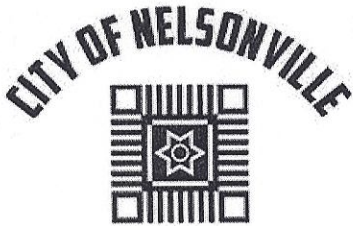


AP/AR
Check Register

Check Number	Check Date	Vendor Code	Vendor Name	Payment Type	Amount
0000098082	01/23/2024	DHK191	Daniel H. Klos Law Office	Peoples Bank - Chec	\$70,000.00
Grand Total:				Number Of Checks: 1	\$70,000.00



AUDITOR'S OFFICE

Deliver To Auditor's Office
211 Lake Hope Dr.
Nelsonville, OH 45764

Vendor DHK191
Daniel H Klos Law Office
1911 Country Place
Lancaster, Ohio 43130

City of Nelsonville
211 Lake Hope Drive
Nelsonville, OH 45764

PURCHASE ORDER

Page: 1
P.O. Number: 2024001105
P.O. Date: 01/23/2024
Req. Number: 2024-Finance-09486-

Requested By: Judy Smith
Blanket Type:
Ship Via:
Terms:

*Approved via vote at
1/22/24 meeting.
Confirmed w/ clerk of council on phone, 1/23*

Line	Description	Account	Qty	Unit	Price/Unit	Amount
001	Settlement claim	100-340-10065 Other Employee Costs				\$23,333.33
002	Settlement claim	700-340-10065 Other Employee Costs				\$23,333.33
003	Settlement claim	750-340-10065 Other Employee Costs				\$23,333.34

*Line items via precedent and council preference,
Past and present.*

*\$70,000 was amount requested by Tom Layman, and
agreement.*

Page Total: \$70,000.00

Purchase Order Total: \$70,000.00

CITY AUDITOR'S CERTIFICATE

It is hereby certified that the amount indicated by the order total required to meet the contract agreement, obligation, payment or expenditure for the above has been lawfully appropriated or directed for such purpose and is in the Treasury or in the process of collection to the credit of the _____ fund free from obligation or certification now outstanding.

1/23/2024

CITY AUDITOR

Date

1/23/2024

CITY MANAGER

Date

SETTLEMENT, WAIVER, AND RELEASE AGREEMENT

THIS AGREEMENT, effective on the last date executed below, is entered into between THE CITY OF NELSONVILLE, on behalf of itself, its officers, councilmembers, directors, attorneys, members, employees, volunteers, principals, and agents (in their individual and representative capacities) (collectively referred to as "the **CITY**"), and its insurers and re-insurers, including, but not limited to, PUBLIC ENTITIES POOL OF OHIO, PUBLIC ENTITY RISK SERVICES OF OHIO, and SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., and their officers, directors, predecessors, subsidiaries, affiliates, successors, and assigns, (collectively referred to as the "**RELEASEES**"), and GREG SMITH, on behalf of himself, his heirs, his executors, his administrators, and his assigns (herein singularly and collectively called "**SMITH**"). The City, Releasees, and Smith are collectively referred to as "the **Parties**" and are sometimes individually referred to as a "**Party**" in this Agreement.

WHEREAS, the Parties desire to fully and completely settle and dispose of:

- (a) Smith's Complaints filed in the Athens County Court of Common Pleas (Case No. 21CI0059; Case No. 21CI0072; Case No. 21CI0174 (which the City appealed to the Fourth District Court of Appeals, Case No. 22CA4); and Case No. 22CI0021) and the Federal District Court for the Southern District of Ohio (Case No. 21-CV-3898) (collectively, "the Complaints") challenging his status as a City Council Member and provisions of the City's Charter; and
- (b) Any and all other claims, grievances, arbitrations, charges, or lawsuits of whatever kind or nature, whether known or unknown, that Smith ever had, may now have, or may hereafter discover it had against the City.

NOW, THEREFORE, in consideration of the promises herein contained, it is agreed as follows:

1. **Payments to Smith:** Subject to Smith satisfying its obligations under this Agreement, and as consideration for those obligations, the gross cumulative amount of \$137,500.00 (One Hundred Thirty Seven Thousand Five Hundred Dollars and Zero Cents) (the "**Settlement Amount**"), shall be split and tendered as follows:
 - (a) The City agrees to pay \$70,000.00 (Seventy Thousand Dollars and Zero Cents) to the order of Smith's counsel, Dan Klos, of Daniel Klos Law Office, which represents any and all legal fees and expenses to which Smith may or may hereafter have incurred. The City shall issue a federal Form 1099 to Jeffrey M. Lewis Co., LPA. Jeffrey M. Lewis Co., LPA shall provide the City with a signed IRS Form W-9 as a condition of payment.
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- (a) The City shall send the payment specified in Section 1(a) of this Agreement within fourteen (14) business days of the latest of the following occurring: (i) the City receives a fully-executed copy of this Agreement from Smith, (ii) the executed W-9 from Daniel Klos Law Office, and (iii) Smith files a "Notice of Dismissal" of the Complaints that reflect he has dismissed all Complaints with prejudice. The City shall send the payment to Daniel H. Klos Law Office, 1911 Country Place, Lancaster, Ohio, 43130.

If Smith fails to resign from City Council as part of the waiver of his right to sit on City Council (as agreed upon in Section 4 of this Agreement) before February 14, 2024, then he shall return to the City the payment specified in Section 2(a).

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- (c) Smith acknowledges and agrees that neither the City, the Releasees, nor their attorneys have made representations to him regarding the tax consequences of any amounts to be paid pursuant to this Agreement. Smith shall be solely and personally responsible for all taxes (including penalties and interest) that may be owed by Smith on such payments. Smith agrees to defend and indemnify and hold the City and the Releasees harmless from and against any and all tax claims arising out of such payments.

3. ***Entire Amount of Monetary Consideration:*** Smith agrees that this Agreement sets forth the entire amount of monetary consideration and benefits to which he is entitled related to the Complaints, and that he will not seek any further compensation or benefits of any kind or nature from the City or Releasees, including, but not limited to wages, benefits, back pay, front pay, damages (whether compensatory, punitive or otherwise), legal fees, expenses and court costs, in connection with any matter.
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8. ***Releases of Claims:*** Smith acquits, releases, and forever discharges both the City and the Releasees from all, and in all manner of, actions and causes of action, suits, debts, claims and demands whatsoever, in law or in equity, which it ever had, may now have or may hereafter discover he had with respect to any aspect related to the facts alleged in the Complaints.
9. ***Waiver of Unknown Claims:*** Smith intends that this Agreement shall bar each and every claim, demand, and cause of action against both the City and the Releasees, whether known or unknown to him at the time of execution of this Agreement. As a result, Smith acknowledges that he might, in the future, discover claims or facts in addition to or different from those which he now knows or believes to exist with respect to the subject matters of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Smith hereby waives any rights, claims, or causes of action that might arise as a result of such different or additional claims or facts.
10. ***Adequacy of Consideration:*** Smith agrees that the covenants and promises made in this Agreement are in consideration of the payment, benefits and other promises made hereunder by the City and the Releasees. Smith acknowledges that but for his execution of this Agreement he would not be entitled to the amounts being paid to him under this Agreement.
11. ***Non-Admission of Liability:*** Smith agrees that: (a) neither this Agreement nor compliance with its terms shall be construed as an admission by the City of a violation of any statutory, regulatory, contractual, quasi-contractual, common law or other right; (b) neither this Agreement nor the fact of its delivery to Smith shall be admissible in any proceeding as evidence of unlawful or improper conduct by the City, except as may be necessary to enforce this Agreement; and (c) neither this Agreement nor compliance with its terms shall be construed as an admission as to the interpretation of the City Charter. The City and the Releasees expressly disclaim any liability to Smith arising out of or related to the Complaints.
11. ***Confidentiality:*** Smith agrees that the settlement of the Complaint, the terms of the settlement, and the terms of this Agreement shall remain strictly confidential and that neither Smith, nor its agents or attorneys, may divulge the terms of said settlement or the terms of this Agreement to anyone except (i) under order of a court of competent

jurisdiction, (ii) any governmental agency as required by law, or (iii) as necessary to be provided to his attorneys, accountants, or tax preparers. This Section shall not prohibit the City from complying with the Ohio Public Records Law or as required by any other applicable state or federal law.

12. ***Non-Disparagement:*** Neither Party nor the Releasees shall state or otherwise publish or discuss anything about the other Party or the Releasees that would adversely affect their reputation, image or business relationships and goodwill. Nothing in this Section shall preclude a Party from testifying honestly if required by law to testify in a proceeding or from participating fully in any government investigation. This Section shall not be interpreted to infringe upon or prohibit the City from adhering to R.C. 149.43, or any other applicable public records law. Smith agrees that the City's conformance with R.C. 149.43, or any other applicable public records law, may not form the basis for a violation of this Section 12. Nothing in this Section shall preclude a Party or the Releasees from engaging in conduct, political speech or speech on matters of public concern that is considered to protected activity under the First Amendment regarding any future matters.
13. ***Relief for Breach:*** In the event that a Party or the Releasees, or any person, entity or organization authorized by a Party or the Releasees, breaches any of its promises made in this Agreement, and the non-breaching Party or the Releasees defends or pursues any charge, suit, complaint, or claims as the proximate result thereof, the prevailing party shall be liable for all damages, reasonable attorneys' fees as determined by a court of competent jurisdiction, expenses, and costs (including discovery costs) incurred in defending or pursuing the same.
14. ***Governing Law and Interpretation:*** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and the United States, shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any Party, and any action by any Party hereunder must be brought and maintained only in an appropriate court having jurisdiction over Nelsonville, Ohio.
15. ***Effect of Provision Being Held Unlawful or Unenforceable:*** In the event that any provision of this Agreement is found, by any court or governmental agency, to be unlawful or unenforceable, the remaining provisions of this Agreement shall continue in effect except as described below in paragraph 15(a) below.
 - (a) Smith understands that the City and Releasees' agreement to make payments under Sections 1(a) and 1(b) of this Agreement are specifically made in consideration of his promises made to resign from City Council and not seek re-election pursuant to Section 4 of this Agreement. If any court or government agency finds Section 4 of this Agreement to be unenforceable, for any reason, and Smith breaches the provisions of Section 4 through seeking re-election to City Council, then Smith shall immediately reimburse to the City and the Releasees all amounts paid to him and/or his legal counsel under Sections 1(a) and 1(b) of this Agreement.
 - (b) **Nothing in Section 15(a) shall be read to invalidate any other provision of this Agreement upon a finding that Section 4 is unenforceable.**

16. **Modification and Waiver:** This Agreement shall not be changed, modified, terminated, canceled or amended except by a written instrument signed by all Parties. The failure to exercise, or a delay in exercising, any right, remedy or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power under this Agreement preclude any other or further exercise thereof.
17. **Advice of Counsel:** By signing this Agreement, Smith acknowledges that he has read this Agreement in its entirety, he understands it, he has been given an opportunity to consult with or obtain representation from an attorney in connection with this Agreement, and he consents to all of the Agreement's provisions as given freely, voluntarily, and with full knowledge and understanding of the Agreement's contents.
18. **Headings:** The headings used in this Agreement are descriptive only, are for the convenience of identifying provisions, and are not determinative of the meaning or effect of any provision.
19. **Counterparts and Execution:** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties.
20. **Entire Agreement:** Except as provided herein, the Parties agree that the foregoing constitutes the entire agreement between them, and that there exist no other agreements, oral or written, express or implied, relating to any matters covered by this Agreement, or relating to any other matter whatsoever, whether or not within the knowledge or contemplation of any of the Parties at the time of execution of this Agreement.

WHEREFORE, the Parties have read all of the foregoing, understand the same, and agree to all of the provisions contained herein.

[INTENTIONALLY LEFT BLANK]

~~THE CITY OF NELSONVILLE~~

Signature

THOMAS CANKS
Name Printed

CITY MANAGER
Title

12/14/2023
Dated

GREGORY SMITH

Signature

12-08-2023
Dated

**Request for Taxpayer
Identification Number and Certification**

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the
requester. Do not
send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.) Daniel H. Klos	
	2 Business name/disregarded entity name, if different from above. Daniel H. Klos Attorney at law	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor ☐ C corporation ☒ S corporation ☐ Partnership ☐ Trust/estate ☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. ☐ Other (see instructions)	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) <i>(Applies to accounts maintained outside the United States.)</i>	
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions ☐	
5 Address (number, street, and apt. or suite no.). See instructions. 1911 Country Place		
6 City, state, and ZIP code Lancaster, Ohio 43130		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-				-	
or								
Employer identification number								
8	0	-	0	2	7	6	9	7

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of
U.S. person

Date

4/18/2024

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

SETTLEMENT, WAIVER, AND RELEASE AGREEMENT

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16. ***Modification and Waiver:*** This Agreement shall not be changed, modified, terminated, canceled or amended except by a written instrument signed by all Parties. The failure to exercise, or a delay in exercising, any right, remedy or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power under this Agreement preclude any other or further exercise thereof.
17. ***Advice of Counsel:*** By signing this Agreement, Smith acknowledges that he has read this Agreement in its entirety, he understands it, he has been given an opportunity to consult with or obtain representation from an attorney in connection with this Agreement, and he consents to all of the Agreement's provisions as given freely, voluntarily, and with full knowledge and understanding of the Agreement's contents.
18. ***Headings:*** The headings used in this Agreement are descriptive only, are for the convenience of identifying provisions, and are not determinative of the meaning or effect of any provision.
19. ***Counterparts and Execution:*** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the Parties.
20. ***Entire Agreement:*** Except as provided herein, the Parties agree that the foregoing constitutes the entire agreement between them, and that there exist no other agreements, oral or written, express or implied, relating to any matters covered by this Agreement, or relating to any other matter whatsoever, whether or not within the knowledge or contemplation of any of the Parties at the time of execution of this Agreement.

WHEREFORE, the Parties have read all of the foregoing, understand the same, and agree to all of the provisions contained herein.

[INTENTIONALLY LEFT BLANK]

THE CITY OF NELSONVILLE

Signature

GREGORY SMITH

Signature

THOMAS CANKSIE

Name Printed

12-08-2023

Dated

CITY MANAGER

Title

12/14/2023

Dated



CITY OF NELSONVILLE
GENERAL ACCOUNT
NELSONVILLE, OH 45764



98082

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Seventy Thousand *****00/100 Dollars

01/23/2024

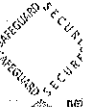
\$70,000.00

PAY
TO THE
ORDER
OF

Daniel H Klos Law Office
1911 Country Place
Lancaster, Ohio 43130



TAYLOR SAPPINGTON CITY AUDITOR



082

CITY OF NELSONVILLE
GENERAL ACCOUNT

98082

Remit To Code: DHK191

Pay To Name: Daniel H Klos Law Office

01/23/2024

0000098082

Invoice Number	Inv. Date	PO Number	Description	Account	Amount
Approved by voice motio	01/23/2024	2024001105	Settlement claim	100-340-10065	\$23,333.33
Approved by voice motio	01/23/2024	2024001105	Settlement claim	700-340-10065	\$23,333.33
Approved by voice motio	01/23/2024	2024001105	Settlement claim	750-340-10065	\$23,333.34
					<u>\$70,000.00</u>

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\$70,000.00



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