

INFRASTRUCTURE CONSTRUCTION AND LOAN AGREEMENT

This Infrastructure Construction and Loan Agreement (“Agreement”) is made as of _____, 2022 (the “Effective Date”) between Science One, LLC, an Ohio limited liability company (“Contractor”), and the City of Gahanna, Ohio (“Gahanna”) (jointly the “Parties”).

BACKGROUND

- A. Gahanna desires to engage Contractor to oversee and contract for certain construction services to construct infrastructure that will be built for and/or transferred to Gahanna and is being built as part of the construction of Tech Center Drive Extension (the “Work”) and Contractor desires to be so engaged.
- B. Gahanna agrees to provide funds to Contractor necessary to pay for the Work from a loan through the State Infrastructure Bank program pursuant to Ohio Revised Code Chapter 5531 (the “SIB Loan”).
- C. Gahanna agrees to provide Three Hundred Thirty-Five Thousand One Hundred Dollars (\$335,100.00) funds to pay in part for the Work.
- D. Contractor agrees to repay the balance of the SIB Loan, in accordance with the terms of the Note. Contractor further agrees to grant Gahanna, as security for the Note, an irrevocable Security Deposit.

NOW THEREFORE, in consideration of the foregoing and the mutual and dependent covenants hereinafter set forth, the Parties agree as follows.

AGREEMENT

1. **ENGAGEMENT OF CONTRACTOR.** Pursuant to the terms and conditions set forth herein, Contractor is hereby engaged to construct the public roadways, water lines, sewers and related appurtenant facilities (the “Work”) in accordance with the plans and specifications set forth in Exhibit A, attached hereto and incorporated herein by reference (the “Plans”). All obligations relating to the performance, and manner of construction, set forth in Exhibit B and the Grant Agreements and SIB Loan (defined herein), shall be complied with by the Contractor and its subcontractors in performance of the Work. The Work shall be dedicated to Gahanna upon substantial completion and acceptance by Gahanna.

2. **OBLIGATIONS OF CONTRACTOR.** Contractor shall: (a) determine the method, manner, and sequence of construction of the Work; (b) select all subcontractors; (c) select all materials and provide all equipment and tools; (d) coordinate all aspects of the Work, and; (e) take all reasonable precautions for the protection of persons and property during the performance of the Work. Contractor shall pay all costs of the Work, including, but not limited to, costs of labor, materials, equipment, tools, supplies, subcontracts, building permits, connection fees, inspection fees, taxes (other than real estate taxes), transportation, insurance (described in Section 7) and all other facilities and services necessary for the construction. Contractor shall perform the Work in

substantial accordance with the Plans (subject to change orders), the terms and conditions of this Agreement and applicable law. Contractor shall comply with all obligations placed upon Gahanna pursuant to SIB Loan and the Grant Agreements in performance of the Work. Contractor shall bid the Work in accordance with Gahanna's bidding standards, and require compliance by all subcontractors with all laws, policies, and obligations that would be applicable to Gahanna, if Gahanna itself were performing the Work.

3. **COMMENCEMENT AND COMPLETION.** The parties acknowledge that the Contractor will commence the Work on or before _____. Further, the Parties anticipate that the Work will be Substantially Complete (as defined below) on or before _____ subject to force majeure and any other delay beyond the immediate control of the Contractor and in accordance with the Grant Agreements and SIB Loan.

4. **CONTRACT PRICE AND PAYMENT.** Gahanna shall pay the Contractor the fixed sum of one dollar (\$1.00) (the "Contract Price") for overseeing the Work. Gahanna shall either pay directly, or indirectly provide for payment, to Contractor the sums necessary to pay for all Work to all third-party subcontractors or material suppliers for work completed up to a maximum sum of One Million Five Hundred Thousand Dollars \$1,500,000.00. All third-party subcontractors and material suppliers shall be engaged by Contractor in conformance with Gahanna's bidding procedures and the laws and rules applicable to Gahanna for procurement of such services and materials. Payment(s) shall be made pursuant to Section 11 hereof which is in accordance with the Promissory Note, executed the same date as this Agreement, between Gahanna and Contractor, a copy of which is attached hereto as Exhibit C. Moreover, and without limiting the above, in addition to the Contract Price, Gahanna shall take all actions necessary to finalize the Grant Agreements and SIB Loan, and to comply with the requirements of the Grant Agreements and SIB Loan. Gahanna will take all reasonable efforts to obtain the proceeds from the Grant Agreements and SIB Loan in accordance with the terms of this Agreement and the Note. Such proceeds from the Grant Agreements shall be credited against the obligations of the Contractor in accordance with the Note. Gahanna will provide the sum of Eighty-Five Thousand One Hundred Dollars \$85,100.00 from the Water Fund, and Two Hundred Fifty Thousand Dollars (\$250,000.00) from TIF Fund to pay for the Work in total Three Hundred Thirty-Five Thousand One Hundred Dollars (\$335,100.00) (the "Gahanna Payment"). The Gahanna Payment shall either be made by directly paying for Work or payment towards the SIB Loan. If payment is made on the SIB Loan, it shall, in accordance with the terms of the Note, reducing by the same amount the sum owed by the Contractor pursuant to the Note. Contractor shall at the time of executing this Agreement, execute and give to Gahanna the irrevocable "Security Deposit" attached hereto as Exhibit D.

5. **PERFORMANCE OF WORK.**

- a. The Contractor agrees to complete the Work in a good and workmanlike manner, with due diligence. The Contractor will obtain, with the assistance of Gahanna, all permits required in order to perform the Work. Contractor may, at its sole discretion, engage subcontractors to perform the Work hereunder, provided that Contractor remains responsible for proper completion of the Work at all times.

- b. The Contractor warrants to Gahanna, its successors and assigns, that materials and equipment furnished by the Contractor hereunder will be of good quality and be free from defects. Upon receipt of notice from Gahanna of any non-conformity or defect in the Work, within one (1) year after Substantial Completion of the Work, the Contractor will promptly complete such repairs and/or replacements as may be required, all at its own cost and expense.

6. **CONDITIONS TO PERFORMANCE.** If, in the course of construction, the Contractor encounters unforeseen geological or physical formations or other concealed subsurface conditions that make it impractical for the Contractor to perform the Work as set forth herein, the Contractor shall promptly notify Gahanna of the conditions and of the estimated additional time necessary to perform the Work under such conditions. Contractor is obligated to complete all Work necessary even if unforeseen conditions are encountered.

7. **INSURANCE.** Prior to commencing the Work, the Contractor shall, at its own expense, secure and maintain in force the following insurance coverage through the performance of the Work: (a) Commercial General Liability Insurance, which includes comprehensive, premises/operations, products/completed operations, contractual liability, broad form property damage and personal injury: \$2,000,000 per occurrence and \$2,000,000 general aggregate; (b) Automobile Liability which includes owned, lease or non-owned vehicles; (i) Bodily Injury: \$500,000 per person and \$500,000 per occurrence; and (ii) Property Damage: \$500,000 per accident; and (c) workers compensation in such amounts set forth under applicable state law. All insurance shall be placed with companies, and be in form and substance, reasonably acceptable to Gahanna. Certificates of insurance evidencing the insurance required in this Section shall be provided to Gahanna prior to the commencement of the Work and shall provide that thirty (30) days written notice shall be provided to Gahanna, prior to cancellation or substantial alteration of coverage, and all such insurance shall name Gahanna as an additional insured.

8. **GRANT REIMBURSEMENT.** Gahanna shall take all actions reasonably necessary to comply with its obligations under the State of Ohio 629 Roadwork Grant Program, as further described in the 629 Grant Agreement (the "629 Grant Agreement") between Gahanna and the Ohio Development Services Agency ("ODSA"). A copy of the 629 Grant Agreement is attached hereto as Exhibit E and incorporated herein by reference. In addition, Gahanna shall take all actions reasonably necessary to comply with its obligations under the Jobs and Commerce Economic Development Program, as further described in the Jobs and Commerce Economic Development Grant Agreement (the "Jobs and Commerce Grant Agreement") between Gahanna and the Ohio Department of Transportation. A copy of the Jobs and Commerce Grant Agreement is attached hereto as Exhibit F and incorporated herein by reference. The 629 Grant Agreement and the Jobs and Commerce Grant Agreement shall be referred to herein jointly as the "Grant Agreements".

No later than twenty (20) business days after making a payment, as directed on the invoices from the Contractor, and as described in Section 10, Gahanna shall apply for reimbursement for the costs of the Work pursuant to the Grant Agreements. The Contractor shall cooperate with Gahanna to facilitate reimbursement, including, but not limited to, providing Gahanna with any additional required information reasonably requested by Gahanna to seek reimbursement under the Grant Agreements. Gahanna shall provide Contractor with written notification of receipt of any reimbursement pursuant to the Grant Agreements within five (5) business days following receipt of the reimbursement. The Grant Agreements place certain requirements upon Gahanna, regarding employment and reporting of employment, after completion of the Work. Contractor shall comply with all employment obligations of Grant Agreements in the performance of the Work. In addition, the Contractor shall provide to Gahanna the information required by all provisions of Section 7 of the 629 Grant Agreement and require of every tenant or subsequent owner of the project, identified in the Scope of Work Exhibit I to the 629 Grant Agreement, to provide such information to Gahanna as required by the 629 Grant Agreement for reporting to ODSA. Contractor shall assist Gahanna with all reporting requirements to ODSA set forth in the 629 Grant Agreement. Further, the Contractor shall comply with all provisions of Section 7, 8.1 and 8.2 of the Jobs and Commerce Grant Agreement and require subcontractor compliance with these provisions as well.

9. **SIB LOAN REQUIREMENTS.** Contractor shall comply with all requirements of

a

general Contractor set forth in the SIB Loan and shall take all action necessary to enable Gahanna to comply with the obligations of the SIB Loan. Further, Contractor shall determine the applicability of either the Davis Bacon Act wage rule, or of prevailing wage by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau of the State as well as providing certified payrolls it issues to the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau as required by the SIB Loan.

10. **WAIVER OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.**

- a. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

11. **PAYMENT OF SUBCONTRACTORS AND MATERIALMEN.** In accordance with the terms and conditions of this Agreement, Gahanna shall provide funds necessary to pay for the Work. The funds provided shall be a "Loan" which shall be evidenced by

this Agreement and the Note, both of which shall be executed by Contractor. The terms of repayment of the Loan shall be as set forth in the Note and in Section 11 below, and the Contractor shall make all payments required to be made under the Note as and when due. Contractor shall only use the proceeds of the Loan to pay for costs and expenses related to the Work. In accordance with the Note, the Contractor shall be entitled to seek disbursement from Gahanna in order to have its invoices paid, as set forth in Section 4.

12. **PAYMENT OF THE WORK COMPLETED.** Gahanna shall make periodic payments to Contractor for the Work completed in accordance with the following provisions:

- a. Contractor shall deliver to Gahanna a Request for Advance in form and substance and as attached as Exhibit G hereto (the "Request for Advance"), which shall include information as required by the form.
- b. Upon Gahanna receiving a Request for Advance, Gahanna shall, within fourteen (14) business days following the Request for Advance, disburse such sum directly to Contractor or to a subcontractor or material provider from the SIB Loan proceeds (provided such funds are available) the amount of the funds being requested in the Request for Advance, provided Gahanna has no reason to believe in good faith that the representations in the Request for Advance are not correct. If Gahanna believes that the information stated in the Request for Advance is incorrect, it so shall inform the Contractor of such within five (5) business days of the receipt of Request for Advance.
- c. Under no circumstance shall Gahanna have any liability for funds to be distributed pursuant to this Agreement to the Contractor or a subcontractor or material provider from the SIB Loan. Nor shall the Contractor have any claim against Gahanna for funds to build the Work in addition to those specifically set forth in this Agreement and monies paid pursuant to the SIB Loan.

13. **TERMINATION BY THE CONTRACTOR FOR CAUSE.**

- a. If Gahanna has not made payment required by this Agreement, within the timeframe stated in this Agreement, or pursuant to the Note, and does not cure such default within fifteen (15) business days of written notice from the Contractor to Gahanna, the Contractor may terminate this Agreement.

14. **DEFAULT BY CONTRACTOR.** If the Contractor is adjudged bankrupt, has a receiver appointed for it, makes a general assignment for the benefit of creditors, or fails to perform the Work and does not begin to cure such default, if a cure is reasonably feasible, within thirty (30) days of written notice from Gahanna, then Gahanna may terminate this Agreement upon notice to Contractor.

Contractor shall not be deemed to be in default, if the default requires more than thirty (30) days to cure and Contractor commences to remedy such default within said thirty (30) day period and proceeds therewith with due diligence.

15. **MISCELLANEOUS.**

- a. Notices. All notices and communications required, necessary or desired to be given pursuant to this Agreement, including, but not limited to, a change of address for purposes of such notices and communication, shall be in writing and shall be deemed given and received (i) upon personal delivery (which shall include delivery by commercial overnight courier) or refusal to accept delivery or (ii) three (3) days after deposit in the United States Mail, certified mail, return receipt requested, postage prepaid. The addresses for notice are as follows:

If to Contractor: Science One LLC
c/o Amy Biondi-Huffman 8400 Industrial Parkway
Plain City OH 43064

With a copy to: Robert J. Behal
501 S. High St
Columbus Ohio 43215

If to Gahanna: City of Gahanna
Attention Mayor
200 Hamilton Road
Gahanna, Ohio 43230

With copies to: City of Gahanna
Attention City Attorney
200 Hamilton Road
Gahanna, Ohio 43230

Albers and Albers, Attorneys at Law
Attn: John Albers
1086 North 4th St. Suite 105
Columbus, OH 43201

- b. Law. This Agreement shall be construed and interpreted under the laws of the State of Ohio.

- c. Assignment. Gahanna may not assign this Agreement without the prior written consent of Contractor. Contractor may assign this Agreement or any of its rights or obligations herein, with the written consent of Gahanna, which shall not be unreasonably withheld.
- d. Amendment. This Agreement may be amended, but only by a written amendment signed by Contractor and by Gahanna.
- e. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- f. Entire Agreement. This Agreement, along with the other documents referenced herein, represent the entire agreement with respect to the subject matter hereof, supersede all prior negotiations and understandings (oral or written), and may only be amended by the written agreement of both parties.
- g. Claims against Gahanna. Any claims by the Contractor against Gahanna pursuant to this Agreement, are solely limited to claims for specific performance of Gahanna's obligations pursuant to this Agreement and shall not include claims for damages or attorney's fee or costs. Contractor shall hold Gahanna harmless from any and all claims made by third parties relating to this Agreement, including any reasonable attorney fees and costs incurred by Gahanna relating to such claims.
- h. Partial Invalidity. If any provision of this Agreement or the application of any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions one of which would render the provision invalid, then such provision shall have the meaning which renders it valid.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SCIENCE ONE, LLC, an Ohio limited liability company

By: _____

THE CITY OF GAHANNA, OHIO

By: _____
Laurie Jadwin, Mayor

Approved as to Form

Raymond J. Mularski, City Attorney

FISCAL OFFICER'S CERTIFICATE

As fiscal officer for the City of Gahanna, Ohio, I hereby certify that funds sufficient to meet the obligations of Gahanna in this Agreement (including specifically the funds required to meet the obligation of Gahanna in the year 2022) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Gahanna has no obligation to make payments to Contractor pursuant to this Agreement except from Loan Proceeds paid pursuant to the SIB Loan and other amounts specifically set forth in this Agreement, which monies are available pursuant to this Agreement and the Note attached hereto as Exhibit C. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 et seq.

Dated: _____

Fiscal Officer
City of Gahanna, Ohio

EXHIBIT A
PLANS AND SPECIFICATIONS

(attached hereto)

EXHIBIT B

CONSTRUCTION REQUIREMENTS

Section 1. Procedures and Policies Applicable to Design and Construction of Public Infrastructure Improvements. The Contractor has designed or shall design and shall procure construction of the Work through contracts complying with this Agreement.

(a) Approval of Construction Plans. The Work shall be constructed in accordance with construction plans and any amendments thereto approved by all necessary parties associated with Gahanna and required for dedication to Gahanna.

If approved construction plans are amended, any such amendment shall be approved by Gahanna prior to any such work being performed.

(b) Prevailing Wages. For construction of any the Work the cost of which exceeds the threshold amount established from time to time under R.C. Section 4115.03(B), the Contractor agrees to pay, and cause its contractors and subcontractors to pay, State of Ohio prevailing wage rates (“Prevailing Wages”) in accordance with: (i) R.C. Sections 4115.03 through 4115.16; and (ii) a Prevailing Wage schedule or schedules which shall be determined in accordance with R.C. Sections 4115.03 through 4115.16 and provided by a Gahanna representative, and documented as an exhibit or supplement to this Agreement prior to commencement of such construction. Gahanna, and not the Contractor, shall be responsible to designate and appoint a prevailing wage coordinator as provided in R.C. Section 4115.071.

(c) Invitations to Bid; Award of Contracts. In accordance with Gahanna’s established bidding requirements, the Contractor (and/or its affiliated general contractor) shall issue and advertise, or shall have issued and advertised, invitations to bid on the construction components of the Work, open and read, or opened and read, the bids aloud in a public forum, determine or determined the best bids (which need not be the lowest bids), and award or awarded the contract(s). Such contracts may be executed in the name of the Contractor (and/or its affiliated general contractor). Bidding procedures shall be reviewed and approved by Gahanna, prior to Contractor commencing bidding .

(d) Retainage Time for Completion. The contracts for construction of the Work shall provide for withholding of retainage in accordance with R.C. Sections 153.12 through 153.14, and shall specify time for completion of work, and damages for delay, in accordance with R.C. Section 153.19.

(e) Security for Performance. In accordance with R.C. Sections 153.54 through 153.571, all contractors bidding to construct the Work shall be required to furnish a bid guarantee, and all contractors contracting to construct the Work shall be required to furnish, prior to commencement of construction, a surety bond to guarantee completion of construction, Each surety bond shall name the Contractor (and/or its affiliated general contractor) and Gahanna as

respective obligees in the form provided by R.C. Section 153.57 or 153.571.

(f) Underground Utility Facilities. The Contractor shall comply with the applicable obligations of R.C. Section 153.64 with respect to underground utility facilities.

(g) Non-Discrimination. Each contract for construction of Work shall contain provisions by which the contractor agrees to both of the following:

- (i) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability (as "disability" is defined in R.C. Section 4112.01), or color, shall discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the work to which the employment relates; and
- (ii) That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability (as "disability" is defined in R.C. Section 4112.01), or color.
- (iii) Contractor, and its subcontractors shall comply with all requirements placed upon Gahanna pursuant to the Grant Agreements and SIB Loan in the performance of all activities associated with the Work and contracting for the Work.

(h) Professional Design Services. If and only if the Contractor intends to seek reimbursement of costs incurred by the Contractor for design (as opposed to construction) of the Work, the Contractor (and/or its affiliated general contractor) shall procure, or shall have procured, such services in accordance with R.C. Sections 153.65 through 153.71.

(i) Installations by Public Utilities. The Work may include public utilities or communication facilities (including, but not limited to, water mains, gas mains, sanitary sewers, storm sewers, electric service lines, telephone lines, and cable communication lines). Such facilities, to the extent they are installed by or for the respective service provider, other than Gahanna, (rather than by a construction contractor selected by the Contractor) are hereby defined as "Installations by Public Utilities." Costs incurred by or on behalf of the Contractor for Installations by Public Utilities are not part of the Work under this Agreement. Paragraphs (a) through (i) of this Section shall not apply to Installations by Public Utilities.

Section 2. Dedication to Public Use.

- (a) Public Infrastructure Improvements. Except as otherwise provided below, the Contractor agrees to dedicate for public use the Work to Gahanna. The dedication

requirements provided herein shall not apply to (i) installations by Public Utilities, or (ii) items of the Work that are not required by law to be publicly dedicated and that, in the Contractor's sole discretion, are to remain privately owned ("collectively, "On Site Designated Public Infrastructure Improvements"). Notwithstanding anything to the contrary in this Agreement, the owner of such On Site Designated Public Infrastructure Improvements shall be solely responsible for all maintenance on such On Site Designated Public Infrastructure Improvements, unless agreed upon in writing by the Contractor and Gahanna.

- (b) Construction Drawings. Upon such dedication as provided in this Section, applicable original construction drawings in the possession of the Contractor shall become the property of Gahanna, and shall be delivered to Gahanna by the Contractor.

EXHIBIT C
FORM OF PROMISSORY NOTE
(attached hereto)

EXHIBIT D
SECURITY DEPOSIT

(attached hereto)

EXHIBIT E
629 GRANT AGREEMENT

(attached hereto)

EXHIBIT F
JOBS AND COMMERCE GRANT AGREEMENT

(attached hereto)

EXHIBIT G

FORM OF REQUEST FOR ADVANCE

[Month] [Day], [Year]

TO: []

RE: _____ (the “Agreement”)

Ladies and Gentlemen:

This Request for Advance is being delivered pursuant to the terms of the Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

The undersigned Project Engineer certifies that the attached Advance Summary (or ‘Draw’) details categories of costs now due and payable.

The undersigned certifies that Project Costs incurred prior to the date of the Advance requested hereby shall not equal or exceed _____ in the aggregate.

The undersigned hereby further certifies and represents, as of the date hereof, that, to the knowledge of the undersigned:

1. There is no litigation existing, pending or threatened against the Project or the Contractor that, if adversely determined, would materially adversely affect the Project. For purposes of the preceding sentence, “threatened” litigation shall include only those adverse claims having a substantial likelihood of actually resulting in existing or pending litigation.
2. No adverse changes have occurred in the financial condition or in the assets and liabilities of the Contractor that will materially adversely affect the Project.
3. There are no new liens against the Property.
4. No event of default, or condition or event which, with the giving of notice or passage of time, or both, would constitute an event of default, exists under the Agreement.
5. All requested payment amounts reflected in each application or request for payment heretofore received by the Contractor have been paid in full.

6. All work and materials heretofore furnished for the Project conform to the Project Plans and Specifications.
7. The sums indicated below fully summarize this Request for Advance and all funds requested by this Request for Advance, along with all funds disbursed previously, will be and have been used for payment of costs in accordance with the Agreement.

Funding Amount Requested, This Requisition: >

Total Amount of Funding Received to Date
(including interest accrual): >

Balance of Funds Remaining to be Funded: >

Requested Funding Date: >

Project Engineer