



City of Cincinnati

801 Plum Street
Cincinnati, Ohio 45202

CALENDAR

Cincinnati City Council

Wednesday, December 7, 2022

2:00 PM

Council Chambers, Room 300

ROLL CALL

PRAYER AND PLEDGE OF ALLEGIANCE

FILING OF THE JOURNAL

MAYOR AFTAB

Internal Audit Committee

1. [202202133](#) **REAPPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby reappoint Vale Croxton to the Republican-affiliated seat at the Internal Audit Committee for a term of two years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/White)

Recommendation CONFIRM

Sponsors: Mayor

2. [202202134](#) **REAPPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby reappoint Melissa Walton-Jones to the Democratic-affiliated seat at the Internal Audit Committee for a term of two years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Female/African American)

Recommendation CONFIRM

Sponsors: Mayor

FC Cincinnati Community Coalition

3. [202202171](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint John Walter to the FC Cincinnati Community Coalition, having been submitted to my office as the Over-the-Rhine Community Council Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/White)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

4. [202202175](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Nick Johnson to the FC Cincinnati Community Coalition, having been submitted to my office as the West End Youth Sports Programs Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/African American)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

5. [202202182](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Matt King to the FC Cincinnati Community Coalition, having been submitted to my office as the West End Business Association Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/White)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

6. [202202186](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Alexis Kidd to the FC Cincinnati Community Coalition, having been submitted to my office as the Seven Hills Neighborhood Houses Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Female/African American)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

7. [202202190](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Greg Johnson to the FC Cincinnati Community Coalition, having been submitted to my office as the CMHA Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/African American)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

8. [202202198](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Mike Moroski to the FC Cincinnati Community Coalition, having been submitted to my office as the CPS School Board Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/White)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

9. [202202202](#) **APPOINTMENT**, submitted by Mayor Aftab Pureval, I hereby appoint Pastor Nick Burnett to the FC Cincinnati Community Coalition, having been submitted to my office as the Faith Alliance of the West End Representative, for a term of three years. This appointment is submitted to City Council for its advice and consent pursuant to its Rules. (Male/African American)

Recommendation HOLD ONE WEEK PURSUANT TO THE RULES OF COUNCIL

Sponsors: Mayor

CITY MANAGER

10. [202202136](#) **REPORT**, dated 12/7/2022 submitted by Sheryl M. M. Long, City Manager, on

a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for Pilgrims Rest LTD, DBA Binskis Bar, 2872 Colerain Avenue. (#6929763, D5J, New) [Objections: Yes]

Recommendation FILE

Sponsors: City Manager

11. [202202137](#) **REPORT**, dated 12/8/2022 submitted by Sheryl M. M. Long, City Manager, on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for Short Vine 2023 LLC, DBA El Vaquero Mexican Restaurant, 2845 Short Vine Street. (#8108922, D5J, New) [Objections: Yes]

Recommendation FILE

Sponsors: City Manager

12. [202202138](#) **REPORT**, dated 12/7/2022 submitted by Sheryl M. M. Long, City Manager, on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for Corporation For Findlay Market, 1801 Race Street - Breezeway-Farmers Market Shed-North Parking Lot-135-100 Elder Street between Race & Elm Streets. (#17512670005, F8, Temporary) [Objections: None]

Recommendation FILE

Sponsors: City Manager

13. [202202139](#) **REPORT**, dated 12/7/2022, submitted Sheryl M. M. Long, City Manager, regarding the Finance and Budget Monitoring Report for the Period Ending September 30, 2022.

Recommendation BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

14. [202202142](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **AUTHORIZING** the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 for the purpose of providing resources to assist with redevelopment of four historic buildings in the Over-the-Rhine neighborhood of Cincinnati into a mixed use development; and **DECLARING** that expenditures from the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 to be for a public purpose. (Subject to the [Temporary Prohibition List](#) <<https://www.cincinnati-oh.gov/law/ethics/city-business>>)

Recommendation

BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

15. [202202143](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **ESTABLISHING** capital improvement program project account no. 980x233x232355, "Queensgate SORTA Easement Improvements," for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated

right-of-way formerly known as McClean Street, adjacent to the Southwest Ohio Regional Transit Authority ("SORTA") facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements; AUTHORIZING the transfer and appropriation of \$1,500,000 from the unappropriated surplus of Income Tax-Transit Fund 759 to newly created capital improvement program project account no. 980x233x232355, "Queensgate SORTA Easement Improvements"; and further AUTHORIZING the appropriation of \$9,064,004.89 from the unappropriated surplus of Income Tax-Transit Fund 759 to the SORTA non-personnel operating budget account no. 759x081x7200 for the purpose of implementing the provisions of Ordinance No. 0247-2020 that authorized the City Manager to execute an Amendment to the City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 to SORTA.

Recommendation

BUDGET AND FINANCE COMMITTEE

Sponsors:

City Manager

16. [202202144](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **AUTHORIZING** the Director of Finance to increase the fund advance limit of Water Works Stores - Materials Fund 204 ("Fund 204"), from \$5,000,000 to \$6,000,000; and further AUTHORIZING the transfer of \$1,000,000 from the unappropriated surplus of Fund 101, Water Works, to Fund 204 for the purpose of providing Greater Cincinnati Water Works with sufficient funds to purchase parts necessary for the operation and maintenance of the City's water system.

Recommendation BUDGET AND FINANCE COMMITTEE**Sponsors:**

City Manager

17. [202202145](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **AUTHORIZING** the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$613,183.01 from American Rescue Plan grant project account no. 469x101xARP025, "Social Services Operational Grants," for the purpose of realigning sources with actual uses; AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$37,329.87 from American Rescue Plan grant project account no. 469x101xARP038, "Children's Hospital," for the purpose of realigning sources with actual uses; AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$1,700 from American Rescue Plan grant project account no. 469x101xARP071, "Rites of Passage," for the purpose of realigning sources with actual uses; ESTABLISHING new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP400, "Violence Reduction Initiatives," for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; AUTHORIZING the transfer and appropriation of the sum of \$100,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly

established American Rescue Plan grant project account no. 469x101xARP400, "Violence Reduction Initiatives," for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; DECLARING expenditures from American Rescue Plan grant project account no. 469x101xARP400, "Violence Reduction Initiatives," to be for a public purpose; ESTABLISHING new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x222xARP401, "PVO / Downtown Event Deployment," for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; AUTHORIZING the transfer and appropriation of the sum of \$552,212.88 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x222xARP401, "PVO / Downtown Event Deployment," for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; and DECLARING expenditures from American Rescue Plan grant project account no. 469x222xARP401, "PVO / Downtown Event Deployment," to be for a public purpose.

Recommendation BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

18. [202202146](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022. **APPROVING AND AUTHORIZING** the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with Cary Capital, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 2250 East Seymour Avenue in the Bond Hill neighborhood of Cincinnati, in connection with the construction of an approximately 50,000 square foot manufacturing facility, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$10,200,000. (Subject to the [Temporary Prohibition List <https://www.cincinnati-oh.gov/law/ethics/city-business>](https://www.cincinnati-oh.gov/law/ethics/city-business))

Recommendation BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

19. [202202147](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **AUTHORIZING** the transfer and return to source Fund 304, "Community Development Block Grant," the sum of \$4,119,272.70 to close out or decrease certain existing project accounts, according to Section A of the attached Schedule of Transfer; and AUTHORIZING the transfer and appropriation of the sum of \$4,350,000 from the unappropriated surplus of Fund 304, "Community Development Block Grant," to various project accounts, as set forth in Section B of the attached Schedule of Transfer.

Recommendation

BUDGET AND FINANCE COMMITTEE

- Sponsors:** City Manager
20. [202202149](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **ACCEPTING AND CONFIRMING** the dedication to public use of a 0.031-acre tract of real property in Madisonville as a portion of Madison Road public right-of-way for street purposes.
- Recommendation** BUDGET AND FINANCE COMMITTEE
- Sponsors:** City Manager
21. [202202151](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **ESTABLISHING** the salary schedule and classification title for the new employment classification of Executive Assistant Police Chief (Job Code 037) by enacting Section 037 of Division 5, Chapter 307 of the Cincinnati Municipal Code.
- Recommendation** PUBLIC SAFETY & GOVERNANCE COMMITTEE
- Sponsors:** City Manager
22. [202202152](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **AUTHORIZING** the City Manager to execute a Grant of Easement in favor of Cure Properties, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of certain real property commonly known as the Main Street Steps in Mt. Auburn.
- Recommendation** BUDGET AND FINANCE COMMITTEE
- Sponsors:** City Manager
23. [202202153](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **APPROVING AND AUTHORIZING** the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with Lester and Montgomery Apartments, LLC, an affiliate of Towne Properties, Inc., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 5984-5988 Lester Road and 6006-6026 Montgomery Road in the Pleasant Ridge neighborhood of Cincinnati, in connection with the construction of approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$23,000,000. (Subject to the [Temporary Prohibition List <https://www.cincinnati-oh.gov/law/ethics/city-business>](https://www.cincinnati-oh.gov/law/ethics/city-business))
- Recommendation** BUDGET AND FINANCE COMMITTEE
- Sponsors:** City Manager
24. [202202155](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 12/7/2022, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with OTR Holdings, Inc., an affiliate of 3CDC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210-218 W. Twelfth Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of four existing buildings into approximately 21,048 square feet of residential space, consisting of

approximately 29 residential units, and approximately 2,600 square feet of commercial space, at a total construction cost of approximately \$6,864,654. (Subject to the [Temporary Prohibition List](https://www.cincinnati-oh.gov/law/ethics/city-business) <<https://www.cincinnati-oh.gov/law/ethics/city-business>>)

Recommendation BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

CLERK OF COUNCIL

25. [202202141](#) **REGISTRATION**, submitted by the Clerk of Council from Legislative Agent Anna C. Sesler, Government Strategies Group, Director of Public Affairs & Strategy, 700 Walnut Street, Suite 450, Cincinnati, Ohio 45202. (METRO)

Recommendation FILE

Sponsors: Clerk of Council

26. [202202156](#) **REGISTRATION**, submitted by the Clerk of Council from Legislative Agent Mary Huttlinger, Government Affairs, Director, 14 Knollcrest Drive, Cincinnati, Ohio 45237. (REALTOR ALLIANCE OF GREATER CINCINNATI)

Recommendation FILE

Sponsors: Clerk of Council

BUDGET AND FINANCE COMMITTEE

27. [202202112](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the City Manager to execute an Amended and Restated Water Service Agreement between the City of Cincinnati and the Village of Addyston, Ohio.

Recommendation PASS EMERGENCY

Sponsors: City Manager

28. [202202113](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the City Manager to execute an Amended and Restated Water Service Agreement between the City of Cincinnati and the City of Reading, Ohio.

Recommendation PASS EMERGENCY

Sponsors: City Manager

29. [202202114](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the City Manager to accept and appropriate grant funds from the Ohio Environmental Protection Agency in the amount of up to \$50,000 to Water Works non-personnel operating budget account no. 101x301x7200, for the purpose of reimbursing the costs incurred by the Greater Cincinnati Water Works in identifying, inventorying, and mapping lead service lines; and **AUTHORIZING** the Finance Director to deposit any such grant funds received into Fund No. 101 "Water Works," revenue account no. 101x8527.

Recommendation PASS

Sponsors: City Manager

30. [202202115](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the City Manager accept and appropriate a donation in an amount of \$40,085 from the Cincinnati Recreation Foundation for the purpose of providing funding support to the Cincinnati Recreation Commission National Junior Tennis program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Fund 319, "Contributions for Recreation Purposes," revenue account 319x8571.

Recommendation PASS EMERGENCY

Sponsors: City Manager

31. [202202116](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **ESTABLISHING** new capital improvement program project account nos. 980x232x232351, "Central & 8th Traffic Calming - Grant," for the purpose of providing Ohio Department of Transportation ("ODOT") grant resources for right of way improvements for traffic calming on Central Avenue at 8th Street; 980x232x232352, "Harrison & Ruehlman Traffic Calming - Grant," for the purpose of providing ODOT grant resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; and 980x232x232353, "Harrison & Ruehlman Traffic Calming - TIF," for the purpose of providing tax increment financing resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the City Manager to accept a Highway Safety Improvement Program Systemic Safety grant (ALN 20.205) in an amount of up to \$600,000 from ODOT, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232351, "Central & 8th Traffic Calming - Grant," for the purpose of implementing right of way improvements for traffic calming on Central Avenue at 8th Street, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232352, "Harrison & Ruehlman Traffic Calming - Grant," for the purpose of implementing right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the transfer and appropriation of the sum of \$90,000 from the unappropriated surplus of Westwood 1 Equivalent Fund 496 to newly established capital improvement program project account no. 980x232x232353, "Harrison & Ruehlman Traffic Calming - TIF; and **DECLARING** expenditures from capital improvement program project account no. 980x232x232353, "Harrison & Ruehlman Traffic Calming - TIF," to be for a public purpose because the project will improve pedestrian safety in the Westwood neighborhood.

Recommendation
PASS EMERGENCY

Sponsors: City Manager

32. [202202121](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022,

AUTHORIZING the establishment of capital improvement program project account nos. 980x233x232372, "Western Hills Viaduct OKI STBG Grant 2021," 980x233x232373, "Western Hills Viaduct TRAC Grant 2021," 980x233x232374, "Western Hills Viaduct Federal Earmark 2022," and 980x233x232375, "Western Hills Viaduct INFRA Grant 2022"; **AUTHORIZING** the City Manager to accept and appropriate an Ohio-Kentucky-Indiana Surface Transportation Block Grant (ALN 20.205) in an amount up to \$1,000,000 for the purpose of providing resources for the demolition and construction of the Western Hills Viaduct (the "Western Hills Viaduct Project"); **AUTHORIZING** the City Manager to accept and appropriate a Transportation Review Advisory Council Grant (ALN 20.205) in an amount up to \$25,000,000 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate an amount up to \$1,000,000 in federal funding earmarked in the Consolidation Appropriations Act of 2022 for Highway Infrastructure Programs (ALN 20.205) for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate a Nationally Significant Freight and Highway Projects grant (ALN 20.934) in an amount up to \$127,115,954 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the Finance Director to deposit a total sum of up to \$154,115,954 (the "Funds") to the various newly established capital improvement program project accounts set forth in the attached Schedule of Appropriation; and **AUTHORIZING** the City Manager to enter into any agreements necessary to accept the Funds.

Recommendation PASS

Sponsors: City Manager

33. [202202088](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **ESTABLISHING** new capital improvement program project account no. 980x164x231628, "Race & Vine Street Two-Way Conversion - TIF," for the purpose of providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets in the downtown neighborhood; **AUTHORIZING** the transfer and appropriation of the sum of \$81,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200; and **AUTHORIZING** the transfer and appropriation of the sum of \$122,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the new capital improvement program project account no. 980x164x231628, "Race & Vine Street Two-Way Conversion - TIF," all for the purpose of providing resources for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

Recommendation

PASS

Sponsors: City Manager

34. [202202120](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the transfer and appropriation of the sum of \$2,900,000 from the unappropriated surplus of Downtown OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 providing resources for implementing a make-safe plan including hard construction costs and related soft costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati; and **DECLARING** that expenditures from Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 to be a public purpose. (Subject to the [Temporary Prohibition List <https://www.cincinnati-oh.gov/law/ethics/city-business>](#))

Recommendation PASS

Sponsors: City Manager

35. [202202122](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 11/30/2022, **AUTHORIZING** the payments of \$427.76 from Emergency Shelter Fund 445 project account no. 445x162x4452029 and \$3,043.46 from Emergency Shelter Fund 445 project account no. 445x162x4452017, totaling \$3,471.22, as a moral obligation to Champlin Architects, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic; and **AUTHORIZING** the payment of \$5,089.77 from Emergency Shelter Fund 445 project account no. 445x162x4452017 as a moral obligation to Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

Recommendation PASS EMERGENCY

Sponsors: City Manager

ANNOUNCEMENTS

Adjournment



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Nov 2022

REAPPOINTMENT

I hereby reappoint Vale Croxton to the Republican-affiliated seat of the Internal Audit Committee for a term of two years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval

Vale T. Croxton, CPA, CIA

EDUCATION and CERTIFICATIONS

Certified Internal Auditor – Licensed December 2021
Institute of Internal Auditors

Certified Public Accountant - Licensed August 2010
Accountancy Board of Ohio

Master of Accountancy - June 2007
University of Tennessee

Bachelor of Science in Business Administration (Accounting) - May 2006
University of Tennessee

PROFESSIONAL EXPERIENCE

THE KROGER CO., Cincinnati, Ohio

July 2007 - Present

Director - Audit

- Oversee scheduling and staffing of financial and operational audits for 30 associates
- Review and prepare financial and operational audit reports for distribution to executive management and audit committee
- Lead engagements of manufacturing, logistics, retail, accounting, and human resources reviews
- Perform Sarbanes-Oxley testing and documentation of internal controls
- Coordinate with external audit firm in staffing requirements and testing strategies
- Participate in comprehensive financial audits, expanding knowledge of specific areas through performance of audit steps relating to balance sheet accounts and evaluating the accuracy of financial presentation
- Participate in store and warehouse operational audits while examining and aiding in implementation of the company mandated policies and best practices
- Mentor associates and interns by coaching, establishing objectives, and performing evaluations
- Liaison with ten universities for recruiting and presenting to accounting classes
- Involved in interviewing and selection process of full-time and intern candidates
- Participant in FMI Future Connect 2015, Kroger Leadership Summit 2015 and Great People Review Day 2014
- Cultural Council champion and Customer 1st Promise champion

CITY OF CINCINNATI AUDIT COMMITTEE, Cincinnati, Ohio

October 2015 - Present

Chair

- Provide consulting to the city's internal audit department based on industry best practices and experience
- Review internal audit reports and provide recommendations to the City Manager and the Major Projects and Smart Government Committee of City Council

TECHNICAL SKILLS

- SAP Business Objects
- Hyperion Essbase
- Certified Food Safety Manager

COMMUNITY SERVICE

- Preparer for Volunteer Income Tax Assistance Program
- Volunteer for Freestore Foodbank and Giving Fields
- Fundraising volunteer for Big Brothers, Big Sisters



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Nov 2022

REAPPOINTMENT

I hereby reappoint Melissa Walton-Jones to the Democratic-affiliated seat of the Internal Audit Committee for a term of two years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval

MELISSA I. JONES

SUMMARY: Versatile and achievement-oriented executive leader with broad financial, operational, and internal audit experience; across telecommunication, consumer product goods, foods, pharmaceutical, and government industries. Experience across Risk Management, Internal Auditing, Quality Assurance, Control Design/Evaluation, and Process Improvement. Supportive and collaborative business partner who develops meaningful relationships to strengthen the internal control environment. Proven track record of managing complex projects while building high performing teams through effective management of people, processes, and technology. Demonstrated deep understanding of business strategy and risk alignment with functional objectives to promote risk assessment from a strategic and operational perspective. Active mentor and developer of talent through empowerment. Fosters an environment of innovation, execution, collaboration, effective decision making and efficiency across all areas of responsibility and influence. Deeply connected to community, philanthropy, and personal volunteerism; member of several community-based volunteer organizations. Diversity, Equity, and Inclusion (DE&I) Champion.

Work Experience

Lincoln Financial Group

May 2022 – Current

Senior Audit Leadership Team: Vice President, Internal Audit

- Perform risk-based audits to provide reasonable assurance regarding the effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations; present findings to senior management and coordinate remediation activities.
- Assist the Chief Audit Executive in developing the consolidated audit plan, which includes analyzing risk assessment evaluations and compiling results for presentation to the Audit Committee.
- Assist with various special projects such as performing compliance reviews of third-party sale agreements, assessing the accuracy and effectiveness of general ledger conversion activities and development of various continuous auditing initiatives.
- Key role in day-to-day interaction with the company's independent auditing firm to ensure work is completed on a timely basis and that audit requests and procedures are reasonable.
- Responsible for staff and senior auditors' efficiency and effectiveness in performing tests to ensure they conform to the departments audit approach and methodology.

Ohio-Kentucky-Indiana Regional Council of Governments

Apr 2020 – April 2022

Senior Leadership Team: Director of Finance – Cincinnati, OH

Sr. Director responsible for wide-ranging accounting and finance functions, including but not limited to oversight of accounting records, general accounting functions, general ledger, budgeting, and Unified Planning Work Program processes. Also responsible for managing coordination of external audit and oversight of the annual audit; day to day activities of A/P, A/R, Payroll, Inventory, Fixed Assets, General and Cost accounting. This position serves as an advisor to the Executive Director and other members of the senior management team.

Smithfield Foods / Smithfield Farmland / Farmland Foods

April 2015 – April 2020

Financial Controller & Business Administrator (HR & Safety) Promotion Cincinnati, OH April 2018 – April 2020

Smithfield BioScience Business Segment Owner: overall responsibility for cost accounting, inventory control, accounts payable, payroll, billing, and preparation of financial reporting and other control reports. Supervision of the maintenance of manufacturing, inventory, and finished goods ledgers and cost accounting activities. Also responsible for the HR and safety functions, and directing and coordinating office services and related activities, including overall administrative functions.

Manager, ERM & Global Compliance Promotion Smithfield, Virginia

January 2018 – April 2018

Responsible for Enterprise Risk Management, Ethics & Compliance, and Corporate Accounting Compliance; working with the Legal and HR teams in the oversight and coordination of the Company's Ethics & Compliance Program and Company Hot Line; involving investigating and evaluating Compliance & Ethics areas, such as Conflict of Interests, Accounting and Operational Fraud/Irregularities, and Foreign Corrupt Practices Act. Responsible for working with the Company's Business Operations, Accounting, and IT teams to ensure effective coordination of the Company's internal controls over financial

MELISSA I. JONES

reporting; responsible for driving compliance with global SOX programs and coordinating with business process owners and control owners to ensure all SOX requirements are met. Serve as administrator of SOX Management software to include Risk Control Matrices, Process Narratives, control testing, issue evaluation and reporting.

Corp Accounting Compliance Manager Promotion Smithfield, VA August 2016 – December 2017
Previously responsible for assessing the company's compliance with SOX 404 and the key controls framework over financial reporting requirements and compliance across all divisions; compliance member of Controls Design & Security for OneSAP; responsible for design of OneSAP controls framework and systems control configuration; assisting with updating and maintaining accounting policies and procedures; evaluating segregation of duties (SOD) compliance and coordinating external audit activities to ensure efficient interaction and data flow; identifying and implementing finance/accounting department process improvements; coordinating delegation of authority for all business operations for the company's major segment domestic and international divisions.

Accounting Compliance Manager	Kansas City, Missouri	April 2015 – July 2016
Director of Operations & Project Management	Easter Seals Midwest - (Formerly Triality)	Jul 2014 – Apr 2015
Director of Accounting/ Corporate Controller	Triality, Inc. (Promoted/Merger)	Dec 2013 – Jul 2014
Sr. Auditor/ SOX Lead Auditor/ Audit Manager	Compass Minerals	Dec 2006 – Dec 2013
Senior Internal Auditor/ SOX 404 Manager	Inergy Services, LP (Contract Hire)	Apr 2006 – Dec 2006
Sr. Sales Compensation Analyst & Administrator	Sprint Corporation- Business Finance	Oct 2003 – April 2006
Internal Auditor- Corporate Audit Services	Sprint Business Finance	Jul 2001 – Oct 2003
Accounting, Bookkeeping, Payroll & Tax	Crittelle Financial Svc (Working Student)	Sept 1998 – May 2002

Education

University of Missouri – Honors Graduate
Rust College – Honors Graduate

MBA - Master of Business Administration
BSBA - Bachelor of Science in Business Admin/Accounting

Advanced Studies/ Training

Top Gun Executive Leadership Program	<i>Center for Creative Leadership, Greensboro, NC</i>	<i>2016-2017</i>
High Impact Presentations – Public Speaking	<i>Dale Carnegie Training Institute</i>	<i>2017</i>
Executive Leadership Institute	<i>The College of William & Mary, Williamsburg, VA</i>	<i>2016</i>

Certifications

Certified Public Accountant - Candidate	American Institute of Certified Public Accountants
Certified Internal Audit - Practitioner	The Institute of Internal Audit
SIX Sigma Green Belt	Compass Minerals

Professional Memberships

American Institute of CPAs (AICPA)	National Association of Black Accountants (NABA)
Accounting & Financial Women's Alliance (AFWA)	National Society of Black CPAs (NSBCPA)
Institute of Internal Audit (The IIA)	National Black MBA Association (NBMBA)
Information Systems Audit & Control Association (ISACA)	Ohio Society of CPAs (OSCPA)

Honors & Awards

2020 Centennial Dove Award Recipient | 2020 Zeta 100 in Business
2019 – Top Forty Under 40 Nominee– Cincinnati Business Courier | Cincinnati Women's Executive Leadership (WE Lead) Program Class 14 | 2017 - Top 20 Under 40 Young Alumni Award - Rust College | 2017 - Smithfield Leads: Top Gun Leadership Program | 2016 - Smithfield ROI Award Finalist - Operational Excellence
2016 - Smithfield Leadership Institute Program | 2013 - Who's Who in Black Kansas City | 2009 - Regnier Venture Creation Challenge Winner - University of Missouri | Arthur Ashe Athletic Scholar | UNCF Scholar



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint John Walter to the FC Cincinnati Community Coalition, having been submitted to my office as the Over-the-Rhine Community Council Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Nick Johnson to the FC Cincinnati Community Coalition, having been submitted to my office as the West End Youth Sports Programs Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Matt King to the FC Cincinnati Community Coalition, having been submitted to my office as the West End Business Association Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Alexis Kidd to the FC Cincinnati Community Coalition, having been submitted to my office as the Seven Hills Neighborhood Houses Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Greg Johnson to the FC Cincinnati Community Coalition, having been submitted to my office as the CMHA Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL

City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Mike Moroski to the FC Cincinnati Community Coalition, having been submitted to my office as the CPS School Board Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval



AFTAB PUREVAL
City of Cincinnati, Office of the Mayor

Dec 2022

APPOINTMENT

I hereby appoint Pastor Nick Burnett to the FC Cincinnati Community Coalition, having been submitted to my office as the Faith Alliance of the West End Representative, for a term of three years. This appointment is submitted to City Council for its advice & consent pursuant to its Rules.



Mayor Aftab Pureval

Date: December 7, 2022

To: Mayor and Members of City Council
From: Sheryl M. M. Long, City Manager
Subject: **Liquor License – New**

202202136

FINAL RECOMMENDATION REPORT

OBJECTIONS: City of Cincinnati Police Department

This is a report on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for the following:

APPLICATION: 6929763
PERMIT TYPE: NEW
CLASS: D5J
NAME: PILGRIMS REST LTD
DBA: BINSKIS BAR
2872 COLERAIN AVE
CINCINNATI, OH 45225

As of today's date, the Department of Buildings & Inspections provided no comment with their investigation.

On October 14, 2022, Camp Washington Community Council was notified of this application and do not object.



Police Department Approval

David M. Laing, Assistant City Prosecutor
Law Department - Recommendation
Objection No Objection

MUST BE RECEIVED BY OHIO DIVISION OF LIQUOR CONTROL BY: December 9, 2022



Date: November 29, 2022
 To: Lieutenant Colonel Teresa A. Theetge, Interim Police Chief
 From: Police Officer John Wolff, District 5 Violent Crimes Squad

Copies to:

Subject: **RENEWAL, TRANSFER OR ISSUANCE OF LIQUOR LICENSES**

PATROL BUREAU MEMO #: 22-525

DISTRICT INVESTIGATING LIQUOR PERMIT PREMISE: District Five

PERMIT #: 6929763

TYPE OF PERMIT APPLIED FOR: New

PERMIT NAME & ADDRESS:

Name:	Pilgrims Rest LTD
Address:	2872 Colerain Ave

APPLICANTS NAME(S): Kiel Erdelac

INSPECTION / INVESTIGATION INFORMATION:

Officer:	P. O. John Wolff
Date:	11/29/2022
Findings:	Officers attempted to conduct an inspection. The premise is currently under construction. I spoke with the applicant Kiel Erdelac who stated he is attempting to open in January 2023. I advised Mr. Erdelac that when construction is finished an investigation will need to take place before the liquor permit will be granted.

COMMUNITY COUNCIL NOTIFIED:

Name 1: Mimi Rook	Date: 11/29/2022	Notified by: phone
Phone: (513) 250-8315	E-mail: mimicwuf@gmail.com	
Name 2:	Date:	Notified by: (select from menu)
Phone:	E-mail:	

DISPOSITION OF THE COMMUNITY COUNCIL:

NO OBJECTIONS OBJECTION: Attached Letter with Community Council Letterhead

DISPOSITION OF THE DISTRICT:

NO OBJECTIONS OBJECTION: If objection checked, a narrative is required below

REASON FOR OBJECTION:

The premise is currently under construction and an inspection is unable to be completed at this time. The owner was advised that before opening in January 2023 construction will need to be completed and an inspection will need to take place.

JWW JW

[Handwritten signature]

For Objection
-ms/LTC
11/29/22

City of Cincinnati Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

October 12, 2022

OHIO DIVISION OF LIQUOR CONTROL
LICENSING SECTION
NEW PERMIT SECTION
6606 TUSSING ROAD
P O BOX 4005
REYNOLDSBURG, OH 43068-9005

Dear Ohio Division of Liquor Control:

The Council of the City of Cincinnati, State of Ohio, is requesting a 30 day extension on the below cited liquor permit application:

Application No.: 6929763
Permit Type: NEW D5J
Name: PILGRIMS REST LTD
DBA BINSKIS BAR
2872 COLERAIN AVE
CINCINNATI OH 45225

Pursuant to R.C. 4303.26(A), City of Cincinnati City Council, through its Clerk of Council (collectively, hereinafter "the City"), respectfully requests an additional 30 days in which to respond to the Ohio Division of Liquor Control regarding whether the City will request a hearing on the subject liquor permit application. The City makes such time extension request for good cause and not for unnecessary delay. Specifically, the City requires additional time for each of its various departments and the applicable community council to review and investigate the liquor application by performing all necessary inspections and research including, but not limited to, permit applicant interviews, site premises inspections, background investigations, and historical investigations regarding the history of the permit premises and the subject location. Moreover, such extension of time would provide the applicable community council an opportunity to meet, vote, and respond back to the City by the deadline. Therefore, the City requires such time extension in order to perform its due diligence in this matter. The City respectfully requests this time extension in good faith, for good cause, and not for unnecessary delay.

Please fax the confirmation back to us as soon as possible at (513) 352-2578.

Thank you for your prompt attention.

Sincerely,

Melissa Autry, CMC
Clerk of Council

**NOTICE TO LEGISLATIVE
AUTHORITY**

OHIO DIVISION OF LIQUOR CONTROL
8888 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)844-2380 FAX(614)844-3186

TO

6929763		NEW		PILGRIMS REST LTD DBA BINSKIS BAR 2872 COLERAIN AVE CINCINNATI OH 45225
PERMIT NUMBER TYPE				
ISSUE DATE				
09 30 2022				
FILING DATE				
D5J				
PERMIT CLASSES				
31	066	A	D57931	
TAX DISTRICT		RECEIPT NO.		

FROM 10/06/202

PERMIT NUMBER		TYPE	
ISSUE DATE			
FILING DATE			
PERMIT CLASSES			
TAX DISTRICT		RECEIPT NO.	

MAILED 10/06/2022

RESPONSES MUST BE POSTMARKED NO LATER THAN.

11/07/2022

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.
REFER TO THIS NUMBER IN ALL INQUIRIES **A NEW 6929763**

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD IN OUR COUNTY SEAT. IN COLUMBUS.

WE DO NOT REQUEST A HEARING.

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title)- Clerk of County Commissioner

(Date)

Clerk of City Council

Township Fiscal Officer

7:07 PM 10/27/2022
CINCINNATI CLERK OF COUNCIL
CITY HALL
801 PLUM ST ROOM 308
CINCINNATI OH 45202

CLERK OF COUNCIL
DLG 4052

REV. 03/08

City of Cincinnati Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

For City Bulletin

Liquor Permit Application

From the Department of Liquor Control advising of permit application for the following:

Application No.: 6929763
Permit Type: NEW D5J
Name: PILGRIMS REST LTD
DBA BINSKIS BAR
2872 COLERAIN AVE
CINCINNATI OH 45225

Pursuant to Section 4303.261 of the Ohio Revised Code, Council must notify the Department of Liquor Control within thirty days if there is an objection to the above permit.

Notice of Application was received by the Clerk of Council's Office

10/12/2022

MELISSA AUTRY, CMC Clerk of Council

The last day for the State to receive an objection is

11/07/2022

Date: December 7, 2022

To: Mayor and Members of City Council
From: Sheryl M. M. Long, City Manager
Subject: **Liquor License – New**

202202137

FINAL RECOMMENDATION REPORT

OBJECTIONS: City of Cincinnati Police Department

This is a report on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for the following:

APPLICATION: 8108922
PERMIT TYPE: NEW
CLASS: D5J
NAME: SHORT VINE 2023 LLC
DBA: EL VAQUERO MEXICAN RESTAURANT
2845 SHORT VINE ST & PATIO
CINCINNATI, OH 45219

As of today's date, the Department of Buildings & Inspections provided no comment with their investigation.

On October 19, 2022, Corryville Community Council was notified of this application and do not object.



Police Department Approval

David M. Laing, Assistant City Prosecutor
Law Department - Recommendation
Objection No Objection

MUST BE RECEIVED BY OHIO DIVISION OF LIQUOR CONTROL BY: December 13, 2022

Date: November 9, 2022
To: Lieutenant Colonel Teresa A. Theetge, Interim Police Chief
From: Police Officer Maggie Bower, P287, District Four, Neighborhood Liaison Officer
Copies to:
Subject: **RENEWAL, TRANSFER OR ISSUANCE OF LIQUOR LICENSES**

PATROL BUREAU MEMO #: 22-480
DISTRICT INVESTIGATING LIQUOR PERMIT PREMISE: District Four
PERMIT #: 8108922

TYPE OF PERMIT APPLIED FOR: New

PERMIT NAME & ADDRESS:

Name:	El Vaquero Mexican Restaurant
Address:	2845 Short Vine Street

APPLICANTS NAME(S): Cesar G. Ornelas

INSPECTION / INVESTIGATION INFORMATION:

Officer:	Maggie Bower
Date:	11/08/2022
Findings:	Inspection completed

COMMUNITY COUNCIL NOTIFIED:

Name 1: Bill Crawford	Date: 11/8/2022	Notified by: email
Phone:	E-mail: bill.crawford@fuse.net	
Name 2: Daniel Luther	Date: 11/8/2022	Notified by: email
Phone: (513) 221-1687	E-mail: lutherdv@zoomtown.com	

DISPOSITION OF THE COMMUNITY COUNCIL:

NO OBJECTIONS
 OBJECTION: Attached Letter with Community Council Letterhead

MJ

DISPOSITION OF THE DISTRICT:

NO OBJECTIONS OBJECTION: If objection checked, a narrative is required below

REASON FOR OBJECTION:

OFFICER BOWER CONTACTED MR. ORNELAS, THE MANAGER OF EL VAQUERO, ON 11/2/2022 AT TIME OF RECEIVED MEMO. OFFICER BOWER CONTACTED MR. ORNELAS FOUR TIMES BY PHONE TO SCHEDULE THE INSPECTION. HE STATED THE LANDLORD OF BUILDING, UPTOWN, WOULD NOT GIVE HIM A KEY TO HIS RESTAURANT AND FAILED TO SCHEDULE A TIME WITH OFFICER BOWER AGAIN. AFTER FIFTH PHONE CALL, MR. ORNELAS REQUESTED A ONE DAY EXTENSION WHICH WAS GRANTED.

OFFICER BOWER MET MR. ORNELAS 11/8/22 FOR THE INSPECTION. HIS RESTAURANT IS REPLACING THE OLD TASTE OF BELGIUM WHO HAVE MOVED OUT. IT WAS CLEAR UPON ARRIVAL, NO CONSTRUCTION OR CLEANING HAD BEEN COMPLETED ANYWHERE. THE BATHROOMS AND KITCHEN WERE DIRTY. MR. ORNELAS SAID HE PLANNED TO ADD ADDITIONAL WALLS. THE RESTAURANT CONSISTED OF WHAT TASTE OF BELGIUM LEFT BEHIND.

INITIALLY, MR. ORNELAS TOLD OFFICER BOWER HE PLANNED TO OPEN IN JANUARY. WHEN ASKED AGAIN DURING INSPECTION, HE STATED "NEXT YEAR," UNCLEAR WHEN. OFFICER BOWER RECOMMENDS DENIAL OF LIQUOR LICENSE AS THE REQUIREMENTS FOR INSPECTION WERE NOT MET.

MAB
MAB

*I AGREE WITH
OFFICER BOWER'S INVESTIGATION
OBJECT AT THIS TIME UNTIL
CPD CAN COMPLETE AT THOROUGH
INSPECTION.*

ggm/5723

11/9/22

*CONCUR - OBJECT @ THIS
TIME PENDING INSPECTION.*

Capt. [Signature] / C170

0-4

*For Objection
-mg/LTC4
11/10/22*

City of Cincinnati

Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

October 19, 2022

**OHIO DIVISION OF LIQUOR CONTROL
LICENSING SECTION
NEW PERMIT SECTION
6606 TUSSING ROAD
P O BOX 4005
REYNOLDSBURG, OH 43068-9005**

Dear Ohio Division of Liquor Control:

The Council of the City of Cincinnati, State of Ohio, is requesting a 30 day extension on the below cited liquor permit application:

Application No.: 8108922
Permit Type: NEW D5J
Name: SHORT VINE 2023 LLC
DBA EL VAQUERO MEXICAN RESTAURANT
2845 SHORT VINE ST & PATIO
CINCINNATI OH 45219

Pursuant to R.C. 4303.26(A), City of Cincinnati City Council, through its Clerk of Council (collectively, hereinafter "the City"), respectfully requests an additional 30 days in which to respond to the Ohio Division of Liquor Control regarding whether the City will request a hearing on the subject liquor permit application. The City makes such time extension request for good cause and not for unnecessary delay. Specifically, the City requires additional time for each of its various departments and the applicable community council to review and investigate the liquor application by performing all necessary inspections and research including, but not limited to, permit applicant interviews, site premises inspections, background investigations, and historical investigations regarding the history of the permit premises and the subject location. Moreover, such extension of time would provide the applicable community council an opportunity to meet, vote, and respond back to the City by the deadline. Therefore, the City requires such time extension in order to perform its due diligence in this matter. The City respectfully requests this time extension in good faith, for good cause, and not for unnecessary delay.

Please fax the confirmation back to us as soon as possible at (513)352-2578.

Thank you for your prompt attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Autry", is written over a horizontal line.

Melissa Autry, CMC
Clerk of Council

**NOTICE TO LEGISLATIVE
AUTHORITY**

OHIO DIVISION OF LIQUOR CONTROL
8208 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-8005
(614)844-2300 FAX(614)844-3186

TO

8108922		NEW		SHORT VINE 2023 LLC DBA EL VAQUERO MEXICAN RESTAURANT 2845 SHORT VINE ST & PATIO CINCINNATI OH 45219
PERMIT NUMBER TYPE				
ISSUE DATE				
10 11 2022				
FILING DATE				
D5J				
PERMIT CLASSES				
31	066	A	D58756	
TAX DISTRICT			RECEIPT NO.	

FROM 10/14/2022

PERMIT NUMBER		TYPE	
ISSUE DATE			
FILING DATE			
PERMIT CLASSES			
TAX DISTRICT		RECEIPT NO.	

MAILED 10/14/2022

RESPONSES MUST BE POSTMARKED NO LATER THAN

11/14/2022

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES A NEW 8108922

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD IN OUR COUNTY SEAT. IN COLUMBUS.

WE DO NOT REQUEST A HEARING.

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE

(Signature)

(Title) Clerk of County Commissioner

(Date)

Clerk of City Council

Township Fiscal Officer

CINCINNATI CLERK OF COUNCIL
CITY HALL
801 PLUM ST ROOM 308
CINCINNATI OH 45202

City of Cincinnati

Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

For City Bulletin

Liquor Permit Application

From the Department of Liquor Control advising of permit application for the following:

Application No.: 8108922
Permit Type: NEW D5J
Name: SHORT VINE 2023 LLC
DBA EL VAQUERO MEXICAN RESTAURANT
2845 SHORT VINE ST & PATIO
CINCINNATI OH 45219

Pursuant to Section 4303.261 of the Ohio Revised Code, Council must notify the Department of Liquor Control within thirty days if there is an objection to the above permit.

Notice of Application was received by the Clerk of Council's Office

10/19/2022

MELISSA AUTRY, CMC Clerk of Council

The last day for the State to receive an objection is

11/14/2022

Date: December 7, 2022

To: Mayor and Members of City Council
From: Sheryl M. M. Long, City Manager
Subject: **Liquor License – Temporary (F8)**

202202138

FINAL RECOMMENDATION REPORT

OBJECTIONS: None

This is a report on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for the following:

APPLICATION: 17512670005
PERMIT TYPE: TEMP
CLASS: F8
NAME: CORPORATION FOR FINDLAY MARKET
DBA: NONE LISTED
1801 RACE ST – BRZWY – FARMERS MKT SHED
N PKING LOT – 135-100 ELDER ST BTWN
RACE & ELM STS
CINCINNATI, OH 45202

On November 10, 2022, Over-the-Rhine Community Council was notified of this application and do not object.



Police Department Approval

David M. Laing, Assistant City Prosecutor
Law Department - Recommendation
Objection No Objection

MUST BE RECEIVED BY OHIO DIVISION OF LIQUOR CONTROL BY: December 30, 2022

Date: November 25, 2022
To: Lieutenant Colonel Teresa A. Theetge, Interim Police Chief
From: P.O. Carroll A Todd, Neighborhood Liaison Unit
Copies to:
Subject: **RENEWAL, TRANSFER OR ISSUANCE OF LIQUOR LICENSES**

PATROL BUREAU MEMO #: 22-502
DISTRICT INVESTIGATING LIQUOR PERMIT PREMISE: District One
PERMIT #: 17512670005
TYPE OF PERMIT APPLIED FOR: New
PERMIT NAME & ADDRESS:

Name:	Corp Findlay Market
Address:	19 W. Elder Street Cincinnati Ohio, 45202

APPLICANTS NAME(S): Kelly Lanser

INSPECTION / INVESTIGATION INFORMATION:

Officer:	P.O. Carroll A Todd
Date:	11/21/2022
Findings:	There are no findings that would cause objections to this.

COMMUNITY COUNCIL NOTIFIED:

Name 1: Maurice Waggoner	Date: 11/21/2022	Notified by: email
Phone:	E-mail: presidentotrcc@gmail.com	
Name 2: Kelly Adamson	Date: 11/21/2022	Notified by: email
Phone:	E-mail: Kelly@otrchamber.com	

DISPOSITION OF THE COMMUNITY COUNCIL:

NO OBJECTIONS
 OBJECTION: Attached Letter with Community Council Letterhead

DISPOSITION OF THE DISTRICT:

NO OBJECTIONS OBJECTION: If objection checked, a narrative is required below

REASON FOR OBJECTION:

CAT ~~_____~~
HWT 35
Lt David P. Davico 24
ADC

No Objection
-mg/lrc4
11/28/22

City of Cincinnati Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

November 9, 2022

**OHIO DIVISION OF LIQUOR CONTROL
LICENSING SECTION
NEW PERMIT SECTION
6606 TUSSING ROAD
P O BOX 4005
REYNOLDSBURG, OH 43068-9005**

Dear Ohio Division of Liquor Control:

The Council of the City of Cincinnati, State of Ohio, is requesting a 30 day extension on the below cited liquor permit application:

Application No.: 17512670005
Permit Type: TEMP F8
Name: CORPORATION FOR FINDLAY MARKET
1801 RACE ST- BRZWY- FARMERS MKT SHED
N PKING LOT- 135-100 ELDER ST BTWN
RACE & ELM STS
CINCINNATI, OH 45202

Pursuant to R.C. 4303.26(A), City of Cincinnati City Council, through its Clerk of Council (collectively, hereinafter "the City"), respectfully requests an additional 30 days in which to respond to the Ohio Division of Liquor Control regarding whether the City will request a hearing on the subject liquor permit application. The City makes such time extension request for good cause and not for unnecessary delay. Specifically, the City requires additional time for each of its various departments and the applicable community council to review and investigate the liquor application by performing all necessary inspections and research including, but not limited to, permit applicant interviews, site premises inspections, background investigations, and historical investigations regarding the history of the permit premises and the subject location. Moreover, such extension of time would provide the applicable community council an opportunity to meet, vote, and respond back to the City by the deadline. Therefore, the City requires such time extension in order to perform its due diligence in this matter. The City respectfully requests this time extension in good faith, for good cause, and not for unnecessary delay.

Please fax the confirmation back to us as soon as possible at (513)352-2578.

Thank you for your prompt attention.

Sincerely,

Melissa Autry, CMC
Clerk of Council

**NOTICE TO LEGISLATIVE
AUTHORITY**

OHIO DIVISION OF LIQUOR CONTROL
6608 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)844-2388 FAX(614)844-3188

TO

17512670005 <small>PERMIT NUMBER</small>	TEMP <small>TYPE</small>	CORPORATION FOR FINDLAY MARKET 1801 RACE ST - BRZVY - FARMERS MKT SHED N PKING LOT - 135-100 ELDER ST BTWN RACE & ELM STS CINCINNATI OH 45202
03 29 2021 <small>ISSUE DATE</small>		
F8 <small>PERMIT CLASS</small>		
31 066 <small>TAX DISTRICT</small>	A <small>RECEIPT NO</small>	

D60765 FROM 03/31/2021



MAILED 11/1/2022

RESPONSES MUST BE POSTMARKED NO LATER THAN 12/2/2022

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES F-8 NEW 1751267-0005

(TRANSACTION # NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD IN OUR COUNTY SEAT, IN COLUMBUS.

WE DO NOT REQUEST A HEARING.

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title) - Clerk of County Commissioner

(Date)

Clerk of City Council

Township Fiscal

CINCINNATI CLERK OF COUNCIL
CITY HALL
801 PLUM ST ROOM 308
CINCINNATI OHIO 45202

Ohio Department of Commerce - Division of Liquor Control
6606 Tussing Road, P.O. Box 4005, Reynoldsburg, Ohio 43068-9005
Telephone No. (614) 387-7407 - http://www.com.ohio.gov/liqr

1chk
8172
\$1,700

F-8 PERMIT APPLICATION

Hamilton County Only
FILING FEE \$1,700.00

APPLICATION MUST BE FILED AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE OF EVENT.

Ohio Revised Code 4303.208 F8 Permit

Sec. 4303.208. (A)(1) The division of liquor control may issue an F-8 permit to a not-for-profit organization that manages, for the benefit of the public and by contract with a political subdivision of this state, publicly owned property to sell beer or intoxicating liquor by the individual drink at specific events conducted on the publicly owned property and appurtenant streets, but only if, and then only at times at which, the sale of beer and intoxicating liquor on the premises is otherwise permitted by law. Additionally, an F-8 permit may be issued only if the publicly owned property is located in a county that has a population of between seven hundred fifty thousand and nine hundred thousand on the effective date of this section.

(2) The premises on which an F-8 permit will be used shall be clearly defined and sufficiently restricted to allow proper supervision of the permit's use by state and local law enforcement officers. Sales under an F-8 permit shall be confined to the same hours permitted to the holder of a D-3 permit.

(3) The fee for an F-8 permit is one thousand seven hundred dollars. An F-8 permit is effective for a period not to exceed nine months as specified in the permit. An F-8 permit is not transferable or renewable. However, the holder of an F-8 permit may apply for a new F-8 permit at any time. An F-8 permit is not effective until any F-8 permit currently held expires. The holder of an F-8 permit shall make sales only at those specific events about which the permit holder has notified in advance the division of liquor control, the department of public safety, and the chief, sheriff, or other principal peace officer of the local law enforcement agencies having jurisdiction over the premises.

(B)(1) An application for the issuance of an F-8 permit is subject to the notice and hearing requirements established in division (A) of section 4303.26 of the Revised Code.

(2) The liquor control commission shall adopt under Chapter 119. of the Revised Code rules necessary to administer this section.

(C) No F-8 permit holder shall sell beer or intoxicating liquor beyond the hours of sale allowed by the permit. This division imposes strict liability on the holder of an F-8 permit and on any officer, agent, or employee of that permit holder.

SECTION (A) PROPOSED F-8 PERMIT PREMISES INFORMATION

Non-Profit Organization Name

Corporation for Findlay Market

Permit Premises Address: Breezewav. Farm Shed. North Parking Lot. West Elder Street between Race Street

Township (if outside city limits):

City: Cincinnati

Zip Code: 45202

County: Hamilton

Mail and/or Fax Permit and Correspondence To:

Name: Corporation for Findlay Ma Street Address: 19 W. Elder Street

City: Cincinnati

State: OH

Zip Code: 45202

Phone #: 5135157872

Fax #:

Individual responsible for the compliance with Ohio's liquor laws in conjunction with the sale and consumption of alcoholic beverages:

Name: Kelly Lanser

Title: Interim CEO

FOR OFFICE USE ONLY

Taxing District Permit Number Receipt #	31-066 JW Old 17512670005 DL0765	Reviewer Action: #17512670005 W Reg 2/98	Remarks:
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SECTION (B)

OWNER/APPLICANT INFORMATION

1. Does the applicant have a contract with the political subdivision to manage events conducted under the F8 permit? YES NO

2. In the event the premise covers an area that includes adjacent streets, please list and identify with address or street ranges in the table below:

STREET NAME	ADDRESS or STREET RANGE	
	TO	FROM
Elm Street	1719	1828
Elder Street	1	300
Race Street	1709	1828

635 12 173

**TO ENSURE THAT THIS APPLICATION IS PROCESSED AS QUICKLY AS POSSIBLE, PLEASE
SUBMIT THE FOLLOWING, ALONG WITH THIS COMPLETED, SIGNED,
AND NOTARIZED APPLICATION**

- \$1,700.00 Permit Fee - Check made payable to the Division of Liquor Control.
- Completed and signed "Diagram of the Event Premises", and any attachments.
Diagram may be submitted on Section C (Page 4) of this application.
- Sections A, B, & C Completed.

Once your application is received, your F8 application will go into process requiring a notice to be sent to the local legislative authority (City Council, Township Trustee, and/or County Commissioner) and local police chief. The local legislative authority will have thirty days to request a hearing upon the advisability of the issuance of the F8 permit. An inspection of the event premises will also be completed by a Division Compliance Officer in order to determine if any churches, schools, libraries, public playgrounds or township parks are located within 500 feet. They will also have thirty days to request a hearing upon the advisability of the issuance of the F8 permit. A local option check for the sale of beer, wine, mixed beverages and spirituous liquor will also be conducted.

It is the responsibility of the applicant to notify the Division of Liquor Control, the Department of Public Safety and the chief, sheriff or other principal peace officer of the local law enforcement agencies having jurisdiction over the premises in advance of each event.

09/26/22

State of Ohio, Hamilton County, ss

I/We, Kelly Langer, Interim CEO being first duly sworn, according to law, depose and say that
(Please Print Name and Title)

I/We are at least twenty-one (21) years of age and the statements and answers made in the foregoing application are true.

[Signature] Interim CEO 9-26-22
(Signature of Officer of Applicant) (Title) (Date)

6479 Rapid Run Road Cincinnati OH 45233 5135157872
(Residence Address) (City) (State) (Zip Code) (Area Code & Telephone Number)

(To be completed by Notary Public)

Sworn to before me and subscribed in my presence this 26 day of September, 2022



JESSICA NOVESTERAS
Notary Public, State of Ohio
My Commission Expires:
March 09, 2025

[Signature] 3/9/25
(Notary Public) (Notary Expiration)

EOE/ADA SERVICE PROVIDER

Page 3

FOR TTY USERS DIAL ORS 1-800-750-0750

DLC 1611

SECTION (C)

DIAGRAM OF PROPOSED PERMIT PREMISES FOR "F-8" LIQUOR PERMIT

THIS DOCUMENT MUST BE COMPLETED IN ORDER TO OBTAIN YOUR PERMIT

Every applicant for an F-8 liquor permit must submit with the application a diagram of the event premises.

FOR EVENTS HELD INDOORS: Diagram must identify the room(s) in which the alcoholic beverages will be sold, stored and consumed.

FOR EVENTS HELD ENTIRELY or PARTIALLY OUTDOORS: Diagram must show shape and measured dimensions of the area to be used. Location of barriers must be shown, and an explanation of the type of barriers given (e.g., chain link fence, snow fence, brick wall, rope, etc.) which will separate permit premises from other areas which are not permit premises.

DIAGRAM MUST APPEAR IN THE SPACE BELOW, OR ON AN ATTACHED SHEET
(if submitting diagram on attached sheet, the diagram must be signed by the person who prepared diagram or applicant)

2022 OCT 27 PM 3:30

Signature of person who prepared diagram or applicant

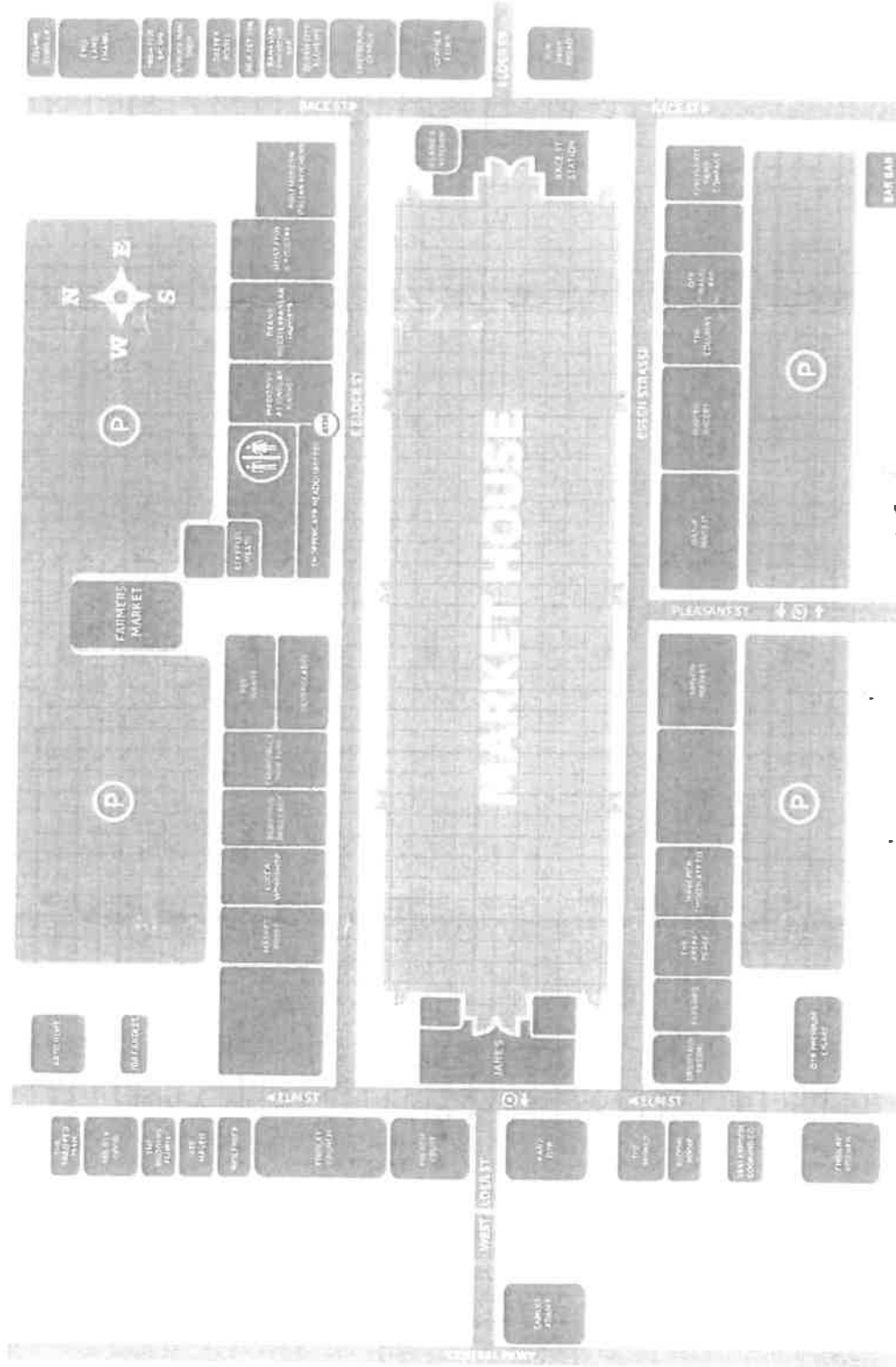
Print Name

Title

Phone #

DIAGRAM OF PROPOSED PERMIT PREMISES FOR "F-8" LIQUOR PERMIT

Breezeway, Farm Shed, North Parking Lot, West Elder Street between Race Street and Elm Street,
 South Parking Lot, 1719-1819 Elm Street, 1W. Elder - 300 W. Elder, 1709-1828 Race Street



Permit Premises

Exterior premises are demised with fence between buildings and/or with walled tents

Signature of person who prepared diagram or applicant

[Handwritten Signature]

Print Name Kelly Lanzer Title Interim CEO Phone # 5135157872



September 26, 2022

Ohio Department of Commerce – Division of Liquor Control
6606 Tussing Road
PO Box 4005
Reynoldsburg, OH 43068-9006

Ohio Department of Commerce,

Enclosed you will find the following:

- Application for the renewal of the Corporation for Findlay Market's F8 Liquor License
- Diagram of proposed Permit
- Application Fee - \$1700

We request that our license be effective no later than 3/5/2023.

Operations

- Jane's will be open regular hours March through December, Tuesday-Sunday.
- Race St. Station will be open regular hours March through October, Tuesday-Sunday, and November and December, Friday-Sunday.
- The following special events are scheduled, at which alcohol will be served:
 - Support Appreciation Month (March 1-31)
 - Findlay Market Opening Day Parade (March 30)
 - Findlay Kitchen Tasting Event (April 30)
 - Art & Poetry (May 13)
 - German American Day (June 3)
 - Juneteenth (June 18)
 - National Farmers Market Week (August 6-12)
 - Flavor of Findlay (September 7)
 - Fall Food Fest (October 21-22)
 - Howl-O-Ween Dog Costume Contest (October 28)
 - Trick-or-Treat at the Market (October 31)
 - Shop Small Saturday (November 25)
 - Holiday Market (December 2-3)

If you have any questions or comments, you can reach me at KLanser@findlaymarket.org or 513-515-7872.

Thank you,

Kelly Lanser

Interim CEO, Corporation for Findlay Market

PO Box 14727
Cincinnati, OH 45250

T: 513-665-4839

F: 513-721-3480

www.findlaymarket.org

City of Cincinnati

Council



Melissa Autry, CMC
Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308
Cincinnati, Ohio 45202
Phone (513) 352-3246
Fax (513) 352-2578

For City Bulletin

Liquor Permit Application

From the Department of Liquor Control advising of permit application for the following:

Application No.: 17512670005
Permit Type: TEMP F8
Name: CORPORATION FOR FINDLAY MARKET
1801 RACE ST- BRZWY- FARMERS MKT SHED
N PKING LOT- 135-100 ELDER ST BTWN
RACE & ELM STS
CINCINNATI, OH 45202

Pursuant to Section 4303.261 of the Ohio Revised Code, Council must notify the Department of Liquor Control within thirty days if there is an objection to the above permit.

Notice of Application was received by the Clerk of Council's Office

11/9/2022

MELISSA AUTRY, CMC Clerk of Council

The last day for the State to receive an objection is

12/2/2022

December 7, 2022

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager 202202139

Subject: Finance and Budget Monitoring Report for the Period Ending September 30, 2022

The purpose of this report is to provide the City Council with the status of the City's Fiscal Year (FY) 2023 financial and operating budget conditions as of September 30, 2022, to note any significant variances, identify potential budget issues, and provide recommendations. The report is divided into two sections: revenues and expenditures. Various supplemental reports are attached to reflect forecasted revenue, actual revenue, expenditures, and commitments through September 30, 2022.

The following Citywide issues may impact the General Fund 050, Special Revenue Funds, and Enterprise Funds.

1. General Fund revenues are greater than projected by \$3.5 million through the end of September. However, this report highlights increased potential expenditure needs in the amount of \$5.1 million.
2. Overtime in the Cincinnati Fire Department (CFD) and the Cincinnati Police Department (CPD) is currently outpacing the budget. In CFD, the increased overtime is primarily driven by the increased attrition experienced over the past several years. The department is required to use overtime to backfill the vacant positions. The graduation of Recruit Class #120 is expected to reduce overtime usage starting in the spring of 2023. If overtime trends do not curtail, the CFD projects a need of up to \$4.1 million by fiscal year end due to increased overtime. In CPD, the increased overtime is primarily due to Police Visibility Overtime (PVO) related to Downtown Event Deployment to curb violence and for large public events such as BLINK, Oktoberfest Zinzinnati, and Cincinnati Bengals home football games. Increased overtime is also required due to a higher vacancy rate of sworn positions, which is expected to curtail when the 113th Recruit Class graduates this winter.
3. The Approved FY 2022 Budget included a 2.0% wage increase for Cincinnati Organized and Dedicated Employees (CODE). The wage increase was not paid in FY 2022 as contract negotiations were still underway. Following the report of a fact finder in September 2022, which was approved by the City Council on

October 5, 2022, through Ordinance No. 0312-2022, the new labor agreement includes a 5.0% wage increase retroactive to March 2022. Supplemental appropriations may be required to cover the additional cost of the wage increase over the budgeted amount as well as the retroactive pay.

4. The Approved FY 2023 Budget Update included a 3.0% wage increase for CODE. The fact finder's report, which was approved by the City Council on October 5, 2022, through Ordinance No. 0312-2022, includes a 4.0% wage increase for March 2023. Supplemental appropriations may be required to cover the cost of the wage increase over the budgeted amount.
5. Community Health Center Activities Fund 395 revenues continue to be negatively impacted by the lasting effects of the COVID-19 pandemic. Healthcare workers remain in high demand, which has resulted in a staffing shortage in nurses and medical assistants working in health centers. These staffing issues have impacted appointment availability and related revenue. The Cincinnati Health Department is continuing the hiring of temporary staff to alleviate staffing needs until the department can fill the permanent position vacancies. Revenue trends will continue to be closely monitored.
6. Parking meter revenue is below the estimate. However, many contractual service expenditures are based on revenue, so less revenue results in lower expenses in some cases. This will partially offset the reduction in revenue. The fund will be monitored closely to ensure expenditures do not outpace revenues.
7. The lasting impacts of the COVID-19 pandemic continue to impact supply chains and the costs of various goods and services. Departments report several areas of concern, including energy costs, vehicle repair and maintenance costs, and the supply of new vehicles. Trends in the energy sector show an increase in costs for natural gas, petroleum, etc. Supply chain issues have also resulted in the shortage of vehicle parts and semiconductor chips. Fleet repairs are becoming more difficult and more expensive in certain cases. The acquisition of new vehicles has also been affected by these issues. Fleet Services anticipates that new vehicles will be significantly delayed which may result in an operating budget need for vehicle leases until new vehicles become available and increased repair costs as older vehicles will remain in service for a longer than anticipated period of time. These issues will be monitored closely for budgetary and operational impacts.

REVENUE

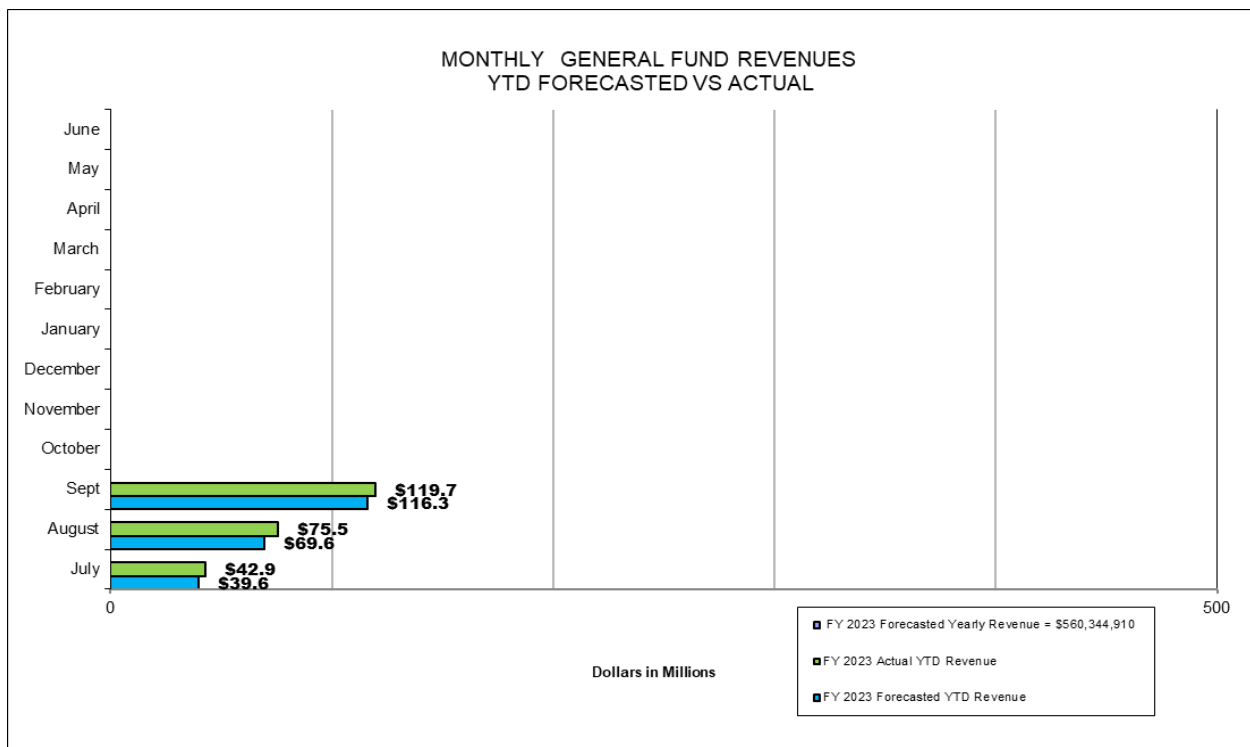
The following report provides an update on the City of Cincinnati's financial condition as of the month ending September 30, 2022. Variances are based on current year

estimates and prior year activity in attached schedules.

A more detailed explanation of revenues is attached for review, including reports comparing actual current year revenue versus forecasted revenue and prior year actual revenue versus current year actual revenue. Both reports are presented on a monthly and year-to-date basis.

I. GENERAL FUND 050

The chart below portrays the performance of actual revenue collected against the forecasted revenue collected through September 30, 2022 and shows that actual revenue of \$119.7 million was above forecasted revenue of \$116.3 million by \$3.4 million.



The major revenue components of the General Fund are listed in the table below. This table highlights the year-to-date variance (favorable and unfavorable) in General Fund revenue collections as compared to forecasted revenue collections. Each major category that differs significantly from forecasted collections will be discussed in further detail.

GENERAL FUND REVENUE SOURCES

	FAVORABLE VARIANCE	(UNFAVORABLE) VARIANCE
General Property Tax		(\$1,534,628)
City Income Tax	1,501,102	
Admissions Tax	953,456	
Short Term Rental Excise Tax	234,145	
Licenses & Permits		(\$131,216)
Fines, Forfeitures, & Penalties	556,688	
Investment Income	416,397	
Local Government	202,623	
Casino	300,052	
Police	560,885	
Buildings and Inspections	5,962	
Fire	423,744	
Parking Meter	150	
Other		(\$1,246)
	5,155,204	(\$1,667,090)
Difference	3,488,115	

General Fund (favorable variance) is \$3.5 million above the amount forecasted through September in the FY 2023 Budget. This is the third month's report for the new fiscal year. What follows is an explanation of significant variances of individual General Fund revenue components.

- 1. Property Tax (unfavorable variance) is \$1.5 million** below estimate due to the decrease in the millage rate for this half. The millage for the second half is set at a higher rate which will offset this unfavorable variance. The Administration anticipates Property Tax revenue will be on target at year end.
- 2. Income Tax (favorable variance) is \$1.5 million** above the forecasted amount. This amount can fluctuate throughout the year as quarterly net profits are due. The Administration will continue to watch the trends very closely.
- 3. Admission Tax (favorable variance) is \$953k** above estimate. As it is early in the fiscal year, Finance will monitor this revenue group. Many estimates have been set to pre-pandemic levels as businesses rebound. The estimate for the new music venue may require a closer look as it continues operations as well.
- 4. Fines, Forfeitures and Penalties (favorable variance) is up \$557k.** This is mostly attributed to an increase in Parking Fine collections.

II. RESTRICTED FUNDS

- A. Convention Center (favorable variance) is \$720k** above estimate. The venue is starting Fiscal Year 2023 better than it has in several years with many bookings taking place. The addition of many people returning to hotels has increased the transient occupancy tax revenue and that adds to the favorable variance.
- B. Cincinnati Health District (favorable variance) is up \$424k.** Federal Emergency Management Agency (FEMA) reimbursements were received that cover prior year COVID-19 expenses such as supplies and vaccine clinics. This was not estimated in FY 2023 as the timeliness of these reimbursements are difficult to know.
- C. Parking System Facilities (favorable variance) is \$407k above estimate.** The estimate was very conservative this year as the decline from the pandemic is still lingering in this category. We are monitoring how many companies are bringing their employees back to the office and utilizing the lots and garages. The actuals are still down from FY 2019.

EXPENDITURES

The following provides an update on the City of Cincinnati's operating budget position as of the month ending September 30, 2022. The attached Fund Summary Report provides the current budget, expenditures, and commitments of each appropriated fund. This report is presented on a year-to-date basis.

I. GENERAL FUND 050

As shown on the attached report, total expenditures are 21.4% of budget, and commitments are 25.5% of budget in the General Fund 050 as compared to the estimated period ending September 30, 2022, or 25.0% of the fiscal year. "Non-personnel expenses" are trending higher at 36.2% committed year to date due to encumbering twelve months of expenditures for certain commodities such as gas and electric costs, contractual services, and materials and supplies. This is not unusual for this reporting period.

The majority of departments have indicated their FY 2023 General Fund 050 appropriation will meet their budgetary needs through the end of the fiscal year. However, budget transfers may be necessary to move funds from divisions and programs with savings to others within the respective departments that have budget needs. These transfers will be included in the Final Adjustment Ordinance (FAO), which will be presented to the City Council in May 2023.

A. Budget Savings Identified

At this time, no General Fund 050 departments are projecting savings at the end of FY 2023. Any savings identified will be available to support budget needs in other departments and programs as necessary. Interdepartmental transfers of funds from one department to another will be included in the FAO as appropriate.

B. Budget Needs Identified

Based on current expenditure projections, the following General Fund 050 departments are forecasting a budget need in FY 2023. The departments have been advised to manage their appropriated resources so that supplemental appropriations will not be required. However, the Administration will continue to closely monitor these budgets in the coming months and work with the respective departments to mitigate the need for supplemental appropriations. As appropriate, any remaining budget needs will be addressed with the FAO.

1. Non-Departmental Accounts (\$1,000)

The Internal Revenue Service (IRS) limits the maximum employee benefit received from a defined contribution retirement plan. Per the Cincinnati Municipal Code (CMC), the City is responsible for covering the excess benefit amount which is paid from this account. An amount of \$1,000 is needed in this account in order to comply with IRS regulations.

2. Department of Human Resources (\$10,000)

The Department of Human Resources projects a need in non-personnel. The door at the main entrance is no longer functional and needs to be replaced to ensure safety and security. The replacement is estimated at \$10,000.

3. Citizen Complaint Authority (\$40,000)

The Citizen Complaint Authority (CCA) projects a possible personnel need resulting from vacant positions that were filled at higher than anticipated salaries as well as anticipated equity salary adjustments. Additionally, the department is projecting a non-personnel need resulting from a FY 2022 computer expense that was not properly encumbered as well as telephone expenses for cell phones for investigators.

4. Cincinnati Police Department (\$925,000)

The Cincinnati Police Department (CPD) projects an overall need of approximately \$925,000 primarily due to personnel expense overages. Personnel overages are attributed to increased Police Visibility Overtime (PVO) related to Downtown Event Deployment to curb violence and for large public events such as BLINK, Oktoberfest Zinzinnati, and Cincinnati Bengals home football games.

Increased overtime is also required due to a higher vacancy rate of sworn positions, which is expected to curtail when the 113th Recruit Class graduates this winter. A small need is also projected in non-personnel related to software maintenance. Personnel and non-personnel expenditures will be closely monitored over the next few months.

5. Cincinnati Fire Department (\$4.1 million)

The Cincinnati Department (CFD) projects a total need of up to \$4.1 million primarily due to overtime. Increased attrition over the past several years has necessitated the use of overtime to backfill vacant positions. The graduation of Recruit Class #120 is expected to reduce overtime usage starting in the spring of 2023. If overtime trends do not curtail, the CFD projects a need of up to \$4.1 million by fiscal year end due to increased overtime. However, this need may be partially offset by non-personnel savings. Both the department and the Office of Budget and Evaluation will continue to closely monitor staffing trends and overtime needs.

C. Within Budget, Intradepartmental Budget Transfers May Be Needed

Numerous General Fund 050 departments have indicated the ability to manage their resources within their appropriation. However, budget adjustments within their departments may be required. These transfers are referred to as Intradepartmental Budget Transfers. Unless noted otherwise, these Intradepartmental Budget Transfers will be included in the FAO, which will be presented to the City Council for approval in May 2023.

1. Clerk of Council

The Clerk of Council's Office projects a potential non-personnel need due to evening neighborhood meetings, which are held twice a month. Each meeting costs an estimated \$1,000. This ongoing expense will be monitored and addressed in a budget adjustment ordinance if necessary.

2. Enterprise Technology Solutions

The Department of Enterprise Technology Solutions projects no budget savings or need at this time, pending reimbursement processing.

3. City Manager's Office

The City Manager's Office projects no budget savings or need at this time. However, a potential non-personnel need may arise related to Infrastructure Investment and Jobs Act (IIJA) grant application consulting services.

4. City Manager's Office: Office of Communications

The Office of Communications projects no budget savings or need at this time.

- 5. City Manager’s Office: Office of Human Relations**
The Office of Human Relations projects no budget savings or need at this time.
- 6. City Manager’s Office: Office of Budget and Evaluation**
The Office of Budget and Evaluation projects no budget savings or need at this time, pending reimbursement processing.
- 7. City Manager’s Office: Emergency Communications Center (ECC)**
The Emergency Communications Center projects no budget savings or need at this time. However, a need may arise related to the 311 service line chat tool software.
- 8. City Manager’s Office: Office of Environment and Sustainability**
The Office of Environment and Sustainability projects no budget savings or need at this time.
- 9. City Manager’s Office: Office of Procurement**
The Office of Procurement projects no budget savings or need at this time.
- 10. City Manager’s Office: Office of Performance and Data Analytics (OPDA)**
The Office of Performance and Data Analytics projects potential personnel savings, which will be monitored. No savings or needs are anticipated in the non-personnel budget.
- 11. City Manager’s Office: Internal Audit**
Internal Audit projects a possible personnel need. The budget will be monitored for a possible shortfall, which can be resolved in the Final Adjustment Ordinance if necessary.
- 12. Department of Law**
The Department of Law projects no budget savings or need at this time.
- 13. Department of Finance**
The Department of Finance projects no budget savings or need at this time.
- 14. Department of Community and Economic Development**
The Department of Community and Economic Development (DCED) projects a non-personnel need due to Shillito’s West annual operating expenses. Additionally, there is a potential personnel need in the Housing Division. These needs will be offset by personnel savings in the Economic Development Division. Transfers between agencies may be required as part of the Final Adjustment Ordinance.

15. Department of City Planning and Engagement

The Department of City Planning and Engagement projects a potential non-personnel need for the new community engagement functions. This includes computer equipment for the new staff as well as other expenses for community engagement efforts. These needs may be offset with position vacancy savings.

16. Cincinnati Recreation Commission

The Cincinnati Recreation Commission projects no budget savings or need at this time. The department has several reimbursements that will be processed in the coming months.

17. Cincinnati Parks Department

The Parks Department projects no budget savings or need at this time. However, transfers between agencies may be required as part of the Final Adjustment Ordinance.

18. Department of Buildings and Inspections

The Department of Buildings and Inspections projects no budget savings or need at this time. The department has several reimbursements that will be processed in the coming months.

19. Department of Transportation and Engineering

The Department of Transportation and Engineering projects no personnel budget savings or needs, pending reimbursement processing.

20. Department of Public Services

The Department of Public Services (DPS) reports a potential need in non-personnel related to increased utility costs due to stormwater rate increases. DPS projects utility expenses could create a budget need of approximately \$82,000. This need will be monitored closely as the fiscal year continues.

21. Department of Economic Inclusion

The Department of Economic Inclusion projects a potential personnel need due to being fully staffed. However, this need may be offset through additional reimbursements from the Income Tax-Infrastructure Fund for eligible work.

II. ENTERPRISE FUNDS

Enterprise Funds account for any activity for which a fee is charged to external users for goods or services. If an activity's principal revenue source meets any one of the following criteria, it is required to be reported as an enterprise fund: (1) an activity financed with debt that is secured solely by pledge of the net revenues from fees and

charges for the activity; (2) laws or regulations which require that the activity's costs of providing services, including capital costs, be recovered with fees and charges, rather than with taxes or similar revenues; or (3) pricing policies which establish fees and charges designed to recover the activity's costs.

A. Water Works Fund 101

Water Works Fund 101 is 16.7% expended year to date. The Greater Cincinnati Water Works (GCWW) projects a potential need in overtime, which will be offset by position vacancy savings. GCWW also projects a potential non-personnel need in contractual services due to an increase in gas costs. These needs will be monitored closely.

B. Parking System Facilities Fund 102

Parking System Facilities Fund 102 includes the budget for off-street parking enterprises, including garages. Fund 102 is currently 10.0% expended year to date. The Division of Parking Facilities within the Department of Community and Economic Development continues to experience an increase in rent expenses due to the rise in employee parking at the Seventh Street Garage and the Hennegan Lot. The division is responsible for covering the difference between what City employees pay and the contracted monthly rate. This need is expected to be offset with savings in contractual services.

C. Duke Energy Convention Center Fund 103

Duke Energy Convention Center Fund 103 is 29.0% expended year to date. Contractual service expenses are trending slightly high due to increased Convention Center operating costs for the first quarter. However, the Finance Department projects no savings or need at this time.

D. General Aviation Fund 104

General Aviation Fund 104 is 14.4% expended year to date. The Department of Transportation and Engineering may have personnel and fringe benefits savings in Fund 104 due to position vacancies, which will be monitored. Possible non-personnel savings will also be monitored.

E. Municipal Golf Fund 105

Municipal Golf Fund 105 is 33.6% expended year to date, which reflects expenses for the calendar year (CY) 2022 golf season and meets expectations. The Cincinnati Recreation Commission projects no budget savings or need.

F. Stormwater Management Fund 107

Stormwater Management Fund 107 provides resources to various City departments. The major recipient of resources from this fund is the Stormwater Management Utility (SMU). The Department of Public Services, the Parks Department, and the Department of Buildings and Inspections also receive appropriations from this fund. The Stormwater Management Fund is 10.2%

expended year to date. SMU, the Parks Department, and the Department of Buildings and Inspections project no budget savings or need at this time. The Department of Public Services projects potential savings in personnel due to position vacancies.

III. DEBT SERVICE FUNDS

Debt Service Funds account for the accumulation of resources for, and the payment of, principal and interest on the City's bonds issued in support of governmental activities.

A. Bond Retirement Fund 151

Bond Retirement Fund 151 is 5.8% expended year to date. The Finance Department projects no budget savings or need for FY 2023.

IV. APPROPRIATED SPECIAL REVENUE FUNDS

Special Revenue Funds account for the proceeds of specific revenue sources (other than trusts for individuals, private organizations, or other governments, or for major capital projects) that are legally restricted to expenditures for specific purposes.

The Office of Budget and Evaluation, in cooperation with various City departments, reviewed appropriated special revenue funds to ensure the Approved FY 2023 Budget Update remains in balance. Based on expenditures and revenues through September 30, 2022, most special revenue funds are on target with regards to their budget and require no additional appropriations at this time. Any identified issues are highlighted in the narrative summaries provided below. If warranted, budget adjustments will be addressed in the FAO later in the fiscal year.

A. Street Construction, Maintenance & Repair Fund 301

Street Construction, Maintenance & Repair Fund 301 is 16.6% expended year to date. The Department of Transportation and Engineering projects no budget savings or need in FY 2023. The Department of Public Services anticipates personnel and fringe benefit savings in Fund 301; however, these savings are anticipated to be partially offset by increased winter emergency operations expenses due to the inclement weather conditions over the next few months.

B. Income Tax-Infrastructure Fund 302

Income Tax-Infrastructure Fund 302 provides resources to several City departments. The Department of Transportation and Engineering is the largest recipient of resources from this fund. The Department of Public Services also receives Income Tax-Infrastructure Fund resources. Fund 302 is 16.5% expended

year to date. The Department of Transportation and Engineering projects potential personnel savings due to position vacancies, which is offset by a potential non-personnel need related to fuel expenses. The Department of Public Services projects a possible personnel need related to overtime.

C. Parking Meter Fund 303

Parking Meter Fund 303 includes the budget for on-street parking enterprises, including parking meters. Fund 303 is currently 21.6% expended year to date. The Division of Parking Facilities within the Department of Community and Economic Development projects neither a savings nor a need in the fund.

D. Municipal Motor Vehicle License Tax Fund 306

Municipal Motor Vehicle License Tax Fund 306 is 13.3% expended year to date. The Department of Transportation and Engineering projects potential personnel savings, which will be monitored. The Department of Public Services currently projects no budget savings or need at this time. However, depending on weather conditions over the next few months, a potential need could arise related to winter emergency operation expenses.

E. Sawyer Point Fund 318

Sawyer Point Fund 318 is 7.1% expended year to date. The Parks Department projects no budget savings or need in Fund 318.

F. Recreation Special Activities Fund 323

Fund 323 is currently 19.6% expended year to date. The Cincinnati Recreation Commission projects no budget savings or need in Fund 323.

G. Cincinnati Riverfront Park Fund 329

Cincinnati Riverfront Park Fund 329 is the appropriated fund for Smale Park. Fund 329 is currently 2.4% expended year to date. The Parks Department projects no budget savings or need in Fund 329.

H. Hazard Abatement Fund 347

Hazard Abatement Fund 347 is 3.0% expended year to date. The Department of Buildings and Inspections projects no budget savings or need at this time.

I. 9-1-1 Cell Phone Fees Fund 364

9-1-1 Cell Phone Fees Fund 364 is the appropriated fund that governs the City portion of state collected revenue from mobile device fees. Fund 364 is currently 3.1% expended year to date. The Emergency Communications Center projects no budget savings or need in Fund 364.

J. Safe and Clean Fund 377

Safe and Clean Fund 377 is the appropriated fund that collects revenue associated with billboard leases. These resources are allocated to Keep Cincinnati Beautiful (KCB) expenditures. This fund is currently 0.7% expended year to date. The Department of Public Services projects no budget savings or need.

K. Community Health Center Activities Fund 395

Community Health Center Activities Fund 395 is 16.7% expended year to date. The Cincinnati Health Department (CHD) projects potential personnel savings resulting from position vacancies.

L. Cincinnati Health District Fund 416

General operational support to the Cincinnati Health Department is provided by Cincinnati Health District Fund 416. This fund is 19.0% expended year to date. The Cincinnati Health Department (CHD) projects a non-personnel need, primarily in contractual services related to the search for the next Health Commissioner, building repair costs, and temporary personnel services. Additionally, the department projects a personnel need in the Technical Resources Division and the Community Health Services Division. These needs can be fully offset by personnel savings in the Office of the Commissioner and the Primary Health Care Centers Division. Transfers may be required as a part of the Final Adjustment Ordinance.

M. Cincinnati Area Geographic Information System (CAGIS) Fund 449

Cincinnati Area Geographic Information System Fund 449 is 14.6% expended year to date. Enterprise Technology Solutions projects no budget savings or need at this time.

N. Streetcar Operations Fund 455

Streetcar Operations Fund 455 is 17.8% expended year to date. The Department of Transportation and Engineering projects a total non-personnel need of \$504,000, primarily due to police special details and SORTA expenses. These needs may be covered by anticipated Ohio Department of Transportation (ODOT) Grant resources. These needs will be monitored closely.

O. County Law Enforcement Applied Regionally (CLEAR) Fund 457

The CLEAR Fund is 11.1% expended year to date. Enterprise Technology Solutions projects no budget savings or need for FY 2023.

Summary

Through September 30, 2022, major budget issues include overtime needs for both the Police Department and Fire Department, revenue decline in Community Health Center Activities Fund 395 and Parking Meter Fund 303, unbudgeted wage items

resulting from collective bargaining agreements, and lasting impacts from the COVID-19 pandemic related to supply chain issues and the costs of various goods and services. Departments have identified possible savings and shortfalls, which will continue to be monitored and updated monthly.

Submitted herewith are the following Office of Budget & Evaluation reports:

1. Fund Summary Report for the month ended September 30, 2022.

Submitted herewith are the following Department of Finance reports:

2. Comparative Statement of Revenue (Actuals, Forecast and Prior Year) as of September 30, 2022.
3. Audit of the City Treasurer's Report for the month ended August 31, 2022.
4. Statement of Balances in the various funds as of September 30, 2022.

By approval of this report, City Council appropriates the revenues received in the various restricted funds on the attached Statement of Balances and as stated in greater detail on the records maintained by the Department of Finance, Division of Accounts & Audits. Such revenues are to be expended in accordance with the purposes for which the funds were established.

cc: William "Billy" Weber, Assistant City Manager
Karen Alder, Finance Director
Andrew M. Dudas, Budget Director

**CITY OF CINCINNATI
FUND SUMMARY
FOR FISCAL YEAR 2023
AS OF 09/30/2022**

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
050	General	PERSONNEL SERVICES	277,654,940.00	61,816,720.24	22.3%	.00	61,816,720.24	22.3%	215,838,219.76
		EMPLOYEE BENEFITS	109,509,260.00	27,657,110.45	25.3%	386,510.00	28,043,620.45	25.6%	81,465,639.55
		NON-PERSONNEL EXPENSES	84,364,472.89	11,296,380.16	13.4%	19,221,761.31	30,518,141.47	36.2%	53,846,331.42
		PROPERTIES	25,860.00	.00	0.0%	.00	.00	0.0%	25,860.00
		*TOTAL FUND_CD 050	471,554,532.89	100,770,210.85	21.4%	19,608,271.31	120,378,482.16	25.5%	351,176,050.73
101	Water Works	PERSONNEL SERVICES	43,725,650.00	7,765,866.11	17.8%	.00	7,765,866.11	17.8%	35,959,783.89
		EMPLOYEE BENEFITS	17,620,410.00	4,081,788.76	23.2%	.00	4,081,788.76	23.2%	13,538,621.24
		NON-PERSONNEL EXPENSES	54,648,230.00	6,078,469.04	11.1%	15,960,091.75	22,038,560.79	40.3%	32,609,669.21
		DEBT SERVICE	45,233,480.00	9,045,060.18	20.0%	.00	9,045,060.18	20.0%	36,188,419.82
		*TOTAL FUND_CD 101	161,227,770.00	26,971,184.09	16.7%	15,960,091.75	42,931,275.84	26.6%	118,296,494.16
102	Parking System Facilities	PERSONNEL SERVICES	378,710.00	75,911.90	20.0%	.00	75,911.90	20.0%	302,798.10
		EMPLOYEE BENEFITS	142,290.00	45,634.20	32.1%	.00	45,634.20	32.1%	96,655.80
		NON-PERSONNEL EXPENSES	4,946,200.00	643,175.77	13.0%	2,536,827.43	3,180,003.20	64.3%	1,766,196.80
		DEBT SERVICE	2,187,280.00	.00	0.0%	.00	.00	0.0%	2,187,280.00
		*TOTAL FUND_CD 102	7,654,480.00	764,721.87	10.0%	2,536,827.43	3,301,549.30	43.1%	4,352,930.70
103	Convention-Exposition Center	PERSONNEL SERVICES	91,070.00	19,093.18	21.0%	.00	19,093.18	21.0%	71,976.82
		EMPLOYEE BENEFITS	38,440.00	6,191.34	16.1%	.00	6,191.34	16.1%	32,248.66
		NON-PERSONNEL EXPENSES	9,931,930.00	2,983,705.24	30.0%	1,871,385.46	4,855,090.70	48.9%	5,076,839.30
		DEBT SERVICE	299,580.00	.00	0.0%	.00	.00	0.0%	299,580.00
		*TOTAL FUND_CD 103	10,361,020.00	3,008,989.76	29.0%	1,871,385.46	4,880,375.22	47.1%	5,480,644.78
104	General Aviation	PERSONNEL SERVICES	891,610.00	153,186.14	17.2%	.00	153,186.14	17.2%	738,423.86
		EMPLOYEE BENEFITS	367,700.00	68,855.13	18.7%	.00	68,855.13	18.7%	298,844.87
		NON-PERSONNEL EXPENSES	962,490.00	105,171.98	10.9%	100,503.75	205,675.73	21.4%	756,814.27
		DEBT SERVICE	44,420.00	.00	0.0%	.00	.00	0.0%	44,420.00
		*TOTAL FUND_CD 104	2,266,220.00	327,213.25	14.4%	100,503.75	427,717.00	18.9%	1,838,503.00
105	Municipal Golf	PERSONNEL SERVICES	224,490.00	21,782.24	9.7%	.00	21,782.24	9.7%	202,707.76
		EMPLOYEE BENEFITS	80,740.00	6,321.10	7.8%	.00	6,321.10	7.8%	74,418.90
		NON-PERSONNEL EXPENSES	4,700,510.00	1,858,297.21	39.5%	664,816.47	2,523,113.68	53.7%	2,177,396.32
		DEBT SERVICE	614,550.00	.00	0.0%	.00	.00	0.0%	614,550.00
		*TOTAL FUND_CD 105	5,620,290.00	1,886,400.55	33.6%	664,816.47	2,551,217.02	45.4%	3,069,072.98

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FUND SUMMARY
FOR FISCAL YEAR 2023
AS OF 09/30/2022

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
107	Stormwater Management	PERSONNEL SERVICES	9,545,820.00	1,093,278.02	11.5%	.00	1,093,278.02	11.5%	8,452,541.98
		EMPLOYEE BENEFITS	4,063,860.00	509,355.82	12.5%	.00	509,355.82	12.5%	3,554,504.18
		NON-PERSONNEL EXPENSES	11,846,260.00	1,202,135.76	10.1%	1,961,416.10	3,163,551.86	26.7%	8,682,708.14
		PROPERTIES	50,000.00	.00	0.0%	.00	.00	0.0%	50,000.00
		DEBT SERVICE	1,957,310.00	.00	0.0%	.00	.00	0.0%	1,957,310.00
		*TOTAL FUND_CD 107	27,463,250.00	2,804,769.60	10.2%	1,961,416.10	4,766,185.70	17.4%	22,697,064.30
151	Bond Retirement - City	PERSONNEL SERVICES	298,180.00	39,427.71	13.2%	.00	39,427.71	13.2%	258,752.29
		EMPLOYEE BENEFITS	111,490.00	12,796.87	11.5%	.00	12,796.87	11.5%	98,693.13
		NON-PERSONNEL EXPENSES	3,528,470.00	277,920.33	7.9%	50,000.00	327,920.33	9.3%	3,200,549.67
		DEBT SERVICE	125,523,250.00	7,223,454.71	5.8%	.00	7,223,454.71	5.8%	118,299,795.29
		*TOTAL FUND_CD 151	129,461,390.00	7,553,599.62	5.8%	50,000.00	7,603,599.62	5.9%	121,857,790.38
301	Street Construction Maintenance & Repair	PERSONNEL SERVICES	6,750,870.00	1,211,623.88	17.9%	.00	1,211,623.88	17.9%	5,539,246.12
		EMPLOYEE BENEFITS	2,959,660.00	668,379.95	22.6%	.00	668,379.95	22.6%	2,291,280.05
		NON-PERSONNEL EXPENSES	6,963,000.00	890,745.88	12.8%	1,634,077.58	2,524,823.46	36.3%	4,438,176.54
		*TOTAL FUND_CD 301	16,673,530.00	2,770,749.71	16.6%	1,634,077.58	4,404,827.29	26.4%	12,268,702.71
302	Income Tax-Infrastructure	PERSONNEL SERVICES	13,203,110.00	2,221,893.14	16.8%	.00	2,221,893.14	16.8%	10,981,216.86
		EMPLOYEE BENEFITS	5,157,660.00	1,125,546.06	21.8%	.00	1,125,546.06	21.8%	4,032,113.94
		NON-PERSONNEL EXPENSES	5,754,120.00	627,451.54	10.9%	288,303.61	915,755.15	15.9%	4,838,364.85
		*TOTAL FUND_CD 302	24,114,890.00	3,974,890.74	16.5%	288,303.61	4,263,194.35	17.7%	19,851,695.65
303	Parking Meter	PERSONNEL SERVICES	1,827,660.00	293,726.85	16.1%	.00	293,726.85	16.1%	1,533,933.15
		EMPLOYEE BENEFITS	794,580.00	195,461.88	24.6%	.00	195,461.88	24.6%	599,118.12
		NON-PERSONNEL EXPENSES	2,298,250.00	573,546.09	25.0%	650,135.31	1,223,681.40	53.2%	1,074,568.60
		*TOTAL FUND_CD 303	4,920,490.00	1,062,734.82	21.6%	650,135.31	1,712,870.13	34.8%	3,207,619.87
306	Municipal Motor Vehicle License Tax	PERSONNEL SERVICES	1,577,010.00	273,706.70	17.4%	.00	273,706.70	17.4%	1,303,303.30
		EMPLOYEE BENEFITS	785,010.00	157,681.85	20.1%	.00	157,681.85	20.1%	627,328.15
		NON-PERSONNEL EXPENSES	1,611,270.00	97,473.78	6.0%	195,595.43	293,069.21	18.2%	1,318,200.79
		*TOTAL FUND_CD 306	3,973,290.00	528,862.33	13.3%	195,595.43	724,457.76	18.2%	3,248,832.24

CITY OF CINCINNATI
FUND SUMMARY
FOR FISCAL YEAR 2023
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FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
318	Sawyer Point	PERSONNEL SERVICES	410,810.00	33,371.24	8.1%	.00	33,371.24	8.1%	377,438.76
		EMPLOYEE BENEFITS	115,560.00	10,001.52	8.7%	.00	10,001.52	8.7%	105,558.48
		NON-PERSONNEL EXPENSES	693,570.00	43,064.93	6.2%	172,587.29	215,652.22	31.1%	477,917.78
		*TOTAL FUND_CD 318	1,219,940.00	86,437.69	7.1%	172,587.29	259,024.98	21.2%	960,915.02
323	Recreation Special Activities	PERSONNEL SERVICES	3,663,260.00	696,671.65	19.0%	.00	696,671.65	19.0%	2,966,588.35
		EMPLOYEE BENEFITS	284,470.00	46,099.83	16.2%	.00	46,099.83	16.2%	238,370.17
		NON-PERSONNEL EXPENSES	1,669,070.00	360,330.66	21.6%	133,027.24	493,357.90	29.6%	1,175,712.10
		PROPERTIES	13,720.00	.00	0.0%	.00	.00	0.0%	13,720.00
		*TOTAL FUND_CD 323	5,630,520.00	1,103,102.14	19.6%	133,027.24	1,236,129.38	22.0%	4,394,390.62
329	Cincinnati Riverfront Park	PERSONNEL SERVICES	670,710.00	.00	0.0%	.00	.00	0.0%	670,710.00
		EMPLOYEE BENEFITS	342,840.00	.00	0.0%	.00	.00	0.0%	342,840.00
		NON-PERSONNEL EXPENSES	505,010.00	37,007.88	7.3%	165,271.80	202,279.68	40.1%	302,730.32
		*TOTAL FUND_CD 329	1,518,560.00	37,007.88	2.4%	165,271.80	202,279.68	13.3%	1,316,280.32
347	Hazard Abatement Fund	PERSONNEL SERVICES	455,010.00	7,482.86	1.6%	.00	7,482.86	1.6%	447,527.14
		EMPLOYEE BENEFITS	231,830.00	10,430.51	4.5%	.00	10,430.51	4.5%	221,399.49
		NON-PERSONNEL EXPENSES	10,720.00	3,283.85	30.6%	.00	3,283.85	30.6%	7,436.15
		*TOTAL FUND_CD 347	697,560.00	21,197.22	3.0%	.00	21,197.22	3.0%	676,362.78
364	911 Cell Phone Fees	PERSONNEL SERVICES	573,480.00	.00	0.0%	.00	.00	0.0%	573,480.00
		EMPLOYEE BENEFITS	243,880.00	.00	0.0%	.00	.00	0.0%	243,880.00
		NON-PERSONNEL EXPENSES	646,160.00	45,507.85	7.0%	22,704.09	68,211.94	10.6%	577,948.06
		*TOTAL FUND_CD 364	1,463,520.00	45,507.85	3.1%	22,704.09	68,211.94	4.7%	1,395,308.06
377	Safe & Clean	NON-PERSONNEL EXPENSES	52,040.00	370.72	0.7%	51,149.28	51,520.00	99.0%	520.00
		*TOTAL FUND_CD 377	52,040.00	370.72	0.7%	51,149.28	51,520.00	99.0%	520.00
395	Community Health Center	PERSONNEL SERVICES	13,050,900.00	2,276,298.16	17.4%	.00	2,276,298.16	17.4%	10,774,601.84
		EMPLOYEE BENEFITS	5,547,470.00	1,288,317.12	23.2%	.00	1,288,317.12	23.2%	4,259,152.88
		NON-PERSONNEL EXPENSES	8,675,950.00	988,020.96	11.4%	4,765,754.39	5,753,775.35	66.3%	2,922,174.65
		*TOTAL FUND_CD 395	27,274,320.00	4,552,636.24	16.7%	4,765,754.39	9,318,390.63	34.2%	17,955,929.37

**CITY OF CINCINNATI
FUND SUMMARY
FOR FISCAL YEAR 2023
AS OF 09/30/2022**

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
416	Cincinnati Health District	PERSONNEL SERVICES	13,018,010.00	2,438,156.82	18.7%	.00	2,438,156.82	18.7%	10,579,853.18
		EMPLOYEE BENEFITS	5,175,870.00	988,566.50	19.1%	.00	988,566.50	19.1%	4,187,303.50
		NON-PERSONNEL EXPENSES	1,367,550.00	286,806.17	21.0%	625,940.70	912,746.87	66.7%	454,803.13
		PROPERTIES	2,980.00	.00	0.0%	.00	.00	0.0%	2,980.00
*TOTAL FUND_CD 416			19,564,410.00	3,713,529.49	19.0%	625,940.70	4,339,470.19	22.2%	15,224,939.81
449	Cincinnati Area Geographic Information Systems (CAGIS)	PERSONNEL SERVICES	1,934,950.00	333,513.02	17.2%	.00	333,513.02	17.2%	1,601,436.98
		EMPLOYEE BENEFITS	666,210.00	160,494.47	24.1%	.00	160,494.47	24.1%	505,715.53
		NON-PERSONNEL EXPENSES	2,180,710.00	205,927.32	9.4%	28,823.72	234,751.04	10.8%	1,945,958.96
*TOTAL FUND_CD 449			4,781,870.00	699,934.81	14.6%	28,823.72	728,758.53	15.2%	4,053,111.47
455	Streetcar Operations	PERSONNEL SERVICES	619,270.00	111,656.42	18.0%	.00	111,656.42	18.0%	507,613.58
		EMPLOYEE BENEFITS	164,660.00	3,701.28	2.2%	.00	3,701.28	2.2%	160,958.72
		NON-PERSONNEL EXPENSES	4,326,710.00	794,159.95	18.4%	3,392,613.20	4,186,773.15	96.8%	139,936.85
*TOTAL FUND_CD 455			5,110,640.00	909,517.65	17.8%	3,392,613.20	4,302,130.85	84.2%	808,509.15
457	County Law Enforcement Applied Regionally (CLEAR)	PERSONNEL SERVICES	1,572,400.00	200,131.94	12.7%	.00	200,131.94	12.7%	1,372,268.06
		EMPLOYEE BENEFITS	479,030.00	85,223.88	17.8%	.00	85,223.88	17.8%	393,806.12
		NON-PERSONNEL EXPENSES	3,494,640.00	327,560.24	9.4%	487,505.46	815,065.70	23.3%	2,679,574.30
*TOTAL FUND_CD 457			5,546,070.00	612,916.06	11.1%	487,505.46	1,100,421.52	19.8%	4,445,648.48
TOTAL			938,150,602.89	164,206,484.94	17.5%	55,366,801.37	219,573,286.31	23.4%	718,577,316.58

EMERGENCY

LES

-2022

AUTHORIZING the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 for the purpose of providing resources to assist with redevelopment of four historic buildings in the Over-the-Rhine neighborhood of Cincinnati into a mixed use development; and **DECLARING** that expenditures from the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 to be for a public purpose.

WHEREAS, the Over-the-Rhine (“OTR”) neighborhood is currently experiencing substantial development activity, creating a significant need for quality affordable housing; and

WHEREAS, The Annie Project housing redevelopment will result in the rehabilitation of four historic buildings located at 210-218 West 12th Street containing 2,600 square feet of ground floor commercial space and a total of 29 residential units, nine of which will be affordable housing units; and

WHEREAS, The Annie Project will provide nine units of quality affordable housing for the OTR neighborhood, three of which will serve households earning no more than sixty percent of the area median income, and six units of which will serve households earning no more than eighty percent of the area median income, as established by the U.S. Department of Housing and Urban Development; and

WHEREAS, 3CDC presented the proposed redevelopment project to the OTR Community Council, and the OTR Community Council voted in support of the project on November 28, 2022; and

WHEREAS, The Annie Project housing redevelopment is in accordance with the “Live” strategy to “[p]rovide quality healthy housing for all income levels” as described on pages 165-168 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 is hereby authorized for the purpose of providing resources for the redevelopment

of four historic buildings located at 210-218 West 12th Street into a mixed-use development in the Over-the-Rhine neighborhood.

Section 2. That Council hereby declares that assisting with redevelopment of four historic buildings in the Over-the-Rhine neighborhood of Cincinnati into a mixed use development (a) constitutes (i) a Public Infrastructure Improvement (as defined in Section 5709.40(A)(8) of the Ohio Revised Code (“ORC”)) that will benefit and/or serve the District 3-Downtown/OTR West District Incentive District, and/or (ii) a “Housing Renovation” (as defined in ORC Section 5709.40(A)(3)), subject to compliance with ORC Sections 5709.40 through 5709.43; and (b) serves a public purpose because the project will provide affordable housing to the OTR neighborhood.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

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 to enable the developer to move forward with the project as soon as possible and finalize all necessary financing, which will result in the creation of jobs and additional affordable housing in the Over-the-Rhine neighborhood of Cincinnati at the earliest possible date.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

December 7, 2022

To: Mayor and Members of City Council 202202143

From: Sheryl M. M. Long, City Manager

Subject: Emergency Ordinance – Southwest Ohio Regional Transit Authority (SORTA): Queensgate SORTA Easement Improvements Project and Income Tax-Transit Fund Final Reconciliation

Attached is an Emergency Ordinance captioned:

ESTABLISHING capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements,” for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way formerly known as McClean Street, adjacent to the Southwest Ohio Regional Transit Authority (“SORTA”) facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements; **AUTHORIZING** the transfer and appropriation of \$1,500,000 from the unappropriated surplus of Income Tax-Transit Fund 759 to newly created capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements”; and further **AUTHORIZING** the appropriation of \$9,064,004.89 from the unappropriated surplus of Income Tax-Transit Fund 759 to the SORTA non-personnel operating budget account no. 759x081x7200 for the purpose of implementing the provisions of Ordinance No. 0247-2020 that authorized the City Manager to execute an Amendment to the City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 to SORTA.

Approval of this Emergency Ordinance authorizes the establishment of new capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements,” for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way formerly known as McClean Street, adjacent to the SORTA facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements. Approval of this Emergency Ordinance further authorizes the transfer and appropriation of \$1,500,000 from the unappropriated surplus of Income Tax-Transit Fund 759 to newly created capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements”.

Ordinance No. 0407-2016 authorized the City Manager to execute an Agreement of Lease with the United States Postal Service (USPS) for two sections of the City-owned former right-of-way known as McClean Street in the Queensgate neighborhood. On October 26, 2016, SORTA consented to this Agreement of Lease, Contract No. 75x0099, regarding a portion of the vacated right-of-way formerly known as McClean Street, adjacent to the SORTA facility in the Queensgate neighborhood.

Capital improvement program project account no. 980x233x232355, "Queensgate SORTA Easement Improvements," will provide Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way, formerly known as McClean Street, which SORTA also benefits from as it is adjacent to their facility in the Queensgate neighborhood.

Additionally, approval of this Emergency Ordinance authorizes the appropriation of \$9,064,004.89 from the unappropriated surplus of Income Tax-Transit Fund 759 to the SORTA non-personnel operating budget account no. 759x081x7200 for the purpose of implementing the provisions of Ordinance No. 0247-2020 that authorized the City Manager to execute an Amendment to the City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 to SORTA.

Ordinance No. 0247-2020 authorized the City Manager to execute an Amendment to the 1973 City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 and the transfer of real property to SORTA. On August 28, 2020, the City Manager and SORTA executed an Amendment to the 1973 City-SORTA Agreement.

Ordinance No. 0299-2020 authorized the appropriation of \$3,000,000 to SORTA for the initial reconciliation of Income Tax-Transit Fund 759.

Ordinance No. 0408-2020 authorized the appropriation of \$5,724,193.76 to SORTA for the second reconciliation of Income Tax-Transit Fund 759.

The sum of \$9,064,004.89 represents the remaining resources available in Income Tax-Transit Fund 759 as well as the third and final reconciliation, which will be paid to SORTA pursuant to the 1973 City-SORTA Agreement, as amended.

The reasons for the emergency are the immediate need to provide resources for Queensgate SORTA easement improvements and for the finalization of the Income Tax-Transit Fund 759 reconciliation with SORTA so SORTA is paid in a timely manner in compliance with the Amendment to the 1973 City-SORTA Agreement.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

EMERGENCY

CFG

-2022

ESTABLISHING capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements,” for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way formerly known as McClean Street, adjacent to the Southwest Ohio Regional Transit Authority (“SORTA”) facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements; **AUTHORIZING** the transfer and appropriation of \$1,500,000 from the unappropriated surplus of Income Tax-Transit Fund 759 to newly created capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements”; and further **AUTHORIZING** the appropriation of \$9,064,004.89 from the unappropriated surplus of Income Tax-Transit Fund 759 to the SORTA non-personnel operating budget account no. 759x081x7200 for the purpose of implementing the provisions of Ordinance No. 0247-2020 that, authorized the City Manager to execute an Amendment to the City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 to SORTA.

WHEREAS, Ordinance No. 0407-2016 authorized the City Manager to execute an Agreement of Lease with the United States Postal Service for two sections of the City-owned former right-of-way known as McClean Street in the Queensgate neighborhood; and

WHEREAS, on October 26, 2016, SORTA consented to this Agreement of Lease, Contract No. 75x0099, regarding a portion of the vacated right-of-way formerly known as McClean Street, adjacent to the SORTA facility in the Queensgate neighborhood; and

WHEREAS, SORTA also benefits from access to the City-owned former right-of-way known as McClean Street in the Queensgate neighborhood; and

WHEREAS, Ordinance No. 0247-2020 authorized the City Manager to execute an Amendment to the 1973 City-SORTA Agreement for the transfer of funds from Income Tax-Transit Fund 759 and the transfer of real property to SORTA; and

WHEREAS, on August 28, 2020, the City Manager and SORTA executed an Amendment to the 1973 City-SORTA Agreement; and

WHEREAS, Ordinance No. 0299-2020 authorized the appropriation of \$3,000,000 to SORTA for the initial reconciliation of Income Tax-Transit Fund 759; and

WHEREAS, Ordinance No. 0408-2020 authorized the appropriation of \$5,724,193.76 to SORTA for the second reconciliation of Income Tax-Transit Fund 759; and

WHEREAS, the sum of \$9,064,004.89 represents the remaining resources available in Income Tax-Transit Fund 759 as well as the third and final reconciliation, which will be paid to SORTA pursuant to the 1973 City-SORTA Agreement, as amended; now, therefore,

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

Section 1. That the establishment of new capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements,” is hereby authorized for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way formerly known as McClean Street, adjacent to the Southwest Ohio Regional Transit Authority (“SORTA”) facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements.

Section 2. That the transfer and appropriation of the sum of \$1,500,000 from the unappropriated surplus of Income Tax-Transit Fund 759 to newly established capital improvement program project account no. 980x233x232355, “Queensgate SORTA Easement Improvements,” is hereby authorized for the purpose of providing Income Tax-Transit Fund 759 resources for easement access improvements to the vacated right-of-way formerly known as McClean Street, adjacent to the SORTA facility in the Queensgate neighborhood, and to provide resources for eligible labor, materials, tools, and technologies needed to plan, design, build, and inspect these improvements.

Section 3. That Council hereby authorizes the transfer and appropriation of the sum of \$9,064,004.89 from the unappropriated surplus of Income Tax-Transit Fund 759 to the Southwest Ohio Regional Transit Authority non-personnel operating budget account no. 759x081x7200 for the purpose of implementing the provisions of Ordinance No. 0247-2020 that authorized the City

Manager to execute an Amendment to the 1973 City-SORTA Agreement, which Amendment requires a reconciliation of the unencumbered fund balance.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to implement the provisions 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 reasons for the emergency are the immediate need to provide resources for Queensgate SORTA easement improvements and for the finalization of the Income Tax-Transit Fund 759 reconciliation with SORTA so SORTA is paid in a timely manner in compliance with the Amendment to the 1973 City-SORTA Agreement.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

December 7, 2022

To: Mayor and Members of City Council

202202144

From: Sheryl M. M. Long, City Manager

Subject: Ordinance – GCWW: Increasing the Fund Advance Limit and Transferring Funds to Water Works Stores – Materials Fund 204

Attached is an Ordinance captioned:

AUTHORIZING the Director of Finance to increase the fund advance limit of Water Works Stores – Materials Fund 204 (“Fund 204”), from \$5,000,000 to \$6,000,000; and further **AUTHORIZING** the transfer of \$1,000,000 from the unappropriated surplus of Fund 101, Water Works, to Fund 204 for the purpose of providing Greater Cincinnati Water Works with sufficient funds to purchase parts necessary for the operation and maintenance of the City’s water system.

This Ordinance would increase the fund advance limit for Water Works Stores – Materials Fund 204 from \$5,000,000 to \$6,000,000. Additionally, \$1,000,000 will be transferred from the unappropriated surplus of Water Works Fund 101 to Water Works Stores – Materials Fund 204. The additional funds will enable Water Works to purchase critical parts such as water meters, pipes, valves, and other construction materials necessary to operate the water system and maintain the high quality of the City’s drinking water.

Due to shortages, cost increases, and supply chain delays, the City Administration requires additional funds to purchase parts at increased prices and desires to purchase and maintain additional parts to ensure that the Greater Cincinnati Water Works (GCWW) can meet the region’s water treatment needs. This ordinance authorizes the Director of Finance to increase the fund advance limit and transfer \$1,000,000 to Water Works Stores – Materials Fund 204.

This Ordinance is in accordance with the “Sustain” goal to “[m]anage our financial resources” and strategy to “[s]pend public funds more strategically,” as described on pages 199-205 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Verna Arnette, GCWW, Interim Executive Director
Andrew Dudas, Budget Director
Karen Alder, Finance Director



Attachment

AUTHORIZING the Director of Finance to increase the fund advance limit of Water Works Stores – Materials Fund 204 (“Fund 204”), from \$5,000,000 to \$6,000,000; and further **AUTHORIZING** the transfer of \$1,000,000 from the unappropriated surplus of Fund 101, Water Works, to Fund 204 for the purpose of providing Greater Cincinnati Water Works with sufficient funds to purchase parts necessary for the operation and maintenance of the City’s water system.

WHEREAS, Water Works Stores – Materials Fund 204 (“Fund 204”), provides for the purchase by Greater Cincinnati Water Works of critical parts such as water meters, pipes, valves, and other construction materials (collectively, “Parts”) necessary to operate the City’s water system and maintain the high quality of the City’s drinking water; and

WHEREAS, the water utility industry is experiencing industry-wide shortages, supply chain delays, and a significant increase in prices, all of which are causing the overall cost of Parts to increase; and

WHEREAS, the fund advance limit of Fund 204 has not been increased since 2019, and an increase to the fund advance limit, along with an appropriation of additional funds, is needed for the City to purchase Parts at increased prices and to maintain additional reserves to ensure that a sufficient supply of Parts is available to meet the needs of the City’s water system; and

WHEREAS, this ordinance is in accordance with the “Sustain” goal to “[m]anage our financial resources” and strategy to “[s]pend public funds more strategically,” as described on pages 199-205 of *Plan Cincinnati* (2012); now, therefore,

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

Section 1. That the fund advance limit of Water Works Stores – Materials Fund 204 (“Fund 204”), is hereby increased from \$5,000,000 to \$6,000,000.

Section 2. That the sum of \$1,000,000 is hereby transferred from the unappropriated surplus of Fund 101, Water Works, to Fund 204 for the purpose of providing Greater Cincinnati Water Works with sufficient funds to purchase parts necessary for the operation and maintenance of the City’s water system.

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

Section 4. 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

December 7, 2022
202202145

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager

Subject: Emergency Ordinance – Transfer of Returned American Rescue Plan (ARP) Funds for Public Safety Needs

Attached is an Emergency Ordinance captioned:

AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$613,183.01 from American Rescue Plan grant project account no. 469x101xARP025, “Social Services Operational Grants,” for the purpose of realigning sources with actual uses; **AUTHORIZING** the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$37,329.87 from American Rescue Plan grant project account no. 469x101xARP038, “Children’s Hospital,” for the purpose of realigning sources with actual uses; **AUTHORIZING** the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$1,700 from American Rescue Plan grant project account no. 469x101xARP071, “Rites of Passage,” for the purpose of realigning sources with actual uses; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; **AUTHORIZING** the transfer and appropriation of the sum of \$100,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; **DECLARING** expenditures from American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” to be for a public purpose; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; **AUTHORIZING** the transfer and appropriation of the sum of \$552,212.88 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; and **DECLARING** expenditures from American Rescue

Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” to be for a public purpose.

The City received funding from the United States Department of the Treasury pursuant to the American Rescue Plan (ARP) Act as part of the Coronavirus Local Fiscal Recovery Fund Act. Subsequently, the City Council appropriated funding to various ARP grant project accounts. Through the periodic reporting process required pursuant to Treasury guidelines, various organizations have submitted final reports to the City indicating that projects have been completed and returned remaining funds to the City.

The City has additional one-time FY 2023 budget needs related to public safety which can be addressed through a reallocation of these returned ARP funds. Specifically, this Emergency Ordinance provides funding in the amount of \$100,000 for “Violence Reduction Initiatives” for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions. Furthermore, this Emergency Ordinance provides funding in the amount of \$552,212.88 for “PVO / Downtown Event Deployment” to the Cincinnati Police Department for Police Visibility Overtime (PVO) including the deployment of overtime to curb violence and for large downtown public events including BLINK, Oktoberfest Zinzinnati, and Cincinnati Bengals home football games. This will help mitigate a projected budget shortfall in the Cincinnati Police Department’s FY 2023 General Fund personnel operating budget due to increased overtime costs.

The reason for the emergency is the immediate need to implement authorized American Rescue Plan-related support programs and projects.

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

Attachment

EMERGENCY

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- 2022

AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$613,183.01 from American Rescue Plan grant project account no. 469x101xARP025, “Social Services Operational Grants,” for the purpose of realigning sources with actual uses; **AUTHORIZING** the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$37,329.87 from American Rescue Plan grant project account no. 469x101xARP038, “Children’s Hospital,” for the purpose of realigning sources with actual uses; **AUTHORIZING** the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$1,700 from American Rescue Plan grant project account no. 469x101xARP071, “Rites of Passage,” for the purpose of realigning sources with actual uses; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; **AUTHORIZING** the transfer and appropriation of the sum of \$100,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; **DECLARING** expenditures from American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” to be for a public purpose; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; **AUTHORIZING** the transfer and appropriation of the sum of \$552,212.88 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events; and **DECLARING** expenditures from American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” to be for a public purpose.

WHEREAS, the City received funding from the United States Department of the Treasury pursuant to the American Rescue Plan Act as part of the Coronavirus Local Fiscal Recovery Fund Act; and

WHEREAS, a portion of the funding was appropriated to various American Rescue Plan grant project accounts; and

WHEREAS, various American Rescue Plan projects have submitted final reports to the City indicating that projects have been completed and remaining funds have been returned to the City; and

WHEREAS, the City has additional one-time FY 2023 budget needs related to public safety; and

WHEREAS, the City Manager's Office will implement violence reduction initiatives for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions; and

WHEREAS, the Cincinnati Police Department has a need for additional funds for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events downtown; now, therefore,

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

Section 1. That the sum of \$613,183.01 is hereby transferred and returned to source Local Fiscal Recovery Fund 469 from American Rescue Plan grant project account no. 469x101xARP025, "Social Services Operational Grants," for the purpose of realigning sources with actual uses.

Section 2. That the sum of \$37,329.87 is hereby transferred and returned to source Local Fiscal Recovery Fund 469 from American Rescue Plan grant project account no. 469x101xARP038, "Children's Hospital," for the purpose of realigning sources with actual uses.

Section 3. That the sum of \$1,700 is hereby transferred and returned to source Local Fiscal Recovery Fund 469 from American Rescue Plan grant project account no. 469x101xARP071, "Rites of Passage," for the purpose of realigning sources with actual uses.

Section 4. That the Director of Finance is hereby authorized to establish new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP400, "Violence Reduction Initiatives," for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions.

Section 5. That the sum of \$100,000 is hereby transferred and appropriated from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” for the purpose of providing funds for a public health informed response to gun violence including the development and implementation of evidence-based, community-based violence reduction interventions.

Section 6. That expenditures from American Rescue Plan grant project account no. 469x101xARP400, “Violence Reduction Initiatives,” are hereby declared to be for a public purpose because the identified program improves the health and safety outcomes of the people of the City, which improvement is necessary because of the substantial negative impacts of the COVID-19 pandemic on the health and safety of City residents.

Section 7. That the Director of Finance is hereby authorized to establish new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events.

Section 8. That the sum of \$552,212.88 is hereby transferred and appropriated from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” for the purpose of providing funds to the Cincinnati Police Department for Police Visibility Overtime including the deployment of overtime to curb violence and for large public events.

Section 9. That expenditures from American Rescue Plan grant project account no. 469x222xARP401, “PVO / Downtown Event Deployment,” are hereby declared to be for a public

purpose because the identified program improves the health and safety outcomes of the people of the City, which improvement is necessary because of the substantial negative impacts of the COVID-19 pandemic on the health and safety of City residents.

Section 10. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 9 hereof.

Section 11. 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 implement authorized American Rescue Plan-related support programs and projects.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

EESW

An Ordinance No. _____ - 2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Cary Capital, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 2250 East Seymour Avenue in the Bond Hill neighborhood of Cincinnati, in connection with the construction of an approximately 50,000 square foot manufacturing facility, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$10,200,000.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a “Community Reinvestment Area” pursuant to Ohio Revised Code (“ORC”) Sections 3735.65 through 3735.70 (the “Statute”); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018 (as amended, the “Commercial Policy Ordinance”), sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, to encourage the development of real property in a more environmentally-friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design (“LEED”) standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the “Energy Petal” of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, “LBC” standards), all pursuant to the Statute; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, Cary Capital, LLC (the “Company”) desires to construct an approximately 50,000 square foot manufacturing facility on real property at 2250 East Seymour Avenue located within the corporate boundaries of the City of Cincinnati, to LEED or LBC standards (the

“Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the City’s Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$123,428; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Cary Capital, LLC (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 2250 East Seymour Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of an approximately 50,000 square foot manufacturing facility, to be constructed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green

Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable) at a total construction cost of approximately \$10,200,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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 the construction described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and CARY CAPITAL, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2250 East Seymour Avenue, Cincinnati, Ohio 45212 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- Q. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property

located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct a 50,000 square foot manufacturing facility on the Property (the "Improvements") at an estimated aggregate cost of \$10,200,000 to commence after the execution of this Agreement and to be completed no later than March 31, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall

commence after tax year 2023 nor extend beyond the earlier of (i) tax year 2037 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number

of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Business Enterprise Program.

A. Compliance with Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"), which includes SBEs owned by minorities and women ("MBEs" and "WBEs", respectively, as used within CMC Chapter 324, and collectively with SBEs, "Certified Firms"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: seventeen percent (17%) MBE participation; and 10% WBE participation. A list of SBEs, MBEs, and WBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

- (i) Including qualified Certified Firms on solicitation lists.
- (ii) Assuring that Certified Firms are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to Certified Firms to provide services, to supply materials, or to bid on construction contracts, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum Certified Firm participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.
- (vi) The Company shall periodically document its best efforts and affirmative steps to meet the above Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to Certified Firms, or to provide technical assistance to Certified Firm as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 may be construed by the City as failure of the Company to use its 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. The

provisions of CMC Sections 323-99 and 324-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 100 full-time permanent jobs and (ii) 36 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,000,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$350,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs. Notwithstanding the foregoing, all jobs created by the Project (during construction and after) will comply with the City's living wage policy as reflected in CMC Chapter 317, which rates shall be adjusted annually in accordance with such chapter.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption

percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Cary Capital, LLC
10250 Alliance Road
Cincinnati, Ohio 45242
Attention: Cynthia Booth, President & CEO

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect.

Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

CARY CAPITAL, LLC,
an Ohio limited liability company

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 2022

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2250 East Seymour Avenue, Cincinnati, Ohio 45212
Auditor's Parcel No.: 120-0004-0128-00

Situated in Section 35, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County and being Parcel IV of the property conveyed to Port of Greater Cincinnati Development Authority in Official Record 13214, Page 1975 and being more particularly described as follows:

Commencing at the northwest corner of Section 35; thence with the north line of Section 35, S 83°52'40" E for a distance of 502.49 feet to the centerline of Seymour Avenue; thence with said centerline, S 11°07'28" E for a distance of 108.22 feet to the centerline of Langdon Farm Road; thence with said centerline, N 76°49'35" E for a distance of 71.97 feet; thence S 13° 10'12" E for a distance of 44.00 feet to a found nail on the south right of way line of Langdon Farm Road and the True Point of Beginning for this description; thence with said south right of way, the following three calls; N 76°49'35" E for a distance of 133.99 feet; thence along an arc of a curve deflecting to the right, having a radius of 456.29 feet, a chord bearing of N 80°26'22" E and a chord length of 57.51 feet, for a total distance along said arc of 57.55 feet; thence along an arc of a curve deflecting to the right, having a radius of 960.00 feet, a chord bearing of N 85°21'37" E and a chord length of 43.82 feet, for a total distance along said arc of 43.82 feet to a found 5/8" iron pin & cap stamped IDE on the west right of way line of Carthage Court; thence with said west right of way the following three calls, S 33°27'48" E for a distance of 396.88 feet; thence S 21°09'48" E for a distance of 282.37 feet to a found mag spike; thence S 39°38'12" W for a distance of 19.49 feet to a found mag spike; thence S 72°36'12" W for a distance of 414.90 feet to a found 5/8" iron pin & cap stamped IDE on the east right of way line of Seymour Avenue, thence with said east right of way, the following four calls; along an arc of a curve deflecting to the right, having a radius of 1960.00 feet, a chord bearing of N 16°59'37" W and a chord length of 400.85 feet, for a total distance along said arc of 401.55 feet to a point, witness a found cross notch S 79°39'58" W for a distance of 6.53 feet; thence N 11°07'28" W for a distance of 44.81 feet; thence N 07°45'29" W for a distance of 242.57 feet to a set iron pin; thence with a curve deflecting to the right, having a radius of 20.00 feet, a chord bearing of N 34°32'03" E, and a chord length of 26.92 feet for a total distance along said arc of 29.53 feet to the Point of Beginning, containing 5.9716 acres.

The basis of bearings for this description is NAD83 Ohio South Zone. All pins referred to as set are 5/8" iron pins with a plastic cap reading "Scott 7407" affixed to the top. The above legal description being taken from a field survey and plat by IDE Incorporated, under the supervision of Mark P. Scott, Ohio Registered Land Surveyor No. 7407, said survey being dated November, 2018.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and CARY CAPITAL, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2250 East Seymour Avenue, Cincinnati, Ohio 45212 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- Q. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property

located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct a 50,000 square foot manufacturing facility on the Property (the "Improvements") at an estimated aggregate cost of \$10,200,000 to commence after the execution of this Agreement and to be completed no later than March 31, 2023; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall

commence after tax year 2023 nor extend beyond the earlier of (i) tax year 2037 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number

of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Business Enterprise Program.

A. Compliance with Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code (“CMC”) Section 323-1-S, “SBEs”), which includes SBEs owned by minorities and women (“MBEs” and “WBEs”, respectively, as used within CMC Chapter 324, and collectively with SBEs, “Certified Firms”). Pursuant to CMC Section 323-11, the City’s annual goal for SBE participation shall be thirty percent (30%) of the City’s total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve (i) the City’s goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company’s Project-specific voluntary commitment, of meeting the City’s economic inclusion program goals to achieve a standard of no less than: seventeen percent (17%) MBE participation; and 10% WBE participation. A list of SBEs, MBEs, and WBEs may be obtained from the City’s Department of Economic Inclusion. The Company may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

- (i) Including qualified Certified Firms on solicitation lists.
- (ii) Assuring that Certified Firms are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to Certified Firms to provide services, to supply materials, or to bid on construction contracts, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum Certified Firm participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.
- (vi) The Company shall periodically document its best efforts and affirmative steps to meet the above Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to Certified Firms, or to provide technical assistance to Certified Firm as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 may be construed by the City as failure of the Company to use its 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. The

provisions of CMC Sections 323-99 and 324-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 100 full-time permanent jobs and (ii) 36 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,000,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$350,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs. Notwithstanding the foregoing, all jobs created by the Project (during construction and after) will comply with the City's living wage policy as reflected in CMC Chapter 317, which rates shall be adjusted annually in accordance with such chapter.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption

percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Cary Capital, LLC
10250 Alliance Road
Cincinnati, Ohio 45242
Attention: Cynthia Booth, President & CEO

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect.

Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

CARY CAPITAL, LLC,
an Ohio limited liability company

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 2022

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2250 East Seymour Avenue, Cincinnati, Ohio 45212
Auditor's Parcel No.: 120-0004-0128-00

Situated in Section 35, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County and being Parcel IV of the property conveyed to Port of Greater Cincinnati Development Authority in Official Record 13214, Page 1975 and being more particularly described as follows:

Commencing at the northwest corner of Section 35; thence with the north line of Section 35, S 83°52'40" E for a distance of 502.49 feet to the centerline of Seymour Avenue; thence with said centerline, S 11°07'28" E for a distance of 108.22 feet to the centerline of Langdon Farm Road; thence with said centerline, N 76°49'35" E for a distance of 71.97 feet; thence S 13° 10'12" E for a distance of 44.00 feet to a found nail on the south right of way line of Langdon Farm Road and the True Point of Beginning for this description; thence with said south right of way, the following three calls; N 76°49'35" E for a distance of 133.99 feet; thence along an arc of a curve deflecting to the right, having a radius of 456.29 feet, a chord bearing of N 80°26'22" E and a chord length of 57.51 feet, for a total distance along said arc of 57.55 feet; thence along an arc of a curve deflecting to the right, having a radius of 960.00 feet, a chord bearing of N 85°21'37" E and a chord length of 43.82 feet, for a total distance along said arc of 43.82 feet to a found 5/8" iron pin & cap stamped IDE on the west right of way line of Carthage Court; thence with said west right of way the following three calls, S 33°27'48" E for a distance of 396.88 feet; thence S 21°09'48" E for a distance of 282.37 feet to a found mag spike; thence S 39°38'12" W for a distance of 19.49 feet to a found mag spike; thence S 72°36'12" W for a distance of 414.90 feet to a found 5/8" iron pin & cap stamped IDE on the east right of way line of Seymour Avenue, thence with said east right of way, the following four calls; along an arc of a curve deflecting to the right, having a radius of 1960.00 feet, a chord bearing of N 16°59'37" W and a chord length of 400.85 feet, for a total distance along said arc of 401.55 feet to a point, witness a found cross notch S 79°39'58" W for a distance of 6.53 feet; thence N 11°07'28" W for a distance of 44.81 feet; thence N 07°45'29" W for a distance of 242.57 feet to a set iron pin; thence with a curve deflecting to the right, having a radius of 20.00 feet, a chord bearing of N 34°32'03" E, and a chord length of 26.92 feet for a total distance along said arc of 29.53 feet to the Point of Beginning, containing 5.9716 acres.

The basis of bearings for this description is NAD83 Ohio South Zone. All pins referred to as set are 5/8" iron pins with a plastic cap reading "Scott 7407" affixed to the top. The above legal description being taken from a field survey and plat by IDE Incorporated, under the supervision of Mark P. Scott, Ohio Registered Land Surveyor No. 7407, said survey being dated November, 2018.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

EMERGENCY

KKF

- 2022

AUTHORIZING the transfer and return to source Fund 304, “Community Development Block Grant,” the sum of \$4,119,272.70 to close out or decrease certain existing project accounts, according to Section A of the attached Schedule of Transfer; and **AUTHORIZING** the transfer and appropriation of the sum of \$4,350,000 from the unappropriated surplus of Fund 304, “Community Development Block Grant,” to various project accounts, as set forth in Section B of the attached Schedule of Transfer.

WHEREAS, the Community Development Block Grant (“CDBG”) Program began in 1974 and is one of the longest continuously run programs at the U.S. Department of Housing and Urban Development (“HUD”), through which HUD provides annual grants to local communities to address a wide range of unique community development needs; and

WHEREAS, HUD announced the grant allocation of \$11,379,516 for the 2022 CDBG program (ALN 14.218) via Award B-22-MC-39-0003 on May 13, 2022; and

WHEREAS, the award was accepted and appropriated by Council through Ordinance No. 0153-2022; and

WHEREAS, CDBG resources in existing project accounts will be realigned with projects that will be deployed in a timely manner, as set forth in the attached Schedule of Transfer; and

WHEREAS, program income received in 2022 is available to be transferred and appropriated to various projects; and

WHEREAS, program income received in the amount of \$230,727.30 now must be appropriated to existing CDBG project accounts as set forth in Section B of the attached Schedule of Transfer; and

WHEREAS, the CDBG program is in accordance with the “Live” strategy to “[s]upport and stabilize our neighborhoods,” as described on pages 160-163 of Plan Cincinnati (2012), and with the “Compete” initiative to “[b]e the pivotal economic force in the region,” as described on pages 101-102 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the sum of \$4,119,272.70 is hereby transferred and returned to Fund 304, “Community Development Block Grant,” in accordance with Section A of the attached Schedule of Transfer for the purpose of closing out or decreasing certain existing project accounts.

Section 2. That the transfer and appropriation of \$4,350,000 from the unappropriated surplus of Fund 304, “Community Development Block Grant,” to various project accounts is hereby authorized in accordance with Section B of the attached Schedule of Transfer for the purpose of funding various projects.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

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 provide funding for the continuation of vital City program projects that will be spent in a timely manner.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

SCHEDULE OF TRANSFER

DECREASE OF EXISTING COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM RECONCILIATION SCHEDULE

Section A

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Decreased	Revised Authorization
CDBG	304	164	30420164	Administration and Planning - DCED Econ Dev '20	\$125,000.00	\$14.47	\$124,985.53
CDBG	304	161	30421000	Administration - CDBG '21	\$2,089,104.98	\$1,324,605.98	\$764,499.00
CDBG	304	161	30422000	Administration - CDBG '22	\$1,675,903.00	\$380,952.09	\$1,294,950.91
CDBG	304	162	30419212	Blueprint for Success '19	\$100,000.00	\$22,730.61	\$77,269.39
CDBG	304	162	30419213	Compliance Assistance Repairs for the Elderly '19	\$190,000.00	\$98,490.87	\$91,509.13
CDBG	304	162	30419124	Hand Up Initiative '19	\$1,256,000.00	\$433,892.21	\$822,107.79
CDBG	304	162	30420124	Hand Up Initiative '20	\$1,260,000.00	\$443,747.37	\$816,252.63
CDBG	304	162	30422124	Hand Up Initiative '22	\$1,100,000.00	\$5,033.32	\$1,094,966.68
CDBG	304	161	30421103	Housing Choice Mobility Program '21	\$32,214.00	\$32,214.00	\$0.00
CDBG	304	263	30419411	Lead Hazard Testing Program '19	\$300,000.00	\$39,574.57	\$260,425.43
CDBG	304	161	30420411	Lead Hazard Testing Program '20	\$200,000.00	\$110,425.43	\$89,574.57
CDBG	304	164	52221	NBD Improvement Program '15	\$905,874.00	\$30,000.00	\$875,874.00
CDBG	304	164	30418221	NBD Improvement Program '18	\$842,000.00	\$27,869.83	\$814,130.17
CDBG	304	164	30421221	NBD Improvement Program '21	\$907,214.00	\$67,177.07	\$840,036.93
CDBG	304	162	30420777	Project Lift '20	\$295,330.88	\$295,330.88	\$0.00
CDBG	304	162	30421777	Project Lift '21	\$607,214.00	\$607,214.00	\$0.00
CDBG	304	162	30422777	Project Lift '22	\$200,000.00	\$200,000.00	\$0.00
TOTAL					\$12,085,854.86	\$4,119,272.70	\$7,966,582.16

INCREASE OF EXISTING COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM RECONCILIATION SCHEDULE

Section B

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Increased	Revised Authorization
CDBG	304	162	51401	Affordable Multi Family Rehab Program '15	\$102,837.38	\$30,000.00	\$132,837.38
CDBG	304	162	30418431	Strategic Housing Initiatives Program '18	\$272,805.78	\$27,869.83	\$300,675.61
CDBG	304	162	30419431	Strategic Housing Initiatives Program '19	\$30,000.00	\$594,688.26	\$624,688.26
CDBG	304	162	30420431	Strategic Housing Initiatives Program '20	\$780,633.11	\$849,518.15	\$1,630,151.26
CDBG	304	162	30421431	Strategic Housing Initiatives Program '21	\$356,583.00	\$497,923.76	\$854,506.76
CDBG	304	162	30421244	Operating Support for CDCs '21	\$1,731,642.00	\$909,600.00	\$2,641,242.00
CDBG	304	164	30421611	Commercial and Industrial Redevelopment '21	\$208,759.00	\$623,687.29	\$832,446.29
CDBG	304	164	30422611	Commercial and Industrial Redevelopment '22	\$500,000.00	\$816,712.71	\$1,316,712.71
TOTAL					\$3,983,260.27	\$4,350,000.00	\$8,333,260.27

Date: December 7, 2022

To: Mayor and Members of City Council 202202149
From: Sheryl M. M. Long, City Manager
Subject: ORDINANCE – ACCEPTING AND CONFIRMING DEDICATION OF THE A PORTION
OF MADISON ROAD

Attached is an ordinance captioned as follows:

ACCEPTING AND CONFIRMING the dedication to public use of a 0.031-acre tract of real property in Madisonville as a portion of Madison Road public right-of-way for street purposes.

Madison and Stewart, LLC (“Dedicator”) has dedicated to public use approximately 0.031-acres of real property in Madisonville as a portion of the Madison Road public right-of-way.

Jody T. Klekamp, a reputable attorney, has provided an Attorney’s Certificate of Title dated November 15, 2022, certifying that the Dedicator holds title to the land to be dedicated.

The Office of the City Engineer has examined the Dedication Plat as to its technical features and found it to be correct.

The City Planning Commission approved the Dedication Plat at its meeting on June 17, 2022.

The Administration recommends passage of the attached emergency ordinance.

Attachment I – Dedication Plat

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

ACCEPTING AND CONFIRMING the dedication to public use of a 0.031-acre tract of real property in Madisonville as a portion of Madison Road public right-of-way for street purposes.

WHEREAS, Madison and Stewart, LLC, an Ohio limited liability company (“Dedicator”) by and through its duly authorized representative, has dedicated to public use approximately 0.031-acres of real property in Madisonville as a portion of the Madison Road public right-of-way for street purposes by a plat attached to this ordinance as Attachment A and incorporated herein by reference (“Dedication Plat”); and

WHEREAS, Jody T. Klekamp, a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney’s Certificate of Title dated November 15, 2022, certifying that the Dedicator holds title to the land depicted and described on the Dedication Plat in fee simple, with full power to convey, free and clear of all encumbrances, including real estate taxes and assessments (or that the Dedicator has made satisfactory provision for payment of all real estate taxes and assessments); and

WHEREAS, the office of the City Engineer has examined and checked the Dedication Plat as to its technical features and found it to be correct; and

WHEREAS, the City Planning Commission approved the dedication of the portion of Madison Road to public use as public right-of-way for street purposes at its meeting on June 17, 2022; and

WHEREAS, based on the foregoing, the City Manager, upon consultation with the City’s Department of Transportation and Engineering, recommends that Council accept and confirm the dedication of the portion of Madison Road as public right-of-way; now, therefore,

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

Section 1. That the dedication to public use of an approximately 0.031-acre tract of real property (“Dedication Property”) in Madisonville as a portion of the Madison Road public right-of-way for street purposes, as depicted and described on the plat attached to this ordinance as Attachment A and incorporated herein by reference is hereby accepted and confirmed. The Dedication Property is more particularly described as follows:

Situated in Section 16, Town 4, Fractional Range 2, Columbia Township, in the City of Cincinnati, County of Hamilton, State of Ohio, and being a portion of a 4.477-acre consolidation plat recorded in Plat Book 479, Page 13 in the Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

Beginning at a point in the northerly existing right-of-way of Madison Road, (being 30.00' as measured perpendicular to centerline), at the common corner of Madison and Stewart, LLC (O.R. 14017, Pg. 2359), and NREA VB I, LLC (O.R. 13863, Pg. 1220), being an existing 5/8" iron pin (found);

Thence with the common line of Madison and Stewart, LLC and NREA VB I, LLC, North 03°54'00" East for a distance of 3.00 feet to a 5/8" iron pin (set);

Thence with the new division line for right-of-way for the following three calls:

South 85°35'00" East for a distance of 367.08 feet to a 5/8" iron pin (set);

Along a circular curve to the left, having a radius of 25.00 feet, an arc length of 36.14 feet, a chord bearing of North 53°00'19" East, for a chord distance of 33.07 feet to a 5/8" iron pin (set);

North 11°35'38" East for a distance of 18.28 feet to a point in the westerly right-of-way of Stewart Avenue (being 25.00 feet as measured perpendicular to centerline), being a 5/8" iron pin (set);

Thence with existing right-of-way and generally along the back of sidewalk for the following two calls:

South 04°36'20" West for a distance of 28.06 feet to a point being an existing notch;

continuing along a circular curve to the right, having a radius of 15.00 feet, an arc length of 23.52 feet, a chord bearing of South 49°30'40" West, for a chord distance of 21.18 feet to a point being in the northerly right-of-way of Madison Road, (33.00' measured perpendicular to centerline), being an existing notch;

Thence with said northerly right-of-way North 85°35'00" West for a distance of 379.05 feet to said common line with Madison and Stewart LLC and NREA VB I, LLC, being the said True Point of Beginning.

The above-described parcel of land contains 0.031 acres (1,331.81 S.F.) and is subject to all rights-of-way and easements of record.

The above description was prepared by Derrick Daily, Ohio Professional Surveyor, No. S-8819 of Surveying and Mapping, LLC (SAM LLC), based

upon a survey made by me or others under my direction, in April 2022, and that all monuments have been found to exist or set as shown. Iron pins denoted as (set) are 5/8” in diameter with a yellow plastic cap stamped “SAM LLC D. Daily PS 8819 PLS 4251.”

Section 2. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the terms of this ordinance, including without limitation the execution of all necessary real estate documents.

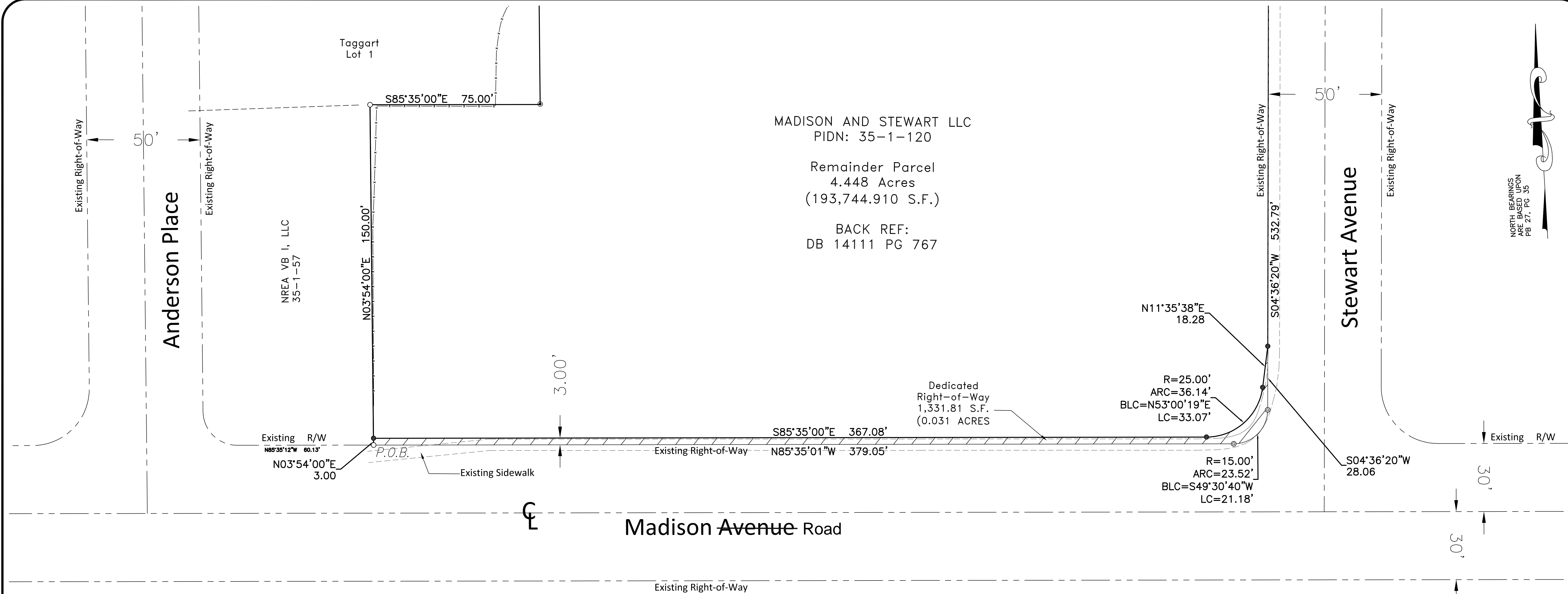
Section 3. That the City Solicitor shall cause an authenticated copy of this ordinance to be filed with the Hamilton County, Ohio Auditor's Office and recorded in the Hamilton County, Ohio Recorder's Office.

Section 4. 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



MADISON AND STEWART LLC
PIDN: 35-1-120

Remainder Parcel
4.448 Acres
(193,744.910 S.F.)

BACK REF:
DB 14111 PG 767

NREA VB I, LLC
35-1-57

Dedicated
Right-of-Way
1,331.81 S.F.
(0.031 ACRES)

R=25.00'
ARC=36.14'
BLC=N53°00'19"E
LC=33.07'

R=15.00'
ARC=23.52'
BLC=S49°30'40"W
LC=21.18'

Point of Beginning : North: 5000.0000' East: 5000.0000'

Segment #1 : Line Course: N03° 54' 00.00"E Length: 3.000' North: 5002.9932' East: 5000.2041'

Segment #2 : Line Course: S85° 35' 00.00"E Length: 367.082' North: 4974.7246' East: 5366.1958'

Segment #3 : Curve
Length: 36.138' Radius: 25.000' Delta: 082.8227 (d) Tangent: 22.049'
Chord: 33.073' Course: N53° 00' 19.21"E
Course In: N04° 25' 00.00"E Course Out: S78° 24' 21.58"E
RP North: 4999.6503' East: 5368.1210' End North: 4994.6259' East: 5392.6109'

Segment #4 : Line Course: N11° 35' 38.42"E Length: 18.281' North: 5012.5335' East: 5396.2849'

Segment #5 : Line Course: S04° 36' 20.00"W Length: 28.060' North: 4984.5641' East: 5394.0318'

Segment #6 : Curve
Length: 23.516' Radius: 15.001' Delta: 089.8149 (d) Tangent: 14.953'
Chord: 21.181' Course: S49° 30' 19.58"W
Course In: N85° 24' 07.17"W Course Out: S04° 24' 46.32"W
RP North: 4985.7667' East: 5379.0786' End North: 4970.8097' East: 5377.9244'

Segment #7 : Line Course: N85° 35' 00.00"W Length: 379.050' North: 5000.0000' East: 5000.0000'

Perimeter: 855.126' Area: 1331.81 Sq. Ft.
Error Closure: 0.0003 Course: N37° 56' 47.92"E
Error North: 0.00024 East: 0.00019

Precision 1: 2832423.333

APPROVED AS TO FORM:

ASSISTANT CITY SOLICITOR
APPROVED BY: _____
SEWERS CHIEF ENGINEER, METROPOLITAN SEWER DISTRICT

APPROVED BY: _____
CITY OF CINCINNATI, STORMWATER MANAGEMENT UTILITY ENGINEER

APPROVED BY: _____
CITY ENGINEER

CITY PLANNING COMMISSION APPROVAL:

PLAT APPROVED BY THE CITY OF CINCINNATI PLANNING COMMISSION AT THE MEETING ON THE _____ DAY OF _____, 2022.

APPROVED BY: _____
KATHERINE KEOUGH-JURS, DIRECTOR, DEPARTMENT OF CITY PLANNING AND ENGAGEMENT.

CITY OF CINCINNATI ACCEPTANCE:

THE DEDICATION OF THE RIGHT-OF-WAY TRACT DEPICTED HEREON IS ACCEPTED BY THE CITY COUNCIL BY ORDINANCE NO. _____, PASSED BY THE CITY OF CINCINNATI COUNCIL ON _____, 2022.

CLERK OF COUNCIL _____ DATE: _____

LIEN HOLDER'S ACKNOWLEDGEMENT:

WE, THE UNDERSIGN, AS MORTGAGEE, DO HEREBY ADOPT AND CONFIRM THIS PLAT OF SUBDIVISION AS SHOWN HEREON.

SIGNED: _____
BY: _____
ITS: _____

THIS IS AN ACKNOWLEDGEMENT AND NO OATH OR AFFIRMATION WAS AFFIRMATION WAS ADMINISTERED TO THE SIGNER.

STATE OF OHIO
COUNTY OF HAMILTON

BE IT REMEMBERED THAT ON THIS _____ DAY OF _____, 2022, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY CAME

_____, OF _____, WHO ON BEHALF OF THE CORPORATION ACKNOWLEDGED THE SIGNING AND EXECUTION OF THE FOREGOING INSTRUMENT TO BE ITS VOLUNTARY ACT AND DEED.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND AFFIXED MY NOTARIAL SEAL ON THE DAY AND DATE AFORESAID.

NOTARY PUBLIC, STATE OF OHIO

OWNER'S DEDICATION:

MADISON AND STEWART LLC, BEING THE OWNERS OF THE PROPERTY DEPICTED AND DESCRIBED HEREON, DO HEREBY ADOPT AND CONFIRM THIS PLAT AND DEDICATE THE 0.031 ACRE OF PROPERTY, AS SHOWN HEREON, TO PUBLIC USE FOR STREET PURPOSES FOREVER. WE ALSO GUARANTEE THE PAYMENT OF ALL TAXES AND ASSESSMENT THAT ARE A LIEN ON THE PROPERTY ON THE DATE OF ACCEPTANCE.

BY: _____ DATE: _____
NICHOLAS P. LINGENFELTER, MEMBER

STATE OF OHIO
COUNTY OF HAMILTON

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2022.

BY: NICHOLAS P. LINGENFELTER, AS A MEMBER OF MADISON AND STEWART LLC, AN OHIO LIMITED LIABILITY COMPANY ON BEHALF OF SAID CORPORATION. THIS IS AN ACKNOWLEDGEMENT. NO OATH OR AFFIRMATION TO THE SIGNER WITH REGARD TO THE NOTARIAL ACT CERTIFIED HEREBY.

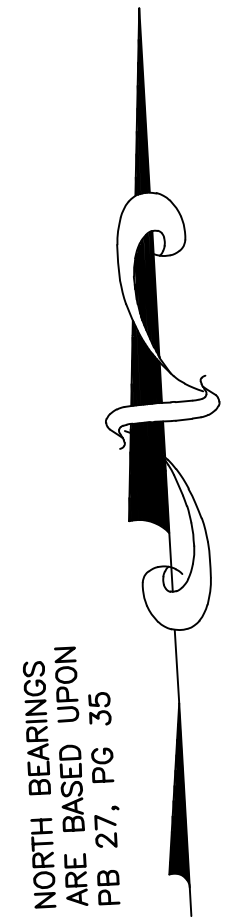
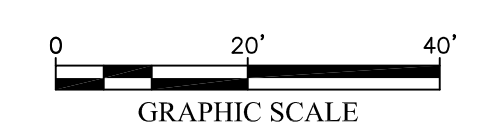
NOTARY PUBLIC, STATE OF OHIO

SURVEYORS CERTIFICATION:

I CERTIFY THAT THIS ACCOMPANYING PLAT IS A CORRECT DEPICTION OF A BOUNDARY SURVEY MADE BY ME OR OTHER SURVEYORS UNDER MY DIRECTION IN APRIL 2022, AND THAT ALL MONUMENTS HAVE BEEN FOUND OR SET AS SHOWN.

Derrick Daily 08-17-2022
DERRICK DAILY DATE
OHIO PS-8819

- ⊙ NOTCH (FOUND)
- REBAR (FOUND)
- ⊙ MAG NAIL (SET)
- 5/8" REBAR (SET) W/YELLOW PLASTIC STAMPED "SAM LLC D.DAILY PS 8819 PLS 4251"



REVIEWED BY: _____

71 Cavalier Blvd., Suite 213
Florence, KY 41042
Ofc: 859.918.5005
Fax: 855.380.2495
email: info@sam.biz

PROJECT:	MADISON_AND_STEWART_LLC THE_JAMESON
JOB NUMBER:	1022069996
DATE:	05.17.2022
SCALE:	1"=20'
SURVEYOR:	DERRICK DAILY
TECHNICIAN:	JUSTIN HUNGLER
DRAWING:	DEDICATION
TRACT ID:	35-1-120
PARTY CHIEF:	KEITH.RAUCH
FIELDBOOKS:	

RIGHT-OF-WAY DEDICATION PLAT
1,331.18 S.F. (0.031 ACRES)
MADISON AVENUE

Section 16, Town 4, F.R. 2, Columbia Township
City of Cincinnati, Hamilton County, Ohio
May 17, 2022

SHEET 1-OF-1

December 7, 2022

To: Mayor and Members of City Council

From: Sheryl M.M. Long, City Manager

202202151

Subject: Ordinance: New Classification and Salary Range for the classification of Executive Assistant Police Chief

Attached is an Ordinance captioned:

ESTABLISHING the salary schedule and classification title for the new employment classification of Executive Assistant Police Chief (Job Code 037) by enacting Section 037 of Division 5, Chapter 307 of the Cincinnati Municipal Code.

The Charter of the City of Cincinnati provides for the rank of Executive Assistant Police Chief, which has heretofore not been created. This unclassified and unrepresented position will be filled by an employee to act in the Police Chief's absence and is authorized to exercise the authority and perform the duties of the Police Chief, including overseeing and coordinating work and assigning duties to the other Assistant Police Chiefs.

The Administration recommends passage of this Emergency Ordinance.

cc: Edward G. Ramsey, Human Resources Director

EMERGENCY

KKF

- 2022

ESTABLISHING the salary schedule and classification title for the new employment classification of Executive Assistant Police Chief (Job Code 037) by enacting Section 037 of Division 5, Chapter 307 of the Cincinnati Municipal Code.

WHEREAS, the Charter of the City of Cincinnati provides that the Cincinnati Police Department shall consist of ranks including the Executive Assistant Police Chief, which currently exists solely as a sub-classification of the civil service classification of Assistant Police Chief; and

WHEREAS, the Executive Assistant Police Chief serves in an unrepresented capacity as the Executive Officer designated to act in the Police Chief's absence, and is authorized to exercise the authority and perform the duties of the Police Chief, including overseeing and coordinating work and assigning duties to the other Assistant Police Chiefs; and

WHEREAS, the Executive Assistant Police Chief should receive higher compensation for these greater duties and responsibilities to incentivize qualified candidates to pursue an unrepresented, unclassified position; and

WHEREAS, lower ranks in the Cincinnati Police Department generally increase in salary in sixteen percent increments as they advance in rank, and it is reasonable that the rank of Police Chief should also be separated by sixteen percent from the rank of Executive Assistant Police Chief; and

WHEREAS, it is further recommended that future cost of living adjustments for the classification be aligned with salary adjustments as approved by Council; now, therefore,

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

Section 1. That Section 037 of Division 5, Chapter 307 of the Cincinnati Municipal Code are hereby enacted as shown below:

Classification	Minimum - Annual	Maximum - Annual
Executive Assistant Police Chief	156,930.68	160,187.20

Section 2. 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 establish the classification and salary range for Executive Assistant Police Chief in order to recruit and retain qualified employees in the Police Department while the position of Executive Assistant Police Chief is unfilled.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Date: December 7, 2022

To: Mayor and Members of City Council 202202152
From: Sheryl M. M. Long, City Manager
Subject: ORDINANCE – GRANT OF EASEMENT – CURE PROPERTIES, LLC (MAIN STREET STEPS)

Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a Grant of Easement in favor of Cure Properties, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of certain real property commonly known as the Main Street Steps in Mt. Auburn.

Cure Properties, LLC (“Grantee”) owns the property located at 213 Goethe Street in the Mt. Auburn neighborhood and has requested an easement upon a portion of the Main Street Steps for a step and a walkway.

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.

The fair market value of the easements is approximately \$200 which Grantee has agreed to pay.

The City Planning Commission approved the easements at its meeting on August 19, 2022.

The Administration recommends passage of the attached ordinance.

Attachment I – Grant of Easement

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

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Cure Properties, LLC, pursuant to which the City of Cincinnati will grant an encroachment easement upon a portion of certain real property commonly known as the Main Street Steps in Mt. Auburn.

WHEREAS, Cure Properties, LLC, an Ohio limited liability company (“Grantee”), owns certain real property located at 213 Goethe Street in Mt. Auburn; and

WHEREAS, the City of Cincinnati owns the adjoining property commonly known as the Main Street Steps (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Grantee has requested an easement from the City for an encroachment upon a portion of the Property, namely, a step and walkway, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference (“Easement”); and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the Easement to Grantee is not adverse to the City’s retained interest in the Property and; (ii) that granting the Easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Property; 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 a professional appraisal that the fair market value of the Easement is approximately \$200, 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 Easement at its meeting on August 19, 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 a *Grant of Easement* in favor of Cure Properties, LLC, an Ohio limited liability company (“Grantee”), owner of the

property located at 213 Goethe Street in Mt. Auburn, 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 an easement to construct and maintain an encroachment (“Easement”) upon a portion of certain real property commonly known as the Main Street Steps (“Property”), as more particularly described on Attachment A.

Section 2. That granting the Easement 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 on the Property.

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

Section 4. That the fair market value of the Easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$200, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grant 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 *Grant 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 *Grant 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

(encroachment upon a portion of Auditor's Parcel No. 94-06-46)

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 **CURE PROPERTIES, LLC**, an Ohio limited liability company, with a tax mailing address of 1805 Dalton Street, Cincinnati, OH 45214 ("**Grantee**").

Recitals:

A. By virtue of a *Limited Warranty Deed* recorded on July 28, 2021, in OR 14468, Page 3066, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 213 Goethe Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Properties*) hereto (the "**Benefitted Property**").

B. By virtue of a *Deed* recorded on December 29, 1905, in Deed Book 940, Page 382, Hamilton County, Ohio Records, the City owns certain real property commonly known as a portion of the Main Street Steps, and more particularly identified as Lot 46 in Dorsey's Blue Plat Subdivision, as recorded in Deed Book 82, Page 418, Hamilton County, Ohio Records, also identified as Hamilton County, Ohio Auditor's Parcel No. 094-0006-0046, as described on Exhibit B (*Legal Description-the Property*) and depicted on Exhibit C (*Survey*) hereto (the "**Property**"). The Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant easement for a step and walkway encroachment in and across a portion of the Property (the "**Encroachment**").

D. The City Manager, in consultation with DOT, has determined that (i) the easement will not have an adverse effect on the City's retained interest in the Property, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing 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 \$200, which Grantee has agreed to pay.

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 August 19, 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, a non-exclusive encroachment easement as an appurtenance to and for the benefit of the Benefitted Property to use, maintain, repair, reconstruct, replace, and remove a step and walkway upon a portion of the Property, as more particularly identified and depicted on Exhibit C and described on Exhibit D (Legal Description—Easement) hereto (the “**Easement**” or the “**Easement Area**”, as applicable). Once installed, Grantee shall not make any alterations, additions, enlargements, or modifications to the Encroachment within the Easement Area without the prior written consent of the City. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Area. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Area or the suitability or fitness of the Easement Area for any purpose. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Easement Area.

2. Permitted Use. Grantee, its agents, tenants, licensees, and invitees shall have the non-exclusive right to use the Easement Area for the sole and limited purpose of pedestrian ingress and egress across the Property to the adjoining public rights-of-way. Grantee shall not use or permit the use of the Easement Area in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the full use and enjoyment of the Property, as determined by the City.

3. Termination. Notwithstanding anything herein to the contrary, the Easement shall automatically terminate (i) upon the complete or respective partial demolition, without rebuilding within 1 year of such demolition, of the Encroachment within the Easement Area, such that the Easement would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Area or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act (“**ADA**”) regulations or accessibility standards; or (iii) upon written notice from the City if the City determines that the Encroachment is creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of the Main Street Steps, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner consistent with the degree of harm posed by the public safety issue.

4. 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 easements, utility lines, and related facilities in the vicinity of the 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 construction, maintenance, repair, reconstruction, or removal 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.

5. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements 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 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, construction, maintenance, repair, and all other matters associated with the Encroachment.

6. Access by City Departments. Grantee shall ensure continuous, unrestricted access to the Easement Area (24 hours/day, 7 days/week, 52 weeks/year) for DOTE for inspection and any other purpose, and for the City's Police and Fire Departments.

7. No Liens. Grantee shall not permit any mechanics liens to attach to the Easement Area in connection with the construction, installation, use, operation, maintenance, repair, reconstruction, removal, or replacement of the Encroachment.

8. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail 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 respective 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.

9. 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.

10. 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.

11. 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.

12. Coordinated Report Conditions (CR #13-2022). The following additional conditions shall apply:

a. DOTE:

- i. Grantee shall repair at its sole cost any damage to existing City-owned walk and stairs due to construction of proposed new walk and retaining walls. All such repairs shall comply with City standards.
- ii. Grantee shall provide an expansion joint between the existing and proposed walk and steps.
- iii. A DOTE street opening permit, obtained by a DOTE-licensed street contractor, is required for all private improvements on the Property. All improvements on the Property must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application

13. 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.

14. Exhibits. The following exhibits are attached hereto and made a part hereof:
- Exhibit A – *Legal Description - Benefitted Property*
 - Exhibit B – *Legal Description – the Property*
 - Exhibit C – *Survey*
 - Exhibit D – *Legal Description—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: _____

Date: _____, 2022

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:

CURE PROPERTIES, 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 **CURE PROPERTIES, 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

Property Address: 213 Goethe Street
Auditor's Parcel No.: 094-0006-0317

Situated in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

COMMENCING at the intersection of the south line of Goethe Street and the west line of Sycamore Street;

Thence with the south line of said Goethe Street, South 86°20'36" West, 265.00 feet to the northwest corner of a tract conveyed to WDC, LLC in Official Record 12749, Page 1535 of the Hamilton County Recorder's Office AND the **POINT OF BEGINNING**, being referenced by a set cross notch North 03°02'10" West, 3.00 feet;

Thence with the lines of said WDC, LLC, the following six (6) courses:

1. South 03°02'10" East, 60.00 feet to a set iron pin and cap;
2. South 86°20'36" West, 33.00 feet to a set iron pin and cap;
3. South 03°02'10" East, 15.00 feet to a set iron pin and cap;
4. South 86°20'36" West, 33.00 feet to a set iron pin and cap;
5. North 03°02'10" West, 11.00 feet to a set iron pin and cap;
6. South 86°20'36" West, 33.00 feet to a set iron pin and cap in the east line of a tract conveyed to the City of Cincinnati in Deed Book 940, Page 382;

Thence with the east line of said City of Cincinnati, North 03°02'10" West, 64.00 feet to the south line of aforesaid Goethe Street, being referenced by a set cross notch North 03°02'10" West, 3.00 feet;

Thence with the south line of said Goethe Street, North 86°20'36" East, 99.00 feet to the **POINT OF BEGINNING**.

CONTAINING 0.1507 ACRES. Together with and subject to all easements of record.

EXHIBIT B
to Grant of Easement
LEGAL DESCRIPTION—THE PROPERTY

Property Address: N/A
Auditor's Parcel No.: 094-0006-0046
Prior Instrument Reference: Deed Book 940, Page 382, Hamilton County, Ohio Records

Situated in Section 13, Town 3, Fractional Range 2 Between the Miamis, City of Cincinnati, Hamilton County, Ohio and being Lot 46 of Dorsey's Blue Plat Subdivision as recorded in Deed Book 82, Page 418, Hamilton County, Ohio Records.

EXHIBIT C
to Grant of Easement
SURVEY

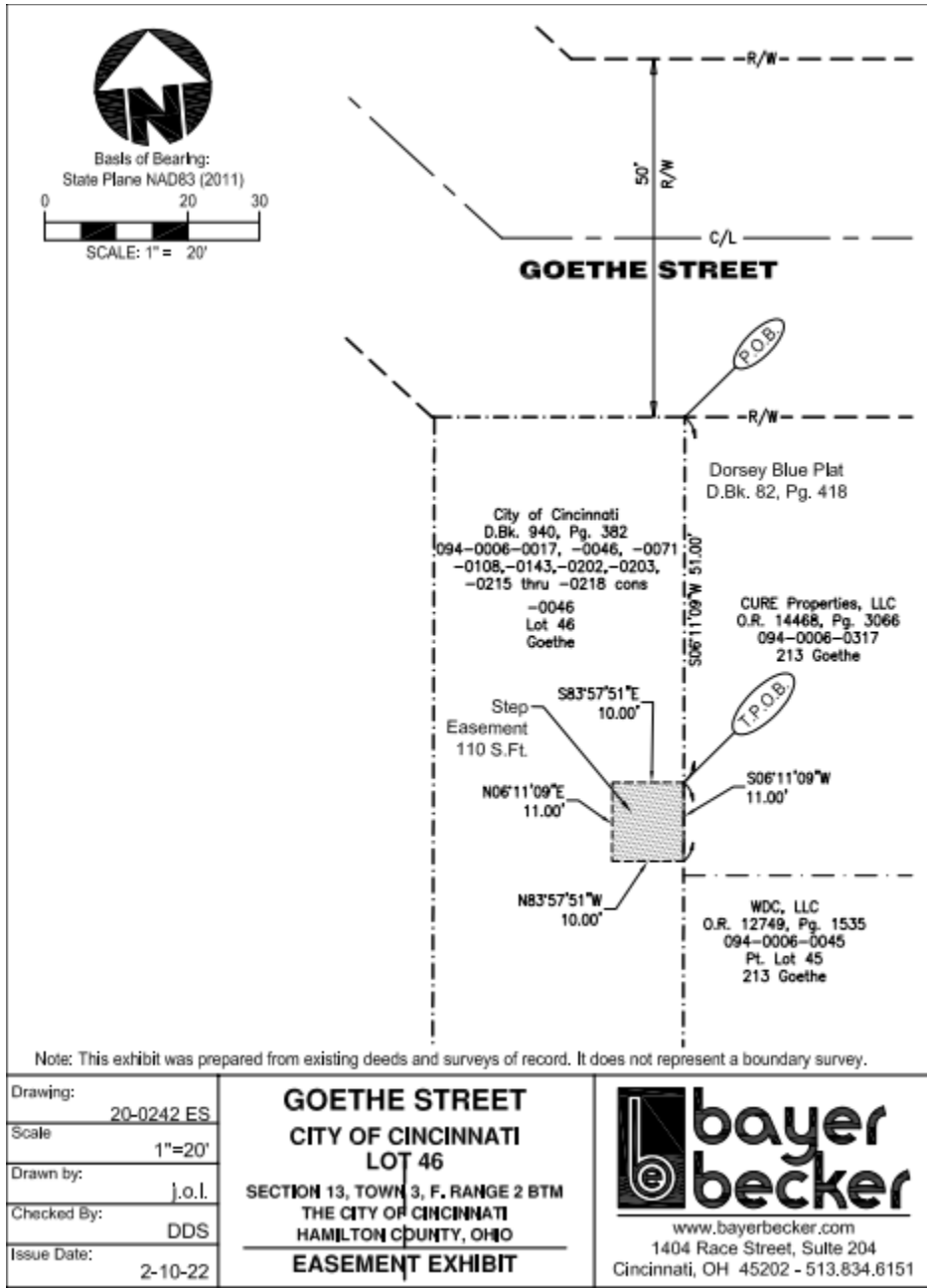


EXHIBIT D
to Grant of Easement
LEGAL DESCRIPTION-EASEMENT

Description: Goethe Street
Step Easement

Date: February 10, 2022

Location: City of Cincinnati
Hamilton County, Ohio



Situated in Section 13, Town 3, Fractional Range 2 Between the Miamis, City of Cincinnati, Hamilton County, Ohio being a Step Easement over part of the City of Cincinnati land as recorded in Deed Book 940, Pg. 382 and being part of Lot 46 of Dorsey Blue Plat as recorded in Deed Book 82, Page 418 and being further described as follows:

Begin at a point found by measuring from the northeast corner of said Lot 46, said corner being on the south right of way of Goethe Street (50') and being the northwest corner of CURE Properties, LLC as recorded in Official Record 14468, Page 3066; thence, departing the south right of way of said Goethe Street and with the west line of said CURE Properties, LLC, South 06° 11' 09" West, 51.00 feet to the true point of beginning;

thence, from the True Point of Beginning thus found, and continuing with said CURE Properties, LLC, South 06° 11' 09" West, 11.00 feet;

thence, departing said CURE Properties, LLC and through the lands of said City of Cincinnati land the following three courses: North 83° 57' 51" West, 10.00 feet;

thence, North 06° 11' 09" East, 11.00 feet;

thence, South 83° 57' 51" East, 10.00 feet to the True Point of Beginning containing 110 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 February 10, 2022 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

December 7, 2022

To: Mayor and Members of City Council 202202153
From: Sheryl M.M. Long, City Manager
Subject: **Emergency Ordinance – Approving and Authorizing CRA Tax Exemption Agreement with Lester and Montgomery Apartments, LLC**

Attached is an Emergency Ordinance captioned:

APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with Lester and Montgomery Apartments, LLC, an affiliate of Towne Properties, Inc., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 5984-5988 Lester Road and 6006-6026 Montgomery Road in the Pleasant Ridge neighborhood of Cincinnati, in connection with the construction of approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$23,000,000.

BACKGROUND/CURRENT CONDITIONS

Lester and Montgomery Apartments, LLC, an affiliate of Towne Properties, Inc., plans to develop the property located at 5984-5988 Lester Road and 6006-6026 Montgomery Road in the Pleasant Ridge neighborhood of Cincinnati. Prior to the proposed development, the City provided a \$950,000 grant to the Pleasant Ridge Development Corporation (PRDC) in 2019 for the ability to purchase and remediate site conditions associated with the parcels in order to create a dense mixed-use development that compliments the character of the neighborhood. The project currently replaces long vacant and blighted properties and continues work needed to remediate existing site conditions related to underground storage tanks and auto repair garages.

DEVELOPER INFORMATION

Founded in 1961, Towne Properties, Inc. (Towne) is a family-owned development and management company headquartered in Cincinnati. Over the last 60 years, Towne has developed over 8,000 apartments, over 2,500 for-sale condominiums, and 3,200,000 square feet of commercial space. Recent projects completed by the Developer include the 92-unit, market-rate DeSales Flats Apartments in the Evanston neighborhood of

Cincinnati. PRDC selected Towne at the front end of the project, based on their long track record of development in Cincinnati neighborhoods, as well as the Towne’s practice of holding properties after development, rather than selling the development after completion. Towne partnered with Levental Lester Montgomery, LLC as an investor on the project, based on their extensive portfolio of multi-family/mixed-use projects, and desire for continued investment in the community.

PROJECT DESCRIPTION

The construction of this \$23,000,000 LEED-silver development will bring 82 new apartment units to Pleasant Ridge. The project consists of (3) studio units that rent at \$1,447, (62) one-bedroom units with rents that range from \$1,563-1,718, and (17) two-bedroom units with rents that range from \$2,171-2,427. There is also 6,013 square feet of commercial space available for retail and restaurant users and 96 parking spaces (73 surface and 23 garage) available to residents and patrons. Additional amenities include a fitness center, club room, and rooftop deck. The Developer agrees to use its best efforts to create 17 full-time permanent jobs at an annual payroll of \$1,220,000 and 135 full-time construction jobs at an annual payroll of \$5,400,000.

The proposed project is consistent with Plan Cincinnati within the Live Initiative Area’s Goals to “create a more livable community” (p. 156) and “provide a full spectrum of housing options and improve housing quality and affordability” (p. 164). Furthermore, the project aligns with the 2016 Pleasant Ridge Community Council Market Study & Vision Plan, which recommends redevelopment of second-tier commercial properties for mixed-use alternatives (p. 18). Approval of the Planned Development (PD) Final Development Plan was passed by Planning Commission on August 19, 2022 and granted by City Council September 14, 2022. The Developer has also conducted extensive engagement with the Pleasant Ridge Community Council, which along with the Pleasant Ridge Development Corporation and Pleasant Ridge Business Association have provided letters of support for the project.

Rent	Affordable to Salary	City Jobs (Min Salary exceeds affordable salary)
\$1,447.00	\$57,080.00	Turf Manager, Electronics Technician 2, Supervising Traffic Aids Worker, Fire Captain Paramedic 2, Sanitarian-in-Training
\$2,427.00	\$97,080.00	Director, Assistant Director, Deputy Director

AMI	1	2	3	4	5	6	7	8
30%	\$20,100	\$22,950	\$25,800	\$28,650	\$32,470	\$37,190	\$49,910	\$46,360
50%	\$33,450	\$38,200	\$43,000	\$47,750	\$51,600	\$55,400	\$49,250	\$63,050
60%	\$40,140	\$45,840	\$51,600	\$57,300	\$61,920	\$66,480	\$59,100	\$75,660
80%	\$53,520	\$61,120	\$68,800	\$76,400	\$82,560	\$88,640	\$78,800	\$100,880

PROPOSED INCENTIVE

DCED is recommending a 15-year, net 59.5% (33% CPS PILOT, 7.5% VTICA Contribution) CRA tax exemption. The 7.5% VTICA contribution is to be for City-wide affordable housing initiatives. The exemption only applies to the increase in improvement value attributed to the construction. This recommendation is based on the following factors:

- The projects plan to replace long vacant and blighted parcels with a mixed-use, high-quality development within the neighborhood business district.
- Over 90% of the residential unit’s rents are affordable to those earning between 100-120% area median income.
- In addition to the voluntary 30% SBE goal, the Developer’s project-specific voluntary commitment of meeting the City’s economic inclusion program goals of 17% MBE and 10% WBE participation.
- The Developers commitment that jobs created by the project will comply with the Living Wage Policy as reflected in CMC Chapter 317.

Pursuant to the Commercial CRA policy established by City Council, this project scored 5 points as indicated below which would merit a 6-year net 45% CRA Tax Abatement:

“But For” Analysis (0-3 points) *	3
LEED (0-6 points)	2
Neighborhood VTICA (1 point for contributions over 1% but less than 15% and 8 points for contributions of 15% or more)	1
TOTAL	5

* *“But For” Analysis Explanation:* 3 points were awarded for the following reasons:

- Without the abatement, the projected return on equity is below 6% for the first 15 years following construction, which is not a reasonable investment for this project.
- DCED has determined that this project falls under the ‘Undercapitalized Projects’ category of the Policy as the project would not attract the equity needed to complete the project with a shorter term and percentage. Furthermore, significant investment is made in community enhancement and blight elimination.

SUMMARY	
Incentive Value	
Annual Net Abatement (Savings to Developer)	\$234,696
Total Term Net Abatement (Savings to Developer)	\$3,520,447
City's Portion of Property Taxes Forgone	\$831,484
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$130,168
Total Term CPS PILOT	\$1,952,517
VTICA	
Annual VTICA	\$29,584
Total Term VTICA PILOT	\$443,754
Income Tax (Max)	\$475,200
New Permanent Jobs	17
Total Public Benefit (CPS PILOT/VTICA PILOT/Income Tax)	\$2,871,470
Total Public Benefit ROI	\$0.82
City's ROI	\$3.45

PROFORMA WITHOUT ABATEMENT (YEARS 1-15)	
Revenue	\$ 3,024,106
Operating Expenses and Reserves	\$ 1,335,154
Net Operating Income	\$ 1,688,952
Debt Service	\$ 1,279,245
Cash Flow After Debt Service	\$ 409,708
Cash on Cash Return	5.92%

PROFORMA WITH ABATEMENT (YEARS 1-15)	
Revenue	\$ 3,024,106
Operating Expenses and Reserves	\$ 980,155
Net Operating Income	\$ 2,043,951
Debt Service	\$1,279,245
Cash Flow After Debt Service	\$ 764,706
Cash on Cash Return	7.84%

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: William Weber
- DCED Director: Markiea Carter
- Project Attorney: Tim Lynch

The anticipated council timeline, which includes two Budget and Finance meetings if necessary is as follows:

- December 7, 2022: Introduction to City Council
- December 12, 2022: Budget and Finance (1)
- December 19, 2022: Budget and Finance (2)
- December 21, 2022: City Council for Final Approval

RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. This is an Emergency Ordinance so construction pricing can hold stable.

Attachment: A. Property location and photographs

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

Attachment A: Location and Photographs



Property Location



5984-5988 Lester Road and 6006-6026 Montgomery Road

EESW

An Ordinance No. _____ - 2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Lester and Montgomery Apartments, LLC, an affiliate of Towne Properties, Inc., thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 5984-5988 Lester Road and 6006-6026 Montgomery Road in the Pleasant Ridge neighborhood of Cincinnati, in connection with the construction of approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$23,000,000.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code ("ORC") Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018 (as amended, the "Commercial Policy Ordinance"), sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, to encourage the development of real property in a more environmentally-friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design ("LEED") standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, "LBC" standards), all pursuant to the Statute; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, Lester and Montgomery Apartments, LLC (the “Company”) desires to construct approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space on real property at 5984-5988 Lester Road and 6006-6026 Montgomery Road located within the corporate boundaries of the City of Cincinnati, to LEED or LBC standards (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 7.5% of the exempt real property taxes, which funds shall be committed by the third-party organization to support affordable housing on a City-wide basis; and

WHEREAS, the City’s Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$234,696; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Lester and Montgomery Apartments, LLC (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value

of improvements to be made to real property located at 5984-5988 Lester Road and 6006-6026 Montgomery Road in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space, to be constructed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable) at a total construction cost of approximately \$23,000,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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 the construction described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and LESTER AND MONTGOMERY APARTMENTS, LLC, an Ohio limited liability company (the "Company"), an affiliate of Towne Properties, Inc.

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 5984-5988 Lester Road and 6006-6026 Montgomery Road (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LEED Silver standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the Pleasant Ridge neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the Pleasant Ridge neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the

Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to seven and one half percent (7.5%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). All of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct one new building on the Property to create approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$23,000,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with LEED Silver standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion

of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LEED Silver standards, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2039 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development

assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Business Enterprise Program.

A. Compliance with Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"), which includes SBEs owned by minorities and women ("MBEs" and "WBEs", respectively, as used within CMC Chapter 324, and collectively with SBEs, "Certified Firms"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: seventeen percent (17%) MBE participation; and 10% WBE participation. A list of SBEs, MBEs, and WBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

- (i) Including qualified Certified Firms on solicitation lists.
- (ii) Assuring that Certified Firms are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to Certified Firms to provide services, to supply materials, or to bid on construction contracts, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum Certified Firm participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to Certified Firms, or to provide technical assistance to Certified Firm as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Sections 323-99 and 324-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 17 full-time permanent jobs, and (ii) 135 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$1,220,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$5,400,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs. Notwithstanding the foregoing, all jobs created by the Project (during construction and after) will comply with the City's living wage policy as reflected in CMC Chapter 317, which rates shall be adjusted annually in accordance with such chapter.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to affect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this

Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of

five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Lester and Montgomery Apartments, LLC
c/o Towne Properties
Attention: Scott Arentsen, CFO
1055 St. Paul Place,
Cincinnati, OH 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the

City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

LESTER AND MONTGOMERY APARTMENTS, LLC,
an Ohio limited liability company

By: _____
Sheryl M. M. Long, City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Parcel I:

Situate in the City of Cincinnati, County of Hamilton and State of Ohio in Section 29, Town 4, Fractional Range 2, and being parts of Lots 1, 2, 3 and 4 of a proposed subdivision known as Glaescher Place and being more particularly described as follows:

Beginning at a point in the east line of Lester Road, 126.42 feet southwardly of the south line of Montgomery Road, as measure along the east line of Lester Road; thence southwardly along the east line of Lester Road 120.48 feet to a point, said point being the northeasterly corner of said Lester Road and Parkview Avenue (formerly Glaescher Avenue); thence northeastwardly with an interior angle of 73 deg. 39' along the north line of Parkview Avenue 138.77 feet to a point; thence North 19 deg. 0' West 115.61 feet to a point; thence South 71 deg. 0' West 104.35 feet to the east line of Lester Road and the place of beginning.

Parcel II:

Lying and being in Section 29, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning in the east line of Lester Road (50 feet wide) South 0° 41' West a distance of 73.36 feet from its intersection with the southerly line of Montgomery Road (70 feet wide); thence continuing South 0° 41' West with said east line of Lester Road a distance of 53.00 feet; thence North 74° 20' East a distance of 105.00 feet; thence North 28° 10' 06" West a distance of 66.00 feet; thence South 64° 10' 34" West a distance of 77.00 feet to the point of beginning on the east line of Lester Road, containing 5,208.94 square feet, or 0.1196 Acre, more or less.

Parcel III:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the east line of Lester Road (50 feet wide) with the southerly line of Montgomery Road (70 feet wide); thence North 62° 42' East with the southerly line of Montgomery Road a distance of 155.22 feet; thence South 26° 23' 07" East a distance of 153.00 feet; thence South 63° 46' West a distance of 12.18 feet; thence South 74° 20' West a distance of 99.13 feet; thence North 28° 10' 06" West a distance of 66.00 feet; thence South 64° 10' 34" West a distance of 77.00 feet to the east line of Lester Road; thence North 0° 41' East with the east line of Lester Road a distance of 73.36 feet to the point of beginning on the southerly line of Montgomery Road. Containing 19,956 square feet, or 0.4581 acres, more or less.

Parcel IV:

Lying and being in Sections 29 and 30 Town 4 Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning in the southerly line of Montgomery Road (70 feet wide) North 62° 42' East a distance of 155.22 feet from its intersection with the east line of Lester Road (50 feet wide), thence continuing North 62° 42' East with said southerly line of Montgomery Road a distance of 50.00 feet;

Thence leaving said right-of-way line, South 26° 02' East a distance of 60.00 feet; Thence North 65° 12' East a distance of 20.00 feet; Thence South 26° 02' East a distance of 4.0 feet; Thence North 63° 46' East a distance of 1.0 feet; Thence South 26° 02' East a distance of 89.43 feet; Thence South 63° 46' West a distance of 70.00 feet; Thence North 26° 23' 07" West to the point of beginning on the southerly line of Montgomery Road, a distance of 153.00 feet, containing 9,558.74 square feet, or 0.219 Acre, more or less.

Parcel V:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the south line of Montgomery Avenue, 205.17 feet East of the southeast corner of Lester Road and Montgomery Avenue; thence North 60 degrees 52 minutes East, 29.48 feet to a point in the south line of Montgomery Avenue; thence North 63 deg. 30' East 31.70 feet to a point in the south line of Montgomery Road; thence South 27 degrees 52 minutes East, 153.50 feet to a point; thence South 61 degrees 56 minutes West, 41.17 feet to a point; thence North 27 degrees 52 minutes West, 89.50 feet to a point; thence South 61 degrees 56 minutes West, 1 ft. to a point; thence North 27 degrees 52 minutes West, 4 feet to a point; thence southwestwardly to a point which is 60 feet South 27 degrees 52 minutes East of the place of beginning; thence northwardly 60 feet to the place of beginning.

Parcel VI:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the north line of Parkview Subdivision, as the same is recorded in Plat Book 29, Page 76, of the Hamilton County, Ohio Recorder's Office, South 74° 06' West, 6.22 ft. from the northeast corner of Lot 17 of said Parkview Subdivision, the above mentioned 6.22 ft. being measured along the north line of said Lot 17, said point of beginning being also the southwest corner of the grantor's property; thence North 27° 42' West along the West line of grantor's property which is also the West line of Lot 74 of Pierson's Addition to Pleasant Ridge, for a distance of 153.40 ft. to the South line of Montgomery Pike which is also the Northwest corner of the grantor's property; thence North 64° 06 1/2' East along the South line of Montgomery Pike for a distance of 40 ft.; thence South 26° 51' East, 116.22 ft.; thence South 15° 34' East, passing through the center of a firewall dividing the existing garages, for a distance of 43 ft. to a point in the North line of Lot 16 of said Parkview Subdivision, which is also the South line of grantor's property; thence South 74° 06' West along the North line of Lots 16 and 17 of said Parkview Subdivision, for a distance of 29.84 ft. to the place of beginning.

Parcel VII:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the North line of Parkview Subdivision as the same is recorded in Plat Book 29, Page 76, of the Hamilton County Recorder's records, South 74° 6' West, along the North line of Lot 16 of said subdivision 0.43 ft. from the Northeast corner of Lot 16 of said Parkview Subdivision, the above 0.43 ft. being measured along the North line of said Lot 16; thence from said beginning point, South 74° 6' West along the North line of said Lot 16, 33.95 ft; thence North 15° 34' West, passing through the center of a firewall dividing the existing garages for a distance of 43 ft.; thence North 26° 51' West, 116.22 ft. to a point in the Southerly line of Montgomery Road, a 70 ft. street; thence North 64° 06 1/2' East along the Southerly line of Montgomery Road, 24.92 ft.; thence, South 26° 51" East, 164.42 ft. to a point in the North line of Lot 16 of said Parkview Subdivision and the place of beginning.

ALSO DESCRIBED AS:

LEGAL DESCRIPTION

Situated in Sections 29 & 30, Town 4, Fractional Range 2 Between the Miamis, Columbia Township, The City of Cincinnati, Hamilton County, Ohio and being all of Lester and Montgomery Apartments, LLC as recorded in Official Record 14345, Page 2511 and Official Record _____, Page _____ of the Hamilton County, Ohio Recorder's Office, containing 1.5224 acres being further described as follows:

Begin at a set cross north at the southeast intersection of the south right of way of Montgomery Road (70') and the east right of way of Lester Road (50') said cross notch being the True Point of Beginning;

thence, from the True Point of Beginning, departing the east right of way of said Lester Road and with south right of way of said Montgomery Road the following four courses:

thence, North 65° 02' 39" East, 211.91 feet to a set cross notch;

thence, with a curve to the right, having a central angle of 02° 38' 00", a radius of 990.00 feet, an arc length of 45.50 feet, and a chord bearing North 66° 21' 39" East, 45.50 feet to a set cross notch;

thence, North 67° 40' 39" East, 71.80 feet to a set cross notch;

thence, with a curve to the right, having a central angle of 00° 05' 37", a radius of 1190.00 feet, an arc length of 1.94 feet, and a chord bearing North 67° 43' 27" East, 1.94 feet to a set cross notch at the northwest corner of Duke Energy Ohio, Inc as recorded in Deed Book 3006, Page 688;

thence, departing the south right of way of said Montgomery Road and with said Duke Energy Ohio, Inc, South 23° 13' 08" East, passing a found 1/2" iron pipe at 0.62 feet, a total distance of 165.03 feet to a set 5/8" iron pin on the north line of Parkview Subdivision as recorded in Plat Book 29, Page 76;

thence, departing said Duke Energy Ohio, Inc and with the north line of said Parkview Subdivision, South 77° 43' 52" West, 63.79 feet to a found 1-1/4" iron pipe;

thence, continuing with and departing said Parkview Subdivision, South 66° 10' 08" West, 123.43 feet to a found 1/2" iron pin with no cap at the northeast corner of Robert E. Clark & Pamela J. Clark as recorded in Official Record 13303, Page 1725;

thence, South 76° 45' 44" West, 100.00 feet to the northwest corner of Justin A. Wilkey as recorded in Official Record 13578, Page 1223, said corner being referenced by a found 5/8" iron pin with no cap leaning South 27° 45' 52" West, 0.27 feet;

thence, with said Justin A. Wilkey, South 13° 14' 16" East, 114.72 feet to the southwest corner of said Justin A. Wilkey, said corner being on the north right of way of Parkview Avenue and being referenced by a found 5/8" iron pin capped Bock & Clark being South 13° 14' 16" East, 0.73 feet;

thence, departing said Justin A. Wilkey and with the north right of way of said Parkview Avenue, South 76° 41' 46" West, 137.53 feet to a set 5/8" iron pin, said pin being the northeast intersection of the north right of way of said Parkview Avenue and the east right of way of said Lester Road;

thence, departing the north right of way of said Parkview Avenue and with the east right of way of said Lester Road, North 03° 02' 39" East, 246.00 feet to the True Point of Beginning containing 1.5224 acres of land more or less subject to all legal highways, easements, restrictions and agreements of record.

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED TO EXECUTION VERSION

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and LESTER AND MONTGOMERY APARTMENTS, LLC, an Ohio limited liability company (the "Company"), an affiliate of Towne Properties, Inc.

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 5984-5988 Lester Road and 6006-6026 Montgomery Road (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LEED Silver standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the Pleasant Ridge neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the Pleasant Ridge neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the

Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement (“VTICA”) with a City-designated third-party non-profit administrative organization (the “Third-Party Administrator”) to contribute to the Third-Party Administrator an amount equal to seven and one half percent (7.5%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the “VTICA Contribution”). All of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company’s representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project’s effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct one new building on the Property to create approximately 64,145 square feet of residential space, consisting of 82 dwelling units, and approximately 6,013 square feet of commercial space (the “Improvements”) at an estimated aggregate cost of \$23,000,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the “Housing Officer”) may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director’s judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with LEED Silver standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion

of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LEED Silver standards, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2039 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development

assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Business Enterprise Program.

A. Compliance with Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"), which includes SBEs owned by minorities and women ("MBEs" and "WBEs", respectively, as used within CMC Chapter 324, and collectively with SBEs, "Certified Firms"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: seventeen percent (17%) MBE participation; and 10% WBE participation. A list of SBEs, MBEs, and WBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

(i) Including qualified Certified Firms on solicitation lists.

(ii) Assuring that Certified Firms are solicited whenever they are potential sources. The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to Certified Firms to provide services, to supply materials, or to bid on construction contracts, as applicable.

(iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum Certified Firm participation.

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to Certified Firms, or to provide technical assistance to Certified Firm as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Sections 323-99 and 324-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 17 full-time permanent jobs, and (ii) 135 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$1,220,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$5,400,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs. Notwithstanding the foregoing, all jobs created by the Project (during construction and after) will comply with the City's living wage policy as reflected in CMC Chapter 317, which rates shall be adjusted annually in accordance with such chapter.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to affect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this

Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of

five (5) years after the discontinuation of operations. As used in this Section 22, “successors” and “related member” shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Lester and Montgomery Apartments, LLC
c/o Towne Properties
Attention: Scott Arentsen, CFO
1055 St. Paul Place,
Cincinnati, OH 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase “Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the

City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

LESTER AND MONTGOMERY APARTMENTS, LLC,
an Ohio limited liability company

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 2022

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Parcel I:

Situate in the City of Cincinnati, County of Hamilton and State of Ohio in Section 29, Town 4, Fractional Range 2, and being parts of Lots 1, 2, 3 and 4 of a proposed subdivision known as Glaescher Place and being more particularly described as follows:

Beginning at a point in the east line of Lester Road, 126.42 feet southwardly of the south line of Montgomery Road, as measure along the east line of Lester Road; thence southwardly along the east line of Lester Road 120.48 feet to a point, said point being the northeasterly corner of said Lester Road and Parkview Avenue (formerly Glaescher Avenue); thence northeastwardly with an interior angle of 73 deg. 39' along the north line of Parkview Avenue 138.77 feet to a point; thence North 19 deg. 0' West 115.61 feet to a point; thence South 71 deg. 0' West 104.35 feet to the east line of Lester Road and the place of beginning.

Parcel II:

Lying and being in Section 29, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning in the east line of Lester Road (50 feet wide) South 0° 41' West a distance of 73.36 feet from its intersection with the southerly line of Montgomery Road (70 feet wide); thence continuing South 0° 41' West with said east line of Lester Road a distance of 53.00 feet; thence North 74° 20' East a distance of 105.00 feet; thence North 28° 10' 06" West a distance of 66.00 feet; thence South 64° 10' 34" West a distance of 77.00 feet to the point of beginning on the east line of Lester Road, containing 5,208.94 square feet, or 0.1196 Acre, more or less.

Parcel III:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the east line of Lester Road (50 feet wide) with the southerly line of Montgomery Road (70 feet wide); thence North 62° 42' East with the southerly line of Montgomery Road a distance of 155.22 feet; thence South 26° 23' 07" East a distance of 153.00 feet; thence South 63° 46' West a distance of 12.18 feet; thence South 74° 20' West a distance of 99.13 feet; thence North 28° 10' 06" West a distance of 66.00 feet; thence South 64° 10' 34" West a distance of 77.00 feet to the east line of Lester Road; thence North 0° 41' East with the east line of Lester Road a distance of 73.36 feet to the point of beginning on the southerly line of Montgomery Road. Containing 19,956 square feet, or 0.4581 acres, more or less.

Parcel IV:

Lying and being in Sections 29 and 30 Town 4 Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning in the southerly line of Montgomery Road (70 feet wide) North 62° 42' East a distance of 155.22 feet from its intersection with the east line of Lester Road (50 feet wide), thence continuing North 62° 42' East with said southerly line of Montgomery Road a distance of 50.00 feet;

Thence leaving said right-of-way line, South 26° 02' East a distance of 60.00 feet; Thence North 65° 12' East a distance of 20.00 feet; Thence South 26° 02' East a distance of 4.0 feet; Thence North 63° 46' East a distance of 1.0 feet; Thence South 26° 02' East a distance of 89.43 feet; Thence South 63° 46' West a distance of 70.00 feet; Thence North 26° 23' 07" West to the point of beginning on the southerly line of Montgomery Road, a distance of 153.00 feet, containing 9,558.74 square feet, or 0.219 Acre, more or less.

Parcel V:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the south line of Montgomery Avenue, 205.17 feet East of the southeast corner of Lester Road and Montgomery Avenue; thence North 60 degrees 52 minutes East, 29.48 feet to a point in the south line of Montgomery Avenue; thence North 63 deg. 30' East 31.70 feet to a point in the south line of Montgomery Road; thence South 27 degrees 52 minutes East, 153.50 feet to a point; thence South 61 degrees 56 minutes West, 41.17 feet to a point; thence North 27 degrees 52 minutes West, 89.50 feet to a point; thence South 61 degrees 56 minutes West, 1 ft. to a point; thence North 27 degrees 52 minutes West, 4 feet to a point; thence southwestwardly to a point which is 60 feet South 27 degrees 52 minutes East of the place of beginning; thence northwardly 60 feet to the place of beginning.

Parcel VI:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the north line of Parkview Subdivision, as the same is recorded in Plat Book 29, Page 76, of the Hamilton County, Ohio Recorder's Office, South 74° 06' West, 6.22 ft. from the northeast corner of Lot 17 of said Parkview Subdivision, the above mentioned 6.22 ft. being measured along the north line of said Lot 17, said point of beginning being also the southwest corner of the grantor's property; thence North 27° 42' West along the West line of grantor's property which is also the West line of Lot 74 of Pierson's Addition to Pleasant Ridge, for a distance of 153.40 ft. to the South line of Montgomery Pike which is also the Northwest corner of the grantor's property; thence North 64° 06 1/2' East along the South line of Montgomery Pike for a distance of 40 ft.; thence South 26° 51' East, 116.22 ft.; thence South 15° 34' East, passing through the center of a firewall dividing the existing garages, for a distance of 43 ft. to a point in the North line of Lot 16 of said Parkview Subdivision, which is also the South line of grantor's property; thence South 74° 06' West along the North line of Lots 16 and 17 of said Parkview Subdivision, for a distance of 29.84 ft. to the place of beginning.

Parcel VII:

Lying and being in Sections 29 and 30, Town 4, Fractional Range 2, in Columbia Township, in the City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Beginning at a point in the North line of Parkview Subdivision as the same is recorded in Plat Book 29, Page 76, of the Hamilton County Recorder's records, South 74° 6' West, along the North line of Lot 16 of said subdivision 0.43 ft. from the Northeast corner of Lot 16 of said Parkview Subdivision, the above 0.43 ft. being measured along the North line of said Lot 16; thence from said beginning point, South 74° 6' West along the North line of said Lot 16, 33.95 ft; thence North 15° 34' West, passing through the center of a firewall dividing the existing garages for a distance of 43 ft.; thence North 26° 51' West, 116.22 ft. to a point in the Southerly line of Montgomery Road, a 70 ft. street; thence North 64° 06 1/2' East along the Southerly line of Montgomery Road, 24.92 ft.; thence, South 26° 51" East, 164.42 ft. to a point in the North line of Lot 16 of said Parkview Subdivision and the place of beginning.

ALSO DESCRIBED AS:

LEGAL DESCRIPTION

Situated in Sections 29 & 30, Town 4, Fractional Range 2 Between the Miamis, Columbia Township, The City of Cincinnati, Hamilton County, Ohio and being all of Lester and Montgomery Apartments, LLC as recorded in Official Record 14345, Page 2511 and Official Record _____, Page _____ of the Hamilton County, Ohio Recorder's Office, containing 1.5224 acres being further described as follows:

Begin at a set cross north at the southeast intersection of the south right of way of Montgomery Road (70') and the east right of way of Lester Road (50') said cross notch being the True Point of Beginning;

thence, from the True Point of Beginning, departing the east right of way of said Lester Road and with south right of way of said Montgomery Road the following four courses:

thence, North 65° 02' 39" East, 211.91 feet to a set cross notch;

thence, with a curve to the right, having a central angle of 02° 38' 00", a radius of 990.00 feet, an arc length of 45.50 feet, and a chord bearing North 66° 21' 39" East, 45.50 feet to a set cross notch;

thence, North 67° 40' 39" East, 71.80 feet to a set cross notch;

thence, with a curve to the right, having a central angle of 00° 05' 37", a radius of 1190.00 feet, an arc length of 1.94 feet, and a chord bearing North 67° 43' 27" East, 1.94 feet to a set cross notch at the northwest corner of Duke Energy Ohio, Inc as recorded in Deed Book 3006, Page 688;

thence, departing the south right of way of said Montgomery Road and with said Duke Energy Ohio, Inc, South 23° 13' 08" East, passing a found 1/2" iron pipe at 0.62 feet, a total distance of 165.03 feet to a set 5/8" iron pin on the north line of Parkview Subdivision as recorded in Plat Book 29, Page 76;

thence, departing said Duke Energy Ohio, Inc and with the north line of said Parkview Subdivision, South 77° 43' 52" West, 63.79 feet to a found 1-1/4" iron pipe;

thence, continuing with and departing said Parkview Subdivision, South 66° 10' 08" West, 123.43 feet to a found 1/2" iron pin with no cap at the northeast corner of Robert E. Clark & Pamela J. Clark as recorded in Official Record 13303, Page 1725;

thence, South 76° 45' 44" West, 100.00 feet to the northwest corner of Justin A. Wilkey as recorded in Official Record 13578, Page 1223, said corner being referenced by a found 5/8" iron pin with no cap leaning South 27° 45' 52" West, 0.27 feet;

thence, with said Justin A. Wilkey, South 13° 14' 16" East, 114.72 feet to the southwest corner of said Justin A. Wilkey, said corner being on the north right of way of Parkview Avenue and being referenced by a found 5/8" iron pin capped Bock & Clark being South 13° 14' 16" East, 0.73 feet;

thence, departing said Justin A. Wilkey and with the north right of way of said Parkview Avenue, South 76° 41' 46" West, 137.53 feet to a set 5/8" iron pin, said pin being the northeast intersection of the north right of way of said Parkview Avenue and the east right of way of said Lester Road;

thence, departing the north right of way of said Parkview Avenue and with the east right of way of said Lester Road, North 03° 02' 39" East, 246.00 feet to the True Point of Beginning containing 1.5224 acres of land more or less subject to all legal highways, easements, restrictions and agreements of record.

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED TO EXECUTION VERSION

December 7, 2022

To: Mayor and Members of City Council

From: Sheryl M.M. Long, City Manager 202202155

Subject: **Emergency Ordinance – Approving and Authorizing CRA Tax Abatement with OTR Holdings, Inc.**

Attached is an Emergency Ordinance captioned:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with OTR Holdings, Inc., an affiliate of 3CDC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210-218 W. Twelfth Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of four existing buildings into approximately 21,048 square feet of residential space, consisting of approximately 29 residential units, and approximately 2,600 square feet of commercial space, at a total construction cost of approximately \$6,864,654.

BACKGROUND/CURRENT CONDITIONS

The project site includes four historic buildings located at 210-218 W 12th Street in Over-the-Rhine. All four buildings are vacant and have been vacant in recent years. The Developer began acquiring these properties in 2012 and have been held for future redevelopment. The Developer previously attempted to find a hotel developer for these properties but was unable to find a hotel development partner who could make the project financially viable.

DEVELOPER INFORMATION

OTR Holdings Inc. is a subsidiary of the Cincinnati City Center Development Corporation (3CDC). Since 2003, 3CDC has undertaken over \$1.4 billion in investment in the Central Business District and Over-the-Rhine, renovating over 160 different buildings and one million square feet of commercial space. Most recently, they have completed the Willkommen project in Over-the-Rhine. 3CDC intends to create a new project specific entity that will undertake the project.

PROJECT DESCRIPTION

The Developer plans to renovate the four historic buildings located at 210-218 W 12th Street into 29 residential units totaling 21,024 net square feet of residential space. Of those 29 units, 9 units would be affordable, with 6 being affordable to 80% AMI, and the remaining 3 being affordable to 60% AMI. There will be 6 studio apartments with rents

ranging from \$564/month to \$1,140/month, 15 one-bedroom apartments with rents ranging from \$851/month to \$1,491/month, and 8 two-bedroom apartments with rents ranging from \$1,491/month to \$2,089/month. The project will also include 2,600 square feet of ground floor commercial space. The Developer projects that the commercial space will create 10.4 full time equivalent jobs at \$647,920 in annual payroll.

This project achieves the Live Initiative Area Goal 3 of Plan Cincinnati (pages 164-178) by providing a full spectrum of housing options and improving housing quality and affordability. The project also achieves the Compete Initiative Area Goal 2 (pages 114-120) and Sustain Initiative Area Goal 2 (pages 193-198) by cultivating our position as the most vibrant and healthiest part of our region and preserving our natural and built environment.

City Planning and the Developer conducted a public engagement meeting with Over-the-Rhine, West End, and Downtown stakeholders following the City Manager’s Community Engagement Policy on November 21, 2022. A written summary of the engagement session can be found on City Planning’s website. The Developer has also conducted extensive engagement with the Over-the-Rhine Community Council and Downtown Residence Council, which have provided letters of support.

Rent	Affordable to Salary	City Jobs (Min Salary exceeds affordable salary)
\$564.00	\$22,560.00	Law Clerk, Council Assistant, Municipal Worker, Custodian, Health Technician, Recycling Operations Tech
\$2,089.00	\$83,560.00	Assistant Neighborhood Services Director, Fire Specialist, Police Specialist, Real Estate Manager, Parking Superintendent, Principal Engineer

AMI	1	2	3	4	5	6	7	8
30%	\$20,100	\$22,950	\$25,800	\$28,650	\$32,470	\$37,190	\$49,910	\$46,360
50%	\$33,450	\$38,200	\$43,000	\$47,750	\$51,600	\$55,400	\$49,250	\$63,050
60%	\$40,140	\$45,840	\$51,600	\$57,300	\$61,920	\$66,480	\$59,100	\$75,660
80%	\$53,520	\$61,120	\$68,800	\$76,400	\$82,560	\$88,640	\$78,800	\$100,880

PROPOSED INCENTIVE

DCED is recommending a 15-year, net 52% Commercial CRA tax abatement. In addition to the tax abatement DCED is also recommending \$2,000,000 in funding from the Downtown/OTR West TIF District, the ordinance for which has been introduced in tandem. This recommendation is based on the following factors:

- This project will help to meet the City’s need for quality affordable housing by creating 9 new affordable units while also activating and repurposing existing vacant, historic buildings.
- The Developer is seeking to fill the commercial space created by this project with a minority or women-owned business enterprise.

* *“But For” Analysis Explanation:*

- Without an abatement, projected return on equity is below 0% for the first 15 years following construction, this equates to the project not moving forward, as the Developer would lose money on their investment.
- With the proposed incentives, the Developer’s return on equity rises to 2% over the first 15 years following construction. While this is not a sufficient return on investment, it is consistent with the Developer’s non-profit status and the City’s desire to support non-profit and quasi-governmental organizations rehabilitating vacant buildings throughout our neighborhoods.

SUMMARY		
Incentive Value		
	Annual Net Incentive to Developer	\$62,556
	Total Term Incentive to Developer	\$938,345
	City's Portion of Property Taxes Forgone (Term)**	\$0
	City's TIF District Revenue Forgone (Term)	\$1,317,292
Public Benefit		
	CPS PILOT	
	Annual CPS Pilot	\$39,699
	Total Term CPS PILOT	\$595,488
	VTICA	
	Annual VTICA	\$18,045
	Total Term VTICA	\$270,676
	Income Tax (Max)	\$305,483
	Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$1,171,648
	Total Public Benefit ROI*	\$1.25
	City's ROI*	\$0.89
	*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone	
	** Amount is zero due revenue going to the TIF District	

PROFORMA WITHOUT ABATEMENT (YEARS 1-15)		PROFORMA WITH ABATEMENT (YEARS 1-15)	
Revenue	\$475,596	Revenue	\$475,596
Operating Expenses and Reserves	\$308,554	Operating Expenses and Reserves	\$242,383
Net Operating Income	\$167,053	Net Operating Income	\$233,213
Debt Service	\$216,001	Debt Service	\$216,001
Cash Flow After Debt Service	-\$48,949	Cash Flow After Debt Service	\$17,212
Cash on Cash Return	-2%	Cash on Cash Return	1%

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: William Weber
- DCED Director: Markiea Carter
- Project Attorney: Samantha Brandenburg

The anticipated council timeline, which includes two Budget and Finance meetings if necessary is as follows:

- December 7, 2022: Introduction to City Council
- December 12, 2022: Budget and Finance (1)
- December 19, 2022: Budget and Finance (2)
- December 21, 2022: City Council for Final Approval

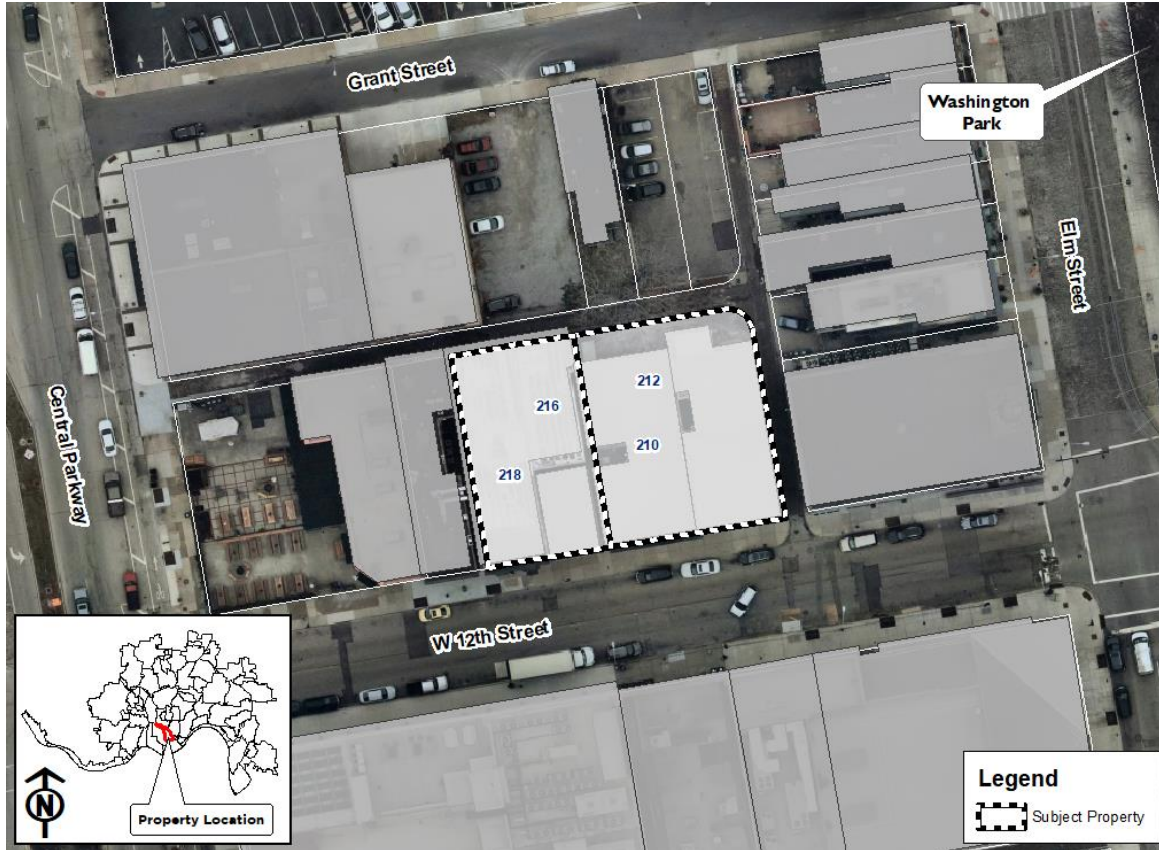
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. The reason for the emergency is so the project can commence construction in the month of December in order that the housing units be created at the earliest possible time for the benefit they provide to the residents of the City of Cincinnati.

Attachment: A. Property location and photographs

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

Attachment A: Location and Photographs



EMERGENCY

City of Cincinnati

ZDS

EESW

An Ordinance No. _____

-2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with OTR Holdings, Inc., an affiliate of 3CDC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 210-218 W. Twelfth Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of four existing buildings into approximately 21,048 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 2,600 square feet of commercial space, at a total construction cost of approximately \$6,864,654.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code ("ORC") Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018, sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, OTR Holdings, Inc. (the "Company") desires to remodel four existing buildings into approximately 21,048 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 2,600 square feet of commercial space on real property at 210-218 W. Twelfth Street located within the corporate boundaries of the City of Cincinnati (the "Improvements" or the "Project," as applicable), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to support the streetcar that specially benefits the property; and

WHEREAS, the City’s Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$62,556; and

WHEREAS, the Company, or other affiliate of Cincinnati Center City Development Corporation (3CDC) acceptable to the City, is simultaneously seeking additional subsidy for the Project in the form of a \$2,000,000 forgivable loan from the City; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per ORC Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with OTR Holdings, Inc. (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 210-218 W. Twelfth Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of four existing buildings into approximately 21,048 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 2,600 square feet of commercial space, to be completed at a total construction cost of approximately \$6,864,654.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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 the remodeling described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and OTR HOLDINGS, INC., an Ohio nonprofit corporation (the "Company"), an affiliate of Cincinnati Center City Development Corporation, commonly known as 3CDC.

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 210-218 W. Twelfth Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed to remodel 4 buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.

- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- R. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel 4 existing buildings on the Property into mixed-use space containing, in aggregate, approximately 2,600 square feet of ground floor commercial space and approximately 21,048 square feet of residential space, consisting of approximately 29 residential rental units (collectively, the "Improvements") at an estimated aggregate cost of Six Million Eight Hundred Sixty-Four Thousand Six Hundred Fifty-Four Dollars (\$6,864,654) to commence after the execution of this Agreement and to be completed no later than June 1, 2025; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in

the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2026 nor extend beyond the earlier of (i) tax year 2040 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

(i) Including qualified SBEs on solicitation lists.

(ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

(iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

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.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 10 full-time equivalent permanent jobs, and (ii) 139 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$647,920 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$6,863,723 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment

by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

OTR Holdings, Inc.
Attn: Clare Healy
1203 Walnut Street
Cincinnati, OH 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the

assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

OTR HOLDINGS, INC.,
an Ohio nonprofit corporation

By: _____
Sheryl M. M. Long, City Manager

Date: _____, 2022

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

Property Address: 210-212 W. Twelfth Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 081-0003-0126-00

Situated in Section 18, Town 4, Fractional Range 1, BTM, City of Cincinnati, Hamilton County, Ohio and being part of the same property conveyed to OTR Holdings, by deed recorded in Official Record Book 13388, page 2307 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at the intersection of the westerly right-of-way line of Emerson Alley, 5.00 feet as measured perpendicular to the centerline, and the northerly right-of-way line of West 12th Street, 30.00 feet as measured perpendicular to the centerline, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, with the northerly right-of-way line of West 12th Street S80°22'53"W 74.00 feet to a point at the common corner of OTR Holdings and OTR Holdings (Official Record Book 13922, Page 1987), an existing cut notch bears S10°01'53"E 3.00 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and OTR Holdings N10°01'53"W 90.00 feet to a point in the southerly right-of-way line of Shute Alley, 5.00 feet as measured perpendicular to the centerline, an existing cut notch bears N10°01'53"W 1.70 feet;

THENCE, with the southerly right-of-way line of Shute Alley N80°22'53"E 64.07 feet to a point, a set cut notch bears N09°37'07"W 5.00 feet;

THENCE, with a curve to the right having a radius of 10.00 feet, a delta angle of 89°35'13", an arc length of 15.64 feet and a chord bearing and distance of S54°49'30"E 14.09 feet to a set M.A.G. nail in the westerly right-of-way line of Emerson Alley;

THENCE, with said right-of-way line S10°01'53"E 80.07 feet to the **POINT OF BEGINNING CONTAINING 0.1524 ACRES** and being subject to all easements and right-of-ways of record;

PARCEL TWO:

Property Address: 216-218 W. Twelfth Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 081-0003-0125-00

Situated in Section 18, Town 4, Fractional Range 1, BTM, City of Cincinnati, Hamilton County, Ohio and being part of the same property conveyed to OTR Holdings, by deed recorded in Official Record Book 13388, page 2307 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at the intersection of the westerly right-of-way line of Emerson Alley, 5.00 feet as measured perpendicular to the centerline, and the northerly right-of-way line of West 12th Street, 30.00 feet as measured perpendicular to the centerline, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, with the northerly right-of-way line of West 12th Street S80°22'53"W 74.00 feet to a point at the common corner of OTR Holdings (Official Record Book 13388, Page 2307 and OTR Holdings (Official Record Book 13922, Page 1987) and the **POINT OF BEGINNING**, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, S80°22'53"W 52.25 feet to the common corner of OTR Holdings and Terence H. Casey, Trustee (Official Record Book 13239, Page 1464), a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and Casey N10°01'53"W 90.00 feet to a point in the southerly right-of-way line of Shute Alley, 5.00 feet as measured perpendicular to the centerline, an existing cut notch bears N10°01'53"W 1.68 feet;

THENCE, with said right-of-way line N80°22'53"E 52.25 feet to the common corner of OTR Holdings and OTR Holdings, an existing cut notch bears N10°01'53"W 1.70 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and OTR Holdings S10°01'53"E 90.00 feet to the **POINT OF BEGINNING CONTAINING 0.1080 ACRES** and being subject to all easements and right-of-ways of record;

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and OTR HOLDINGS, INC., an Ohio nonprofit corporation (the "Company"), an affiliate of Cincinnati Center City Development Corporation, commonly known as 3CDC.

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 210-218 W. Twelfth Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed to remodel 4 buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to support the streetcar that specially benefits the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.
- P. The Company acknowledges that the Streetcar will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.

- Q. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- R. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.
- S. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel 4 existing buildings on the Property into mixed-use space containing, in aggregate, approximately 2,600 square feet of ground floor commercial space and approximately 21,048 square feet of residential space, consisting of approximately 29 residential rental units (collectively, the "Improvements") at an estimated aggregate cost of Six Million Eight Hundred Sixty-Four Thousand Six Hundred Fifty-Four Dollars (\$6,864,654) to commence after the execution of this Agreement and to be completed no later than June 1, 2025; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in

the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2026 nor extend beyond the earlier of (i) tax year 2040 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code (“CMC”) Section 323-1-S, “SBEs”). Pursuant to CMC Section 323-11, the City’s annual goal for SBE participation shall be thirty percent (30%) of the City’s total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City’s goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City’s Department of Economic Inclusion. The Company may refer interested firms to the City’s Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

(iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

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.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors 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 SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 10 full-time equivalent permanent jobs, and (ii) 139 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$647,920 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$6,863,723 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment

by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support the streetcar. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

OTR Holdings, Inc.
Attn: Clare Healy
1203 Walnut Street
Cincinnati, OH 45202

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition 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 Project partner, the Company shall use either the phrase "Project Assistance 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.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the

assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

(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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. 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.

Remainder of this page intentionally left blank. Signature page follows.

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI,
an Ohio municipal corporation

OTR HOLDINGS, INC.,
an Ohio nonprofit corporation

By: _____
Sheryl M. M. Long, City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

Property Address: 210-212 W. Twelfth Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 081-0003-0126-00

Situated in Section 18, Town 4, Fractional Range 1, BTM, City of Cincinnati, Hamilton County, Ohio and being part of the same property conveyed to OTR Holdings, by deed recorded in Official Record Book 13388, page 2307 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at the intersection of the westerly right-of-way line of Emerson Alley, 5.00 feet as measured perpendicular to the centerline, and the northerly right-of-way line of West 12th Street, 30.00 feet as measured perpendicular to the centerline, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, with the northerly right-of-way line of West 12th Street S80°22'53"W 74.00 feet to a point at the common corner of OTR Holdings and OTR Holdings (Official Record Book 13922, Page 1987), an existing cut notch bears S10°01'53"E 3.00 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and OTR Holdings N10°01'53"W 90.00 feet to a point in the southerly right-of-way line of Shute Alley, 5.00 feet as measured perpendicular to the centerline, an existing cut notch bears N10°01'53"W 1.70 feet;

THENCE, with the southerly right-of-way line of Shute Alley N80°22'53"E 64.07 feet to a point, a set cut notch bears N09°37'07"W 5.00 feet;

THENCE, with a curve to the right having a radius of 10.00 feet, a delta angle of 89°35'13", an arc length of 15.64 feet and a chord bearing and distance of S54°49'30"E 14.09 feet to a set M.A.G. nail in the westerly right-of-way line of Emerson Alley;

THENCE, with said right-of-way line S10°01'53"E 80.07 feet to the **POINT OF BEGINNING CONTAINING 0.1524 ACRES** and being subject to all easements and right-of-ways of record;

PARCEL TWO:

Property Address: 216-218 W. Twelfth Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 081-0003-0125-00

Situated in Section 18, Town 4, Fractional Range 1, BTM, City of Cincinnati, Hamilton County, Ohio and being part of the same property conveyed to OTR Holdings, by deed recorded in Official Record Book 13388, page 2307 in the Hamilton County Recorder's Office in Cincinnati, Ohio and is more particularly described as follows:

All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at the intersection of the westerly right-of-way line of Emerson Alley, 5.00 feet as measured perpendicular to the centerline, and the northerly right-of-way line of West 12th Street, 30.00 feet as measured perpendicular to the centerline, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, with the northerly right-of-way line of West 12th Street S80°22'53"W 74.00 feet to a point at the common corner of OTR Holdings (Official Record Book 13388, Page 2307 and OTR Holdings (Official Record Book 13922, Page 1987) and the **POINT OF BEGINNING**, a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, S80°22'53"W 52.25 feet to the common corner of OTR Holdings and Terence H. Casey, Trustee (Official Record Book 13239, Page 1464), a set cut notch bears S10°01'53"E 3.00 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and Casey N10°01'53"W 90.00 feet to a point in the southerly right-of-way line of Shute Alley, 5.00 feet as measured perpendicular to the centerline, an existing cut notch bears N10°01'53"W 1.68 feet;

THENCE, with said right-of-way line N80°22'53"E 52.25 feet to the common corner of OTR Holdings and OTR Holdings, an existing cut notch bears N10°01'53"W 1.70 feet;

THENCE, leaving said right-of-way line and with the common line of OTR Holdings and OTR Holdings S10°01'53"E 90.00 feet to the **POINT OF BEGINNING CONTAINING 0.1080 ACRES** and being subject to all easements and right-of-ways of record;

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

202202141

Clerk of Council

801 Plum Street, Room 308
Cincinnati, Ohio 45202
(513) 352-3246

\$25.00 FILING FEE

LEGISLATIVE AGENT/EMPLOYER INITIAL REGISTRATION STATEMENT

This statement must be filed with the Clerk of Council within ten (10) days of engagement. Please read instructions and review Section 112-5 prior to filing. There is a \$25.00 fee for this filing. *Check or money order only made payable to "Clerk of Council"*. Upon termination of this engagement, there is an affirmative duty to notify the Clerk of Council within thirty (30) days the form may be obtained from Clerk. **ANY PERSON WHO KNOWINGLY FILES A FALSE STATEMENT IS GUILTY OF FALSIFICATION UNDER SECTION 2921.13 OF THE OHIO REVISED CODE, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE.**

A. LEGISLATIVE AGENT INFORMATION

- 1. Full Name Anne C. Sesler
- 2. Occupation Government Strategies Group
- 3. Title/Position Director of Public Affairs & Strategy
- 4. Business Address 700 Walnut Street Ste 450
Street Suite Number
Cincinnati OH 45202
City State Zip(+4)
- 5. Telephone Number (513) 651-4100
- 6. Date of Engagement as Legislative Agent November 28, 2022

B. EMPLOYER INFORMATION

- 1. Full name of company or organization Metro
- 2. Type of Industry Transportation
- 3. Business Address 525 Vine Street, Suite 500
Street Suite Number
- 4. Cincinnati OH 45202
City State Zip(+4)

C. BRIEF DESCRIPTION OF THE TYPE OF LEGISLATION TO WHICH LEGISLATIVE AGENT'S ENGAGEMENT RELATES.

Activities related to Metro and transportation.

14/802902

1980
1981
1982
1983

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

MEMORANDUM FOR THE DIRECTOR, FBI
FROM: SAC, NEW YORK (100-100000)
SUBJECT: [Illegible]

RE: [Illegible]

D. CATEGORICAL LISTING OF PRINCIPAL BUSINESS OR ACTIVITY OF EMPLOYER. PLEASE CHECK ALL THAT ARE APPLICABLE.

- | | | |
|---|--|--|
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Environment | <input type="checkbox"/> Real Estate/Housing |
| <input type="checkbox"/> Alcohol/Tobacco | <input type="checkbox"/> Financial Institutions/Consumer Finance | <input type="checkbox"/> Retail and Commercial |
| <input type="checkbox"/> Arts/Entertainment | <input type="checkbox"/> Medical/Hospitals/Health Care | <input type="checkbox"/> Service Business |
| <input type="checkbox"/> Communications/Media | <input type="checkbox"/> Insurance | <input type="checkbox"/> Social Svs./Human Svs. |
| <input type="checkbox"/> Contractors/Construction | <input type="checkbox"/> Labor/Labor Organizations | <input type="checkbox"/> Science and Technology |
| <input type="checkbox"/> County/Local Government | <input type="checkbox"/> Legal | <input type="checkbox"/> State Employees |
| <input type="checkbox"/> Education | <input type="checkbox"/> Manufacturer | <input type="checkbox"/> State Government |
| <input type="checkbox"/> Energy/Utilities | <input type="checkbox"/> Public Interest | <input checked="" type="checkbox"/> Transportation |

CERTIFICATION: THE UNDERSIGNED HEREBY CERTIFY THAT ALL REASONABLE EFFORTS AND DUE DILIGENCE HAVE BEEN UNDERTAKEN IN THE PREPARATION AND COMPLETION OF THIS STATEMENT AND THAT THE CONTENTS ARE TRUE AND ACCURATE TO THE BEST OF HIS OR HER KNOWLEDGE.

ALL SIGNATURES MUST BE ORIGINAL AND SIGNED PERSONALLY BY THE NAMED INDIVIDUAL.

Anne C. Sesler
Type or Print Name of Legislative Agent

Anne Sesler
Signature of Legislative Agent

November 28, 2022
Date

Darryl Haley
Type or Print Name of Persons Signing for Employer

BY: *Darryl Haley*
Signature for Employer

CEO & General Manager
Title

November 28, 2022
Date

Clerk of Council
801 Plum Street, Room 308
Cincinnati, Ohio 45202
(513) 352-3246

\$25.00 FILING FEE
207702156

LEGISLATIVE AGENT/EMPLOYER INITIAL REGISTRATION STATEMENT

This statement must be filed with the Clerk of Council within ten (10) days of engagement. Please read instructions and review Section 112-5 prior to filing. There is a \$25.00 fee for this filing. *Check or money order only made payable to "Clerk of Council"*. Upon termination of this engagement, there is an affirmative duty to notify the Clerk of Council within thirty (30) days the form may be obtained from Clerk. **ANY PERSON WHO KNOWINGLY FILES A FALSE STATEMENT IS GUILTY OF FALSIFICATION UNDER SECTION 2921.13 OF THE OHIO REVISED CODE, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE.**

A. LEGISLATIVE AGENT INFORMATION

1. Full Name Mary Huttlinger
2. Occupation Lobbyist
3. Title/Position Director, Government Affairs
4. Business Address 14 Knollcrest Drive
Street Suite Number
Cincinnati, OH 45237
City State Zip(+4)
5. Telephone Number (513) 842-3021
6. Date of Engagement as Legislative Agent Hired Jun 1, 2022

B. EMPLOYER INFORMATION

1. Full name of company or organization REALTOR Alliance of Greater Cincinnati
2. Type of Industry professional association, 501c6
3. Business Address 14 Knollcrest Drive
Street Suite Number
Cincinnati, OH 45237
City State Zip(+4)

C. BRIEF DESCRIPTION OF THE TYPE OF LEGISLATION TO WHICH LEGISLATIVE AGENT'S ENGAGEMENT RELATES.

homeownership, private property rights, residential real estate, development

D. CATEGORICAL LISTING OF PRINCIPAL BUSINESS OR ACTIVITY OF EMPLOYER. PLEASE CHECK ALL THAT ARE APPLICABLE.

- | | | |
|---|--|---|
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Environment | <input checked="" type="checkbox"/> Real Estate/Housing |
| <input type="checkbox"/> Alcohol/Tobacco | <input type="checkbox"/> Financial Institutions/Consumer Finance | <input type="checkbox"/> Retail and Commercial |
| <input type="checkbox"/> Arts/Entertainment | <input type="checkbox"/> Medical/Hospitals/Health Care | <input type="checkbox"/> Service Business |
| <input type="checkbox"/> Communications/Media | <input type="checkbox"/> Insurance | <input type="checkbox"/> Social Svs./Human Svs. |
| <input type="checkbox"/> Contractors/Construction | <input type="checkbox"/> Labor/Labor Organizations | <input type="checkbox"/> Science and Technology |
| <input type="checkbox"/> County/Local Government | <input type="checkbox"/> Legal | <input type="checkbox"/> State Employees |
| <input type="checkbox"/> Education | <input type="checkbox"/> Manufacturer | <input type="checkbox"/> State Government |
| <input type="checkbox"/> Energy/Utilities | <input type="checkbox"/> Public Interest | <input type="checkbox"/> Transportation |

CERTIFICATION: THE UNDERSIGNED HEREBY CERTIFY THAT ALL REASONABLE EFFORTS AND DUE DILIGENCE HAVE BEEN UNDERTAKEN IN THE PREPARATION AND COMPLETION OF THIS STATEMENT AND THAT THE CONTENTS ARE TRUE AND ACCURATE TO THE BEST OF HIS OR HER KNOWLEDGE.

ALL SIGNATURES MUST BE ORIGINAL AND SIGNED PERSONALLY BY THE NAMED INDIVIDUAL.

Mary Huttlinger
 Type or Print Name of Legislative Agent

Mary Huttlinger
 Signature of Legislative Agent

November 23, 2022
 Date

Rich Fletcher
 Type or Print Name of Persons Signing for Employer

BY: *RU*
 Signature for Employer

CEO
 Title

November 23, 2022
 Date

November 30, 2022

To: Mayor and Members of City Council 202202112

From: Sheryl M.M. Long, City Manager

Subject: Emergency Ordinance Authorizing the City Manager to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the Village of Addyston, Ohio

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute an Amended and Restated Water Service Agreement between the City of Cincinnati and the Village of Addyston, Ohio.

Greater Cincinnati Water Works currently supplies standby and retail water service to the Village of Addyston pursuant to a water contract and related amendments to that contract. The current term of the contract is set to expire on December 31, 2022. This ordinance authorizes the City Manager to execute an *Amended and Restated Water Service Agreement* that extends the contract term until December 31, 2050. The form of the amended and restated agreement is attached to the ordinance as Exhibit A.

The Administration recommends passage of this Emergency Ordinance.

cc: ^{VJA} Verna J. Arnette, Interim Executive Director/Greater Cincinnati Water Works

EMERGENCY

City of Cincinnati

AEY

EESW

An Ordinance No. _____ - 2022

AUTHORIZING the City Manager to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the Village of Addyston, Ohio.

WHEREAS, the City of Cincinnati (“Cincinnati”) and the Village of Addyston, Ohio (“Addyston”) are parties to a certain *Water Contract* dated February 19, 1984 for Cincinnati to supply standby and retail water service to Addyston (as amended, the “1984 Contract”); and

WHEREAS, the 1984 Contract term is currently set to expire December 31, 2022; and

WHEREAS, the City and Addyston desire to amend and restate the terms of the 1984 Contract in order to, among other terms, allow for Cincinnati to continue to provide surplus water and retail service to Addyston until December 31, 2050; 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 an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the Village of Addyston (“Addyston”) in substantially the same form as Attachment A attached hereto.

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

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 execute the amended and restated agreement to enable Cincinnati to continue to provide water service to Addyston to beyond the current contract expiration date of December 31, 2022.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

**AMENDED AND RESTATED
WATER SERVICE AGREEMENT**
(standby and retail service to Village of Addyston)

This *Amended and Restated Water Service Agreement* (“**Agreement**”) is made and entered into effective as of the Effective Date (defined on the signature page hereof) between the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for the purposes of this Agreement is 4747 Spring Grove Avenue, Cincinnati, Ohio, 45232 (“**Cincinnati**”) and the VILLAGE OF ADDYSTON, an Ohio municipal corporation (“**Addyston**”) located at 235 Main Street, Addyston, Ohio 45001.

RECITALS

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a city department and municipal water utility that treats and supplies water to properties within Cincinnati pursuant to Ohio Constitution Article XVIII, Section 4. Cincinnati is empowered pursuant to Ohio Constitution Article XVIII, Section 6 and Cincinnati City Charter Article IV, Section 9 to sell and deliver surplus water outside of the Cincinnati city limits as may be authorized by Cincinnati City council. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system.
- B. Addyston owns and operates the Addyston Village PWS, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to treat and distribute water to properties within its corporate boundaries, and is empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the Village of Addyston.
- C. Cincinnati and Addyston are parties to a *Water Contract* dated February 19, 1984, as amended by a *Supplement* dated February 14, 1989, a *Second Supplement* dated August 11, 1993 (adding an area of retail service), and a *Third Supplement* dated December 7, 1993, a *Fourth Amendment* dated January 18, 2006 (adding a second area of retail service), a *Fifth Amendment* dated December 21, 2017, a *Sixth Amendment* dated December 30, 2020, and *Seventh Amendment* dated December 27, 2021 (as amended “**Original Agreement**”) for Cincinnati to: 1) to provide Addyston with standby water service in case of emergency or maintenance of the Addyston PWS; and 2) provide retail water service to customers in retail area as defined in the Original Agreement, which will expire December 31, 2022.
- D. The parties desire to amend and restate the terms of the Original Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Addyston on the terms and conditions provided herein.

A. This Agreement is authorized by Addyston Village Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

1. DEFINITIONS. Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 1 (*Definitions*).

A. “GCWW” shall mean the Greater Cincinnati Water Works, the department of the City of Cincinnati that operates the Cincinnati Water System.

B. “Cincinnati Water System”. The water supply, production, treatment, transmission, storage, distribution, billing, collections and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Addyston), in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. The Cincinnati Water System shall include the Addyston Retail Water Area as defined herein.

C. “Cincinnati Requirements”. The Cincinnati ordinances (including, without limitation, applicable portions of the Cincinnati Municipal Code), laws, standards, specifications, engineering drawings, policies, and rules and regulations governing GCWW, as may be amended or changed by Cincinnati from time to time.

D. “Addyston Village PWS”. The wells, pumps, water storage, distribution, and related facilities owned and/or operated by Addyston for itself and its inhabitants, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Addyston Village PWS shall include all facilities beyond the master meter in the Standby Area.

E. “Addyston Retail Water Area”. Also referred to as the “Retail Area”, shall mean the areas labeled on Exhibit A as “1993 Retail Section” and “2006 Retail Section” as depicted on Exhibit A.

F. “Addyston Standby Water Area”. Also referred to as the “Standby Area”, shall mean the area labeled “GCWW Standby Water Service Area” on Exhibit B.

G. Water. Surplus treated water determined in Cincinnati’s sole discretion not to be needed by Cincinnati or its inhabitants.

H. Distribution Main. “Distribution Main” means any main intended primarily to serve properties abutting the street or road in which the main is laid.

I. Director. “Director” means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

J. City Manager. "City Manager" means the City Manager of Cincinnati.

2. TERM; TERMINATION.

A. **Term.** The parties intend and agree that this Agreement shall be a continuation of and supersede the Original Agreement in accordance with the amended and restated terms herein. Except for those provisions which expressly survive termination, this Agreement shall remain in full force and effect until midnight of December 31, 2050 ("**Expiration Date**", the effective period of this Agreement shall be referred to as the "**Term**"). During the year prior to the Expiration Date, Cincinnati will make best efforts to notify Addyston, and both parties agree to negotiate in good faith for a new agreement or an amendment to extend the Term. If the Term is not extended, this Agreement will expire on the Expiration Date. Following the termination of this Agreement for any reason, Cincinnati may continue, but shall not be required, to provide water service to Addyston at rates to be established by Cincinnati in accordance with then existing laws.

B. **Termination.** From and after termination of this Agreement:

i. Cincinnati shall be entitled to retain ownership of any capital improvements within the Addyston corporate limits that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to serve any portions of the Cincinnati Water System outside of the corporate limits of the Village of Addyston. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Right to Use*) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B) (*Termination*) remain in use for Cincinnati Water System operations.

ii. Within a reasonable amount of time following termination, Addyston shall pay to Cincinnati:

- a. the costs of all capital improvements within the Addyston corporate limits that are not retained by Cincinnati per section 2(B)(i) above to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated;
- b. all associated and ongoing costs, if any, (including operation and maintenance, regulatory compliance, etc.) of such capital improvements, to fairly compensate Cincinnati for costs incurred by Cincinnati due to Addyston's discontinuation of water service, and
- c. the costs to Cincinnati of transitioning Addyston to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

iii. Once Addyston has paid to Cincinnati all amounts listed in 2(B)(ii), Cincinnati will transfer to Addyston ownership of those capital improvements within Addyston limits that have not been retained by Cincinnati pursuant to this Section 2(B).

3. SUPPLY OF WATER NOT GUARANTEED. Cincinnati's furnishing of water service under this Agreement is pursuant to Cincinnati's municipal authority under the Ohio Constitution to sell Water (defined above as surplus water). The Parties agree and acknowledge that the supply of Water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston, is at all times dependent upon the existence of a surplus of water beyond the amount of water needed for users located within the corporate boundaries of the City of Cincinnati. Except a) where a surplus does not exist; b) in the case of breaks in mains, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice); c) where an insufficient supply of water exists, or d) where insufficient water is available at the Connections located outside of the corporate limits of Cincinnati, Cincinnati will use its best efforts to provide a potable, stable, and adequate supply of water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston. In the event of the occurrence of any of the conditions in the preceding sentence, Cincinnati shall have the right to allocate and prioritize Water service on a reasonable basis among the other non-Cincinnati political subdivisions served by Cincinnati (including those served by standby, wholesale or other water service), and there shall be no prior rights to service by reason of earlier date of contract. Cincinnati shall not be liable for any damages for its failure to furnish water, and in no event shall Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or to maintain any minimum of water pressure, it being understood that the pressure and supply of water is not guaranteed to consumers.

4. STANDBY WATER SERVICE

A. **Standby Service.** Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, following Addyston's prior notification to Cincinnati as provided below, Cincinnati will make best efforts to furnish standby water service to the Addyston Village PWS (*Standby Area*) on a temporary basis through the Connections (as defined herein) for the following needs and no others:

i. Emergency Use. Addyston shall obtain prior verbal approval from GCWW Distribution Dispatch at (513)591-7700 (24 hour) to operate the Connections to access emergency standby water. Within 24 hours of verbal approval, Addyston shall provide written notice to the GCWW Director of the reason for and extent of use of emergency standby water. For purposes of this section, an "Emergency" shall be defined as any situation arising from fire, flood, storm, contamination, water main break, or other malfunction or breakdown of a water system or unpotable condition of water in a water system, or a similar emergency condition causing an immediate threat to the life, health, property or normal business of the customers served by the water system experiencing

the emergency. The parties agree that inadequate water supply due to inadequate facilities and/or high seasonal demand shall not be considered an emergency.

ii. Non-Emergency Use. Addyston may request to purchase surplus water for non-emergency purposes, such as system maintenance, which shall only be accessed with the prior written approval of GCWW.

Addyston shall not supply the surplus water provided through standby service to properties outside of the corporate boundaries of the Village of Addyston (as may be modified from time to time). Addyston shall pay Cincinnati for standby water usage in accordance with Section 9 (*Water Rates*) hereof.

B. Connections and Master Meters. There is one existing connection for surplus water delivery between the Cincinnati Water System and the Addyston Village PWS located at approximately 250 First Street (Fiddler's Green Rd.) (including any connections installed in the future, the "**Connections**"). Cincinnati shall own and be responsible for maintaining and replacing the existing master meters at the Connections. Other than the master meters, Addyston shall own and be responsible for the maintaining, repairing, operating, replacing and testing of the water facilities comprising the Connections, including the pressure regulator valves, meter pits, backflow preventers and other related appurtenances, in accordance with the Cincinnati Requirements as well as any applicable state and federal regulations. Addyston may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. The initial master meter cost at a new connection shall be Addyston's responsibility. Upon termination or expiration of this Agreement, Addyston shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Addyston pursuant to this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

5. RETAIL WATER SERVICE

A. Retail Service. During the Term (as defined herein) and subject to the terms and conditions of this Agreement and the Cincinnati Requirements, Cincinnati shall provide Water and the water services described herein on a retail basis (including distribution, metering, billing, and collection) to the inhabitants and properties within the Retail Area.

B. 2006 Retail Section. Addyston may terminate GCWW retail water service to the 2006 Retail Section provided that Addyston has delivered to Cincinnati: 1) written notice of termination no less than three (3) months prior to the effective date of termination; 2) Addyston Village Engineer's certification that all necessary improvements have been completed to adequately provide retail service to the 2006 Retail Section; 3) documentation of Addyston Village Council approval of the termination; and 4) a letter from the Ohio Environmental Protection Agency (OEPA) indicating its approval of Addyston's plan to provide retail service to the 2006 Retail Section and of the termination of GCWW retail service to the 2006 Retail Section. The provisions of Section

2(B)(*Termination*) shall apply to the transition of ownership from Cincinnati to Addyston if GCWW retail service to the 2006 Retail Section is terminated in accordance with this subsection.

C. Cincinnati shall retain ownership of the water main between Affirmed Drive and Fiddler's Green Road (aka 1st Street), if such main has been constructed, along with the right to use any easements or rights-of-way owned by Addyston and needed for Cincinnati to maintain, operate, repair, or replace such water main. At Addyston's request, Addyston may construct, at its sole cost, an additional emergency Connection along the water main between Affirmed Drive and Fiddlers Green Road (at a mutually agreed upon site), provided that the design, inspection and construction of the interconnection shall be reviewed and approved by GCWW and conform with Cincinnati Requirements and that all OEPA required approvals are obtained by Addyston. Addyston shall purchase a master meter approved by Cincinnati for this emergency connection, and standby service shall be provided in accordance with the provisions of Section 4 (*Standby Water Service*) to this Agreement.

D. Restriction in Use. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied to the Retail Area shall be restricted to usage within that area unless the expressed prior written consent of the Director is obtained.

E. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Addyston shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Addyston acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances to serve the Retail Area is a significant expense to Cincinnati, and revenues from Retail Area are necessary to offset those expenses and Cincinnati may rely on revenues from Addyston retail service customers to service any related debt. Addyston shall not take action or assist others in taking action, or contract with others to affect the construction or operation of any public water system to furnish Water to the Retail Area. If any property within the Retail Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of the Village of Addyston, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Addyston agrees that it shall cooperate to ensure Cincinnati's continued exclusive right to service.

F. Billing and Collections. Cincinnati will read all meters; and deliver (by mail, electronically or otherwise) and collect payment of bills and charges, and audit accounts as to each account/property in the Retail Area, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in the Retail Area, except as expressly provided herein.

G. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace Cincinnati Water System facilities within the Retail Area. If repairs and

replacements are necessitated as the result of negligence on the part of Addyston, or its employee(s) or contractor(s), Addyston shall reimburse Cincinnati for repair costs caused by such negligence.

H. Water Service Branches; Water Meters. Water service branches and water meters, including, without limitation, the charges for their installation, ownership, repair, replacement, and maintenance for properties in the Retail Area shall be in accordance with Cincinnati Requirements, which shall operate no differently for persons and properties located in Cincinnati than for those located in the Retail Area and other portions of the Cincinnati Water System.

I. Obligation of Owners of Property Served. Any owner of real property supplied with retail water service under this Agreement, shall be deemed to have accepted and be subject to: 1) the provisions of this Agreement, as may be amended from time to time, 2) the Cincinnati Requirements and Cincinnati enforcement thereof, and 3) liability for all water service charges for such premises, whether or not the accounts for such premises include the name of tenants, managing agents, or other persons.

J. Enforcement. As to the Retail Area, Cincinnati reserves the right to shut off service, discontinue service, disconnect the service branch and/or remove the meter to any property, consumer, or account for a breach of the terms of this Agreement, for nonpayment of bills or other violation of the Cincinnati Requirements in accordance with the Cincinnati Requirements. Such remedies shall be non-exclusive and at Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

K. Retail Area Water Infrastructure.

i. Improvements for Cincinnati Water System Purposes. Cincinnati will plan for and perform replacements of existing capital improvements to Cincinnati Water System facilities in the Retail Area that are determined in Cincinnati's sole discretion to be necessary for the purpose of providing an adequate supply of Water within the Retail Area. Cincinnati shall not be required to pay for initial capital improvements requested by Addyston in the Retail Area that are determined by the Director not to be necessary for the benefit of the Cincinnati Water System (for example, relocation to accommodate utility/road improvements or economic development), which shall be subject to the terms of Section 5(K)(ii) (*Requested Water Mains*) below.

ii. Requested Water Mains. Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 5(K)(i) (*Improvements for Cincinnati Water System Purposes*), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving the Retail Area, shall be constructed by Addyston, developer or other requestor, and Cincinnati shall not be required to contribute to the cost of such installation from Cincinnati Water System revenue; however, Cincinnati may elect

to contribute to such costs, in accordance with an applicable plan for water main installation in Cincinnati Municipal Code Chapter 401. Once a main has been connected and placed into service, it shall become part of the Cincinnati Water System. As provided in Section 6(B) (*Control; Regulatory Compliance/Cincinnati Water System*) hereof, installations, connections and improvements to the Cincinnati Water System in the Retail Area shall be subject to the Cincinnati Requirements and Cincinnati approval, including without limitation requirements for contractor bonding, plan review, warranty and inspection and approval. Addyston shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Addyston.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial development unless such proposed subdivision has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which opinion shall not be unreasonably withheld. Addyston shall submit to GCWW all building permit applications potentially affecting water usage in the Retail Area (except single family residences in subdivisions for which Cincinnati has determined within the prior 12 months that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Addyston is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Addyston has ownership in any portion of the Cincinnati Water System, which is expressly acknowledged to be the property of and under the control and operation of Cincinnati. During the Term, and until Cincinnati transfers ownership following termination in accordance with Section 2(B) (*Termination*) hereof, the water facilities used by Cincinnati to provide retail service within the Retail Area shall be part of the Cincinnati Water System and shall be owned by Cincinnati. This Section 6(A)(i) shall survive termination of this Agreement.

ii. **Addyston Village PWS.** It is expressly agreed and understood by the parties that Addyston is the owner of the Addyston Village PWS, and that nothing in this Agreement shall imply that Cincinnati has ownership or responsibility in any portion of the Addyston Village PWS, which is expressly acknowledged to be the property of and under the control and operation of Addyston.

B. Control; Regulatory Compliance.

i. **Cincinnati Water System.** The Cincinnati Water System is subject to strict federal, state, and local regulations related to the water system, including, without limitation, compliance with treatment and water quality requirements, management of the distribution system, billing and other standards related to the water system. Cincinnati is ultimately responsible for and shall have sole discretion to manage and operate the Cincinnati Water System, including but not limited to, capital improvements associated with the quality of water, water production or treatment facilities, water quality related equipment and facilities, decisions involving treatment techniques, rate setting, and billing and collections, including, without limitation, actions (a) for the protection of health, lives, or property, (b) renovation, replacement, or upgrade of facilities and appurtenances, (c) to ensure compliance with applicable laws and regulations, and (d) sound operation of the water utility. Because the Cincinnati Water System must operate as a whole to serve numerous jurisdictions, Cincinnati shall not be subject to the requirements of Addyston, or any other contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the Retail Area and as to all Connections and Master Meters all applicable Cincinnati Requirements, now or hereafter lawfully in effect. Cincinnati may at any time change the Cincinnati Requirements. The materials and workmanship of all facilities connecting to the Cincinnati Water System, including mains, reservoirs, tanks, pumping stations, and other works, shall conform to the engineering standards of GCWW (and all other Cincinnati Requirements) as interpreted by GCWW. Any facilities connecting or integrated into the Cincinnati Water System shall be subject to approval and inspection of the Director or their duly authorized representative and to GCWW inspection costs. Cincinnati shall have the right to exercise in its management of the Cincinnati Water System, including the Retail Area, Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

ii. **Addyston Village PWS.** Addyston, as the owner and operator of the Addyston Village PWS, is solely responsible for and shall have sole discretion to manage and operate the Addyston Village PWS. Cincinnati shall not have any responsibility for the Addyston Village PWS, and Addyston shall not be subject to the Cincinnati Requirements in its management of the Addyston Village PWS. Cincinnati shall not have any responsibility or liability for any claims arising from Addyston's failure to maintain or repair any facilities for which it is responsible under this Agreement.

7. RIGHT TO USE. Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, shall have the right to use all existing easements and rights-of-way within the Village of Addyston when required for any purposes under this contract, including, but not limited to construction, operation, maintenance, repair, and replacement of water mains and other appurtenances to the Cincinnati Water System which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Addyston or through Addyston to other areas of the Cincinnati Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to

the requirements of Addyston; however, Addyston shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. When required by Cincinnati, Addyston shall apply its power of eminent domain to acquire easements or other property ownership necessary for the Cincinnati Water System capital improvements. Provided that the exercise of eminent domain does not also serve an Addyston or other right-of-way purpose, Cincinnati shall reimburse Addyston for the costs of just compensation to the owners of the property for which eminent domain is exercised. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Addyston, Cincinnati shall restore such streets to their original condition to the satisfaction of Addyston; however, Cincinnati shall not be required to repave or resurface any part of any street not opened by it in connection with such work. Cincinnati shall make best efforts to complete all water main work in the Village of Addyston within a reasonable amount of time following commencement.

8. FIRE HYDRANTS.

A. Use of Water. With the exception of the use of Water from public fire hydrants for firefighting by fire departments organized under Ohio law, no water shall be taken from fire hydrants in the Retail Area other than for fire purposes, except: 1) as may be authorized in advance in writing by Cincinnati in accordance with the Cincinnati Requirements, and 2) provided a permit is obtained from GCWW.

B. Fire Hydrants. Fire hydrants within the Retail Area shall be subject to the terms below:

i. Addyston shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Addyston at no cost to Cincinnati.

ii. Installation, maintenance, repair, operation, replacement and removal of fire hydrants connected to the Cincinnati Water System shall conform to the Cincinnati Requirements, and be subject to GCWW inspection, which inspection shall be at no cost to Addyston.

iii. Any flushing of public fire hydrants by Addyston shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Addyston shall be responsible for any damage to the Cincinnati Water System caused by flushing of fire hydrants conducted in contravention of the Cincinnati Requirements.

iv. Any other expenses incurred by Cincinnati in connection with any installation, repair, maintenance, replacement, or removal of fire hydrants performed on an emergency basis shall be paid by Addyston on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System. The respective fire officials will, on a quarterly basis, provide the Director an estimate of the amount of water used by them for fire purposes.

v. Addyston shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed in the Retail Area under their responsibility.

vi. Addyston may impose and enforce additional requirements for private fire protection facilities beyond those required for the Cincinnati Water System. Cincinnati shall have no obligation to enforce such requirements.

9. WATER RATES. From time to time, Cincinnati City Council shall fix by ordinance the charges for water supplied to political jurisdictions and to retail customers in the City of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati’s right to establish rates for water supplied to customers in Cincinnati. During the Term, the rates for service under this Agreement shall be as follows:

A. Standby Water. Addyston shall pay for emergency and non-emergency standby water at rates for water used by political subdivisions (currently Cincinnati Municipal Code 401-81 "Political Subdivision Rates") as fixed by ordinance of the Council of Cincinnati from time to time. The current rates established for 2023 and 2024 are:

Period	Political Subdivision rate
Winter (Jan-May & Nov-Dec 2023)	\$3.45/ccf
Summer (May - Oct 2023)	\$4.11/ccf
Winter (Jan-May & Nov-Dec 2024)	\$3.64/ccf
Summer (May - Oct 2024)	\$4.33/ccf

Payment for standby water furnished shall be made within 30 days after billing by Cincinnati. Payment is agreed to be for the purchase of water and water service and shall not be interpreted to be for the purchase of any portion of the Cincinnati Water System or other Cincinnati-owned property used in providing water and/or water service.

B. Retail Water Service. Notwithstanding any other provisions in this Agreement, the rate charged to the retail customers under this Agreement shall be fixed at 1.25 times (“**Rate Differential**”) the rate charged to customers in the City of Cincinnati pursuant to the Cincinnati Municipal Code as may be amended from time to time. The Parties agree that the Rate Differential established by this Section 9(B) (*Water Rates/Retail Water Service*) has been set by agreement, in consideration of the mutual promises set forth herein. No Party shall claim or contend, in any court, arbitration, or other dispute resolution forum, based on any statute or otherwise, that the rate established by this Agreement is improper or the product of non-acceptable methodology, and the Parties hereby waive any such rights and covenant not to bring any such claim. Billing and collection of retail water service customers (including, but not limited to meter reading, billing, collection, auditing, and appeals) shall be in accordance with the Cincinnati Requirements and other procedures, which shall operate no differently for

persons located in Addyston than for those located in the City of Cincinnati (except as to the Rates).

10. NOTICES

All legal notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: Director's Office
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Addyston:

Village of Addyston
235 Main St.
Addyston, OH 45001

However, if Addyston sends a notice to Cincinnati alleging that it is in default under this Agreement or that Addyston desires to terminate or not renew the Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

11. GENERAL PROVISIONS

A. No Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Cincinnati or Addyston.

B. Waiver. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

C. Entirety; Conflict. This Agreement and any documents, laws, codes, regulations, or written policies specifically identified herein and in the Exhibits contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

D. Severability. In the event that any provision of this Agreement is declared

to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

E. Choice of Law; Joint Preparation. This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Addyston agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

F. Forum Selection. The parties, their successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Cincinnati to Addyston in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

G. Electronic, Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and an electronic, facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

H. Official Capacity. 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 Cincinnati in other than his or her official capacity.

I. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

12. EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference.

- Exhibit A –Map of Retail Area
- Exhibit B – Map of Standby Area

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below, effective as of the later of such dates ("**Effective Date**").

VILLAGE OF ADDYSTON

By: _____
Lisa Mear, Mayor

Date: _____, 2022

Approved as to Form by:

Village of Addyston, Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager
Date: _____, 2022

RECOMMENDED BY:

Verna J. Arnette, Interim Executive Director
Greater Cincinnati Water Works

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

APPROVED AS TO FORM BY:

Assistant City Solicitor

CITY PURCHASING APPROVAL BY:

Bobbi Hageman,
Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Karen Alder, Cincinnati Finance Director

EXHIBIT A-Map of Retail Area (on Effective Date)

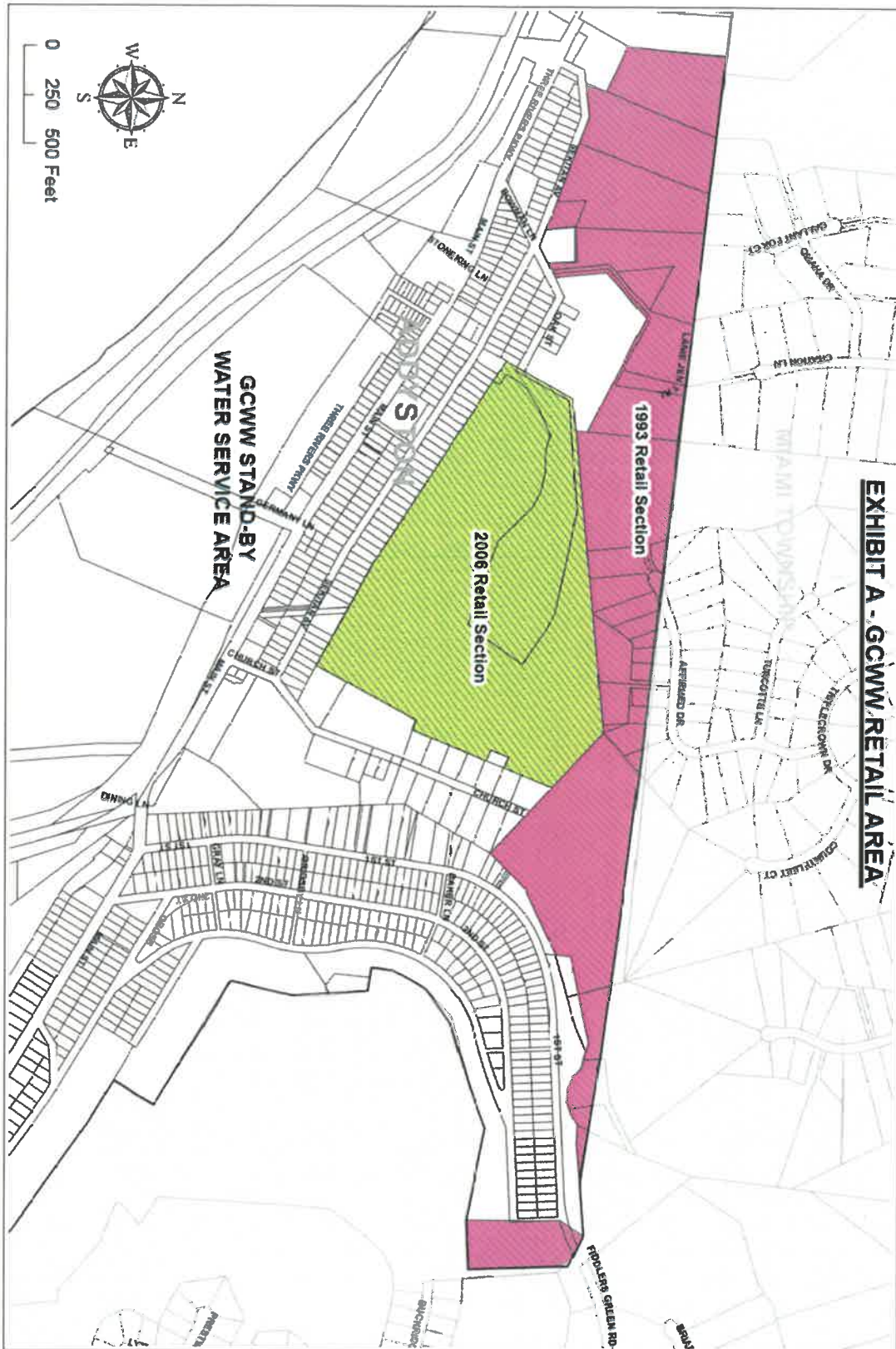
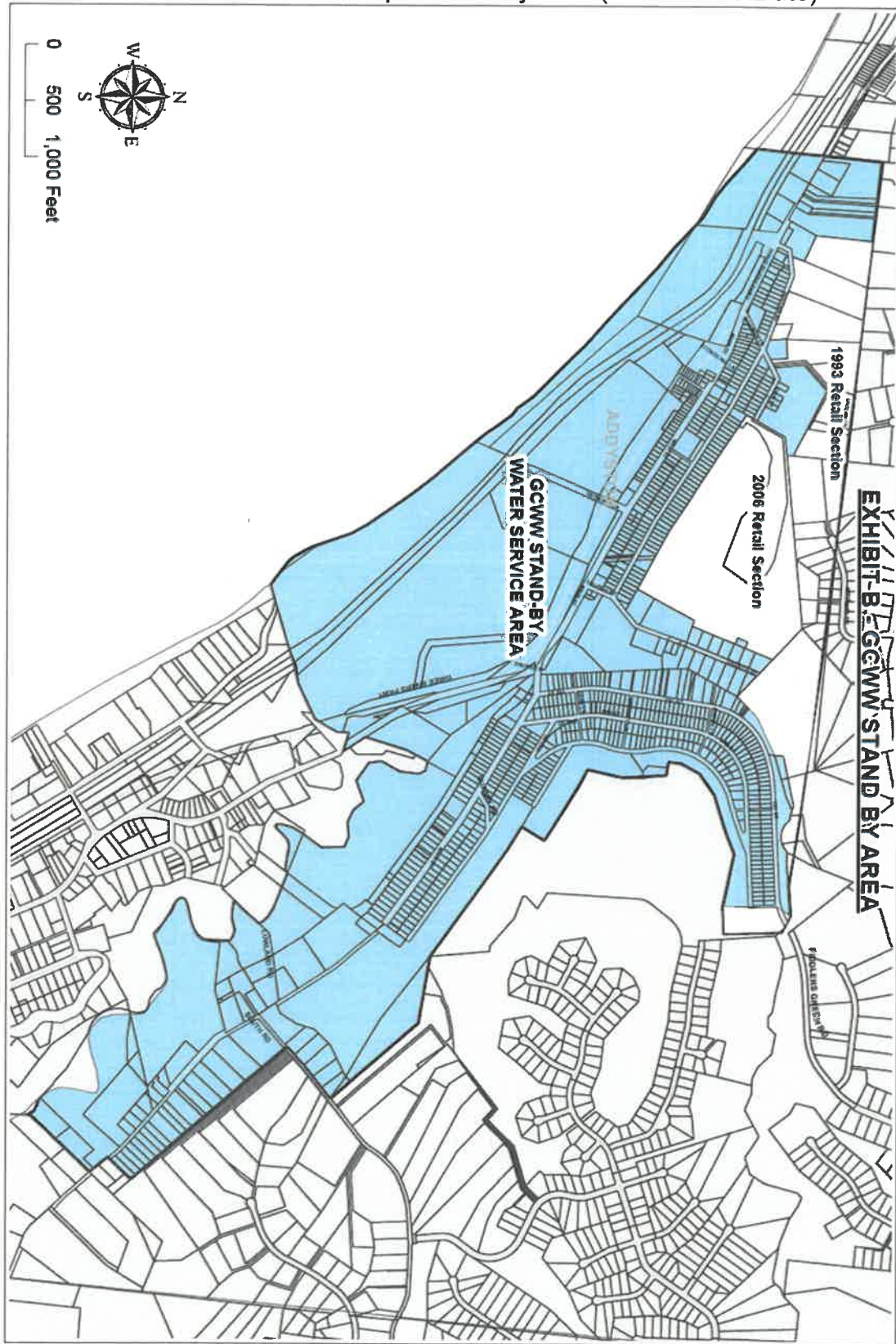


EXHIBIT B-Map of Standby Area (on Effective Date)



**AMENDED AND RESTATED
WATER SERVICE AGREEMENT**

(standby and retail service to Village of Addyston)

This *Amended and Restated Water Service Agreement* (“**Agreement**”) is made and entered into effective as of the Effective Date (defined on the signature page hereof) between the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for the purposes of this Agreement is 4747 Spring Grove Avenue, Cincinnati, Ohio, 45232 (“**Cincinnati**”) and the VILLAGE OF ADDYSTON, an Ohio municipal corporation (“**Addyston**”) located at 235 Main Street, Addyston, Ohio 45001.

RECITALS

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a city department and municipal water utility that treats and supplies water to properties within Cincinnati pursuant to Ohio Constitution Article XVIII, Section 4. Cincinnati is empowered pursuant to Ohio Constitution Article XVIII, Section 6 and Cincinnati City Charter Article IV, Section 9 to sell and deliver surplus water outside of the Cincinnati city limits as may be authorized by Cincinnati City council. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system.
- B. Addyston owns and operates the Addyston Village PWS, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to treat and distribute water to properties within its corporate boundaries, and is empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the Village of Addyston.
- C. Cincinnati and Addyston are parties to a *Water Contract* dated February 19, 1984, as amended by a *Supplement* dated February 14, 1989, a *Second Supplement* dated August 11, 1993 (adding an area of retail service), and a *Third Supplement* dated December 7, 1993, a *Fourth Amendment* dated January 18, 2006 (adding a second area of retail service), a *Fifth Amendment* dated December 21, 2017, a *Sixth Amendment* dated December 30, 2020, and *Seventh Amendment* dated December 27, 2021 (as amended “**Original Agreement**”) for Cincinnati to: 1) to provide Addyston with standby water service in case of emergency or maintenance of the Addyston PWS; and 2) provide retail water service to customers in retail area as defined in the Original Agreement, which will expire December 31, 2022.
- D. The parties desire to amend and restate the terms of the Original Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Addyston on the terms and conditions provided herein.

A. This Agreement is authorized by Addyston Village Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

1. DEFINITIONS. Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 1 (*Definitions*).

A. “GCWW” shall mean the Greater Cincinnati Water Works, the department of the City of Cincinnati that operates the Cincinnati Water System.

B. “Cincinnati Water System”. The water supply, production, treatment, transmission, storage, distribution, billing, collections and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Addyston), in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. The Cincinnati Water System shall include the Addyston Retail Water Area as defined herein.

C. “Cincinnati Requirements”. The Cincinnati ordinances (including, without limitation, applicable portions of the Cincinnati Municipal Code), laws, standards, specifications, engineering drawings, policies, and rules and regulations governing GCWW, as may be amended or changed by Cincinnati from time to time.

D. “Addyston Village PWS”. The wells, pumps, water storage, distribution, and related facilities owned and/or operated by Addyston for itself and its inhabitants, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Addyston Village PWS shall include all facilities beyond the master meter in the Standby Area.

E. “Addyston Retail Water Area”. Also referred to as the “Retail Area”, shall mean the areas labeled on Exhibit A as “1993 Retail Section” and “2006 Retail Section” as depicted on Exhibit A.

F. “Addyston Standby Water Area”. Also referred to as the “Standby Area”, shall mean the area labeled “GCWW Standby Water Service Area” on Exhibit B.

G. Water. Surplus treated water determined in Cincinnati’s sole discretion not to be needed by Cincinnati or its inhabitants.

H. Distribution Main. “Distribution Main” means any main intended primarily to serve properties abutting the street or road in which the main is laid.

I. Director. “Director” means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

J. City Manager. "City Manager" means the City Manager of Cincinnati.

2. TERM; TERMINATION.

A. **Term.** The parties intend and agree that this Agreement shall be a continuation of and supersede the Original Agreement in accordance with the amended and restated terms herein. Except for those provisions which expressly survive termination, this Agreement shall remain in full force and effect until midnight of December 31, 2050 ("**Expiration Date**", the effective period of this Agreement shall be referred to as the "**Term**"). During the year prior to the Expiration Date, Cincinnati will make best efforts to notify Addyston, and both parties agree to negotiate in good faith for a new agreement or an amendment to extend the Term. If the Term is not extended, this Agreement will expire on the Expiration Date. Following the termination of this Agreement for any reason, Cincinnati may continue, but shall not be required, to provide water service to Addyston at rates to be established by Cincinnati in accordance with then existing laws.

B. **Termination.** From and after termination of this Agreement:

i. Cincinnati shall be entitled to retain ownership of any capital improvements within the Addyston corporate limits that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to serve any portions of the Cincinnati Water System outside of the corporate limits of the Village of Addyston. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Right to Use*) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B) (*Termination*) remain in use for Cincinnati Water System operations.

ii. Within a reasonable amount of time following termination, Addyston shall pay to Cincinnati:

- a. the costs of all capital improvements within the Addyston corporate limits that are not retained by Cincinnati per section 2(B)(i) above to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated;
- b. all associated and ongoing costs, if any, (including operation and maintenance, regulatory compliance, etc.) of such capital improvements, to fairly compensate Cincinnati for costs incurred by Cincinnati due to Addyston's discontinuation of water service, and
- c. the costs to Cincinnati of transitioning Addyston to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

iii. Once Addyston has paid to Cincinnati all amounts listed in 2(B)(ii), Cincinnati will transfer to Addyston ownership of those capital improvements within Addyston limits that have not been retained by Cincinnati pursuant to this Section 2(B).

3. SUPPLY OF WATER NOT GUARANTEED. Cincinnati's furnishing of water service under this Agreement is pursuant to Cincinnati's municipal authority under the Ohio Constitution to sell Water (defined above as surplus water). The Parties agree and acknowledge that the supply of Water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston, is at all times dependent upon the existence of a surplus of water beyond the amount of water needed for users located within the corporate boundaries of the City of Cincinnati. Except a) where a surplus does not exist; b) in the case of breaks in mains, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice); c) where an insufficient supply of water exists, or d) where insufficient water is available at the Connections located outside of the corporate limits of Cincinnati, Cincinnati will use its best efforts to provide a potable, stable, and adequate supply of water to Addyston, its inhabitants, and properties within the corporate limits of the Village of Addyston. In the event of the occurrence of any of the conditions in the preceding sentence, Cincinnati shall have the right to allocate and prioritize Water service on a reasonable basis among the other non-Cincinnati political subdivisions served by Cincinnati (including those served by standby, wholesale or other water service), and there shall be no prior rights to service by reason of earlier date of contract. Cincinnati shall not be liable for any damages for its failure to furnish water, and in no event shall Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or to maintain any minimum of water pressure, it being understood that the pressure and supply of water is not guaranteed to consumers.

4. STANDBY WATER SERVICE

A. **Standby Service.** Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, following Addyston's prior notification to Cincinnati as provided below, Cincinnati will make best efforts to furnish standby water service to the Addyston Village PWS (*Standby Area*) on a temporary basis through the Connections (as defined herein) for the following needs and no others:

i. **Emergency Use.** Addyston shall obtain prior verbal approval from GCWW Distribution Dispatch at (513)591-7700 (24 hour) to operate the Connections to access emergency standby water. Within 24 hours of verbal approval, Addyston shall provide written notice to the GCWW Director of the reason for and extent of use of emergency standby water. For purposes of this section, an "Emergency" shall be defined as any situation arising from fire, flood, storm, contamination, water main break, or other malfunction or breakdown of a water system or unpotable condition of water in a water system, or a similar emergency condition causing an immediate threat to the life, health, property or normal business of the customers served by the water system experiencing

the emergency. The parties agree that inadequate water supply due to inadequate facilities and/or high seasonal demand shall not be considered an emergency.

ii. Non-Emergency Use. Addyston may request to purchase surplus water for non-emergency purposes, such as system maintenance, which shall only be accessed with the prior written approval of GCWW.

Addyston shall not supply the surplus water provided through standby service to properties outside of the corporate boundaries of the Village of Addyston (as may be modified from time to time). Addyston shall pay Cincinnati for standby water usage in accordance with Section 9 (*Water Rates*) hereof.

B. Connections and Master Meters. There is one existing connection for surplus water delivery between the Cincinnati Water System and the Addyston Village PWS located at approximately 250 First Street (Fiddler's Green Rd.) (including any connections installed in the future, the "**Connections**"). Cincinnati shall own and be responsible for maintaining and replacing the existing master meters at the Connections. Other than the master meters, Addyston shall own and be responsible for the maintaining, repairing, operating, replacing and testing of the water facilities comprising the Connections, including the pressure regulator valves, meter pits, backflow preventers and other related appurtenances, in accordance with the Cincinnati Requirements as well as any applicable state and federal regulations. Addyston may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. The initial master meter cost at a new connection shall be Addyston's responsibility. Upon termination or expiration of this Agreement, Addyston shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Addyston pursuant to this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

5. RETAIL WATER SERVICE

A. Retail Service. During the Term (as defined herein) and subject to the terms and conditions of this Agreement and the Cincinnati Requirements, Cincinnati shall provide Water and the water services described herein on a retail basis (including distribution, metering, billing, and collection) to the inhabitants and properties within the Retail Area.

B. 2006 Retail Section. Addyston may terminate GCWW retail water service to the 2006 Retail Section provided that Addyston has delivered to Cincinnati: 1) written notice of termination no less than three (3) months prior to the effective date of termination; 2) Addyston Village Engineer's certification that all necessary improvements have been completed to adequately provide retail service to the 2006 Retail Section; 3) documentation of Addyston Village Council approval of the termination; and 4) a letter from the Ohio Environmental Protection Agency (OEPA) indicating its approval of Addyston's plan to provide retail service to the 2006 Retail Section and of the termination of GCWW retail service to the 2006 Retail Section. The provisions of Section

2(B)(*Termination*) shall apply to the transition of ownership from Cincinnati to Addyston if GCWW retail service to the 2006 Retail Section is terminated in accordance with this subsection.

C. Cincinnati shall retain ownership of the water main between Affirmed Drive and Fiddler's Green Road (aka 1st Street), if such main has been constructed, along with the right to use any easements or rights-of-way owned by Addyston and needed for Cincinnati to maintain, operate, repair, or replace such water main. At Addyston's request, Addyston may construct, at its sole cost, an additional emergency Connection along the water main between Affirmed Drive and Fiddlers Green Road (at a mutually agreed upon site), provided that the design, inspection and construction of the interconnection shall be reviewed and approved by GCWW and conform with Cincinnati Requirements and that all OEPA required approvals are obtained by Addyston. Addyston shall purchase a master meter approved by Cincinnati for this emergency connection, and standby service shall be provided in accordance with the provisions of Section 4 (*Standby Water Service*) to this Agreement.

D. Restriction in Use. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied to the Retail Area shall be restricted to usage within that area unless the expressed prior written consent of the Director is obtained.

E. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Addyston shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Addyston acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances to serve the Retail Area is a significant expense to Cincinnati, and revenues from Retail Area are necessary to offset those expenses and Cincinnati may rely on revenues from Addyston retail service customers to service any related debt. Addyston shall not take action or assist others in taking action, or contract with others to affect the construction or operation of any public water system to furnish Water to the Retail Area. If any property within the Retail Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of the Village of Addyston, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Addyston agrees that it shall cooperate to ensure Cincinnati's continued exclusive right to service.

F. Billing and Collections. Cincinnati will read all meters; and deliver (by mail, electronically or otherwise) and collect payment of bills and charges, and audit accounts as to each account/property in the Retail Area, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in the Retail Area, except as expressly provided herein.

G. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace Cincinnati Water System facilities within the Retail Area. If repairs and

replacements are necessitated as the result of negligence on the part of Addyston, or its employee(s) or contractor(s), Addyston shall reimburse Cincinnati for repair costs caused by such negligence.

H. Water Service Branches; Water Meters. Water service branches and water meters, including, without limitation, the charges for their installation, ownership, repair, replacement, and maintenance for properties in the Retail Area shall be in accordance with Cincinnati Requirements, which shall operate no differently for persons and properties located in Cincinnati than for those located in the Retail Area and other portions of the Cincinnati Water System.

I. Obligation of Owners of Property Served. Any owner of real property supplied with retail water service under this Agreement, shall be deemed to have accepted and be subject to: 1) the provisions of this Agreement, as may be amended from time to time, 2) the Cincinnati Requirements and Cincinnati enforcement thereof, and 3) liability for all water service charges for such premises, whether or not the accounts for such premises include the name of tenants, managing agents, or other persons.

J. Enforcement. As to the Retail Area, Cincinnati reserves the right to shut off service, discontinue service, disconnect the service branch and/or remove the meter to any property, consumer, or account for a breach of the terms of this Agreement, for nonpayment of bills or other violation of the Cincinnati Requirements in accordance with the Cincinnati Requirements. Such remedies shall be non-exclusive and at Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

K. Retail Area Water Infrastructure.

i. **Improvements for Cincinnati Water System Purposes.** Cincinnati will plan for and perform replacements of existing capital improvements to Cincinnati Water System facilities in the Retail Area that are determined in Cincinnati's sole discretion to be necessary for the purpose of providing an adequate supply of Water within the Retail Area. Cincinnati shall not be required to pay for initial capital improvements requested by Addyston in the Retail Area that are determined by the Director not to be necessary for the benefit of the Cincinnati Water System (for example, relocation to accommodate utility/road improvements or economic development), which shall be subject to the terms of Section 5(K)(ii) (*Requested Water Mains*) below.

ii. **Requested Water Mains.** Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 5(K)(i) (*Improvements for Cincinnati Water System Purposes*), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving the Retail Area, shall be constructed by Addyston, developer or other requestor, and Cincinnati shall not be required to contribute to the cost of such installation from Cincinnati Water System revenue; however, Cincinnati may elect

to contribute to such costs, in accordance with an applicable plan for water main installation in Cincinnati Municipal Code Chapter 401. Once a main has been connected and placed into service, it shall become part of the Cincinnati Water System. As provided in Section 6(B) (*Control; Regulatory Compliance/Cincinnati Water System*) hereof, installations, connections and improvements to the Cincinnati Water System in the Retail Area shall be subject to the Cincinnati Requirements and Cincinnati approval, including without limitation requirements for contractor bonding, plan review, warranty and inspection and approval. Addyston shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Addyston.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial development unless such proposed subdivision has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which opinion shall not be unreasonably withheld. Addyston shall submit to GCWW all building permit applications potentially affecting water usage in the Retail Area (except single family residences in subdivisions for which Cincinnati has determined within the prior 12 months that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Addyston is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Addyston has ownership in any portion of the Cincinnati Water System, which is expressly acknowledged to be the property of and under the control and operation of Cincinnati. During the Term, and until Cincinnati transfers ownership following termination in accordance with Section 2(B) (*Termination*) hereof, the water facilities used by Cincinnati to provide retail service within the Retail Area shall be part of the Cincinnati Water System and shall be owned by Cincinnati. This Section 6(A)(i) shall survive termination of this Agreement.

ii. **Addyston Village PWS.** It is expressly agreed and understood by the parties that Addyston is the owner of the Addyston Village PWS, and that nothing in this Agreement shall imply that Cincinnati has ownership or responsibility in any portion of the Addyston Village PWS, which is expressly acknowledged to be the property of and under the control and operation of Addyston.

B. Control; Regulatory Compliance.

i. **Cincinnati Water System.** The Cincinnati Water System is subject to strict federal, state, and local regulations related to the water system, including, without limitation, compliance with treatment and water quality requirements, management of the distribution system, billing and other standards related to the water system. Cincinnati is ultimately responsible for and shall have sole discretion to manage and operate the Cincinnati Water System, including but not limited to, capital improvements associated with the quality of water, water production or treatment facilities, water quality related equipment and facilities, decisions involving treatment techniques, rate setting, and billing and collections, including, without limitation, actions (a) for the protection of health, lives, or property, (b) renovation, replacement, or upgrade of facilities and appurtenances, (c) to ensure compliance with applicable laws and regulations, and (d) sound operation of the water utility. Because the Cincinnati Water System must operate as a whole to serve numerous jurisdictions, Cincinnati shall not be subject to the requirements of Addyston, or any other contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the Retail Area and as to all Connections and Master Meters all applicable Cincinnati Requirements, now or hereafter lawfully in effect. Cincinnati may at any time change the Cincinnati Requirements. The materials and workmanship of all facilities connecting to the Cincinnati Water System, including mains, reservoirs, tanks, pumping stations, and other works, shall conform to the engineering standards of GCWW (and all other Cincinnati Requirements) as interpreted by GCWW. Any facilities connecting or integrated into the Cincinnati Water System shall be subject to approval and inspection of the Director or their duly authorized representative and to GCWW inspection costs. Cincinnati shall have the right to exercise in its management of the Cincinnati Water System, including the Retail Area, Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

ii. **Addyston Village PWS.** Addyston, as the owner and operator of the Addyston Village PWS, is solely responsible for and shall have sole discretion to manage and operate the Addyston Village PWS. Cincinnati shall not have any responsibility for the Addyston Village PWS, and Addyston shall not be subject to the Cincinnati Requirements in its management of the Addyston Village PWS. Cincinnati shall not have any responsibility or liability for any claims arising from Addyston's failure to maintain or repair any facilities for which it is responsible under this Agreement.

7. RIGHT TO USE. Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, shall have the right to use all existing easements and rights-of-way within the Village of Addyston when required for any purposes under this contract, including, but not limited to construction, operation, maintenance, repair, and replacement of water mains and other appurtenances to the Cincinnati Water System which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Addyston or through Addyston to other areas of the Cincinnati Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to

the requirements of Addyston; however, Addyston shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. When required by Cincinnati, Addyston shall apply its power of eminent domain to acquire easements or other property ownership necessary for the Cincinnati Water System capital improvements. Provided that the exercise of eminent domain does not also serve an Addyston or other right-of-way purpose, Cincinnati shall reimburse Addyston for the costs of just compensation to the owners of the property for which eminent domain is exercised. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Addyston, Cincinnati shall restore such streets to their original condition to the satisfaction of Addyston; however, Cincinnati shall not be required to repave or resurface any part of any street not opened by it in connection with such work. Cincinnati shall make best efforts to complete all water main work in the Village of Addyston within a reasonable amount of time following commencement.

8. FIRE HYDRANTS.

A. Use of Water. With the exception of the use of Water from public fire hydrants for firefighting by fire departments organized under Ohio law, no water shall be taken from fire hydrants in the Retail Area other than for fire purposes, except: 1) as may be authorized in advance in writing by Cincinnati in accordance with the Cincinnati Requirements, and 2) provided a permit is obtained from GCWW.

B. Fire Hydrants. Fire hydrants within the Retail Area shall be subject to the terms below:

i. Addyston shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Addyston at no cost to Cincinnati.

ii. Installation, maintenance, repair, operation, replacement and removal of fire hydrants connected to the Cincinnati Water System shall conform to the Cincinnati Requirements, and be subject to GCWW inspection, which inspection shall be at no cost to Addyston.

iii. Any flushing of public fire hydrants by Addyston shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Addyston shall be responsible for any damage to the Cincinnati Water System caused by flushing of fire hydrants conducted in contravention of the Cincinnati Requirements.

iv. Any other expenses incurred by Cincinnati in connection with any installation, repair, maintenance, replacement, or removal of fire hydrants performed on an emergency basis shall be paid by Addyston on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System. The respective fire officials will, on a quarterly basis, provide the Director an estimate of the amount of water used by them for fire purposes.

v. Addyston shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed in the Retail Area under their responsibility.

vi. Addyston may impose and enforce additional requirements for private fire protection facilities beyond those required for the Cincinnati Water System. Cincinnati shall have no obligation to enforce such requirements.

9. WATER RATES. From time to time, Cincinnati City Council shall fix by ordinance the charges for water supplied to political jurisdictions and to retail customers in the City of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati’s right to establish rates for water supplied to customers in Cincinnati. During the Term, the rates for service under this Agreement shall be as follows:

A. Standby Water. Addyston shall pay for emergency and non-emergency standby water at rates for water used by political subdivisions (currently Cincinnati Municipal Code 401-81 "Political Subdivision Rates") as fixed by ordinance of the Council of Cincinnati from time to time. The current rates established for 2023 and 2024 are:

Period	Political Subdivision rate
Winter (Jan-May & Nov-Dec 2023)	\$3.45/ccf
Summer (May - Oct 2023)	\$4.11/ccf
Winter (Jan-May & Nov-Dec 2024)	\$3.64/ccf
Summer (May - Oct 2024)	\$4.33/ccf

Payment for standby water furnished shall be made within 30 days after billing by Cincinnati. Payment is agreed to be for the purchase of water and water service and shall not be interpreted to be for the purchase of any portion of the Cincinnati Water System or other Cincinnati-owned property used in providing water and/or water service.

B. Retail Water Service. Notwithstanding any other provisions in this Agreement, the rate charged to the retail customers under this Agreement shall be fixed at 1.25 times (“**Rate Differential**”) the rate charged to customers in the City of Cincinnati pursuant to the Cincinnati Municipal Code as may be amended from time to time. The Parties agree that the Rate Differential established by this Section 9(B) (*Water Rates/Retail Water Service*) has been set by agreement, in consideration of the mutual promises set forth herein. No Party shall claim or contend, in any court, arbitration, or other dispute resolution forum, based on any statute or otherwise, that the rate established by this Agreement is improper or the product of non-acceptable methodology, and the Parties hereby waive any such rights and covenant not to bring any such claim. Billing and collection of retail water service customers (including, but not limited to meter reading, billing, collection, auditing, and appeals) shall be in accordance with the Cincinnati Requirements and other procedures, which shall operate no differently for

persons located in Addyston than for those located in the City of Cincinnati (except as to the Rates).

10. NOTICES

All legal notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: Director's Office
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Addyston:

Village of Addyston
235 Main St.
Addyston, OH 45001

However, if Addyston sends a notice to Cincinnati alleging that it is in default under this Agreement or that Addyston desires to terminate or not renew the Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

11. GENERAL PROVISIONS

A. No Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Cincinnati or Addyston.

B. Waiver. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

C. Entirety; Conflict. This Agreement and any documents, laws, codes, regulations, or written policies specifically identified herein and in the Exhibits contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

D. Severability. In the event that any provision of this Agreement is declared

to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

E. Choice of Law; Joint Preparation. This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Addyston agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

F. Forum Selection. The parties, their successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Cincinnati to Addyston in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

G. Electronic, Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and an electronic, facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

H. Official Capacity. 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 Cincinnati in other than his or her official capacity.

I. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

12. EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference.

- Exhibit A –Map of Retail Area
- Exhibit B – Map of Standby Area

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below, effective as of the later of such dates (“**Effective Date**”).

VILLAGE OF ADDYSTON

By: _____
Lisa Mear, Mayor

Date: _____, 2022

Approved as to Form by:

Village of Addyston, Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager
Date: _____, 2022

RECOMMENDED BY:

Verna J. Arnette, Interim Executive Director
Greater Cincinnati Water Works

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

APPROVED AS TO FORM BY:

Assistant City Solicitor

CITY PURCHASING APPROVAL BY:

Bobbi Hageman,
Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Karen Alder, Cincinnati Finance Director

EXHIBIT A-Map of Retail Area (on Effective Date)

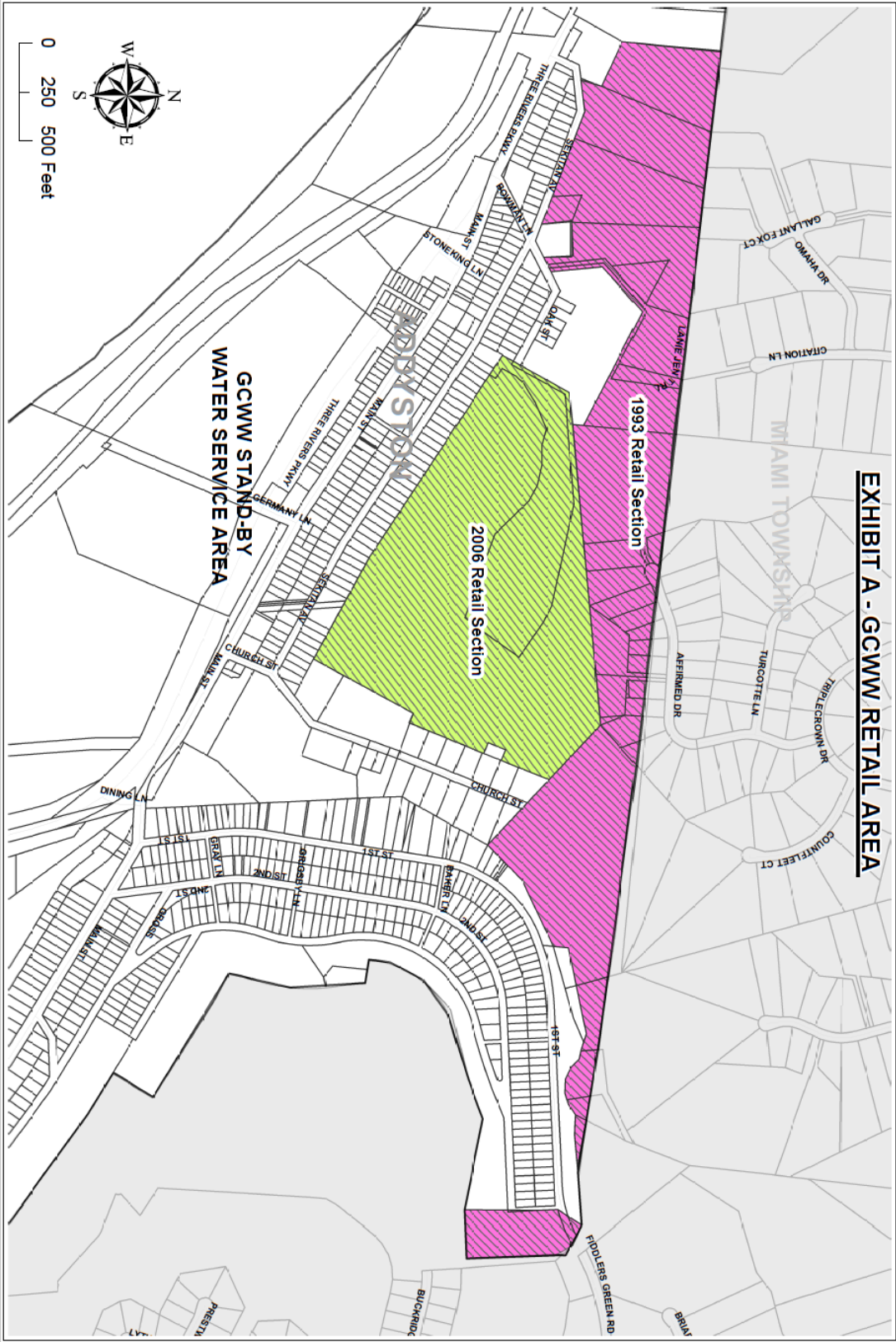
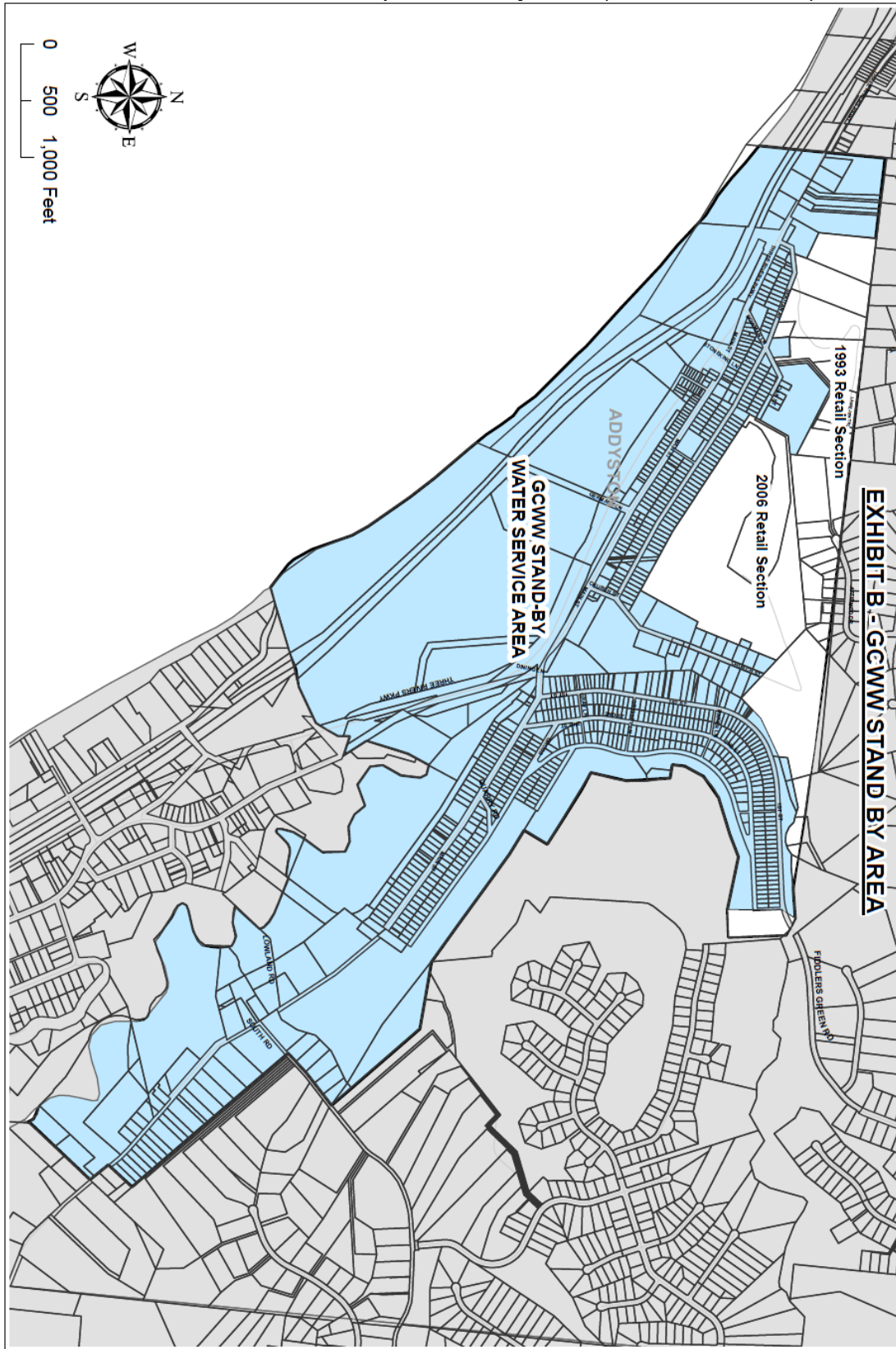


EXHIBIT B-Map of Standby Area (on Effective Date)



November 30, 2022

To: Mayor and Members of City Council 202202113
From: Sheryl M.M. Long, City Manager
Subject: Emergency Ordinance Authorizing the City Manager to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the City of Reading, Ohio

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute an Amended and Restated Water Service Agreement between the City of Cincinnati and the City of Reading, Ohio.

The City of Cincinnati provides wholesale and retail water service to the City of Reading pursuant to a contract dated August 26, 1993 which is set to expire December 31, 2022. This ordinance authorizes the City Administration to enter into an amended and restated agreement with updated terms, including a contract expiration date of December 31, 2047, in substantially the same form as attached to this ordinance.

The Administration recommends passage of this Emergency Ordinance.

cc: Verna J. Arnette, Interim Executive Director/Greater Cincinnati Water Works VJA

EMERGENCY

City of Cincinnati

AEY

EESW

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the City of Reading, Ohio.

WHEREAS, the City of Cincinnati (“Cincinnati”) and the City of Reading, Ohio (“Reading”) are parties to: 1) a certain *Contract* dated December 30, 1993 for Cincinnati to supply retail and wholesale water service to Reading (as amended, the “1993 Contract”), and 2) a certain *Agreement* dated January 23, 1957 (as amended, the “1957 Agreement”) in which Reading granted to Cincinnati the right to install, repair, operate, and maintain and replace GCWW water transmission mains in Ridge Road, Columbia Road, and Reading Road in the City of Reading; and

WHEREAS, the 1993 Contract term is currently set to expire on December 31, 2022; and

WHEREAS, the City and Reading desire to amend and restate the terms of the 1993 Contract and the 1957 Agreement in order to, among other terms, allow for Cincinnati to continue to provide surplus water and retail service to Reading until December 31, 2047, and to include the terms from the 1957 Agreement regarding Cincinnati’s use of the specified Reading rights-of-way for water transmission mains serving jurisdictions to the north of Reading; 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 an *Amended and Restated Water Service Agreement* between the City of Cincinnati and the City of Reading, Ohio in substantially the same form as Attachment A attached hereto.

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

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 execute the amended and restated agreement to enable Cincinnati to continue to provide water service to Reading to beyond the current contract expiration date of December 31, 2022.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____

Clerk

ATTACHMENT A

AMENDED AND RESTATED WATER SERVICE AGREEMENT
(Wholesale and Retail Service to City of Reading, Ohio)

This *Amended and Restated Water Service Agreement* (this “**Agreement**”) is entered into effective on the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation through its Greater Cincinnati Water Works (GCWW), with offices located at 4747 Spring Grove Avenue, Cincinnati, OH 45232 (“**Cincinnati**”), and the CITY OF READING, an Ohio municipal corporation with office located at 1000 Market St., Cincinnati, Ohio 45215 (“**Reading**”).

RECITALS:

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a city department and municipal water utility that treats and supplies water to properties within Cincinnati pursuant to Ohio Constitution Article XVIII, Section 4. Cincinnati is empowered pursuant to Ohio Constitution Article XVIII, Section 6 and Cincinnati City Charter Article IV, Section 9 to sell and deliver surplus water outside of the Cincinnati city limits as may be authorized by Cincinnati City council. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system.
- B. Reading owns and operates the City of Reading Public Water System, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to distribute treated water to properties within its corporate boundaries and empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the City of Reading.
- C. Cincinnati and Reading are parties to:
 - a. A certain *Contract* dated August 26, 1993, as subsequently amended by a *First Amendment* dated December 30, 1993, a *Second Amendment* dated May 14, 1996, a *Third Amendment* dated December 21, 2017, a *Fourth Amendment* dated December 30, 2020, and a *Fifth Amendment* dated December 23, 2021 (collectively, the “**1993 Contract**”) for Cincinnati to: 1) sell wholesale water to Reading for distribution to the wholesale area as defined in the 1993 Contract, and 2) provide retail water service to customers in retail area defined by the 1993 Contract. The 1993 Contract is set to expire December 31, 2022.
 - b. A certain *Agreement* dated January 23, 1957 (“**1957 Agreement**”) in which Reading granted to Cincinnati the right to install, repair, operate and maintain and replace water mains in Ridge Road, Columbia Road and Reading Road in the City of Reading, and Cincinnati agreed to restore the portion of the streets

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disturbed by work on the water mains. Sections 3 and 4 of the 1957 Agreement were superseded by the terms of the 1993 Contract, while Sections 1 and 2 remained in place.

- D. The parties desire to amend and restate the terms of the 1993 Contract and the 1957 Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Reading, and to include the active terms from the 1957 Agreement regarding Cincinnati's use of the Reading rights-of-way as provided herein.
- E. This Agreement is authorized by Reading City Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW THEREFORE for and in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

1. DEFINITIONS. Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 1 (*Definitions*).

A. "GCWW" shall mean the Greater Cincinnati Water Works, the department of the City of Cincinnati that operates the Cincinnati Water System.

B. "Cincinnati Water System". The water supply, production, treatment, transmission, storage, distribution, billing, collections and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Reading), in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. The Cincinnati Water System shall include the Reading Retail Water Area as defined herein.

C. "Cincinnati Requirements". The Cincinnati ordinances (including, without limitation, applicable portions of the Cincinnati Municipal Code), laws, standards, specifications, engineering drawings, policies, and rules and regulations governing GCWW, as may be amended or changed by Cincinnati from time to time.

D. "Reading Distribution System". The water storage, distribution, and related facilities owned and/or operated by Reading for itself and its inhabitants, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Reading Distribution System shall include all facilities in the Wholesale Area beyond the master meter.

E. "Reading Retail Water Area". Also referred to as the "Retail Area", shall mean the area so labeled on Exhibit A.

F. "Reading Wholesale Water Area". Also referred to as the "Wholesale Area", shall mean the area so labelled on Exhibit B. The Wholesale Area includes specified

portions of the Village of Evandale and the City of Blue Ash that are provided retail service by the Reading Distribution System.

G. Water. Surplus treated water determined in Cincinnati's sole discretion not to be needed by Cincinnati or its inhabitants.

H. Cincinnati Transmission Mains. "Cincinnati Transmission Mains" means any water mains that are used by Cincinnati to furnish water to areas to the north, northeast or northwest of Reading, including, without limitation, the water mains in Ridge Road, Columbia Road, and Reading Road depicted in Exhibit C hereto.

I. Distribution Main. "Distribution Main" means any main intended primarily to serve properties abutting the street or road in which the main is laid.

J. Director. "Director" means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

K. City Manager. "City Manager" means the City Manager of Cincinnati.

2. TERM; TERMINATION.

A. **Term**. The parties intend and agree that this Agreement shall be a continuation of the 1957 Contract and the 1993 Agreement in accordance with the amended and restated terms herein. Except for those provisions which expressly survive termination, this Agreement shall remain in full force and effect until midnight of December 31, 2047 ("**Expiration Date**", the effective period of this Agreement shall be referred to as the "**Term**"). During the year prior to the Expiration Date, Cincinnati will make best efforts to notify Reading, and both parties agree to negotiate in good faith for a new agreement or an extension of the Term. If the Term is not extended as provided herein, this Agreement will expire on the Expiration Date. Following the termination of this Agreement for any reason, Cincinnati may continue, but shall not be required, to provide water service to Reading at rates to be established by Cincinnati in accordance with then existing laws.

B. **Termination**. From and after termination of this Agreement:

i. Cincinnati shall retain ownership of the Cincinnati Transmission Mains, as well as the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and Rights of Way*) of this Agreement as long as the Cincinnati Transmission Mains are in use for Cincinnati Water System operations.

ii. Cincinnati shall be entitled to retain ownership of any capital improvements within the Reading corporate limits that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to serve any portions of the Cincinnati Water System outside of the corporate limits of the City of Reading. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and*

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Rights of Way) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B)(ii) (*Term; Termination*) remain in use for Cincinnati Water System operations.

iii. Within a reasonable amount of time following termination, Reading shall pay to Cincinnati:

a. the costs of all capital improvements within the Reading corporate limits that are not retained by Cincinnati per section 2(B)(i) above to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated;

b. all associated and ongoing costs, if any, (including operation and maintenance, regulatory compliance, etc.) of such capital improvements, to fairly compensate Cincinnati for costs incurred by Cincinnati due to Reading's discontinuation of water service, and

c. the costs to Cincinnati of transitioning Reading to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

iv. Once Reading has paid to Cincinnati all amounts listed in 2(B)(iii), Cincinnati will transfer to Reading ownership of those capital improvements within Reading limits that have not been retained by Cincinnati pursuant to Section 2(B)(iii).

3. SUPPLY OF WATER NOT GUARANTEED. Cincinnati's furnishing of water service under this Agreement is pursuant to Cincinnati's municipal authority under the Ohio Constitution to sell Water (defined above as surplus water). The Parties agree and acknowledge that the supply of Water to Reading, its inhabitants, properties within the corporate limits of the City of Reading, and properties in the Wholesale Area, is at all times dependent upon the existence of a surplus of water beyond the amount of water needed for users located within the corporate boundaries of the City of Cincinnati. Except a) where a surplus does not exist; b) in the case of breaks in mains, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice); c) where an insufficient supply of water exists, or d) where insufficient water is available at the Connections located outside of the corporate limits of Cincinnati, Cincinnati will use its best efforts to provide a potable, stable, and adequate supply of water to Reading, its inhabitants, and properties within the corporate limits of the City of Reading. In the event of the occurrence of any of the conditions in the preceding sentence, Cincinnati shall have the right to allocate and prioritize Water service on a reasonable basis among the other non-Cincinnati political subdivisions served by Cincinnati (including those served by standby, wholesale or other water service), and there shall be no prior rights to service by reason of earlier date of contract. Cincinnati shall not be liable for any damages for its failure to furnish water, and in no event shall

Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or to maintain any minimum of water pressure, it being understood that the pressure and supply of water is not guaranteed to consumers.

4. WHOLESALE WATER SERVICE

A. Wholesale Area. Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, Cincinnati will make best efforts to furnish Water to Reading through the Connections (as defined herein) to be used for provision of water through the Reading Distribution System in the Wholesale Area. The water supplied to the Reading under this Section 4 (*Wholesale Water Service*) shall be restricted to usage within the Wholesale Area unless the Director has provided advance written consent and shall be used for public water supply purposes only. Reading shall pay for all water received through the Connections at the rates provided in Section 9 (*Water Rates*). No water from sources other than GCWW shall be sold by Reading in the Wholesale Area or Retail Area. Cincinnati shall have no responsibility for the Reading Distribution System or water distribution activities (including billing and collection) within the Wholesale Area.

Reading may use water from other sources, including the Reading wells for fire suppression, irrigation and other non-potable purposes, provided that during the term, no physical connection shall be made or exist between such sources and either the Cincinnati Water System or the Reading Distribution System.

B. Connections and Master Meters. The wholesale Water supplied by Cincinnati to Reading shall be taken from Cincinnati mains through master meter connections between the Cincinnati Water System and the Reading Distribution System (including any connections installed in the future, the "**Connections**").

i. Existing Connections. The existing Connections are as follows:

Master Meter Locations	Size
515 E. Columbia Ave	10"
9701 Reading Rd	6"
8374 Reading Rd	8"

Cincinnati shall own and be responsible for maintaining and replacing the master meters at the Connections. Other than the master meters, Reading shall own and be responsible (at no cost to Cincinnati) for the maintenance, repair, operation, replacement and testing of the Connections, including the pressure regulator valves, meter pits, backflow preventer and other related appurtenances (including fittings, valves, vaults and other master meter appurtenances). Reading may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. Upon termination or expiration of this Agreement, Reading shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Reading pursuant to

this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

The parties agree that all connections contemplated in the original 1993 Agreement have been completed.

ii. Additional or Replacement Connections.

- a. If additional Connections or replacement of existing Connections are determined by the Director to be needed for the benefit of or to accommodate the Cincinnati Water System (other than to meet existing Cincinnati Requirements or requirements under state or federal law), Cincinnati shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.
- b. If additional Connections or replacement of existing Connections are determined by Reading to be needed for the benefit of or to accommodate the Reading Distribution System (including to meet existing Cincinnati Requirements or requirements under state or federal law), Reading shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.
- c. If additional Connections or replacement of existing Connections are determined by both parties to be needed for the mutual benefit of or to accommodate both the Reading and Cincinnati systems, then the parties shall share in the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices in proportion to the benefit received by each party for the work or as may otherwise be agreed upon in writing.
- d. All Connections and Master Meters shall be subject to the Cincinnati Requirements as provided in Section 6(C) hereof.

c. **Wholesale Charges.**

i. Billing. Cincinnati will read the master meters and bill Reading monthly for usage in accordance with the wholesale rate provided in Section 9 (*Water Rates*) hereof. The monthly bills shall be for water furnished during the preceding month and shall include the master meter readings, amount of water consumed, and the total water charge. The Reading Safety/Services Director or authorized representative shall have the right to inspect the master meters and Cincinnati's records to verify the accuracy of the amount of water furnished to Reading. In case of failure to obtain a master meter reading due to equipment failure, Cincinnati shall have the right to bill Reading based on

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estimated water usage from historic data. If Reading contests the basis for this estimated usage, the matter shall be submitted to a three-member board of arbitration composed of a Cincinnati appointee, a Reading appointee and an appointing chosen by the Cincinnati and Reading appointed members. The decision of the board of arbitration shall be final and binding. The costs of arbitration shall be shared equally by Cincinnati and Reading.

ii. Payment. Reading shall pay Cincinnati on or before the due date stated on the bill, which shall be no earlier than 21 days from the date the bill is issued. If such bills are not paid when due, nonpayment fees shall be charged in accordance with the Cincinnati Requirements.

D. Industrial/Large User Water Availability. Reading shall submit to GCWW all requests for new or significant increases in water usage (of 1MGD increase or greater) in the Wholesale Area in order to determine, in the opinion of the Director, if the proposed increase can be adequately served without materially affecting the water service of existing consumers, which approval shall not be unreasonably withheld. If additional infrastructure changes (ex-additional connections, master meter upgrades), such costs shall be at Reading's cost per Section 4(B) (*Wholesale Connections and Master Meters*).

5. RETAIL WATER SERVICE.

A. Retail Service. During the Term (as defined herein) and subject to the terms and conditions of this Agreement and the Cincinnati Requirements, Cincinnati shall provide Water and the water services described herein on a retail basis (including distribution, metering, billing, and collection) to the inhabitants and properties within the Retail Area.

B. Restriction in Use. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied to the Retail Area shall be restricted to usage within that area unless the expressed prior written consent of the Director is obtained.

C. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Reading shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Reading acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances to serve the Retail Area is a significant expense to Cincinnati, and revenues from Retail Area are necessary to offset those expenses and Cincinnati may rely on revenues from Reading retail service customers to service any related debt. Reading shall not take action or assist others in taking action, or contract with others to affect the construction or operation of any public water system to furnish Water to the Retail Area. If any property within the Retail Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of the City of Reading, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Reading agrees that it shall cooperate to ensure

Cincinnati's continued exclusive right to service.

D. Billing and Collections. Cincinnati will read all meters; and deliver (by mail, electronically or otherwise) and collect payment of bills and charges, and audit accounts as to each account/property in the Retail Area, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in the Retail Area.

E. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace Cincinnati Water System facilities within the Retail Area. If repairs and replacements are necessitated as the result of negligence on the part of Reading, or its employee(s) or contractor(s), Reading shall reimburse Cincinnati for repair costs caused by such negligence.

F. Water Service Branches; Water Meters. Water service branches and water meters, including, without limitation, the charges for their installation, ownership, repair, replacement, and maintenance for properties in the Retail Area shall be in accordance with Cincinnati Requirements, which shall operate no differently for persons and properties located in Cincinnati than for those located in the Retail Area and other portions of the Cincinnati Water System.

G. Obligation of Owners of Property Served. Any owner of real property supplied with Water service under this Agreement, shall be deemed to have accepted and be subject to: 1) the provisions of this Agreement, as may be amended from time to time, 2) the Cincinnati Requirements and Cincinnati enforcement thereof, and 3) liability for all water service charges for such premises, whether or not the accounts for such premises include the name of tenants, managing agents, or other persons.

H. Enforcement. As to the Retail Area, Cincinnati reserves the right to shut off service, discontinue service, disconnect the service branch and/or remove the meter to any property, consumer, or account for a breach of the terms of this Agreement, for nonpayment of bills or other violation of the Cincinnati Requirements in accordance with the Cincinnati Requirements. Such remedies shall be non-exclusive and at Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

I. Retail Area Water Infrastructure.

i. Improvements for Cincinnati Water System Purposes. Cincinnati will plan for and perform capital improvements to Cincinnati Water System facilities in the Retail Area that are determined in Cincinnati's sole discretion to be necessary for the purpose of providing an adequate supply of Water within the Retail Area. Cincinnati shall not be required to pay for capital improvement requested by Reading in the Retail Area that are determined by the Director not to be necessary for the benefit of the Cincinnati Water System (for example, relocation to accommodate

utility/road improvements or economic development), which shall be subject to the terms of Section 5(I)(ii) (*Requested Water Mains*) below.

ii. **Requested Water Mains.** Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 5(I)(i) (*Improvements for Cincinnati Water System Purposes*), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving the Retail Area, shall be constructed by Reading, developer or other requestor, and Cincinnati shall not be required to contribute to the cost of such installation from Cincinnati Water System revenue; however, Cincinnati may elect to contribute to such costs, in accordance with an applicable plan for water main installation in Cincinnati Municipal Code Chapter 401. As provided in Section 6(B)(i) (*Control; Regulatory Compliance/Cincinnati Water System*) hereof, installations, connections and improvements to the Cincinnati Water System in the Retail Area shall be subject to the Cincinnati Requirements and Cincinnati approval, including without limitation requirements for contractor bonding, plan review, warranty, and inspection and approval. Once a GCWW approved main has been connected and placed into service, it shall become part of the Cincinnati Water System. Reading shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Reading.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial or industrial development unless such proposed subdivision or development has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which approval shall not be unreasonably withheld. Reading shall submit to GCWW all building permit applications potentially affecting water usage in the Retail Area (except single family residences in subdivisions for which Cincinnati has previously determined that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available and to ensure compliance with all Cincinnati Requirements.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Reading is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Reading has ownership in any portion of the Cincinnati Water System, which is expressly acknowledged to be the property of and under the control and operation of Cincinnati. During the Term, and until Cincinnati transfers ownership in accordance with Section 2(B) (*Term*) hereof, the water facilities used by Cincinnati to provide retail service within the Retail Area shall be part of the Cincinnati Water System and shall be owned by Cincinnati. This Section 6(A)(i) shall survive termination of this Agreement.

ii. **Reading Distribution System.** It is expressly agreed and understood by the parties that Reading is the owner of the Reading Distribution System, and that nothing in this Agreement shall imply that Cincinnati has ownership in any portion of the Reading Distribution System, which is expressly acknowledged to be the property of and under the control and operation of Reading.

B. Control; Regulatory Compliance.

i. **Cincinnati Water System.** The Cincinnati Water System is subject to strict federal, state, and local regulations related to the water system, including, without limitation, compliance with treatment and water quality requirements, management of the distribution system, billing and other standards related to the water system. Cincinnati is ultimately responsible for and shall have sole discretion to manage and operate the Cincinnati Water System, including but not limited to, capital improvements associated with the quality of water, water production or treatment facilities, water quality related equipment and facilities, decisions involving treatment techniques, rate setting, and billing and collections, including, without limitation, actions (i) for the protection of health, lives, or property, (ii) renovation, replacement, or upgrade of facilities and appurtenances, (iii) to ensure compliance with applicable laws and regulations, and (iv) sound operation of the water utility. Because the Cincinnati Water System must operate as a whole to serve numerous jurisdictions, Cincinnati shall not be subject to the requirements of Reading, or any other contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the Retail Area and as to all Connections and Master Meters all applicable Cincinnati Requirements, now or hereafter lawfully in effect. Cincinnati may at any time change the Cincinnati Requirements. The materials and workmanship of all facilities connecting to the Cincinnati Water System, including mains, reservoirs, tanks, pumping stations, and other works, shall conform to the engineering standards of GCWW (including the Cincinnati Requirements) as interpreted by GCWW. Any facilities connecting or integrated into the Cincinnati Water System shall be subject to approval and inspection of the Director or their duly authorized representative and to GCWW inspection costs. Cincinnati shall have the right to exercise in its management of the

Cincinnati Water System, including the Retail Area, Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

ii. **Reading Distribution System.** Reading, as the owner of the Reading Distribution System is solely responsible for and shall have sole discretion to manage and operate the Reading Distribution System. Cincinnati shall not have any responsibility for the Reading Distribution System, and Reading shall not be subject to any requirements of Cincinnati in its management of the Reading Distribution System.

iii. **Reading Water Treatment Facilities.** In order to maintain the integrity of the Cincinnati Water System, and to comply with the final orders of the Ohio EPA, Reading has discontinued operation of its water treatment facilities in accordance with the terms of the 1993 Contract.

7. EASEMENTS AND RIGHTS OF WAY.

A. 1957 Easement for Cincinnati Transmission Mains. Per the 1957 Contract, Reading granted and conveyed to Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, a perpetual easement for constructing, reconstructing, laying, relaying, maintaining, repairing, and replacing the Cincinnati Transmission Mains as depicted in Exhibit C hereto. Cincinnati's rights in this paragraph shall not be considered as terminated or abandoned as long as Cincinnati, its successor or assigns, are furnishing water to areas north, northeast or northwest of Reading, and shall survive expiration or other termination of this Agreement. Cincinnati shall have the right to record a copy of this Agreement in the Official Records of the Hamilton County Recorder memorializing the location and terms of this easement.

B. Acquisition/Use of Rights-of-Way. Cincinnati shall have the right to use all rights-of-way in the Retail Area, including those held under easements, whether used as highways, streets, and alleys, or unimproved when required for any purposes under this contract, including, but not limited to, the construction, operation, maintenance, repair, and replacement of water mains or other appurtenances of the Cincinnati Water System, which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Reading or through Reading to other areas of the GCWW Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to the requirements of Reading; however, Reading shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. When required by Cincinnati, Reading shall apply its power of eminent domain to acquire easements or other property ownership necessary for the Cincinnati Water System capital improvements. Provided that the exercise of eminent domain does not also serve a Reading or other right-of-way purpose, Cincinnati shall reimburse Reading for the costs of just compensation to the owners of the property for which eminent domain is exercised. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Reading, Cincinnati shall restore such streets to their original condition to the satisfaction of Reading; however, Cincinnati

shall not be required to repave or resurface any part of any street not opened by it in connection with such work. Cincinnati shall make best efforts to complete all water main work in the Reading within a reasonable amount of time following commencement.

8. FIRE HYDRANTS.

A. Use of Water. With the exception of the use of Water from public fire hydrants for firefighting by fire departments organized under Ohio law, no water shall be taken from fire hydrants in the Retail Area other than for fire purposes, except: 1) as may be authorized in advance in writing by Cincinnati in accordance with the Cincinnati Requirements, and 2) provided a permit is obtained from GCWW, Reading may use reasonable amounts of water, without charge, for the flushing of public sewers or for the repair of streets within the Retail Area.

B. Fire Hydrants. Fire hydrants within the Retail Area shall be subject to the terms below:

i. Reading shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Reading at no cost to Cincinnati.

ii. Installation, maintenance, repair, operation, replacement and removal of fire hydrants connected to the Cincinnati Water System shall conform to the Cincinnati Requirements, and be subject to GCWW inspection, which inspection shall be at no cost to the Reading.

iii. Any flushing of public fire hydrants by Reading shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Reading shall be responsible for any damage to the Cincinnati Water System caused by flushing of fire hydrants conducted in contravention of the Cincinnati Requirements.

iv. Any other expenses incurred by Cincinnati in connection with any installation, repair, maintenance, replacement, or removal of fire hydrants performed on an emergency basis shall be paid by Reading on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System. The respective fire officials will, on a quarterly basis, provide the Director an estimate of the amount of water used by them for fire purposes.

v. Reading shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed in the Retail Area under their responsibility.

vi. Reading may impose and enforce additional requirements for private fire protection facilities beyond those required for the Cincinnati Water System. Cincinnati shall have no obligation to enforce such requirements.

9. WATER RATES. Cincinnati City Council shall fix the charges for water supplied to customers in the corporate boundaries of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied or for water services in the City of Cincinnati.

A. Retail Area. During the Term, the rates, fees, and charges for Water and water services for accounts and properties in the Retail Area shall be the same as for customers in the unincorporated territory of Hamilton County under the water service contract between Cincinnati and the Board of County Commissioners of Hamilton County as may be amended from time to time (the "**County Contract**"). For reference, the version of the County Contract current at the time of execution of this Agreement is the *Amended and Restated County Water Area Contract* dated December 11, 2019, which provides for customers in the unincorporated areas to pay a differential rate 1.25 times the rate charged to customers within the corporate limits of the City of Cincinnati. The Cincinnati City Council shall, from time to time, fix by ordinance the charges for water supplied to customers in Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied to customers in the City of Cincinnati.

B. Wholesale Area. During the Term, the rates, fees, and charges for Water and water services for the Wholesale Area shall be calculated by multiplying the rate differential of 1.1 times the second block commodity rate charged to Cincinnati customers (usage between 20 to 600 CCF/month).

C. The Parties agree that the rate differentials established by this Section 9 (*Water Rates*) have been set by agreement, in consideration of the mutual promises set forth herein. No Party shall claim or contend, in any court, arbitration, or other dispute resolution forum, based on any statute or otherwise, that the rate differential established by this Agreement is improper or the product of non-acceptable methodology, and the Parties hereby waive any such rights and covenant not to bring any such claim.

10. NOTICES

All legal notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: Director's Office
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Reading:

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City of Reading
1000 Market St.
Cincinnati, Ohio 45215

However, if Reading sends a notice to Cincinnati alleging that it is in default under this Agreement or that Reading desires to terminate or not renew the Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

11. GENERAL PROVISIONS

A. No Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Cincinnati or Reading.

B. Waiver. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

C. Entirety; Conflict. This Agreement and any documents, laws, codes, regulations, or written policies specifically identified herein and, in the Exhibits, contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

D. Severability. In the event that any provision of this Agreement is declared to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

E. Choice of Law; Joint Preparation. This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Reading agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

F. Forum Selection. The parties, their successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Cincinnati to Reading in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement

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must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

G. Electronic, Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and an electronic, facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

H. Official Capacity. 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 Cincinnati in other than his or her official capacity.

I. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

2. EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference.

Exhibit A – *Map of Retail Area*

Exhibit B – *Map of Wholesale Area*

Exhibit C -- *Map of Cincinnati Transmission Mains and easement*

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below, effective as of the later of such dates ("**Effective Date**").

CITY OF READING

By: _____
Patrick G. Ross, Safety Service Director
Date: _____

APPROVED AS TO FORM BY:

David Stevenson, Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager
Date: _____, 2022

RECOMMENDED BY:

Verna J. Arnette, Interim Executive Director
Greater Cincinnati Water Works

APPROVED AS TO FORM BY:

Assistant City Solicitor

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

Karen Alder, Cincinnati Finance Director

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

CITY PURCHASING APPROVAL BY:

Bobbi Hageman,
Chief Procurement Officer

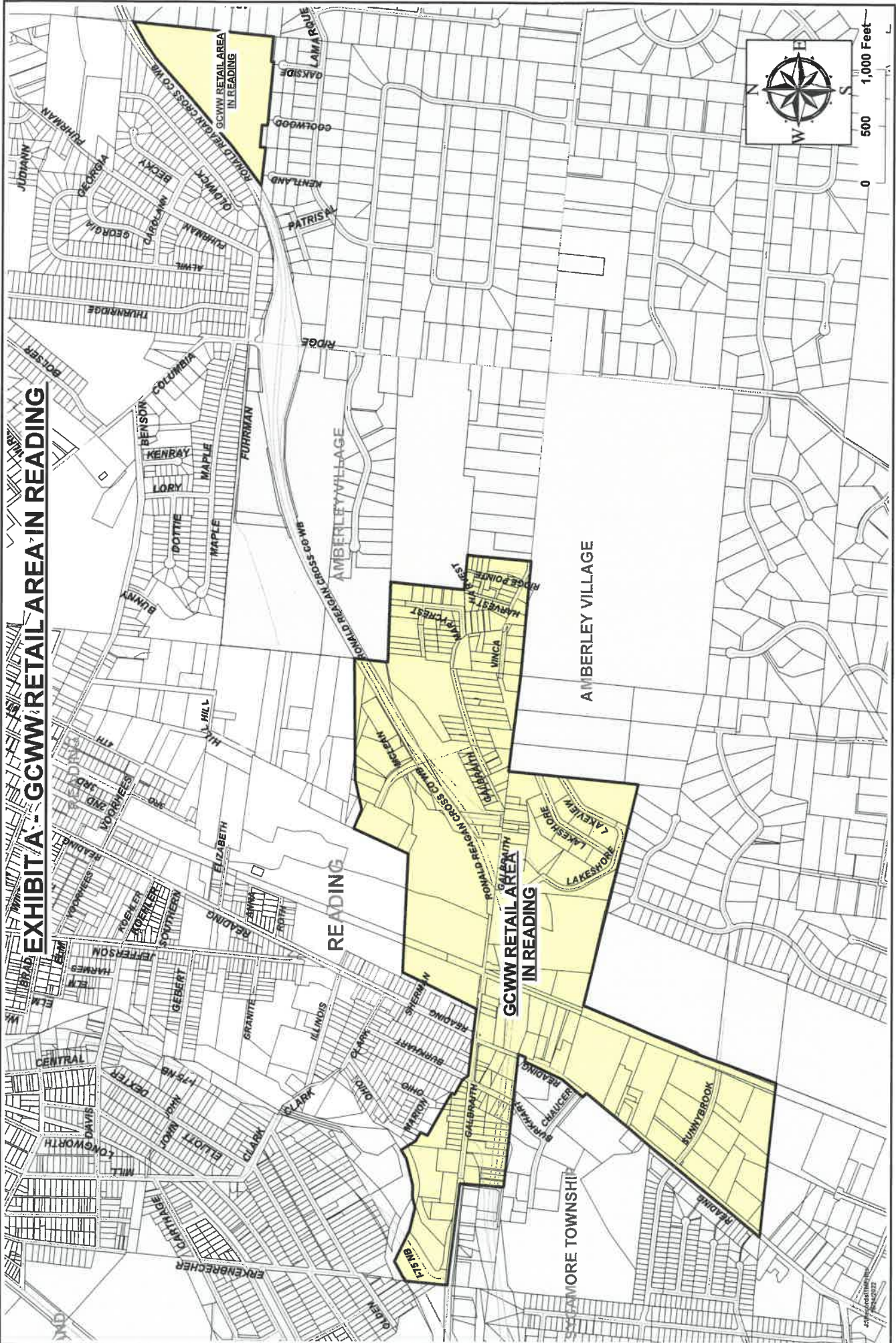


EXHIBIT A - GCWW RETAIL AREA IN READING

EXHIBIT B - GCWW WHOLESALERE AREA IN READING

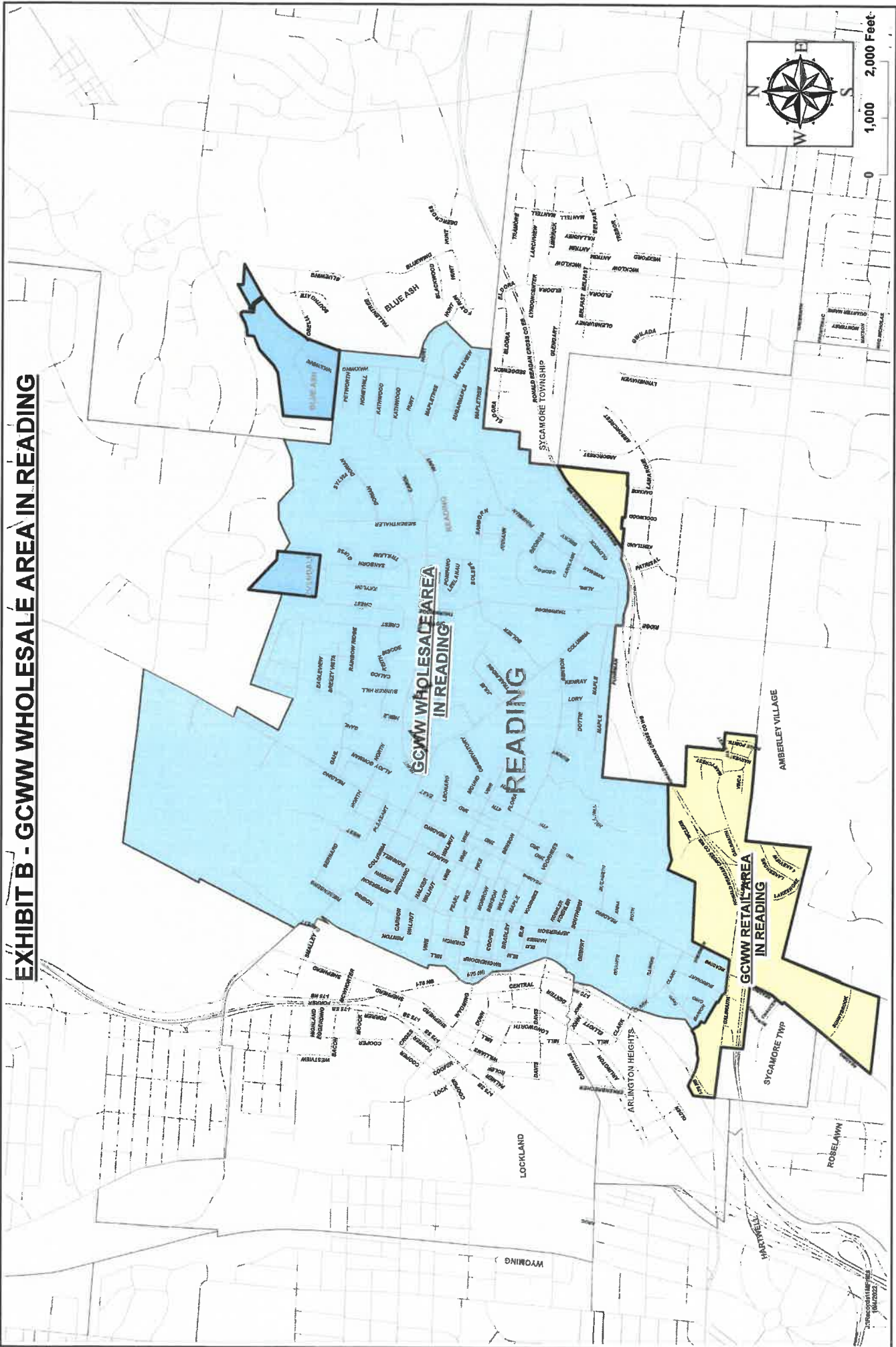
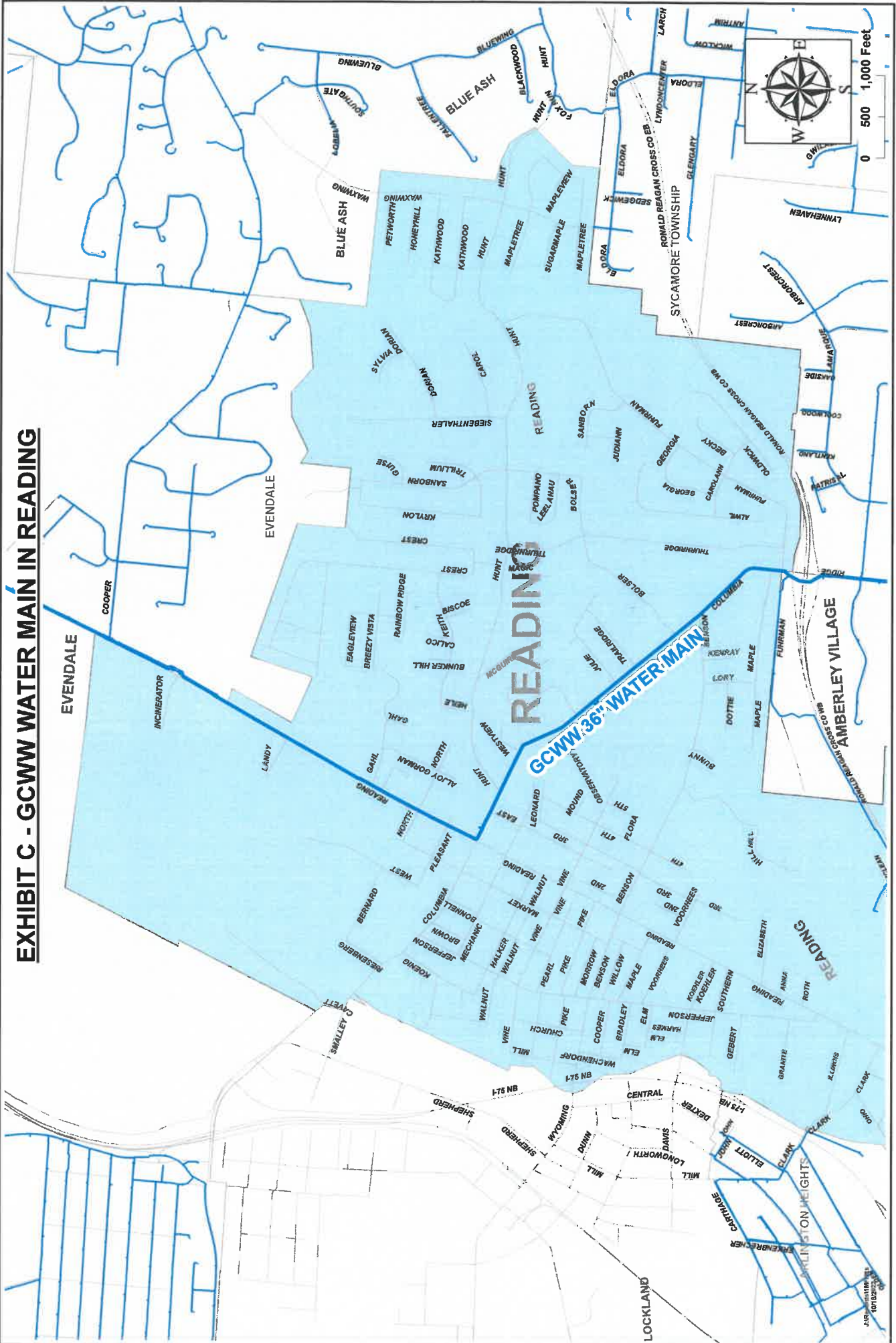


EXHIBIT C - GCWW WATER MAIN IN READING



AMENDED AND RESTATED WATER SERVICE AGREEMENT
(Wholesale and Retail Service to City of Reading, Ohio)

This *Amended and Restated Water Service Agreement* (this “**Agreement**”) is entered into effective on the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation through its Greater Cincinnati Water Works (GCWW), with offices located at 4747 Spring Grove Avenue, Cincinnati, OH 45232 (“**Cincinnati**”), and the CITY OF READING, an Ohio municipal corporation with office located at 1000 Market St., Cincinnati, Ohio 45215 (“**Reading**”).

RECITALS:

- A. Cincinnati owns and operates the Greater Cincinnati Water Works (GCWW), a city department and municipal water utility that treats and supplies water to properties within Cincinnati pursuant to Ohio Constitution Article XVIII, Section 4. Cincinnati is empowered pursuant to Ohio Constitution Article XVIII, Section 6 and Cincinnati City Charter Article IV, Section 9 to sell and deliver surplus water outside of the Cincinnati city limits as may be authorized by Cincinnati City council. GCWW is licensed by the Ohio EPA to operate as the Cincinnati Public Water System, a R.C. 6109 public water system.
- B. Reading owns and operates the City of Reading Public Water System, a municipal water utility, which is licensed by the Ohio EPA as a R.C. 6109 public water system to distribute treated water to properties within its corporate boundaries and empowered pursuant to Ohio Constitution Article XVIII, Sec. 4 to contract with Cincinnati to purchase water and water service for properties within the City of Reading.
- C. Cincinnati and Reading are parties to:
 - a. A certain *Contract* dated August 26, 1993, as subsequently amended by a *First Amendment* dated December 30, 1993, a *Second Amendment* dated May 14, 1996, a *Third Amendment* dated December 21, 2017, a *Fourth Amendment* dated December 30, 2020, and a *Fifth Amendment* dated December 23, 2021 (collectively, the “**1993 Contract**”) for Cincinnati to: 1) sell wholesale water to Reading for distribution to the wholesale area as defined in the 1993 Contract, and 2) provide retail water service to customers in retail area defined by the 1993 Contract. The 1993 Contract is set to expire December 31, 2022.
 - b. A certain *Agreement* dated January 23, 1957 (“**1957 Agreement**”) in which Reading granted to Cincinnati the right to install, repair, operate and maintain and replace water mains in Ridge Road, Columbia Road and Reading Road in the City of Reading, and Cincinnati agreed to restore the portion of the streets

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disturbed by work on the water mains. Sections 3 and 4 of the 1957 Agreement were superseded by the terms of the 1993 Contract, while Sections 1 and 2 remained in place.

- D. The parties desire to amend and restate the terms of the 1993 Contract and the 1957 Agreement in order to allow for Cincinnati to continue to provide surplus water and retail water service to Reading, and to include the active terms from the 1957 Agreement regarding Cincinnati's use of the Reading rights-of-way as provided herein.
- E. This Agreement is authorized by Reading City Council Ordinance no. _____ dated _____ and Cincinnati City Council Ordinance no. _____ dated _____.

NOW THEREFORE for and in consideration of the mutual promises, covenants and agreements contained herein, the parties do hereby agree as follows:

1. DEFINITIONS. Except as otherwise expressly indicated in this Agreement, the terms herein shall have the meaning defined in this Section 1 (*Definitions*).

A. "GCWW" shall mean the Greater Cincinnati Water Works, the department of the City of Cincinnati that operates the Cincinnati Water System.

B. "Cincinnati Water System". The water supply, production, treatment, transmission, storage, distribution, billing, collections and related facilities owned and/or operated by Cincinnati for itself, its inhabitants, and for all other areas served by Cincinnati (including Reading), in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. The Cincinnati Water System shall include the Reading Retail Water Area as defined herein.

C. "Cincinnati Requirements". The Cincinnati ordinances (including, without limitation, applicable portions of the Cincinnati Municipal Code), laws, standards, specifications, engineering drawings, policies, and rules and regulations governing GCWW, as may be amended or changed by Cincinnati from time to time.

D. "Reading Distribution System". The water storage, distribution, and related facilities owned and/or operated by Reading for itself and its inhabitants, in accordance with powers conferred upon municipalities by the Ohio Constitution and the laws of the State of Ohio. Except as may be expressly provided herein, the Reading Distribution System shall include all facilities in the Wholesale Area beyond the master meter.

E. "Reading Retail Water Area". Also referred to as the "Retail Area", shall mean the area so labeled on Exhibit A.

F. "Reading Wholesale Water Area". Also referred to as the "Wholesale Area", shall mean the area so labelled on Exhibit B. The Wholesale Area includes specified

portions of the Village of Evandale and the City of Blue Ash that are provided retail service by the Reading Distribution System.

G. Water. Surplus treated water determined in Cincinnati's sole discretion not to be needed by Cincinnati or its inhabitants.

H. Cincinnati Transmission Mains. "Cincinnati Transmission Mains" means any water mains that are used by Cincinnati to furnish water to areas to the north, northeast or northwest of Reading, including, without limitation, the water mains in Ridge Road, Columbia Road, and Reading Road depicted in Exhibit C hereto.

I. Distribution Main. "Distribution Main" means any main intended primarily to serve properties abutting the street or road in which the main is laid.

J. Director. "Director" means the Director of GCWW, also known as the Superintendent pursuant to the Charter of the City of Cincinnati.

K. City Manager. "City Manager" means the City Manager of Cincinnati.

2. **TERM; TERMINATION.**

A. **Term**. The parties intend and agree that this Agreement shall be a continuation of the 1957 Contract and the 1993 Agreement in accordance with the amended and restated terms herein. Except for those provisions which expressly survive termination, this Agreement shall remain in full force and effect until midnight of December 31, 2047 ("**Expiration Date**", the effective period of this Agreement shall be referred to as the "**Term**"). During the year prior to the Expiration Date, Cincinnati will make best efforts to notify Reading, and both parties agree to negotiate in good faith for a new agreement or an extension of the Term. If the Term is not extended as provided herein, this Agreement will expire on the Expiration Date. Following the termination of this Agreement for any reason, Cincinnati may continue, but shall not be required, to provide water service to Reading at rates to be established by Cincinnati in accordance with then existing laws.

B. **Termination**. From and after termination of this Agreement:

i. Cincinnati shall retain ownership of the Cincinnati Transmission Mains, as well as the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and Rights of Way*) of this Agreement as long as the Cincinnati Transmission Mains are in use for Cincinnati Water System operations.

ii. Cincinnati shall be entitled to retain ownership of any capital improvements within the Reading corporate limits that are determined, in Cincinnati's sole discretion, to be useful and/or necessary to serve any portions of the Cincinnati Water System outside of the corporate limits of the City of Reading. Cincinnati shall retain the rights to use the relevant easement and/or right of ways per Section 7 (*Easements and*

Rights of Way) of this Agreement as long as the improvements retained by Cincinnati under this subsection 2(B)(ii) (*Term; Termination*) remain in use for Cincinnati Water System operations.

iii. Within a reasonable amount of time following termination, Reading shall pay to Cincinnati:

a. the costs of all capital improvements within the Reading corporate limits that are not retained by Cincinnati per section 2(B)(i) above to the extent that debt service (principal and interest) remains unpaid or that the asset has not been fully depreciated;

b. all associated and ongoing costs, if any, (including operation and maintenance, regulatory compliance, etc.) of such capital improvements, to fairly compensate Cincinnati for costs incurred by Cincinnati due to Reading's discontinuation of water service, and

c. the costs to Cincinnati of transitioning Reading to an alternate water service, including without limitation transfer of system, engineering or customer billing/account information, installation of valves or other equipment.

iv. Once Reading has paid to Cincinnati all amounts listed in 2(B)(iii), Cincinnati will transfer to Reading ownership of those capital improvements within Reading limits that have not been retained by Cincinnati pursuant to Section 2(B)(iii).

3. SUPPLY OF WATER NOT GUARANTEED. Cincinnati's furnishing of water service under this Agreement is pursuant to Cincinnati's municipal authority under the Ohio Constitution to sell Water (defined above as surplus water). The Parties agree and acknowledge that the supply of Water to Reading, its inhabitants, properties within the corporate limits of the City of Reading, and properties in the Wholesale Area, is at all times dependent upon the existence of a surplus of water beyond the amount of water needed for users located within the corporate boundaries of the City of Cincinnati. Except a) where a surplus does not exist; b) in the case of breaks in mains, serious damage to reservoirs or pumping equipment, or other emergencies or necessities (in which case the water may be shut off without notice); c) where an insufficient supply of water exists, or d) where insufficient water is available at the Connections located outside of the corporate limits of Cincinnati, Cincinnati will use its best efforts to provide a potable, stable, and adequate supply of water to Reading, its inhabitants, and properties within the corporate limits of the City of Reading. In the event of the occurrence of any of the conditions in the preceding sentence, Cincinnati shall have the right to allocate and prioritize Water service on a reasonable basis among the other non-Cincinnati political subdivisions served by Cincinnati (including those served by standby, wholesale or other water service), and there shall be no prior rights to service by reason of earlier date of contract. Cincinnati shall not be liable for any damages for its failure to furnish water, and in no event shall

Cincinnati be liable for consequential or special damages by reason of any failure to furnish water or to maintain any minimum of water pressure, it being understood that the pressure and supply of water is not guaranteed to consumers.

4. WHOLESALE WATER SERVICE

A. Wholesale Area. Provided that the Cincinnati Water System has available Water as provided in Section 3 (*Supply of Water Not Guaranteed*) hereof, Cincinnati will make best efforts to furnish Water to Reading through the Connections (as defined herein) to be used for provision of water through the Reading Distribution System in the Wholesale Area. The water supplied to the Reading under this Section 4 (*Wholesale Water Service*) shall be restricted to usage within the Wholesale Area unless the Director has provided advance written consent and shall be used for public water supply purposes only. Reading shall pay for all water received through the Connections at the rates provided in Section 9 (*Water Rates*). No water from sources other than GCWW shall be sold by Reading in the Wholesale Area or Retail Area. Cincinnati shall have no responsibility for the Reading Distribution System or water distribution activities (including billing and collection) within the Wholesale Area.

Reading may use water from other sources, including the Reading wells for fire suppression, irrigation and other non-potable purposes, provided that during the term, no physical connection shall be made or exist between such sources and either the Cincinnati Water System or the Reading Distribution System.

B. Connections and Master Meters. The wholesale Water supplied by Cincinnati to Reading shall be taken from Cincinnati mains through master meter connections between the Cincinnati Water System and the Reading Distribution System (including any connections installed in the future, the “**Connections**”).

i. Existing Connections. The existing Connections are as follows:

Master Meter Locations	Size
515 E. Columbia Ave	10”
9701 Reading Rd	6”
8374 Reading Rd	8”

Cincinnati shall own and be responsible for maintaining and replacing the master meters at the Connections. Other than the master meters, Reading shall own and be responsible (at no cost to Cincinnati) for the maintenance, repair, operation, replacement and testing of the Connections, including the pressure regulator valves, meter pits, backflow preventer and other related appurtenances (including fittings, valves, vaults and other master meter appurtenances). Reading may add or upgrade the Connections at its own cost and in accordance with plans approved by Cincinnati. Upon termination or expiration of this Agreement, Reading shall remove and plug the Connections subject to the inspection and approval of GCWW. Any and all work performed by Reading pursuant to

this Agreement shall conform in all respects to the Cincinnati Requirements and will be subject to GCWW inspection and approval.

The parties agree that all connections contemplated in the original 1993 Agreement have been completed.

ii. Additional or Replacement Connections.

- a. If additional Connections or replacement of existing Connections are determined by the Director to be needed for the benefit of or to accommodate the Cincinnati Water System (other than to meet existing Cincinnati Requirements or requirements under state or federal law), Cincinnati shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.
- b. If additional Connections or replacement of existing Connections are determined by Reading to be needed for the benefit of or to accommodate the Reading Distribution System (including to meet existing Cincinnati Requirements or requirements under state or federal law), Reading shall pay the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices.
- c. If additional Connections or replacement of existing Connections are determined by both parties to be needed for the mutual benefit of or to accommodate both the Reading and Cincinnati systems, then the parties shall share in the expense related to such Connections, including installation of master meters, appurtenances (i.e. fittings, valves, vaults, etc.), backflow devices and pressure regulating devices in proportion to the benefit received by each party for the work or as may otherwise be agreed upon in writing.
- d. All Connections and Master Meters shall be subject to the Cincinnati Requirements as provided in Section 6(C) hereof.

c. **Wholesale Charges.**

i. Billing. Cincinnati will read the master meters and bill Reading monthly for usage in accordance with the wholesale rate provided in Section 9 (*Water Rates*) hereof. The monthly bills shall be for water furnished during the preceding month and shall include the master meter readings, amount of water consumed, and the total water charge. The Reading Safety/Services Director or authorized representative shall have the right to inspect the master meters and Cincinnati's records to verify the accuracy of the amount of water furnished to Reading. In case of failure to obtain a master meter reading due to equipment failure, Cincinnati shall have the right to bill Reading based on

estimated water usage from historic data. If Reading contests the basis for this estimated usage, the matter shall be submitted to a three-member board of arbitration composed of a Cincinnati appointee, a Reading appointee and an appointing chosen by the Cincinnati and Reading appointed members. The decision of the board of arbitration shall be final and binding. The costs of arbitration shall be shared equally by Cincinnati and Reading.

ii. Payment. Reading shall pay Cincinnati on or before the due date stated on the bill, which shall be no earlier than 21 days from the date the bill is issued. If such bills are not paid when due, nonpayment fees shall be charged in accordance with the Cincinnati Requirements.

D. Industrial/Large User Water Availability. Reading shall submit to GCWW all requests for new or significant increases in water usage (of 1MGD increase or greater) in the Wholesale Area in order to determine, in the opinion of the Director, if the proposed increase can be adequately served without materially affecting the water service of existing consumers, which approval shall not be unreasonably withheld. If additional infrastructure changes (ex-additional connections, master meter upgrades), such costs shall be at Reading's cost per Section 4(B) (*Wholesale Connections and Master Meters*).

5. RETAIL WATER SERVICE.

A. Retail Service. During the Term (as defined herein) and subject to the terms and conditions of this Agreement and the Cincinnati Requirements, Cincinnati shall provide Water and the water services described herein on a retail basis (including distribution, metering, billing, and collection) to the inhabitants and properties within the Retail Area.

B. Restriction in Use. In recognition of the need to properly plan for an adequate supply of finished water for the Cincinnati Water System users, the water supplied to the Retail Area shall be restricted to usage within that area unless the expressed prior written consent of the Director is obtained.

C. Exclusivity. During the Term, Cincinnati Water System shall be the sole supplier and furnisher of Water to inhabitants and properties within the Retail Area. Reading shall not furnish water to or allow others to furnish water to any property or inhabitants within the Retail Area. Reading acknowledges and agrees that Cincinnati's construction and continued capital improvements of a water system and appurtenances to serve the Retail Area is a significant expense to Cincinnati, and revenues from Retail Area are necessary to offset those expenses and Cincinnati may rely on revenues from Reading retail service customers to service any related debt. Reading shall not take action or assist others in taking action, or contract with others to affect the construction or operation of any public water system to furnish Water to the Retail Area. If any property within the Retail Area should subsequently be detached or annexed to another jurisdiction such that it is no longer under the jurisdiction of the City of Reading, the parties agree that Cincinnati's exclusivity as to water service for such property shall not be waived, disturbed, altered or terminated, and Reading agrees that it shall cooperate to ensure

Cincinnati's continued exclusive right to service.

D. Billing and Collections. Cincinnati will read all meters; and deliver (by mail, electronically or otherwise) and collect payment of bills and charges, and audit accounts as to each account/property in the Retail Area, all in accordance with Cincinnati Requirements which shall operate no differently for persons located in Cincinnati than for those located in the Retail Area.

E. Maintenance and Operation. Cincinnati shall maintain, operate, repair, and replace Cincinnati Water System facilities within the Retail Area. If repairs and replacements are necessitated as the result of negligence on the part of Reading, or its employee(s) or contractor(s), Reading shall reimburse Cincinnati for repair costs caused by such negligence.

F. Water Service Branches; Water Meters. Water service branches and water meters, including, without limitation, the charges for their installation, ownership, repair, replacement, and maintenance for properties in the Retail Area shall be in accordance with Cincinnati Requirements, which shall operate no differently for persons and properties located in Cincinnati than for those located in the Retail Area and other portions of the Cincinnati Water System.

G. Obligation of Owners of Property Served. Any owner of real property supplied with Water service under this Agreement, shall be deemed to have accepted and be subject to: 1) the provisions of this Agreement, as may be amended from time to time, 2) the Cincinnati Requirements and Cincinnati enforcement thereof, and 3) liability for all water service charges for such premises, whether or not the accounts for such premises include the name of tenants, managing agents, or other persons.

H. Enforcement. As to the Retail Area, Cincinnati reserves the right to shut off service, discontinue service, disconnect the service branch and/or remove the meter to any property, consumer, or account for a breach of the terms of this Agreement, for nonpayment of bills or other violation of the Cincinnati Requirements in accordance with the Cincinnati Requirements. Such remedies shall be non-exclusive and at Cincinnati's sole discretion and shall be available in addition to any other legal remedies available to Cincinnati.

I. Retail Area Water Infrastructure.

i. Improvements for Cincinnati Water System Purposes. Cincinnati will plan for and perform capital improvements to Cincinnati Water System facilities in the Retail Area that are determined in Cincinnati's sole discretion to be necessary for the purpose of providing an adequate supply of Water within the Retail Area. Cincinnati shall not be required to pay for capital improvement requested by Reading in the Retail Area that are determined by the Director not to be necessary for the benefit of the Cincinnati Water System (for example, relocation to accommodate

utility/road improvements or economic development), which shall be subject to the terms of Section 5(l)(ii) (*Requested Water Mains*) below.

ii. **Requested Water Mains.** Unless determined by the Director to be necessary for the benefit of the Cincinnati Water System per Section 5(l)(i) (*Improvements for Cincinnati Water System Purposes*), any requested installation of water mains, including extension, relocation, upsizing, upgrading or replacement of distribution mains in or serving the Retail Area, shall be constructed by Reading, developer or other requestor, and Cincinnati shall not be required to contribute to the cost of such installation from Cincinnati Water System revenue; however, Cincinnati may elect to contribute to such costs, in accordance with an applicable plan for water main installation in Cincinnati Municipal Code Chapter 401. As provided in Section 6(B)(i) (*Control; Regulatory Compliance/Cincinnati Water System*) hereof, installations, connections and improvements to the Cincinnati Water System in the Retail Area shall be subject to the Cincinnati Requirements and Cincinnati approval, including without limitation requirements for contractor bonding, plan review, warranty, and inspection and approval. Once a GCWW approved main has been connected and placed into service, it shall become part of the Cincinnati Water System. Reading shall provide Cincinnati with detailed drawings showing the location of all pipes, special castings, valves and fire hydrants installed by Reading.

iii. **Building Permits/Water Availability.** No water main extension or service connection shall be made to serve a proposed subdivision or commercial or industrial development unless such proposed subdivision or development has been approved by the proper authorities in accordance with the Ohio Revised Code Chapter 711 and all other pertinent provisions of Ohio law, and, in the opinion of the Director, the subdivision or development can be adequately served, without materially affecting the water service of existing consumers, which approval shall not be unreasonably withheld. Reading shall submit to GCWW all building permit applications potentially affecting water usage in the Retail Area (except single family residences in subdivisions for which Cincinnati has previously determined that adequate water service is available) prior to issuance of the permit, for a determination of whether adequate water service is available and to ensure compliance with all Cincinnati Requirements.

6. OWNERSHIP; LAWS.

A. Ownership.

i. **Cincinnati Water System.** It is expressly agreed and understood by the parties that Reading is contracting for the purchase of Water and other water related services under this Agreement and that nothing in this Agreement shall imply that Reading has ownership in any portion of the Cincinnati Water System, which is expressly acknowledged to be the property of and under the control and operation of Cincinnati. During the Term, and until Cincinnati transfers ownership in accordance with Section 2(B) (*Term*) hereof, the water facilities used by Cincinnati to provide retail service within the Retail Area shall be part of the Cincinnati Water System and shall be owned by Cincinnati. This Section 6(A)(i) shall survive termination of this Agreement.

ii. **Reading Distribution System.** It is expressly agreed and understood by the parties that Reading is the owner of the Reading Distribution System, and that nothing in this Agreement shall imply that Cincinnati has ownership in any portion of the Reading Distribution System, which is expressly acknowledged to be the property of and under the control and operation of Reading.

B. Control; Regulatory Compliance.

i. **Cincinnati Water System.** The Cincinnati Water System is subject to strict federal, state, and local regulations related to the water system, including, without limitation, compliance with treatment and water quality requirements, management of the distribution system, billing and other standards related to the water system. Cincinnati is ultimately responsible for and shall have sole discretion to manage and operate the Cincinnati Water System, including but not limited to, capital improvements associated with the quality of water, water production or treatment facilities, water quality related equipment and facilities, decisions involving treatment techniques, rate setting, and billing and collections, including, without limitation, actions (i) for the protection of health, lives, or property, (ii) renovation, replacement, or upgrade of facilities and appurtenances, (iii) to ensure compliance with applicable laws and regulations, and (iv) sound operation of the water utility. Because the Cincinnati Water System must operate as a whole to serve numerous jurisdictions, Cincinnati shall not be subject to the requirements of Reading, or any other contracting jurisdiction, as to operation and management of the Cincinnati Water System. Unless otherwise specifically provided for herein, the Director is authorized to enforce within the Retail Area and as to all Connections and Master Meters all applicable Cincinnati Requirements, now or hereafter lawfully in effect. Cincinnati may at any time change the Cincinnati Requirements. The materials and workmanship of all facilities connecting to the Cincinnati Water System, including mains, reservoirs, tanks, pumping stations, and other works, shall conform to the engineering standards of GCWW (including the Cincinnati Requirements) as interpreted by GCWW. Any facilities connecting or integrated into the Cincinnati Water System shall be subject to approval and inspection of the Director or their duly authorized representative and to GCWW inspection costs. Cincinnati shall have the right to exercise in its management of the

Cincinnati Water System, including the Retail Area, Connections and Master Meters, all authority granted under applicable federal, state, and local laws related to the operation and management of a municipal water utilities.

ii. **Reading Distribution System.** Reading, as the owner of the Reading Distribution System is solely responsible for and shall have sole discretion to manage and operate the Reading Distribution System. Cincinnati shall not have any responsibility for the Reading Distribution System, and Reading shall not be subject to any requirements of Cincinnati in its management of the Reading Distribution System.

iii. **Reading Water Treatment Facilities.** In order to maintain the integrity of the Cincinnati Water System, and to comply with the final orders of the Ohio EPA, Reading has discontinued operation of its water treatment facilities in accordance with the terms of the 1993 Contract.

7. EASEMENTS AND RIGHTS OF WAY.

A. 1957 Easement for Cincinnati Transmission Mains. Per the 1957 Contract, Reading granted and conveyed to Cincinnati, its successors and assigns as to the ownership of the Cincinnati Water System, a perpetual easement for constructing, reconstructing, laying, relaying, maintaining, repairing, and replacing the Cincinnati Transmission Mains as depicted in Exhibit C hereto. Cincinnati's rights in this paragraph shall not be considered as terminated or abandoned as long as Cincinnati, its successor or assigns, are furnishing water to areas north, northeast or northwest of Reading, and shall survive expiration or other termination of this Agreement. Cincinnati shall have the right to record a copy of this Agreement in the Official Records of the Hamilton County Recorder memorializing the location and terms of this easement.

B. Acquisition/Use of Rights-of-Way. Cincinnati shall have the right to use all rights-of-way in the Retail Area, including those held under easements, whether used as highways, streets, and alleys, or unimproved when required for any purposes under this contract, including, but not limited to, the construction, operation, maintenance, repair, and replacement of water mains or other appurtenances of the Cincinnati Water System, which right shall not be terminated as long as Cincinnati, its successor or assigns are furnishing water to Reading or through Reading to other areas of the GCWW Water System. Cincinnati shall obtain a street opening or other similar permit from and perform work according to the requirements of Reading; however, Reading shall not require Cincinnati to pay any permit, license, fees, or taxes of any kind, except as may be required by State law. When required by Cincinnati, Reading shall apply its power of eminent domain to acquire easements or other property ownership necessary for the Cincinnati Water System capital improvements. Provided that the exercise of eminent domain does not also serve a Reading or other right-of-way purpose, Cincinnati shall reimburse Reading for the costs of just compensation to the owners of the property for which eminent domain is exercised. Following construction, reconstruction, maintenance, repair, laying, relaying or replacement of water mains in the streets of Reading, Cincinnati shall restore such streets to their original condition to the satisfaction of Reading; however, Cincinnati

shall not be required to repave or resurface any part of any street not opened by it in connection with such work. Cincinnati shall make best efforts to complete all water main work in the Reading within a reasonable amount of time following commencement.

8. FIRE HYDRANTS.

A. Use of Water. With the exception of the use of Water from public fire hydrants for firefighting by fire departments organized under Ohio law, no water shall be taken from fire hydrants in the Retail Area other than for fire purposes, except: 1) as may be authorized in advance in writing by Cincinnati in accordance with the Cincinnati Requirements, and 2) provided a permit is obtained from GCWW, Reading may use reasonable amounts of water, without charge, for the flushing of public sewers or for the repair of streets within the Retail Area.

B. Fire Hydrants. Fire hydrants within the Retail Area shall be subject to the terms below:

i. Reading shall be responsible for installation, removal, flushing, testing, maintenance, operation, repair, and replacement of all public fire hydrants in Reading at no cost to Cincinnati.

ii. Installation, maintenance, repair, operation, replacement and removal of fire hydrants connected to the Cincinnati Water System shall conform to the Cincinnati Requirements, and be subject to GCWW inspection, which inspection shall be at no cost to the Reading.

iii. Any flushing of public fire hydrants by Reading shall be conducted in accordance with the Cincinnati Requirements for the Cincinnati Water System. Reading shall be responsible for any damage to the Cincinnati Water System caused by flushing of fire hydrants conducted in contravention of the Cincinnati Requirements.

iv. Any other expenses incurred by Cincinnati in connection with any installation, repair, maintenance, replacement, or removal of fire hydrants performed on an emergency basis shall be paid by Reading on the basis of cost including overhead as calculated annually by Cincinnati for the Cincinnati Water System. The respective fire officials will, on a quarterly basis, provide the Director an estimate of the amount of water used by them for fire purposes.

v. Reading shall furnish to Cincinnati reproducible, detailed drawings showing the location of all pipes, special castings, valves, and fire hydrants installed in the Retail Area under their responsibility.

vi. Reading may impose and enforce additional requirements for private fire protection facilities beyond those required for the Cincinnati Water System. Cincinnati shall have no obligation to enforce such requirements.

9. WATER RATES. Cincinnati City Council shall fix the charges for water supplied to customers in the corporate boundaries of Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied or for water services in the City of Cincinnati.

A. Retail Area. During the Term, the rates, fees, and charges for Water and water services for accounts and properties in the Retail Area shall be the same as for customers in the unincorporated territory of Hamilton County under the water service contract between Cincinnati and the Board of County Commissioners of Hamilton County as may be amended from time to time (the "**County Contract**"). For reference, the version of the County Contract current at the time of execution of this Agreement is the *Amended and Restated County Water Area Contract* dated December 11, 2019, which provides for customers in the unincorporated areas to pay a differential rate 1.25 times the rate charged to customers within the corporate limits of the City of Cincinnati. The Cincinnati City Council shall, from time to time, fix by ordinance the charges for water supplied to customers in Cincinnati. Nothing in this Agreement shall limit in any way Cincinnati's right to establish rates for water supplied to customers in the City of Cincinnati.

B. Wholesale Area. During the Term, the rates, fees, and charges for Water and water services for the Wholesale Area shall be calculated by multiplying the rate differential of 1.1 times the second block commodity rate charged to Cincinnati customers (usage between 20 to 600 CCF/month).

C. The Parties agree that the rate differentials established by this Section 9 (*Water Rates*) have been set by agreement, in consideration of the mutual promises set forth herein. No Party shall claim or contend, in any court, arbitration, or other dispute resolution forum, based on any statute or otherwise, that the rate differential established by this Agreement is improper or the product of non-acceptable methodology, and the Parties hereby waive any such rights and covenant not to bring any such claim.

10. NOTICES

All legal notices required under this Agreement shall be personally served or sent by first class U.S. mail, postage prepaid, addressed to the parties as follows, or to such other addresses as a party may designate in writing for such purpose:

To Cincinnati:

City of Cincinnati
Greater Cincinnati Water Works
Attention: Director's Office
4747 Spring Grove Ave
Cincinnati, Ohio 45232

To Reading:

{00351753-1}

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City of Reading
1000 Market St.
Cincinnati, Ohio 45215

However, if Reading sends a notice to Cincinnati alleging that it is in default under this Agreement or that Reading desires to terminate or not renew the Agreement, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, and Cincinnati, OH 45202.

11. GENERAL PROVISIONS

A. No Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Cincinnati or Reading.

B. Waiver. This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

C. Entirety; Conflict. This Agreement and any documents, laws, codes, regulations, or written policies specifically identified herein and, in the Exhibits, contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

D. Severability. In the event that any provision of this Agreement is declared to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

E. Choice of Law; Joint Preparation. This Agreement is entered into and is to be performed in the State of Ohio. Cincinnati and Reading agree that the laws of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties under and related to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

F. Forum Selection. The parties, their successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Cincinnati to Reading in connection therewith. However, in the event that any claim arising from, related to, or in connection with this Agreement

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must be litigated in federal court, the parties agree that the exclusive venue for such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Ohio.

G. Electronic, Counterpart and PDF Signatures. This Agreement may be executed in counterparts, and an electronic, facsimile or PDF signature shall be deemed to be, and shall have the same force and effect as, an original signature.

H. Official Capacity. 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 Cincinnati in other than his or her official capacity.

I. Amendment. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

2. EXHIBITS. The following exhibits are attached hereto and incorporated herein by reference.

Exhibit A –*Map of Retail Area*

Exhibit B – *Map of Wholesale Area*

Exhibit C -- *Map of Cincinnati Transmission Mains and easement*

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below, effective as of the later of such dates (“**Effective Date**”).

CITY OF READING

By: _____
Patrick G. Ross, Safety Service Director
Date: _____

APPROVED AS TO FORM BY:

David Stevenson, Law Director

[CITY OF CINCINNATI SIGNATURE PAGES FOLLOW]

CITY OF CINCINNATI

By:

Sheryl M. M. Long, City Manager
Date: _____, 2022

RECOMMENDED BY:

Verna J. Arnette, Interim Executive Director
Greater Cincinnati Water Works

APPROVED BY DEPARTMENT OF
ECONOMIC INCLUSION:

Collin Mays, Director

APPROVED AS TO FORM BY:

Assistant City Solicitor

CITY PURCHASING APPROVAL BY:

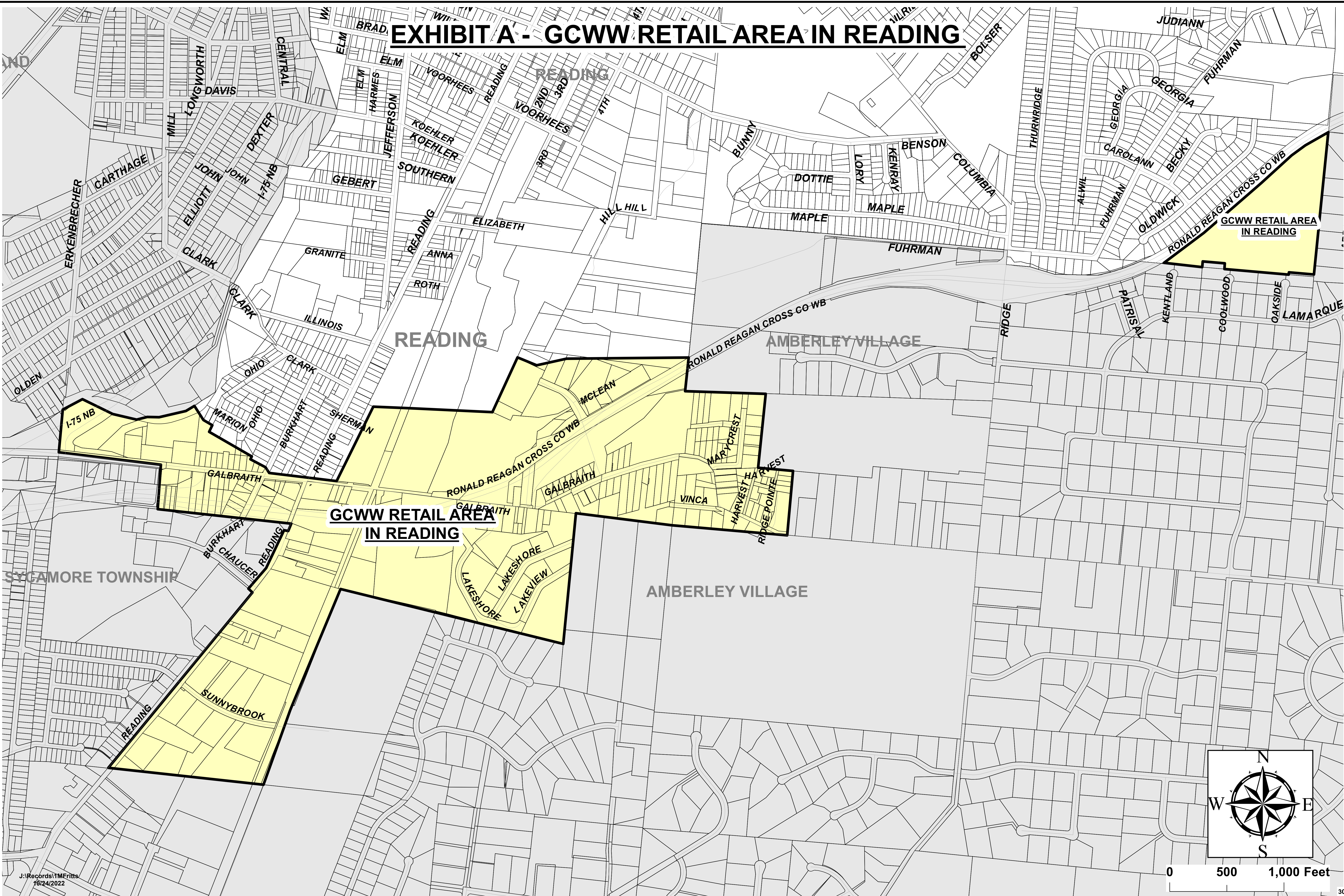
Bobbi Hageman,
Chief Procurement Officer

CERTIFICATION OF FUNDS:

Date: _____
Funding: _____
Amount: _____

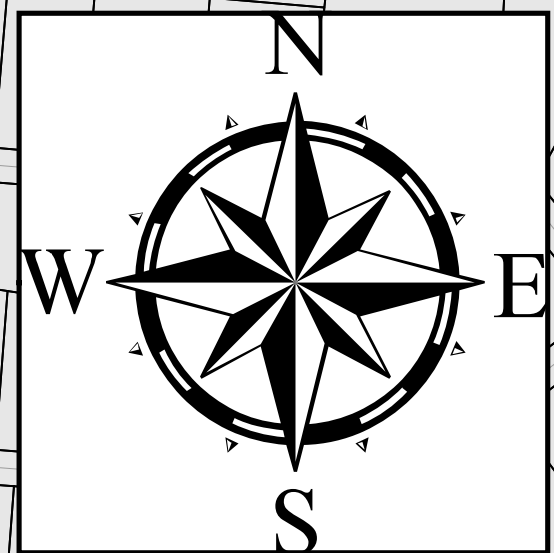
Karen Alder, Cincinnati Finance Director

EXHIBIT A - GCWW RETAIL AREA IN READING



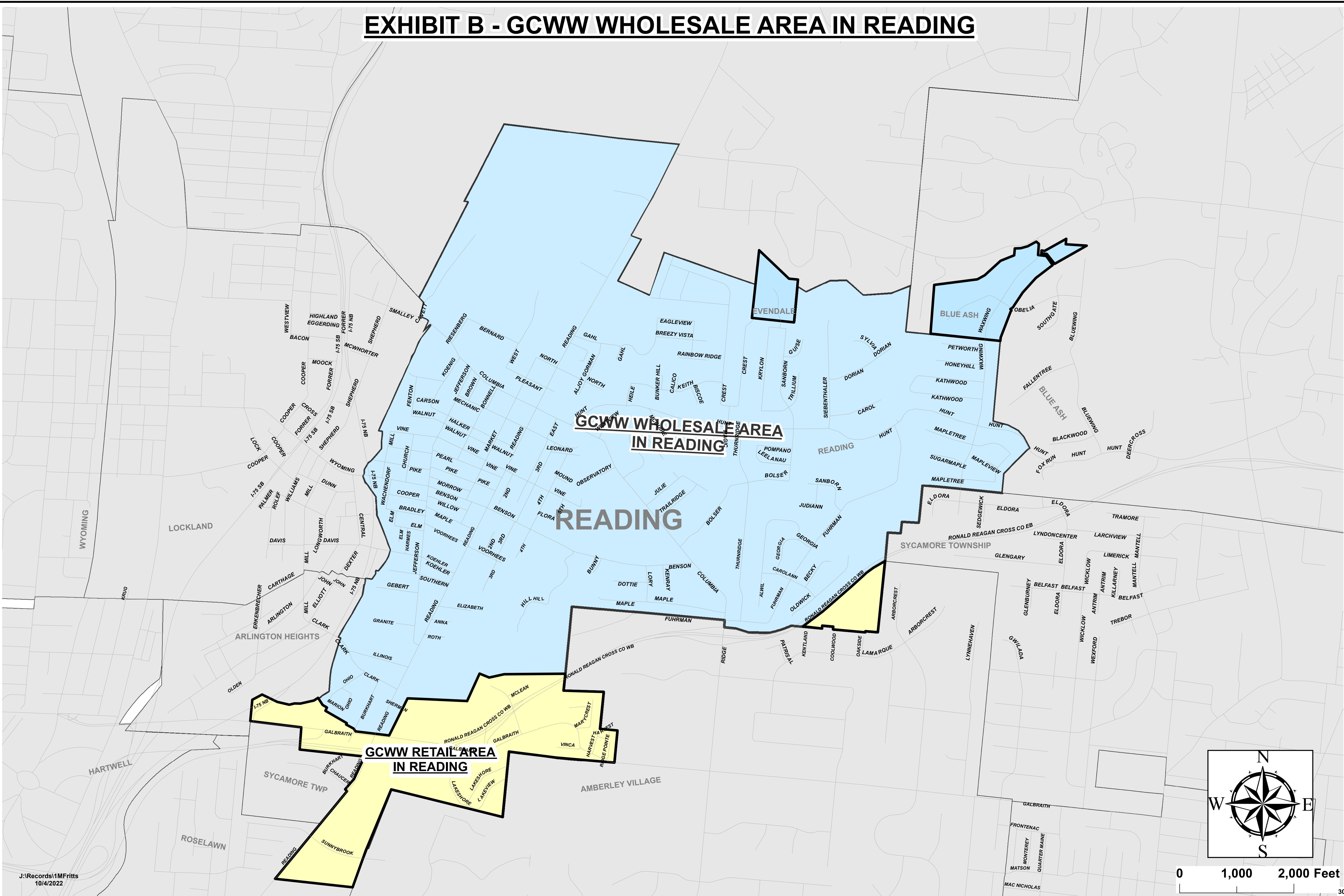
**GCWW RETAIL AREA
IN READING**

**GCWW RETAIL AREA
IN READING**



0 500 1,000 Feet

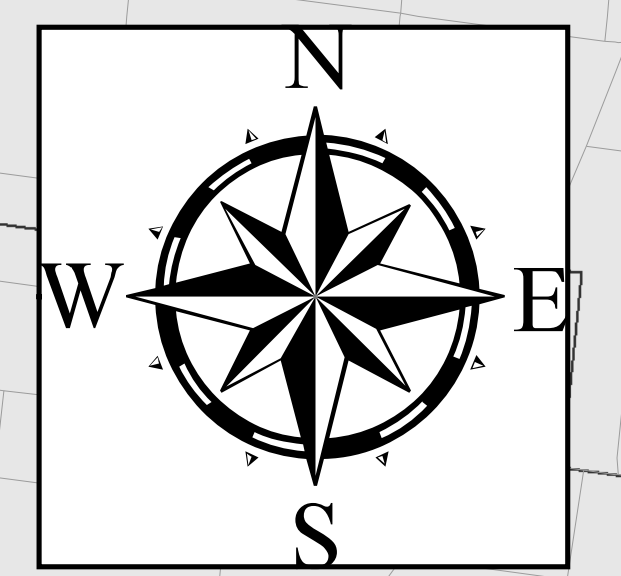
EXHIBIT B - GCWW WHOLESAL E AREA IN READING



**GCWW WHOLESAL E AREA
IN READING**

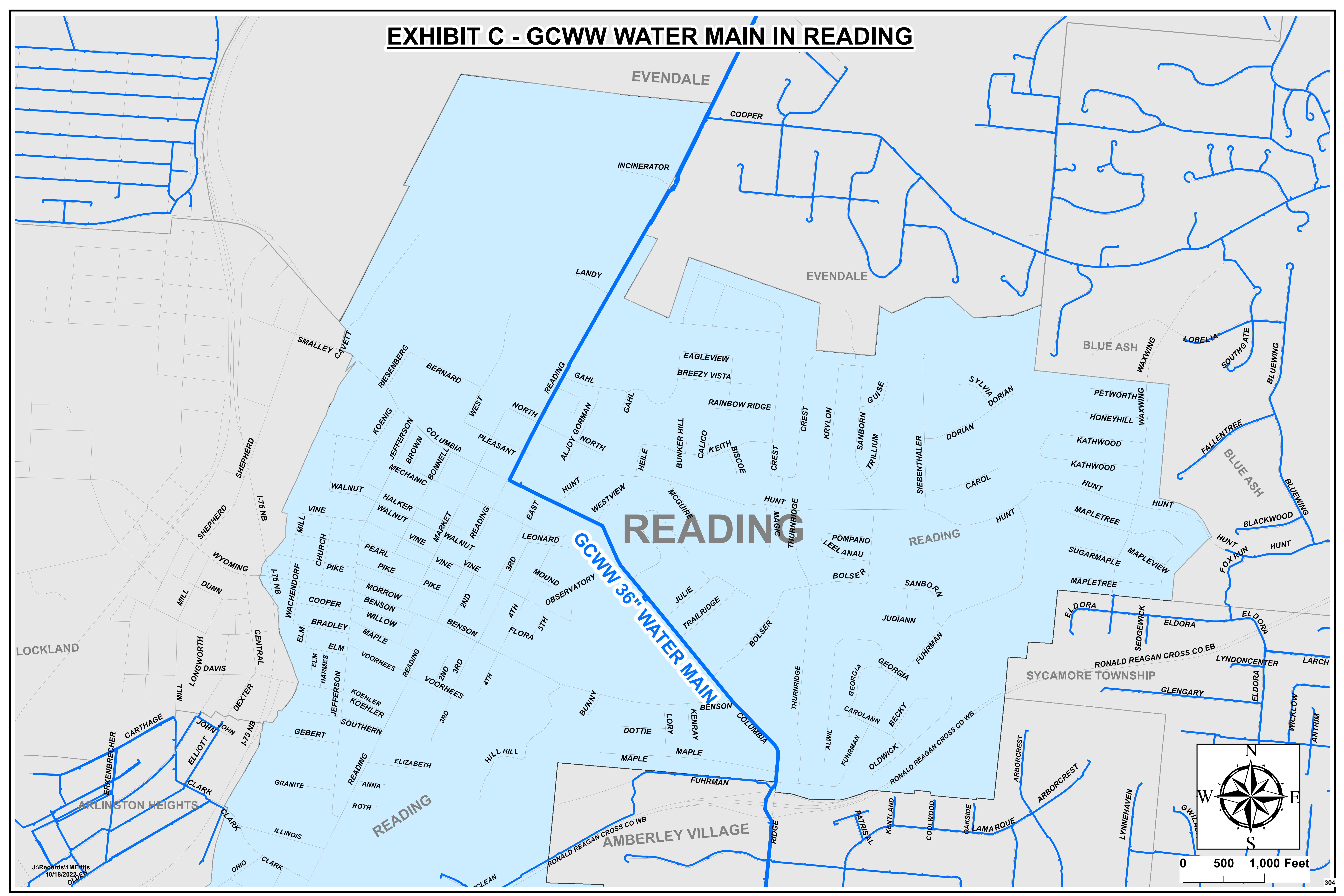
READING

**GCWW RETAIL AREA
IN READING**



0 1,000 2,000 Feet

EXHIBIT C - GCWW WATER MAIN IN READING



November 30, 2022

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager 202202114

Subject: **Ordinance – GCWW: OEPA Grant for Identification, Inventory and Mapping of Lead Service Lines.**

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to accept and appropriate grant funds from the Ohio Environmental Protection Agency in the amount of up to \$50,000 to Water Works non-personnel operating budget account no. 101x301x7200, for the purpose of reimbursing the costs incurred by the Greater Cincinnati Water Works in identifying, inventorying, and mapping lead service lines; and **AUTHORIZING** the Finance Director to deposit any such grant funds received into Fund No. 101 “Water Works,” revenue account no. 101x8527.

This Ordinance authorizes the City Manager to accept and appropriate grant funds from the Ohio Environmental Protection Agency (OEPA) in an amount up to \$50,000 for the purpose of assisting the Greater Cincinnati Water Works (GCWW) in mapping and locating unknown lead service lines within its service area. The Federal revised Lead and Copper Rule requires that public water systems identify, inventory, and document the material type of all water service lines within their service area by October 2024. Currently, GCWW has mapped the location of lead service lines in its service area based upon available historic records; however, some records may not accurately reflect the current service line material, due to property owner repairs or alterations to the service line, and incomplete records from areas that joined the GCWW system years after construction. These grant funds will assist GCWW with the cost of conducting exploratory excavation and two-point verification of service line material in areas and for properties with unknown or unidentified service line material in order to update GCWW’s lead service line maps.

This Ordinance further authorizes the Director of Finance to receive and deposit the grant funds into Fund No. 101 “Water Works,” revenue account no. 101x8527, in FY2023.

There is no local match required, and acceptance of the grant resources will not require the addition of any FTEs.

Acceptance of grant funding to assist with mapping the location of unknown lead service lines within the Greater Cincinnati Service Area and to ultimately help eliminate private lead service lines as a potential source of lead in water is in accordance with the “Sustain” goal to “[b]ecome a healthier Cincinnati” and strategy

to "[c]reate a healthy environment and reduce energy consumption" as described on pages 181-186 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Verna Arnette, GCWW, Interim Executive Director
Andrew M. Dudas, Budget Director
Karen Alder, Finance Director

Attachment

AUTHORIZING the City Manager to accept and appropriate grant funds from the Ohio Environmental Protection Agency in the amount of up to \$50,000 to Water Works non-personnel operating budget account no. 101x301x7200 for the purpose of reimbursing the costs incurred by the Greater Cincinnati Water Works in identifying, inventorying, and mapping lead service lines; and **AUTHORIZING** the Finance Director to deposit any such grant funds received into Fund No. 101 “Water Works,” revenue account no. 101x8527.

WHEREAS, the City of Cincinnati Greater Cincinnati Water Works (“GCWW”) is subject to the federal revised Lead and Copper Rule, which seeks to eliminate lead in drinking water and requires, among other things, that public water systems identify, inventory, and document the material type of all water service lines within their service area by October 2024; and

WHEREAS, the Ohio Environmental Protection Agency (“OEPA”), as part of the H2Ohio Fund, is offering grant funding to public water systems for identification, inventory, and mapping of lead service lines; and

WHEREAS, GCWW applied for the OEPA grant funding in order to meet the September 9, 2022 application deadline and has been awarded a grant in the amount of \$50,000 for the cost of conducting exploratory excavation and two-point verification of service line material in areas and for properties with unknown or unidentified service line material in order to update GCWW’s lead service line maps; and

WHEREAS, there is no local match required, and acceptance of the grant resources will not require the addition of any FTEs; and

WHEREAS, acceptance of grant funding to assist with mapping the location of unknown lead service lines within the Greater Cincinnati Service Area and to ultimately help eliminate private lead service lines as a potential source of lead in water is in accordance with the “Sustain” goal to “[b]ecome a healthier Cincinnati” and strategy to “[c]reate a healthy environment and reduce energy consumption,” as described on pages 181-186 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 appropriate grant funds in the amount of up to \$50,000 to Water Works non-personnel operating budget account

no. 101x301x7200 from the Ohio Environmental Protection Agency for the purpose of reimbursing the costs incurred by the Greater Cincinnati Water Works in the identification, inventory, and mapping of lead service lines within the utility's service area.

Section 2. That the Director of Finance is hereby authorized to receive and deposit the grant funds into Fund No. 101 "Water Works," revenue account no. 101x8527.

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 1 and 2 hereof.

Section 4. 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

November 30, 2022

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager 202202115

Subject: **Emergency Ordinance – CRC: Accept and Appropriate Monetary Donation for the National Junior Tennis Program**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager accept and appropriate a donation in an amount of \$40,085 from the Cincinnati Recreation Foundation for the purpose of providing funding support to the Cincinnati Recreation Commission National Junior Tennis program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Fund 319, “Contributions for Recreation Purposes,” revenue account 319x8571.

Approval of this Emergency Ordinance will authorize the City Manager to accept and appropriate a donation in an amount of \$40,085 from the Cincinnati Recreation Foundation for the purpose of providing funding support to the Cincinnati Recreation National Junior Tennis Program. This Emergency Ordinance will also authorize the Finance Director to deposit the donated resources into Fund 319, “Contributions for Recreation Purposes,” revenue account 319x8571.

The Cincinnati Recreation Foundation has been awarded a grant from the United States Tennis Association (USTA) to fund a National Junior Tennis Program. The Cincinnati Recreation Foundation is donating the resources to the Cincinnati Recreation Commission to support its National Junior Tennis Program.

There are no new FTE or local match requirements associated with this donation.

Acceptance of the donation for the National Junior Tennis Program is in accordance with the “Collaborate” goal to “Work in synergy with the Cincinnati community” and strategy to “Unite our communities” as described on pages 207-212 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to comply with the grant acceptance timeline established by the United States Tennis Association.

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 appropriate a donation in an amount of \$40,085 from the Cincinnati Recreation Foundation for the purpose of providing funding support to the Cincinnati Recreation Commission National Junior Tennis program; and **AUTHORIZING** the Finance Director to deposit the donated funds into Fund 319, “Contributions for Recreation Purposes,” revenue account 319x8571.

WHEREAS, the Cincinnati Recreation Foundation received a grant in the amount of \$40,085 from the United States Tennis Association (“USTA”) to fund a National Junior Tennis program; and

WHEREAS, the grant from USTA permits the Cincinnati Recreation Foundation to donate grant funds to the Cincinnati Recreation Commission (“CRC”) to support the CRC National Junior Tennis program; and

WHEREAS, acceptance of the donation requires no matching funds, and there are no FTEs associated with the donation; and

WHEREAS, acceptance of the donated funds for the National Junior Tennis program is in accordance with the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” and strategy to “[u]nite our communities,” as described on pages 207 - 212 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 authorized to accept and appropriate a donation in the amount of \$40,085 from the Cincinnati Recreation Foundation for the purpose of providing funding support to the Cincinnati Recreation Commission National Junior Tennis program.

Section 2. That the Finance Director is authorized to deposit the donated funds into Fund 319, “Contributions for Recreation Purposes,” revenue account 319x8571.

Section 3. That the proper City Officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

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 comply with the grant acceptance timeline established by the United States Tennis Association.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

November 30, 2022

To: Mayor and Members of City Council 202202116

From: Sheryl M. M. Long, City Manager

Subject: **Emergency Ordinance – DOTE: Highway Safety Improvement Program (HSIP) Grant for Traffic Calming**

Attached is an Emergency Ordinance captioned:

ESTABLISHING new capital improvement program project account nos. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of providing Ohio Department of Transportation (“ODOT”) grant resources for right of way improvements for traffic calming on Central Avenue at 8th Street; 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of providing ODOT grant resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; and 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” for the purpose of providing tax increment financing resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the City Manager to accept a Highway Safety Improvement Program Systemic Safety grant (ALN 20.205) in an amount of up to \$600,000 from ODOT, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Central Avenue at 8th Street, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the transfer and appropriation of the sum of \$90,000 from the unappropriated surplus of Westwood 1 Equivalent Fund 496 to newly established capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF; and **DECLARING** expenditures from capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” to be for a public purpose because the project will improve pedestrian safety in the Westwood neighborhood.

This Emergency Ordinance does the following:

1. Establishes new capital improvement program project account nos. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of providing Ohio Department of Transportation (ODOT) grant resources for right of way improvements for traffic calming on Central Avenue at 8th street; 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of providing ODOT grant resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman; and 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” for the purpose of providing tax increment financing resources for right of way improvement for traffic calming on Harrison Avenue at Ruehlman Place;

2. Authorizes the City Manager to accept a Highway Safety Improvement Program Systemic Safety grant (ALN 20.205) in an amount of up to \$600,000 from ODOT and appropriate up to \$300,000 to newly established capital improvement program project account no. 980x232x232351, “Central & 8th Traffic Calming – Grant,” and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant”;
3. Authorizes the transfer and appropriation of the sum of \$90,000 from the unappropriated surplus of Westwood 1 Equivalent Fund 496 to newly established capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF”; and
4. Declares expenditures from newly established capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” to be for a public purpose because the project will improve pedestrian safety in the Westwood neighborhood.

The City Council adopted Ordinance No. 0239-2017, which authorized the City Manager to apply for grants up to \$500,000 awarded by the ODOT Highway Safety Improvement Program for the purpose of ensuring the timely completion of various safety improvement projects throughout the City. The City Council also adopted Ordinance No. 0026-2022, which authorized the City Manager to apply for a grant in the amount of up to \$2,000,000 from the Highway Safety Improvement Program Systemic Safety Funding grant, administered by ODOT, for the purpose of implementing traffic calming improvements on Harrison Avenue between Kling Avenue and the corporate line. The Department of Transportation and Engineering (DOTE) submitted two grant applications and received a lump sum grant award of up to \$600,000 from the ODOT Highway Safety Improvement Program Systemic Safety Funding program for the Central Avenue at 8th Street and Harrison Avenue at Ruehlman Place traffic calming projects, which will not be accepted without City Council approval.

A local match in the amount of up to \$90,000 will be required for the traffic calming project at Central Avenue at 8th Street, which will come from existing “Neighborhood Transportation Strategies” and “Safety Improvements” capital improvement program project accounts. A local match in the amount of up to \$90,000 will be required for the traffic calming project at Harrison Avenue at Ruehlman Place, which is anticipated to come from the unappropriated surplus of Westwood 1 Equivalent Fund 496. No new FTEs are associated with these grants.

The grant projects are in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” and strategy to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 127-138 of Plan Cincinnati (2012)

The reason for the emergency is the immediate need to begin project design work to meet ODOT deadlines.

The Administration recommends passage of this Emergency Ordinance.

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

Attachments



EMERGENCY

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- 2022

ESTABLISHING new capital improvement program project account nos. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of providing Ohio Department of Transportation (“ODOT”) grant resources for right of way improvements for traffic calming on Central Avenue at 8th Street; 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of providing ODOT grant resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; and 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” for the purpose of providing tax increment financing resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the City Manager to accept a Highway Safety Improvement Program Systemic Safety grant (ALN 20.205) in an amount of up to \$600,000 from ODOT, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Central Avenue at 8th Street, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place; **AUTHORIZING** the transfer and appropriation of the sum of \$90,000 from the unappropriated surplus of Westwood 1 Equivalent Fund 496 to newly established capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF”; and **DECLARING** expenditures from capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” to be for a public purpose because the project will improve pedestrian safety in the Westwood neighborhood.

WHEREAS, Council adopted Ordinance No. 0239-2017 on September 13, 2017, which authorized the City Manager to apply for grants up to \$500,000 awarded by the Ohio Department of Transportation (“ODOT”) Highway Safety Improvement Program for the purpose of ensuring the timely completion of various safety improvement projects throughout the City; and

WHEREAS, Council adopted Ordinance No. 0026-2022 on February 9, 2022, which authorized the City Manager to apply for a grant in the amount of up to \$2,000,000 from the Highway Safety Improvement Program Systemic Safety Funding grant, administered by ODOT, for the purpose of implementing traffic calming improvements on Harrison Avenue between Kling Avenue and the corporate line; and

WHEREAS, ODOT has grant funding available from the Highway Safety Improvement Program Systemic Safety grant program (ALN 20.205) for the purpose of implementing traffic calming improvements; and

WHEREAS, there is a need to implement right of way improvements for traffic calming on Central Avenue at 8th Street and on Harrison Avenue at Ruehlman Place in order to construct pedestrian friendly amenities; and

WHEREAS, the Department of Transportation and Engineering submitted two grant applications and received a lump sum grant award of up to \$600,000 from the ODOT Highway Safety Improvement Program Systemic Safety Funding program for the Central Avenue at 8th Street and Harrison Avenue at Ruehlman Place traffic calming projects, funding which will not be accepted without approval from Council; and

WHEREAS, a local match in the amount of up to \$90,000 will be required for the traffic calming project at Central Avenue at 8th Street, which will come from existing “Neighborhood Transportation Strategies” and “Safety Improvements” capital improvement program project accounts; and

WHEREAS, a local match in the amount of up to \$90,000 will be required for the traffic calming project at Harrison Avenue at Ruehlman Place, which is anticipated to come from the unappropriated surplus of Westwood 1 Equivalent Fund 496; and

WHEREAS, the Westwood Civic Association and the Westwood Community Urban Redevelopment Corporation support using the Westwood 1 Equivalent Fund 496 to provide resources for the local match for the project at Harrison Avenue and Ruehlman Place; and

WHEREAS, the project will serve a public purpose because the project will improve pedestrian safety in the neighborhood of Westwood; and

WHEREAS, no new FTEs are associated with these grants; and

WHEREAS, these grant projects are in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” and strategy to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 127-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Director of Finance is authorized to establish new capital improvement program project account nos. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of providing Ohio Department of Transportation (“ODOT”) grant resources for right of way improvements for traffic calming on Central Avenue at 8th Street; 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of providing ODOT grant resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman

Place; and 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” for the purpose of providing tax increment financing resources for right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place.

Section 2. That the City Manager is hereby authorized to accept a grant in the amount of up to \$600,000 from ODOT’s Highway Safety Improvement Program Systemic Safety grant (ALN 20.205), and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232351, “Central & 8th Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Central Avenue at 8th Street, and appropriate an amount up to \$300,000 to newly established capital improvement program project account no. 980x232x232352, “Harrison & Ruehlman Traffic Calming – Grant,” for the purpose of implementing right of way improvements for traffic calming on Harrison Avenue at Ruehlman Place.

Section 3. That the transfer and appropriation of the sum of \$90,000 from the unappropriated surplus of Westwood 1 Equivalent Fund 496 to the newly established capital improvement program project account no. 980x232x232353, “Harrison & Ruehlman Traffic Calming – TIF,” for the purpose of implementing traffic calming right of way improvements on Harrison Avenue at Ruehlman Place is hereby authorized.

Section 4. That the Harrison and Ruehlman Traffic Calming – TIF right of way improvements project for traffic calming is hereby declared to serve a public purpose because it will improve pedestrian safety in the Westwood neighborhood.

Section 5. That Council hereby declares that the right of way improvements project at the intersection of Harrison Avenue and Ruehlman Place constitutes a “Public Infrastructure Improvement” (as defined by Section 5709.40(A)(8) of the Ohio Revised Code (“ORC”)), that

will benefit and/or serve the District 17 – Westwood Incentive District, subject to compliance with ORC Sections 5709.40 through 5709.43.

Section 6. That the City Manager is hereby authorized to enter into any agreements necessary to accept these grant and local matching resources.

Section 7. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the grant and Sections 1 through 6 hereof.

Section 8. 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 begin project design work to meet ODOT deadlines.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

November 30, 2022

To: Mayor and Members of City Council 202202121
From: Sheryl M. M. Long, City Manager
Subject: Ordinance – DOTE: Western Hills Viaduct Grants

Attached is an Ordinance captioned:

AUTHORIZING the establishment of capital improvement program project account nos. 980x233x232372, “Western Hills Viaduct OKI STBG Grant 2021,” 980x233x232373, “Western Hills Viaduct TRAC Grant 2021,” 980x233x232374, “Western Hills Viaduct Federal Earmark 2022,” and 980x233x232375, “Western Hills Viaduct INFRA Grant 2022”; **AUTHORIZING** the City Manager to accept and appropriate an Ohio-Kentucky-Indiana Surface Transportation Block Grant (ALN 20.205) in an amount up to \$1,000,000 for the purpose of providing resources for the demolition and construction of the Western Hills Viaduct (the “Western Hills Viaduct Project”); **AUTHORIZING** the City Manager to accept and appropriate a Transportation Review Advisory Council Grant (ALN 20.205) in an amount up to \$25,000,000 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate an amount up to \$1,000,000 in federal funding earmarked in the Consolidation Appropriations Act of 2022 for Highway Infrastructure Programs (ALN 20.205) for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate a Nationally Significant Freight and Highway Projects grant (ALN 20.934) in an amount up to \$127,115,954 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the Finance Director to deposit a total sum of up to \$154,115,954 (the “Funds”) to the various newly established capital improvement program project accounts set forth in the attached Schedule of Appropriation; and **AUTHORIZING** the City Manager to enter into any agreements necessary to accept the Funds.

This Ordinance does the following:

1. Establishes capital improvement program project account nos. 980x233x232372, “Western Hills Viaduct OKI STBG Grant 2022,” 980x233x232373, Western Hills Viaduct TRAC Grant 2021,” 980x233x232374, “Western Hills Viaduct Federal Earmark 2022,” and 980x233x232375, “Western Hills Viaduct INFRA Grant 2022”;
2. Authorizes the City Manager to accept and appropriate an Ohio-Kentucky-Indiana (OKI) Surface Transportation Block Grant (STBG) (ALN 20.205) in an amount up to \$1,000,000 for the purpose of providing resources for the Western Hills Viaduct Project;
3. Authorizes the City Manager to accept and appropriate a Transportation Review Advisory Council Grant (TRAC) (ALN 20.205) in an amount up to \$25,000,000 for the purpose of providing resources for the Western Hills Viaduct Project;
4. Authorizes the City Manager to accept and appropriate an amount up to \$1,000,000 in federal funding earmarked in the Consolidation Appropriations Act of 2022 for

Highway Infrastructure Programs (ALN 20.205) for the purpose of providing resources for the Western Hills Viaduct Project;

5. Authorizes the City Manager to accept and appropriate a Nationally Significant Freight and Highway Projects (INFRA) grant (ALN 20.934) in an amount up to \$127,115,954 for the purpose of providing resources for the Western Hills Viaduct Project;
6. Authorizes the Finance Director to deposit a total sum of up to \$154,115,954 (the Funds) to various newly established capital improvement program project accounts set forth in the attached Schedule of Appropriation; and
7. Authorizes the City Manager to enter into any agreements necessary to accept the Funds.

On June 4, 2021, the Hamilton County Engineer applied for STBG resources through OKI for the Western Hills Viaduct Project, for which the City is the Local Public Authority receiving the funds and was awarded \$1,000,000 for the Project. The City Council approved Ordinance No. 0106-2021, which authorized the City Manager to apply for a grant in an amount up to \$150,000,000 from the TRAC (ALN 20.205), awarded by and through the Ohio Department of Transportation (ODOT), to provide resources for the Western Hills Viaduct Project, and the City was awarded an amount up to \$25,000,000. The City Council approved Ordinance No. 0156-2022, which authorized the City Manager to apply for an INFRA grant (ALN 20.934) in an amount up to \$200,000,000 for the Western Hills Viaduct Project, and the City has been awarded an amount up to \$127,115,954. On June 28, 2022, the Federal Highway Administration (FHWA) announced appropriations for Highway Infrastructure Programs (ALN 20.205) in Division L, Title I of the Consolidated Appropriations Act of 2022, which included \$1,000,000 for the Western Hills Viaduct Project. City Council approval is required to accept the Funds.

The OKI STBG, the TRAC Grant, and the FHWA Allocation require 20 percent local matches, which will be provided from a combination of existing and future City of Cincinnati capital improvement program project accounts, Hamilton County resources, and Transit Infrastructure Grant (TIG) resources. The INFRA Grant requires a minimum 40 percent match, of which 20 percent may come from other federal sources. No new FTEs are associated with the Funds.

Acceptance of the Funds for the Western Hills Viaduct Project is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability,” as well as the strategy to “[p]lan, design and implement a safe and sustainable transportation system,” described on pages 129-138 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachments

AUTHORIZING the establishment of capital improvement program project account nos. 980x233x232372, “Western Hills Viaduct OKI STBG Grant 2021,” 980x233x232373, “Western Hills Viaduct TRAC Grant 2021,” 980x233x232374, “Western Hills Viaduct Federal Earmark 2022,” and 980x233x232375, “Western Hills Viaduct INFRA Grant 2022”; **AUTHORIZING** the City Manager to accept and appropriate an Ohio-Kentucky-Indiana Surface Transportation Block Grant (ALN 20.205) in an amount up to \$1,000,000 for the purpose of providing resources for the demolition and construction of the Western Hills Viaduct (the “Western Hills Viaduct Project”); **AUTHORIZING** the City Manager to accept and appropriate a Transportation Review Advisory Council Grant (ALN 20.205) in an amount up to \$25,000,000 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate an amount up to \$1,000,000 in federal funding earmarked in the Consolidation Appropriations Act of 2022 for Highway Infrastructure Programs (ALN 20.205) for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the City Manager to accept and appropriate a Nationally Significant Freight and Highway Projects grant (ALN 20.934) in an amount up to \$127,115,954 for the purpose of providing resources for the Western Hills Viaduct Project; **AUTHORIZING** the Finance Director to deposit a total sum of up to \$154,115,954 (the “Funds”) to the various newly established capital improvement program project accounts set forth in the attached Schedule of Appropriation; and **AUTHORIZING** the City Manager to enter into any agreements necessary to accept the Funds.

WHEREAS, on June 4, 2021, the Hamilton County Engineer applied for grant resources from the Surface Transportation Block Grant (“STBG”) through the Ohio-Kentucky-Indiana Regional Council of Governments (“OKI”) for the demolition and construction of the Western Hills Viaduct (the “Western Hills Viaduct Project”), for which the City is the Local Public Authority receiving the funds, and was awarded \$1,000,000 for the Project (the “OKI STBG”); and

WHEREAS, on April 7, 2021, Council approved Ordinance No. 0106-2021, which authorized the City Manager to apply for a grant in an amount up to \$150,000,000 from the Transportation Review Advisory Council (“TRAC”) (ALN 20.205), awarded by and through the Ohio Department of Transportation, to provide resources for the Western Hills Viaduct Project, and the City was awarded an amount up to \$25,000,000 (the “TRAC Grant”); and

WHEREAS, on June 15, 2022, Council approved Ordinance No. 0156-2022, which authorized the City Manager to apply for grant resources in an amount up to \$200,000,000 awarded by the United States Department of Transportation through the Nationally Significant Multimodal Freight and Highway Projects (“INFRA”) (ALN 20.934) and the National Infrastructure Project Assistance (ALN 20.937) discretionary grant programs for the construction of the Western Hills

Viaduct Project, and the City has been awarded an amount up to \$127,115,954 from the INFRA program (the “INFRA Grant”); and

WHEREAS, on June 28, 2022, the Federal Highway Administration (“FHWA”) announced appropriations for Highway Infrastructure Programs (ALN 20.205) in Division L, Title I of the Consolidated Appropriations Act of 2022, which included \$1,000,000 for the Western Hills Viaduct Project (the “FHWA Allocation”); and

WHEREAS, total funds in the amount of \$154,115,954 (the “Funds”) are therefore available from the OKI STBG, TRAC Grant, INFRA Grant, and the FHWA Allocation for the purpose of providing resources for the Western Hills Viaduct Project; and

WHEREAS, the Funds will not be accepted without approval from Council; and

WHEREAS, acceptance of the OKI STBG, the TRAC Grant, and the FHWA Allocation require 20 percent local matches, which will be provided from a combination of existing and future City of Cincinnati capital improvement program project accounts, Hamilton County resources, and Transit Infrastructure Grant resources; and

WHEREAS, acceptance of the INFRA Grant requires a minimum 40 percent match, of which 20 percent may come from other federal sources; and

WHEREAS, no new FTEs are associated with the Funds; and

WHEREAS, acceptance of the Funds for the Western Hills Viaduct Project is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability,” as well as the strategy to “[p]lan, design and implement a safe and sustainable transportation system,” described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Director of Finance is hereby authorized to establish capital improvement program project account nos. 980x233x232372, “Western Hills Viaduct OKI STBG Grant 2021,” 980x233x232373, “Western Hills Viaduct TRAC Grant 2021,” 980x233x232374, “Western Hills Viaduct Federal Earmark 2022,” and 980x233x232375, “Western Hills Viaduct INFRA Grant 2022.”

Section 2. That the City Manager is hereby authorized to accept and appropriate an Ohio-Kentucky-Indiana Surface Transportation Block Grant (ALN 20.205) in an amount up to

\$1,000,000 for the purpose of providing resources for the demolition and construction of the Western Hills Viaduct (the “Western Hills Viaduct Project”) in accordance with the attached Schedule of Appropriation.

Section 3. That the City Manager is hereby authorized to accept and appropriate a Transportation Review Advisory Council Grant (ALN 20.205) in an amount up to \$25,000,000 for the purpose of providing resources for the Western Hills Viaduct Project in accordance with the attached Schedule of Appropriation.

Section 4. That the City Manager is hereby authorized to accept and appropriate an amount up to \$1,000,000 in federal funding earmarked in the Consolidation Appropriations Act of 2022 for Highway Infrastructure Programs (ALN 20.205) for the purpose of providing resources for the Western Hills Viaduct Project in accordance with the attached Schedule of Appropriation.

Section 5. That the City Manager is hereby authorized to accept and appropriate a Nationally Significant Freight and Highway Projects grant (ALN 20.934) in an amount up to \$127,115,954 for the purpose of providing resources for the Western Hills Viaduct Project in accordance with the attached Schedule of Appropriation.

Section 6. That the sum of \$154,115,954 (the “Funds”) is hereby authorized to be deposited to the various newly established capital improvement program project accounts as set forth in the attached Schedule of Appropriation.

Section 7. That the City Manager is authorized to enter into any agreements necessary to accept the Funds.

Section 8. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of these funding sources and Sections 1 through 7 hereof.

Section 9. 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

SCHEDULE OF APPROPRIATION

Grant Program	Fund	Agency	PROJECT OR FUND TO BE TRANSFERRED TO NUMBER: DESCRIPTION	Original Authorization	Amount to be Increased	Revised Authorization
OKI STBG	980	233	232372 Western Hills Viaduct OKI STBG Grant 2021	\$0	\$1,000,000	\$1,000,000
TRAC	980	233	232373 Western Hills Viaduct TRAC Grant 2021	\$0	\$25,000,000	\$25,000,000
FED HIP	980	233	232374 Western Hills Viaduct Federal Earmark 2022	\$0	\$1,000,000	\$1,000,000
INFRA	980	233	232375 Western Hills Viaduct INFRA Grant 2022	\$0	\$127,115,954	\$127,115,954
TOTAL				\$0	\$154,115,954	\$154,115,954

November 30, 2022

To: Mayor and Members of City Council 202202088
From: Sheryl M. M. Long, City Manager
Subject: **Ordinance – DCED: Race & Vine Street Two-Way Conversion - TIF**

Attached is an Ordinance captioned:

ESTABLISHING new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” for the purpose of providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets in the downtown neighborhood; **AUTHORIZING** the transfer and appropriation of the sum of \$81,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200; and **AUTHORIZING** the transfer and appropriation of the sum of \$122,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” all for the purpose of providing resources for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

Approval of this Ordinance establishes new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” for the purpose of providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets in the downtown neighborhood. It further authorizes the transfer and appropriation of \$81,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community and Economic Development (DCED) non-personnel operating budget account no. 481x164x7200. Additionally, approval of this Ordinance authorizes the transfer and appropriation of \$122,000 from the unappropriated surplus of Downtown South/OTR East Equivalent Fund 481 to newly established capital improvement program project account no. 980x164x231628, “Race & Vine Street Two Way Conversion - TIF,” for the purpose of providing resources for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

The project will be completed in two phases. The first phase will be a feasibility study on Race and Vine Streets as the primary two-way streets which will cost \$81,000.

This amount includes \$3,750 for a traffic count study completed in 2021. If the feasibility study indicates that Race and Vine Streets can serve as two-way streets, further design will be completed. An additional \$122,000 is needed to complete a field study, Americans with Disabilities Act (ADA) compliance report, concept design, and construction cost estimates.

In 2019, the Mayor and the City Council created the Downtown Pedestrian Task Force to review several pedestrian safety initiatives downtown. One of the initiatives was evaluating the ability of several downtown streets to be converted to two-way streets. 3CDC and the Department of Transportation and Engineering (DOTE) jointly hired a third-party Traffic Engineering firm to assess current conditions and run traffic modeling regarding the two-way conversion of the following streets: Vine Street - 3rd Street to Central Parkway, 8th Street - Central Avenue to Broadway, and 9th Street - Central Avenue to Broadway. During the evaluation, multiple Task Force meetings were held to receive feedback. Although the streets being considered at this point have changed, the feedback previously received from this task force is still applicable. On October 11th, 2022, 3CDC and DOTE presented an update of the current project at the Downtown Residents Council meeting to continue community engagement.

Providing resources for a feasibility study and preliminary design for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood constitutes a “Public Infrastructure Improvement” (as defined in Section 5709.40(A)(8) of the Ohio Revised Code (ORC) that will benefit and/or serve the District 2- Downtown South/Riverfront District Incentive District, subject to compliance with ORC Sections 5709.40 through 5709.43.

The Administration recommends passage of this Ordinance.

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

Attachment

ESTABLISHING new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” for the purpose of providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets in the downtown neighborhood; **AUTHORIZING** the transfer and appropriation of the sum of \$81,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200; and **AUTHORIZING** the transfer and appropriation of the sum of \$122,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” all for the purpose of providing resources for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

WHEREAS, the Downtown Pedestrian Task Force was created in 2019 to review several pedestrian safety initiatives in the City, one of which was the feasibility of converting several one-way streets to two-way streets in the downtown neighborhood; and

WHEREAS, the City is considering the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood; and

WHEREAS, the initial phase of a possible Race and Vine Streets two-way conversion would involve a feasibility study requiring \$81,000 to complete, which amount includes \$3,750 for a traffic count study completed in 2021 related to the possible conversion of Race and Vine Streets to two-way streets; and

WHEREAS, if the feasibility study indicates that Race and Vine Streets are able to serve as two-way streets, \$122,000 is needed to complete a field study, ADA compliance report, concept design, and construction cost estimates for the possible conversion; and

WHEREAS, sufficient funds are available in Downtown South/Riverfront Equivalent Fund 481 to provide funding of \$203,000 for the scopes of work; now, therefore,

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

Section 1. That new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” is hereby established for the purpose of

providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

Section 2. That Council hereby authorizes the transfer and appropriation of the sum of \$122,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the new capital improvement program project account no. 980x164x231628, “Race & Vine Street Two-Way Conversion - TIF,” for the purpose of providing resources for the preliminary design for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood.

Section 3. That Council hereby authorizes the transfer and appropriation of the sum of \$81,000 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community of Economic Development non-personnel operating budget account no. 481x164x7200 for the purpose of providing resources for a feasibility study for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood, which amount includes payment of \$3,750 to Cincinnati Center City Development Corporation for a traffic count study it conducted in 2021 related to the possible conversion of Race and Vine Streets to two-way streets.

Section 4. That Council hereby declares that providing resources for a feasibility study and preliminary design for the possible conversion of Race Street and Vine Street to two-way streets between Second Street on the south and Central Parkway on the north in the downtown neighborhood constitutes a “Public Infrastructure Improvement” (as defined in Section 5709.40(A)(8) of the Ohio Revised Code (“ORC”)) that will benefit and/or serve the District 2-

Downtown South/Riverfront District Incentive District, subject to compliance with ORC Sections 5709.40 through 5709.43.

Section 5. That the proper City officials are hereby authorized to take all appropriate actions to carry out this ordinance including, but not limited to, the appropriations and transfers authorized herein.

Section 6. 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

November 30, 2022

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager

202202120

Subject: Ordinance – DCED: Terrace Plaza Building Stabilization - TIF

Attached is an Ordinance captioned:

AUTHORIZING the transfer and appropriation of the sum of \$2,900,000 from the unappropriated surplus of Downtown OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 providing resources for implementing a make-safe plan including hard construction costs and related soft costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati; and **DECLARING** that expenditures from Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 to be a public purpose.

Approval of this Ordinance authorizes the transfer and appropriation of \$2,900,000 from Downtown/OTR West Equivalent Fund 482 to non-personnel operating budget account no. 482x164x7200 to provide resources for implementing a make-safe plan including hard construction costs and related soft costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati.

Cincinnati Development III LLC acquired the distressed Terrace Plaza building in downtown Cincinnati, located at 15 West Sixth Street, and has implemented a make-safe plan as the necessary first step to abate the hazardous conditions at this prominent property. Providing resources in the amount of \$2,900,000 from the Downtown/OTR West TIF District will provide for hard construction costs and related soft costs, acceptable to the City, and will be provided in the form of a loan to the developer that is repayable over a seven-year term.

On November 2, 2022, a community engagement meeting through the Department of City Planning and Engagement was held. The developer is pursuing support for the project from the Over-the-Rhine Community Council and the Downtown Residents Council.

Investing in Terrace Plaza is in accordance with the “Compete” goal to “Foster a climate conducive to growth, investment, stability, and opportunity,” as described on pages 103-113 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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

Attachments



AUTHORIZING the transfer and appropriation of the sum of \$2,900,000 from the unappropriated surplus of Downtown OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 providing resources for implementing a make-safe plan including hard construction costs and related soft costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati; and **DECLARING** that expenditures from Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 to be a public purpose.

WHEREAS, Cincinnati Development III LLC acquired the distressed Terrace Plaza building in downtown Cincinnati, located at 15 West Sixth Street, and has implemented a make-safe plan as the necessary first step to abate the hazardous conditions at this prominent property; and

WHEREAS, to finance a portion of the stabilization costs under the make-safe plan, \$2,900,000 in funding from the Downtown/OTR West TIF District is proposed to be used for hard construction costs and related soft costs acceptable to the City to be provided in the form of a loan to the developer that is repayable over a seven-year term; and

WHEREAS, a community engagement meeting through the Department of City Planning and Engagement was held on November 2, 2022, and the developer is pursuing support from the Over-the-Rhine Community Council and the Downtown Residents Council; and

WHEREAS, investing in Terrace Plaza is in accordance with the “Compete” goal to “[f]oster a climate conducive to growth, investment, stability, and opportunity,” as described on pages 103-113 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the transfer and appropriation of the sum of \$2,900,000 from the unappropriated surplus of Downtown OTR West Equivalent Fund 482 to the Department of Community and Economic Development non-personnel operating budget account no. 482x164x7200 is hereby authorized for the purpose of providing resources for implementing a make-safe plan including hard construction costs and related soft costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati.

Section 2. That Council hereby declares that implementing a make-safe plan including hard construction costs and related costs associated with the stabilization of the Terrace Plaza building in Downtown Cincinnati, (a) constitutes a Public Infrastructure Improvement (as defined in Section 5709.40(A)(8) of the Ohio Revised Code) that will benefit and/or serve the District 3-Downtown/OTR West District TIF Incentive District, subject to compliance with Ohio Revised Code Sections 5709.40 through 5709.43; and (b) serves a public purpose because the project will provide resources to stabilize a long-neglected structure in a vital location in downtown Cincinnati and to protect the public health, safety, and welfare.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

Section 4. 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

November 30, 2022

To: Mayor and Members of City Council 202202122

From: Sheryl M. M. Long, City Manager

Subject: **Emergency Ordinance – Office of Grant Administration: Champlin Architects, Inc. & Cincinnati Union Bethel, Inc. Moral Obligation**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the payments of \$427.76 from Emergency Shelter Fund 445 project account no. 445x162x4452029 and \$3,043.46 from Emergency Shelter Fund 445 project account no. 445x162x4452017, totaling \$3,471.22, as a moral obligation to Champlin Architects, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic; and **AUTHORIZING** the payment of \$5,089.77 from Emergency Shelter Fund 445 project account no. 445x162x4452017 as a moral obligation to Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

This Emergency Ordinance authorizes the payments of \$427.76 from Emergency Shelter Fund 445 project account no. 445x162x4452029 and \$3,043.46 for Emergency Shelter Fund 445 project account no. 445x162x4452017, totaling \$3,471.22, as a moral obligation to Champlin Architects, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic. This Emergency Ordinance also authorizes the payment of \$5,089.77 from Emergency Shelter Fund 445 project account no. 445x162x4452017 as a moral obligation to Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

Champlin Architects, Inc. and Cincinnati Union Bethel, Inc. provided homeless shelter enhancement services to the City in response to the COVID-19 pandemic. Cost overruns occurred before contract amendments covering those costs were executed and resources were encumbered.

The reason for the emergency is the immediate need to pay Champlin Architects, Inc. and Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

EMERGENCY

CMZ

- 2022

AUTHORIZING the payments of \$427.76 from Emergency Shelter Fund 445 project account no. 445x162x4452029 and \$3,043.46 from Emergency Shelter Fund 445 project account no. 445x162x4452017, totaling \$3,471.22, as a moral obligation to Champlin Architects, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic; and **AUTHORIZING** the payment of \$5,089.77 from Emergency Shelter Fund 445 project account no. 445x162x4452017 as a moral obligation to Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

WHEREAS, Champlin Architects, Inc. provided homeless shelter enhancement services totaling \$97,823.72 to the City in response to the COVID-19 pandemic, and the existing contract was in the amount of up to \$94,352.50; and

WHEREAS, Cincinnati Union Bethel, Inc. provided homeless shelter enhancement services totaling \$168,959 to the City in response to the COVID-19 pandemic, and the amended contract was in the amount of up to \$163,869.23; and

WHEREAS, cost overruns occurred on the homeless shelter enhancement projects before contract amendments covering those costs were executed and resources were encumbered; and

WHEREAS, sufficient resources are available from the Emergency Shelter Fund 445 project account nos. 445x162x4452029 and 445x162x4452017 to provide payments to Champlin Architects, Inc. and Cincinnati Union Bethel, Inc.; and

WHEREAS, Council desires to provide payment for the services related to homeless shelter enhancements in the amounts of \$3,471.22 to Champlin Architects, Inc. and \$5,089.77 to Cincinnati Union Bethel, Inc.; now, therefore,

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

Section 1. That the Finance Director is authorized to make payments of \$427.76 from Emergency Shelter Fund 445 project account no. 445x162x4452029 and \$3,043.46 from Emergency Shelter Fund 445 project account no. 445x162x4452017, totaling \$3,471.22, as a moral obligation of the City of Cincinnati to Champlin Architects, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

Section 2. That the Finance Director is authorized to make a payment of \$5,089.77 from Emergency Shelter Fund 445 project account no. 445x162x4452017 as a moral obligation of the City of Cincinnati to Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the provisions of Sections 1 and 2 hereof.

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 pay Champlin Architects, Inc. and Cincinnati Union Bethel, Inc. for homeless shelter enhancement services provided to the City as part of the response to the COVID-19 pandemic.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk