditions set forth shall be subject to an annual review between the parties.

### **SECTION 4: POSSESSION**

The Society shall have possession of said premises on February 15, 2024

### **SECTION 5: TAXES AND UTILITIES**

- 1) The City shall pay for all assessments and utilities, such as water, sewer, electricity and gas for said leased premises as they become due.
- 2) The City shall pay all real estate taxes said leased premises as they become due.

### **SECTION 6: SOCIETY RESPONSIBILITY**

- 1) The Society, at their own expense, may make alterations and improvements to or may remodel the structures. Such alterations, improvements, remodeling and structure relocation shall be made for the use and benefit of the City and shall remain the property of the City.
- 2) The Society may not alter the Complex structures or grounds without the written approval of the City. Any permanent addition to or alteration of the structures or the site must be approved by the City in advance.
- 3) The Society, at their own expense, may add technology infrastructure, such as internet and wireless access to the sites, upon written approval of the City.
- 4) The Society shall provide the furnishings, equipment, artifacts and all related and necessary supplies or structures as it deems appropriate for the use of the leased premises and maintain insurance upon said contents located therein.
- 5) The Society shall have the final judgment upon what items of historical value shall be placed on the site or in the building. Any items to be donated to the City for use at the site or in the building must be recommended by the Society and approved by the City in advance.
- 6) The Society shall provide an alarm system, providing for the initial purchase, maintenance and subsequent replacement thereof, as well as any other maintenance responsibilities and operational expenses that may be necessary to protect the structure and its contents.
- 7) The Society shall provide all janitorial services, cleaning of the building, and the

grounds which the Society shall have open to the public. The City shall require the Society to properly maintain, by way of housekeeping, the proper cleanliness necessary for the demonstration of such area and historical exhibits.

- 8) The Society shall take care to protect and preserve the structure and the grounds. They shall further provide liability insurance for their use and for such parties that may enter upon the premises under any circumstances during the time the Society shall have custody and control of said structure, artifacts and related services.
- 9) The Society shall provide evidence of insurance for liability and extended coverage on the building and complex per the above in accordance with the liability and insurance section contained herein.
- 10) The Society is responsible for all costs of maintenance and repairs of damage to the physical structure, equipment or complex property that is caused by the Society activities.
- 11) The Society agrees to the limited use of the Carnegie Building. The Society has access and use, per this lease, for the top floor (first floor) only. Use of the basement will not be permitted unless said permission is expressly given by the City.
- 12) The Society shall designate one individual to serve as liaison between the City and the Society. The liaison will coordinate needs and uses with the Parks and Facilities Superintendent or designee.

## **SECTION 7: CITY RESPONSIBILITIES**

- 1) The City hereby agrees that if the Society shall perform every one of the above covenants, undertakings and agreements contained herein, it shall during the term hereof, freely, peaceably and quietly enjoy the use of the building and park property for said public purposes without molestation, hindrance, eviction, or disturbance by the City or persons under its control.
- 2) The City shall require the Society to prove evidence of insurance for liability and extended coverage on the building and complex. The City shall likewise maintain adequate property insurance on structures to insure them for normal perils under commercial property insurance programs.
- 3) The City shall provide for the reasonable maintenance of the building, including the interior and exterior walls, floors, roof, windows, sidewalk, plumbing, HVAC, electrical systems, and other interior and exterior repairs as may be necessary to protect the structure for the leased premises.
- 4) The City agrees to designate the Parks and Facilities Superintendent or designee as the City liaison to the Society.
- 5) The City will provide the Society first rights for rental of the Market Square building located at 4 North Main Street, Miamisburg OH 45342. The City is responsible for determining and administering any rental agreements for this building. The City

receives all revenues generated by rental of Market Square.

## **SECTION 8: CONDITION OF PREMISES**

The Society has examined and knows the condition of the premises and does hereby accept the same in the condition that exists on the date of the signing of this Lease Agreement and does hereby release and discharge the City from any and all claims, damages and accidents that may be occasioned by reason of the condition of the premises and that no representation as to the condition and repair thereof has been made by City not herein mentioned and said Society shall keep the interior of the premises in good repair at all times during the term of this lease agreement. Further, the Society shall keep the premises clean, safe and in healthy condition, according to the ordinances and direction of the proper officials at the Society's own expense.

## **SECTION 9: ALTERATIONS**

The Society may at the Society's expense make alterations and improvements to or may remodel the leased premises. Such alterations, improvements and remodeling shall be made for the use and benefit of the City and shall remain the property of the City and the Society shall have no interest whatsoever in any building or improvement constructed by the Society on said leased premises. The Society shall first obtain written consent from the City before altering, improving or remodeling the leased premises, which consent shall not be unreasonably withheld.

## **SECTION 10: LIABILITY**

The Society agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and volunteers against any liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising wholly or in part due to any act or omission of the Society, its agents, volunteers or employees, and arising out of the Society's use of the leased premises or in the execution, performance or failure to adequately perform the Society's obligations pursuant to this agreement.

## **SECTION 11: INSURANCE**

The Society shall obtain at its own cost and expense insurance covering the contents of the leased premises and all supplies, materials, equipment and Society contents located within. Further, the Society agrees to obtain at its own cost and expense comprehensive general liability insurance acceptable to the City, with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and personal injury; and the Society shall, at the time of the execution of this agreement, furnish the City with a satisfactory certificate of such insurance, providing for a ten (10) day advance written notice of cancellation. However, failure to obtain the required documents shall not waive the Society's obligation to provide them. The City, its officers, employees and volunteers shall be named as additional insureds thereunder. For any claims related to this Agreement, the Society's insurance coverage shall be primary insurance as respects the City, its officers, officials,

employees or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Society's insurance and shall not contribute to it.

As of April 1<sup>st</sup>, 2019, the Society does not employ any individuals. If, in the future, the Society does employ any individuals, the Society shall always maintain during which employment occurs, Workers' Compensation coverage for its employees and shall, upon request, provide the City with a copy of its current Workers' Compensation certificate.

#### **SECTION 12: ASSIGNMENT, SUB-LETTING, SOCIETY LIEN**

The Society has the exclusive right to determine who, if anyone, shall be permitted access to the areas located on the premises. The Society has the right to enter into agreements with other sub-lessees regarding use of areas located within the premises.

Except as otherwise provided herein, the Society shall not assign any Lease, use agreement or any interest herein or hereunder without the City's written consent not permit the Society's interest under this Lease or any part thereof to be sold or assigned by operation of law or under execution or other legal process or under Order of Court or otherwise, without the written consent of the City; and that at the end of said term the Society will deliver said premises in as good order and condition as they now are, or may be put by said Society, reasonable use and ordinary wear and tear thereof and damage by fire or other unavoidable casualty excepted; and the interest of said Society in and to the same, in favor of City; the Society's successors, and assigns, prior and preferable to any and all other liens thereupon whatsoever.

#### **SECTION 13: ACCESS TO PREMISES**

The City and/or the City's authorized representatives shall have the right to enter the leased premises at all reasonable hours to examine the same, unless required for emergency or critical facility infrastructure, maintenance, or other need. The City shall notify the Society within a reasonable time prior to such entry. Should the City need to enter the premises for purpose of emergency, the City shall notify the Society within a reasonable time frame after such entry.

#### **SECTION 14: FORFEITURE AND RE-ENTRY**

If the Society shall fail to keep any of the other covenants to this lease by said City to be kept and such failure continues for ten (10) days after written notice is given to the Society, it shall be lawful for said City, the City's heirs or assigns, to re-enter upon the premises and thereupon this Lease, and all rights of the Society thereunder shall cease, terminate and be void.

#### **SECTION 15: CUMULATIVE REMEDIES**

The remedies to which the City may resort under this Lease Agreement are cumulative and are not intended to be exclusive of any other remedy to which the City may be entitled by law or in equity. The failure of the City to insist on strict



performance of any of the provisions of this Lease Agreement or exercise any right herein contained shall not constitute a waiver on the part of the City. The acceptance required hereby with knowledge of a breach by Society of any provisions herein shall not constitute a waiver of such a breach.

#### **SECTION 16: ABANDONED PROPERTY**

In the event the Society leaves any property on the leased premises for more than seven (7) days after termination of this Lease for any cause, such property shall become the City's sole property without any liability on the City's part other than to pay the Society the net proceeds from any disposition of said property less expenses of such disposition and less any other amounts then due or becoming due from the Society to the City under the terms of this Lease Agreement.

#### **SECTION 17: QUIET ENJOYMENT**

The City covenants that the City has the full right and authority to make the lease and that if the Society performs all the terms of the Lease, the Society shall peacefully and quietly enjoy and possess the premises throughout the term thereof, subject only to the conditions therein set forth.

#### **SECTION 18: NOTICE**

All notices and demands which may be required to be served upon the City and the Society may be given by personal service or may be given by depositing a copy of it in U.S. Mail, postage prepaid, registered or certified mail, addressed as follows:

To City:       City Manager  
                  City of Miamisburg  
                  10 N. First Street  
                  Miamisburg, OH 45342

To Society:    Miamisburg Historical Society  
                  P.O. Box 774  
                  Miamisburg, OH 45342

#### **SECTION 19: SUCCESSORS AND ASSIGNEES**

This Lease shall be binding upon and insure to the benefit of the successors, executors, administrators, heirs and assigns of the City and the successors of the Society, as well as any assignees of the Society to which the City has in writing agreed as herein provided. Provided, however, that this Lease shall not be assigned without the written consent of the City.

#### **SECTION 20: PRIOR LEASE AGREEMENTS**

The execution of this lease agreement shall take precedence and replace any prior lease agreements between the parties for the premises contained herein.

## **SECTION 21: PARTIAL INVALIDITY**

The invalidity or unenforceability of any provision herein shall not render invalid or unenforceable any other provision.

## **SECTION 22: OHIO LAW**

This Lease shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties being first duly authorized have signed this Lease Agreement on the date first written above.

Signed in the presence of:

Lessor:

City of Miamisburg

---

Witness

---

Keith D. Johnson

Date

City Manager

Lessee:

The Miamisburg Historical Society

---

Witness

---

Ken Ballinger

Date

President

ORDINANCE NO. 7068

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BEAU TOWNSEND FORD FOR THE PURPOSE OF PURCHASING A DUMP TRUCK WITH UTILITY BODY AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code (O.R.C.) Section 125.04 Section C authorizes the City, to purchase supplies or services from another party, including a political subdivision, instead of through participation in contracts if the City can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through those contracts. Purchases that the City makes under this section are exempt from any competitive selection procedures otherwise required by law, and

WHEREAS, the Public Works Department's current dump truck with utility bed is at the end of its useful life and needs replaced; and

WHEREAS, the replacement of the existing dump truck with utility bed is budgeted in the 2023 Sewer Capital Improvement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a contract with Beau Townsend Ford for the purchase of a 2024 dump truck with utility bed for a total cost not to exceed \$130,000.00.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public utilities, therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 6, 2024

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved:

Mayor Michelle L. Collins  
Michelle L. Collins, Mayor

ORDINANCE NO. 7069

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES AND DECLARING AN EMERGENCY.

WHEREAS, the need for additional raw water production wells was identified in the Water System Master Plan to accommodate future demands and build redundancy into the water supply; and,

WHEREAS, Arcadis U.S., Inc. has been selected as the engineering consultant having the knowledge, skills, abilities and experience necessary to effectively design the new production well and transmission main and oversee the bidding of the project; and,

WHEREAS, an additional raw water production well is needed to supplement the City's water supply, and an Addendum to the original professional services contract is needed to provide for the design of Well No. 15 concurrently with Well No. 14.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Addendum No. 19 to The Master Professional Services Agreement with Arcadis U.S., Inc. at a cost not to exceed \$661,000, is hereby determined to be necessary for the design and oversight of Production Well No. 15 and Well Installations.

Section 2.

The City Manager is hereby authorized to enter into an agreement with Arcadis U.S., Inc. for engineering services as delineated in the Scope of Services attached hereto and marked as Exhibit A at a cost not to exceed \$661,000.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the professional engineering services are needed, at the earliest possible date, to ensure eligibility for project funding; therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 6, 2024

Attested: \_\_\_\_\_

Kim Combs

Kim Combs, Clerk of Council

Approved: \_\_\_\_\_

Mayor Michelle L. Collins  
Michelle L. Collins, Mayor

## **ADDENDUM NO. 19**

**TO**

### **MASTER PROFESSIONAL SERVICES AGREEMENT**

This Addendum is executed this \_\_\_\_ day of January, 2024 in connection with the Master Professional Services Agreement between the **City of Miamisburg, Ohio** ("OWNER") and **ARCADIS U.S., Inc.**, ("ENGINEER") dated as of January 23, 2014 (the "Agreement") which is incorporated herein by reference and made a part hereof. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. In the event a term of this Addendum conflicts with a term of the Agreement, the terms of this Addendum shall prevail.

#### **SCOPE OF SERVICES:**

The ENGINEER will provide design services for **Include Production Well No. 15 and Well Installations** into the Production Well #14 Project (Addendum #15) as further provided in Exhibit A attached hereto and incorporated herein by reference (the "Services").

#### **COMPENSATION:**

The OWNER will compensate ENGINEER for the Services as follows:

• Well No. 14 Installation, Testing, & Development	\$ 300,000
• Well No. 15 Installation, Testing, & Development	\$ 300,000
• Oversight of Well No. 15 Installation	\$ 36,000
• Additional Design Services Associated with Including Production Well No. 15	<u>\$ 25,000</u>
<b>Compensation Maximum Price</b>	<b>\$ 661,000</b>

#### **SCHEDULE:**

The ENGINEER shall complete the Services in accordance with the schedule attached hereto as Exhibit B and incorporated herein by reference (the "Schedule").

IN WITNESS WHEREOF, the parties hereto have made and executed this ADDENDUM the day and year indicated herein:

**Attest:**

**CITY OF MIAMISBURG, OHIO**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Keith D. Johnson  
Title: City Manager

**Attest:**

**ARCADIS U.S., Inc.**

Scott Niekamp  
Scott Niekamp  
Title: Senior Hydrogeologist

By: Jason M. Abbott  
Name: Jason M, Abbott, PE for  
Brad Olson, PE  
Title: Vice President



## **EXHIBIT A SCOPE OF SERVICES**

### **Include Well No. 15 and Well Installations - Design**

ARCADIS U.S., Inc., will provide the engineering services described below for the design and bidding services for Including Production Well No. 15 and Well Installations into the Production Well No. 14 Project (Addendum #15).

#### **Background**

The ongoing Production Well No. 14 design was originally described in Addendum #15 to include the design of Production Well No. 14 and the conveyance piping needed to move the raw water from the site of the new production well to the existing City of Miamisburg Water Treatment Facility.

The new production well site was approved by OEPA on December 9, 2020, for both Wells 14 and 15 (original Package Number: 1398789, with subsequent extensions until 2023 and now 2024). With Wells 14 and 15 near each other, it was determined during the preliminary phases of the design that Well 15 could be efficiently included in the design so Miamisburg would not have to conduct a future project solely to design and construct Well #15 (additionally with the City's existing Production Well #9 reaching the end of its useful life, the addition of Well #15 is needed to meet the needs of the citizens of Miamisburg).

This addendum includes design and bidding services for Production Well No. 15 as well as the well drilling services for installation, testing and development of both Production Well No. 14 and No. 15.

#### **Additional Design Services**

##### **Production Well No. 14:**

- Based off the drawings and specifications developed by Arcadis, procure the services of a well driller subcontractor for the installation, testing and development of Production Well No. 14.

##### **Production Well No. 15:**

- Based off the drawings and specifications developed by Arcadis, procure the services of a well driller subcontractor for the installation, testing and development of Production Well No. 15.
- Provide additional oversight of Well No. 15 installation.
- Provide additional process mechanical, civil, electrical, structural, and I&C design services associated with including Production Well No. 15 in the design.

**EXHIBIT B  
PROJECT MILESTONE SCHEDULE**

**City of Miamisburg, Ohio  
Include Production Well No. 15 and Well Installations - Design**

ENGINEER has developed a preliminary milestone schedule for the design and bidding of the Production Well No. 14 and Raw Water Main Project (Addendum #15). The Inclusion of Production Well No. 15 and the Wells Installations shall follow the schedule of Addendum #15

Task/Milestone

Target Completion Date

Per schedule set forth in Production Well No. 14 Design Project (Addendum #15)