



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final-revised

Budget and Finance Committee

Chairperson, Greg Landsman
Vice Chairperson, Reggie Harris
Councilmember Jeff Cramerding
Councilmember Mark Jeffreys
Councilmember Scotty Johnson
Vice Mayor Jan-Michele Kearney
Councilmember Liz Keating
Councilmember Meeka Owens
President Pro Tem Victoria Parks

Monday, March 21, 2022

1:00 PM

Council Chambers, Room 300

ROLL CALL

DEPARTMENTAL PRESENTATIONS

Metropolitan Sewer District (MSD)
Diana Christy, Director

Parks
John Neyer, Interim Director

Community & Economic Development (DCED)
Markiea Carter, Director

Economic Inclusion (DEI)
Edgar DeVeyra, Director

AGENDA

1. [202200623](#) **ORDINANCE (EMERGENCY)**, submitted by Councilmember Owens, from Andrew Garth, City Solicitor, **AUTHORIZING** the transfer of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the City Manager's Office - Office of Environment and Sustainability's General Fund non-personnel operating budget account no. 050x104x0000x7289 for the purpose of providing funding for projects related to the implementation of the Green Cincinnati Plan.

Sponsors: Owens

Attachments: [Transmittal](#)
[Ordinance](#)

2. [202200609](#) **ORDINANCE (EMERGENCY)** submitted by John P. Curp, Interim City

Manager, on 3/16/2022, **AUTHORIZING** the City Manager to accept and deposit a donation in an amount of up to \$1,083,906 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$1,083,906 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," for the purpose of providing resources for the restoration and improvement of Lytle Park; and **AUTHORIZING** the transfer and appropriation of \$200,000 from the unappropriated surplus of Park Board Permanent Improvement Fund 752 to capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," for the purpose of providing resources for the restoration and improvement of Lytle Park.

Sponsors: City Manager

Attachments: [Transmittal](#)

[Ordinance](#)

3. [202200610](#) **ORDINANCE (EMERGENCY)** submitted by John P. Curp, Interim City Manager, on 3/16/2022, **AUTHORIZING** the City Manager to accept and deposit a donation in an amount of \$44,000 from the Cincinnati Parks Foundation into Fund No. 430, "Parks Private Endowment and Donations," for the purpose of providing resources for the construction of the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work; and further **AUTHORIZING** the transfer and appropriation of \$44,000 from the unappropriated surplus of Fund No. 430, "Parks Private Endowment and Donations," to the existing capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza."

Sponsors: City Manager

Attachments: [Transmittal](#)

[Ordinance](#)

4. [202200611](#) **ORDINANCE (EMERGENCY)** submitted by John P. Curp, Interim City Manager, on 3/16/2022, **AUTHORIZING** the transfer of the sum of \$2,450,000 from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts, according to the attached Schedule of Transfer, for the purpose of providing resources for FY 2022 utility cost increases for electric power and natural gas.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

5. [202200625](#) **ORDINANCE** submitted by John P. Curp, Interim City Manager, on 3/16/2022, **AUTHORIZING** the City Manager to execute five *Grants of Easement* in favor of LPH Thrives, LLC, pursuant to which the City of Cincinnati will grant encroachment easements upon portions of West Eighth, Neave, and St. Michael Streets in Lower Price Hill.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment I](#)
[Attachment II](#)
[Attachment III](#)
[Attachment IV](#)
[Attachment V](#)

6. [202200626](#) **ORDINANCE** submitted by John P. Curp, Interim City Manager, on 3/16/2022, **AUTHORIZING** the City Manager to execute a *Lease Agreement* with Colonial Life & Accident Insurance Company, pursuant to which the City will lease a parking lot generally located east of Eggleston Avenue between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati for up to 15 years.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment I](#)

7. [202200492](#) **ORDINANCE** submitted by John P. Curp, Interim City Manager, on 2/24/2022, **AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

8. [202200624](#) **REPORT**, dated 3/16/2022, submitted by John P. Curp, Interim City Manager, regarding The council at its session on January 20, 2022, referred the following motion number 202200118 for review and report.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Report](#)

9. [202200118](#) **MOTION**, submitted by Councilmembers Jeffreys and Owens, **WE MOVE** that, the Administration provide an initial report within sixty (60) days outlining the specific expenses associated the GCWW rate increase pursuant to ordinance number 248-2021 authorized by Council on June 23, 2021; **WE FURTHER MOVE** that, in that initial report it outline the plan to apply for applicable federal dollars associated with lead pipe replacement including but not limited to federal dollars that may be available through the Bipartisan Infrastructure Law passed by Congress on November 15, 2021; **WE FURTHER MOVE** that, in that initial report the Administration include information on the feasibility and legality of reducing the corresponding rate increase as well as providing rate payers with a credit for any fees that have already been paid based on the potential receipt of those federal dollars received; **WE FURTHER MOVE** that, the Administration report back within sixty (60) days of the federal funds being secured to Council with specific plans for giving rate payers a credit for the fees already paid associated with lead pipe reduction and a plan for adjusting their future rate based on the receipt of these federal funds. (STATEMENT ATTACHED)

Recommendation BUDGET AND FINANCE COMMITTEE

Sponsors: Jeffreys and Owens

Attachments: [MOTION](#)

10. [202200638](#) PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/21/2022, regarding the Department of Community & Economic Development's FY 2023 Budget Update.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Presentation](#)

11. **202200701** PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/21/2022, regarding the Metropolitan Sewer District (MSD) FY2023 Budget Update.

Sponsors: City Manager

Attachments: Transmittal
Presentation

12. **202200726** PRESENTATION submitted by John P. Curp, Interim City Manager, dated 3/21/2022, regarding the Department of Economic Inclusion's FY2023 Budget Update.

Sponsors: City Manager

Attachments: Transmittal
Presentation

13. **202200727** PRESENTATION submitted by John P. Curp, Interim City Manager, dated

3/21/2022, regarding the Cincinnati Parks Department's FY2023 Budget Update.

Sponsors: City Manager

Attachments: Transmittal
Presentation

ADJOURNMENT

2022-00623
Date: March 9, 2022

To: Councilmember Meeka Owens
From: Andrew Garth, City Solicitor *AWG/LESW*
Subject: **Emergency Ordinance - Green Cincinnati Funding**

Transmitted herewith is an emergency ordinance captioned as follows:

AUTHORIZING the transfer of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the City Manager's Office – Office of Environment and Sustainability's General Fund non-personnel operating budget account no. 050x104x0000x7289 for the purpose of providing funding for projects related to the implementation of the Green Cincinnati Plan.

AWG/LES(ink)
Attachment
359028

80000003

W/ST/OWA

EMERGENCY

City of Cincinnati

LES *ANG/EBW*

An Ordinance No. _____

- 2022

AUTHORIZING the transfer of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the City Manager’s Office – Office of Environment and Sustainability’s General Fund non-personnel operating budget account no. 050x104x0000x7289 for the purpose of providing funding for projects related to the implementation of the Green Cincinnati Plan.

WHEREAS, the Green Cincinnati Plan adopted by Council by Motion No. 201800830 included a recommendation to create a “Green Cincinnati Fund” to finance sustainability initiatives, and such fund has been established by the Greater Cincinnati Foundation; and

WHEREAS, the City’s agreement with Dynegy Energy Services, LLC to administer the City’s electric aggregation program includes the Dynegy Greenback Program, which offers up to \$100,000 in annual rebates to the City for energy efficiency work performed and completed at City services locations, which is to be paid to the City each fiscal year from FY 2022 to FY 2026; and

WHEREAS, the City has received the first rebate in the amount of \$100,000 for FY 2022; and

WHEREAS, funding in the amount of \$100,000 is being authorized as a supplemental appropriation to the Office of Environment and Sustainability in FY 2022 for the purpose of implementing projects related the Green Cincinnati Plan pursuant to Motion No. 202200330 adopted by Council on February 16, 2021; and

WHEREAS, Council wishes to provide \$100,000 annually for FY 2023 through FY 2026, subject to available annual appropriations, to the Green Cincinnati Fund as leveraged support with the source of funds being the annual rebate from the Dynegy Greenback Program; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the sum of \$100,000 is hereby transferred from the unappropriated surplus of General Fund 050 to the City Manager’s Office – Office of Environment and Sustainability’s General Fund non-personnel operating budget account no. 050x104x0000x7289 for the purpose of providing funding for projects related to the implementation of the Green Cincinnati Plan.

Section 2. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to provide funds for projects related to the implementation of the Green Cincinnati Plan.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____

Clerk

March 16, 2022

To: Mayor and Members of City Council 202200609
From: John P. Curp, Interim City Manager
Subject: **Emergency Ordinance – Parks: Lytle Park Improvements**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to accept and deposit a donation in an amount of up to \$1,083,906 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$1,083,906 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” for the purpose of providing resources for the restoration and improvement of Lytle Park; and **AUTHORIZING** the transfer and appropriation of \$200,000 from the unappropriated surplus of Park Board Permanent Improvement Fund 752 to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” for the purpose of providing resources for the restoration and improvement of Lytle Park.

Approval of this Emergency Ordinance will authorize the City Manager to accept and deposit a donation in the amount of up to \$1,083,906 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, into Parks Private Endowment and Donations Fund 430. This Emergency Ordinance will also authorize the transfer and appropriation of \$1,083,906 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x182015, “Lytle Park Improvements” for the purpose of providing resources for the restoration and improvement of Lytle Park. Finally, this Emergency Ordinance will authorize the transfer and appropriation of \$200,000 from the unappropriated surplus of Park Board Permanent Improvement Fund 752 to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements” for the purpose of providing resources for the restoration and improvement of Lytle Park.

The Cincinnati Park Board facilitated a community engagement process to produce a design and renovation plan for Lytle Park in collaboration with the Western & Southern Financial Fund, which included new plazas, brick walkways, a decorative fountain, a running track, new landscape, lighting, and benches.

On December 10, 2014, the City Council approved Ordinance No. 0339-2014, which authorized the City Manager to accept and appropriate a payment in the amount of \$1,111,077.54 from the State of Ohio Department of Transportation (ODOT) to

capital improvement program project account no. 980x203x152015, “Lytle Park Improvements,” for the purpose of partially funding the restoration and improvement of Lytle Park following the State of Ohio’s completion of the Lytle Tunnel Rehabilitation Project as compensation for damage to the existing park. On August 9, 2017, the City Council approved Ordinance No. 0226-2017, which authorized the City Manager to accept and appropriate an amount up to \$1,600,000 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, to capital improvement program project account no. 980x203x152015, “Lytle Park Improvements,” for the purpose of partially funding the restoration and improvement of Lytle Park.

On June 20, 2018, the City Council approved Ordinance No. 0154-2018, which authorized the City Manager to accept and appropriate an amount up to \$50,000 from the Cincinnati Park Commissioners’ Private Endowment Funds to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” for the purpose of having necessary funding in place to allow the Park Board to move forward with appropriate contracting in order to stabilize and repair infrastructure at various locations throughout the Park System. The \$50,000 appropriation was to provide resources to make improvements to Lytle Park, including, but not limited to, replacing part of the playground located at Lytle Park that was removed as part of the park renovation.

The Lytle Park design and renovation plan evolved over time such that the Park Board and the Western & Southern Financial Fund have entered into a new Memorandum of Understanding (MOU) to provide additional funding to complete the plan, including a new bocce ball court and relocation of a tree. Under this MOU, the Western & Southern Financial Fund will contribute an additional \$1,083,906 and the City would contribute an additional \$200,000 to complete the project.

The Lytle Park Improvements project was originally delayed due to litigation but is now cleared to begin. The additional funds appropriated by this Emergency Ordinance will supplement the prior funds received for the project. No new FTEs are associated with the acceptance of this donation.

This Emergency Ordinance is in accordance with the “Live” goal to “build a robust public life” and strategy to “develop and maintain inviting and engaging public spaces that encourage social interaction between different types of people,” as described on pages 147 – 152 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to accept this donation and transfer the funding necessary to avoid a disruption in service.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director



Attachment

EMERGENCY

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- 2022

AUTHORIZING the City Manager to accept and deposit a donation in an amount of up to \$1,083,906 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, into Parks Private Endowment and Donations Fund 430; **AUTHORIZING** the transfer and appropriation of \$1,083,906 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” for the purpose of providing resources for the restoration and improvement of Lytle Park; and **AUTHORIZING** the transfer and appropriation of \$200,000 from the unappropriated surplus of Park Board Permanent Improvement Fund 752 to capital improvement program project account no. 980x203x182015, “Lytle Park Improvements,” for the purpose of providing resources for the restoration and improvement of Lytle Park.

WHEREAS, the Cincinnati Park Board (“Park Board”) facilitated a community engagement process to produce a design and renovation plan (“Plan”) for Lytle Park in collaboration with the Western & Southern Financial Fund (the “Fund”), which included new plazas, brick walkways, a decorative fountain, a running track, new landscape, lighting, and benches; and

WHEREAS, on December 10, 2014, Council approved Ordinance No. 0339-2014, which authorized the City Manager to accept and appropriate a payment in the amount of \$1,111,077.54 from the State of Ohio Department of Transportation to newly established capital improvement program project account no. 980x203x152015, “Lytle Park Improvements,” for the purpose of partially funding the restoration and improvement of Lytle Park following the State of Ohio’s completion of the Lytle Tunnel Rehabilitation Project as compensation for damage to the existing park; and

WHEREAS, on August 9, 2017, Council approved Ordinance No. 0226-2017, which authorized the City Manager to accept and appropriate an amount up to \$1,600,000 from the Cincinnati Parks Foundation, as originally donated by the Fund, to capital improvement program project account no. 980x203x152015, “Lytle Park Improvements,” for the purpose of partially funding the restoration and improvement of Lytle Park; and

WHEREAS, on June 20, 2018, Council approved Ordinance No. 0154-2018, which authorized the City Manager to accept and appropriate an amount up to \$50,000 from the Cincinnati Park Commissioners’ Private Endowment Funds to newly established capital improvement program project account no. 182015, “Lytle Park Improvements,” for the purpose of having necessary funding in place to allow the Park Board to move forward with appropriate contracting in order to stabilize and repair infrastructure at various locations throughout the Park System; and

WHEREAS, the \$50,000 appropriation to capital improvement program project account no. 182015, “Lytle Park Improvements,” will provide resources to make improvements to Lytle Park, including, but not limited to, replacing part of the playground located at Lytle Park that was removed as part of the park renovation; and

WHEREAS, on April 24, 2019, Council approved Ordinance No. 0132-2019, which authorized the City Manager to accept and appropriate an amount up to \$248,390 from the Cincinnati Parks Foundation, as originally donated by the Fund, to capital improvement project account no. 980x203x152015, “Lytle Park Improvements,” for the purpose of providing resources for the restoration and improvement of Lytle Park; and

WHEREAS, the Plan has evolved over time in response to changing conditions around the park, availability of funding, and inflated construction costs, so the Park Board and the Fund entered into a new Memorandum of Understanding (“MOU”) to provide additional funding to complete the Plan, including a new bocce ball court and relocation of a large London Plane tree; and

WHEREAS, under the MOU the parties agreed that the Fund would contribute up to an additional \$1,083,906, inclusive of the \$248,390 already approved, and that the City would contribute an additional \$200,000 to complete the project; and

WHEREAS, the Lytle Park Improvements project was delayed due to litigation but now is cleared to begin; and

WHEREAS, the additional funds under this ordinance will supplement the prior funds received for the project; and

WHEREAS, there are no new FTEs associated with this donation; and

WHEREAS, this ordinance is in accordance with the “Live” goal to “[b]uild a robust public life” and strategy to “[d]evelop and maintain inviting and engaging public spaces that encourage social interaction between different types of people,” as described on pages 147 – 152 of Plan Cincinnati (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to accept and deposit a donation in an amount of up to \$1,083,906 from the Cincinnati Parks Foundation, as originally donated by the Western & Southern Financial Fund, into Parks Private Endowment and Donations Fund 430 for the purpose of providing resources for the restoration and improvement of Lytle Park.

Section 2. That the transfer and appropriation of the sum of \$1,083,906 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," for the purpose of providing resources for the restoration and improvement of Lytle Park is hereby authorized.

Section 3. That the City Manager is hereby authorized to transfer and appropriate \$200,000 from the unappropriated surplus of Park Board Permanent Improvement Fund 752 to capital improvement program project account no. 980x203x182015, "Lytle Park Improvements," for the purpose of providing resources for the restoration and improvement of Lytle Park.

Section 4. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 herein.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to accept this donation and transfer the funding necessary to avoid a disruption in service.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk



March 16, 2022
202200610

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager

Subject: **Emergency Ordinance – Parks: Ezzard Charles Statue Plaza**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to accept and deposit a donation in an amount of \$44,000 from the Cincinnati Parks Foundation into Fund No. 430, “Parks Private Endowment and Donations,” for the purpose of providing resources for the construction of the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work; and further **AUTHORIZING** the transfer and appropriation of \$44,000 from the unappropriated surplus of Fund No. 430, “Parks Private Endowment and Donations,” to the existing capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza.”

Approval of this Emergency Ordinance will authorize the City Manager to accept and deposit \$44,000 from the Cincinnati Parks Foundation into Parks Private Endowment and Donations Fund 430 for the purpose of providing resources for the construction of the Ezzard Charles Statue Plaza in Laurel Park. This Emergency Ordinance will also authorize the transfer and appropriation of \$44,000 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to existing capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza.”

On March 24, 2021, the City Council passed Ordinance No. 0090-2021 authorizing the transfer and appropriation of \$100,000 from the unappropriated surplus of Parks Private Endowment and Donations Fund 430 to capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza.” The Cincinnati Park Board is constructing the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work. The Cincinnati Parks Foundation is donating an additional \$44,000 for the project. No matching funds or new FTEs are associated with the acceptance of this donation.

This Ordinance is in accordance with the “Live” goal to “build a robust public life,” and the strategy to “develop and maintain inviting and engaging public spaces that encourage social interaction between different types of people,” as described on pages 147-152 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to accept this donation within the timeframe necessary for construction to begin in June 2022.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director

Attachment



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AUTHORIZING the City Manager to accept and deposit a donation in an amount of \$44,000 from the Cincinnati Parks Foundation into Fund No. 430, “Parks Private Endowment and Donations,” for the purpose of providing resources for the construction of the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work; and further **AUTHORIZING** the transfer and appropriation of \$44,000 from the unappropriated surplus of Fund No. 430, “Parks Private Endowment and Donations,” to the existing capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza.”

WHEREAS, the Cincinnati Park Board is constructing the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work (the “Project”); and

WHEREAS, on March 24, 2021, Council passed Ordinance No. 0090-2021 authorizing the City Manager to accept and deposit a donation of \$100,000 from the Cincinnati Parks Foundation into Fund No. 430, “Parks Private Endowment and Donations,” establishing a new capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza,” and authorizing the transfer and appropriation of \$100,000 from the unappropriated surplus of Fund No. 430, “Parks Private Endowment and Donations,” to the newly established capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza”; and

WHEREAS, the Cincinnati Parks Foundation is generously donating an additional \$44,000 for the Project, and acceptance of these funds will cover a portion of the City’s construction costs for the Project; and

WHEREAS, there is no match requirement associated with the acceptance of this donation; and

WHEREAS, there are no additional FTEs associated with the acceptance of this donation; and

WHEREAS, this ordinance is in accordance with the “Live” goal to “[b]uild a robust public life,” and the strategy to “[d]evelop and maintain inviting and engaging public spaces that encourage social interaction between different types of people,” as described on pages 147-152 of Plan Cincinnati (2012); now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to accept and deposit a donation in an amount up to \$44,000 from the Cincinnati Parks Foundation to Fund No. 430, “Parks Private

Endowment and Donations,” for the purpose of providing resources for the construction of the Ezzard Charles Statue Plaza in Laurel Park, including electric installation, lighting, and other improvement work (“the Project”).

Section 2. That the City Manager is hereby authorized to transfer and appropriate up to \$44,000 from the unappropriated surplus of Fund No. 430, “Parks Private Endowment and Donations,” to the existing capital improvement program project account no. 980x203x212009, “Ezzard Charles Statue Plaza,” for the purpose of providing resources for the Project.

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 and 2 herein.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to accept this donation within the timeframe necessary for construction to begin in June 2022.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

March 16, 2022

To: Mayor and Members of City Council 202200611
From: John P. Curp, Interim City Manager
Subject: **Emergency Ordinance – FY 2022 Mid-Year Budget Adjustments
(March 2022)**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the transfer of the sum of \$2,450,000 from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts, according to the attached Schedule of Transfer, for the purpose of providing resources for FY 2022 utility cost increases for electric power and natural gas.

This Emergency Ordinance authorizes the transfer of \$2,450,000 from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts according to the attached Schedule of Transfer. The transfer is necessary due to unanticipated utility cost increases during FY 2022 for electric power and natural gas.

The Greater Cincinnati Water Works (GCWW) is experiencing a 42% increase in the average price of electrical generation costs for FY 2022 as compared to FY 2021. This has created a budget shortfall of \$2,300,000 for these expenses.

GCWW is also experiencing an increase in the cost of natural gas which is 25% higher in FY 2022 as compared to FY 2021. This has created a budget shortfall of \$150,000 for these expenses.

The reason for the emergency is the immediate need to allow for the continuation of uninterrupted services in FY 2022.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director

Attachment

EMERGENCY

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AUTHORIZING the transfer of the sum of \$2,450,000 from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts, according to the attached Schedule of Transfer, for the purpose of providing resources for FY 2022 utility cost increases for electric power and natural gas.

WHEREAS, the Greater Cincinnati Water Works is experiencing a 42 percent increase in the average price of electrical generation costs for FY 2022 as compared to FY 2021, which has created a budget shortfall of \$2,300,000; and

WHEREAS, the Greater Cincinnati Water Works is experiencing a 25 percent increase in the cost of natural gas over FY 2022 budgeted amounts, which has created a budget shortfall of \$150,000; and

WHEREAS, Council wishes to authorize the transfer of the sum of \$2,450,000 from the from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts, according to the attached Schedule of Transfer, for the purpose of providing resources for FY 2022 utility cost increases for electric power and natural gas; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the sum of \$2,450,000 is hereby transferred from the unappropriated surplus of Water Works Fund 101 to various Water Works non-personnel operating budget accounts, according to the attached Schedule of Transfer, for the purpose of providing resources for FY 2022 utility cost increases for electric power and natural gas.

Section 2. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of Section 1.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow for the continuation of uninterrupted services in FY 2022.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

SCHEDULE OF TRANSFER

FY 2022 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 101 Water Works

| <i>REDUCTIONS</i> | | | Appropriation | Obj | <i>\$ Amount</i> | <i>INCREASES</i> | | | Appropriation | Obj | <i>\$ Amount</i> | |
|---|--------|--------|---------------|------|------------------|---|--------|--------|---------------|------|------------------|-----------|
| Fund | Agency | Bureau | Unit | Code | | Fund | Agency | Bureau | Unit | Code | | |
| SUPPLEMENTAL APPROPRIATIONS | | | | | | SUPPLEMENTAL APPROPRIATIONS | | | | | | |
| SOURCE ACCOUNTS | | | | | | USE ACCOUNTS | | | | | | |
| UNAPPROPRIATED SURPLUS | 101 | | | | 2,450,000 | GREATER CINCINNATI WATER WORKS | | | | | | |
| | | | | | | SUPPLY DIVISION | 101 | 303 | 2000 | 7200 | 7241 | 2,300,000 |
| | | | | | | SUPPLY DIVISION | 101 | 303 | 2000 | 7200 | 7248 | 150,000 |
| Subtotal Supplemental Appropriations | | | | | 2,450,000 | Subtotal Supplemental Appropriations | | | | | 2,450,000 | |
| TOTAL FUND REDUCTIONS | | | | | 2,450,000 | TOTAL FUND INCREASES | | | | | 2,450,000 | |

Date: March 16, 2022

To: Mayor and Members of City Council
From: John P. Curp, Interim City Manager
Subject: ORDINANCE – GRANT OF EASEMENT – LPH THRIVES, LLC (2213 WEST EIGHTH STREET, 642 AND 644 NEAVE STREET, AND 2130 AND 2131 ST. MICHAEL STREET)

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute five *Grants of Easement* in favor of LPH Thrives, LLC, pursuant to which the City of Cincinnati will grant encroachment easements upon portions of West Eighth, Neave, and St. Michael Streets in Lower Price Hill.

LPH Thrives, LLC, an Ohio limited liability company (“Grantee”) owns the property located at 2213 West Eighth, 642 and 644 Neave Street, and 2130 and 2131 St. Michael Street in Lower Price Hill. Grantee has requested easements from the City for encroachments upon portions of the Property, namely, three existing stoops, a fire escape, and a bay window.

The City has determined that granting the easement to Grantee is not adverse to the City’s retained interest in the public right-of-way and that granting the easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities.

The fair market value of the easements is approximately \$180 which Grantee has agreed to pay.

The City Planning Commission approved the easements at its meeting on March 4, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Grant of Easement (2130 St. Michael St)
Attachment II – Grant of Easement (2131 St. Michael St)
Attachment III– Grant of Easement (642 Neave St)
Attachment IIII – Grant of Easement (644 Neave St)
Attachment V – Grant of Easement (W. 8th Street)

cc: John S. Brazina, Director, Transportation and Engineering

AUTHORIZING the City Manager to execute five *Grants of Easement* in favor of LPH Thrives, LLC, pursuant to which the City of Cincinnati will grant encroachment easements upon portions of West Eighth, Neave, and St. Michael Streets in Lower Price Hill.

WHEREAS, LPH Thrives, LLC, an Ohio limited liability company (“Grantee”), owns certain real property located at 2213 West Eighth Street, 642 and 644 Neave Street, and 2130 and 2131 St. Michael Street in Lower Price Hill; and

WHEREAS, the City of Cincinnati owns the adjoining West Eighth, Neave, and St. Michael Streets public rights-of-way (the “Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTe”); and

WHEREAS, Grantee has requested easements from the City for encroachments upon portions of the Property, namely, three existing stoops, a fire escape, and a bay window as more particularly depicted and described in the *Grants of Easement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, the City Manager, in consultation with DOTe, has determined (i) that granting the easements to Grantee is not adverse to the City’s retained interest in the Property and; (ii) that granting the easements will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, the City Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by an appraisal that the collective fair market value of the easements is approximately \$180, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on March 4, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute five *Grants of Easement* in favor of LPH Thrives, LLC, an Ohio limited liability company (“Grantee”), owner

of the properties located at 2213 West Eighth Street, 642 and 644 Neave Street, and 2130 and 2131 St. Michael Street in Lower Price Hill, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee easements for encroachments upon the West Eighth, Neave, and St. Michael Streets public rights-of-way (the “Property”).

Section 2. That granting the easements to Grantee (i) is not adverse to the City’s retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located within the public rights-of-way.

Section 3. That it is in the best interest of the City to grant the easements without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the easements.

Section 4. That the collective fair market value of the easements, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$180, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grants of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the *Grants of Easement*, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY”

represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grants of Easement*, including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachments upon a portion of St. Michael St.)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Limited Warranty Deed* recorded on August 2, 2021, in OR 14471, Page 4098, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2130 St. Michael Street, Cincinnati, OH 45204, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining St. Michael Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for stoop and handrail encroachments on and across the St. Michael Street public right-of-way (the "**Encroachments**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the St. Michael Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing St. Michael Street public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$15, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on March 4, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove a stoop and handrail in, on, and across the St. Michael Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Stoop Easement) hereto (the “**Stoop Easement**” or “**Stoop Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachments within the Stoop Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Stoop Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachments within the Stoop Easement Area, such that the Stoop Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Stoop Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachments are creating a public safety issue, such as non-compliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Stoop Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachments, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, removal, or sealing of the Encroachments under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines, and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Stoop Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Encroachments, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys’ fees), liability, and damages suffered or incurred by, or asserted against, the City in connection with the use, maintenance, repair, and all other matters associated with the Encroachments.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE’s satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee’s expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully

paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #75-2021). The following additional conditions shall apply: None

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts, and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Stoop Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

LPH THRIVES, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **LPH THRIVES, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Parcel ID No.: 149-0011-0282-00 5
2130 St. Michael

Situated in the City of Cincinnati, Hamilton County, Ohio, and described as follows, to-wit:
Lot Number 107 of T. and C. Neave's Subdivision a plat of which is recorded in Book 122,
page 278 Hamilton County Records, being 25 feet in front of the north side of St. Michaels
Street and 116 feet in depth.

EXHIBIT B

to Grant of Easement

Survey Plat

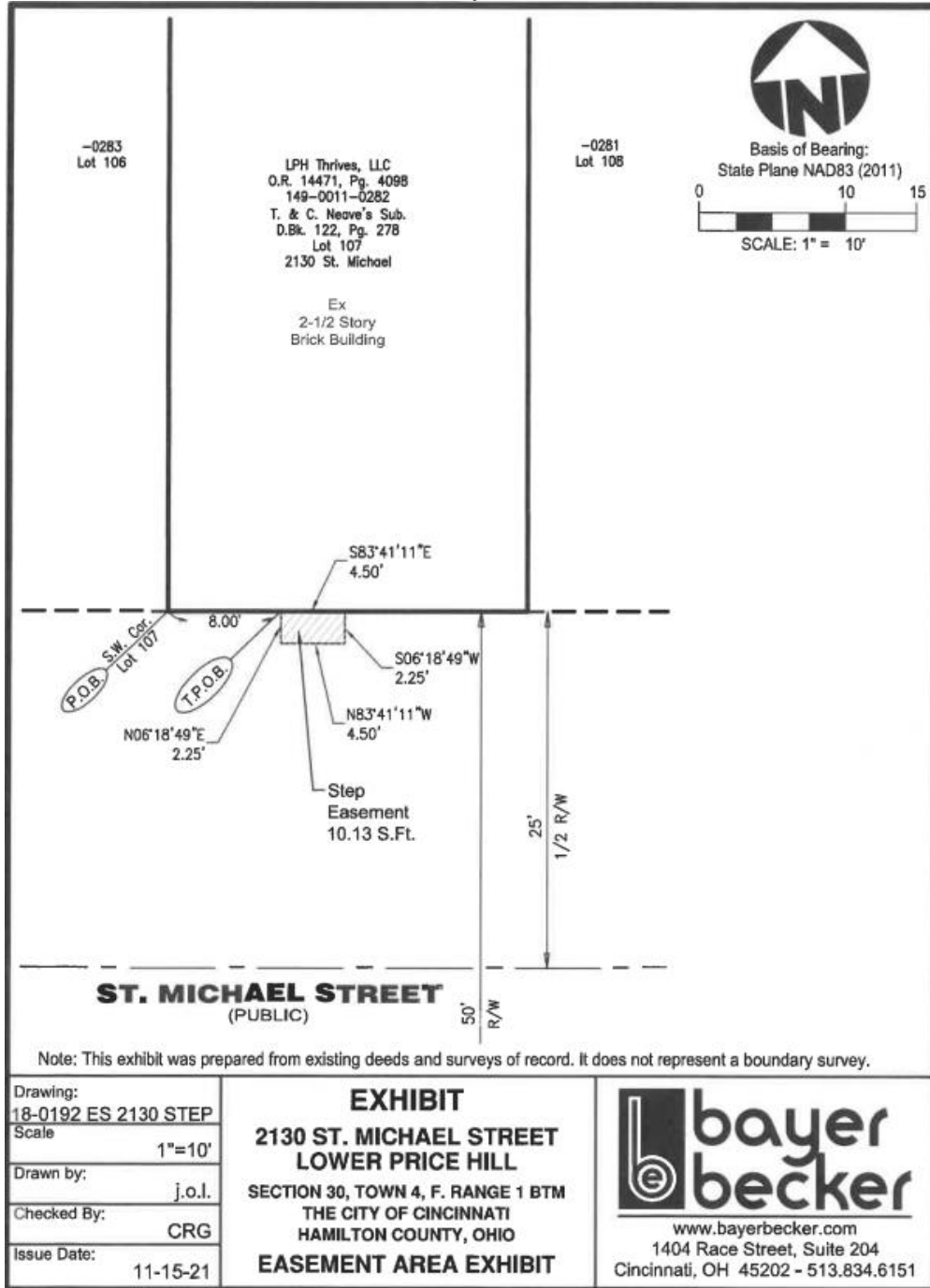


EXHIBIT C

to Grant of Easement

Legal Description – Stoop Easement

Description: Exhibit
Step Easement

Date: November 15, 2021

Location: 2130 St. Michael Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Step Easement over part of the right of way of St. Michael Street and being further described as follows:

Begin at a point found by measuring from the southwest corner of Lot 107 of T. & C. Neave's Subdivision as recorded in Deed Book 122, Page 278, said corner being on the north right of way of St. Michael Street (50'); thence, with the north right of way of said St. Michael Street, South 83° 41' 11" East, 8.00 feet to the true point of beginning;

thence, from the True Point of Beginning thus found, continuing with the north right of way of said St. Michael Street, South 83° 41' 11" East, 4.50 feet;

thence, through the lands of said right of way the following three courses: South 06° 18' 49" West, 2.25 feet;

thence, North 83° 41' 11" West, 4.50 feet;

thence, North 06° 18' 49" East, 2.25 feet to the True Point of Beginning containing 10.13 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachments upon a portion of St. Michael St.)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Limited Warranty Deed* recorded on August 2, 2021, in OR 14471, Page 4092, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2131 St. Michael Street, Cincinnati, OH 45204, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining St. Michael Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for stoop and handrail encroachments on and across the St. Michael Street public right-of-way (the "**Encroachments**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the St. Michael Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing St. Michael Street public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$15, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on March 4, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove a stoop and handrail in, on, and across the St. Michael Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Stoop Easement) hereto (the “**Stoop Easement**” or “**Stoop Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachments within the Stoop Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Stoop Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachments within the Stoop Easement Area, such that the Stoop Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Stoop Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachments are creating a public safety issue, such as non-compliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easement, utility lines, and related facilities in the vicinity of the Stoop Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachments, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, removal, or sealing of the Encroachments under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Stoop Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Encroachments, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys’ fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, maintenance, repair, and all other matters associated with the Encroachments.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE’s satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee’s expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully

paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #75-2021). The following additional conditions shall apply: None

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts, and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Stoop Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

LPH THRIVES, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **LPH THRIVES, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

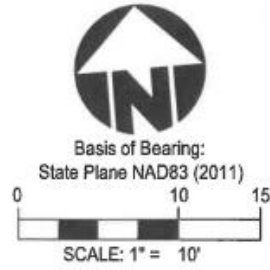
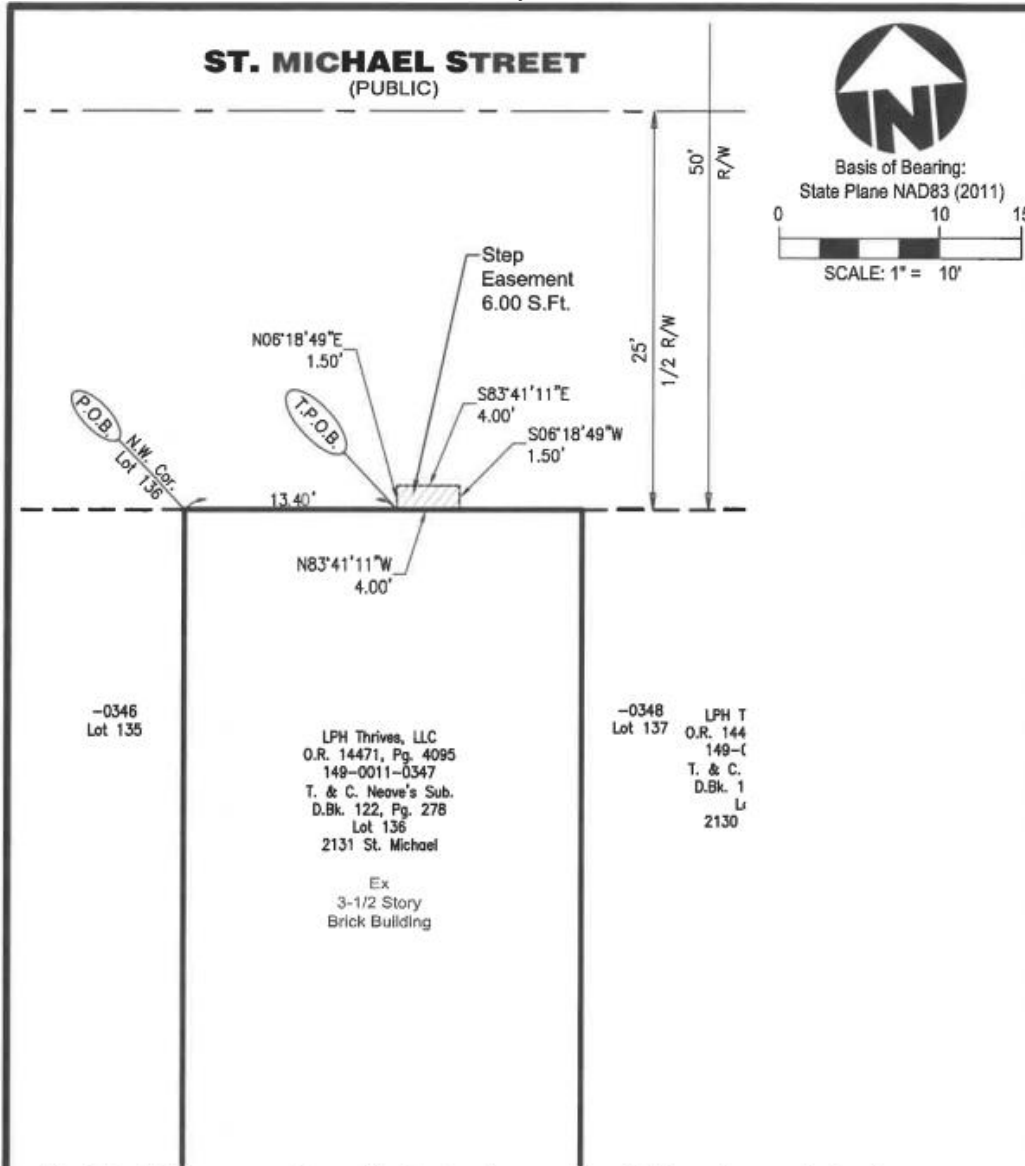
Parcel ID No.: 149-0011-0347-00 ST
2131 St. Michael St.

Situated in the City of Cincinnati, Hamilton County, Ohio and being Lot No. 136 in T and C Neave Subdivision of lots in Storrs Township (now 21st Ward, Cincinnati) said lot being on the south side of St. Michael Street and 100 feet in depth, as described on said plat as recorded in Plat Book 1, Pages 302 and 303 of the Hamilton County, Ohio Records.

EXHIBIT B

to Grant of Easement

Survey Plat



-0346
Lot 135

LPH Thrives, LLC
O.R. 14471, Pg. 4095
149-0011-0347
T. & C. Neeve's Sub.
D.Bk. 122, Pg. 278
Lot 136
2131 St. Michael

Ex
3-1/2 Story
Brick Building

-0348 LPH T
Lot 137 O.R. 144
149-C
T. & C.
D.Bk. 1
Lr
2130

Note: This exhibit was prepared from existing deeds and surveys of record. It does not represent a boundary survey.

| | | |
|----------------------------------|--|---|
| Drawing: 18-0192 ES 2131 STEP | EXHIBIT 2131 ST. MICHAEL STREET LOWER PRICE HILL SECTION 30, TOWN 4, F. RANGE 1 BTM THE CITY OF CINCINNATI HAMILTON COUNTY, OHIO EASEMENT AREA EXHIBIT |  www.bayerbecker.com 1404 Race Street, Suite 204 Cincinnati, OH 45202 - 513.834.6151 |
| Scale 1"=10' | | |
| Drawn by: j.o.l. | | |
| Checked By: CRG | | |
| Issue Date: 11-15-21 | | |

EXHIBIT C

to Grant of Easement

Legal Description – Stoop Easement

Description: Exhibit
Step Easement

Date: November 15, 2021

Location: 2131 St. Michael Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Step Easement over part of the right of way of St. Michael Street and being further described as follows:

Begin at a point found by measuring from the northwest corner of Lot 136 of T. & C. Neave's Subdivision as recorded in Deed Book 122, Page 278, said corner being on the south right of way of St. Michael Street (50'); thence, with the south right of way of said St. Michael Street, South 83° 41' 11" East, 13.40 feet to the true point of beginning;

thence, from the True Point of Beginning thus found, through the right of way of said St. Michael Street the following three courses: North 06° 18' 49" East, 1.50 feet;

thence, South 83° 41' 11" East, 4.00 feet;

thence, South 06° 18' 49" West, 1.50 feet to the south right of way of said St. Michael Street;

thence, with the south right of way of said St. Michael Street, North 83° 41' 11" West, 4.00 feet to the True Point of Beginning containing 6.00 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of St. Michael St.)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Limited Warranty Deed* recorded on August 2, 2021, in OR 14471, Page 4098, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 642 Neave Street, Cincinnati, OH 45204, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining St. Michael Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for a fire escape encroachment over and across the St. Michael Street public right-of-way (the "**Encroachment**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the St. Michael Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing St. Michael Street public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$115, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on March 4, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove a fire escape in, over, and across the St. Michael Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (*Legal Description-Fire Escape Easement*) hereto (the “**Fire Escape Easement**” or “**Fire Escape Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Fire Escape Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Fire Escape Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachment within the Fire Escape Easement Area, such that the Fire Escape Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Fire Escape Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachment are creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachment in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easement, utility lines, and related facilities in the vicinity of the Fire Escape Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachment, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, removal, or sealing of the Encroachment under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Fire Escape Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Encroachment, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys’ fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, maintenance, repair, and all other matters associated with the Encroachment.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE’s satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee’s expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully

paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #74-2021). The following additional conditions shall apply: None

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Fire Escape Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

LPH THRIVES, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **LPH THRIVES, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Parcel ID No.: 149-0011-0286-00 *By Prior*
642 Neave St.

All that certain lot of land situated in Section 30, Town 4, Fractional Range 1, Storrs Township in the City of Cincinnati, County of Hamilton, State of Ohio, known, numbered and designated as Lot 96 on the Plat of T and C Neave's Subdivision, a plat of which is recorded in Deed Book 122, page 278, and Plat Book 1, page 302, Hamilton County, Ohio Records, less and excepting, however, a tract of land 25.50 feet in front on the northerly side of St. Michael Street by 29 feet in depth and lying 74.50 feet east of Neave Street, heretofore conveyed by said grantor to Sybel Fisher, recorded in Deed Book 1268, page 301, Hamilton County, Ohio Records.

EXHIBIT B

to Grant of Easement

Survey Plat

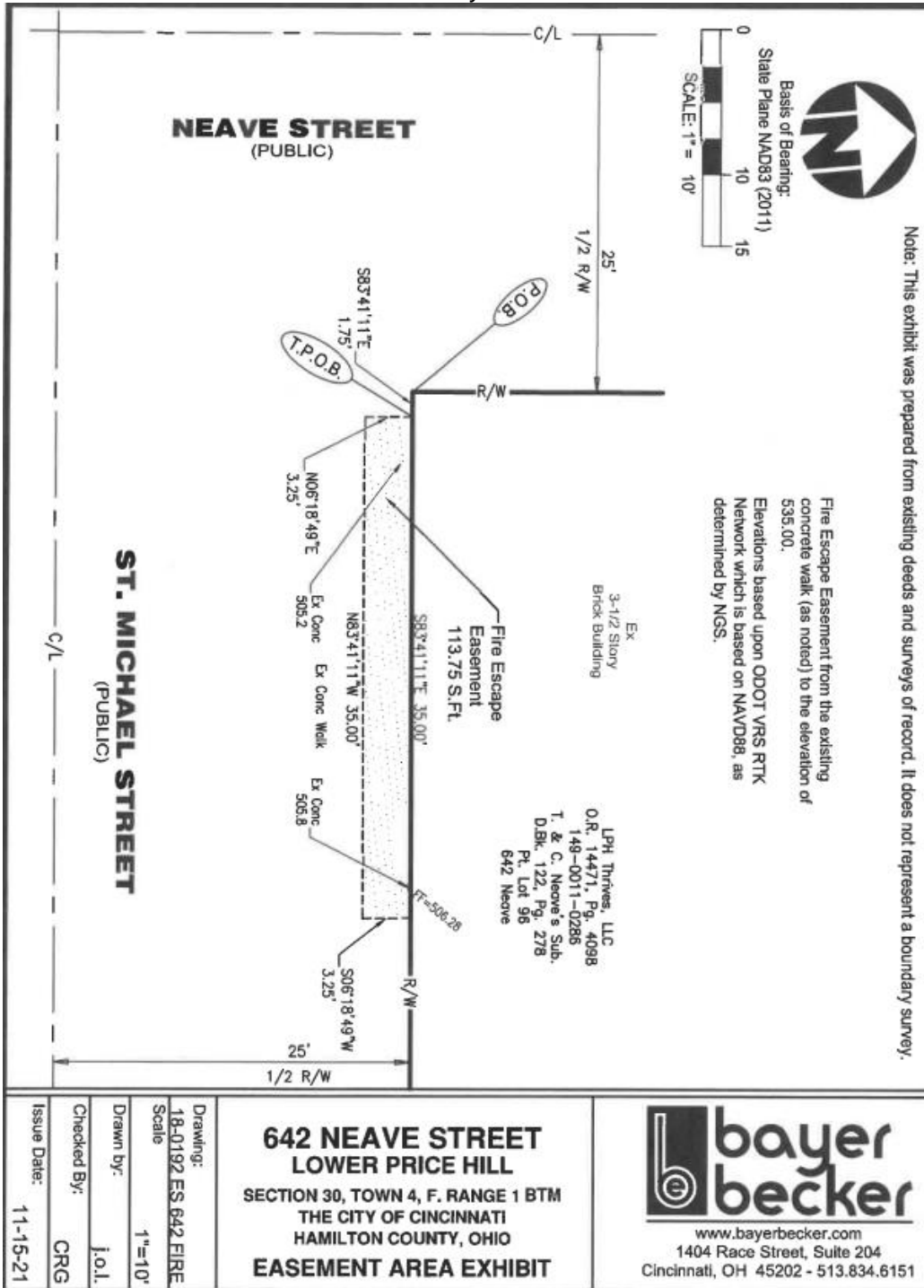


EXHIBIT C

to Grant of Easement

Legal Description – Fire Escape Easement

Description: Exhibit
Fire Escape Easement

Date: November 15, 2021

Location: 642 Neave Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Fire Escape Easement from the existing concrete walk elevation to the elevation of 535.00 over part of the right of way of St. Michael Street and being further described as follows:

Begin at a point found by measuring from the intersection of the north right of way of St. Michael Street (50') and the east right of way of Neave Street (50'); thence, departing the east right of way of said Neave Street and with the north right of way of said St. Michael Street, South 83° 41' 11" East, 1.75 feet to the true point of beginning;

thence, from the True Point of Beginning thus found, continuing with the north right of way of said St. Michaels Street, South 83° 41' 11" East, 35.00 feet;

thence, through the right of way of said right of said St. Michaels Street the following three courses: South 06° 18' 49" West, 3.25 feet;

thence, North 83° 41' 11" West, 35.00 feet;

thence, North 06° 18' 49" East, 3.25 feet to the to the True Point of Beginning containing 113.75 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

Vertical Elevations based upon ODOT VRS RTK Network which is based on NAVD88, as determined by NGS.

The above description was prepared from an easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachments upon a portion of Neave St.)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on August 2, 2021, in OR 14471, Page 4088, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 644 Neave Street, Cincinnati, OH 45204, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining Neave Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for stoop and handrail encroachments on and across the Neave Street public right-of-way (the "**Encroachments**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the Neave Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing Neave Street public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$115, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on March 4, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove a stoop and handrail in, on, and across the Neave Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Stoop Easement) hereto (the “**Stoop Easement**” or “**Stoop Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachments within the Stoop Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Stoop Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachments within the Stoop Easement Area, such that the Stoop Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Stoop Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachments are creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easement, utility lines, and related facilities in the vicinity of the Stoop Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachments, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, removal, or sealing of the Encroachments under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Stoop Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Encroachments, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys’ fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, maintenance, repair, and all other matters associated with the Encroachments.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE’s satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee’s expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully

paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #74-2021). The following additional conditions shall apply: None

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Stoop Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

LPH THRIVES, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **LPH THRIVES, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Parcel ID No.: 149-0011-0287-00 *ST*
644 Neave St.

Situated in the City of Cincinnati, County of Hamilton, and State of Ohio:

Beginning at a point in the East line of Neave Street, 29.05 feet North of the Northeast corner of Neave and St Michael Street;

Thence in the East line of Neave Street, North 5 degrees 00' East 29.10 feet;

Thence South 85 degrees 26' East 59.00 feet;

Thence South 85 degrees 24' East 22.00 feet;

Thence North 5 degrees East 00.26 of a foot,

Thence South 85 degrees 31' East 18.50 feet;

Thence South 5 degrees 00' West 28.85 feet;

Thence North 85 degrees 44' West 99.50 feet to the East line of Neave Street and the place of beginning.

EXHIBIT B

to Grant of Easement

Survey Plat

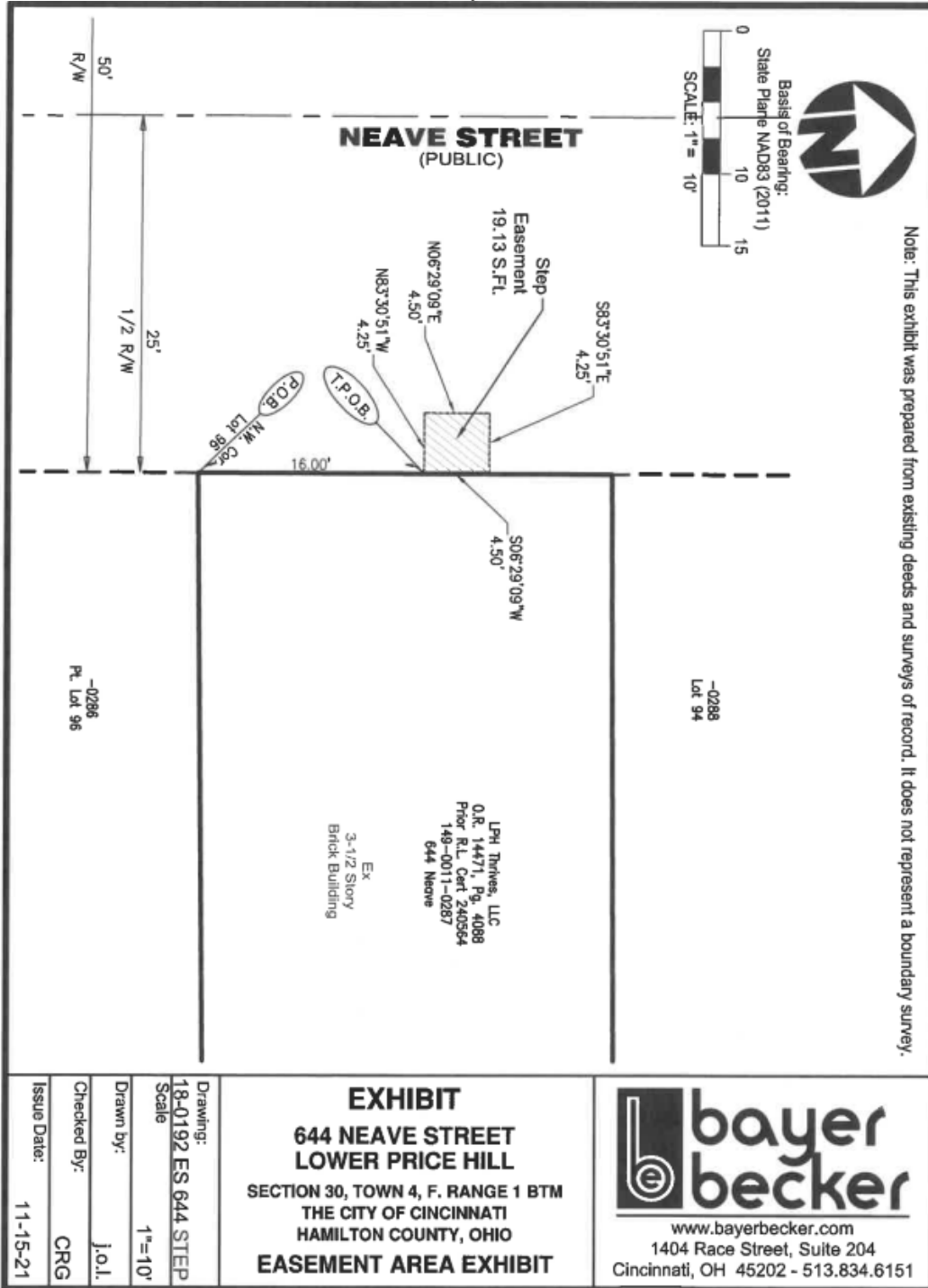


EXHIBIT C

to Grant of Easement

Legal Description – Stoop Easement

Description: Exhibit
Step Easement

Date: November 15, 2021

Location: 644 Neave Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being a Step Easement over part of the right of way of Neave Street and being further described as follows:

Begin at a point found by measuring from the northwest corner of Lot 96 of T. & C. Neave's Subdivision as recorded in Deed Book 122, Page 278, said corner being on the east right of way of Neave Street (50'); thence, with the east right of way of said Neave Street, North 06° 29' 09" East, 16.00 feet to the true point of beginning;

thence, from the True Point of Beginning thus found, and through the right of way of said Neave Street the following three courses: North 83° 30' 51" West, 4.25 feet;

thence, North 06° 29' 09" East, 4.50 feet;

thence, South 83° 30' 51" East, 4.25 feet to the east right of way of said Neave Street;

thence, with the east right of way of said Neave Street, South 06° 29' 09" West, 4.50 to the True Point of Beginning containing 19.13 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from an easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of W. 8th Street.)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **LPH THRIVES, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W. 14th Street, Cincinnati, OH 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on August 2, 2021, in OR 14471, Page 4088, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 2213 W. 8th Street, Cincinnati, OH 45204, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey Plat*) hereto (the "**Benefitted Property**").

B. The City owns the adjoining West 8th Street public right-of-way, which is under the management of the City's Department of Transportation and Engineering ("**DOTE**").

C. Grantee has requested the City to grant an easement for a bay window encroachment over the West 8th Street public right-of-way (the "**Encroachment**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the West 8th Street public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing West 8th Street public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$50, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easement at its meeting on March 4, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [____]-2022, passed on [____], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive encroachment easement to use, maintain, repair, reconstruct, replace, and remove a bay window in and over the West 8th Street public right-of-way, as more particularly depicted on Exhibit B and described on Exhibit C (Legal Description-Bay Window Easement) hereto (the “**Bay Window Easement**” or “**Bay Window Easement Area**”, as applicable). Grantee shall not make any modifications to the Encroachment within the Bay Window Easement Area without the City’s prior written consent.

2. Termination. Notwithstanding anything herein to the contrary, the Bay Window Easement shall automatically terminate upon (i) the complete or partial demolition of the Encroachment within the Bay Window Easement Area, such that the Bay Window Easement would be rendered unnecessary; (ii) upon written notice from the City, if the City determines that it needs the Bay Window Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act (“**ADA**”) regulations compliance or accessibility standards; (iii) or upon written notice from the City if the City determines that the Encroachment are creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

3. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachment in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easement, utility lines, and related facilities in the vicinity of the Bay Window Easement Area (“**Third-Party Utility Lines**”). In connection with Grantee’s maintenance, repair, and use of the Encroachment, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee’s expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the maintenance, repair, reconstruction, removal, or sealing of the Encroachment under this instrument shall be handled entirely at Grantee’s expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

4. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City’s request and, in any event, prior to undertaking any construction activities within the Bay Window Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee’s insurers, rights of subrogation, in connection with any damage to the Encroachment, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys’ fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, maintenance, repair, and all other matters associated with the Encroachment.

5. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fails to address the same to DOTE’s satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee’s expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully

paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

6. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

7. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

8. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

9. Coordinated Report Conditions (CR #73-2021). The following additional conditions shall apply: None

10. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description - Benefitted Property*
Exhibit B – *Survey Plat*
Exhibit C – *Legal Description - Bay Window Easement*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

LPH THRIVES, LLC,
an Ohio limited liability company,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, the _____ of **LPH THRIVES, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A

to Grant of Easement

LEGAL DESCRIPTION - BENEFITTED PROPERTY

Parcel ID No.: 149-0011-0136-90 37
2113 W. 8th

All that certain lot of land in Cincinnati, Hamilton County, Ohio, in Section 30, Township 4, Fractional Range 1, of the Miami Purchase, bounded and described as follows:

Commencing at a point in the South line of Eighth Street seventy-five (75) feet East of Depot Street and extending

Thence eastwardly twenty-five (25) feet to a point in the South line of said Eighth Street;

Thence, southwardly parallel to Depot Street one hundred twenty (120) feet more or less to Pardee Alley; Thence, westwardly with Pardee Alley twenty-five (25) feet to a point seventy-five (75) feet distant from Depot Street; Thence, northwardly one hundred twenty (120) feet more or less to the South line of Eighth Street and the place of

EXHIBIT B

to Grant of Easement

Survey Plat

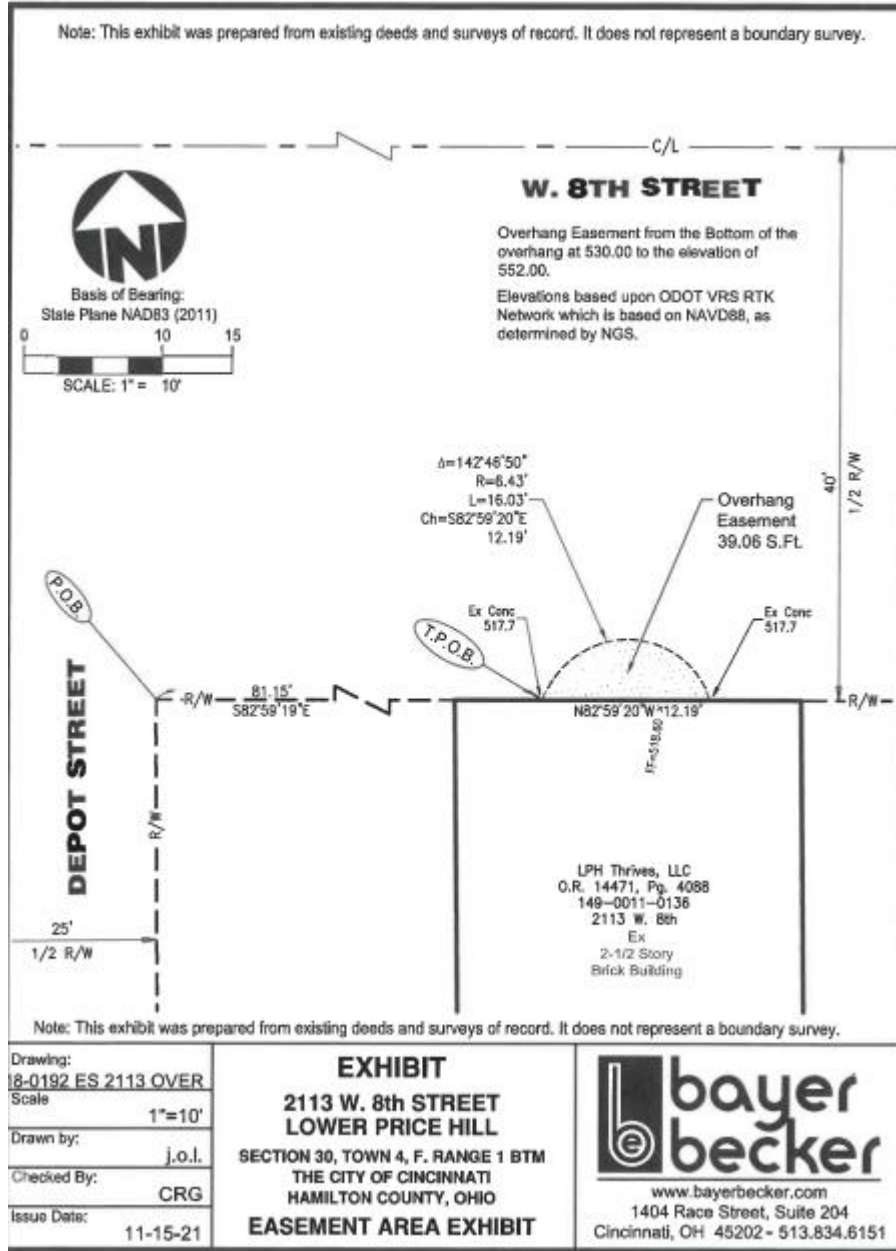


EXHIBIT C

to Grant of Easement

Legal Description – Bay Window Easement

Description: Exhibit
Overhang Easement
Date: November 15, 2021
Location: 2113 W. 8th Street
City of Cincinnati
Hamilton County, Ohio



Situated in Section 30, Town 4, Fractional Range 1 Between the Miamis, The City of Cincinnati, Hamilton County, Ohio being an Overhang Easement from the bottom of the overhang at 530.00 feet to an elevation of 552.00 feet over part of the right of way of W. 8th Street and being further described as follows:

Begin at a point found by measuring from the intersection of the south right of way of W. 8th Street (80') and the east right of way of Depot Street (50'); thence, departing the east right of way of said Depot Street and with the south right of way of said W. 8th Street, South 82° 59' 19" East, 81.15 feet to the true point of beginning;

thence, from the True Point of Beginning thus found and through the right of way of said right of said W. 8th Street with a non-tangent curve to the right, having a central angle of 142° 46' 50", a radius of 6.43 feet, an arc length of 16.03 feet, and a chord bearing South 82° 59' 20" East, 12.19 feet to the south right of way of said right of said W. 8th Street;

thence, with right of way of said right of said W. 8th Street, North 82° 59' 20" West, 12.19 feet to the True Point of Beginning containing 39.06 square feet.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

Vertical Elevations based upon ODOT VRS RTK Network which is based on NAVD88, as determined by NGS.

The above description was prepared from an easement exhibit made on November 15, 2021 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Date: March 16, 2022

202200626

To: Mayor and Members of City Council
From: John P. Curp, Interim City Manager
Subject: ORDINANCE – SUBLEASE A PARKING LOT TO COLONIAL LIFE & ACCIDENT INSURANCE COMPANY

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Lease Agreement* with Colonial Life & Accident Insurance Company, pursuant to which the City will lease a parking lot generally located east of Eggleston Avenue between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati for up to 15 years.

The City leases from the Ohio Department of Transportation certain real property known as Lots 14A and 14B located under viaducts supporting Interstate 471 in the Central Business District (the “Property”). The currently subleases to Colonial Life & Accident Insurance Company (“Lessee”), a portion of the Property (the “Subleased Area”). Lessee desires to continue to lease the Subleased Area as a parking lot for the benefit of an adjacent office building known as the Sawyer Point Building located at 720 E. Pete Rose Way for up to an additional 15 years (namely, an initial 5-year term, followed by two successive 5-year renewal terms).

The City has determined the Subleased Area is not needed for a municipal purpose for the duration of the Lease and is not adverse to the City’s retained interest in the Subleased Area or the Property.

The fair market value of the Subleased Area is approximately \$14,916 per month, which Lessee has agreed to pay.

The City Planning Commission approved the lease at its meeting on November 19, 2021.

The Administration recommends passage of the attached ordinance.

Attachment I – Lease Agreement

cc: John S. Brazina, Director, Transportation and Engineering

City of Cincinnati

CHM

ANG/ESW

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Lease Agreement* with Colonial Life & Accident Insurance Company, pursuant to which the City will lease a parking lot generally located east of Eggleston Avenue between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati for up to 15 years.

WHEREAS, pursuant to that certain *Agreement* dated April 16, 2003, the State of Ohio, acting through its Director of the Ohio Department of Transportation, leases to the City certain real property identified in the *Agreement* as Lots 14A and 14B located under viaducts supporting Interstate 471 (the "Property"), which Property is under the management of the Department of Transportation and Engineering ("DOT"); and

WHEREAS, the City presently subleases to Colonial Life & Accident Insurance Company, a South Carolina corporation ("Lessee") a portion of the Property (the "Subleased Area") pursuant to a *Lease Agreement* dated January 30, 2007, that expired on November 15, 2021, and the *Lease Agreement* has continued on a month-to-month basis since that time; and

WHEREAS, Lessee desires to continue to lease the Subleased Area as a parking lot for the benefit of an adjacent office building known as the Sawyer Point Building located at 720 E. Pete Rose Way for up to an additional 15 years (namely, an initial 5-year term, followed by two successive 5-year renewal terms), as further described in a *Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the "Lease"); and

WHEREAS, the City Manager, in consultation with DOT, has determined that (i) the Subleased Area is not needed for a municipal purpose for the duration of the Lease, and (ii) leasing the Subleased Area to Lessee is not adverse to the City's retained interest in the Subleased Area or the Property; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, the City Manager has determined that the City's lease of the Subleased Area to Lessee is commercial in nature because the City's lease of the Subleased Area to Lessee will enhance the economic viability of the Sawyer Point Building and the maintenance and creation of jobs by ensuring that employees and visitors have adequate parking, for the benefit of the community; and

WHEREAS, the City's Real Estate Services Division has determined by a professional appraisal that the fair market rental value of the Subleased Area is approximately \$14,916 per month, which Lessee has agreed to pay; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Subleased Area at its meeting on November 19, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Lease Agreement* (the "Lease") with Colonial Life & Accident Insurance Company, a South Carolina corporation ("Lessee"), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will sublease certain real property located in the Central Business District, as more particularly identified in the Lease (the "Subleased Area") for up to 15 years (namely, an initial 5-year term, followed by two successive 5-year renewal terms).

Section 2. That the Subleased Area is not needed for municipal purposes for the duration of the Lease.

Section 3. That leasing the Subleased Area to Lessee is not adverse to the City's retained interest in the Subleased Area.

Section 4. That eliminating competitive bidding in connection with the City's lease of the Subleased Area is in the best interest of the City because the Lease will enhance the economic viability of Lessee's real property, commonly known as the Sawyer Point Building, which is likely to contribute to the maintenance and creation of jobs by ensuring that the commercial

businesses occupying the Sawyer Point Building have adequate parking for their employees and visitors.

Section 5. That the City's Real Estate Services Division has determined by professional appraisal that the fair market rental value of the Subleased Area is approximately \$14,916 per month, which Lessee has agreed to pay.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Lease, including, without limitation, executing any and all ancillary documents associated with the Lease, such as amendments or supplements to the Lease deemed by the City Manager to be in the vital and best interests of the City.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: Eggleston Avenue between
East Third Street and East Pete Rose Way

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which is 801 Plum Street, Suite 122, Cincinnati, OH 45202; Attention: Real Estate (the "**City**"), and **Colonial Life & Accident Insurance Company**, a South Carolina corporation, the address of which is 2211 Congress Street, B259, Portland, ME 04122 ("**Lessee**").

Recitals:

A. The City owns or controls certain real property generally located east of Eggleston Avenue, lying between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati, more particularly identified as Hamilton County, Ohio Auditor's Parcel Nos. 85-1-1, 85-1-2, and 85-1-3 (the "**Property**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. Lessee owns an adjacent office building (known as the Sawyer Point Building) located at 720 E. Pete Rose Way ("**Lessee's Property**"), which is occupied by several commercial businesses.

C. Lessee has leased a portion of the Property pursuant to that certain *Lease Agreement* dated January 30, 2007, by and between the City and Lessee's successor-in-interest CRE Corporation, an Ohio corporation, for private parking serving Lessee's Property, as shown on Exhibit A (Site Map) and more particularly described on Exhibit B (Legal Description) hereto (the "**Leased Area**"). Upon the expiration of the initial 5-year term of the *Lease Agreement*, the parties extended the *Lease Agreement* for two additional terms of 5 years each (each 5-year term being a "**Renewal Period**").

D. The second Renewal Period expired on November 12, 2021, and Lessee has continued to use the Leased Area on a month-to-month basis since that time.

E. Lessee has petitioned to enter into a new lease with the City for the Leased Area, which the City is agreeable to on the terms and conditions set forth herein.

F. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

G. The City has determined that the City's lease of the Leased Area to Lessee is commercial in nature because the City's lease of the Leased Area to Lessee will enhance the economic viability of the Sawyer Point Building and the maintenance and creation of jobs by ensuring that employees and visitors have adequate parking, for the benefit of the community.

H. DOT has determined that the Leased Area is not currently needed for transportation or other municipal purposes.

I. The fair market rental value of the Leased Area, as determined by appraisal by the City's Real Estate Services Division, is approximately \$14,916 per month, which Lessee has agreed to pay.

I. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Area is in the best interest of the public because Lessee owns the adjacent office building and the City is agreeable to leasing the Leased Area to Lessee to help address the parking needs for the building.

J. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's lease of the Leased Area to Lessee at its meeting on November 19, 2021.

K. The City's execution of this Lease was approved by Cincinnati City Council by ordinance no. ____-2022, passed on _____, 2022.

NOW THEREFORE, the parties hereby agree as follows:

1. Grant.

(A) Grant. The City does hereby lease the Leased Area to Lessee, and Lessee does hereby lease the Leased Area from the City, excepting therefrom those portions of land occupied by the supports and foundations of the viaducts and all the air space below the viaducts to a plane at least eight feet below the underside or soffit of the viaducts, on the terms and conditions set forth herein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Area. The City makes no representations or warranties to Lessee concerning the physical condition of the Leased Area or the condition of the City's title to the Leased Area and, on the Commencement Date, Lessee shall accept the Leased Area in "as is" condition. The parties acknowledge that Lessee has been using the Leased Area for parking for many years and is familiar with the condition of the Leased Area. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Area, and to any and all existing agreements between the City and the State of Ohio, including, without limitation to, that certain *Agreement* dated April 16, 2003, pursuant to which the City leases from the State of Ohio certain real property designated therein as Lots 14A and 14B. Notwithstanding the foregoing, the City hereby reserves right to take immediate possession of the Leased Area in case of national or other emergency, or for the purpose of preventing sabotage and for the protection of the viaducts. Lessee shall be relieved from the performance of all conditions or covenants set forth herein for the duration of such emergency occupancy.

(B) Access by City Departments, Utility Companies, State of Ohio, and Others. Lessee shall ensure continuous access to the Leased Area (24 hours/day, 7 days/week, 52 weeks/year) by the City, its agents, employees, and contractors, the State of Ohio, its agents, employees, and contractors, and any and all utility companies that have utility lines or other utility installations within or near the Leased Area for the purpose of examining the condition of the Leased Area, determining Lessee's compliance with the provisions of this Lease, accessing, maintaining, repairing, replacing, or removing any public utility installations located within or near the Leased Area, and for any other proper purpose. Lessee shall not construct any structures or other improvements above any underground utility lines within the Leased Area that would interfere with a utility company's operation or maintenance thereof or access thereto. If Lessee constructs any improvements within the Leased Area or undertakes any other action that interferes with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease, whereupon the City and such third parties shall be permitted to take all actions reasonably necessary to eliminate such interference at Lessee's expense. If Lessee's activities within the Leased Area cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All actual, out-of-pocket costs of repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Area in connection with its inspection, maintenance, repair, replacement or removal of its existing utility facilities

in the area, Lessee shall be solely responsible for all costs associated with the repair, removal or replacement of Lessee's improvements. Under no circumstances shall the City be responsible for any damage to the Leased Area or improvements thereon resulting from the entry onto the Leased Area by utility companies and others having the right to enter upon the Leased Area. The foregoing shall not be deemed as precluding Lessee from making a claim directly against a third party whom Lessee alleges wrongfully damages Lessee's improvements.

2. Term.

(A) Initial Term (5 years). The initial term of this Lease (the "**Term**") shall commence on the Effective Date (also referred to herein as the "**Commencement Date**") and shall continue for **five years**, unless extended or sooner terminated as herein provided. On the Effective Date, the prior lease between the City and Lessee pertaining to the Leased Area shall be deemed to have automatically terminated.

(B) Automatic Renewals (two 5-year renewals). Unless the City or Lessee notifies the other party in writing, no less than 3 months prior to the date that the then current Term of this Lease is scheduled to expire, that such party does not wish to extend the Term for an additional five year period, the Term of this Lease shall automatically be extended for up to two consecutive renewal periods of five years each (each, a "**Renewal Period**") (such that the maximum Term of this Lease shall be 15 years). As used herein, the "**Term**" of this Lease means the initial Term, as the same may be extended under this paragraph.

(C) City's Right to Terminate Lease on 90 days Notice. Lessee acknowledges that the Leased Area may be needed in the future for municipal or state highway purposes. Therefore, notwithstanding anything in this Lease to the contrary, the City shall have the right to terminate this Lease at any time, by giving Lessee no less than 90 days prior written notice; whereupon (i) the City shall refund any prepaid base rent to Lessee, (ii) Lessee shall remove any of Lessee's site improvements unless the City instructs otherwise as described in section 11 (*Surrender; Holdover*) below, and (iii) Lessee shall surrender possession of the Leased Area to the City no later than the termination date set forth in the City's termination notice.

3. Base Rent.

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month in the amount of **\$14,916.00** ("**Base Rent**"). Rent shall be payable in advance, without notice or setoff. Rent shall increase upon the commencement of each Renewal Period by a percentage equal to the percentage increase of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor ("**CPI**") with respect to such five year period (the "**Adjusted Rent**" together with Base Rent, collectively, "**Rent**"). In no event shall there be a reduction of Rent as a result of changes to CPI. The parties acknowledge that, if this Lease is subsequently amended to provide for an extension of the Term beyond 15 years, Rent shall be adjusted at the commencement of such extended term to reflect the then fair market rental value of the Leased Area as determined by the City's Real Estate Services Division.

(B) Late Payment; Place of Payment. If any payment owed by Lessee hereunder is not received by the City on the due date, Lessee shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. All payments shall be made by check payable to the "City of Cincinnati - Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, Attention: Real Estate.

4. Permitted Use. Lessee shall use the Leased Area for private parking for employees, agents and invitees to the Sawyer Point Building. Lessee may use the Leased Area for public parking for special events held in the riverfront area after 6:00 p.m. on weekdays and all day on Saturday and Sunday. Lessee shall not use or permit the use of the Leased Area for storage of materials or supplies of any nature. Lessee shall not bring or permit to be brought on the Leased Area (i) vehicles used or designated for the transportation of gasoline or petroleum products, (ii) bulk storage of gasoline or

petroleum products, (iii) explosives or any hazardous materials or other contaminants or substances that are harmful to the public or to the environment, and (iv) wrecked vehicles or parts thereof. Lessee shall not install facilities for, nor operate on the Leased Area, a gasoline supply station. Lessee shall not permit hazardous or objectionable smoke, fumes, or vapors to rise above the grade of the viaduct. Lessee shall not permit vending of any kind or character to be conducted, permitted, or allowed within the Leased Area.

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses for utilities directly serving the Leased Area, (ii) any and all real estate taxes and assessments levied against the Leased Area, including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears, and (iii) any and all operating or other expenses associated with the Leased Area. Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Area during the Term of this Lease.*

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain, or cause to be kept and maintained, the Leased Area in good, safe, orderly, sanitary, and clean condition and repair, including without limitation all parking lot site improvements. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Area. In the event of damage to the Leased Area, Lessee shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE (however Lessee shall not be required to restore the Leased Area to a better condition than otherwise required under this Lease). Lessee shall be solely responsible for all snow and ice removal from the Leased Area. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Area or any improvements thereon.*

7. Alterations.

(A) Alterations. Lessee shall not make any alterations or improvements to the Leased Area, including without limitation installing any fences, signs, lighting, or utilities, or remove any existing improvements within the Leased Area, without in each case obtaining the prior written consent of the City. Lessee shall not make any changes in the land grade or level of the Leased Area. If Lessee proposes to install any permanent-type structures or other improvements within the Leased Area, Lessee shall also obtain the prior written consent of all utility companies whose utility facilities might be affected. Lessee acknowledges that, in connection with the City's review of Lessee's proposed alterations, the City may require Lessee to apply for and obtain a separate permit for the work.

(B) No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Area in connection with work performed by or at the request of Lessee.

(C) Signs. Lessee shall not install or erect any directional, operational, or advertising signs within the Leased Area without the written consent of the City.

(D) Compliance with Laws. Lessee shall obtain all necessary City inspection permits for work within the Leased Area performed by Lessee and shall pay all required permit fees. Lessee shall ensure that all work is performed in compliance with all applicable federal, state and local laws, codes, regulations and other governmental requirements.

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain: (i) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City of Cincinnati as an additional insured; (ii) worker's compensation insurance in the amount required under Ohio law, (iii) umbrella or excess liability insurance in the amount of not less

{00350953-1}

than \$1,000,000 per occurrence/\$1,000,000 aggregate; (iv) property insurance on all improvements constructed by Lessee within the Leased Area in such amount as Lessee from time to time deems commercially reasonable; and (v) such additional insurance as the City or its risk advisors may from time to time reasonably require. Lessee's insurance policies shall [x] be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, [y] provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and [z] be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(B) Waiver of Claims and Subrogation. All improvements, materials, equipment and other personal property of every kind that may at any time be within the Leased Area shall be within the Leased Area at Lessee's sole risk, and under no circumstances shall the City be liable for any loss or damage thereto, no matter how caused. As a material consideration under this Lease, Lessee hereby waives, as against the City, its employees, agents and contractors, and the State of Ohio, all claims and liability, and on behalf of Lessee's insurers, rights of subrogation, with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnification. The City assumes no responsibility for any acts, errors or omissions of Lessee or any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Area or in connection with any breach by Lessee under this Lease.

9. Casualty. If the Leased Area are damaged or destroyed by fire or other casualty, Lessee shall repair and restore the same, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which they were in immediately prior to such occurrence. The City and Lessee shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If Lessee's insurance proceeds are insufficient to fully repair and restore the Leased Area, Lessee shall make up the deficiency. Lessee shall handle all construction in accordance with the applicable requirements set forth in this Lease. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Area is being repaired or restored.

10. Default; Remedies.

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City; and

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than 30 days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30-day period, an event of default shall not be

deemed to have occurred if Lessee commences to cure such failure within such 30-day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within 90 days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it).

(B) **Remedies.** Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within 30 days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

11. Notices. All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express, UPS or other recognized courier that in the ordinary course of business maintains a record of each delivery, or mailed by U.S. certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Lease, or at such other address as either party may from time to time specify by notice to the other. Notices shall be deemed to have been given on the date of receipt if personally delivered, on the day of receipt if delivered by courier, and on the date noted on the return receipt if mailed by U.S. certified mail. If Lessee sends a notice to the City alleging that the City is in default under this Lease, Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

12. Surrender; Holdover.

(A) **Surrender; Holdover.** Upon the expiration or termination of the Term, Lessee shall surrender the Leased Area to the City in the condition in which Lessee is required to maintain the Leased Area under the terms of this Lease. If Lessee remains in possession of the Leased Area after the end of the Term without the City's consent, then, at the City's option, such holdover shall create a tenancy-at-will on the same terms and conditions as set forth in this Lease except that rent payable during such holdover shall be equal to 200% of the amount payable under this Lease at the end of the Term. Lessee shall be liable for all costs and damages that the City may suffer or incur as a result of Lessee's holding over.

(B) **Removal of Parking Site Improvements.** At the end of the Term, the City shall identify which improvements, if any, Lessee shall be required to surrender (at no cost to the City) and which improvements Lessee shall be required to remove. If Lessee fails to timely remove improvements that are designated for removal by the City and fails to restore the Leased Area to its former condition, or if Lessee fails to remove any items of personal property from the Leased Area, such improvements and items of personal property shall be deemed abandoned by Lessee, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements and items of personal property, and Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand. If the City incurs costs in removing Lessee's improvements and restoring the Leased Area to its

former condition, Lessee shall reimburse the City for all such removal and restoration costs within thirty (30) days after receiving an invoice therefor from the City.

13. Compliance with Laws.

(A) Compliance with Laws. Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. Lessee hereby covenants and agrees that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; (ii) that in connection with the construction of any improvements on the Leased Area and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contactors, by contractors in the selection and retention of first tier subcontractors and by first tier subcontractors in the selection and retention of second tier subcontractors; (iii) that such discrimination shall not be practiced against the public in their access to, and use of the facilities constructed or operated on, over, or under the space of the right of way and; (iv) that Lessee shall use the Lease Area in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation," as said regulations may be amended from time to time. Lessee shall defend, indemnify and hold harmless the City from any and all claims and demands of third persons, including the United States of America and the State of Ohio, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

14. General Provisions.

(A) Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessee agrees that venue in such court is proper. Lessee hereby waives trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

{00350953-1}

(G) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by Lessee of its obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. Lessee represents that it has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. Lessee represents that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease has been duly authorized by all necessary actions on Lessee's part.

(M) Counterparts and Electronic Signatures. This Lease may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Lease may be executed and delivered by electronic signature.

15. Additional Conditions from City's Coordinated Report (CR #8-2021). Lessee shall comply with the following additional terms and conditions:

(A) *Buildings and Inspections*: Lessee shall comply with all applicable parking lot requirements imposed by Cincinnati Municipal Code Section 1411-31 and Cincinnati Municipal Code Chapter 413.

16. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Site Map*
Exhibit B – *Legal Description*

[SIGNATURE PAGES FOLLOW]

This Lease is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation & Engineering

Approved as to Form:

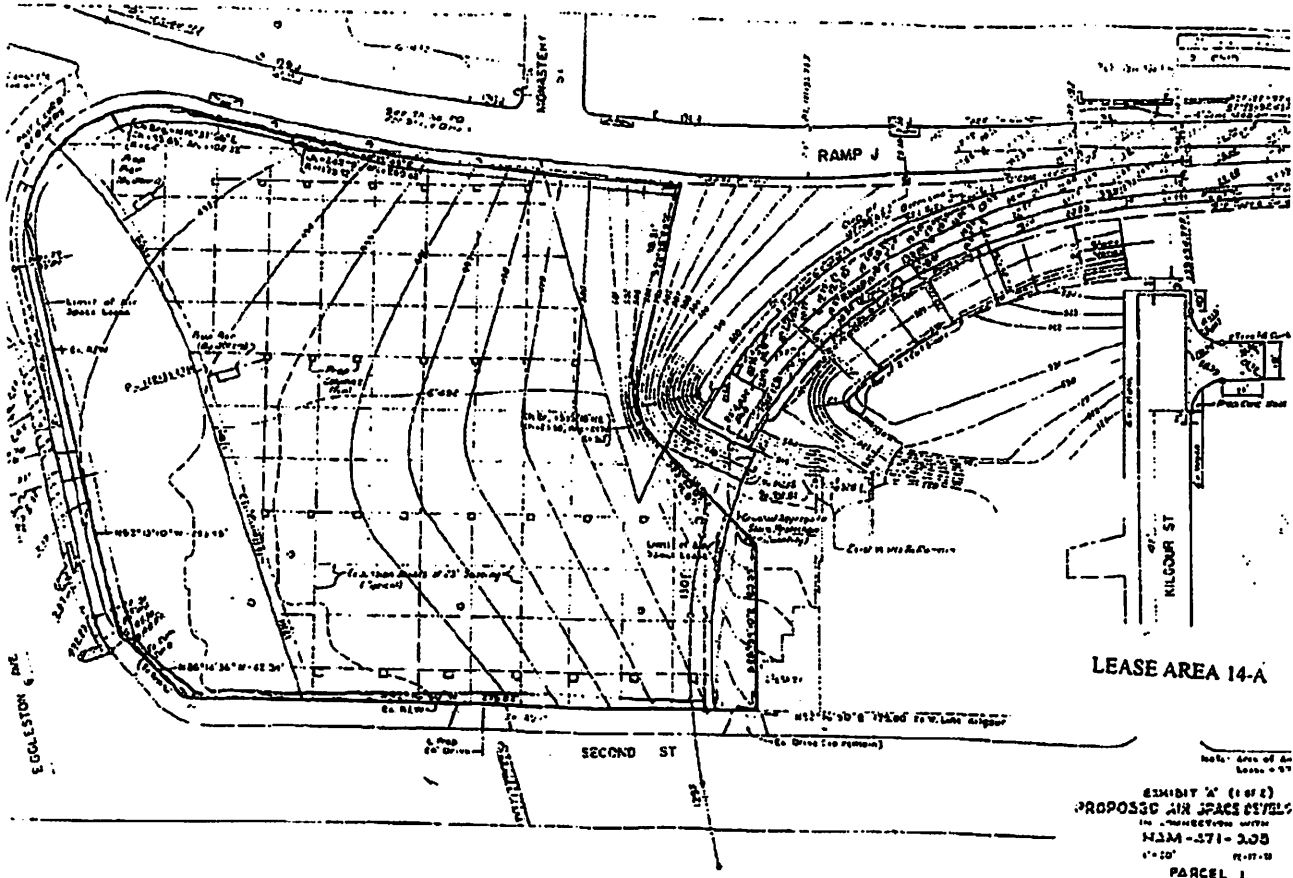
Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Karen Alder, City Finance Director

[Lessee Signature Page Follows]

EXHIBIT A
to Lease Agreement

Site Map



Scale: Area of Lease = 57
 EXHIBIT A (1 of 2)
 PROPOSED AIR SPACE EASEL
 N.M. - 571 - 3.08
 1" = 10'
 PARCEL 1

EXHIBIT A (Cont.)

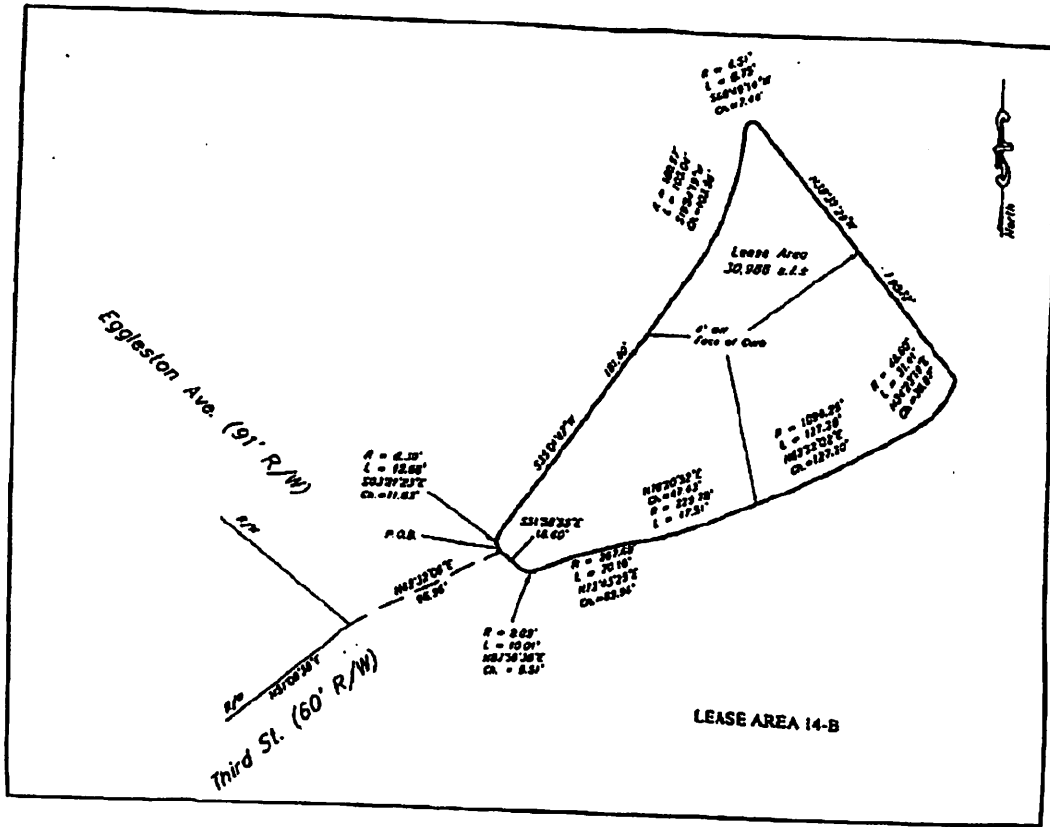


EXHIBIT B
to Lease Agreement

Legal Description

Lease Area No.14-A
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 85-1-2,3, 8 thru 25

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County, Ohio, and being more particularly described as follows:

From the intersection of the southwesterly line of Kilgour Street (a 40 foot Street) and the northwesterly line of Second Street (a 60 foot street), measure South 52° 16' 50" West, along the northwesterly line of Second Street, a distance of 200.00 feet for the PLACE OF BEGINNING: thence South 52° 16' 50" West, continuing along the northwesterly line of Second Street, a distance of 250.82 feet; thence North 86° 14' 36" West, a distance of 42.39 feet to the northeasterly line of Eggleston Avenue (a 91 foot Street); thence North 52° 13' 10" West, along the northeasterly line of Eggleston Avenue, a distance of 205.95 feet, thence North 37° 46' 50" East, a distance of 7.00 feet; thence northeastwardly along a curve deflecting to the right with a radius of 57.00 feet for a distance of 95.36 feet (the chord of said curve bears North 18° 24' 35" East for 84.62 feet) to the southeasterly line of Ramp "J"; thence northeastwardly along a curve, which is along the southeasterly line of Ramp "J" and tangent to the last described curve, deflecting to the left with a radius of 1,182.92 feet for a distance of 239.96 feet (the chord of said curve bears North 59° 15' 43" East for 239.54 feet); thence South 26° 56' 23" East a distance of 91.80 feet; thence southeastwardly along a curve tangent to the last described course and deflecting to the left with a radius of 30.00 feet for a distance of 29.70 feet (the chord of said curve bears South 55° 18' 11" East for 28.50 feet); thence South 83° 40' East, tangent to the last described curve, a distance of 36.45 feet; thence South 38° 39' 10" East for 104.58 feet to the northwesterly line of Second Street and the Place of Beginning and containing 75,583 square feet, more or less.

Together with the appurtenances, fixtures, rights, privileges and easement thereunto belonging or appertaining, EXCEPTING THEREFROM that portion of the above described land occupied by the supports and foundations of the viaduct and all the air space below the viaduct to a plane at least eight (8) feet below the underside or soffit of the viaduct.

EXHIBIT B (Cont.)

**CITY OF CINCINNATI
Lease Area 14-B
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 79-5-1 & 3; 79-6-256 thru 258**

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning at the intersection of the West line of Eggleston Ave. (91' R/W), and the North line of Third St. (60' R/W), said North line having a bearing of North 51°08'38" East, measure North 62°32'06" East, 96.96 feet to The Place of Beginning; thence South 51°58'55" East, 16.60 feet to a point; thence on a curve to the left said curve having a radius of 9.09 feet a chord bearing North 87°56'38" East, 9.51 feet, 10.01 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 267.60 feet a chord bearing North 72°43'25" East, 69.96 feet, 70.16 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 229.78 feet a chord bearing North 70°20'52" East, 47.43 feet, 47.51 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 1094.25 feet a chord bearing North 62°22'02" East, 127.20 feet, 127.28 feet as measured along said curve to a point; thence on a curve to the left having a radius of 48.60 feet a chord bearing North 34°23'19" East, 30.87 feet, 31.41 feet as measured along said curve to a point; thence North 38°31'29" West, 190.32 feet to a point; thence on a curve to the left said curve having a radius of 4.51 feet a chord bearing South 68°49'14" West, 7.44 feet, 8.75 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 180.57 feet a chord bearing South 19°54'19" West, 103.56 feet, 105.04 feet as measured along said curve to a point; thence South 35°01'47" West, 181.40 feet to a point; thence on a curve to the left said curve having a radius of 8.30 feet a chord bearing South 03°21'23" East, 11.63 feet, 12.88 feet as measured along said curve to The Place of Beginning. Containing 30,986 square feet of land more or less. Bearings based on State Plane Coordinate Monuments

6919 and 6920 as described in the City of Cincinnati Geodetic Control Manual. Subject to all legal highways, easements and all restrictions of record.

Contract No. _____

Property: Eggleston Avenue between
East Third Street and East Pete Rose Way

LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which is 801 Plum Street, Suite 122, Cincinnati, OH 45202; Attention: Real Estate (the “**City**”), and **Colonial Life & Accident Insurance Company**, a South Carolina corporation, the address of which is 2211 Congress Street, B259, Portland, ME 04122 (“**Lessee**”).

Recitals:

A. The City owns or controls certain real property generally located east of Eggleston Avenue, lying between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati, more particularly identified as Hamilton County, Ohio Auditor’s Parcel Nos. 85-1-1, 85-1-2, and 85-1-3 (the “**Property**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Lessee owns an adjacent office building (known as the Sawyer Point Building) located at 720 E. Pete Rose Way (“**Lessee’s Property**”), which is occupied by several commercial businesses.

C. Lessee has leased a portion of the Property pursuant to that certain *Lease Agreement* dated January 30, 2007, by and between the City and Lessee’s successor-in-interest CRE Corporation, an Ohio corporation, for private parking serving Lessee’s Property, as shown on Exhibit A (Site Map) and more particularly described on Exhibit B (Legal Description) hereto (the “**Leased Area**”). Upon the expiration of the initial 5-year term of the *Lease Agreement*, the parties extended the *Lease Agreement* for two additional terms of 5 years each (each 5-year term being a “**Renewal Period**”).

D. The second Renewal Period expired on November 12, 2021, and Lessee has continued to use the Leased Area on a month-to-month basis since that time.

E. Lessee has petitioned to enter into a new lease with the City for the Leased Area, which the City is agreeable to on the terms and conditions set forth herein.

F. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

G. The City has determined that the City’s lease of the Leased Area to Lessee is commercial in nature because the City’s lease of the Leased Area to Lessee will enhance the economic viability of the Sawyer Point Building and the maintenance and creation of jobs by ensuring that employees and visitors have adequate parking, for the benefit of the community.

H. DOT has determined that the Leased Area is not currently needed for transportation or other municipal purposes.

I. The fair market rental value of the Leased Area, as determined by appraisal by the City’s Real Estate Services Division, is approximately \$14,916 per month, which Lessee has agreed to pay.

I. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Area is in the best interest of the public because Lessee owns the adjacent office building and the City is agreeable to leasing the Leased Area to Lessee to help address the parking needs for the building.

J. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's lease of the Leased Area to Lessee at its meeting on November 19, 2021.

K. The City's execution of this Lease was approved by Cincinnati City Council by ordinance no. _____-2022, passed on _____, 2022.

NOW THEREFORE, the parties hereby agree as follows:

1. Grant.

(A) Grant. The City does hereby lease the Leased Area to Lessee, and Lessee does hereby lease the Leased Area from the City, excepting therefrom those portions of land occupied by the supports and foundations of the viaducts and all the air space below the viaducts to a plane at least eight feet below the underside or soffit of the viaducts, on the terms and conditions set forth herein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Area. The City makes no representations or warranties to Lessee concerning the physical condition of the Leased Area or the condition of the City's title to the Leased Area and, on the Commencement Date, Lessee shall accept the Leased Area in "as is" condition. The parties acknowledge that Lessee has been using the Leased Area for parking for many years and is familiar with the condition of the Leased Area. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Area, and to any and all existing agreements between the City and the State of Ohio, including, without limitation to, that certain *Agreement* dated April 16, 2003, pursuant to which the City leases from the State of Ohio certain real property designated therein as Lots 14A and 14B. Notwithstanding the foregoing, the City hereby reserves right to take immediate possession of the Leased Area in case of national or other emergency, or for the purpose of preventing sabotage and for the protection of the viaducts. Lessee shall be relieved from the performance of all conditions or covenants set forth herein for the duration of such emergency occupancy.

(B) Access by City Departments, Utility Companies, State of Ohio, and Others. Lessee shall ensure continuous access to the Leased Area (24 hours/day, 7 days/week, 52 weeks/year) by the City, its agents, employees, and contractors, the State of Ohio, its agents, employees, and contractors, and any and all utility companies that have utility lines or other utility installations within or near the Leased Area for the purpose of examining the condition of the Leased Area, determining Lessee's compliance with the provisions of this Lease, accessing, maintaining, repairing, replacing, or removing any public utility installations located within or near the Leased Area, and for any other proper purpose. Lessee shall not construct any structures or other improvements above any underground utility lines within the Leased Area that would interfere with a utility company's operation or maintenance thereof or access thereto. If Lessee constructs any improvements within the Leased Area or undertakes any other action that interferes with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease, whereupon the City and such third parties shall be permitted to take all actions reasonably necessary to eliminate such interference at Lessee's expense. If Lessee's activities within the Leased Area cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All actual, out-of-pocket costs of repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Area in connection with its inspection, maintenance, repair, replacement or removal of its existing utility facilities

in the area, Lessee shall be solely responsible for all costs associated with the repair, removal or replacement of Lessee's improvements. Under no circumstances shall the City be responsible for any damage to the Leased Area or improvements thereon resulting from the entry onto the Leased Area by utility companies and others having the right to enter upon the Leased Area. The foregoing shall not be deemed as precluding Lessee from making a claim directly against a third party whom Lessee alleges wrongfully damages Lessee's improvements.

2. Term.

(A) Initial Term (5 years). The initial term of this Lease (the "**Term**") shall commence on the Effective Date (also referred to herein as the "**Commencement Date**") and shall continue for **five years**, unless extended or sooner terminated as herein provided. On the Effective Date, the prior lease between the City and Lessee pertaining to the Leased Area shall be deemed to have automatically terminated.

(B) Automatic Renewals (two 5-year renewals). Unless the City or Lessee notifies the other party in writing, no less than 3 months prior to the date that the then current Term of this Lease is scheduled to expire, that such party does not wish to extend the Term for an additional five year period, the Term of this Lease shall automatically be extended for up to two consecutive renewal periods of five years each (each, a "**Renewal Period**") (such that the maximum Term of this Lease shall be 15 years). As used herein, the "**Term**" of this Lease means the initial Term, as the same may be extended under this paragraph.

(C) City's Right to Terminate Lease on 90 days Notice. Lessee acknowledges that the Leased Area may be needed in the future for municipal or state highway purposes. Therefore, notwithstanding anything in this Lease to the contrary, the City shall have the right to terminate this Lease at any time, by giving Lessee no less than 90 days prior written notice; whereupon (i) the City shall refund any prepaid base rent to Lessee, (ii) Lessee shall remove any of Lessee's site improvements unless the City instructs otherwise as described in section 11 (*Surrender; Holdover*) below, and (iii) Lessee shall surrender possession of the Leased Area to the City no later than the termination date set forth in the City's termination notice.

3. Base Rent.

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month in the amount of \$14,916.00 ("**Base Rent**"). Rent shall be payable in advance, without notice or setoff. Rent shall increase upon the commencement of each Renewal Period by a percentage equal to the percentage increase of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor ("**CPI**") with respect to such five year period (the "**Adjusted Rent**" together with Base Rent, collectively, "**Rent**"). In no event shall there be a reduction of Rent as a result of changes to CPI. The parties acknowledge that, if this Lease is subsequently amended to provide for an extension of the Term beyond 15 years, Rent shall be adjusted at the commencement of such extended term to reflect the then fair market rental value of the Leased Area as determined by the City's Real Estate Services Division.

(B) Late Payment; Place of Payment. If any payment owed by Lessee hereunder is not received by the City on the due date, Lessee shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. All payments shall be made by check payable to the "City of Cincinnati - Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, Attention: Real Estate.

4. Permitted Use. Lessee shall use the Leased Area for private parking for employees, agents and invitees to the Sawyer Point Building. Lessee may use the Leased Area for public parking for special events held in the riverfront area after 6:00 p.m. on weekdays and all day on Saturday and Sunday. Lessee shall not use or permit the use of the Leased Area for storage of materials or supplies of any nature. Lessee shall not bring or permit to be brought on the Leased Area (i) vehicles used or designated for the transportation of gasoline or petroleum products, (ii) bulk storage of gasoline or

petroleum products, (iii) explosives or any hazardous materials or other contaminants or substances that are harmful to the public or to the environment, and (iv) wrecked vehicles or parts thereof. Lessee shall not install facilities for, nor operate on the Leased Area, a gasoline supply station. Lessee shall not permit hazardous or objectionable smoke, fumes, or vapors to rise above the grade of the viaduct. Lessee shall not permit vending of any kind or character to be conducted, permitted, or allowed within the Leased Area.

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses for utilities directly serving the Leased Area, (ii) any and all real estate taxes and assessments levied against the Leased Area, including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears, and (iii) any and all operating or other expenses associated with the Leased Area. Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Area during the Term of this Lease.*

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain, or cause to be kept and maintained, the Leased Area in good, safe, orderly, sanitary, and clean condition and repair, including without limitation all parking lot site improvements. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Area. In the event of damage to the Leased Area, Lessee shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE (however Lessee shall not be required to restore the Leased Area to a better condition than otherwise required under this Lease). Lessee shall be solely responsible for all snow and ice removal from the Leased Area. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Area or any improvements thereon.*

7. Alterations.

(A) Alterations. Lessee shall not make any alterations or improvements to the Leased Area, including without limitation installing any fences, signs, lighting, or utilities, or remove any existing improvements within the Leased Area, without in each case obtaining the prior written consent of the City. Lessee shall not make any changes in the land grade or level of the Leased Area. If Lessee proposes to install any permanent-type structures or other improvements within the Leased Area, Lessee shall also obtain the prior written consent of all utility companies whose utility facilities might be affected. Lessee acknowledges that, in connection with the City's review of Lessee's proposed alterations, the City may require Lessee to apply for and obtain a separate permit for the work.

(B) No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Area in connection with work performed by or at the request of Lessee.

(C) Signs. Lessee shall not install or erect any directional, operational, or advertising signs within the Leased Area without the written consent of the City.

(D) Compliance with Laws. Lessee shall obtain all necessary City inspection permits for work within the Leased Area performed by Lessee and shall pay all required permit fees. Lessee shall ensure that all work is performed in compliance with all applicable federal, state and local laws, codes, regulations and other governmental requirements.

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain: (i) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City of Cincinnati as an additional insured; (ii) worker's compensation insurance in the amount required under Ohio law, (iii) umbrella or excess liability insurance in the amount of not less

than \$1,000,000 per occurrence/\$1,000,000 aggregate; (iv) property insurance on all improvements constructed by Lessee within the Leased Area in such amount as Lessee from time to time deems commercially reasonable; and (v) such additional insurance as the City or its risk advisors may from time to time reasonably require. Lessee's insurance policies shall [x] be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, [y] provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and [z] be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(B) Waiver of Claims and Subrogation. All improvements, materials, equipment and other personal property of every kind that may at any time be within the Leased Area shall be within the Leased Area at Lessee's sole risk, and under no circumstances shall the City be liable for any loss or damage thereto, no matter how caused. As a material consideration under this Lease, Lessee hereby waives, as against the City, its employees, agents and contractors, and the State of Ohio, all claims and liability, and on behalf of Lessee's insurers, rights of subrogation, with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnification. The City assumes no responsibility for any acts, errors or omissions of Lessee or any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Area or in connection with any breach by Lessee under this Lease.

9. Casualty. If the Leased Area are damaged or destroyed by fire or other casualty, Lessee shall repair and restore the same, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which they were in immediately prior to such occurrence. The City and Lessee shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If Lessee's insurance proceeds are insufficient to fully repair and restore the Leased Area, Lessee shall make up the deficiency. Lessee shall handle all construction in accordance with the applicable requirements set forth in this Lease. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Area is being repaired or restored.

10. Default; Remedies.

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City; and

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than 30 days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30-day period, an event of default shall not be

deemed to have occurred if Lessee commences to cure such failure within such 30-day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within 90 days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it).

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within 30 days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

11. Notices. All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express, UPS or other recognized courier that in the ordinary course of business maintains a record of each delivery, or mailed by U.S. certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Lease, or at such other address as either party may from time to time specify by notice to the other. Notices shall be deemed to have been given on the date of receipt if personally delivered, on the day of receipt if delivered by courier, and on the date noted on the return receipt if mailed by U.S. certified mail. If Lessee sends a notice to the City alleging that the City is in default under this Lease, Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

12. Surrender; Holdover.

(A) Surrender; Holdover. Upon the expiration or termination of the Term, Lessee shall surrender the Leased Area to the City in the condition in which Lessee is required to maintain the Leased Area under the terms of this Lease. If Lessee remains in possession of the Leased Area after the end of the Term without the City's consent, then, at the City's option, such holdover shall create a tenancy-at-will on the same terms and conditions as set forth in this Lease except that rent payable during such holdover shall be equal to 200% of the amount payable under this Lease at the end of the Term. Lessee shall be liable for all costs and damages that the City may suffer or incur as a result of Lessee's holding over.

(B) Removal of Parking Site Improvements. At the end of the Term, the City shall identify which improvements, if any, Lessee shall be required to surrender (at no cost to the City) and which improvements Lessee shall be required to remove. If Lessee fails to timely remove improvements that are designated for removal by the City and fails to restore the Leased Area to its former condition, or if Lessee fails to remove any items of personal property from the Leased Area, such improvements and items of personal property shall be deemed abandoned by Lessee, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements and items of personal property, and Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand. If the City incurs costs in removing Lessee's improvements and restoring the Leased Area to its

former condition, Lessee shall reimburse the City for all such removal and restoration costs within thirty (30) days after receiving an invoice therefor from the City.

13. Compliance with Laws.

(A) Compliance with Laws. Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. Lessee hereby covenants and agrees that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; (ii) that in connection with the construction of any improvements on the Leased Area and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contactors, by contractors in the selection and retention of first tier subcontractors and by first tier subcontractors in the selection and retention of second tier subcontractors; (iii) that such discrimination shall not be practiced against the public in their access to, and use of the facilities constructed or operated on, over, or under the space of the right of way and; (iv) that Lessee shall use the Lease Area in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation," as said regulations may be amended from time to time. Lessee shall defend, indemnify and hold harmless the City from any and all claims and demands of third persons, including the United States of America and the State of Ohio, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

14. General Provisions.

(A) Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessee agrees that venue in such court is proper. Lessee hereby waives trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

{00350953-1}

(G) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by Lessee of its obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. Lessee represents that it has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. Lessee represents that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease has been duly authorized by all necessary actions on Lessee's part.

(M) Counterparts and Electronic Signatures. This Lease may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Lease may be executed and delivered by electronic signature.

15. Additional Conditions from City's Coordinated Report (CR #8-2021). Lessee shall comply with the following additional terms and conditions:

(A) *Buildings and Inspections*: Lessee shall comply with all applicable parking lot requirements imposed by Cincinnati Municipal Code Section 1411-31 and Cincinnati Municipal Code Chapter 413.

16. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Site Map*
Exhibit B – *Legal Description*

[SIGNATURE PAGES FOLLOW]

This Lease is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation & Engineering

Approved as to Form:

Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Karen Alder, City Finance Director

[Lessee Signature Page Follows]

Colonial Life & Accident Insurance Company,
a South Carolina corporation

By: _____

Printed Name: _____

Title: _____

Date: _____, 2021

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of the Colonial Life & Accident Insurance Company, a South Carolina corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

EXHIBIT A
to Lease Agreement

Site Map

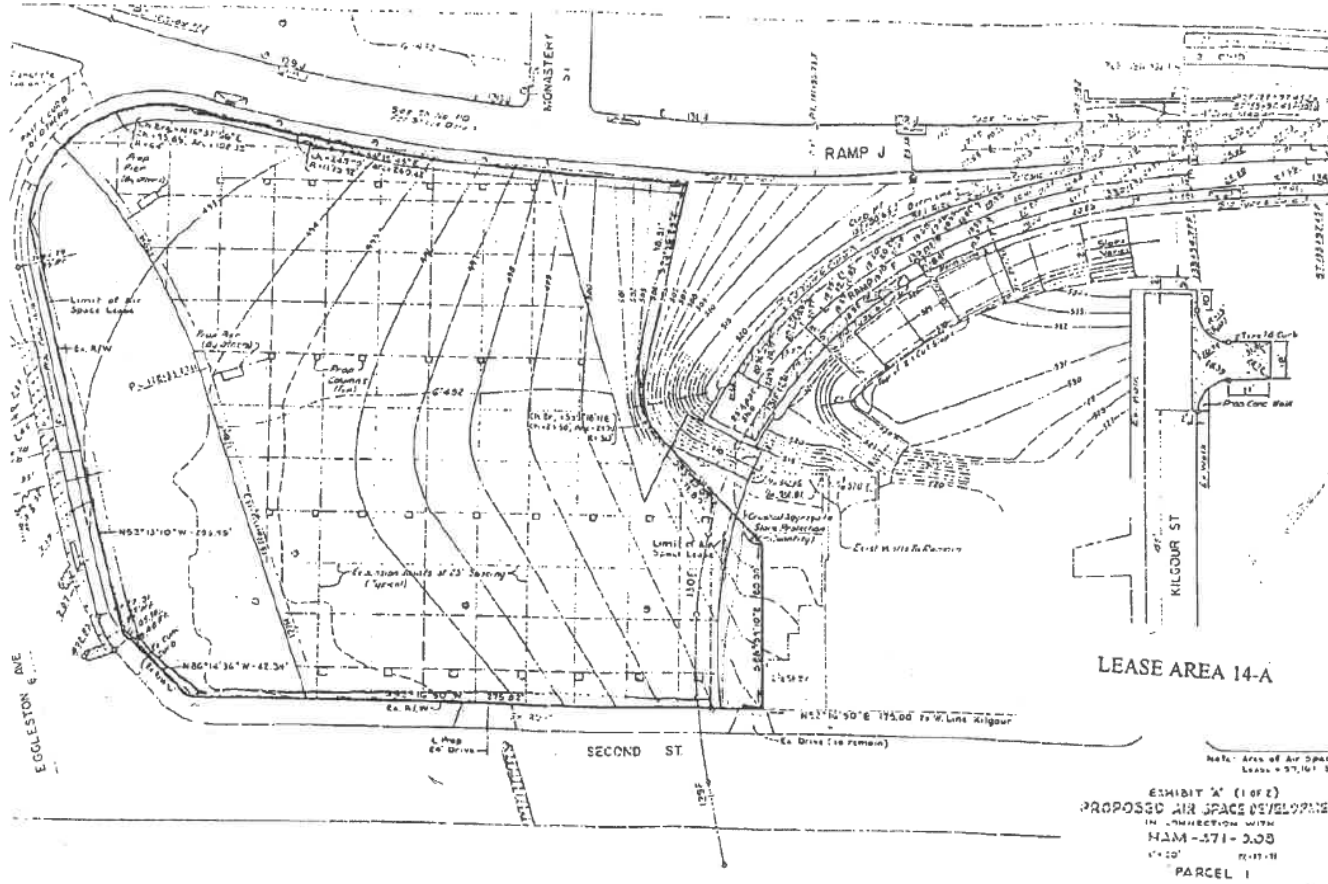


EXHIBIT A (Cont.)

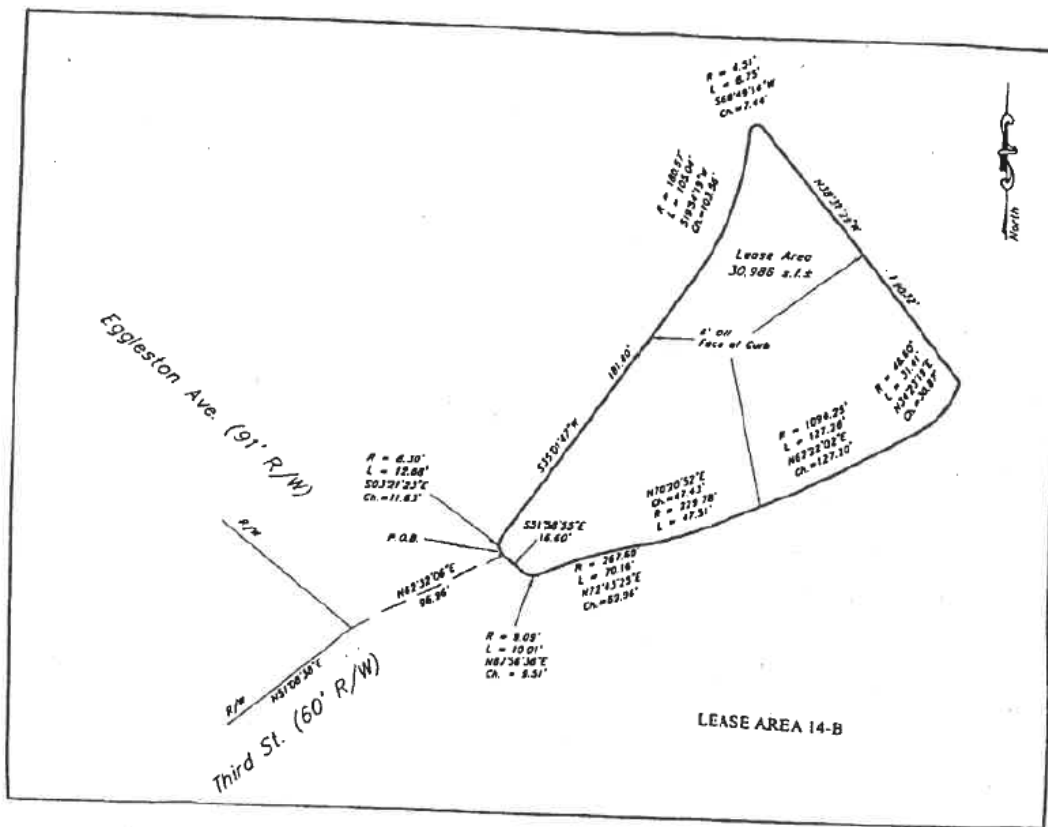


EXHIBIT B
to Lease Agreement

Legal Description

**Lease Area No.14-A
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 85-1-2,3, 8 thru 25**

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County, Ohio, and being more particularly described as follows:

From the intersection of the southwesterly line of Kilgour Street (a 40 foot Street) and the northwesterly line of Second Street (a 60 foot street), measure South 52° 16' 50" West, along the northwesterly line of Second Street, a distance of 200.00 feet for the PLACE OF BEGINNING: thence South 52° 16' 50" West, continuing along the northwesterly line of Second Street, a distance of 250.82 feet; thence North 86° 14' 36" West, a distance of 42.39 feet to the northeasterly line of Eggleston Avenue (a 91 foot Street); thence North 52° 13' 10" West, along the northeasterly line of Eggleston Avenue, a distance of 205.95 feet, thence North 37° 46' 50" East, a distance of 7.00 feet; thence northeastwardly along a curve deflecting to the right with a radius of 57.00 feet for a distance of 95.36 feet (the chord of said curve bears North 18° 24' 35" East for 84.62 feet) to the southeasterly line of Ramp "J"; thence northeastwardly along a curve, which is along the southeasterly line of Ramp "J" and tangent to the last described curve, deflecting to the left with a radius of 1,182.92 feet for a distance of 239.96 feet (the chord of said curve bears North 59° 15' 43" East for 239.54 feet); thence South 26° 56' 23" East a distance of 91.80 feet; thence southeastwardly along a curve tangent to the last described course and deflecting to the left with a radius of 30.00 feet for a distance of 29.70 feet (the chord of said curve bears South 55° 18' 11" East for 28.50 feet); thence South 83° 40' East, tangent to the last described curve, a distance of 36.45 feet; thence South 38° 39' 10" East for 104.58 feet to the northwesterly line of Second Street and the Place of Beginning and containing 75,583 square feet, more or less.

Together with the appurtenances, fixtures, rights, privileges and easement thereunto belonging or appertaining, EXCEPTING THEREFROM that portion of the above described land occupied by the supports and foundations of the viaduct and all the air space below the viaduct to a plane at least eight (8) feet below the underside or soffit of the viaduct.

EXHIBIT B (Cont.)

**CITY OF CINCINNATI
Lease Area 14-B
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 79-5-1 & 3; 79-6-256 thru 258**

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning at the intersection of the West line of Eggleston Ave. (91' R/W), and the North line of Third St. (60' R/W), said North line having a bearing of North 51°08'38" East, measure North 62°32'06" East, 96.96 feet to The Place of Beginning; thence South 51°58'55" East, 16.60 feet to a point; thence on a curve to the left said curve having a radius of 9.09 feet a chord bearing North 87°56'38" East, 9.51 feet, 10.01 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 267.60 feet a chord bearing North 72°43'25" East, 69.96 feet, 70.16 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 229.78 feet a chord bearing North 70°20'52" East, 47.43 feet, 47.51 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 1094.25 feet a chord bearing North 62°22'02" East, 127.20 feet, 127.28 feet as measured along said curve to a point; thence on a curve to the left having a radius of 48.60 feet a chord bearing North 34°23'19" East, 30.87 feet, 31.41 feet as measured along said curve to a point; thence North 38°31'29" West, 190.32 feet to a point; thence on a curve to the left said curve having a radius of 4.51 feet a chord bearing South 68°49'14" West, 7.44 feet, 8.75 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 180.57 feet a chord bearing South 19°54'19" West, 103.56 feet, 105.04 feet as measured along said curve to a point; thence South 35°01'47" West, 181.40 feet to a point; thence on a curve to the left said curve having a radius of 8.30 feet a chord bearing South 03°21'23" East, 11.63 feet, 12.88 feet as measured along said curve to The Place of Beginning. Containing 30,986 square feet of land more or less. Bearings based on State Plane Coordinate Monuments

6919 and 6920 as described in the City of Cincinnati Geodetic Control Manual. Subject to all legal highways, easements and all restrictions of record.

February 24, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202200492**

Subject: ORDINANCE – AUTHORIZING PROPERTY SALE AND DEVELOPMENT AGREEMENT WITH OAKLEY CROSSINGS HOLDINGS, LLC

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

BACKGROUND/CURRENT CONDITIONS

Oakley Crossings Holdings, LLC (the “Developer”) recently acquired approximately 2.6588 acres of property located at 3628-3646 Madison Road in the Oakley neighborhood of Cincinnati (the “Developer Property”). The City owns approximately 0.0617 acres of property directly adjacent to the Developer’s property (the “City Property”). The Developer desires to purchase the City Property for consolidation with the Developer Property to facilitate a redevelopment project.

City Council previously approved the amendment of the Energy Special Improvement District (“ESID”) boundaries to add this property to the ESID and to levy special assessments on the property.

DEVELOPER INFORMATION

The Developer is affiliated with Morelia Group, LLC (“Morelia”). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister’s Deli, Tropical Smoothie Café, Holtman’s Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning

Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs in the City.

PROJECT DESCRIPTION

The Developer plans to demolish the existing structures on the Developer Property and relocate existing sewer lines to facilitate the project. The Developer plans to consolidate the City Property with the Developer Property to create the Project Site.

The Developer plans to construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants, as well as another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

In connection with the construction of the project, the Developer intends to dedicate approximately 0.0847 acres along Madison Road as right-of-way (the “Dedication Property”).

The project is expected to have an estimated total cost of \$9,100,000. The project will result in the creation of 255 full-time equivalent employees (“FTEs”) with a total annual payroll of approximately \$6,240,000. The project will also result in the creation of 80 full-time temporary construction jobs with an associated annual payroll of \$2,500,000.

The proposed sale of property was approved by the City Planning Commission on December 17, 2021.

City Planning and the Developer conducted a public engagement meeting with Oakley stakeholders on December 6, 2021. A written summary of the engagement session can be found on City Planning’s website.

PROPOSED INCENTIVE

DCED is recommending the sale of the City-owned property (0.0617 acres) for \$1.00.

The approximate Fair Market Value (“FMV”) of the City-owned property was determined by appraisal to be \$53,750.

DCED is recommending a \$1.00 sale because the City will receive economic and non-economic benefits exceeding the determined FMV in connection with the project, including:

- The benefit of the Dedication Property being dedicated for use by the general public.
- The creation of jobs and urban redevelopment of Oakley.

DCED is also recommending an 8-year, net 52% CRA tax exemption. This proposed incentive is outlined in a separate ordinance.

PROJECT TEAM & TIMELINE

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance (1)
- March 7, 2022: Budget and Finance (2)
- March 14, 2022: Budget and Finance (3)
- March 16, 2022: City Council for Final Approval

RECOMMENDATION

The Administration recommends approval of this Ordinance.

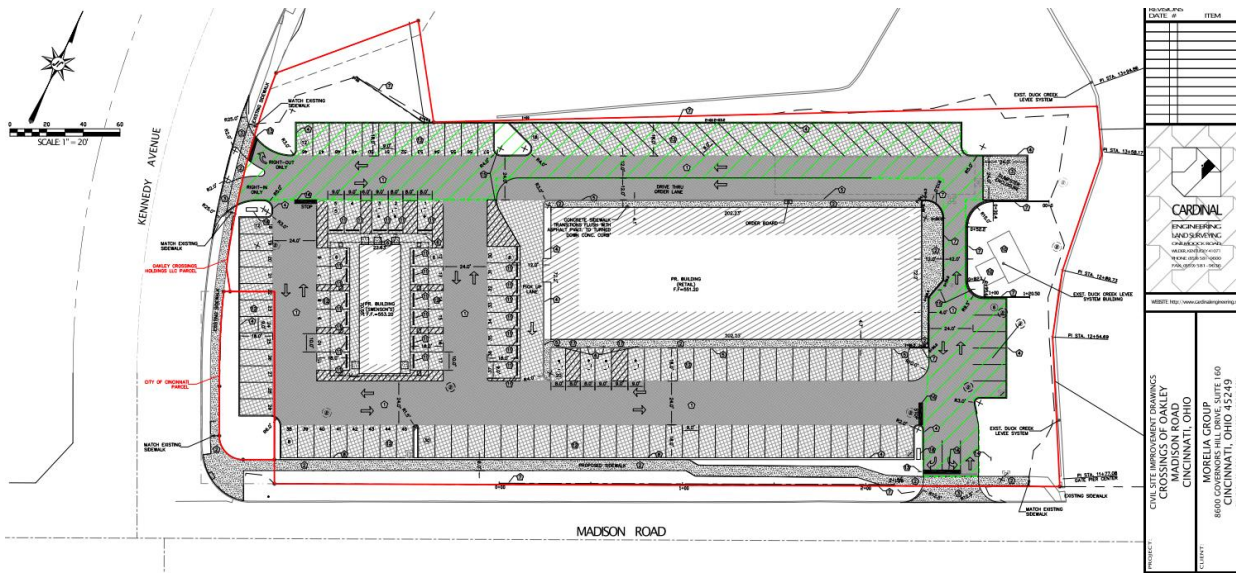
Attachment: A. Property location and site plan

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

Attachment A: Location and Site Plan



Property Location



Site Plan

City of Cincinnati

ZDS

AWB

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

WHEREAS, the City owns certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in Oakley, which is under the management and control of the City's Department of Transportation and Engineering (the "City Property"); and

WHEREAS, Oakley Crossings Holdings, LLC ("Developer") desires to purchase a portion of the City Property, being approximately 0.0617 acres, as more particularly described and depicted in the *Property Sale and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Sale Property"), from the City to consolidate with Developer's adjoining real property (together with the Sale Property, the "Project Site"), and thereafter construct on the consolidated Project Site approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000 (the "Project"); and

WHEREAS, in connection with the construction of the Project, Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, as more particularly described in the Agreement (the "Dedication Property"), on the terms and conditions of the Agreement; and

WHEREAS, Developer estimates that the Project will create approximately (i) 80 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$2,500,000; and (ii) approximately 255 full-time permanent jobs following completion of construction of the Project with an approximate annual payroll of \$6,240,000; and

WHEREAS, the City desires that the Sale Property be put to its highest and best use; and

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Sale Property is approximately \$53,750; however, to facilitate the Project and promote its economic feasibility, the City desires to sell the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the Sale Property in connection with the Project, including (i) the creation of jobs and stimulation of economic growth in the Oakley neighborhood of Cincinnati, and (ii) the benefit of the Dedication Property being dedicated for use by the general public; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that to create or preserve jobs and employment opportunities and to improve the economic welfare of the people

of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research; and

WHEREAS, the City has determined that: (i) the Sale Property is not needed for municipal purposes; (ii) the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Sale Property to Developer because Developer owns the adjoining property and consolidation of the Project Site will put the Sale Property to the highest and best use; and (iv) the City's sale of the Sale Property to Developer to complete the Project will create jobs and stimulate economic growth in the Oakley neighborhood of Cincinnati, thereby contributing to the social and economic viability and stability of the neighborhood; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Sale Property at its meeting on December 17, 2021; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the "Agreement"), pursuant to which the City will sell to Oakley Crossings Holdings, LLC ("Developer") certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati (the "Sale Property"), for Developer to (a) consolidate with adjoining property Developer owns or controls (together with the Sale Property, the "Project Site"); and (b) construct approximately 16,200 square feet of retail space at the consolidated Project Site, at an estimated total project cost of approximately \$9,100,000 (the "Project").

Section 2. That the Sale Property is not needed for municipal purposes.

Section 3. That the fair market value of the Sale Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$53,750; however, the City is justified in selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market

value of the Sale Property because (a) the Project will create jobs and stimulate economic growth in the Oakley neighborhood; and (b) Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, including certain real property currently owned by Developer, for the benefit of the general public.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the Sale Property to Developer is in the best interest of the City because Developer owns the adjoining property and consolidation and redevelopment within the Project Site will put the Sale Property to the highest and best use.

Section 5. That proceeds from the sale of the Sale Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the sale, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, deeds, plats, covenants, terminations, releases, and other documents.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

OAKLEY CROSSINGS HOLDINGS, LLC

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at
3628-3646 Madison Road and construction of
approximately 16,200 square feet of commercial retail space)

Dated: _____, 2022

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the "**Developer**"), an affiliate of Morelia Group, LLC.

Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (*Site Plan*) hereto (the "**Developer Property**").

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (*Legal Description – Sale Property*) and Exhibit B-2 (*Survey Plat – Sale Property*) hereto (the "**Sale Property**"; and collectively with the Developer Property, the "**Property**" or the "**Project Site**", as applicable), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (*Statement of Work, Budget, and Sources of Funds*) hereto (the "**Project**").

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (*Dedication Plat*) hereto (together with the Remainder Property (as defined below), the "**Dedication Property**").

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the "**Project Commencement Date**"), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the "**Project Completion Date**").

F. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* ("**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

H. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research.

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“DCED”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on _____, 2022.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Developer, and Developer hereby agrees to purchase the Sale Property from the City, for a purchase price of \$1.00 (the “Purchase Price”). Developer acknowledges that it is familiar with the condition of the Sale Property and, at the Closing (as defined below), the City shall convey the Sale Property to Developer in “as is” condition. The City makes no representations or warranties to Developer with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “Closing”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “Conditions”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (Form of Quitclaim Deed – Cut-Up) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “Remainder Property”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Sale Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Sale Property. Developer shall promptly repair any damage to the Sale Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Sale Property. Entry shall be at the sole risk of Developer.

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of [____], 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

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hereto (the "City's Deed"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer's commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Sale Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals ("**Construction Completion**") no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director's judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City's Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**First Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(F) Dedication and Acceptance of Dedication Property. The parties acknowledge that, Developer intends to dedicate the Dedication Property for public use, and intends for the City to accept the Dedication Property (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(I) Inspection of Work. During construction at the Property, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(J) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Project Site during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(K) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(L) Recognition of City Support. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which construction has been completed.

4. Insurance; Indemnity.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Developer in connection with the Project. Developer's obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. **Casualty; Eminent Domain.** If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. **Default; Remedies.**

(A) **Default.** The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) the failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement, the CRA Agreement, or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "Cure Period"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement or the CRA Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of the property of Developer; or

(iii) any representation, warranty, or certification of Developer made in connection with this Agreement, the CRA Agreement, or any other related agreements or documents shall prove to have been false or materially misleading when made.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof if the default occurs prior to the Closing, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their

addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC
Attn: Christopher Hildebrant
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(A) Developer is duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(C) Developer's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(E) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the Project.

(F) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or other amounts to the City.

9. Reporting Requirements.

(A) **Submission of Records and Reports; Records Retention.** Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

(B) **City's Right to Inspect and Audit.** During construction of the Project and for a period of 3 years completion thereof, Developer shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

10. General Provisions.

(A) **Assignment.** Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(B) **Entire Agreement.** This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(C) **Amendments and Waivers.** This Agreement may be amended, waived, or otherwise modified only by a written amendment signed by both parties.

(D) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns.

(F) **Captions.** The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) **Severability.** If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) **No Third-Party Beneficiaries.** The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

{00356362-12}

(I) No Brokers. Developer represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

(J) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's Office.

(K) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(M) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

12. **Exhibits**. The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

OAKLEY CROSSINGS HOLDINGS, LLC,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement
Site Plan

TO BE ATTACHED

Exhibit B-1
to Property Sale and Development Agreement

Legal Description – Sale Property

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

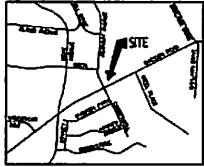
Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2
to Property Sale and Development Agreement
Survey Plat – Sale Property

SEE ATTACHED



VICINITY MAP
NTS

| LINE | TYPE | LENGTH |
|------|---|--------|
| 1 | 5/8" IRON PIN SET WITH ID CAP STAMPED "DKY #8729" | 1.18 |
| 2 | MONUMENT FOUND (SIZE AND TYPE AS NOTED) | 1.18 |
| 3 | CROSS NOTCH FOUND | 1.18 |

| LINE | TYPE | LENGTH |
|------|---|--------|
| 1 | 5/8" IRON PIN SET WITH ID CAP STAMPED "DKY #8729" | 1.18 |
| 2 | MONUMENT FOUND (SIZE AND TYPE AS NOTED) | 1.18 |
| 3 | CROSS NOTCH FOUND | 1.18 |

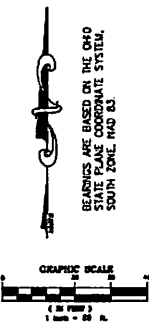
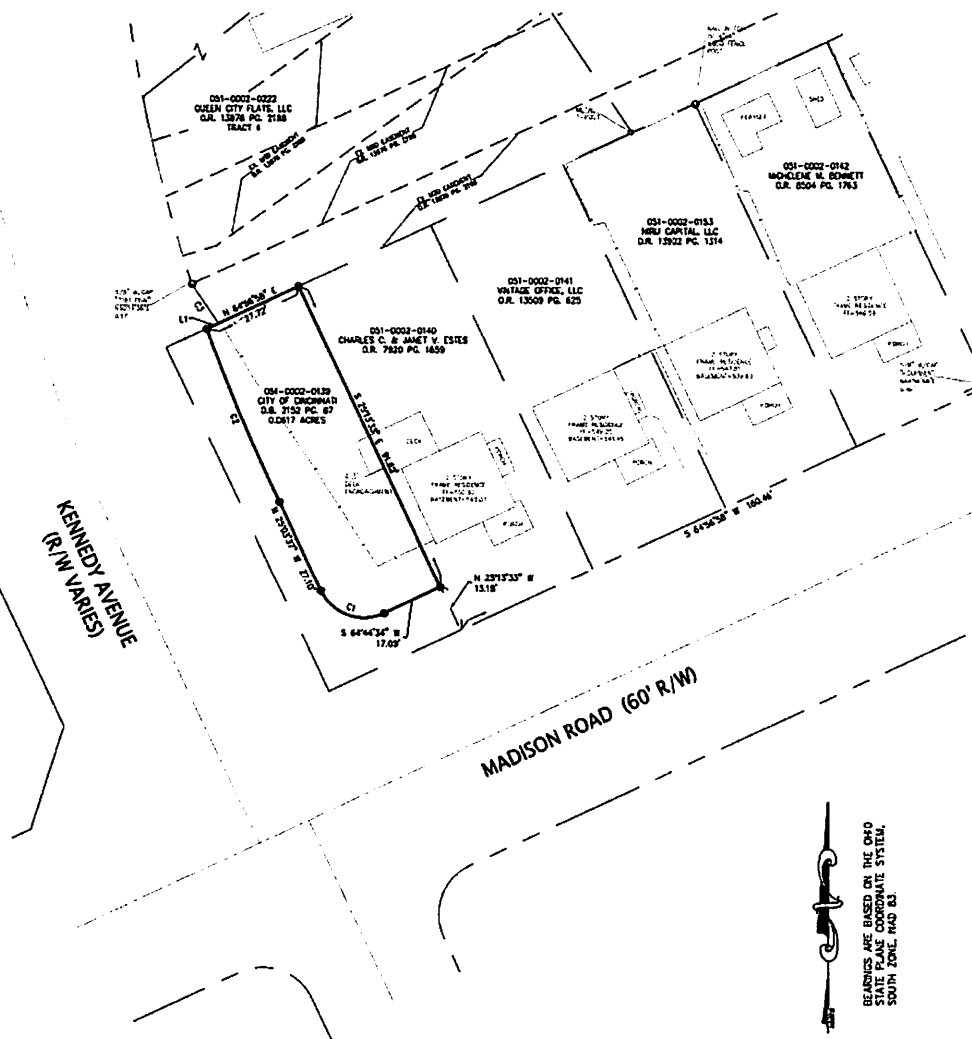
CLOSURE

Pm/1 Bearing Distance Northings Eastings
 D1 5 64°43' E 17.09 428244.1062 1424082.0833
 LOT106 N 25°03'37" W 27.30 428236.8147 1424576.8283
 Chord Bkt: N 70°28'23" W 84°12'28" E Rad-Cut: N 25°15'28" W Rad-Out: N 64°58'23" E
 Radius Pt: LOT107 428248.0718 1424671.0833 Tangent: 13.04 Dk: Right
 Tangent-In: S 64°44'34" W Tangent-Out: N 25°03'37" W Tangent-In: Tangent-Out
 LOT107 N 25°03'37" W 27.30 428243.0055 1424558.3053
 20.005
 Radius: 483.04 Length: 57.86 Chord: 31.83 Date: 4/24/16
 Chord Bkt: N 22°41'24" W Rad-In: N 64°12'28" E Rad-Out: N 70°28'23" E
 Radius Pt: LOT109 428270.0371 1424865.1841 Tangent: 23.98 Dk: Right
 Tangent-In: N 25°03'37" W Tangent-Out: N 19°29'17" W Rad-Tangent-In: Rad-Tangent-Out
 LOT110 N 64°58'58" E 27.72 428270.4335 1424827.8335
 R211 5 25°17'33" E 14.82 428271.1725 1424852.8494
 D1 5 25°17'33" E 14.82 428244.1062 1424082.0833
 Closure Precision: 1 in 24198.9
 Area: 0.0617 ACRES

I DANIEL K. YORK, A REGISTERED LAND SURVEYOR IN THE STATE OF OHIO, DO HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS PERFORMED BY CARDINAL ENGINEERING CORPORATION UNDER MY DIRECT SUPERVISION IN ACCORD WITH DAC 4733-37, AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR SET AS NOTED.

DANIEL K. YORK 5-8729 DATE

- - 5/8" IRON PIN SET WITH ID CAP STAMPED "DKY #8729"
- - MONUMENT FOUND (SIZE AND TYPE AS NOTED)
- x - CROSS NOTCH FOUND



- NOTES:
- ALL MONUMENTS FOUND IN GOOD CONDITION.
 - SOURCE DOCUMENTS ARE AS NOTED.
 - EVIDENCE OF OCCUPATION IS AS SHOWN.
 - TOPOGRAPHIC SURVEY INFORMATION SHOWN IS BASED ON A FIELD SURVEY BY CARDINAL ENGINEERING IN OCTOBER OF 2020.

| REVISIONS | DATE | BY | ITEM |
|-----------|------|----|------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |



CARDINAL
ENGINEERING
LAND SURVEYING
ONE AARON ROAD
PLAIN BLEDHO, OHIO
PHONE: 513-981-7883
FAX: 513-981-7888

NOTICE: SEE www.cardinalsurveying.com

SURVEY PLAT
0.0617 ACRES
SECTION 22, TOWN 4 N, RANGE 10 E, S.T.M.
CITY OF CINCINNATI, HAMILTON COUNTY, OHIO
CLIENT:
MORELIA GROUP
8600 GOVERNORE HILL DRIVE
CINCINNATI, OHIO 45249

| REVISION | DATE | BY | ITEM |
|----------|------|----|------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PROJECT NO. 20-153
SCALE 1" = 20'
DATE 11/13/2020
SURVEY PLAT
SHEET 1 OF 1

100356362-12

Exhibit C
to Property Sale and Development Agreement
Statement of Work, Budget, and Sources of Funds

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

| | |
|----------------------------|-----------------------|
| Acquisition | \$4,320,000.00 |
| Site Work | \$1,430,000.00 |
| Retail Shell | \$2,002,000.00 |
| Retail Tenant Improvements | \$291,200.00 |
| Soft Costs | \$295,566.49 |
| Commissions | \$409,200.00 |
| Builder & Development Fee | \$85,000.00 |
| Interest Reserve | \$233,311.64 |
| Contingency | \$26,638.36 |
| TOTAL PROJECT COSTS | \$9,092,916.49 |

III. Sources of Funds

| | |
|----------------|-----------------------|
| Debt | \$6,353,282.00 |
| Pace Financing | \$1,771,846.00 |
| Owner Equity | \$967,788.49 |
| TOTAL | \$9,092,916.49 |

Exhibit D
to Property Sale and Development Agreement

Dedication Plat

TO BE ATTACHED

Exhibit E
to Property Sale and Development Agreement

Form of Quitclaim Deed – Cut-Up

TO BE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: _____ acre parcel along Madison Road

(cut-up to create _____ acre parcel (Parcel "A")
and 0.0617 acre parcel (Parcel "B"))

QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "City"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of _____ acre parcel

Auditor's parcel #: 051-0002-0139-00

This Deed is executed and recorded in connection with the cut-up of a _____ acre parcel of land into two parcels containing _____ acres (Parcel "A") and 0.0617 acres (Parcel "B").

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Plat of Survey*
Exhibit B – *Legal Description – Parcel "A"*
Exhibit C – *Legal Description – Parcel "B"*

Exhibit A
to Quitclaim Deed – Cut-Up

Plat of Survey

cut-up of _____ acre parcel to create
_____ acre parcel (Parcel "A") & 0.0617 acre parcel ("Parcel "B")

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Cut-Up
Legal Description – Parcel "A"

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Cut-Up
Legal Description – Parcel "B"

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F
to Property Sale and Development Agreement
Form of Quitclaim Deed – Conveyance

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto (the "**Property**").

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor's Parcel No(s): _____

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY CREATES, THE FOLLOWING EASEMENTS, COVENANTS AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Sewer Easement*) hereto, and depicted on Exhibit C (*Easement Plat – Sewer Easement*) hereto (the "**Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items that may be placed upon the Easement Area shall be so placed at the sole expense of Grantee, its successors, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Easement Area, resulting from the existence or use of the Easement Area by Grantee, its successors or assigns.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the Easement Area line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) *Re-conveyance to City upon Failure to Timely Commence or Complete Construction.* The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 20__ (the "Agreement"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not (i) commence construction at the Property on or before the Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (ii) complete construction at the Property on or before the Project Completion Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Legal Description – Property*
Exhibit B – *Legal Description – Sewer Easement*
Exhibit C – *Easement Plat – Sewer Easement*

Exhibit A
to Quitclaim Deed – Conveyance

Legal Description – Property

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Conveyance

Legal Description – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Conveyance
Easement Plat – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G
to Property Sale and Development Agreement

Additional Requirements

Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information with Respect to Government Requirements. This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that Developers, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council's directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City's Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least

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halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "Construction Workforce Goals").

As used herein, the following terms shall have the following meanings:

(a) "Best Efforts" means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) "Minority Person" means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(c) "Black" means a person having origin in the black racial group of Africa.

(d) "Asian or Pacific Islander" means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(e) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(f) "American Indian" or "Alaskan Native" means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority," and "contract" {00356362-12}

as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project's budget. For the purposes of this clause (iii), "direct City funding" means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) "Bid" means an offer in response to an invitation for bids to provide construction work.

(2) "Invitation to Bid" means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) "Trade Craft" means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the "scope of work" and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) "Read Aloud in a Public Forum" means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under Cincinnati Municipal Code Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.¹

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. Municipal Code Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent Municipal Code Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE"s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code ("CMC") Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

- (1) Including qualified SBEs on solicitation lists.
- (2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.
- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15th. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, {00356362-12}

and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

{00356362-12}

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans With Disabilities Act: Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "**Accessibility Motion**"). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code {00356362-12}

3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage's electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

ADDENDUM I
to
Additional Requirements Exhibit
City's Prevailing Wage Determination

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 2/11/22

ORIGINAL ASSIGNED NUMBER: 2022-034

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

DECISION NUMBER: n/a

MODIFICATIONS: n/a

DECISION DATE: n/a

EXPIRATION DATE: n/a

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

APPROVED BY:

Edgar De Veyra, Interim Director
DIRECTOR, DEPARTMENT OF ECONOMIC
INCLUSION

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

Local wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

REQUESTING AGENCY OR DEPT:
DCED

CONTACT PERSON AND PHONE NUMBER:

Taylor German x4546

Requested Date: 02/11/2022
Estimated Advertising Date: 05/01/2022
Estimated Bid Opening Date: 05/01/2022
Estimated Starting Date: 06/01/2022

SOURCE AND FUND NUMBER

| | |
|----------------|-------------|
| CITY | FUND |
| STATE | FUND |
| COUNTY | FUND |
| FEDERAL | FUND |

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 0

TOTAL PROJECT DOLLARS: 9,092,916.49

NAME OF PROJECT

Crossings of Oakley

TYPE OF WORK

- | | | | |
|---------------|---|----------------|---|
| 1. Building | X | 2. Heavy | X |
| 3. Highway | | 4. Residential | |
| 5. Demolition | X | | |
| 6. Other | | | |

PROJECT LOCATION

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

PROJECT FUNDING SOURCE

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

PROJECT SCOPE OF WORK AND BUDGET

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

DEI 217 Form
REV: 6/12/2017

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

OAKLEY CROSSINGS HOLDINGS, LLC

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at
3628-3646 Madison Road and construction of
approximately 16,200 square feet of commercial retail space)

Dated: _____, 2022

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the “**Developer**”), an affiliate of Morelia Group, LLC.

Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (Site Plan) hereto (the “**Developer Property**”).

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (Legal Description – Sale Property) and Exhibit B-2 (Survey Plat – Sale Property) hereto (the “**Sale Property**”; and collectively with the Developer Property, the “**Property**” or the “**Project Site**”, as applicable), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (Statement of Work, Budget, and Sources of Funds) hereto (the “**Project**”).

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (Dedication Plat) hereto (together with the Remainder Property (as defined below), the “**Dedication Property**”).

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the “**Project Commencement Date**”), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the “**Project Completion Date**”).

F. The City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* (“**CRA Agreement**”), subject to passage by City Council of a separate ordinance authorizing such abatement.

H. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research.

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“**DCED**”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on _____, 2022.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Developer, and Developer hereby agrees to purchase the Sale Property from the City, for a purchase price of \$1.00 (the “**Purchase Price**”). Developer acknowledges that it is familiar with the condition of the Sale Property and, at the Closing (as defined below), the City shall convey the Sale Property to Developer in “as is” condition. The City makes no representations or warranties to Developer with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. Closing and Conditions to Closing.

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “**Closing**”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “**Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (*Form of Quitclaim Deed – Cut-Up*) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “**Remainder Property**”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Sale Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Sale Property. Developer shall promptly repair any damage to the Sale Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Sale Property. Entry shall be at the sole risk of Developer.

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of [____], 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

hereto (the “**City’s Deed**”). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City’s execution and delivery of the City’s Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer’s commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Sale Property that exists at or prior to the time of the City’s execution of this Agreement (herein, a “**Pre-existing Environmental Condition**”), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City’s Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys’ fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer’s remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections (“**B&I**”) for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, “**Construction Commencement**”) no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (“**Construction Completion**”) no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director’s judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City’s Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the “**First Repurchase Option**”), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(F) Dedication and Acceptance of Dedication Property. The parties acknowledge that, Developer intends to dedicate the Dedication Property for public use, and intends for the City to accept the Dedication Property (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(I) Inspection of Work. During construction at the Property, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(J) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Project Site during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(K) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(L) Recognition of City Support. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which construction has been completed.

4. Insurance; Indemnity.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times protect against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Developer in connection with the Project. Developer's obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. Casualty; Eminent Domain. If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. Default; Remedies.

(A) Default. The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) the failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement, the CRA Agreement, or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"); *provided, however,* that if the nature of the default is such that it cannot reasonably be cured during the Cure period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement or the CRA Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of the property of Developer; or

(iii) any representation, warranty, or certification of Developer made in connection with this Agreement, the CRA Agreement, or any other related agreements or documents shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof if the default occurs prior to the Closing, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their

addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC
Attn: Christopher Hildebrant
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(A) Developer is duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(C) Developer's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(E) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the Project.

(F) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or other amounts to the City.

9. Reporting Requirements.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Developer, the Project, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of 3 years after the completion of the Project.

(B) City's Right to Inspect and Audit. During construction of the Project and for a period of 3 years completion thereof, Developer shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

10. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(B) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

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(I) No Brokers. Developer represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

(J) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's Office.

(K) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(M) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

12. Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "**Effective Date**").

OAKLEY CROSSINGS HOLDINGS, LLC,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement

Site Plan

TO BE ATTACHED

Exhibit B-1
to Property Sale and Development Agreement

Legal Description – Sale Property

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

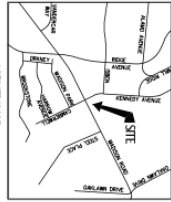
Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2
to Property Sale and Development Agreement

Survey Plat – Sale Property

SEE ATTACHED



| LINE # | LINE BEARING | LINE LENGTH |
|--------|---------------|-------------|
| 1 | N 42°00'00" E | 111.00' |
| 2 | S 66°44'34" W | 17.00' |
| 3 | N 25°13'37" W | 27.10' |
| 4 | S 66°44'34" W | 17.00' |

| POINT | BEARING | DISTANCE | NORTHING | EASTING |
|-------|---------------|----------|----------|---------|
| CI | N 25°13'37" W | 27.10' | 24.82 | -10.42 |
| CI | S 66°44'34" W | 17.00' | -12.16 | -10.42 |
| CI | N 42°00'00" E | 111.00' | -12.16 | 99.84 |
| CI | S 66°44'34" W | 17.00' | -12.16 | 111.00' |

CLOSURE

Point Bearing Distance Northing Easting

D1 5 66°44'34" W 17.00 428244.1062 142492.0833

LOT106 5 66°44'34" W 17.00 428244.1062 142492.0833

Point Bearing Distance Northing Easting

20500 N 25°13'37" W 27.10 43887.7444 142492.0833

Point Bearing Distance Northing Easting

20500 N 25°13'37" W 27.10 43887.7444 142492.0833

Point Bearing Distance Northing Easting

20500 N 25°13'37" W 27.10 43887.7444 142492.0833

Point Bearing Distance Northing Easting

20500 N 25°13'37" W 27.10 43887.7444 142492.0833

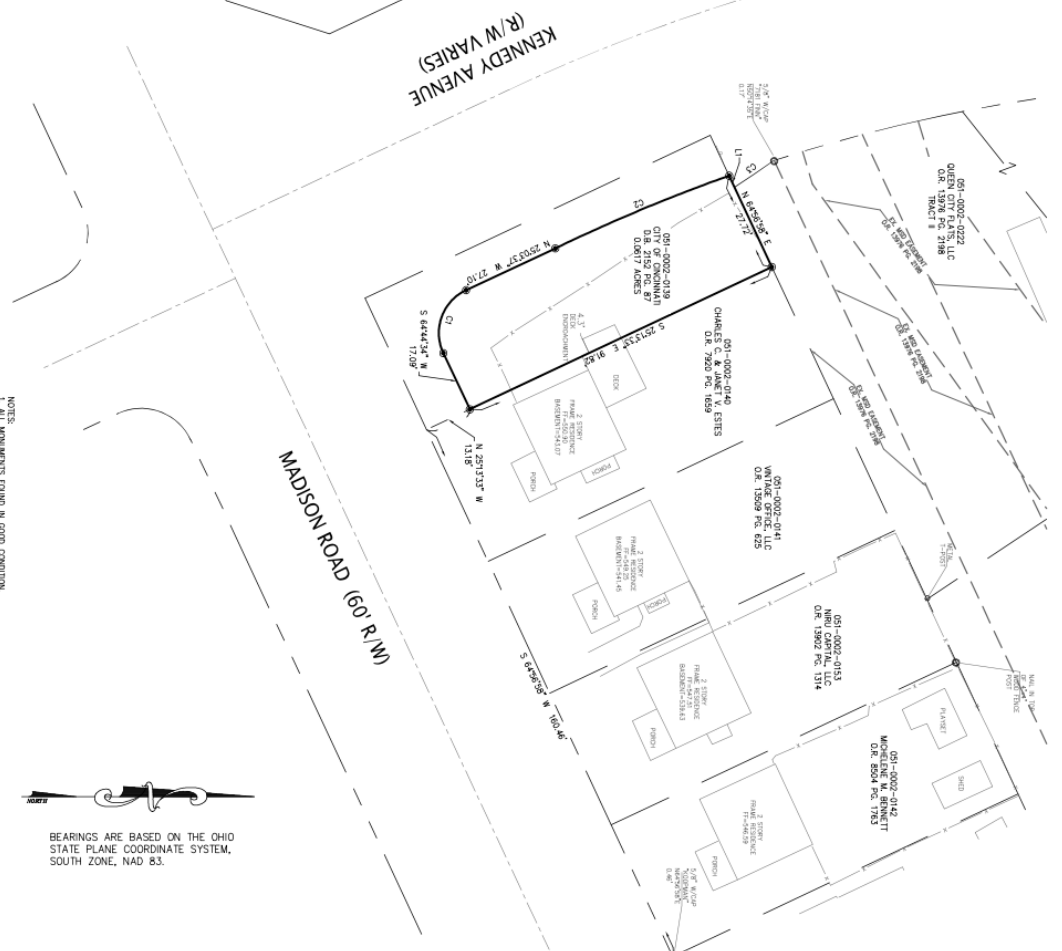
I DANIEL K. YORK, A REGISTERED LAND SURVEYOR IN THE STATE OF OHIO, DO HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS PERFORMED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND ACCORDS WITH OAC 4733-37 AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR SET AS NOTED.

DANIEL K. YORK 5-8729 DATE

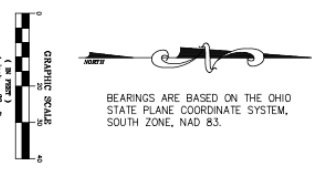
● - 5/8" IRON PIN SET WITH ID CAP STAMPED "KY #8729"

○ - MONUMENT FOUND (SIZE AND TYPE AS NOTED)

x - CROSS NOTCH FOUND



- NOTES:
1. ALL MONUMENTS FOUND IN GOOD CONDITION.
 2. SOURCE DOCUMENTS ARE IN GOOD CONDITION.
 3. THIS SURVEY IS BASED ON THE OHIO STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83.
 4. TOPOGRAPHIC SURVEY INFORMATION SHOWN IS BASED ON A 2000 SOURCE BY CARDINAL ENGINEERING IN OCTOBER OF 2000.



| REVISIONS | DATE | BY | ITEM |
|-----------|------|----|------|
| | | | |
| | | | |
| | | | |
| | | | |

| | |
|----------|--|
| PROJECT: | SURVEY PLAT 0.0617 ACRES SECTION 22, TOWN 4, FRACTIONAL RANGE 2, B.T.M. CITY OF CINCINNATI, HAMILTON COUNTY, OHIO |
| CLIENT: | MORELIA GROUP 8600 GOVERNORE HILL DRIVE CINCINNATI, OHIO 45249 |

| | |
|--------|------------|
| DATE: | 11/13/2020 |
| SCALE: | 1" = 20' |
| SHEET: | 1 OF 1 |

Exhibit C
to Property Sale and Development Agreement

Statement of Work, Budget, and Sources of Funds

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

| | |
|----------------------------|-----------------------|
| Acquisition | \$4,320,000.00 |
| Site Work | \$1,430,000.00 |
| Retail Shell | \$2,002,000.00 |
| Retail Tenant Improvements | \$291,200.00 |
| Soft Costs | \$295,566.49 |
| Commissions | \$409,200.00 |
| Builder & Development Fee | \$85,000.00 |
| Interest Reserve | \$233,311.64 |
| Contingency | \$26,638.36 |
| TOTAL PROJECT COSTS | \$9,092,916.49 |

III. Sources of Funds

| | |
|----------------|-----------------------|
| Debt | \$6,353,282.00 |
| Pace Financing | \$1,771,846.00 |
| Owner Equity | \$967,788.49 |
| TOTAL | \$9,092,916.49 |

Exhibit D
to Property Sale and Development Agreement

Dedication Plat

TO BE ATTACHED

Exhibit E
to Property Sale and Development Agreement

Form of Quitclaim Deed – Cut-Up

TO BE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: _____ acre parcel along Madison Road

(cut-up to create _____ acre parcel (Parcel "A")
and 0.0617 acre parcel (Parcel "B"))

QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of _____ acre parcel

Auditor's parcel #: 051-0002-0139-00

This Deed is executed and recorded in connection with the cut-up of a _____ acre parcel of land into two parcels containing _____ acres (Parcel "A") and 0.0617 acres (Parcel "B").

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Plat of Survey*
Exhibit B – *Legal Description – Parcel “A”*
Exhibit C – *Legal Description – Parcel “B”*

Exhibit A
to Quitclaim Deed – Cut-Up

Plat of Survey

cut-up of _____ acre parcel to create
_____ acre parcel (Parcel “A”) & 0.0617 acre parcel (“Parcel “B”)

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “A”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “B”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F
to Property Sale and Development Agreement
Form of Quitclaim Deed – Conveyance

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (Legal Description) hereto (the “**Property**”).

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor’s Parcel No(s): _____

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY CREATES, THE FOLLOWING EASEMENTS, COVENANTS AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (Legal Description – Sewer Easement) hereto, and depicted on Exhibit C (Easement Plat – Sewer Easement) hereto (the “**Easement Area**”), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items that may be placed upon the Easement Area shall be so placed at the sole expense of Grantee, its successors, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Easement Area, resulting from the existence or use of the Easement Area by Grantee, its successors or assigns.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the Easement Area line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 20__ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not (i) commence construction at the Property on or before the Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (ii) complete construction at the Property on or before the Project Completion Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Legal Description – Property*
Exhibit B – *Legal Description – Sewer Easement*
Exhibit C – *Easement Plat – Sewer Easement*

Exhibit A
to Quitclaim Deed – Conveyance

Legal Description – Property

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Conveyance

Legal Description – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Conveyance
Easement Plat – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G
to Property Sale and Development Agreement

Additional Requirements

Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information with Respect to Government Requirements.

This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that Developers, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council's directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City's Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least

{00356362-12}

halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the “**Construction Workforce Goals**”).

As used herein, the following terms shall have the following meanings:

(a) “**Best Efforts**” means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) “**Minority Person**” means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(c) “**Black**” means a person having origin in the black racial group of Africa.

(d) “**Asian or Pacific Islander**” means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(e) “**Hispanic**” means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(f) “**American Indian**” or “**Alaskan Native**” means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, but not limited to, the City’s construction of public improvements to specifically benefit the Project, or the City’s sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor’s meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor’s meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract”

{00356362-12}

as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project’s budget. For the purposes of this clause (iii), “direct City funding” means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) “Bid” means an offer in response to an invitation for bids to provide construction work.

(2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) “Read Aloud in a Public Forum” means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under Cincinnati Municipal Code Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.¹

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. Municipal Code Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent Municipal Code Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE"s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code ("CMC") Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15th. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, {00356362-12}

and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

{00356362-12}

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans With Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the “**Accessibility Motion**”). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the “**ADA**”), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a “place of public accommodation” or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, “**Contractual Minimum Accessibility Requirements**” means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building’s primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, “qualifying incentives” does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code

{00356362-12}

3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage's electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

ADDENDUM I
to
Additional Requirements Exhibit
City's Prevailing Wage Determination

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 2/11/22

ORIGINAL ASSIGNED NUMBER: 2022-034

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

DECISION NUMBER: n/a

MODIFICATIONS: n/a

DECISION DATE: n/a

EXPIRATION DATE: n/a

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

APPROVED BY:

Edgar De Veyra, Interim Director
DIRECTOR, DEPARTMENT OF ECONOMIC
INCLUSION

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

Local wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

REQUESTING AGENCY OR DEPT:
DCED

CONTACT PERSON AND PHONE NUMBER:

Taylor German x4546

Requested Date: 02/11/2022
Estimated Advertising Date: 05/01/2022
Estimated Bid Opening Date: 05/01/2022
Estimated Starting Date: 06/01/2022

SOURCE AND FUND NUMBER

| | |
|----------------|-------------|
| CITY | FUND |
| STATE | FUND |
| COUNTY | FUND |
| FEDERAL | FUND |

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 0

TOTAL PROJECT DOLLARS: 9,092,916.49

NAME OF PROJECT

Crossings of Oakley

TYPE OF WORK

- | | | | |
|---------------|---|----------------|---|
| 1. Building | X | 2. Heavy | X |
| 3. Highway | | 4. Residential | |
| 5. Demolition | X | | |
| 6. Other | | | |

PROJECT LOCATION

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

PROJECT FUNDING SOURCE

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

PROJECT SCOPE OF WORK AND BUDGET

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

**DEI 217 Form
REV: 6/12/2017**

March 16, 2022

202200624

TO: Mayor and Members of City Council
FROM: John P. Curp, Interim City Manager
SUBJECT: Expenses Associated with the GCWW Rate Increase Pursuant to Ordinance 248-2021

Reference Document #202200118

The council at its session on January 20, 2022, referred the following item for review and report.

WE MOVE that, the Administration provide an initial report within sixty (60) days outlining specific expenses associated with the GCWW rate increase pursuant to ordinance number 248-2021 authorized by Council on June 23, 2021;

WE FURTHER MOVE that, in that initial report it outline the plan for applicable federal dollars associated with lead pipe replacement including but not limited to federal dollars that may be available through the Bipartisan Infrastructure Law passed by Congress on November 15, 2021;

WE FURTHER MOVE that, in that initial report the Administration include information on the feasibility and legality of reducing the corresponding rate increase as well as providing rate payers with a credit for any fees that have already been paid based on the potential receipt of those federal dollars received;

WE FURTHER MOVE that, the Administration report back within sixty (60) days of the federal funds being secured to Council with specific plans for giving rate payers a credit for the fees already paid associated with lead pipe reduction and a plan for adjusting their future rate based on the receipt of these federal funds.

cc: Cathy B. Bailey, Executive Director, Greater Cincinnati Water Works 



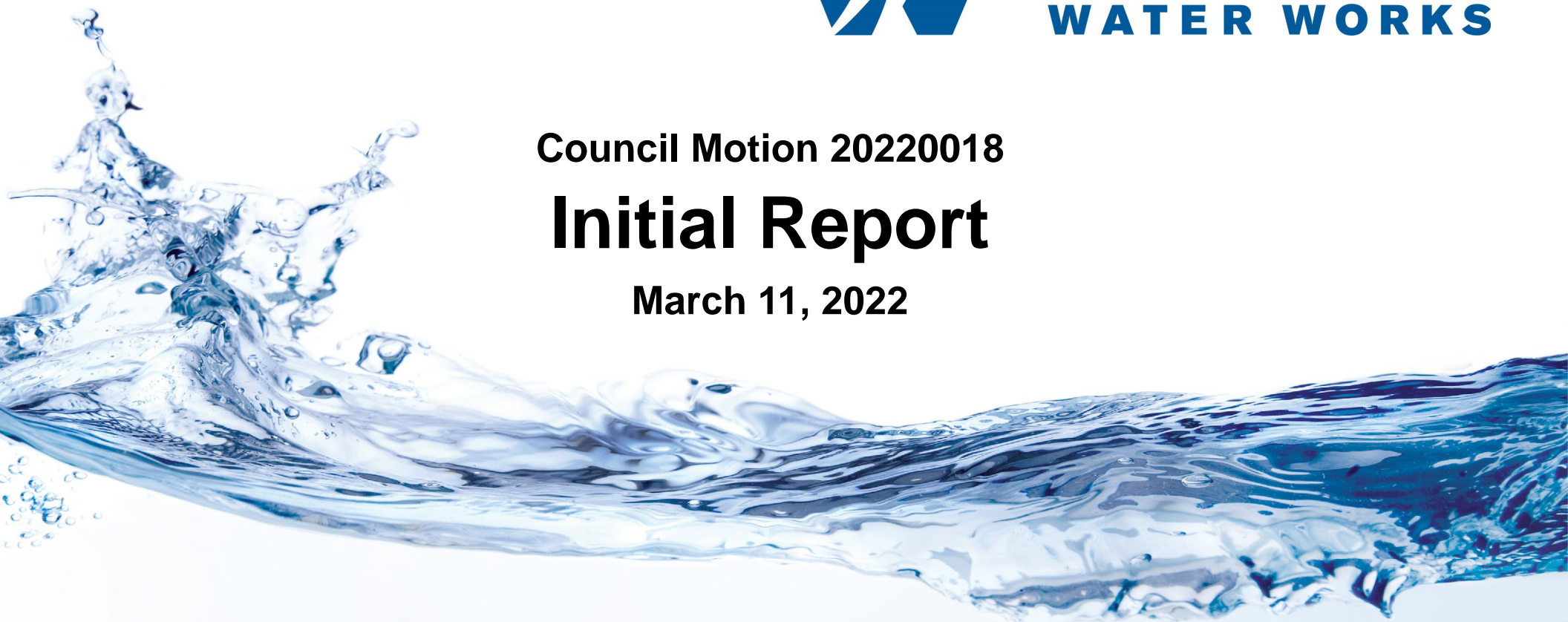
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Council Motion 20220018

Initial Report

March 11, 2022





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Council Motion 202200118

Motion, item number 202200118, submitted by Councilmembers Jeffreys and Owens, WE MOVE that, the Administration provide an initial report within sixty (60) days outlining the specific expenses associated the GCWW rate increase pursuant to ordinance number 248-2021 authorized by Council on June 23, 2021; WE FURTHER MOVE that, in that initial report it outline the plan to apply for applicable federal dollars associated with lead pipe replacement including but not limited to federal dollars that may be available through the Bipartisan Infrastructure Law passed by Congress on November 15, 2021; WE FURTHER MOVE that, in that initial report the Administration include information on the feasibility and legality of reducing the corresponding rate increase as well as providing rate payers with a credit for any fees that have already been paid based on the potential receipt of those federal dollars received; WE FURTHER MOVE that, the Administration report back within sixty (60) days of the federal funds being secured to Council with specific plans for giving rate payers a credit for the fees already paid associated with lead pipe reduction and a plan for adjusting their future rate based on the receipt of these federal funds.



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Council Motion 202200118 request

1. Initial Report – Due March 13, 2022
 - Expenses associated with GCWW 2022-2026 rate increases
 - Federal funding application plans for lead pipe replacement
 - Feasibility of reducing rates and providing ratepayer credit on receipt of federal funding
2. Report – Due in 60 days if City secures federal funding
 - Plan for crediting ratepayers for lead replacement fees
 - Plan for adjusting future rate based on federal funding

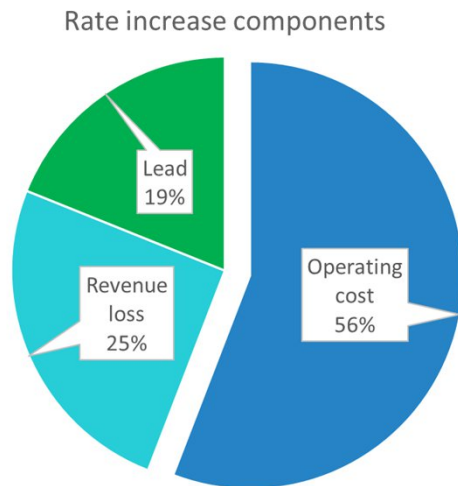


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Executive Summary

Rate Increase Expenses



Federal Funding/Rate Adjustment for Lead Program

- Estimated annual grant funding level: ~\$1M to \$2M
- Lead Program need: ~\$5M/yr to replace 3% of LSLs
- Rate adjustment allows GCWW to move from 800/yr to 1200/yr

Recommendation:

- Keep program funding as is
- Use additional funds to speed up replacement rate
- Works to advance health equity



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Motion response: Initial Report

1. Rate Increases

2. Lead Pipe Replacement:

Federal mandates/GCWW Program

3. Federal/State Funding





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Rate Increases 2022-2026





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GCWW Rates: Background

2008-2016

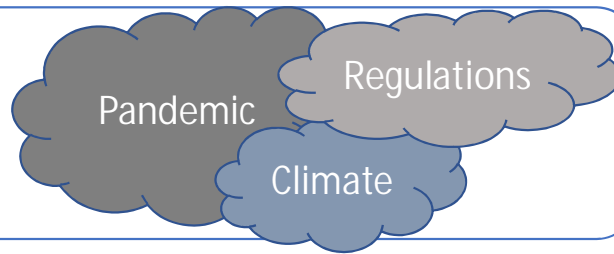
- FLUCTUATING INCREASES AS HIGH AS 8.5%

2016

- NO MORE 7% INCREASES
- Separated water utility "Deep Dive" into Budget

2017-2021

- 5 YEARS OF STABLE 3.75% INCREASES
- AAA bond rating
- "Right-Sized" budget
- Critical capital upgrades
- Lead Program I



2021

- New 5-year Rate Study

2022-2026

- Approved rate increases

| Year | Rate |
|------|-------|
| 2008 | 6.00% |
| 2009 | 5.90% |
| 2010 | 3.00% |
| 2011 | 0% |
| 2012 | 8.50% |
| 2013 | 7.25% |
| 2014 | 5.50% |
| 2015 | 4.00% |
| 2016 | 5.00% |
| 2017 | 3.75% |
| 2018 | 3.75% |
| 2019 | 3.75% |
| 2020 | 3.75% |
| 2021 | 3.75% |
| 2022 | 3.75% |
| 2023 | 5.55% |
| 2024 | 5.55% |
| 2025 | 5.55% |
| 2026 | 5.55% |



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Cost of Service / Rate Study

Study to develop a 5-year financial forecast and plan

Black & Veatch conducted GCWW rate study for 2022-2026

Projects customers and consumption

Forecasts expenditures – operation & maintenance, capital

Determines revenue needs to meet O&M, capital, debt and financial performance criteria

Calculates rates to recover revenue required

Substantial challenges highlighted in study



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GCWW Rates 2022-2026: Drivers of Increase

1. Operation Costs

- Personnel, contract services, power, chemicals cost increases
- Fund Deferred System projects (due to \$20 M emergency landslide projects 2017-18)
- Aging/Failing Infrastructure Replacement
- Improve Fire Flow/hydrant maintenance

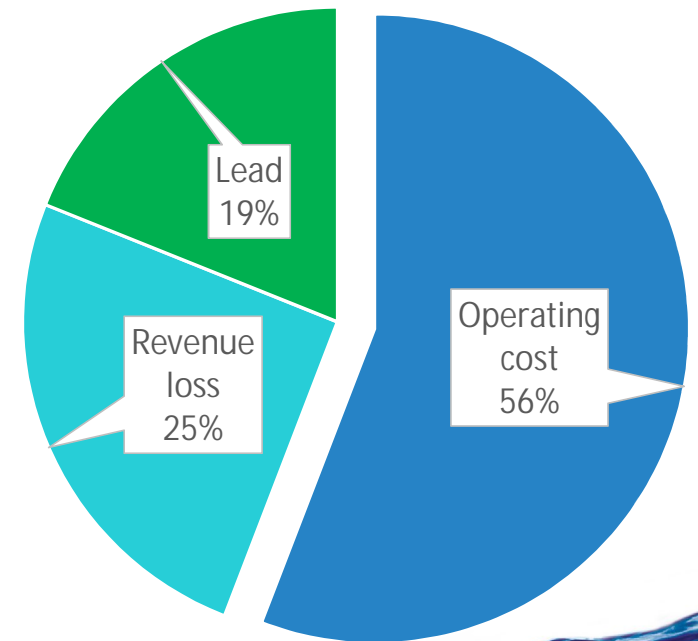
2. Offset \$10 Million Revenue Loss

- Loss of Warren county wholesale customers; unpaid bills

3. Lead Service Line Replacement

- New USEPA replacement mandates
- Affordability and health equity issues

Rate increase components





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GCWW Rates 2022-2026: Constraints

1. Financial Constraints

- Infrastructure Bond Covenants
- AAA Bond Rating standards
- Debt Service Coverage/Days Cash on Hand

2. Regulatory Requirements

- New Federal Lead and Copper Rule mandates
- Water quality requirements

3. City Policies

- Small Commission 1% annual infrastructure replacement
- New City fire flow requirements



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GCWW Rates 2022-2026 : Impact

The annual rate increase of 5.55% is lower than the current inflation rate of 7.5%

For a four-person household with 6230 gal/month usage:

| | rate increase | monthly cost | increase over prior year |
|------|---------------|--------------|--------------------------|
| 2021 | 3.75% | \$ 32.18 | |
| 2022 | 3.75% | \$ 33.39 | \$ 1.21 |
| 2023 | 5.55% | \$ 35.24 | \$ 1.85 |
| 2024 | 5.55% | \$ 37.20 | \$ 1.96 |
| 2025 | 5.55% | \$ 39.26 | \$ 2.06 |
| 2026 | 5.55% | \$ 41.44 | \$ 2.18 |



16 oz glass of water

2021 \$0.00065

2026 \$0.00083



30 gallon bath

2021 \$0.15

2022 \$0.16

2023 \$0.17

2024 \$0.18

2025 \$0.19

2026 \$0.20

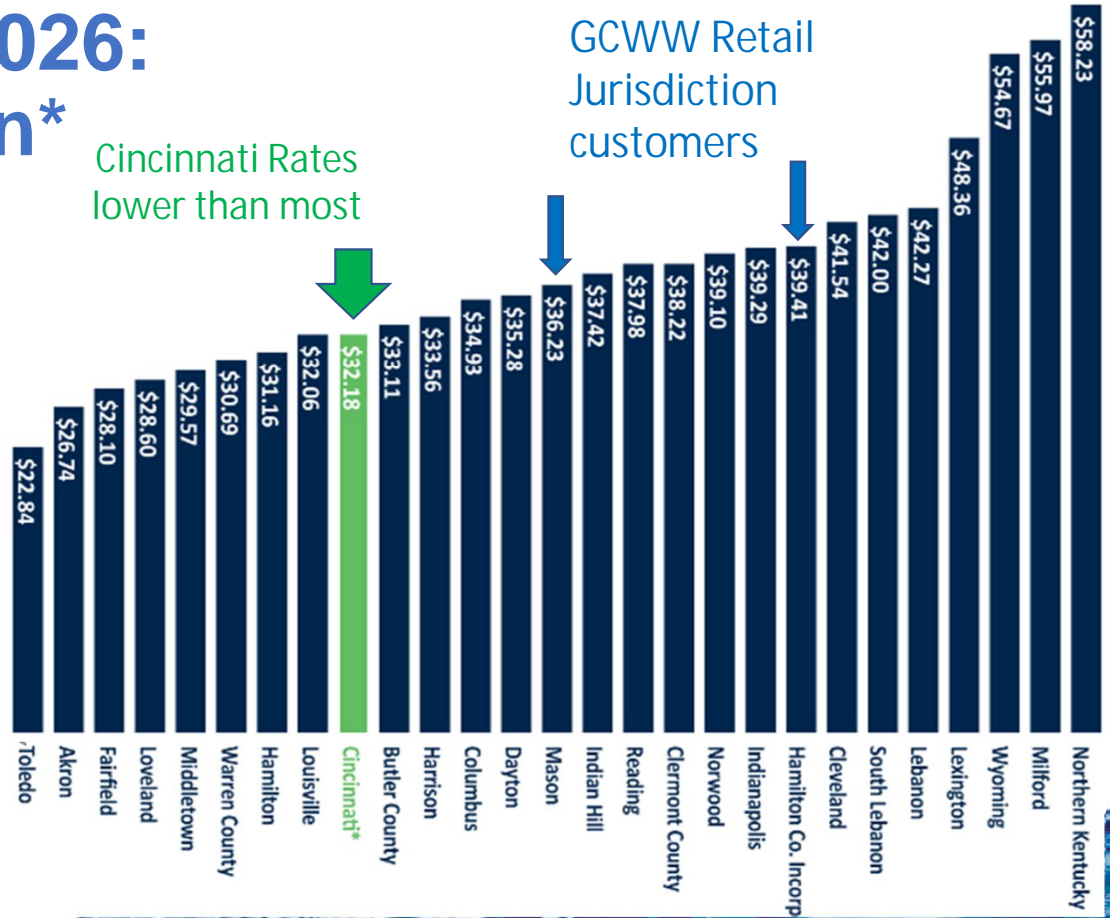


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GCWW Rates 2022-2026: Regional Comparison*

*Avg monthly water bill
4-person household with
6230 gal/month usage





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GCWW's Nationally Recognized Lead Service Line Replacement Program





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2014-2015 Flint Lead Crisis



GCWW Response

In 2015, GCWW took a close look at the presence of over 44,000 lead service lines in the GCWW Service Area.

- ~90% in the City of Cincinnati
- 78% of LSLs in neighborhoods with poverty rates higher than Ohio's rate
- Nearly 40% of LSLs in **predominantly black neighborhoods**

Although in compliance with federal/state lead regulations, GCWW proactively implemented a groundbreaking lead program to address lead in our community.



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GCWW Lead Pipe Replacement Program



**EPISODE 054:
REAL TALK ABOUT
LEADING ON THE LEAD
ISSUE WITH THE FIRST
LADY OF WATER
CATHY BAILEY
EXECUTIVE DIRECTOR
GREATER CINCINNATI WATER WORKS**



Cathy Bailey is the Executive Director of the Greater Cincinnati Water Works Department (GCWW). In over 200 years, Cathy is the first woman and first African American to lead Cincinnati's major, independent, municipal water utility. Cathy leads a team that ensures safe drinking water for a regional population of more than 1.1 million citizens; supervises a team of 600 full-time employees; and oversees a \$110 million operating budget and a \$450 million capital budget over the next five years. Cathy is a strong champion and key visionary behind Greater Cincinnati Water Works award-winning Lead Service Line Replacement Program.





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An official website of the United States government.



Environmental Topics

Laws & Regulations

About EPA

News Releases from Headquarters > Water (OW) Administrator Pruitt Discusses Water Quality and Lead Eradication in Ohio

04/16/2018

Contact Information:

EPA Press Office (press@epa.gov)

Cincinnati, Ohio – Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt visited Cincinnati, Ohio to meet with local water utilities and tour two local lead service line replacement construction sites as well as EPA’s Cincinnati Office of Research and Development (ORD) lab.

“EPA is working closely with state and local partners to eradicate lead in drinking water,” **said EPA Administrator Scott Pruitt.** “This visit highlights Cincinnati’s proactive approach to upgrading the city’s infrastructure and removing lead service lines. This is a great example of a local community taking the initiative to protect their residents’ health and the environment.”

PHOTOS



Administrator Pruitt meeting with leaders of Greater Cincinnati Water Works (GCWW).



GCWW Lead Pipe Replacement Program





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Home › Blogs › EDF Health › In latest act of leadership, Cincinnati votes to c...

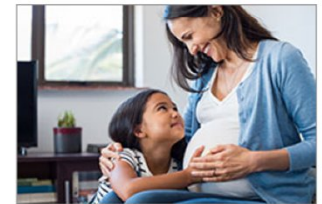
In latest act of leadership, Cincinnati votes to cover the cost of replacing lead pipes for all residents

By Tom Neltner / Published: January 12, 2022

Tom Neltner, Chemicals Policy Director

The Cincinnati City Council has [voted unanimously](#) to authorize Greater Cincinnati Water Works (GCWW) to pay 100% of the cost of replacing private lead service lines (LSLs) that bring drinking water to customers' homes and other buildings. The Council's December vote supports its larger [strategy](#) to "provide quality healthy housing for all income levels." More broadly, the action is the latest act of leadership from the city as it works to address the environmental justice issues in its communities.

About this blog



EDF's science, health, and business experts discuss the chemical and air pollution issues of the day. It's time to forge a healthier path.



GCWW Lead Pipe Replacement Program



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GCWW Lead Pipe Replacement Program Phase 1: 2016-2021- Accomplishments

Forged ahead of regulatory requirements

- Outreach/free testing/website/meetings
- On-line searchable lead map
- 2400 private lines replaced
- Over 11,000 free lead tests analyzed for customers
- Over 14,000 lead tests performed for schools/childcares
- Private lead line replacement
- \$750,000 H2Ohio Grant for free child-care replacements
- 11 contractor/plumbing removal partners

Most water systems:

- Do not know location or number of lead lines
- Do not provide testing
- Do not help residents with private replacement



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GCWW Lead Pipe Replacement Program Phase 1: 2016-2021- USEPA national model

For decades, GCWW has been removing public lead lines. But owners were not removing private lead lines (average cost \$3000-5000)

Cost/Affordability are a major obstacle to private replacement

2017:

GCWW initiated a private lead service line replacement program

- City managed the work
- 40% credit off City cost (max \$1500)
- 0% financing of balance

Additional "HELP" for low-income owners

- 30% additional cost reduction
- Funded through donations; non-rate revenue (\$200,000/yr)



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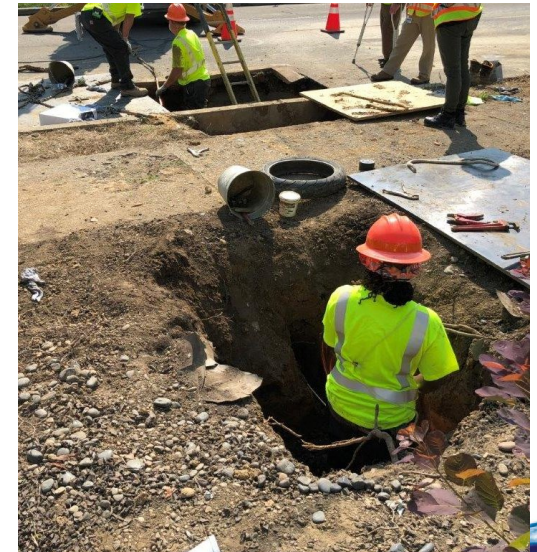
GCWW Lead Pipe Replacement Program: Next phase: USEPA Lead & Copper rule update

Starting 2024:

- GCWW will be required to replace 3% or 1200/year
- Requirement includes Private lead service lines
- Non-compliance penalties

Current private replacement rate 800/year will NOT comply with updated Lead & Copper Rule Requirements

- PRIVATE REPLACEMENT IS A COMPLIANCE ISSUE
- Utility cost share increased from 40% to 100% to eliminate cost/affordability as an issue





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GCWW Lead Pipe Replacement Program: Next Phase: Remaining challenges

Lead is a Neurotoxin that can cause developmental problems for children

- 39,222 Lead service lines remain in GCWW Service Area
- 35,000 Lead service lines in City of Cincinnati
- \$120 million to replace all lead service lines

USEPA mandate 1200/year, it will take **30 years**—an entire generation—to eliminate lead service lines from the GCWW service area



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GCWW Lead Pipe Replacement Program: Remaining challenges

Lead service lines are concentrated in:

- Older neighborhoods
- Predominantly black neighborhoods
- Neighborhoods with significant low-income population

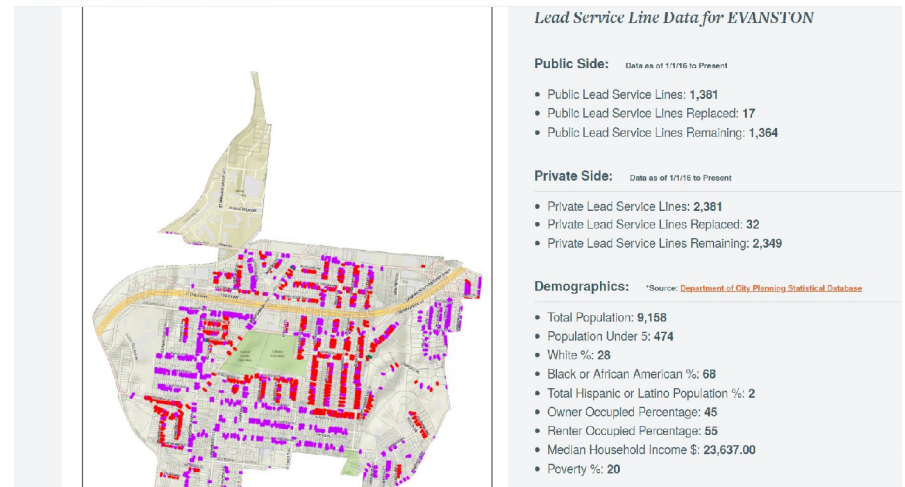
Removal of lead service lines is an equity and healthy housing issue



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REPLACE YOUR LEAD SERVICE LINE RESOURCES CONTACT US MY LEAD ACCOUNT





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Federal/State Funding





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Federal/State Funding

- GCWW Grant/Loan activity
- Federal and state funding opportunities
- GCWW Grant funding strategy
- Funding criteria and challenges
- Feasibility of reducing rates and providing ratepayer credit on receipt of federal funding



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Federal/State Funding: GCWW 2020-2022 successes

- \$2.05 million in grants for lead pipe replacement

| PROGRAM | AGENCY | FUNDING SOUGHT | STATUS |
|---|--------------------------|---|--|
| H2Ohio | Ohio EPA | Childcare lead service line replacement | AWARDED/RECEIVED \$750,000 GRANT (2020) |
| Drinking Water Revolving Fund (DWSRF) | Ohio EPA | Water main replacement (including public lead pipes) and other projects | AWARDED ~\$10 million in low interest loans/year |
| | | Low-income lead service line replacement | AWARDED/IN PROGRESS \$1.3 MILLION GRANT (2022) |
| American Rescue Plan Act (ARPA 2021) | Ohio Dept of Development | 28 water system projects - \$25M value | Not awarded despite County Engineer prioritization of 2 projects |
| Water Infrastructure Improvements for the Nation (WIIN) | USEPA | Monitoring Grants | ???? |



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**GREATER CINCINNATI
WATER WORKS**

Federal/State Funding

GCWW discussions/webinars for funding information:

- Ohio EPA Division of Environmental and Financial Assistance (DEFA)
- US Environmental Protection Agency
- Utility Industry association: American Water Works Association, Association of Ohio Drinking Water Utilities, Water Alliance





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GREATER CINCINNATI
WATER WORKS

Bipartisan Infrastructure Law Funding by State



Bipartisan Infrastructure Law: Environmental Protection Agency 2022 State Revolving Fund (SRF) Estimated Allotments to States, Tribes, and Territories by Program

| | Total | DWSRF | DWSRF Lead Service Line Replacement | DWSRF Emerging Contaminants | CWSRF | CWSRF Emerging Contaminants |
|----------------|---------------|--------------|-------------------------------------|-----------------------------|---------------|-----------------------------|
| New Hampshire | \$72,644,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$17,933,000 | \$941,000 |
| New Jersey | \$168,949,000 | \$30,644,000 | \$48,257,000 | \$12,869,000 | \$73,330,000 | \$3,849,000 |
| New Mexico | \$63,041,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$8,809,000 | \$462,000 |
| New York | \$428,072,000 | \$73,327,000 | \$115,475,000 | \$30,793,000 | \$198,074,000 | \$10,403,000 |
| North Carolina | \$199,211,000 | \$55,139,000 | \$86,831,000 | \$23,155,000 | \$32,386,000 | \$1,700,000 |
| North Dakota | \$63,041,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$8,809,000 | \$462,000 |
| Ohio | \$241,554,000 | \$45,156,000 | \$71,111,000 | \$18,963,000 | \$101,021,000 | \$5,303,000 |
| Oklahoma | \$91,488,000 | \$25,455,000 | \$40,085,000 | \$10,689,000 | \$14,498,000 | \$761,000 |
| Oregon | \$92,079,000 | \$23,623,000 | \$37,201,000 | \$9,920,000 | \$20,271,000 | \$1,064,000 |
| Pennsylvania | \$240,381,000 | \$55,287,000 | \$87,065,000 | \$23,217,000 | \$71,081,000 | \$3,731,000 |
| Puerto Rico | \$78,404,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$23,405,000 | \$1,229,000 |
| Rhode Island | \$66,451,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$12,049,000 | \$632,000 |
| South Carolina | \$88,984,000 | \$23,253,000 | \$36,618,000 | \$9,765,000 | \$18,383,000 | \$965,000 |
| South Dakota | \$63,041,000 | \$17,955,000 | \$28,275,000 | \$7,540,000 | \$8,809,000 | \$462,000 |



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GREATER CINCINNATI
WATER WORKS

Federal/State Funding: Bipartisan Infrastructure Law (BIL) aka Infrastructure Investment & Jobs Act (IIJA)

Rough Estimates of Ohio's Portion of IIJA Funds for the SRF Programs

| Year | Ohio's CWSRF Portion for Base Program | New! Ohio's CWSRF Portion for Emerging Contaminants | Ohio's DWSRF Portion for Base Program | New! Ohio's DWSRF Portion for Emerging Contaminants | New! Ohio's DWSRF Portion for Lead | Estimated Total |
|--------------|---------------------------------------|---|---------------------------------------|---|------------------------------------|------------------|
| 2022 | \$102 M | \$5 M | \$45 M | \$18 M | \$71 M | \$241 M |
| 2023 | \$118 M | \$11 M | \$52 M | \$18 M | \$71 M | \$270 M |
| 2024 | \$128 M | \$11 M | \$57 M | \$18 M | \$71 M | \$285 M |
| 2025 | \$138 M | \$11 M | \$62 M | \$18 M | \$71 M | \$300 M |
| 2026 | \$138 M | \$11 M | \$62 M | \$18 M | \$71 M | \$300 M |
| Total | \$624 M | \$49 M | \$278 M | \$90 M | \$355 M | \$1.396 B |

* All figures are estimates based on annual appropriations indicated in the Infrastructure Bill multiplied by the standard SRF allotment formulas.



WEBINAR

- Ohio EPA to receive \$71 million/yr for lead

2022-2026

- \$174 million grants
- \$181 million loans
- \$355 million total

- Funds allocated through Revolving Loan Fund



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GREATER CINCINNATI
WATER WORKS

How much funding is still needed to replace lead lines?

Started with approximately 44,000 lines

- Now, 39,222 left
 - Total to remove remaining lines = \$120,000,000

*cost has declined; started at avg cost of \$5500

-now, due to pandemic, expect the cost to go back up some

-In a few years, hoping it will decline again

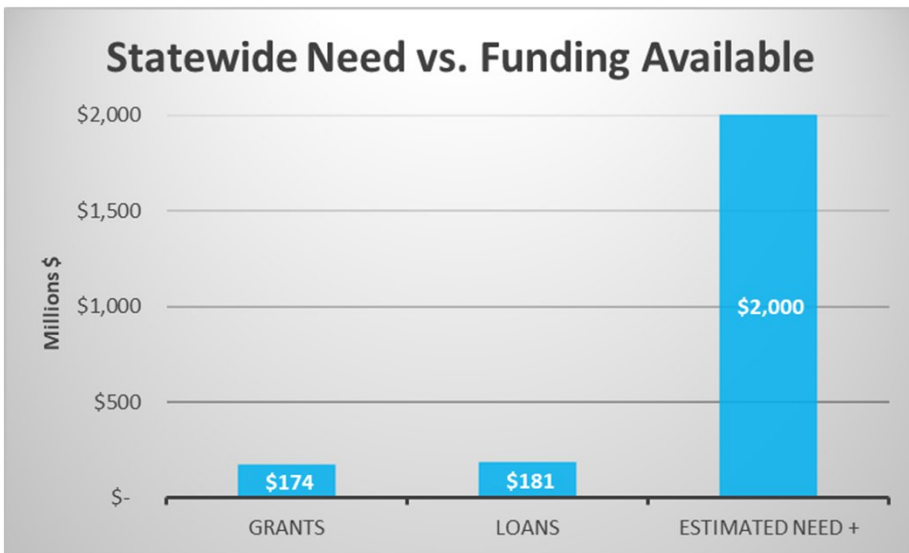




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GREATER CINCINNATI
WATER WORKS

Federal/State Funding: BIL Lead Replacement Grants



\$174 million in grants statewide is just a drop as to \$2 billion need.

| | Cincinnati | Ohio |
|------------------|---------------|-----------------|
| Lead lines | 39,000 | 650,000 |
| Replacement Need | \$120,000,000 | \$2,000,000,000 |

Statewide funding will be competitive-- GCWW alone needs \$120 million.



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GREATER CINCINNATI
WATER WORKS

Federal/State Funding: Challenges

GCWW has a recognized lead program that is “shovel ready”
BUT...

- Grant funds are targeted towards “Disadvantaged Communities”
- Other Ohio water utilities need funds to
 - Locate/map lead lines
 - Develop organizational capacity for private lead removal
 - Comply with Lead & Copper rule 2024 mandates

Ohio EPA will likely spread grant funding across the state





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GREATER CINCINNATI
WATER WORKS

Federal/State Funding: Grants focus on “Disadvantaged Communities”

| Program Name | Fund Source | Administering Agency | Drinking Water Focus | Eligibility | Grant | Loan |
|--------------|---------------|----------------------|-----------------------------|---|-------|------|
| H2Ohio | State | Ohio EPA | Water quality issues | Disadvantaged Community and High-Risk Areas | X | |
| DWSRF | Federal/State | Ohio EPA | Infrastructure improvements | All | | X |
| | | | | Disadvantaged Community | X | |
| WIIN | Federal | US EPA | Infrastructure improvements | All | | X |
| | | | | Disadvantaged Community | X | |
| ARPA | Federal | Ohio DoD | Infrastructure improvements | All, prioritized on disadvantaged community status and other criteria | X | |
| BIL | Federal | US EPA Ohio EPA | Infrastructure improvements | All | | X |
| | | | | Disadvantaged Community | X | |



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GREATER CINCINNATI
WATER WORKS

Federal/State Funding

Grant funding focuses on “Disadvantaged Communities”

- Ohio EPA does not consider GCWW to be eligible for grants for “Disadvantaged Communities” when viewed from system-wide basis
- Ohio EPA looks at
 1. Documented human health-related factors
 2. Community public water system with service area less than 10,000 persons
 3. Average water and sewer rates combined comprise more than 2.4% of Median HH income
 4. MHI estimate < statewide average OR poverty rate estimate > statewide average
- GCWW has asked Ohio EPA to review interpretation of “portion of service area” per Ohio RC 6109.01(H)/OAC 3745-88(E)



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**GREATER CINCINNATI
WATER WORKS**

Federal/State Funding GCWW Grant application plan:

- Nominate 16 watermain replacement projects in 2022 (WSRLF loan)
 - Include projects with concentration of lead service lines
- Apply for mix of Lead Service Line loan/grant funding
 - Include project specific census tract demographic information
 - Continue conversations with Ohio EPA to be eligible for disadvantaged community grant dollars for lead line replacement



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GREATER CINCINNATI
WATER WORKS

Federal/State Funding: Feasibility/legality of reduced rates/credits to ratepayers if grant funds received

A rate reduction could create issues with:

- Infrastructure bond and Ohio EPA loans – the City certifies its rates to support its borrowing on the bond market and from the Ohio EPA WSLRA loans

A ratepayer credit would be:

- Difficult/expensive to implement software revision
- Be very minimal to ratepayer – the actual monthly reduction would be less than a dollar per month.
- Use of grant funds to refund cost of replacements completed before the grant award is impermissible
- May be a significant concern for bond raters to refund rate increases (need more info. on this)

For a household of 4 people using 6230 gal/mo

| | rate increase | monthly cost | increase over prior year | refund of 19% of rate increase (lead related) |
|------|---------------|--------------|--------------------------|---|
| 2021 | 3.75% | \$32.18 | | |
| 2022 | 3.75% | \$33.39 | \$1.21 | \$0.23 |
| 2023 | 5.55% | \$35.24 | \$1.85 | \$0.35 |
| 2024 | 5.55% | \$37.20 | \$1.96 | \$0.37 |
| 2025 | 5.55% | \$39.26 | \$2.06 | \$0.39 |
| 2026 | 5.55% | \$41.44 | \$2.18 | \$0.41 |



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GREATER CINCINNATI
WATER WORKS

Federal/State Funding:

GCWW recommends that any grant funding received be used to:

- Accelerate replacement rate
 - Eliminate lead lines in less than 30 years
 - Protect public health/make housing healthy
 - Reduce risk of childhood exposure
 - Ensure regulatory compliance
- Prioritize underserved areas for lead service line replacement to promote equity



A Service of The City of Cincinnati

**GREATER CINCINNATI
WATER WORKS**

Thank you for allowing GCWW to respond to this motion. If you have additional questions, please contact:

Leslie.Moening@gcww.Cincinnati-oh.gov Lead Program Manager

Verna.Arnette@gcww.Cincinnati-oh.gov Deputy Director of Operations

Cathy.bailey@gcww.Cincinnati-oh.gov Executive Director





Mark Jeffreys
Councilmember

202200118

January 12, 2022

MOTION

WE MOVE that, the Administration provide an initial report within sixty (60) days outlining the specific expenses associated the GCWW rate increase pursuant to ordinance number 248-2021 authorized by Council on June 23, 2021;

WE FURTHER MOVE that, in that initial report it outline the plan to apply for applicable federal dollars associated with lead pipe replacement including but not limited to federal dollars that may be available through the Bipartisan Infrastructure Law passed by Congress on November 15, 2021;

WE FURTHER MOVE that, in that initial report the Administration include information on the feasibility and legality of reducing the corresponding rate increase as well as providing rate payers with a credit for any fees that have already been paid based on the potential receipt of those federal dollars received;

WE FURTHER MOVE that, the Administration report back within sixty (60) days of the federal funds being secured to Council with specific plans for giving rate payers a credit for the fees already paid associated with lead pipe reduction and a plan for adjusting their future rate based on the receipt of these federal funds.

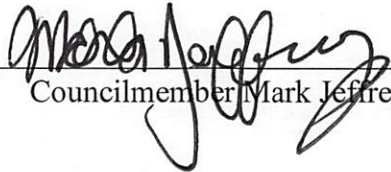
STATEMENT

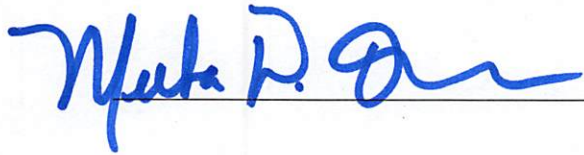
Cincinnati City Council passed a water rate increase on June 23, 2021 to cover the cost of replacing the remaining lead pipes throughout the city among other expenses for GCWW. Subsequently, President Biden signed the Bipartisan Infrastructure Bill into law on November 15, 2021.¹ This bill allocates \$2.9 billion for lead pipe replacement in States, Tribes, and Territories.² If the City were to be awarded federal dollars to replace lead pipes throughout the

¹ <https://www.npr.org/2021/11/15/1055841358/biden-signs-1t-bipartisan-infrastructure-bill-into-law>

² <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/>

city then the portion of the previous rate increase dedicated to lead pipe replacement would be rendered redundant. It would be prudent to pursue this funding and give rate payers credit for the previously passed rate increase that corresponds with the lead pipe replacement program.


Councilmember Mark Jeffrey



March 21, 2022

To: Budget and Finance Committee 202200638

From: John P. Curp, Interim City Manager

Subject: Presentation – Department of Community & Economic Development (DCED):
FY 2023 Budget Update

Attached is the Department of Community & Economic Development’s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 21, 2022.

cc: William “Billy” Weber, Assistant City Manager
Andrew Dudas, Budget Director



Department of Community & Economic Development Budget Presentation

Budget & Finance Committee
March 21, 2022

Community & Economic Development Department Mission

Our mission is to facilitate strategic development and services within the Cincinnati community that

- ❖ **Improve** the lives of residents,
- ❖ **Increase** business investment, &
- ❖ **Revitalize** City neighborhoods.

Community and Economic Development Department Operations

Director's Office

Small Business Regulatory Assistance

Incentive Monitoring & Oversight

Fiscal Accountability & Operations

Communications

Neighborhoods

Economic Development

Housing

Parking

| | | | |
|--|--|--|-----------------------|
| Federal Entitlement Programs - Neighborhood & Jobs | Commercial Tax Abatements (Industrial, Commercial or Mixed Use) | Commercial Tax Abatements (Multi-Family) | On-Street Technology |
| Neighborhood Programs (NBDIP, TIF Districts) | Job Retention/Attraction Program (REDI) | Notice of Funding Availability (NOFA) | On-Street Enforcement |
| Community Development Corporation support | Property Sale Requests: Industrial, Commercial or Mixed Use | Property Sale Requests: Housing/Residential | Off-Street Assets |
| Neighborhoods Job Retention/Attraction Program | Tax Increment Financing: Project based | Homeownership Development Programs (CRA, ADDI) | |
| Neighborhood Non-Profit Org Liaisons | Commercial Real Property Incentives - Mixed Use Development, Industrial | Federal Entitlement Programs - Housing Affordable Housing Trust Fund | |

Community and Economic Development Department Budget History

General Fund Operating Budget
FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|------------------------|---------------------|---------------------|----------------------|---------------------|---------------------|
| Personnel Compensation | 1,299,031.00 | 1,137,890.00 | 907,940.00 | 767,580.00 | 1,016,260.00 |
| Fringe Benefits | 301,090.00 | 361,140.00 | 387,500.00 | 257,420.00 | 341,450.00 |
| Non-Personnel Expenses | 6,919,271.00 | 6,818,690.00 | 8,722,343.00 | 2,333,570.00 | 2,963,520.00 |
| Total | 8,519,392.00 | 8,317,720.00 | 10,017,783.00 | 3,358,570.00 | 4,321,230.00 |

Resources for the Human Services Fund and various other leveraged support items were transferred out of DCED’s General Fund Budget starting in FY 2021.

Community and Economic Development Department Budget History

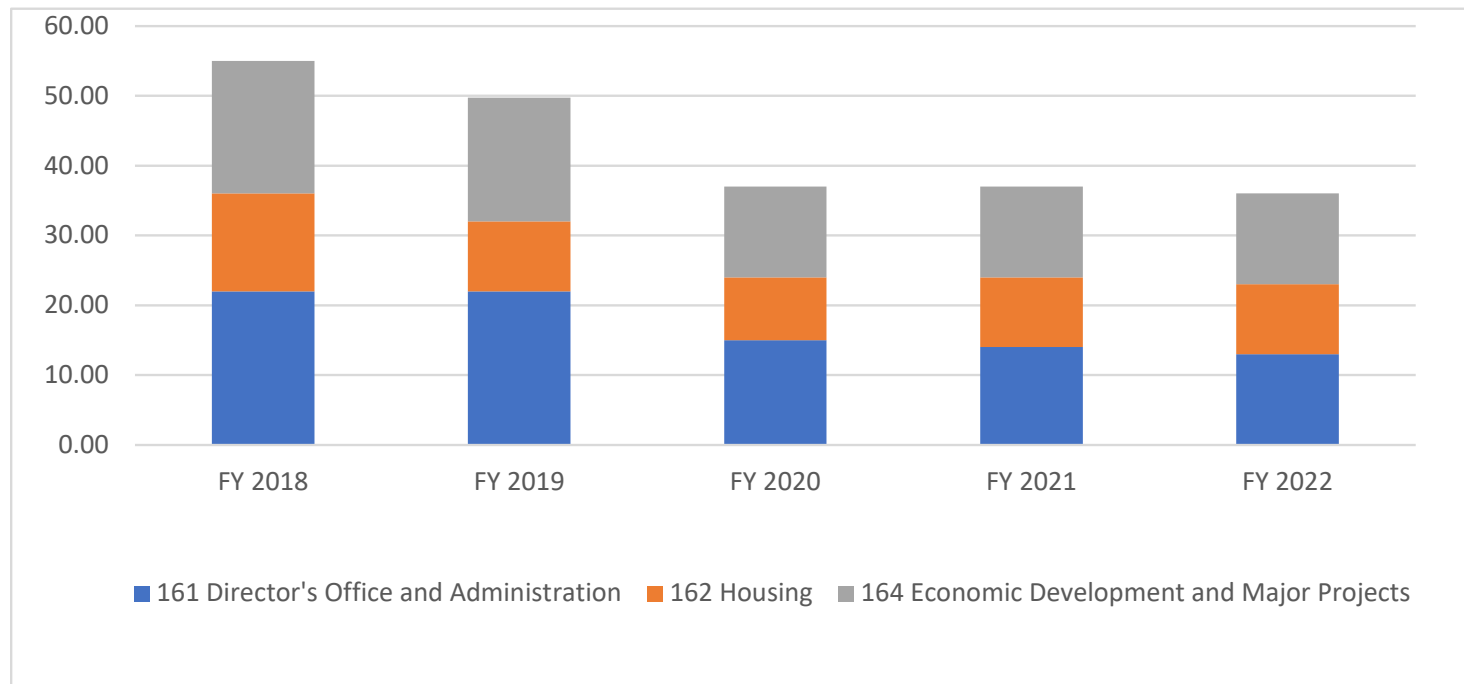
Restricted Funds Operating Budget
FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| Parking System Facilities Fund 102 | 209,070.00 | 220,030.00 | 0.00 | 0.00 | 0.00 |
| Urban Development - Property Operations Fund 317 | 342,310.00 | 377,650.00 | 352,640.00 | 355,920.00 | 363,490.00 |
| Bond Hill-Roselawn Development Fund 358 | 200,000.00 | 200,000.00 | 200,000.00 | 200,000.00 | 250,000.00 |
| Total | 751,380.00 | 797,680.00 | 552,640.00 | 555,920.00 | 613,490.00 |

Community Development Block Grant Fund 304 is appropriated separately from the annual budget and is not included in the above table.

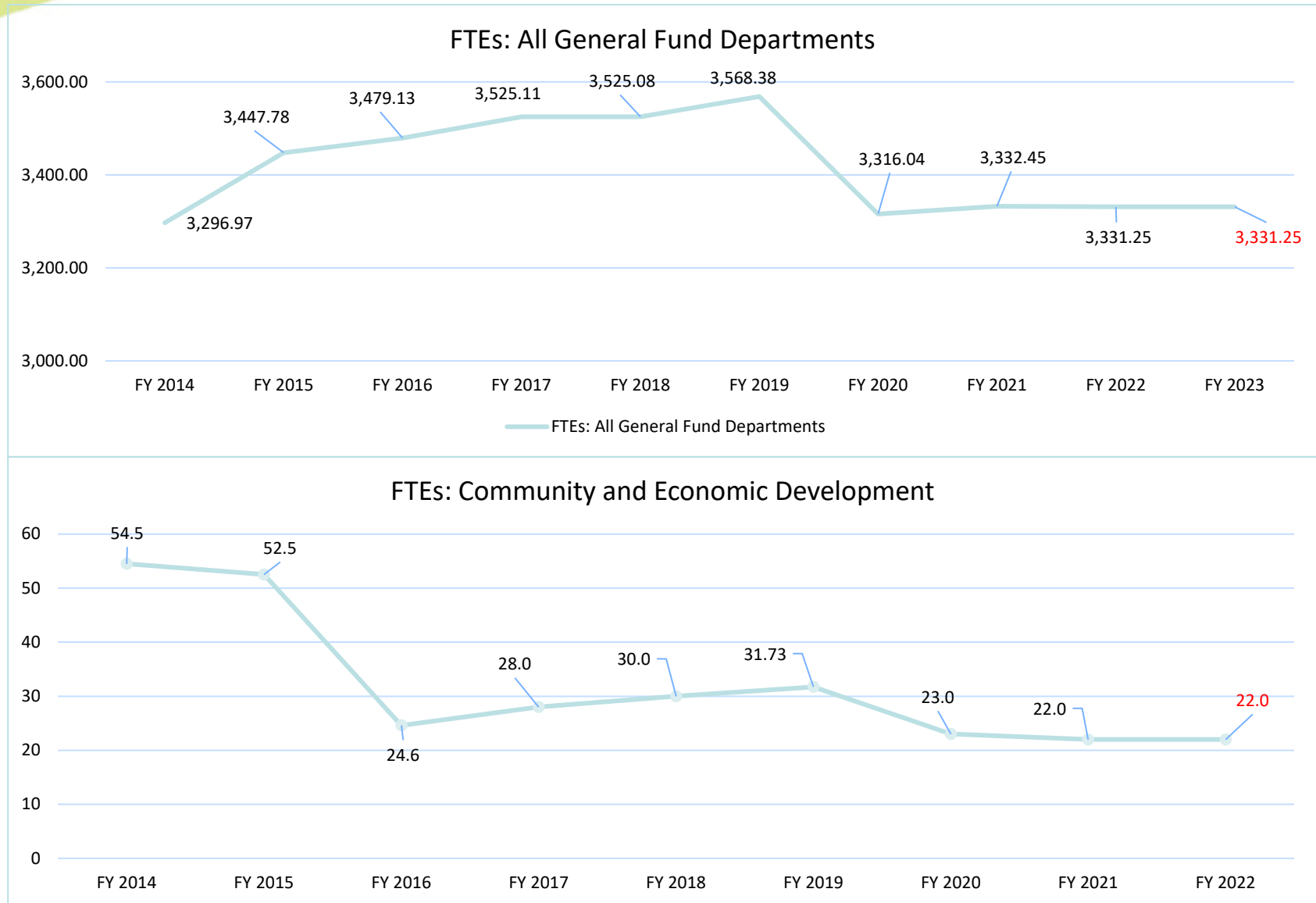
Community and Economic Development Department FTE History

All Funds Operating Budget
FY 2018 – FY 2022



| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|---|--------------|--------------|--------------|--------------|--------------|
| 161 Director's Office and Administration | 22.00 | 22.00 | 15.00 | 14.00 | 13.00 |
| 162 Housing | 14.00 | 10.00 | 9.00 | 10.00 | 10.00 |
| 164 Economic Development and Major Projects | 19.00 | 17.73 | 13.00 | 13.00 | 13.00 |
| Total | 55.00 | 49.73 | 37.00 | 37.00 | 36.00 |

General Fund and Community and Economic Development FTE History: FY 2014 – FY 2023



Community and Economic Development Department CY 2021 Accomplishments

- ❖ CY 2021 Total Investment Managed: \$2,596,969,612
- ❖ Jobs Created: 2,874
- ❖ Housing Units Created: 5,323
- ❖ Affordable Housing Created: 350

Community and Economic Development Department Significant Budget Issues – Operating

Staffing limitations:

- Staffing has decreased by 30% since 2018. While DCED has continued to do more with fewer staffing resources, capacity for new programs and initiatives is limited without additional staff resources.
- Monitoring federally funded housing units, varied tax incentives approved by Council, and other multi-year activities have ongoing costs and commitments. The Monitoring Division was eliminated in FY 2020 leaving 1.0 FTE.

Community and Economic Development Department Significant Budget Issues – Operating

Staffing limitations:

- In spite of reduced staffing, DCED has:
 - Launched new neighborhood supporting programs created through American Rescue Plan (Neighborhood Business District Support Grants (NBDSG), Neighborhood Activation Fund (NAF) and Port Affordable Housing)
 - Prepared to support Housing Advisory Board and Housing Trust Fund programming
 - Increased its effectiveness in agreement monitoring (Tax Increment Financing (TIF), Community Reinvestment Area (CRA), Job Creation Tax Credit (JCTC), Leases etc.)

Community and Economic Development Department Significant Budget Issues – Capital

Resource limitations:

- Affordable Housing – Department receives approximately \$6 million per year for housing related programs (NOFA, Housing Trust Fund, Housing Repair Services, ADDI). Most of this is federal entitlement funding and the dedicated local source for the Housing Trust fund represents approximately \$600,000 per year.
- Neighborhood Capital Investments – ARPA represented one-time financial resources for new neighborhood programs. Our signature Neighborhood Business District Improvement Program (NBDIP) annually receives \$2 million of capital and federal entitlement. Neighborhood Support Program and NBD Support Fund are collectively \$550,000.

Community and Economic Development Department Significant Issues Miscellaneous

Many valued activities are not optimal due to limited staff and financial resources:

- Business retention and recruitment visits
- Community Council participation
- Business association participation
- Training - limited to no professional training of staff

QUESTIONS?

March 21, 2022

To: Budget and Finance Committee 202200701
From: John P. Curp, Interim City Manager
Subject: Presentation – Metropolitan Sewer District (MSD): FY 2023 Budget Update

Attached is the Metropolitan Sewer District (MSD)'s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 21, 2022.

cc: William "Billy" Weber, Assistant City Manager
Andrew Dudas, Budget Director



MSD Presentation to Budget & Finance Committee

March 21, 2022



Agenda

1. Overview of MSD System
2. MSD Governance
3. MSD Budgets
4. MSD Programs
 - Wet Weather Improvement Program
 - Sewer Backup Program
 - Customer Assistance Program



Overview of MSD System

MSD: It's All About Clean Water

Our Mission:

MSD collects, treats, and manages wastewater from Greater Cincinnati communities, protecting the environment and public health by returning clean water to local rivers and streams.



Our Vision:

Our vision is to provide exceptional customer service to the community, delivered in a manner that is financially responsible, transparent, and cost effective to our ratepayers. As a public utility, MSD is dedicated to organizational and operational excellence.

MSD Service Area

MSD Service Area encompasses 43 of the 49 political subdivisions in Hamilton County, and small parts of Butler, Clermont and Warren Counties.

MSD treats 190 million gallons of wastewater a day

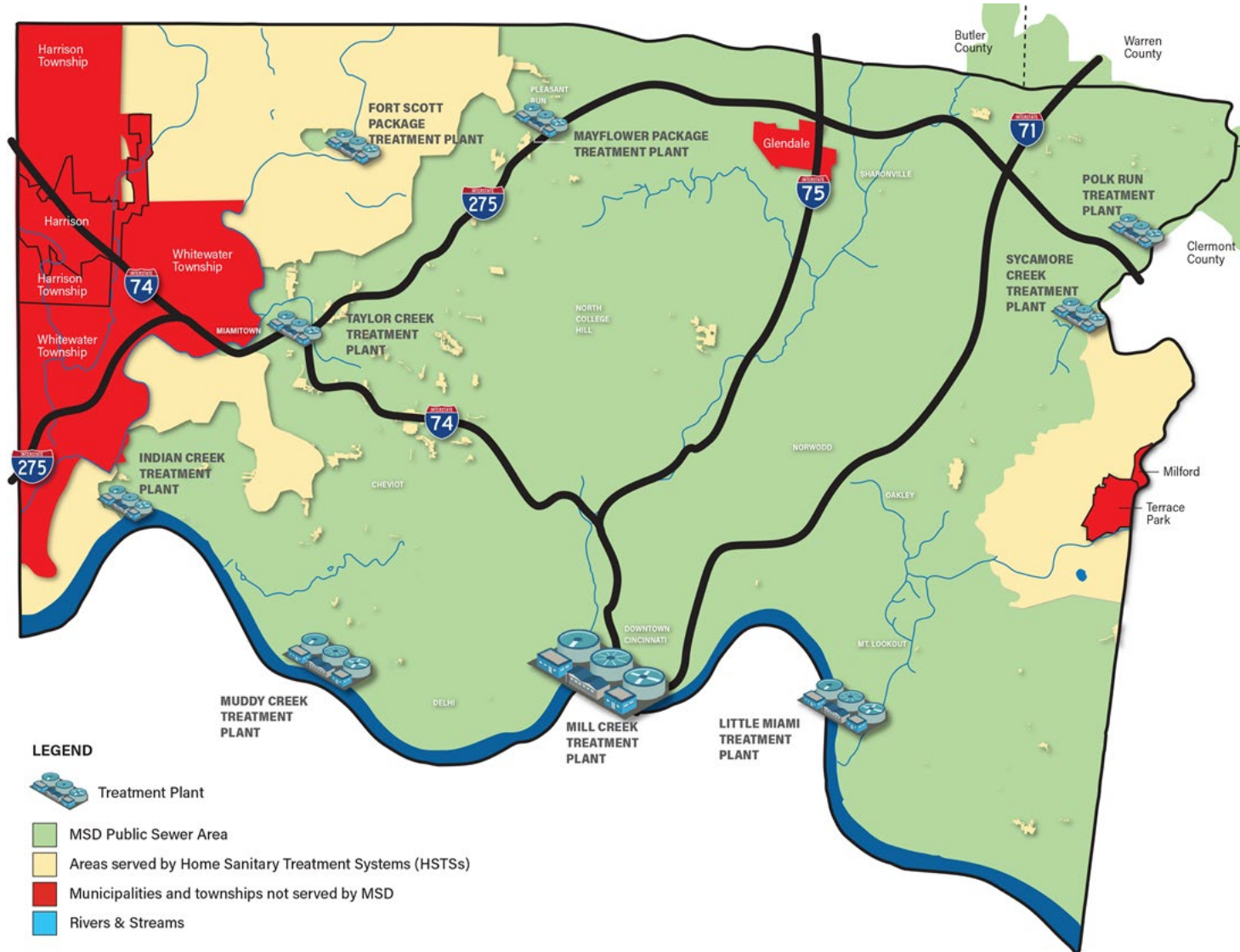


MSD has 9 treatment plants and other assets

MSD maintains more than 3,000 miles of sewer pipe

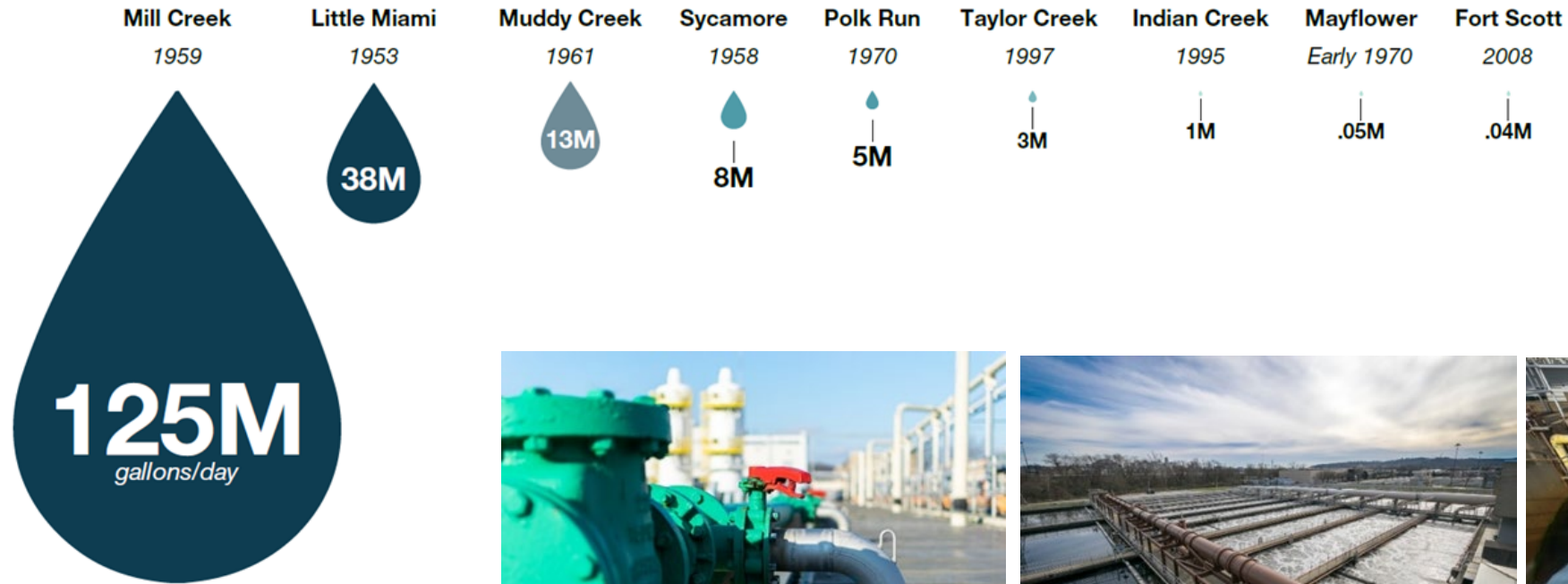


MSD serves >225,000 residential, commercial and industrial customers



MSD Treatment System

Millions of Gallons Treated Per Day





MSD Governance

MSD Governance

City of Cincinnati and Hamilton County executed an agreement in April, 1968

- City joined County's "Sewer District #1", renamed "Metropolitan Sewer District of Greater Cincinnati"
- City sewer system previously managed as a division of City Public Works Department
- Purpose of the 1968 Agreement was to constitute the City as the "sole management agency for the operation and maintenance of the sewer system"
- City provided its **existing** sewer system and three **existing** treatment facilities to the County "for use only"

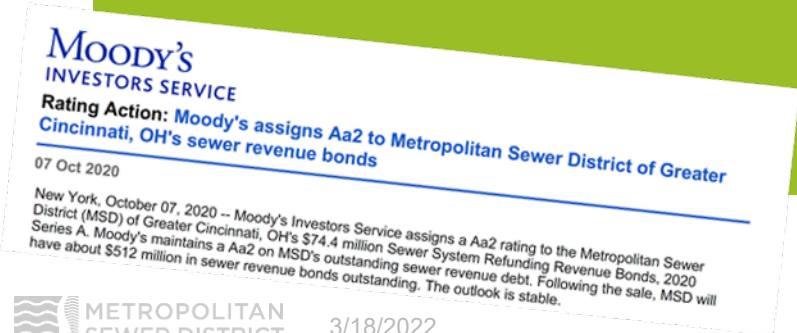
A G R E E M E N T

THIS AGREEMENT, entered into this 12th day of April, 1968 between the City of Cincinnati, Ohio, a municipality (hereinafter referred to as CITY) and the Board of Commissioners of Hamilton County, Ohio (hereinaft

WHEREAS, it is deemed to be in the interest of the City and the County for the Board of County Commissioners to enter into an agreement with the City of Cincinnati wherein the City of Cincinnati would agree to provide a total and complete management service for the operation of the county sewer system; and

MSD Governance

- All MSD employees are City employees. No County personnel are directly employed by the City to provide MSD management, professional, or technical expertise
- The Sewer Department’s Chief Engineer is also the Hamilton County Sanitary Engineer
- Finances for MSD are under the purview of the City
 - The City’s Financial System (CFS) is used to disburse funds and the City’s Procurement Division is used to procure construction, goods, and services
 - Sewer ratepayer funds are restricted use funds and can only be used to benefit the sewer district and not for other purposes
 - Capital financing uses revenue bonds to reimburse MSD capital expenses
 - BOCC approves budgets, appropriates funds, sets rates and adopts rules



| Credit Profile | | |
|---|------------|----------|
| US\$107.97 mil swr sys rfdg rev bnds (Greater Cincinnati Metro Swr Dist) ser 2019A due 12/01/2034 | | |
| <i>Long Term Rating</i> | AA+/Stable | New |
| Hamilton Cnty, Ohio | | |
| Greater Cincinnati Metro Swr Dist, Ohio | | |
| Hamilton Cnty (Greater Cincinnati Metro Swr Dist) swr | | |
| <i>Long Term Rating</i> | AA+/Stable | Affirmed |

MSD Governance

Four amendments to the 1968 Agreement from 1985-2010:

- Bonding and finance modifications (1985 and 1997)
- Federal Consent Decree expenditures and penalties (2002)
- Authority to build storm sewers or other prevention or replacement facility when deemed a cost-effective measure to comply with Federal Consent Decree (2004)

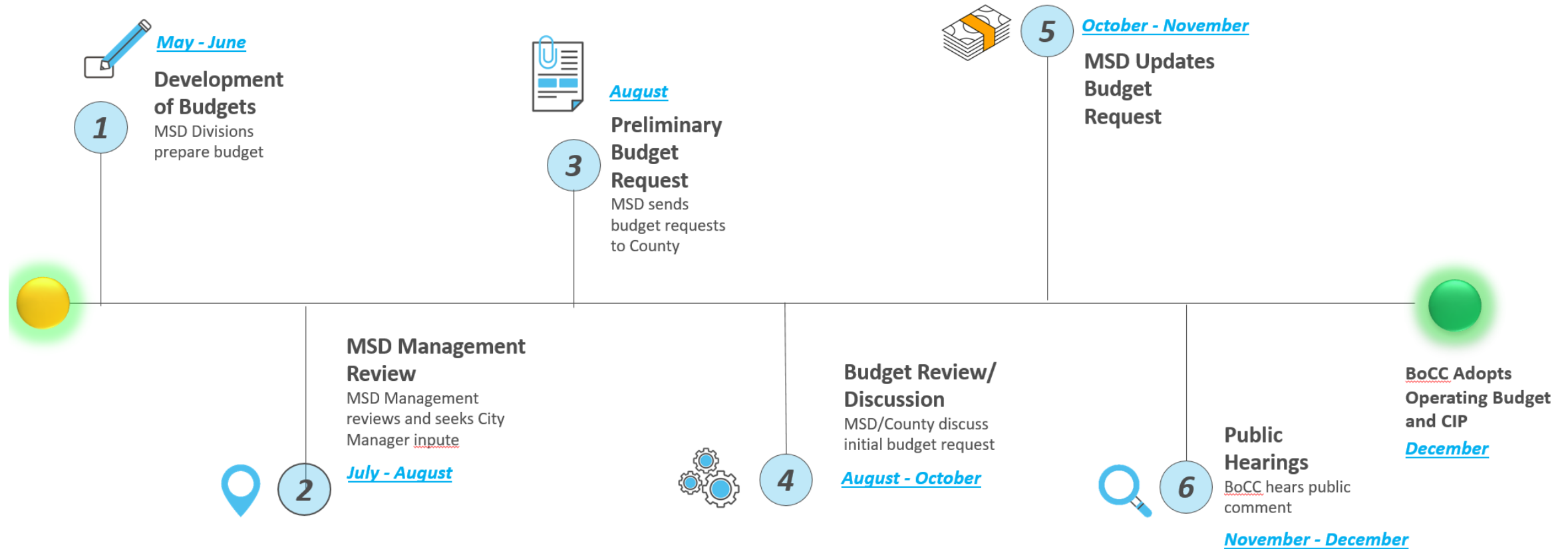
The City and County have been in litigation over their respective sovereign rights regarding MSD:

- Federal District Judge issued order extending the 1968 Agreement (indefinitely)
- Partially resolved conflict as it relates to Consent Decree negotiations



MSD Budgets

MSD Budget Process





Operating Budget

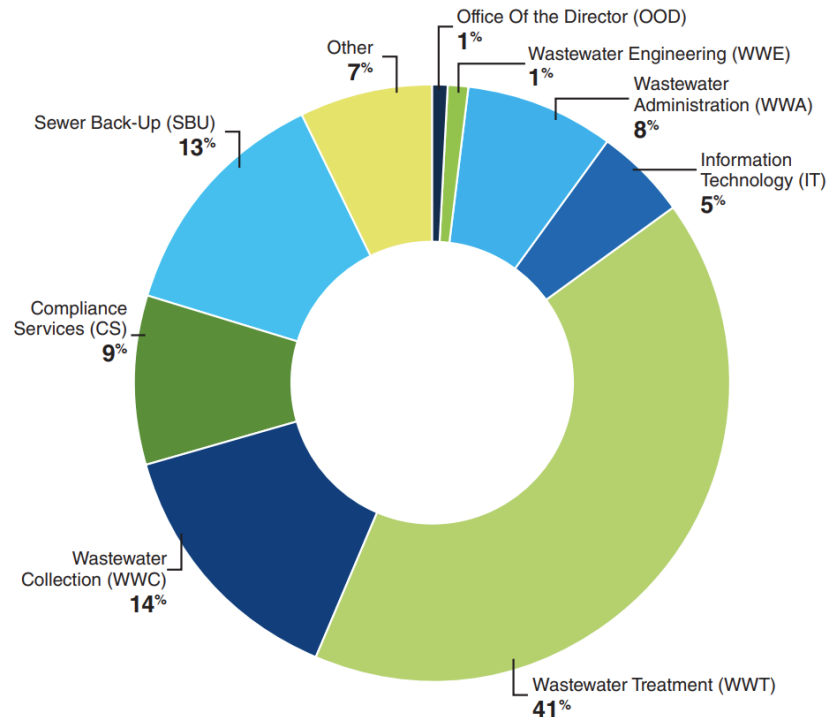
2022 Operating Budget

MSD's approved 2022 Operating Budget is approximately \$231 million.

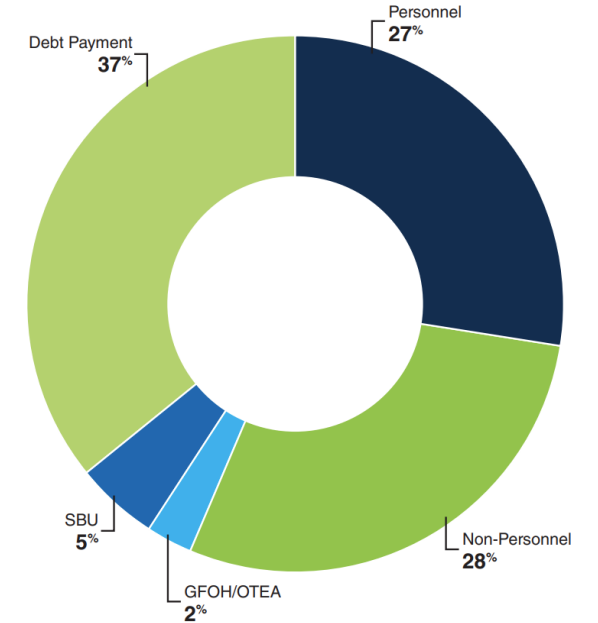
Increase of about \$8.2 million or 3.6% over the 2021 budget due to:

- Rising chemical costs
- Increases to hauling & disposal
- Increased power costs
- Supply chain impacts
- Regulatory Obligations
- O&M of new wet weather assets
- Technology & Cyber Security

Non-Personnel Request by Division



Overall Request by Category



MSD Operations by Division

Wastewater Treatment Division (240 FTEs)

- Licensed plant operators, electricians, machine maintenance, engineers, laborers, crew leaders, plant supervisors, etc.
- Complete operation and maintenance for 9 WWTPs, 9 wet-weather facilities, 97 pump stations
- Annual Recipient of National Awards for compliance with NPDES permits

Wastewater Collection Division (165 FTEs)

- Collection equipment specialists, inspectors, utility techs, maintenance crew leaders, field supervisors, engineers, customer service, etc.
- Planned and emergency maintenance of all sewers and manholes, 24/7 customer service response, green infrastructure management and SBU program management

Compliance Services Division (70 FTEs)

- Chemists, lab techs, engineers, industrial waste investigators, environmental safety specialists, etc.
- Regulatory compliance and reporting, permit renewals, laboratory analysis, overflow monitoring, modeling, commercial and industrial waste program, etc.

Wastewater Engineering Division (100 FTEs)

- Engineers, civil engineering techs, public works inspectors, surveyors, construction ion inspectors, etc.
- Capital program project management, engineering planning, development services including plan review, sewer availability, coordinated site review, etc.

Wastewater Administration/Information Technology/Office of Director (80 FTEs)

- Accountants, accounting techs, administrative specialists, computer systems analysts, IT manager, assistant city solicitor, etc.





Capital Budget

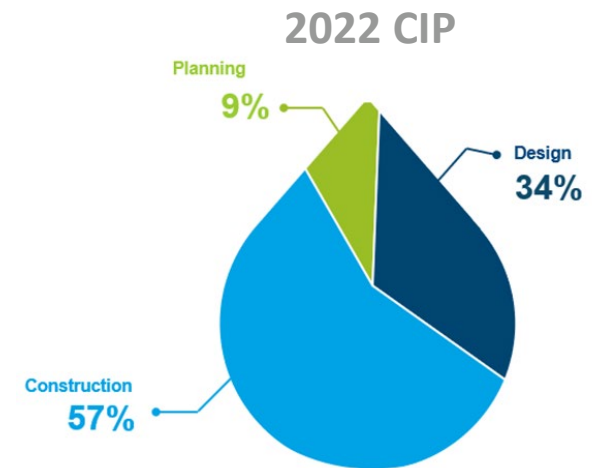
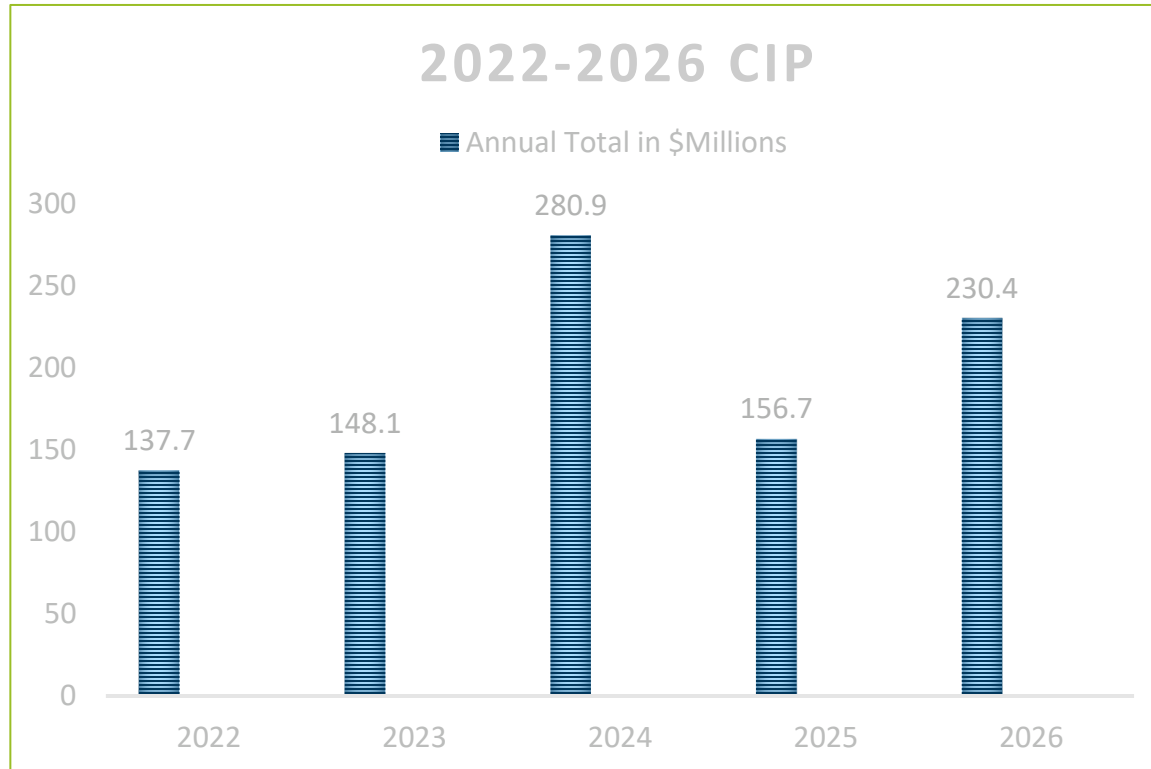
Capital Improvement Plan (CIP)

Each year, MSD proposes a five-year CIP to the County Commissioners.

The capital budget is approved on an annual basis and only funds for the first year of the plan are appropriated.

The 2022-2026 CIP included a 5-year total of \$952 million.

2022 capital budget is \$136 million for 59 specific projects across the planning, design, and construction phases.



Capital Improvement Needs

Industry standard for reinvestment in Assets:

- 2 percent of asset value per year for WWT assets (at least \$26 million per year)
- 1 percent of asset value per year for WWC assets (at least \$82 million per year)
- Current targets given by the County are approximately \$50M asset management

| Asset Category | Replacement Value | 1% CIP for Collection System and 2% CIP for Treatment |
|----------------|-----------------------|---|
| Gravity Sewer | 9.5 billion | \$79 - \$95 million |
| Force Main | \$62 million | \$0.6 million |
| Pump Station | \$135 million | \$1.3 million |
| Buildings | \$88 million | \$0.8 million |
| WWTP | \$1.6 billion | \$26 - \$32 million |
| Land | \$4 million | N/A |
| TOTAL | \$11.7 billion | \$108 – \$128 million |



Major CIP Project

Little Miami Solids \$167M

Anaerobic wastewater digester (AD) systems break down biodegradable material in the absence of oxygen.

AD will greatly reduce the amount of organic matter that would otherwise be dumped in landfills, or burned in incinerators.

AD process will allow the capture of biogas to be converted into usable energy and ultimately produce a usable end-product.



MSD Programs

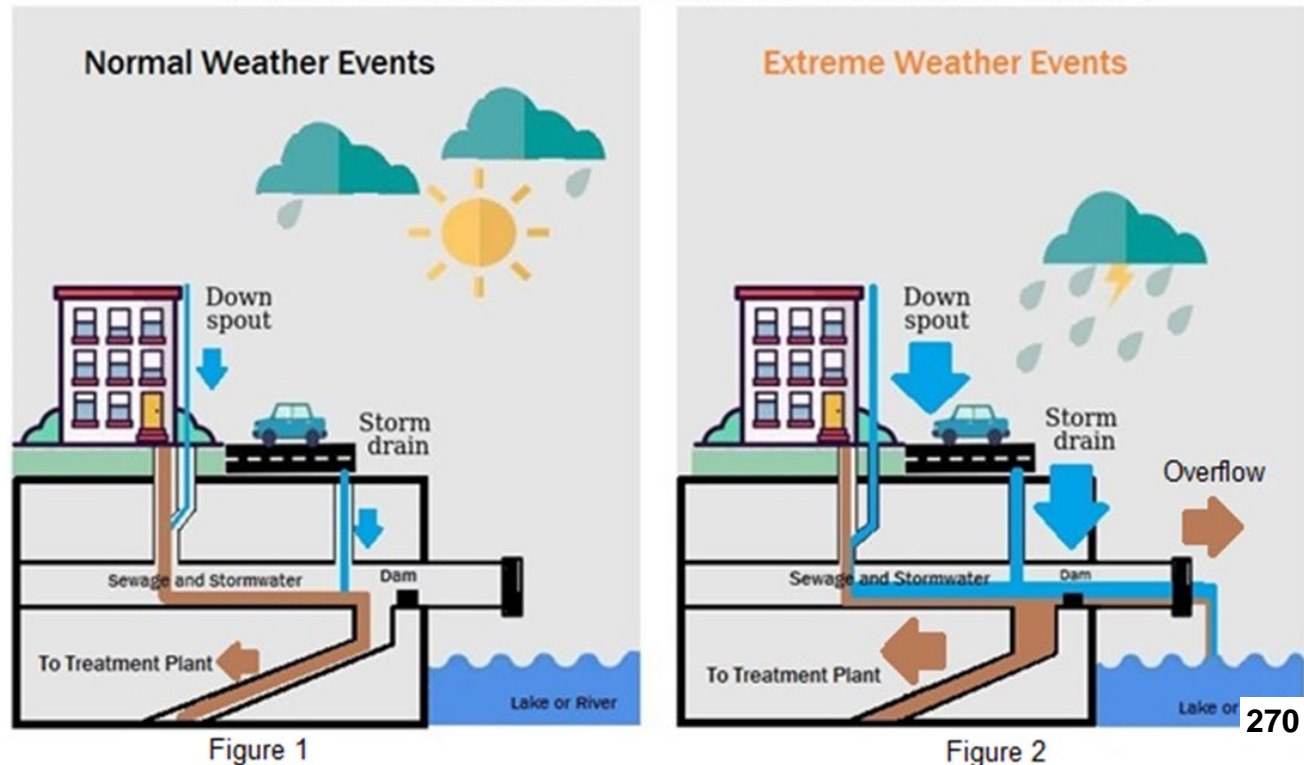


Wet Weather Improvement Program

Wet Weather Improvement Program

- The MSD service area receives about 41 inches of rain annually, equal to about 180 billion gallons of rain.
- About 21 billion gallons of rain enters the combined sewer system. A much smaller amount enters the sanitary sewer system.
- U.S. EPA has mandated that MSD significantly reduce the combined sewer overflows (CSOs) and eliminate sanitary sewer overflows SSOs.

Combined Sewer Overflows



Wet Weather Improvement Program

MSD is reducing or eliminating sewer overflows by using different strategies outlined in the WWIP:

- 💧 **Capacity:** Larger sewers and CSO storage tanks or tunnels
- 💧 **Upgraded Treatment Plants:** Upgraded treatment plants, pump stations, enhanced high-rate treatment facilities
- 💧 **Green Solutions:** Solutions that control stormwater and keep it out of the combined sewer system. These solutions include storm water detention basins, bioswales, stream restoration, bioinfiltration basins, etc.

Phased Approach: Projects completed in phases over multiple years due to its size, complexity, and cost. Measure is “Affordability”



WWIP - Solution for CSOs

- First phase completed in 2020, **133 projects** at a cost of **\$1 billion**
- The entire program will take **many decades to complete**
- To date, we have eliminated **6 billion gallons** of sewer overflows a year (from 14 billion to 8 billion) & dramatically improved water quality
- Phase 2 under development



WWIP - Solution for CSOs

MSD Vision for the LMCPR:

What if....It met performance standards AND...



...it created a network of community assets that attracted new interest and investment?



...if it left behind open spaces, enhanced streetscapes and opportunities for green building?



...if it served as a model for a sustainable 21st century community?



...it could be more than a sewer project?

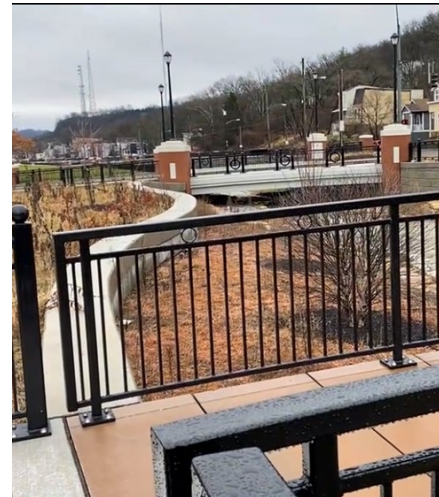
vision

Lick Run Greenway is Part of the Revised Original LMCPR

- Lower cost CSO reduction than Default Solution by \$300 million
- Better leave behind for the community
- National Model of Green Infrastructure
- Community/ratepayer support for the Lick Run Alternative



11 NARROW CHANNEL | WET CONDITION, 0.5-INCH RAIN EVENT
LICK RUN WATER LEVEL RENDERING





Sewer Backup Program

Sewer Backup Program

- Established in MSD's Global Consent Decree, requires MSD to respond, investigate, and take action.
- The program covers the backup of wastewater into a building that is the result of incapacity in the sewer system or negligent maintenance or operation of the sewer system.
- The program does not address water in buildings caused by overland flooding not emanating from the MSD system or blockages in private lateral sewer lines.

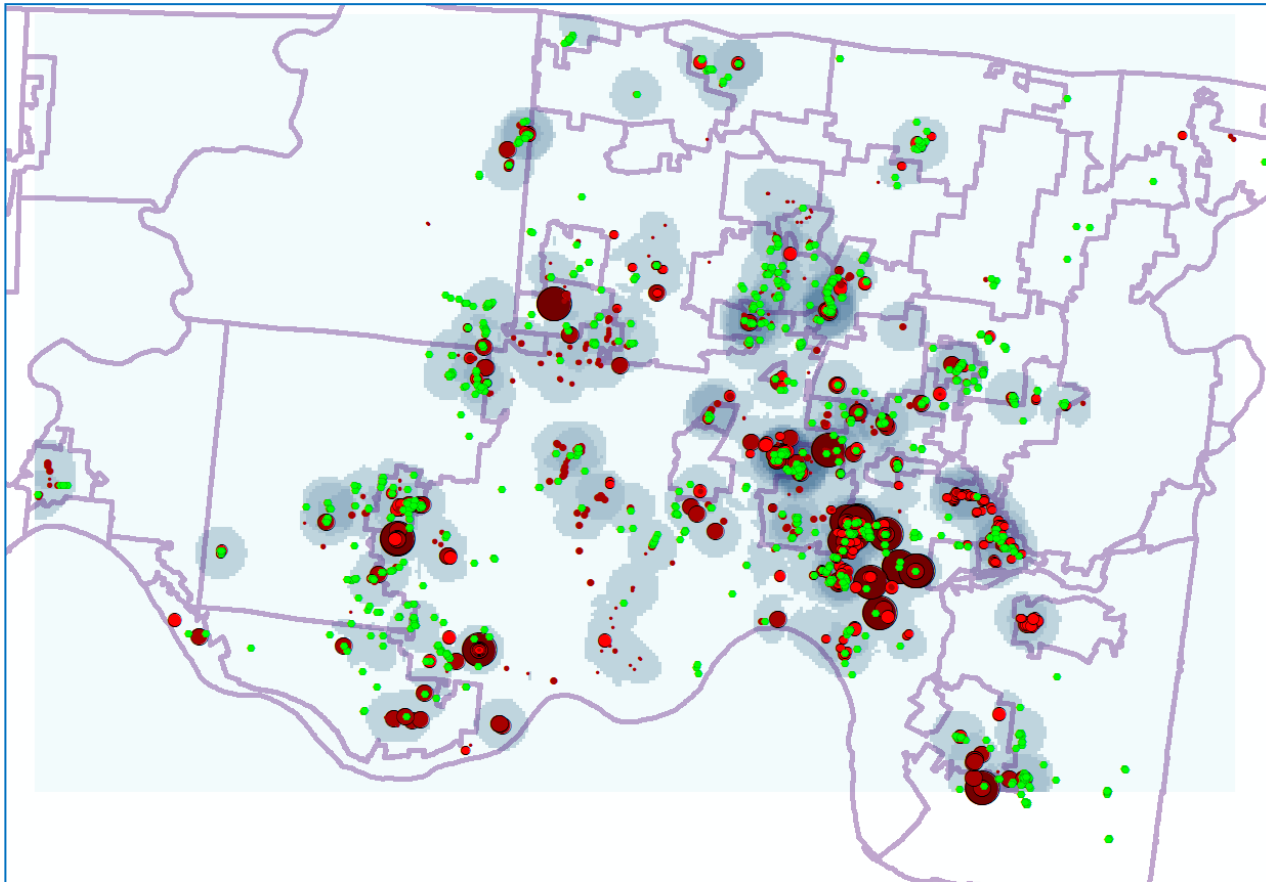


Sewer Backup Program

- If you think you've experienced a sewer backup from the public sewer:
 - Report your backup to MSD asap
 - 352-4900 or sbu.msdbg.org –24/7
- MSD will investigate to determine what caused the backup
- If eligible, customers receive cleaning services and claims reimbursement for damages inside the property
- Customers with recurring backups from lack of capacity in the public sewer are eligible for a prevention device

MSD has spent \$158 million on this program since 2004

Sewer Backup Prevention Program



SBUPP

Total Properties Protected = 1,222

Total Dollars Spent = \$35,700,000

Average SBUPP cost/home = \$45,000

LEGEND

- Heat map SBU response areas (2017 to 7/2020)
- Confirmed capacity related SBU; the larger the red circle, the smaller the storm event that caused the mainline capacity problem (2017 - 2020)
- SBU Prevention Devices Installed since 2004

Sewer Backup Mitigation

MSD looking for other ways to reduce sewer backups:

- Operational controls (currently pilot testing)
- Muddy Creek project using FEMA grant funds to purchase and demolish properties built in a former drainage area
- SBU Mitigation Toolbox

The **vast majority (85%)** of sewer backups investigated by MSD are caused by **private property issues or overland flooding**

- Clogs, blockages, and breaks in private building sewers, and from foundation drains, or internal plumbing

What can you do?

- Regular inspections of your private building sewer
- Learn what **NOT** to flush
- Landscape with care
- Consider purchasing private building sewer insurance



What about flooding?

- Flooding and sewer backups are different!
- Flooding occurs when rainwater travels along the ground or streets and enters buildings through recessed driveways, cracks in foundation walls or gaps in windows/doors
 - Exacerbated by:
 - Development in former drainage basins
 - Impervious pavement
 - Blocked storm drains in streets, blocked gutters and downspouts
 - And lots of rain
- MSD has no jurisdiction over flooding



Customer Assistance Program

Customer Assistance Program

The Customer Assistance Program (CAP) was established to assist eligible low-income senior citizens pay their sewer bills.

Approved eligible customers will receive a 25% discount on their sewer charges (including both the minimum base charge and the commodity charge). Eligibility:

- 65 years of age or older
- Own and live in the residence for which they are paying the MSD sewer bill-sewer bill should be in the applicant's name
- Modified Adjusted Gross Income (MAGI) of no more than \$34,200 for 2021 (combined income of the applicant and their spouse).

In the two years since inception, MSD has enrolled 2,650 customers in the program.

- Statutory change required to expand CAP customer classification below age 65



MSD Revenue & Rates

MSD Rates

MSD charges users to cover its costs:

- Operation and maintenance of MSD assets
- Operating costs associated with required activities such as treatment chemicals, equipment, laboratory, permitting, vehicles, equipment, IT systems, etc.
- Funding of the capital program, including debt service on outstanding bonds and loans, and cash financed capital
- MSD is a not-for-profit entity: budget is “break even” (i.e., revenues = expenses)
- MSD cannot charge for activities MSD is not responsible for conducting; MSD funds are restricted funds
 - Sanitary and combined sewer system
 - National Pollutant Discharge Elimination System (NPDES)
 - CSO/SSO Consent Decree

MSD Rate Structure

Minimum Charge

- Water meter size
- Includes 3 CCF of Volume



Volume Charge

- \$/CCF for volume above 3 CCF of water
- 1 CCF = 100 cubic feet = 748 gallons

No Rate Increase since 2015

- CPI has risen 16% since 2015
- The average user pays \$610/year based on average water usage
- More assets to maintain and more needs to cover to keep things operational
- MSD is evaluating enhancements to its rate structure

Minimum Base Charges for Residential, Commercial, and Industrial Customers

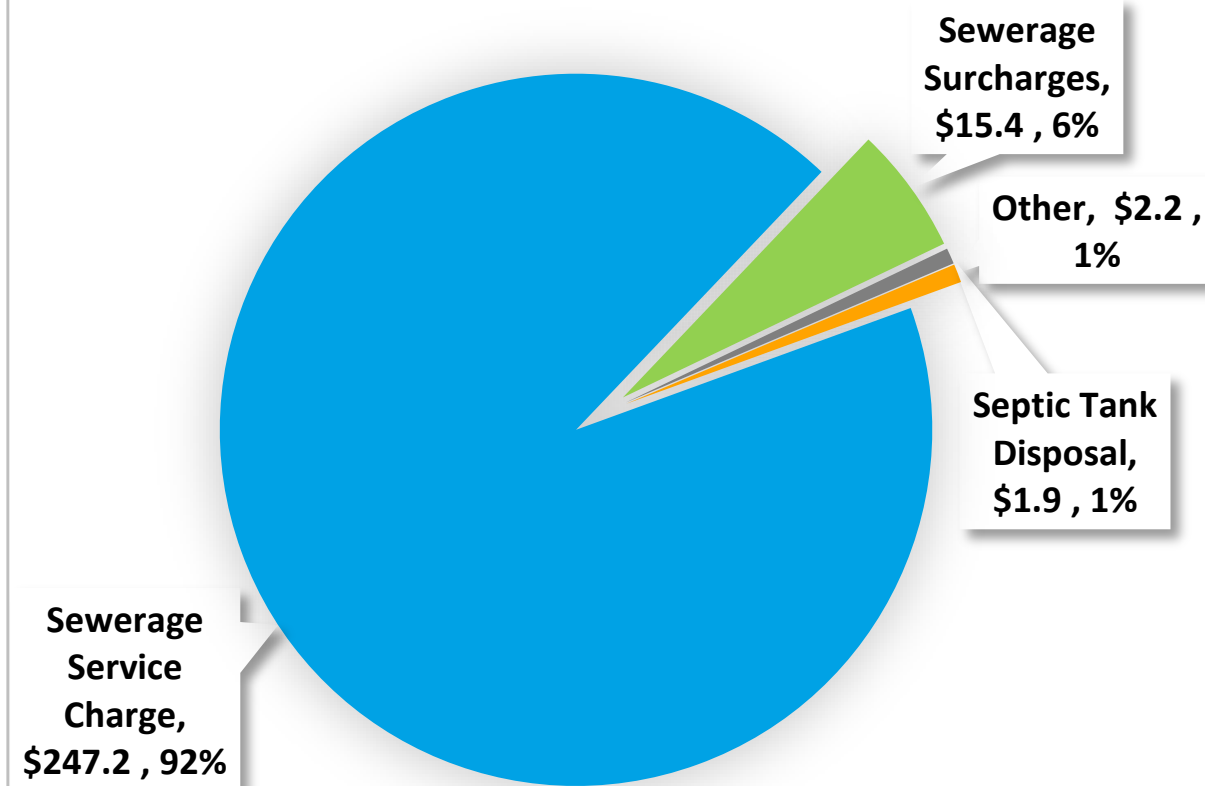
| Meter Size (Inches) | Monthly Bills (\$) | Monthly Bills - 25% CAP Discount (\$) |
|---------------------|--------------------|---------------------------------------|
| 5/8 | 39.12 | 29.34 |
| 3/4 | 50.44 | 37.83 |
| 1 | 69.15 | 51.86 |
| 1 1/2 | 117.50 | 88.13 |
| 2 | 166.44 | 124.83 |
| 3 | 427.16 | 320.37 |
| 4 | 707.43 | 530.57 |
| 6 | 1397.72 | 1048.29 |
| | | 1564.19 |

Commodity Charges for Residential, Commercial, and Industrial Customers³

| Monthly Water Usage | Sewer Rate (\$) | Sewer Rate - 25% CAP Discount (\$) |
|----------------------------------|-------------------------------------|--|
| Up to 3 CCF | Included in the minimum base charge | Included in the discounted minimum base charge |
| Greater than 3 CCF, up to 50 CCF | \$5.879 per CCF | \$4.409 per CCF |
| More than 50 CCF | \$4.701 per CCF | \$3.526 per CCF |

Projected Revenue

Projected 2022 Operating Revenues (\$million)



Sewerage Service Charge:

Applies to all customers – residential, commercial, industrial – based on water consumption

Sewerage Surcharges:

Commercial and industrial customers may be charged additional fees to cover costs associated with their discharges, including:

- Surcharge rates
- Industrial pretreatment charges



Ask MSD about...

COVID Wastewater Sampling

Smart Sewer System

Rate Restructuring

Updated Detention Rules

Sustainability

It's All About Clean Water

MSD collects, treats, and manages wastewater from Greater Cincinnati communities, protecting the environment and public health by returning clean water to local rivers and streams.



March 21, 2022

To: Budget and Finance Committee 202200726

From: John P. Curp, Interim City Manager

Subject: Presentation – Department of Economic Inclusion (DEI): FY 2023 Budget Update

Attached is the Department of Economic Inclusion’s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 21, 2022.

cc: William “Billy” Weber, Assistant City Manager
Andrew Dudas, Budget Director



Department of Economic Inclusion Budget Presentation

Budget & Finance Committee

March 21, 2022

Economic Inclusion Department Purpose

The mission of the Department of Economic Inclusion (DEI) is to ensure economic opportunity and inclusion for all citizens seeking to do business with the City of Cincinnati and serve as a catalyst for the growth of minority- and women-owned businesses in the City and throughout the region.

Department of Economic Inclusion Operations

- Economic Inclusion Division – Oversees the MBE/WBE/MWBE/SBE/ELBE/SLBE certification programs.
- Contract Compliance Division – Administers, enforces and monitors the Equal Employment Opportunity (EEO) Program, the Living Wage Program, Local, State & Federal Prevailing Wage Laws, Wage Enforcement and the Responsible Bidder Program.

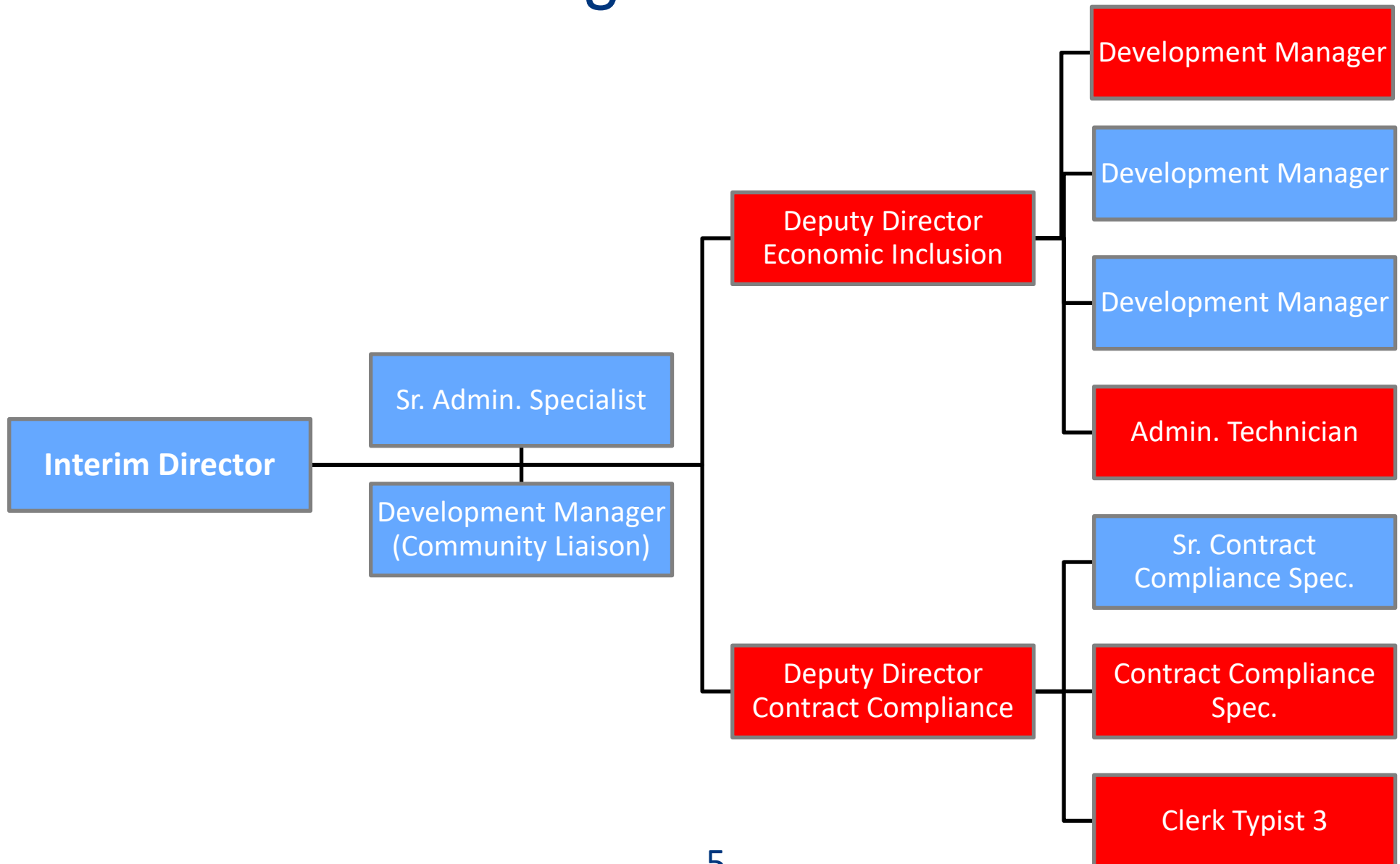
DEI staff members work on certification, wage and economic inclusion compliance monitoring.

Department of Economic Inclusion

FY 2022 Key Performance Indicators

- Disparity Study – Weekly meetings are conducted between the consultant, Griffin and Strong, and DEI. The timetable for completion is being met. Final Report ready by end of calendar year.
- Streamline Certification Renewal Processing – Goal of reducing certification of MBE and WBE renewal applications to 90 days. As of October 2021, the oldest certification application was at 540 days. It is now down to 120 days.

Economic Inclusion Table of Organization



Economic Inclusion Department Budget History

General Fund Operating Budget FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|-------------------------------|---------------------|-------------------|-------------------|---------------------|---------------------|
| Personnel Compensation | 669,853.00 | 657,020.00 | 681,244.00 | 523,280.00 | 693,580.00 |
| Fringe Benefits | 219,822.00 | 229,100.00 | 197,466.00 | 140,540.00 | 204,620.00 |
| Non-Personnel Expenses | 229,203.00 | 83,770.00 | 87,620.00 | 3,626,327.00 | 148,120.00 |
| Total | 1,118,878.00 | 969,890.00 | 966,330.00 | 4,290,147.00 | 1,046,320.00 |

Note: FY 2021 included various leveraged support items which were moved to the City Manager's Office for FY 2022.

Economic Inclusion Department Budget History

Income Tax-Infrastructure Fund Operating Budget
FY 2018 – FY 2022

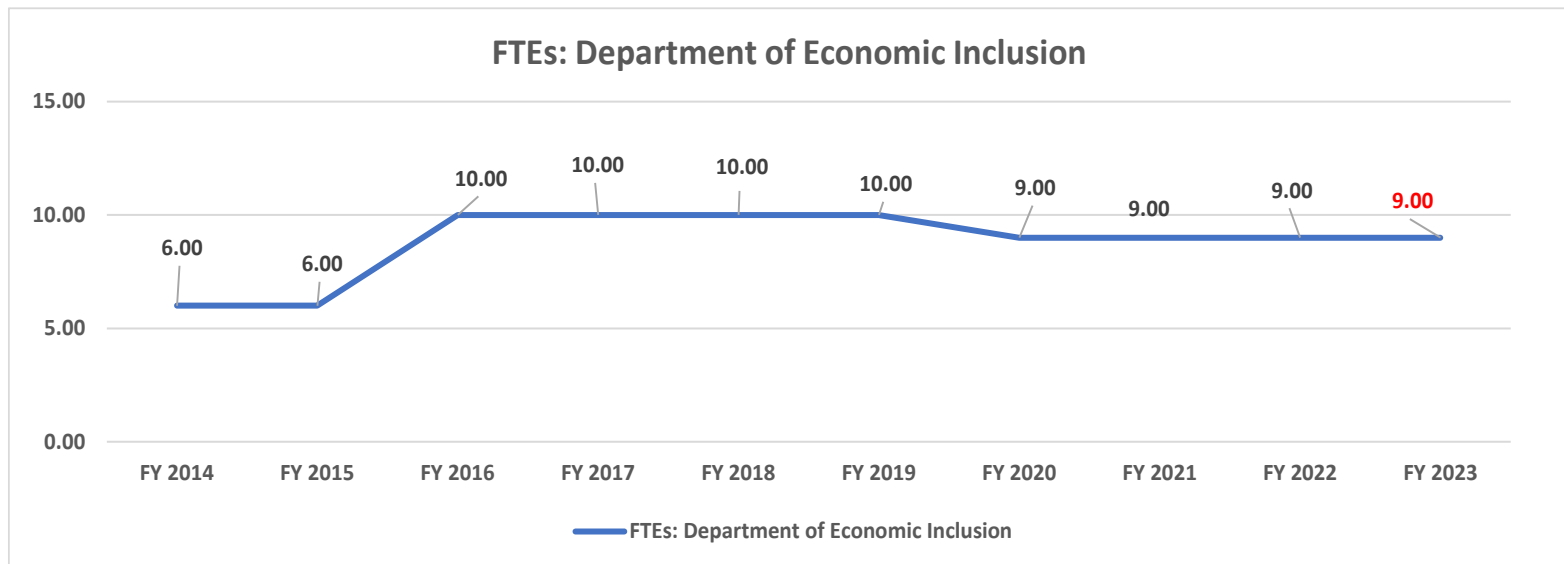
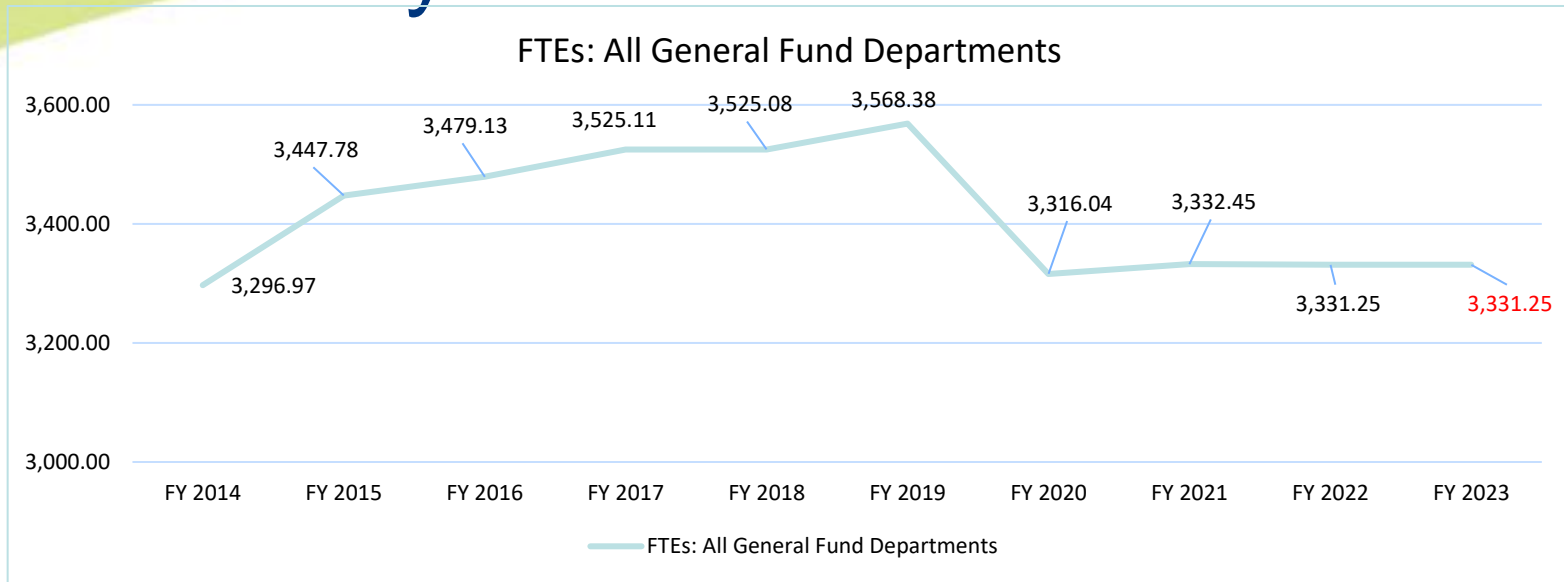
| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Personnel Compensation | 229,030.00 | 236,350.00 | 256,600.00 | 246,280.00 | 218,600.00 |
| Fringe Benefits | 72,260.00 | 79,020.00 | 88,640.00 | 77,710.00 | 84,860.00 |
| Non-Personnel Expenses | 12,990.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Total | 314,280.00 | 315,370.00 | 345,240.00 | 323,990.00 | 303,460.00 |

Economic Inclusion Department FTE History

All Funds Operating Budget
FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|
| 050 General Fund | 10.00 | 10.00 | 9.00 | 9.00 | 9.00 |
| 302 Income Tax - Infrastructure Fund | 2.00 | 2.00 | 3.00 | 3.00 | 3.00 |
| Total | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

General Fund and Economic Inclusion FTE History: FY 2014 – FY 2023



*The Department of Economic Inclusion was established in the FY 2016 – 2017 Biennial Budget. The FTEs from FY 2014 and FY 2015 reflect the Contract Compliance FTEs under CMO.

Department of Economic Inclusion Budget History

- The General Fund Budget increased in FY 2021 due to several one-time expenses in the Department. These items were removed or transferred for FY 2022.
- \$3,099,717 for leveraged support contracts were assigned to DEI in FY 2021. These contracts were transferred to other departments in FY 2022.
- The contract to conduct the Disparity Study was budgeted at \$450,000 in FY 2021 as a one-time expense.

Department of Economic Inclusion Significant Budget Issues – Staffing

- More than 60% of DEI's employees were placed on Temporary Emergency Leave (TEL) in 2020 due to the Covid-19 pandemic.
- Only 6 of 12 positions on TO are currently filled (50% vacancy).
- The Director's position has been filled on an interim basis for multiple years.
- Both Deputy Director positions are currently vacant.
- One administrative position has been held vacant for a full year and another for a half year.

Economic Inclusion Significant Issues Staffing (continued)

Expansion of Responsibilities

- 74 open development projects are being monitored for inclusion, prevailing wage.
- Wage enforcement responsibilities, including development projects not otherwise subject to monitoring.
- Bid and RFP inclusion reviews expanded to include projects with aspirational SBE goals.
- Responsible bidder bid reviews.

Economic Inclusion Significant Issues Staffing (Continued)

- There are 493 open contracts (more than \$500M) monitored for inclusion.
- There are 257 open contracts (more than \$483M) monitored for prevailing wage (Federal, State and Local prevailing wage).
- 121 contracts subject to wage enforcement only.
- 123 bid and RFP inclusion review and 19 responsible bidder review.
- 340 prevailing wage determination in CY 2021.
- 184 Certification Applications received in CY 2021
- 190 Contracts Reviewed for MBE/WBE Goals
- 75 EEO Forms Reviewed and Processed
- Project Management of Disparity Study

QUESTIONS?

March 21, 2022

To: Budget and Finance Committee 202200727
From: John P. Curp, Interim City Manager
Subject: Presentation – Cincinnati Parks Department: FY 2023 Budget Update

Attached is the Cincinnati Parks Department’s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on March 21, 2022.

cc: William “Billy” Weber, Assistant City Manager
Andrew Dudas, Budget Director



Department of Parks Budget Presentation

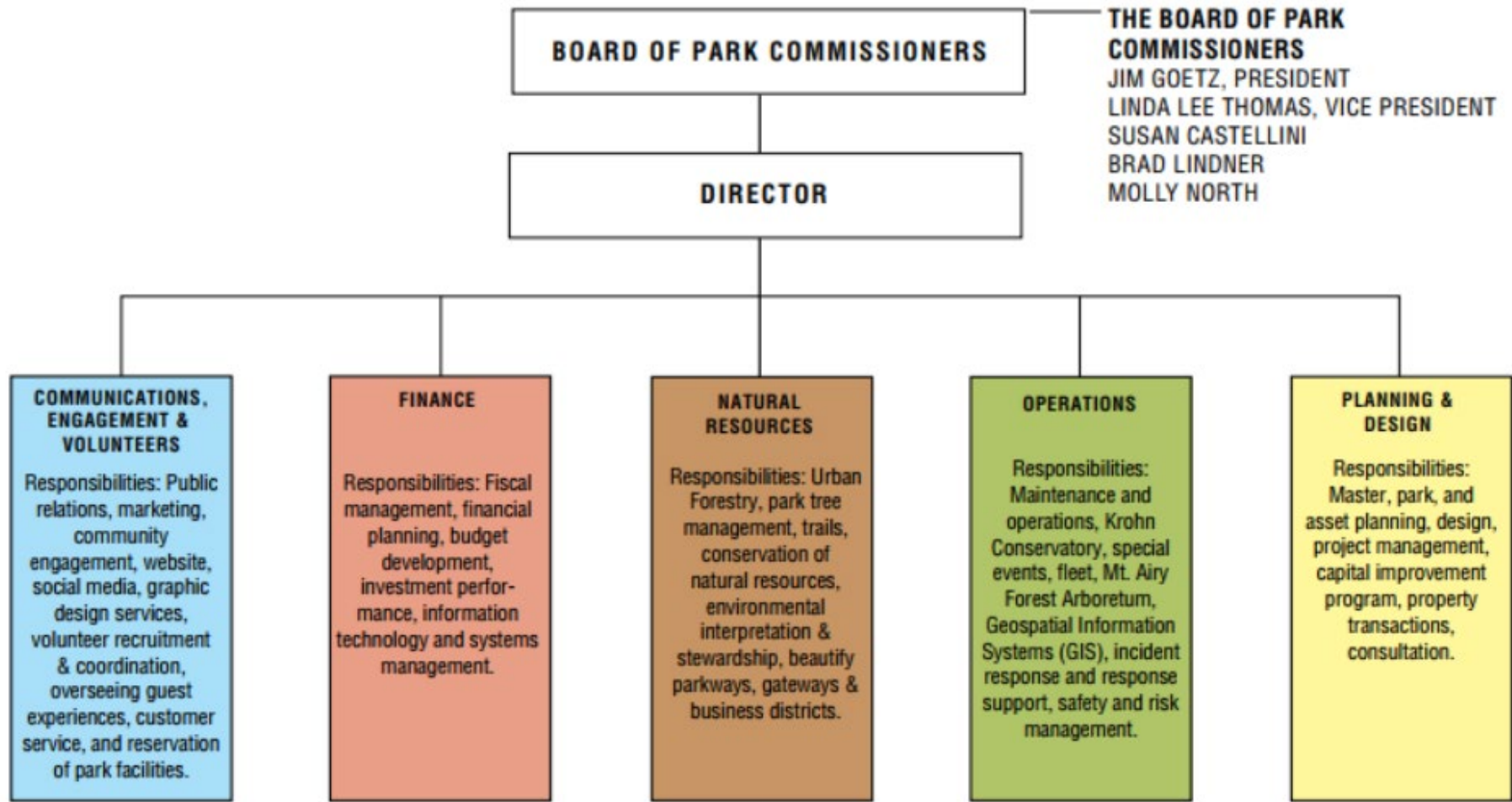
Budget & Finance Committee

March 21, 2022

Parks Department Purpose

The mission of the Department of Parks is to conserve, manage, sustain, and enhance parks' natural and cultural resources and public green spaces for the enjoyment, enlightenment, and enrichment of the Cincinnati community.

Parks Organization Chart



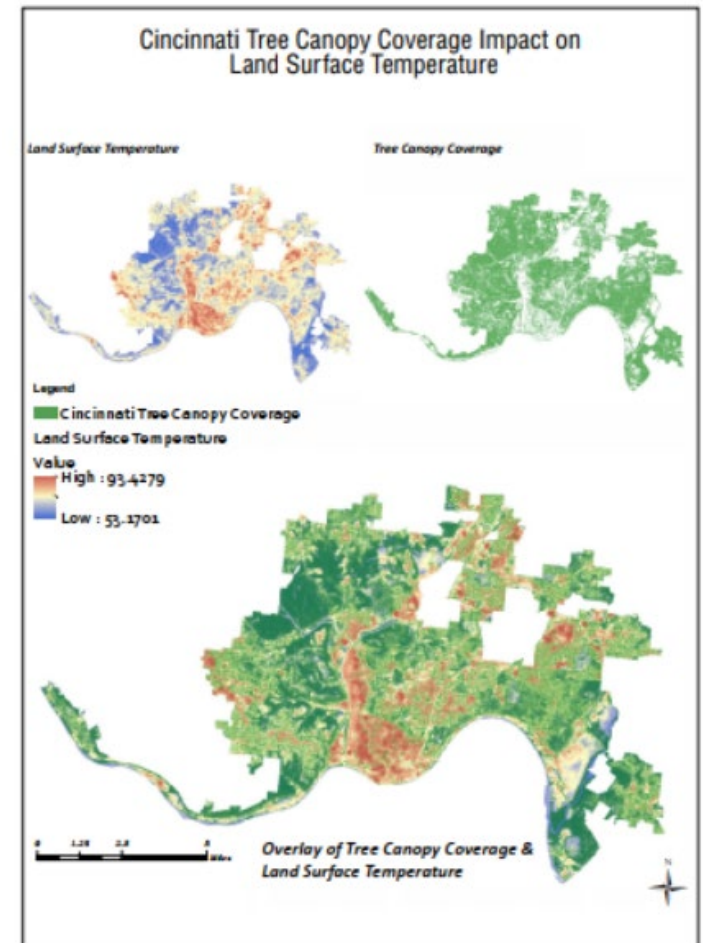
Parks Department Operations

- Division of Park Operations
 - Division comprising over Operations, Facilities, Krohn Conservatory, Special Events, and GIS Mapping.



Parks Department Operations

- Division of Natural Resources
- Division of Natural Resources is responsible for urban forestry, land management, conservation, trails, greenspace, and Explore Nature.



Parks Department Operations

- Division of Planning & Design
 - Division maintains 130 park structures, plans and designs new and enhanced parks, plans infrastructure and landscape projects, and provides support for special projects.



Parks Department

FY 2022 Key Performance Indicators

- Parks ReLeaf Program
 - Distribute 1,700 trees to the community FY 2022. The ReLeaf Program was completed on November 30, 2021, in partnership with the Cincinnati Parks Foundation and MadTree Brewing.
- Comprehensive Trail Signage Plan
 - Parks' 65 miles of hiking trails lack consistent, clear, directional and interpretive signage. This project would seek to complete design, location identification, fabrication and start installation by June 30, 2022.

Parks Department Budget History

General Fund Operating Budget
FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|------------------------|------------------|------------------|------------------|------------------|------------------|
| Personnel Compensation | 4,696,360 | 4,593,380 | 4,403,010 | 3,741,550 | 4,281,630 |
| Fringe Benefits | 1,472,724 | 1,329,410 | 1,479,570 | 1,298,800 | 1,592,910 |
| Non-Personnel Expenses | 2,944,540 | 2,961,540 | 3,187,670 | 3,233,530 | 3,330,180 |
| Total | 9,113,624 | 8,884,330 | 9,070,250 | 8,273,880 | 9,204,720 |

Parks Department Budget History

Restricted Funds Operating Budget FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|---|------------------|------------------|------------------|------------------|------------------|
| Stormwater Management Fund 107 | 883,920 | 2,994,230 | 1,939,390 | 1,934,860 | 1,935,020 |
| Street Construction Maintenance & Repair Fund 301 | 376,110 | 384,120 | 392,120 | 395,240 | 404,090 |
| Income Tax-Infrastructure Fund 302 | 1,829,053 | 1,864,360 | 1,827,460 | 1,602,580 | 1,707,970 |
| Sawyer Point Fund 318 | 1,642,900 | 1,668,480 | 1,510,300 | 1,490,820 | 1,106,920 |
| Cincinnati Riverfront Park Fund 329 | 489,475 | 913,930 | 992,410 | 997,840 | 1,526,430 |
| Income Tax-Transit Fund 759 | 30,070 | 30,670 | 30,980 | 31,300 | 0 |
| Total FTE | 5,251,528 | 7,855,790 | 6,692,660 | 6,452,640 | 6,680,430 |

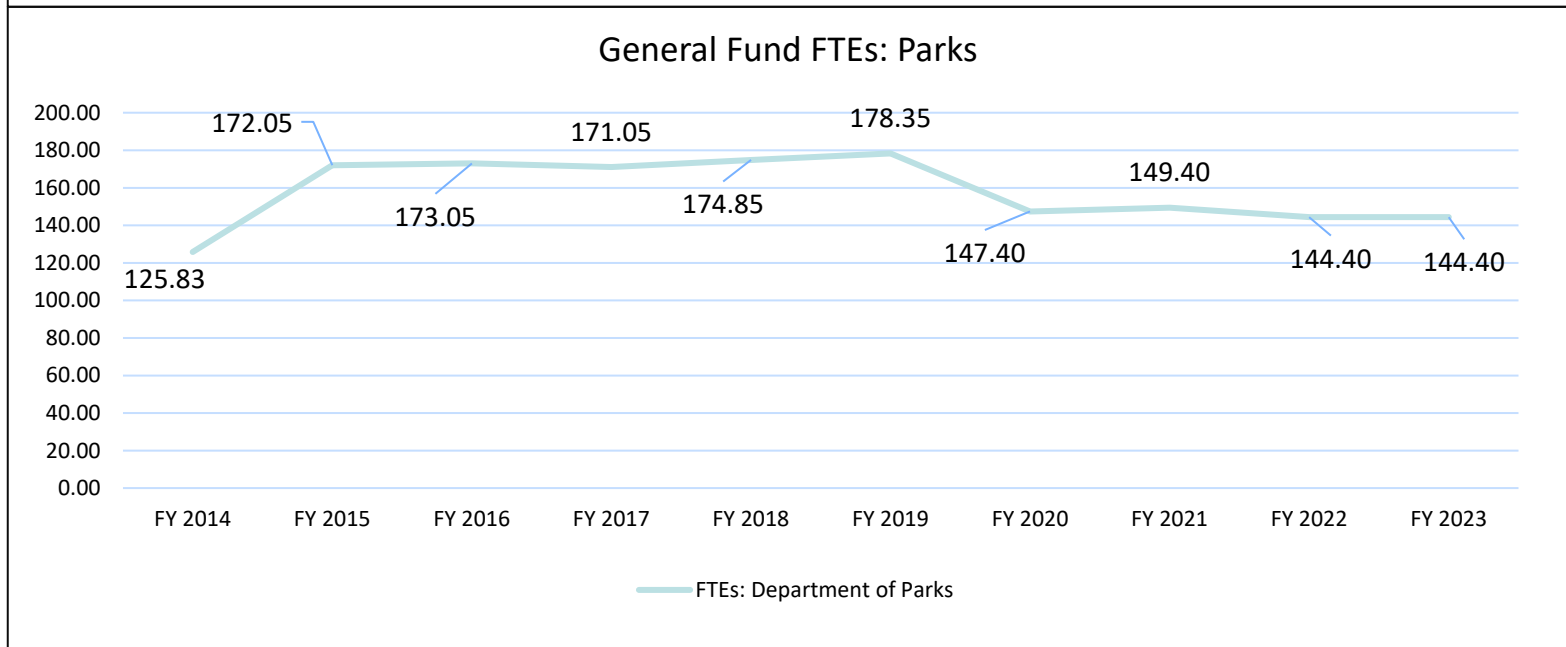
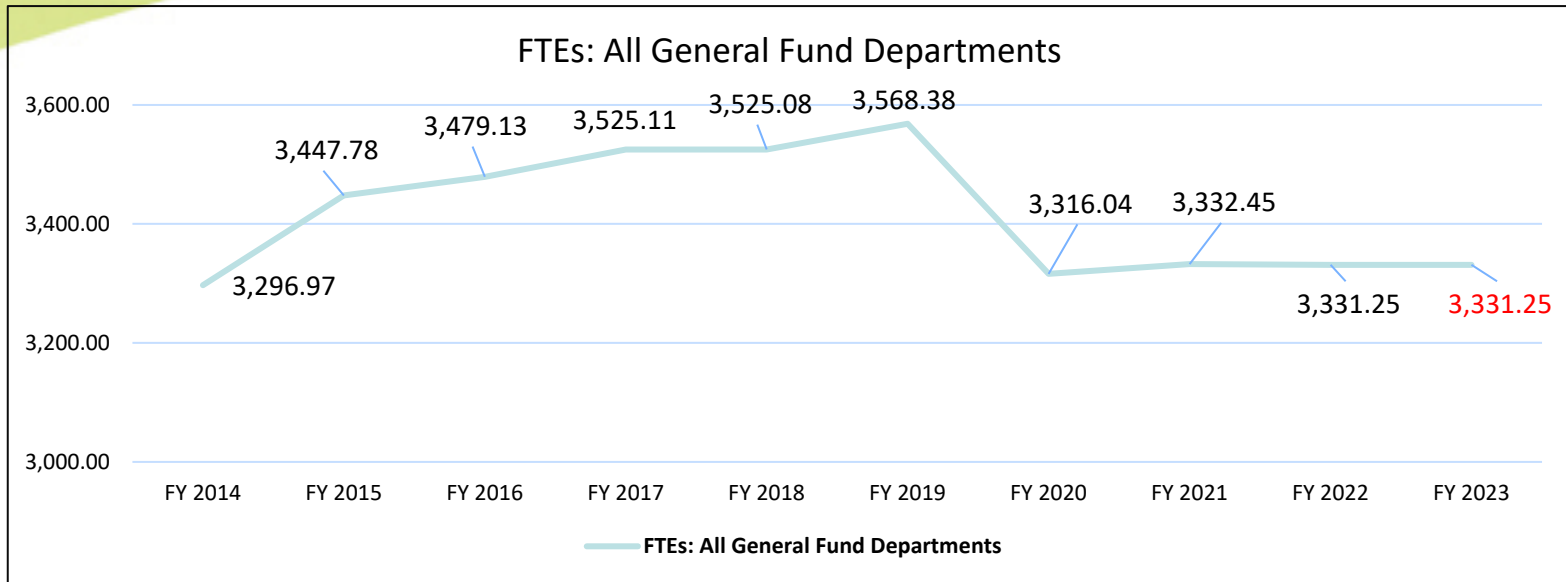
As of FY 2022, Income Tax-Transit Fund 759 has no expenditures and will be eliminated. Expenses previously budgeted in Fund 759 have since been transferred to other funds.

Parks Department FTE History

All Funds Operating Budget
FY 2018 – FY 2022

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|---|----------------|----------------|----------------|----------------|----------------|
| General Fund 050 | 174.85 | 178.35 | 147.40 | 149.40 | 144.40 |
| Street Construction Maintenance & Repair Fund 301 | 5.00 | 5.00 | 5.00 | 5.00 | 6.00 |
| Income Tax-Infrastructure Fund 302 | 39.60 | 39.60 | 38.60 | 37.60 | 35.60 |
| Sawyer Point Fund 318 | 4.00 | 4.00 | 5.00 | 5.00 | 5.00 |
| Cincinnati Riverfront Park Fund 329 | 2.00 | 2.00 | 3.00 | 0.00 | 1.00 |
| Total FTE | 225.45 | 228.95 | 199.00 | 197.00 | 192.00 |

General Fund and Parks FTE History: FY 2014 – FY 2023



Parks Department

Significant Budget Issues – Operating

- The Parks Department has experienced a stagnant General Fund budget since FY 2016. The result of the stagnant budget caused the Parks Board to reduce staffing by 16 FTEs across all funds.
- For FY 2023, General Fund departments are being asked to submit a 15% General Fund budget reduction scenario. To meet the reduction amount, Parks proposes to hold 7 FTEs vacant in FY 2023 and eliminate 40 Part-Time positions which will cause a significant decrease in services to numerous parks.

| | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|--|--------------|--------------|--------------|--------------|--------------|----------------|----------------|
| General Fund Budget | \$ 9,114,590 | \$ 8,738,500 | \$ 9,113,624 | \$ 8,884,330 | \$ 9,070,250 | \$ 8,273,880 | \$ 9,204,720 |
| <i>US Inflation Rate</i> | | 2.1% | 2.4% | 1.8% | 1.2% | 7.0% | 7.5% |
| Adjusted General Fund Budget using FY16 with Inflation | \$ 9,114,590 | \$ 9,309,642 | \$ 9,536,797 | \$ 9,709,414 | \$ 9,825,926 | \$ 10,513,741 | \$ 11,302,272 |
| GF versus Adjusted GF | \$ - | \$ (571,142) | \$ (423,173) | \$ (825,084) | \$ (755,676) | \$ (2,239,861) | \$ (2,097,552) |

Inflation Rate based on the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI).

Parks Department

Significant Budget Issues – Capital

- The Parks Department has experienced disinvestment in the Park Infrastructure Rehabilitation annual allocation project in the capital budget since FY 2016.

| | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|--------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Capital Budget | \$ 2,300,000 | \$ 2,560,800 | \$ 1,666,000 | \$ 2,077,001 | \$ 2,009,000 | \$ 2,001,000 | \$ 2,055,000 |
| <i>Year over Year variance</i> | | \$ 260,800 | \$ (894,800) | \$ 411,001 | \$ (68,001) | \$ (8,000) | \$ 54,000 |

**\$890K of Capital is used to pay Planning & Design Division Salaries

- Infrastructure Study conducted by Brandstetter Carroll, Inc. found \$15.5 million of Parks assets are in Poor condition and \$33.7 million are in Fair condition.
- In 2020, the Departments of Parks and Recreation ranked 66th out of 99 for capital investment per acre as compared to other cities' Parks and Recreation Departments in the USA.*
- The Departments of Parks and Recreation ranks 11th out of 15 as compared to other cities with similar acres of park land.

Parks Department Infrastructure Deterioration

California Woods Road



Parks Department Infrastructure Deterioration

Mt Airy Forest



Parks Department Infrastructure Deterioration Inwood Park



Parks Department Infrastructure Deterioration

Eden Park Guardrail and Retaining Wall



Parks Department Infrastructure Deterioration

Eden Park Melan Arch Bridge Retaining Wall



Parks Department Infrastructure Deterioration

Ault Park Pavilion



Parks Department Funding Request

- Enable funding of Planning & Design salaries outside of Capital Dollars
 - \$800k
- Fund 10% of the Fair & Poor Priorities
 - \$4.9 million annually

QUESTIONS?