

CITY OF CLAYTON, OHIO

RESOLUTIONS AND ORDINANCES

February 2, 2023

OLD BUSINESS – NONE

NEW BUSINESS

RESOLUTIONS (SINGLE READING AND IMMEDIATE ENACTMENT)

RESOLUTION NO. R – 02 – 23 – 15

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH JOHN R. JURGENSEN COMPANY FOR PAVING OF PHILLIPSBURG-UNION ROAD BETWEEN HABER ROAD AND SHAW ROAD AT A TOTAL PROJECT COST OF \$438,749.40 AND A TOTAL COST TO THE CITY OF CLAYTON, OHIO NOT TO EXCEED \$201,922.40

WHEREAS, in accordance with the provisions of Charter Section 8.02, bids were solicited for the paving of Phillipsburg-Union Road between Haber Road and Shaw Road, PID 116863; and

WHEREAS, said bids have been received and reviewed and the City Manager and City staff recommends for acceptance the bid received from John R. Jurgensen Company as being the lowest and best bid submitted by a responsible bidder; and therefore, City staff recommends accepting said bid in accordance with the terms of the request for bids.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is hereby authorized to enter into an agreement with John R. Jurgensen Company to complete the paving of a specified section of Phillipsburg-Union Road between Haber Road and Shaw Road, PID 116863, with the total cost of said repaving not to exceed \$438,749.40 and with a total cost to the City of Clayton for its portion of the paving project not to exceed \$201,922.40.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023

RESOLUTION NO. R – 02 – 23 – 16

A RESOLUTION PROVIDING CONSENT TO THE OHIO DEPARTMENT OF TRANSPORTATION TO COMPLETE THE PROJECT DESCRIBED AS “BRIDGE REPAIRS ON VARIOUS BRIDGES WITHIN THE DISTRICT INCLUDING SFN 5705479, MOT IR70 10.620 IN THE CITY OF CLAYTON” AND BEARING PID NO. 108092

WHEREAS, the State has determined the need for the described project:

This Project will conducted bridge repairs on various bridges within the District including SFN 5705479, MOT IR70 10.620 in the City of Clayton.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. **Consent Statement:** Being in the public interest, the City of Clayton, Ohio (“LPA”) gives consent to the Director of Transportation to complete the above-described project.

2. **Cooperation Statement:** The LPA shall cooperate with the Director of Transportation in the above-described project as follows: The State shall assume and bear 100% of all of the costs of the improvement.

The LPA agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

3. **Utilities and Right-of-Way Statement:** The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

4. **Maintenance:** That, upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23 U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

5. This Resolution shall take effect and be in force immediately from and after the date of its passage.

RESOLUTION NO. R – 02 – 23 – 17

A RESOLUTION DECLARING THE NECESSITY OF CONSTRUCTING STREET LIGHTING IMPROVEMENTS IN AND ASSESSING ANNUAL LIGHTING CHARGES UPON LOTS LOCATED WITHIN HUNTER’S PATH, SECTION ONE, IN THE CITY OF CLAYTON, OHIO

WHEREAS, the Clayton City Council (hereinafter the "Council") has heretofore studied the need to construct street lighting improvements (the "Improvements") to service presently unserved areas in the City of Clayton that are in the process of current or planned development; and

WHEREAS, the proposed Hunter’s Path, Section One development project will be designed to serve the residences to be constructed and located throughout the project area; and

WHEREAS, this Council with and upon recommendation of staff has reviewed and hereby approves the general plans and the detailed plans and specifications required to proceed with the Improvements; and

WHEREAS, this Council has received a duly subscribed and regularly presented request/petition pursuant to Ohio Revised Code Section 727.06 requesting said improvement and including in said request/petition that the annual lighting charge cost of the street lighting improvement be assessed in an equal amount against each benefited lot, the amount to be determined by dividing the total cost per semiannual installment by the number of benefited lots in the district; and

WHEREAS, Council is electing to assess the entire cost annual lighting charge cost of the street lighting improvement in an equal amount against each benefited lot, the amount to be determined by dividing the total cost per semiannual installment by the number of benefited lots in the district”; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Clayton, Ohio:

1. That this Council hereby declares it necessary for the preservation and promotion of the public health and welfare, for the reasons set forth in the preambles hereof, to enter into an agreement with AES/Miami Valley Lighting LLC for full service lighting and to assess the accumulated annual charge estimated to be **\$4,557.60** against the lots in Hunter’s Path Section One.
2. The lots or parcels of land to be assessed for the Hunter’s Path Section One, Street Lighting Improvement Project are: Redwood Road Lots 1-8, 15-24, 52-57 and 60-66 and Willow Road Lots 34-46 and 47-51 and Fallgold Drive Lots 25-33 and Falls Road Lots 9-14 and 58-59 of Hunter’s Path Section One, located in Section 29, Town 5, Range 5 East, City of Clayton, Montgomery County, Ohio and as further described in the attached Petition (**Exhibit A**) and Lot Map (**Exhibit B**).
3. The Hunter’s Path Section One, Street Lighting Improvement Project is estimated to consist of installation and trenching of ten (10) light poles and fixtures at a developers cost of **\$107,900** and total annual lighting charges for said ten (10) poles and fixtures of **\$4,557.60** to be assessed as delineated herein with no portion of the improvement to be paid by the City.

4. The boundaries of the area to be assessed include all properties within Hunter's Path Section One.

5. The Improvements are more particularly described and set out in the plans, specifications, estimates of cost, rates, charges and tentative assessments which are on file in the Clayton Government Center, 6996 Taywood Road, Englewood, Ohio, 45322 where they may be examined and which plans, specifications, estimates of costs, rates, charges and tentative assessments are hereby approved.

6. That the total annual lighting charge is estimated to be **\$4,557.60** and shall be funded as follows:

- (a) The portion to be specially assessed to property owners on an annual basis totals **\$69.05 per parcel**, as adjusted to reflect increases in future years, in an equal amount against each benefited lot, the amount to be determined by dividing the total cost per semiannual installment by the number of benefited lots in the district.

7. The City does not intend to issue securities in anticipation of the levy of the assessments. The City does not intend to issue securities in anticipation of collection of the assessments.

8. That the estimate of the assessments against each parcel of property subject to assessment shall be prepared and filed in the office of the Clerk of Council and shall be open for inspection during regular business hours.

9. That Notice of the passage of this Resolution of Necessity and the filing of the estimated assessment pursuant to Ohio Revised Code Section 727.12 shall, after the estimated assessment has been made and filed as provided therein be served by the Clerk of Council, or a person designated by the clerk, upon the owners of the lots or parcels of land to be assessed for the Improvements, by certified mail addressed to such owner at his last known address or to the address to which tax bills are sent.

10. That the owner of any lot or parcel of land who objects to the amount or apportionment of, or the assessment against such lot or parcel as set forth in the estimated assessment filed under Ohio Revised Code Section 727.12, shall file such objection, in writing, with the Clerk of Council within two weeks from the date of completion of the notice required herein. Such objection shall include the address for mailing of the notice of the creation by the City of an Assessment Equalization Board pursuant to Ohio Revised Code Section 727.16.

11. That an owner who fails to so file an objection shall be deemed to have waived any objection.

12. That this Council hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

13. That a copy of this Resolution shall be filed with the Montgomery County Auditor.

RESOLUTION NO. R – 02 – 23 – 18

A RESOLUTION AUTHORIZING MUTUAL WAIVER OF 30-DAY NOTICE OF TERMINATION PROVISION AND FURTHER AUTHORIZING THE CITY MANAGER TO PROVIDE WRITTEN NOTICE OF IMMEDIATE TERMINATION OF AGREEMENT WITH BRANDSTETTER CARROLL, INC. FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES AND TO TAKE SUCH FURTHER ACTIONS NECESSARY TO TERMINATE SAID AGREEMENT

WHEREAS, Charter Section 8.02 provides that the City Manager shall be the contracting officer of the City and shall award and execute all contracts on behalf of the City; and

WHEREAS, via enactment of Resolution No. R-05-21-31 on May 20, 2021, Council authorized the City Manager to enter into an Agreement for professional engineering consulting services with Brandstetter Carroll, Inc. and the City Manager did enter into said Agreement on behalf of the City of Clayton, Ohio (*Exhibit A*); and

WHEREAS, Section VI, Paragraph 1 of the Agreement referenced herein, provides, “This Agreement will continue in effect until terminated by either party upon thirty days (30) written notice to the other party.”; and

WHEREAS, the City and Brandstetter Carroll, Inc. mutually agree to waive the 30-day notice of termination provision found at Section VI, Paragraph 1 of the Agreement referenced herein such that termination of said Agreement can become immediately effective upon adoption of this Resolution No. R-02-23-18; and

WHEREAS, Council desires to authorize the City Manager to provide written notice to Brandstetter Carroll, Inc. of the termination of the Agreement referenced above.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That Council hereby authorizes the mutual agreement of the parties to waive the 30 day notice of termination provision found at Section VI, Paragraph 1 of the Agreement referenced herein (*Exhibit A*) and the City Manager is hereby authorized to provide written notice to Brandstetter Carroll, Inc. of the immediate termination of the Agreement referenced herein and to take such further necessary actions to consummate termination of said Agreement.

NOTE: THE FOLLOWING TWO RESOLUTIONS NUMBERED R-02-23-19 WERE TABLED BY COUNCIL:

RESOLUTION NO. R – 02 – 23 – 19

A RESOLUTION AUTHORIZING THE CITY OF CLAYTON, OHIO TO ENTER INTO THE SUSTAINABLE OHIO PUBLIC ENERGY COUNCIL (“SOPEC”), AND FURTHER AUTHORIZING THE EXECUTION AND DELIVERY OF THE AGREEMENT ESTABLISHING SOPEC, AND APPROVING THE BYLAWS OF SOPEC

WHEREAS, the City Council of Clayton, Ohio (the “City”) previously enacted legislation authorizing the City to establish an opt-out electric aggregation program, pursuant to Section 4928.20 of the Ohio Revised Code (the “Electric Aggregation Program”), for the residents, businesses, and other eligible electric consumers located within the City, and for that purpose, to act jointly with any other village, city, township, municipal corporation, county, or other political subdivision of the State of Ohio, as permitted by law; and

WHEREAS, by joining the Southeast Ohio Public Energy Council (DBA Sustainable Ohio Public Energy Council) (“SOPEC”), the City will be able to act jointly with other members of political subdivisions and thereby maximize the potential benefit of electric deregulation through group purchasing efforts.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, COUNTY OF MONTGOMERY, AND STATE OF OHIO, THAT:

SECTION 1. The City Council finds and determines that it is in the best interest of the City, including the electric consumers located within the City, to join SOPEC and to adopt the SOPEC Bylaws, for the purpose of establishing and implementing the Electric Aggregation Program within the City.

SECTION 2. The City Manager of the City is hereby authorized and directed to execute and deliver the Agreement Establishing the Southeast Ohio Public Energy Council (dba Sustainable Ohio Public Energy Council) (the “SOPEC Agreement”). The SOPEC Agreement shall be substantially in the form presented to this City Council and on file with the Clerk, subject to such changes, insertions, and omissions that are consistent with this Resolution and are not substantially adverse to the City and as may be approved by the City Council, which approval shall be conclusively evidenced by the execution of the SOPEC Agreement.

SECTION 3. The City Council hereby approves and adopts the Bylaws of SOPEC in the form attached to the SOPEC Agreement.

SECTION 4. It is found and determined that all formal actions of this City Council concerning and relating to the passage of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and of any of its committees that

resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including the City's Codified Ordinances and Section 121.22 of the Ohio Revised Code.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023

RESOLUTION NO. R – 02 – 23 – 19

A RESOLUTION AUTHORIZING MIAMI VALLEY COMMUNICATIONS COUNCIL TO ACT AS THE CITY OF CLAYTON, OHIO'S GOVERNMENTAL AGGREGATOR FOR ELECTRICAL AGGREGATION

WHEREAS, the majority of the participating voters in the City of Clayton, Ohio have authorized the aggregation of retail electric loads located in its respective jurisdiction and to enter into service agreements to facilitate for those loads and purchase and sale of electricity; and

WHEREAS, this Council may exercise such authority jointly with any other legislative authorities or political subdivision of the State of Ohio; and

WHEREAS, the City Manager has recommended to Council that Miami Valley Communications Council ("MVCC") be authorized to act as its governmental aggregator to the full extent permitted by law, and subject to MVCC's Rules and Procedures, and the relevant governing documents, Miami Valley Communications Council Electric Power Aggregation Operation and Governance Plan, approved by the Public Utility Commission of Ohio; and

WHEREAS, this Council has determined this Resolution is in the best interest of the City's residents and promotes the general welfare of said citizenry.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, OHIO, AS FOLLOWS:

Section 1. The Clayton City Council, Ohio hereby authorizes MVCC to act as its governmental aggregator of retail electric in accordance with Ohio law.

Section 2. The City Manager is hereby authorized to serve as this City's representative to MVCC's governing body for the participation and administration of utility aggregation.

Section 3. The City Manager is hereby authorized to select her own alternate to serve as the City's representative to MVCC's governing body in her absence.

Section 4. The City Manager is hereby authorized to enter into utility aggregation agreements, either directly or by and through MVCC, for periods of time up to three (3) years.

Section 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 6. This Resolution shall become effective immediately upon its passage.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023

RESOLUTION NO. R – 02 – 23 – 20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE KLEINGERS GROUP FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES AND AT A COST NOT TO EXCEED \$150,000.00

WHEREAS, Charter Section 8.02(C)(3)(g) exempts professional services not to exceed \$150,000.00 from competitive bidding; and

WHEREAS, City staff has recommended entering into an agreement with The Kleingers Group for professional engineering consulting services.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is authorized to enter into an agreement with The Kleingers Group in a form substantially similar to the agreement appended hereto as *Exhibit A* for professional engineering consulting services, with such agreed upon modifications thereto as authorized by the Law Director and at a cost not to exceed \$150,000.00.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023
