



EMERGENCY

City of Cincinnati

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An Ordinance No. _____

- 2024

AUTHORIZING the City Manager to execute a Development Agreement with 3CDC Development Manager LLC and the Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, pertaining to the major renovation and expansion of the City-owned property known as Duke Energy Convention Center (the “DECC”), and other adjacent properties, all in the Central Business District; **ESTABLISHING** new capital improvement program project account no. 980x164x241620, “Convention Center District Urban Renewal TIF,” to provide resources for improvements to the DECC and other adjacent properties; **AUTHORIZING** the transfer and appropriation of \$23,000,000 from the unappropriated surplus of Urban Renewal – Tax Increment Bond Fund 852 to newly established capital improvement program project account no. 980x164x241620, “Convention Center District Urban Renewal TIF,” to provide resources for the improvements to the DECC and other adjacent properties as required by the Development Agreement between the City of Cincinnati, 3CDC Development Manager LLC, and the Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio; and **DECLARING** this capital improvement project an urban renewal project located in an urban renewal area, each as defined in Ohio Revised Code Chapter 725.

WHEREAS, the City of Cincinnati (the “City”) owns the Duke Energy Convention Center (the “DECC”) located at 525 Elm Street, and generally bounded by Elm Street, Fifth Street, Sixth Street, and Central Avenue in the Central Business District of Cincinnati; and

WHEREAS, even though the City has provided day-to-day maintenance and repairs and completed periodic capital improvements, the DECC has deteriorated in recent years and is once again in need of substantial renovation and capital repairs; and

WHEREAS, the City currently anticipates vacating that portion of Elm Street right-of-way between Sixth Street and Fifth Street for potential consolidation with the DECC or to be owned as a standalone parcel by the City (the “Elm Street Parcel”); and

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port”) currently owns certain real property where the former Millennium Hotel was located, generally bounded by Elm Street, Fifth Street, Sixth Street, and the 84.51 headquarters building (the “Millennium Site”); and

WHEREAS, the City owns certain real property (i) bisecting the Millennium Site that is currently a paper street known as Convention Way, and (ii) consisting of several parcels along Elm Street and Convention Way (such City-owned property, with the DECC, the Millennium Site, and the Elm Street Parcel, are collectively referred to hereinafter as the “Project Site”); and

WHEREAS, pursuant to Resolution No. 6-2022, approved by Council on January 26, 2022, and a Resolution passed by the Board of County Commissioners of Hamilton County,

Ohio (the “County”) on January 27, 2022, the City and the County expressed their support for the creation of a comprehensive strategy for redevelopment of the DECC and the surrounding area generally bounded by Race Street, Central Avenue, Fourth Street, and Sixth Street (collectively, the “District”), including through the engagement of Cincinnati Center City Development Corporation (“3CDC”) for planning and management services related to the District; and

WHEREAS, Council adopted a Motion, Item No. 202300325, on February 23, 2023, requesting that the City work with 3CDC and other relevant stakeholders to maximize opportunities for minority and women contractors to engage in development within the District; and

WHEREAS, the City, the County, and 3CDC Development Manager LLC (“Manager”), a wholly owned subsidiary of 3CDC, entered into a Development Management Services Agreement, pursuant to which Manager has been providing pre-development services associated with the potential renovation of the DECC, the potential development of a new convention center headquarters hotel, and the general planning and development of other sites within the District (the “Pre-Development Services”); and

WHEREAS, Manager entered into an agreement with Messer Construction Co. (“Messer”) to provide pre-construction services related to the renovation of the Project Site (the “DECC Project”), which services have been nearly completed; and

WHEREAS, the City and the County now desire to further engage Manager to provide additional development management project implementation services related to the DECC Project through execution of a Development Agreement substantially in the form attached hereto as Attachment A (the “Development Agreement”); and

WHEREAS, in recognition of the importance and value of including diversity, equity, and inclusion efforts for development projects within the District, the City, the County, and Manager have worked together to develop a plan and establish goals to maximize inclusion efforts within the District (the “Inclusion Plan”); and

WHEREAS, through the Development Agreement, the City and the County will engage Manager, and Messer through Manager, to ensure that all contractors, subcontractors, and consultants on the DECC Project comply with the Inclusion Plan and utilize best efforts to achieve participation at a level of twenty percent for minority-owned business enterprises and ten percent for women-owned business enterprises, with an additional aspirational reach goal of an additional five percent each; and

WHEREAS, the City has determined that it is in its best interest to (i) approve Manager’s retention of Messer as the construction manager at risk, in partnership with TriVersity Construction and Jostin Construction, for the construction of the DECC Project due to Messer’s experience and reputation for successfully completing projects of this magnitude and complexity, and (ii) to permit Messer to selectively hire the subcontractors for the DECC Project because of the highly specialized nature of the renovation work that will be performed by the subcontractors, with the understanding that Messer will comply with the Inclusion Plan; and

WHEREAS, Manager intends to commence on-site construction on the DECC Project no later than July 1, 2024, and substantially complete construction no later than December 31, 2025; and

WHEREAS, the total estimated cost (including, without limitation, hard construction costs, soft costs, acquisition costs, and costs of issuance) of the DECC Project is approximately \$200,000,000; and

WHEREAS, in addition to the funds provided by the City in the amount of \$7,000,000 for the Pre-Development Services, the City now desires to provide an additional \$23,000,000 (the “City Cash Funds”) for the DECC Project; and

WHEREAS, the source of the City Cash Funds is proceeds from the City’s issuance of urban renewal bonds or notes to finance a portion of the DECC Project; and

WHEREAS, the Project Site constitutes an urban renewal area and the DECC Project constitutes an urban renewal project, each for purposes of Ohio Revised Code Chapter 725; and

WHEREAS, the County previously provided funding for the acquisition and demolition of the former Millennium Hotel and \$5,000,000 for pre-development costs associated with the Millennium Site, and now intends to provide an additional \$10,000,000 for the DECC Project; and

WHEREAS, to facilitate a bond issuance by the Port in a principal amount not to exceed \$370,000,000 (the “TOT Bonds”), the City and the County intend to pledge to the Port, and/or the trustee on the TOT Bonds, some of the revenues from their respective transient occupancy taxes (the “TOT Revenues”), and, subject to appropriation, the City and the County intend to provide credit enhancements on the TOT Bonds in the form of an annual contribution from each such entity in an amount not to exceed \$650,000 annually; and

WHEREAS, the pledge(s) of the TOT Revenues and the terms of the financing associated with the TOT Bonds, pursuant to which the Port will make the net TOT Bonds proceeds available to pay for the construction of the DECC Project, will be determined by separate agreements entered into between the City, the County, and the Port, which financing structure Council will authorize by separate ordinance; and

WHEREAS, the City believes that the DECC Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, and for this reason the City desires to facilitate the DECC Project by providing the City Cash Funds and other financial support for the DECC Project, all as more particularly described in the Development Agreement; and

WHEREAS, completion of the DECC Project is in accordance with the “Compete” goal to “[b]ecome nationally and internationally recognized as a vibrant and unique city” as described on pages 121-125 of Plan Cincinnati (2012) and the “Collaborate” goal to “[s]peak in a unified voice with other entities to reach regional goals” as described on pages 213-216 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 execute a Development Agreement, substantially in the form attached hereto as Attachment A (the “Development Agreement”), with 3CDC Development Manager LLC and the Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio, pertaining to the major renovation and expansion of the City-owned property known as the Duke Energy Convention Center (the “DECC”), located at 525 Elm Street, and adjacent properties thereto, all generally bounded by the 84.51 headquarters building, Fifth Street, Sixth Street, and Central Avenue, all in the Central Business District of Cincinnati, which property is more particularly described in the Development Agreement (collectively, the “Project Site”).

Section 2. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x164x241620, “Convention Center District Urban Renewal TIF,” to provide resources for improvements to the Project Site pursuant to the terms of the Development Agreement (the “DECC Project”).

Section 3. That the transfer and appropriation of \$23,000,000 from the unappropriated surplus of Urban Renewal – Tax Increment Bond Fund 852 to newly established capital improvement program project account no. 980x164x241620, “Convention Center District Urban Renewal TIF,” to provide resources for the DECC Project, all as allowable by law, is authorized.

Section 4. That it is in the best interest of the City to approve Messer Construction as the construction manager at risk, in partnership with TriVersity Construction and Jostin Construction, for the DECC Project due to Messer’s experience and reputation for successfully completing projects of this magnitude and complexity.

Section 5. That Council hereby declares that the DECC Project constitutes an urban renewal project, and the Project Site constitutes an urban renewal area, each as defined in Chapter 725 of the Ohio Revised Code.

Section 6. That the appropriate City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 1-5 of this ordinance, including, without limitation, entering into the Development Agreement and any other agreements, amendments, and other instruments pertaining to the DECC Project.

Section 7. 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 City to execute the Development Agreement at the earliest possible time in order to proceed with the completion of the DECC Project for the economic benefit of the people of the City of Cincinnati.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No: _____

DEVELOPMENT AGREEMENT

among the

CITY OF CINCINNATI,
an Ohio municipal corporation

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO,
an Ohio political subdivision

and

3CDC DEVELOPMENT MANAGER LLC,
an Ohio limited liability company

Project Name: Duke Energy Convention Center Renovation and Expansion

Dated: _____, 2024

DEVELOPMENT AGREEMENT
(Duke Energy Convention Center Renovation and Expansion)

This Development Agreement (this “**Agreement**”) is made and entered into effective as of the Effective Date (as defined on the signature page hereof) among the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”); the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the “**County**”); and **3CDC DEVELOPMENT MANAGER LLC**, an Ohio limited liability company, 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Manager**”), a wholly owned subsidiary of Cincinnati Center City Development Corporation, an Ohio nonprofit corporation (“**3CDC**”).

Recitals:

A. The City owns the Duke Energy Convention Center located at 525 Elm Street, generally bounded by Elm Street, 5th Street, 6th Street, and Central Avenue in the Central Business District of Cincinnati, as depicted on Exhibit A (Site Plan) hereto and more particularly described on Exhibit B-1 (Legal Description – DECC) hereto (the “**DECC**”).

B. The City currently anticipates vacating that portion of Elm Street right-of-way between 6th Street and 5th Street, as depicted on Exhibit A and more particularly described on Exhibit B-2 (Legal Description – Elm Street) hereto (the “**Former City ROW**”), for potential consolidation with the DECC or to be owned as a standalone parcel by the City.

C. The Port of Greater Cincinnati Development Authority (the “**Port**”) currently owns certain real property where the former Millennium Hotel was located, generally bounded by Elm Street, 5th Street, 6th Street, and the 84.51 headquarters building, as depicted on Exhibit A and more particularly described on Exhibit B-3 (Legal Description – Millennium Site) hereto (the “**Millennium Site**”). The City owns certain real property that bisects the Millennium Site that is comprised of (i) existing right-of-way that is currently a paper street known as Convention Way and (ii) several parcels along Elm Street and Convention Way, all as depicted on Exhibit A and more particularly described on Exhibit B-4 (Legal Description – Convention Way Property) hereto (the “**Convention Way Property**”, and collectively with the Millennium Site, the “**Plaza Site**”).

D. The County helped finance the Port’s acquisition of the Millennium Site and demolition of the building formerly located thereon, creating potential development opportunities for the District (as defined below).

E. To facilitate the DECC Project (as defined below), the parties currently anticipate that (i) the City will vacate the Former City ROW and other right-of-way included in the Convention Way Property, with the Port providing abutter’s consents to such vacations in such form as the City may require and assisting with other necessary title clean-ups, (ii) then, the Port will convey fee simple title to the Millennium Site to the County, and (iii) thereafter the County will lease the Millennium Site to the City for coordinated planning and programming of the Plaza Site with the DECC and the Former City ROW (the DECC, the Former City ROW, and the Plaza Site are hereinafter collectively referred to as the “**Project Site**”), which lease, as further described in Section 5 hereof, the parties anticipate will contain terms substantially in accordance with the terms outlined in Exhibit C (Plaza Lease Terms) hereto.

F. Although the City has provided for day-to-day maintenance and repairs and the completion of periodic capital improvements, the DECC has deteriorated in recent years and is once again in need of renovation and capital repairs.

G. Pursuant to (i) Resolution No. 6-2022, approved by City Council on January 26, 2022, the Mayor and Council of the City, and (ii) a Resolution passed by the Board of County Commissioners on January 27, 2022, the City and the County expressed their support for the creation of a comprehensive

strategy for redevelopment of the DECC and the surrounding area generally bounded by Race Street, Central Avenue, 4th Street, and 6th Street (collectively, the “District”), including through the engagement of 3CDC for planning and management services related to the District.

H. The parties hereto entered into a certain *Development Management Services Agreement* dated June 14, 2023 (the “**Pre-Development Agreement**”), pursuant to which (i) the City and the County engaged Manager to, among other things, provide general planning and development services as it relates to property within the District, including for development of a new convention center headquarters hotel and the renovation of the DECC and potential expansion over the Former City ROW and the Plaza Site (the “**Pre-Development Services**”); and (ii) the City provided \$7,000,000 for certain costs associated with the Pre-Development Services (the “**DECC Pre-Development Funds**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Pre-Development Agreement.

I. Manager’s work associated with the Pre-Development Services has, to date, been to the satisfaction of the City and the County, the City and the County now desire to further engage Manager to provide additional development management project implementation services related to the renovation of the DECC, the Plaza Site, and the Former City ROW, all as more particularly described on Exhibit D (Statement of Work) hereto (the “**DECC Project**”). For the avoidance of doubt, in no event does the DECC Project include other development within the District, including, without limitation, any development at 435 Elm Street (also known as the former site of the Convention Place Mall), the convention center headquarters hotel, or the Whex Garage.

J. Manager intends to commence on-site construction on the DECC Project no later than July 1, 2024 (the “**Commencement Deadline**”), and substantially complete construction no later than December 31, 2025 (the “**Completion Deadline**”). For the purposes hereof, “substantially complete” shall have the same meaning as “Substantial Completion” as defined in the CMAR Agreement (as defined below).

K. The total estimated cost (including, without limitation, hard construction costs, soft costs, acquisition costs, and costs of issuance) of the DECC Project is approximately \$200,000,000, which costs are more particularly detailed on Exhibit E (Budget) hereto (as the same may thereafter be updated from time to time during the DECC Project, in accordance with the terms and conditions of this Agreement, the “**Budget**”).

L. In addition to providing the DECC Pre-Development Funds, to facilitate the DECC Project, the City intends to provide an additional \$23,000,000 (the “**City Cash Funds**”).

M. The current source of the City Cash Funds is proceeds from the City’s issuance of urban renewal bonds or notes to finance a portion of the DECC Project, as authorized by Ordinance No. _____-20_____, passed by City Council on _____, 20____ (the “**Urban Renewal Ordinance**”).

N. In addition to having provided (i) funding for the acquisition and demolition of the former Millennium Hotel, and (ii) \$5,000,000 for pre-development costs associated with the Millennium Site, to facilitate the DECC Project, the County intends to provide an additional \$10,000,000 (the “**County Cash Funds**”).

O. To facilitate a bond issuance by the Port, in a principal amount not to exceed \$370,000,000 (the “**TOT Bonds**”), (i) the City and the County will pledge to the Port and/or the trustee on the TOT Bonds some of the revenues from their respective transient occupancy taxes (the “**TOT Revenues**”); and (ii) subject to appropriation, [and only if necessary,] (a) the City will transfer to the Port City funds in the amount of \$650,000 annually (the “**City Annual Funds**”), and (b) the County will transfer to the Port County funds in the amount of \$650,000 annually (the “**County Annual Funds**”; and together with the City Annual Funds, the “**Annual Funds**”), the terms of all of which will be agreed to by means of a separate cooperative agreement and other ancillary agreements between the City, the County, and the Port, and pursuant to which the Port will make the net TOT Bonds proceeds available to pay for the construction of the DECC Project, as will be determined by such separate agreements.

P. The cooperative agreement and other documents associated with the TOT Bonds with respect to the DECC Project entered into with the Port and Manager or 3CDC to which the City and/or the County are parties are referred to herein as the “**TOT Bond Documents**,” and the TOT Bond Documents, this Agreement, the Pre-Development Agreement, the CMAR Agreement, and such other ancillary documents and instruments executed by Manager or 3CDC and the City and/or County, or executed by Manager or 3CDC in favor of the City and/or County in relation to the DECC Project are referred to herein as the “**Project Documents**.”

Q. The City has determined that it is in the best interest of the City to (i) approve MESSER CONSTRUCTION (“**Messer**”) as the construction manager, in partnership with TriVersity Construction and Jostin Construction, for the DECC Project due to the company’s experience and reputation for successfully completing projects of this magnitude and complexity; and (ii) permit the construction manager to selectively hire the subcontractors for the DECC Project because of the highly specialized nature of the renovation work that will be performed by the subcontractors, with the understanding that the construction manager will comply with the Inclusion Plan in connection with the DECC Project.

R. The City and the County believe that the DECC Project is in the vital and best interests of the City and the County and the health, safety, and welfare of their residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, and for this reason the City and the County desire to facilitate the DECC Project by providing the City Cash Funds, the County Cash Funds, and other financial support for the DECC Project as described herein.

S. Execution of this Agreement and the other Project Documents on behalf of the City was authorized by Ordinance No. _____-20____, passed by City Council on ____, 20____ and the Urban Renewal Ordinance.

T. Execution of this Agreement and the other Project Documents on behalf of the County was authorized by that certain Resolution passed by the Board of County Commissioners of Hamilton County, Ohio on _____, 20____.

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

1. **Term.** The term of this Agreement shall commence on the Effective Date and shall end on the date on which the City and the County have disbursed all of the City Cash Funds and the County Cash Funds to Manager and Manager has fulfilled all of its obligations hereunder, including, without limitation, any reporting requirements.

2. **Construction of the DECC Project.**

(A) **Preparation of Plans and Specifications.** Manager shall prepare plans and specifications for the DECC Project and shall submit the same to the City and the County for review and approval. The approved plans and specifications for the DECC Project, as included in the executed GMP Amendment (as defined below), and as approved by the City and the County in accordance with Exhibit D hereto (including any and all changes thereto reflected on properly-executed change orders, as defined and in accordance with Exhibit D hereto), are referred to herein as the “**Final Plans**”. Manager shall submit any and all proposed changes to the Final Plans to the City and the County for review and approval that Manager is not otherwise permitted to approve without City or County approval pursuant to Exhibit D hereto.

(B) **Obtaining and Approving Construction Bids.** Upon completion of the Final Plans, Manager shall cause Messer to begin selecting contractors and subcontractors for the construction of the improvements reflected in such Final Plans. The final bids for each component of the DECC Project, as approved by Manager, are referred to herein as the “**Final Bids**”. For the avoidance of doubt, the City and the County acknowledge that the DECC Project may be split up into multiple packages and phases, all in accordance with the CMAR Agreement, and, therefore, for the purpose of this Agreement, the Final Plans

and the Final Bids may relate to a specific package and phase. Upon Manager's selection of the bids for the DECC Project, Manager shall submit to the City and the County, for review and approval, an updated Budget for the DECC Project.

(C) Construction. Once Final Plans and Final Bids have been approved in accordance with Sections 2(A) and (B) above, Manager shall proceed with construction of the DECC Project, and provided Manager has obtained all building permits, zoning approvals, and other governmental approvals required for the DECC Project, Manager shall cause Messer to commence on-site construction no later than the Commencement Deadline, and thereafter complete the construction of the DECC Project, as reflected in the respective Final Plans therefor, in compliance with all applicable laws, and substantially in accordance with Exhibit D hereto, no later than the Completion Deadline. Manager shall obtain the City's and the County's approval of any proposed changes to Exhibit D hereto. Notwithstanding the foregoing, upon written request of Manager, the City and the County may, in their sole and absolute discretion, extend the Commencement Deadline and/or the Completion Deadline by up to 6 months by providing written notice to Manager.

(D) Contractors and Subcontractors. Manager shall not solicit, or cause to be solicited, bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor Performance list.

(E) Applicable Laws. Manager shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the construction of the improvements. The City makes no representations or other assurances to Manager that Manager will be able to obtain whatever variances, permits, or other approvals from the City's Department of Buildings & Inspections, Department of Planning & Engagement, Department of Transportation & Engineering, other City departments, City Planning Commission, or City Council that may be required in connection with the DECC Project. Notwithstanding the foregoing, the City will consider assigning permitting staff primarily dedicated to the District to review all permits for construction projects located within the District, including the DECC Project.

(F) Inspection of Work. During construction, the City and the County, and their employees and agents, shall have the right at all reasonable times to inspect the progress of construction. In addition, Manager, at no charge to the City and the County, shall make Messer, its project architect, general contractor, or other representative of Manager reasonably accessible to the City to provide pertinent information about the DECC Project. If the City and the County determine that the DECC Project is not substantially in accordance with the Final Plans or other requirements of this Agreement, is not in compliance with all legal requirements, or is not being performed in a good and workmanlike manner, the City and the County shall have the right to order Manager to correct the nonconforming work or noncompliance by giving Manager written notice thereof.

(G) Mechanics' Liens. Manager shall not permit any mechanic's or other liens to be filed against the Project Site, or the City's or the County's funds, during construction. If a mechanic's lien shall at any time be filed, Manager shall, within 60 days after notice of the filing thereof, cause the same to be discharged of record.

(H) Monthly Reporting During Construction. During construction, Manager shall provide the City and the County with monthly reports describing the status of the DECC Project, including, without limitation, information about whether the DECC Project is on budget and on schedule, an updated report tracking the W/MBE Goals and Aspirational Goals according to the Compliance Plan, a list of newly-hired Consultants (as defined below) and a list of any roles for which Manager anticipates hiring additional Consultants, and containing such additional pertinent information thereto as the City or the County may from time to time reasonably request. Manager shall submit a final report to the City and the County for the month in which the DECC Project is substantially completed.

(I) As-Built Drawings. Following completion of construction of the DECC Project, Manager shall provide the City with "as-built" drawings of the improvements completed as part of the DECC Project.

(J) Diversity, Equity, and Inclusion. Pursuant to the terms of the Pre-Development Agreement, the parties developed an Inclusion Plan to meet the agreed-upon MBE and WBE inclusion goals the parties have agreed are applicable to the District, including the DECC Project. Manager shall follow and enforce the Inclusion Plan, including through following and enforcing the Compliance Plan and submitting the required monthly reports relating thereto, to ensure that Manager, Messer, and all of their respective contractors, subcontractors, and consultants utilize best efforts to achieve the W/MBE Goals of 20% for MBEs and 10% for WBEs, with the additional Aspirational Goals of 5% each for MBEs and WBEs, for collective goals of 25% for MBEs and 15% WBEs.

(K) DECC Dispute Resolution Process. In the event of any disputes between the City and the County on a decision, upon which each the City and the County have approval rights pursuant to this Agreement, that will materially impact construction associated with the DECC Project, the City and the County agree to work in good faith to come to a mutually agreeable resolution. If the City and the County are unable to come to a mutually agreeable resolution within 30 calendar days, then the City and the County shall submit the matter to binding arbitration in accordance with the American Arbitration Association rules and regulations. Notwithstanding the foregoing, the parties hereby acknowledge and agree that any results of such arbitration will not be binding upon the parties if the resolution is determined to be illegal under applicable laws. In the event of any such arbitration, the parties hereby agree that costs associated with such arbitration shall be paid for, on a pro rata basis, out of the City Cash Funds and the County Cash Funds; *provided, however*, that each party shall bear its own attorneys' fees.

3. Financing.

(A) City Cash Funds. Provided that Manager is not in breach of this Agreement, the Pre-Development Agreement, or any of the other Project Documents, the City shall provide to Manager the City Cash Funds, in an amount not to exceed \$23,000,000, which shall be disbursed in accordance with Exhibit E (Disbursement of Funds) hereto.

(B) County Cash Funds. Provided that Manager is not in breach of this Agreement, the Pre-Development Agreement, or any of the other Project Documents, the County shall provide to Manager the County Cash Funds, in an amount not to exceed \$10,000,000, which shall be disbursed in accordance with Exhibit F.

(C) TOT Funds. To facilitate the TOT Bonds in a principal amount not to exceed \$370,000,000, the City and the County shall pledge to the Issuer some of the TOT Revenues, and, if necessary, the Annual Funds, as sources of repayment and security for the TOT Bonds. For the avoidance of doubt, the parties hereby agree and acknowledge that each the City's and the County's transient occupancy tax revenues have been previously committed to other projects (the "**Prior TOT Commitments**"), and that such Prior TOT Commitments will be senior in order of priority of repayment to any TOT Bonds issued pursuant hereto. Additionally, revenues from the City's 1.50% transient occupancy tax levied in 1969 are explicitly excluded from the defined TOT Revenues that the City will make available to facilitate the TOT Bonds.

(D) Permitted Use of Funds. Manager shall use the City Cash Funds and the County Cash Funds solely to pay for costs associated with the DECC Project and other eligible costs associated with the District and approved by the City and the County. The net proceeds of the TOT Bonds shall be used solely to pay for construction costs associated with the DECC Project that are incurred at the Project Site and other eligible costs associated with the District, as more specifically set forth in the TOT Bond Documents.

(E) Development Fee. In addition to the Pre-Development Fee, Manager shall receive a fee of \$2,750,000 for its performance of the services associated with the construction of the DECC Project (the "**Development Fee**"), which shall be paid out of the TOT Bond proceeds and/or City Cash Funds and

County Cash Funds, as follows: (i) \$1,000,000 paid within 30 days from the date of closing on the TOT Bonds, and (ii) the remaining \$1,750,000 (the “**Installment Fee**”), paid in equal monthly installments of \$97,222.22 beginning on July 1, 2024, and continuing until the Installment Fee has been paid in full; *provided, however*, that each monthly installment of the Installment Fee shall be payable only following (i) the submission by Manager to the City and the County of a monthly progress report related to the services associated with the construction of the DECC Project accomplished during the preceding month and (ii) approval by the City and the County in their reasonable discretion that the work on the construction of the DECC Project, if any, has been satisfactorily completed to date. The City and the County shall use best efforts to approve or reject such monthly report within 5 business days of receipt thereof. Manager shall include an invoice for the portion of the Development Fee then due with each draw request.

4. Project Contractors and Consultants.

(A) **CMAR Agreement.** The parties hereto hereby agree and acknowledge that Manager has entered into that certain Agreement dated December 4, 2023, whereby Manager engaged Messer to serve as Construction Manager at Risk as it relates to the DECC Project (the “**CMAR Agreement**”). Notwithstanding anything in the CMAR Agreement to the contrary, Manager hereby agrees to remit to the City any proceeds paid to Manager under or pursuant to the terms of the CMAR Agreement that are intended to inure to the benefit of the owner of the DECC.

(B) **Authority to Hire Consultants.** The City and the County hereby authorize Manager to hire Consultants to serve as subcontractors of Manager, except as otherwise provided herein. Notwithstanding anything herein to the contrary, no attorney or law firm may be retained by Manager for the purpose of serving as legal counsel in connection with this Agreement or Manager’s services related hereto without the express prior written approval of the City Solicitor and the County Prosecuting Attorney.

(C) **Manager’s Enforcement Obligations.** Manager is not a guarantor or warrantor of performance or workmanship of any Consultants, the Architect, Messer, or any contractor or subcontractors of any of them, or their respective employees or agents with regard to the DECC Project or any work related thereto. However, because Manager is executing the contracts with Messer, the Architect, and Consultants, Manager shall include in each such contract language that requires Messer and the Consultants to indemnify Manager and to secure and maintain insurance as required hereunder, under the CMAR Agreement, or as required under any other Project Document, with the Manager, the City, and the County named as additional insureds. Manager shall enforce its rights under those agreements in the event of any breach and shall ensure that the City and/or the County (as applicable) may also enforce such agreements in the event of any breach. Notwithstanding anything herein to the contrary, neither the City nor the County shall be entitled to terminate this Agreement for the breach of this Agreement for the breach of Messer or a Consultant, so long as Manager is enforcing its rights under the applicable contract(s) and is actively pursuing a solution to the breach to the satisfaction of the City and the County, which may include Manager’s finding and retaining an adequate substitute construction manager or Consultant satisfactory to the City and the County, in each such entity’s sole and absolute discretion, such approval not to be unreasonably withheld.

5. Plaza Lease. The City and the County hereby agree to work in good faith toward entering into a lease and operating agreement whereby the County will lease the Millennium Site to the City, and the City will operate the Plaza Site in coordination with the operations of the DECC and the remainder of the Project Site and provide other civic and entertainment uses to the general public. The parties anticipate that the lease and operating agreement (the “**Plaza Lease**”) will contain terms substantially in accordance with Exhibit C hereto. For the avoidance of doubt, the actual terms of the Plaza Lease will be finalized in a standalone document separate and apart from this Agreement, and will require additional legislative approvals to effectuate the City’s and the County’s respective interests in the Millennium Site. The parties anticipate the Plaza Lease will be executed and in place no later than the earlier to occur of (a) the execution of the GMP Amendment and (b) the date of closing on the TOT Bonds.

6. City and County Representatives. The City shall act by and through the City Manager or her authorized designee (“**City’s Representative**”) and the County shall act by and through the County

Administrator or his authorized representative (“**County’s Representative**”), and Manager, the City, and the County shall each be entitled to deal with the City’s Representative and the County’s Representative as agents fully authorized and empowered by the City and the County, respectively, to perform the duties and functions set forth herein and to bind the City and the County as to the matters provided for herein (to the extent permitted by applicable law); *provided, however*, that each such request for approval or direction by Manager (i) of the City must be in writing, and each such approval or direction by the City’s Representative must be in writing to bind the City; and (ii) of the County must be in writing, and each such approval or direction by the County’s Representative must be in writing to bind the County. For the avoidance of doubt, Manager, the City, and the County shall each be entitled to reasonably rely on the aforementioned written approval(s) or direction(s) of the City’s Representative on behalf of the City and the County’s Representative on behalf of the County. Manager shall meet with the City’s Representative and the County’s Representative regularly to provide progress reports on the Project. Any decision requiring the expenditure of funds of either the City or the County in excess of the existing authority of the City Manager or the County Administrator, respectively, shall be subject to the approval of the applicable legislative authority. Meetings between Manager, the City’s Representative, and the County’s Representative will take place at least once per month at a mutually agreed upon time and location. To the extent feasible, the City’s Representative and the County’s Representative will be responsive and cooperative during the Term and will provide timely feedback, including endeavoring to respond within 3 business days of a written request by Manager.

7. Insurance; Indemnity.

(A) **Insurance During Construction.** Until such time as all construction work associated with the DECC Project has been completed or, if later, any insurance obligations required pursuant to the CMAR Agreement expire, Manager shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City and the County as additional insured with respect to the DECC Project, (ii) worker’s compensation insurance in such amount as required by law, (iii) all insurance as may be required by the Port, (iv) professional liability insurance for its legal liability arising out of the performance of the services related to the construction of the DECC Project, which insurance shall be in the minimum limits of at least \$1,000,000 per occurrence/\$3,000,000 aggregate, with a maximum deductible not to exceed \$50,000 for each occurrence, naming the City and the County as additional insured, and (v) such other insurance coverage as may be deemed reasonably necessary by the City from time to time. Manager’s insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days’ prior written notice to the City. Prior to commencement of construction of the DECC Project, Manager shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time; *provided* that if the City requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Manager shall have 6 months following the date of the City’s request to obtain such an endorsement from its insurer and provide the original endorsement to the City.

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

(C) **Indemnity.** Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City and the County to enter into this Agreement, Manager shall defend, indemnify, and

hold the City and the County, and their respective officers, council members, commissioners, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages (collectively, "Claims") suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Manager, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Manager in connection with the DECC Project. Notwithstanding the foregoing, if (1) Manager has not engaged in intentional, reckless, fraudulent, or criminal behavior in its performance of the services that Manager is providing to the City and the County pursuant to this Agreement, (2) Manager provides and maintains in force insurance required by the terms of this Agreement and contractually obligates Messer or any other of its contractors or subcontractors to maintain in force the insurance required by the terms of the CMAR Agreement, as approved by the City and County, (3) the insurers have paid or have agreed to pay out those amounts they are required to pay pursuant to such policies, and (4) the denial of a claim or the failure to pay a claim is not caused by the action nor inaction of Manager, including, without limitation, through the failure of Manager to provide timely notice of a claim or to exhaust all appeal rights in response to the denial of a claim or to enforce its agreement(s) with Messer or another contractor to do the same, then Manager's obligation to indemnify and save the City and the County harmless shall be limited to the sum of (x) the insurance proceeds actually paid to Manager by the insurers and (y) any additional amounts Manager may recover from Messer or other contractors and subcontractors hired or engaged pursuant to this Agreement, the CMAR Agreement, or any other Project Documents. For purposes of this calculation, deductibles or retention amounts for which Manager, Messer, or any contractors or subcontractors of either are responsible under this Agreement, the CMAR Agreement, or any applicable insurance policy and any amounts that would have been covered by the required policies but for the action or inaction of Manager, Messer, or the contractors or subcontractors of either, are to be included. *Provided, however,* Manager shall have no obligation to defend, indemnify, and hold the Indemnified Parties harmless in the event such Claims are caused by the negligence or willful misconduct of the Indemnified Parties. Manager's indemnification obligations under this paragraph shall survive the termination or expiration of this Agreement with respect to Claims arising prior thereto. For the avoidance of doubt, the limitation of Manager's indemnification obligations hereunder is not intended as a waiver of any claims the City or the County may have against Messer, Consultants, other contractors or subcontractors, or any other responsible parties, or their insurers for further recovery. Nothing herein shall be construed as an indemnification of Manager by either the City or the County.

8. Default; Remedies.

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

(i) The dissolution of Manager, or the filing of any bankruptcy or insolvency proceedings by or against Manager, the appointment of a receiver (temporary or permanent) for Manager, the attachment of, levy upon, or seizure by legal process of any property of Manager, or the insolvency of Manager; or

(ii) The failure of Manager to perform or observe any obligation, duty, or responsibility under this Agreement or any other Project Document and failure by Manager to correct such default or failure within 60 days after Manager's receipt of written notice thereof from the City or the County; *provided, however,* that if the nature of the default is such that it cannot reasonably be cured within 60 days, Manager shall not be in default so long as Manager commences to cure the default within such 60-day period and thereafter diligently completes such cure within 90 days after Manager's receipt of the initial notice of default. Notwithstanding the foregoing, if Manager's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as reasonably determined by the City and the County, an event of default shall be deemed to have occurred if Manager fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default by Manager under this Agreement, (i) the City shall be entitled to terminate this Agreement by giving written notice to Manager and

the County specifying the effective date of the termination; (ii) take such actions in the way of "self-help" as the City and the County determine to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Manager; and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Manager shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City in connection with administration, enforcement, or termination of this Agreement or as a result of a default of Manager under this Agreement. The failure of the City and the County to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other agreement to which Manager and the City and/or the County are parties relating to the DECC Project shall not constitute a waiver of the breach of such covenant or of such remedy.

9. Termination.

(A) Termination by City Prior to Execution of GMP Amendment or Closing on TOT Bonds.

During the Term, the City may terminate this Agreement at any time for any reason upon 45 days' written notice to Manager and the County. In the event of termination of this Agreement, Manager shall be paid any costs incurred by Manager for completed work associated with the DECC Project, subject to the satisfaction of the City, in the City Manager's sole and absolute discretion, through the termination date of this Agreement. The termination rights of the City under this paragraph shall automatically terminate upon the earlier to occur of (i) execution of a GMP Amendment and (ii) the closing of the TOT Bonds, at least as to the City's commitment to provide the City Cash Funds and its portion of the TOT Revenues. Notwithstanding the foregoing, nothing herein shall limit the City's right to terminate this Agreement as it relates to the engagement of Manager to perform services associated with construction of the DECC Project.

(B) Withdrawal by County Prior to Execution of GMP Amendment or Closing on TOT Bonds. During the Term, the County may withdraw from further participation in this Agreement at any time for any reason upon 30 days' written notice to Manager and the City. The withdrawal rights of the County under this paragraph shall automatically terminate upon the earlier to occur of (i) execution of a GMP Amendment and (ii) the closing of the TOT Bonds, at least as to the County's commitment to provide the County Cash Funds and its portion of the TOT Revenues. For the avoidance of doubt, this Agreement shall not be terminated as to Manager's and the City's respective rights and obligations in the event of a withdrawal of the County's participation from this Agreement.

(C) Notice to Messer, Consultants, Contractors, and Subcontractors. In the event this Agreement is terminated pursuant to Section 8(B)(ii) above or Section 9(A) above, then Manager shall deliver notice to Messer, the architect, and all other consultants, contractors, and subcontractors of Manager or Messer, that all work associated with the DECC Project must cease at the effective date of such termination, as determined pursuant to the applicable paragraph hereof, and Manager shall have no obligation to provide services related to the DECC Project pursuant to this Agreement following the effective date of such termination. Notwithstanding the foregoing, nothing in this Agreement shall prevent the City from assuming Manager's rights and obligations as Owner under the CMAR Agreement, provided that the City delivers proper notice to Manager and Messer of its intent to assume such rights and obligations.

10. Notices. All notices required to be given by the parties hereunder shall be deemed given if in writing and personally delivered, delivered via electronic mail, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as such parties may designate by notice to the other parties given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To Manager:
3CDC Development Manager LLC
1203 Walnut Street, 4th Floor
Cincinnati, Ohio 45202

Attn: Steve Leeper, CEO, and
Caitlin Felvus, Legal Director
sleeper@3CDC.org and cfelvus@3CDC.org

To the City:
City Manager's Office
City of Cincinnati
801 Plum Street, Suite 104
Cincinnati, Ohio 45202
Attn: William Weber, Assistant City Manager
William.Weber@cincinnati-oh.gov

with a copy to:
Solicitor's Office
City of Cincinnati
801 Plum Street, Suite 214
Cincinnati, Ohio 45202
Attn: Emily Smart Woerner, City Solicitor
Emily.Woerner@cincinnati-oh.gov

To the County:
Office of the County Administrator
138 E. Court Street, Room 603
Cincinnati, Ohio 45202
Attn: Jeff Aluotto, County Administrator
Jeff.Aluotto@hamilton-co.org

with a copy to:
Hamilton County Prosecuting Attorney
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Attn: Roger E. Friedmann, Assistant
Prosecuting Attorney
Roger.Friedmann@hcpros.org

11. Representations, Warranties, and Covenants of Manager. Manager makes the following representations, warranties, and covenants to induce the City and the County to enter into this Agreement:

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

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

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

(D) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Manager, threatened against or affecting Manager at law or in equity or before or by any governmental authority.

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

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

(G) Pursuant to Section 301-20 of the Cincinnati Municipal Code, neither Manager nor any of its affiliates are currently delinquent in paying any fines, penalties, judgments, water, or other utility charges, or any other amounts owed by them to the City.

12. Reporting Requirements.

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

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

13. General Provisions.

(A) Assignment; Change of Control.

(i) Assignment. Manager shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City and the County; *provided that* the City and the County will not unreasonably withhold its consent to the assignment by Manager to an entity wholly owned or controlled by 3CDC.

(ii) Change of Control. Manager shall not permit a Change of Control (as defined below) without the prior written consent of the City and the County, which shall not be unreasonably withheld or delayed. As used herein, "**Change of Control**" means a change in the ownership of Manager such that 3CDC has less than a 51% direct or indirect voting interest in Manager and lacks the power to direct or cause the direction of the management and policies of Manager, whether through the ownership of ownership interests in Manager, by contract, or otherwise.

(B) Entire Agreement; Conflicting Provisions. This Agreement, together with the other Project Documents, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other Project Documents, the provisions of such other Project Documents shall control.

(C) Ownership of Property. Manager agrees that, at the expiration or termination of this Agreement, all finished and unfinished documents, data, studies, memoranda, plans, maps, drawings, renderings, designs, specifications, scopes of work, bid packets, working papers, reports, and other documents or information prepared or produced by Manager, Messer, any consultants hired by Manager or Messer, and any other contractors or subcontractors in connection with the DECC Project (the "**Services**")

Documents”) shall become the property of the City, and Manager shall promptly deliver such items to the City. Manager shall ensure that its contracts with Messer, the Architect, and all such consultants, contractors, and subcontractors retained by Manager, Messer, or the Architect to perform work under this Agreement include clear and unambiguous provisions regarding the City’s sole and exclusive ownership of the Services Documents and that any interest Manager, Messer, or the Architect may have in those documents is freely transferable to the City. Manager may retain copies for its records. Upon the County’s request, Manager shall make copies of the Services Documents available to the County for review.

(D) Amendments and Waivers. The provisions of this Agreement may be amended, waived, or otherwise modified only by a written agreement signed by all parties.

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

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

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

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

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

(J) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

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

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

(M) Applicable Laws. Manager shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements in connection with the matters contemplated by this Agreement, including any of the laws and regulations described on Exhibit G (Additional Requirements) hereto which are applicable to the DECC Project.

(N) Contingency for Legislative Authorization. Notwithstanding anything to the contrary in this Agreement, (i) the City shall not be in breach of this Agreement and shall not be required to provide its portion of the TOT Revenues if for any reason City Council does not pass any and all necessary legislation for the DECC Project, including, without limitation, the ordinance(s) authorizing the TOT Bond Documents; and (ii) the County shall not be in breach of this Agreement and shall not be required to provide its portion of the TOT Revenues if for any reason the Board of County Commissioners of Hamilton County, Ohio, does

not pass any and all necessary legislation for the DECC Project, including, without limitation, legislation authorizing the TOT Bond Documents. In the event the necessary legislative authorizations are not obtained, the City or the County may terminate this Agreement by giving written notice thereof to the other parties, whereupon the parties shall thereafter have no rights or obligations under this Agreement. The City's and the County's right to terminate this Agreement pursuant to this Section 10(N) shall automatically terminate at such time as City Council and the Board of County Commissioners of Hamilton County, Ohio, have passed all necessary legislation for the DECC Project.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature.

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

Exhibit A - *Site Plan*

Exhibit B-1 - *Legal Description – DECC*

Exhibit B-2 - *Legal Description – Elm Street*

Exhibit B-3 - *Legal Description – Millennium Site*

Exhibit B-4 - *Legal Description – Convention Way Property*

Exhibit C - *Plaza Lease Terms*

Exhibit D - *Statement of Work*

Exhibit E - *Budget*

Exhibit F - *Disbursement of Funds*

Exhibit G - *Additional Requirements*

[signature page(s) follow]

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

3CDC DEVELOPMENT MANAGER LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 2024

CITY OF CINCINNATI,
an Ohio limited liability company

By: _____
Sheryl M.M. Long
City Manager

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO,
an Ohio political subdivision

By: _____
Jeff Aluotto
County Administrator

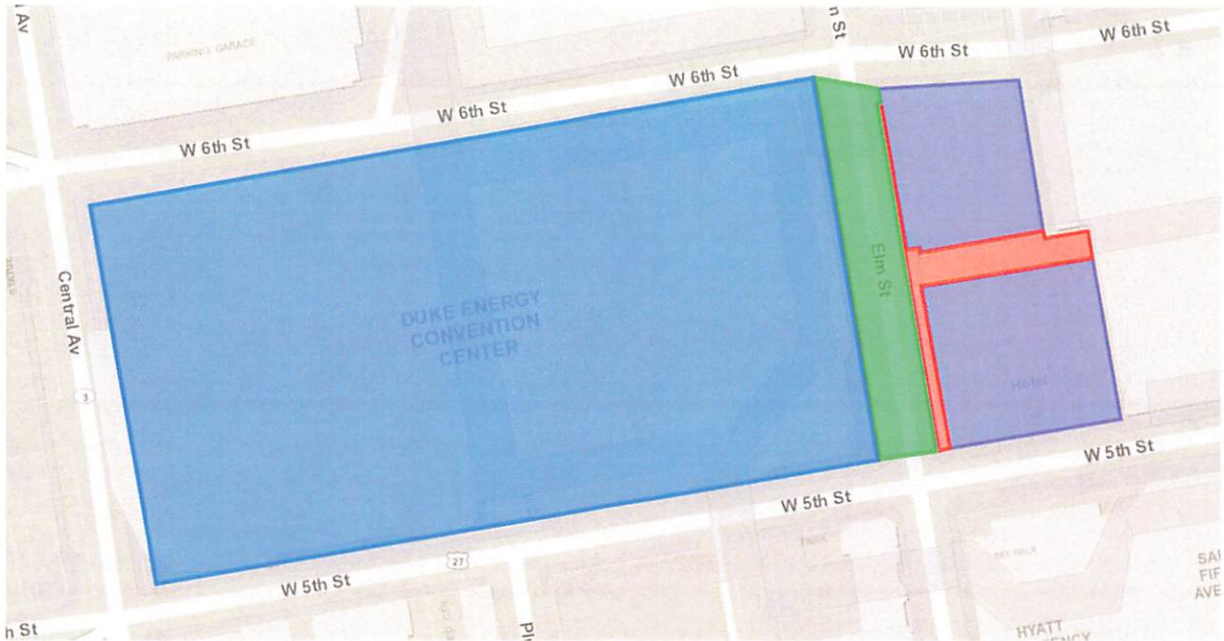
Date: _____, 2024

Approved as to Form:

Assistant Prosecuting Attorney

Exhibit A

Site Plan



Blue: DECC

Green: Former City ROW

Red: Convention Way Property

Purple: Millennium Site

Exhibit B-1

Legal Description – DECC

Parcel 1:

Situate in Section 13, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning a set CN at the intersection of the West line of Elm Street and the North line of Fifth Street, measure with said Fifth Street South 80°20'59" West, 211.43 feet to a set CN; thence South 80°04'02" West, 182.42 feet to a set CN; thence South 80°04'37" West, 172.33 feet to a set CN; thence North 09°55'23" West, 1.62 feet to a set PK nail; thence South 80°17'59" West, 271.33 feet to a set CN at the intersection of said Fifth Street and the East line of Central Avenue; thence with said Central Avenue North 09°47'31" West, 432.61 feet to a set PK nail at the intersection of said Central Avenue and the South line of Sixth Street; thence with said Sixth Street North 80°04'37" East, 419.61 feet to a point; thence North 79°48'15" East, 189.99 feet to a point; thence North 80°04'02" East, 226.90 feet to a Set PK nail in the West line of said Elm Street; thence with said Elm Street South 09°55'31" East, 437.21 feet to the Place of Beginning. Containing 364,147 square feet of land more or less (8.360 acres). Bearings are based on Ohio State Plane Coordinate System.

Parcel 2:

Situate in Section 13, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning a set PK at the intersection of the East line of Central Avenue. and the South line of Sixth Street, measure with said Sixth Street North 80°04'37" East, 210.28 feet to a set CN; thence South 09°55'23" East, 7.14 feet to a set CN; thence South 80°24'59" West, 210.29 feet to a set PK in said East line of Central Avenue; thence North 09°47'31" West; 5.89 feet to the Place of Beginning. Containing 1,370 square feet of land more or less. Bearings are based on Ohio State Plane Coordinate System.

Parcel 3:

Situate in Section 13, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning at the intersection of the West line of Elm Street and the South line of Sixth Street, measure with said Sixth Street South 80°04'02" West, 226.90 feet to a set CN being the Place of Beginning; thence South 09°55'58" East, 10.41 feet to a set CN; thence South

80°24'59" West, 190.00 feet to a set CN; thence North 09°55'23" West, 8.38 feet to a set PK in said South line of Sixth Street; thence North 79°48'15" East; 189.99 feet to the Place of Beginning. Containing 1,785 square feet of land more or less. Bearings are based on Ohio State Plane Coordinate System.

Parcel 4:

Situate in Section 13, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning a set PK at the intersection of the West line of Elm Street and the South line of Sixth Street, measure with said Elm Street South 09°55'31" East, 11.79 feet to a set CN; thence South 80°24'59" West, 42.89 feet to a point; thence North 09°55'58" West, 11.53 feet to a set CN in said South line of Sixth Street; thence North 80°04'02" East; 42.90 feet to the Place of Beginning. Containing 500 square feet of land more or less. Bearings are based on Ohio State Plane Coordinate System.

Exhibit B-2

Legal Description – Elm Street

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B-3

Legal Description – Millennium Site

The Millennium Site consists of Hamilton County Auditor's Parcel Nos. 145-0002-0437-00 and 145-0002-0340-00.

[LEGAL DESCRIPTION(S) TO BE ATTACHED TO EXECUTION VERSION]

Exhibit B-4

Legal Description – Convention Way Property

The Convention Way Property consists of (i) existing right-of-way that is current a paper street known as Convention Way and (ii) Hamilton County Auditor's Parcel Nos. 145-0002-0304-90, 145-0002-0318-90, 145-0002-0320-90, 145-0002-0321-90, 145-0002-0322-90, 145-0002-0323-90, 145-0002-0325-90, 145-0002-0327-90, 145-0002-0336-90, 145-0002-0338-90, 145-0002-0339-90, and 145-0002-0355-90.

[LEGAL DESCRIPTION(S) TO BE ATTACHED TO EXECUTION VERSION]

Exhibit C

Plaza Lease Terms

THIS EXHIBIT IS NON-BINDING AND IS INCLUDED ONLY FOR THE PURPOSES OF INDICATING THE TERMS EXPECTED TO BE A PART OF ONE OR MORE SUBSEQUENT AGREEMENTS BETWEEN THE CITY AND THE COUNTY.

Lease and Permitted Uses

The County agrees to lease to the City the Millennium Site for the purpose of operating, with the inclusion of the Convention Way Property, a cohesive Plaza Site that will support the operations of the DECC and provide other civic and entertainment uses to the general public. The first priority use of the Plaza Site is for the benefit of the DECC and its events and clients. Other uses of the Plaza Site will be secondary.

County-Organized Events at DECC or Plaza Site

The City agrees to grant the County access to the DECC and Plaza Site under the same rights that it maintains for hosting events at those locations. For clarity, the County agrees that any out-of-pocket expenses related to any such event shall be covered by the County.

County Recognition Signage

The City agrees that the County shall be recognized prominently on public signage on the Plaza Site.

Third Party Management

The City shall have the right to enter into agreement(s) with one or more third parties to manage and program the Plaza Site. The County Administrator shall have the right to approve the manager of the Plaza Site and the initial form of the management agreement; however, so long as the City does not change the entity responsible for managing the Plaza Site, then the City shall have the right to extend the term of the management agreement(s) without additional County approval. The County acknowledges that the City utilizes a third-party manager for the DECC and that the management of the Plaza Site is intended to involve both the City's third-party DECC manager as well as Cincinnati Center City Development Corporation or related subsidiary. The agreement or agreements for management of the Plaza Site shall include at minimum the following terms:

1. Scope of Services:

- a. Promotion and Marketing of Plaza
- b. Coordination and Support of Convention Center-hosted Events
- c. Event Coordination, Permitting, and Oversight
- d. Programming and Activation of the Plaza Site
- e. Security
- f. Landscaping
- g. Maintenance, Care, and Cleaning of the Plaza Site
- h. Capital Repairs and Improvements
- i. Revenue Generation, Fundraising, and Sponsorship

2. Annual Reporting on the Plaza Site

Annual reporting to the City and the County shall be required and include, at minimum, the following information:

- a. **Annual Operating Budget** – Detailing expected revenues and expenditures for the coming year of the Plaza Site. The City and the County shall have approval rights of the annual operating budget. In the event of disagreement, the City's determination shall control.

- b. **Prior Year Financial Report** – Detailing revenues, including sponsorship revenue, and expenditures for the previous year and any reserves or cash-on-hand at the end of the year.
 - c. **Inspection Report** – Detailing the condition of the physical conditions of improvements on the Plaza Site.
 - d. **Attendance Report** – Detailing the estimated number and attendance at events on the Plaza Site during the last year—including details as to events directly related to events hosted at the DECC and also those events that were for more general civic, entertainment, or other purposes.
 - e. **Financial Statements** – Audited financial statements will be provided.
3. **Amendments** - City shall have the right to approve amendments to the management agreement(s) without further County consent so long as such amendments do not materially negatively impact the County's rights delineated above.

Costs and Revenue

The City shall be responsible for any and all costs and expenses related to the Plaza Site, including, but not limited to, programming and maintenance. However, the County shall be responsible for paying all property taxes of the Millennium Site, if applicable and not exempted. The City shall be responsible for any special assessments on both the Millennium Site and the Convention Way Property.

Any revenue generated from operations on the Plaza Site shall be utilized to support the operations of the DECC, including the Plaza Site. The City and the County agree that any revenue generated from use of the Plaza Site by an event hosted by the DECC shall be attributed to DECC operations. Remaining revenue generated by the Plaza Site shall be allocated to Plaza Site operations and separately accounted for by the manager of the Plaza Site.

Maintenance and Repair

The City shall appropriately fund all cleaning, maintenance, and repairs to ensure the Plaza Site is clean, well maintained, in good repair, and safe for use.

Capital Improvements

The City may from time to time undertake capital improvements to the Plaza Site to modernize and update the physical improvements located on it. The County shall have approval rights, not to be unreasonably withheld, to any capital improvement projects in excess of \$1 million in project cost. In the event of disagreement, the City's determination shall control, unless the County is being asked to fund the proposed capital improvements.

Naming Rights

The County shall have the right to review and approve for any naming rights agreements for the Plaza Site, which approval shall not be unreasonably withheld.

Rent

The City shall pay the County annual rent of \$1/year for the term of the Plaza Lease.

Term

Effective upon execution, the Plaza Lease shall have a term of 40 years, with two 30-year options to extend upon mutual agreement between the City and the County.

Termination

Following a default by the City on the Plaza Lease, the County may terminate the Plaza Lease; however, the Plaza Lease shall include notice and an opportunity for the City to cure any default before such a default will trigger termination. The City and the County may also terminate by mutual agreement.

Rights to Purchase

The City and the County will work to negotiate mutually agreeable terms that will delineate how and under what conditions the City has the right to purchase the Millennium Site to support a future expansion of the DECC. Such terms are intended to be included in the Plaza Lease. If the City and the County cannot come to terms on a purchase option to support expansion, the financial terms contained in this Exhibit C may be re-negotiated.

Exhibit D

Statement of Work

1. **Final Plans.** Manager shall:
 - a. Submit plans and specifications to the City and the County and secure approval of Final Plans.
 - b. Obtain preliminary estimates of the cost of work or the cost of program requirements using area, volume, or similar cost estimating techniques, including cost evaluations of alternative materials and systems suggested by the architect or Messer and share the same estimates with the City.

2. **Contracting.** Manager shall:
 - a. Negotiate all necessary contracts and subcontracts, including the guaranteed maximum price amendment to the CMAR Agreement (the "**GMP Amendment**"), for the DECC Project and submit the same for the City's review and approval. Manager shall not accept a GMP Amendment without the City's prior written approval. The GMP Amendment shall include a financing contingency in the event the parties do not close on the TOT Bonds by [December 31, 2024].
 - b. The CMAR Agreement includes the development and implementation processes needed to maximize the participation of MBE and WBE certified firms on the DECC Project in accordance with the City's and County's requirements. Manager shall monitor such MBE and WBE participation on City's and County's behalf during the DECC Project.
 - c. Choose the products and materials necessary to equip and furnish the DECC and complete the DECC Project in a manner that satisfies all requirements of the Final Plans.
 - d. Investigate and recommend a schedule for purchase of all materials and equipment requiring long lead time procurement, coordinate the schedule with the architect and expedite and coordinate delivery of such purchases.
 - e. Submit the final Contractor Controlled Insurance Program ("**CCIP**") for the City's review and approval. Manager shall not accept a CCIP without the City's prior written approval.

3. **Oversight during Construction.** Manager shall:
 - a. Cause the DECC Project to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:
 - i. the Final Plans as they may be amended by the agreement of the parties hereto; and
 - ii. any and all obligations of the City and the County under the governing finance documents.
 - b. Coordinate the work of the architect to complete the DECC Project in accordance with the objectives as to cost, time, and quality, and provide sufficient personnel at the Project Site with authority to achieve such objectives.
 - c. Ensure that the DECC Project is completed free and clear of all mechanics' and materialmen's liens and in compliance with all applicable laws, regulations, and programs including, without limitation, applicable living wage and prevailing wage laws and requirements.
 - d. Provide to the City and the County, and periodically update, a building construction time schedule which coordinates and integrates the architect's services with construction schedules.
 - e. Provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete, recommend to the City and the County adjustments in the schedule to meet the probable completion date, provide summary of such monitoring within the quarterly reports required pursuant to this Agreement, and document all changes in the schedule.

- f. When requirements of subcontracts are not being fulfilled, take action pursuant to Manager's agreements with subcontractors and recommend other courses of action to the City and the County, as applicable and necessary.
- g. Revise and refine the approved estimate of DECC Project costs, incorporate changes as they occur, and develop cash flow reports and forecasts as needed.
- h. Provide regular monitoring of the approved estimate of DECC Project costs, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the City and the County whenever projected costs exceed budgets or estimates.
- i. Develop and implement a procedure for the review and processing of applications by the contractors and subcontractors for progress and final payments.
- j. In collaboration with the architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples.
- k. Record the progress of the DECC Project and submit written progress reports to the City, the County, and the architect, including the percentage of completion and the number and amounts of change orders (as defined below).
- l. Cause to be performed in a diligent and efficient manner the following:
 - i. Redevelopment of the Project Site and completion of the DECC project, including any required off-site work;
 - ii. General administration and supervision of the DECC Project, including, without limitation, activities of the architect, Messer, contractors, subcontractors, consultants, and their employees and agents, and others employed as to the DECC Project in a manner which complies in all respects with the Final Plans.
 - iii. Manager shall hold regularly scheduled progress meetings. Minutes of all such meetings shall be taken by the architect, Messer, or any subcontractors or consultants, and copies of the same shall be furnished on a timely basis to the City and the County.
 - iv. Manager shall hold quarterly meetings in coordination with the submission of quarterly reports with the City and the County during the DECC Project. During the quarterly meetings the Manager will review the quarterly report, including, without limitation, issues involving the DECC Project scope, schedule, Budget, or construction.
 - v. Manager shall inspect the work in progress weekly during construction. Manager shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the construction work but will, on the basis of the site visits, keep the City and the County informed about the progress and quality of the portion of the work completed.
 - vi. Manager shall issue all instructions to the design team, any consultants, the architect, Messer, contractors, and any subcontractors for and on behalf of the City and the County, and shall be responsible for all communications from the City and the County to any consultants, the architect, Messer, and any contractors or subcontractors.
 - vii. Manager shall act as interpreter of the requirements of all documents related to the construction of the DECC Project and as judge of performance thereunder by the parties thereto and shall make recommendations to the City and the County as to any claim of the design team, any consultants, the architect, contractors, and any subcontractors relating to execution and progress of work on the DECC Project, or any other matter or question relating thereto. Manager shall not be liable for results of any such interpretation, decision, or recommendation rendered by Manager in good faith, and without negligence or willful misconduct on its part.
 - viii. Manager shall review and approve on behalf of the City and the County all change orders and requests for additional compensation from the DECC Project participants (collectively referred to in this paragraph as "change orders"). Manager shall have authority on the City's and the County's behalf to issue or approve change orders without the City's and the County's approval during

execution of the DECC Project so long as (a) the projected costs of the DECC Project, after taking into account all such change orders, do not exceed the total Budget, (b) the general character and appearance of the DECC Project are not materially affected by such change orders, and (c) the cost of the change order does not exceed \$150,000. In the event a change order does not meet conditions (a)-(c) above, then Manager shall obtain the City's and County's prior written approval prior to approving any such change order.

4. Administration. Manager shall:

- a. Keep, or cause to be kept, accounts and cost records as to the DECC Project.
- b. Maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions.
- c. Make available to the City and the County, during normal business hours and upon the City's or the County's written request, copies of all contracts and subcontracts.
- d. Provide general DECC Project financial and accounting services for the City and the County during the DECC Project including (i) accounting and financial oversight and reporting; (ii) periodic accounting reconciliations (daily, monthly, quarterly, or yearly, as needed); (iii) year-end tax statements and reporting, as needed; (iv) payroll and invoice entry and processing; (v) monthly departmental reports to the City and the County; (vi) maintenance of vendor information and records; (vii) coordination and preparation of an annual DECC Project development budget; (viii) coordination of the annual audit with the City and the County and the City's and the County's independent audit firms; (ix) pledges receivables tracking; (x) quarterly Ohio lobby reporting; and (xi) other similar services as may be agreed to by the City, the County, and Manager.

5. Project Close-out. Manager shall:

- a. Obtain an architect's certificate that the work on the DECC Project is substantially complete, and inspect Messer's work, which work must be completed to the satisfaction of the City, in the City's sole and absolute discretion.
- b. Deliver to the City and the County a dimensioned as-built survey of the real property and as-built drawings of the DECC Project construction.
- c. Coordinate the DECC Project close out, including required governmental inspections. Obtain a certificate of occupancy and any other permits, approvals, licenses, and other documents required for the beneficial occupancy of the DECC and the broader Project Site, and deliver all documents to the City. Manage execution and delivery of all close out documentation, manuals, warranties, training, and maintenance agreements.

Exhibit E

Budget

USES	
Hard Costs	
Construction Cost	159,055,242
FF&E	6,450,000
Subtotal Hard Costs	165,505,242
Soft Costs	
Architecture/Engineering	15,905,224
Insurance	830,000
Utilities	1,350,000
Construction Testing	150,000
Construction Inspections	100,000
Professional Fees	965,670
Title & Recording Fees	530,000
Legal Fees	290,044
Marketing & Signage	35,000
Interest	10,000
Contingency	10,500,000
Developer Fee	3,828,820
Subtotal Soft Costs	34,494,758
TOTAL USES	200,000,000
SOURCES	
City of Cincinnati (previously approved)	7,000,000
City of Cincinnati	23,000,000
Hamilton County	15,000,000
Bond Proceeds	155,000,000
TOTAL SOURCES	200,000,000

From time to time during the course of the Project, the parties anticipate that the Budget will need to be updated. In accordance with the terms of this Agreement, Manager shall submit to the City's Representative and the County's Representative any proposed updates to the Budget in writing for their review and approval, which approval will be provided in the City's and County's sole and absolute discretion.

Exhibit F

Disbursement of Funds

(A) Conditions to be Satisfied Prior to Disbursement of City Cash Funds and County Cash Funds. The City and the County shall be under no obligation to disburse any City Cash Funds or County Cash Funds unless and until the following conditions are satisfied and continue to be satisfied:

(i) Manager has provided the City and the County with evidence of insurance required under this Agreement;

(ii) Manager has provided the City and the County with evidence that it has obtained all licenses, permits, governmental approvals, and the like necessary for the construction work, if any, with respect to which the City Cash Funds and County Cash Funds are being requested;

(iii) Construction of the DECC Project, to the extent it has commenced, is proceeding in accordance with the Final Plans, Budget, and construction schedule;

(iv) Manager has provided the City and the County with such other documents, reports and information relating to the DECC Project (a) as required by this Agreement or (b) as the City or the County has reasonably requested; and

(v) No events of default by Manager or circumstances which would, by provision of notice, the passage of time, or otherwise, constitute events of default, have occurred and are continuing under this Agreement, the Pre-Development Agreement, or any other Project Document.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the City Cash Funds and the County Cash Funds (collectively, the City Cash Funds and the County Cash Funds are hereinafter referred to as the "**Funds**" for the purposes of this Exhibit E) shall have been satisfied, the City and the County shall disburse the Funds to Developer. The City shall disburse the City Cash Funds and the County shall disburse the County Cash Funds, and they shall be disbursed pro-rata (i.e., the City Cash Funds and the County Cash Funds shall be disbursed simultaneously on a pro-rata basis). For the avoidance of doubt, nothing herein shall be construed to require the City or the County to disburse the City Cash Funds or the County Cash Funds on an advance basis. Manager shall not be entitled to a disbursement of the Funds to pay for costs incurred prior to June 1, 2023. Manager shall request and use the Funds solely for the purposes permitted under this Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of the Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or for any other purpose expressly disapproved in writing by the City and the County. Manager may not request a disbursement of the Funds for any expenditure that is not itemized on or contemplated by the Budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the Budget; however, Manager may request, in writing, that funds be transferred between line items, with the City's and the County's approval thereof not to be unreasonably withheld. Disbursements from the project account shall be limited to an amount equal to the actual cost of the work, materials, and labor incorporated in the work up to the amount of such items as set forth in the request for payment.

(C) Draw Procedure.

(i) Frequency. Manager may make disbursement requests no more frequently than once in any 30 day period.

(ii) Documentation. Each disbursement request shall include the following:

(a) For non-construction costs shown on the approved Budget, Manager shall submit a draw request form provided by the City and the County along with such other documentation or information requested by the City and the County relevant to the requested disbursement.

(b) For construction costs shown on the approved Budget, Manager shall submit a draw request form provided by the City and the County, with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City and the County, (ii) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from all contractors, subcontractors, and materialmen with contracts for \$25,000 or more covering all work, labor, and materials for the work through the date of the disbursement and establishing that all such work, labor, and materials have been paid for in full, (iii) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein, and (iv) such other documentation or information requested by the City that a prudent construction lender might request. To the extent Messer and/or Manager collects any affidavits or lien waivers pursuant to this Agreement and/or the CMAR Agreement that are signed, fully-executed originals, then those signed, fully-executed originals shall be delivered to the City upon completion of construction as provided for herein.

(D) Estoppel Certification. A request for the disbursement of the Funds shall, unless otherwise indicated in writing at the time Manager makes such request, be deemed as a representation and certification by the requestor that (i) all work done and materials supplied to date are in accordance with the approved plans and specifications and in strict compliance with all legal requirements as of the date of the request, (ii) the construction is being completed in accordance with the approved Budget and construction schedule, and (iii) the requestor, the City, and the County have complied with all of their respective obligations under this Agreement. If Manager alleges that the City or the County has been or is then in default under this Agreement at the time either makes such request, and if the City and/or the County disputes such allegation, the City and the County shall not be obligated to make or authorize such disbursement(s) until the alleged default has been resolved.

Exhibit G

Additional Requirements

Manager and Messer shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Manager hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the DECC Project, Manager, or Manager's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) the City and the County and their respective legal departments are not providing legal counsel to or creating attorney-client relationships with Manager by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information With Respect to Government Requirements.

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

(ii) Affirmatively Imposing Contractual Obligations.

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

(A) Reserved.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati Ordinance No. 130-2002, this requirement is limited to transactions in which Manager receives City funds or other assistance (including, without limitation, the City's construction of public improvements to specifically benefit the DECC Project, or the City's sale of real property to Manager at below fair market value).

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

shall provide to the City, in writing, a summary of Manager and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts: Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code ("**CMC**") Chapter 321. CMC Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority," and "contract" as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

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

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

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

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

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

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

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

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the

"scope of work" and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than 14 days prior to the deadline for submission of bids stated in the invitation to bid.

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

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

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

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

(F) Reserved.

(G) Equal Employment Opportunity.

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

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

(H) Prevailing Wage. Manager shall comply, and shall cause all contractors working on the DECC Project to comply, with all any prevailing wage requirements that may be applicable to the DECC Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Manager shall make such payments or reimburse the City for such payments within 20 days of demand therefor.

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

(J) Prompt Payment. The provisions of Chapter 319 of the CMC, which provides for a "Prompt Payment System", may apply to this Agreement. CMC Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

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

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

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the CMC (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. CMC 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 CMC. 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 CMC) 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 CMC, 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 CMC, 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 CMC, 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 CMC, 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 CMC Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

(N) Americans with Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including without limitation the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

(Q) **Use of Nonfranchised Commercial Waste Haulers Prohibited.** The City requires that persons providing commercial waste collection services (as that term is defined under CMC Chapter 730) within the City of Cincinnati obtain a franchise, and the City maintains a list of franchised commercial waste haulers. Manager is prohibited from using or hiring (or causing to be used or hired) a nonfranchised commercial waste hauler to provide commercial waste collection services in connection with the performance of this Agreement, and Manager is responsible for ensuring that any commercial waste collection services provided in connection with the performance of this Agreement are provided by a franchised commercial waste hauler. Questions related to the use of commercial waste franchisees can be directed to, and a list of current franchisees can be obtained from, the City's Office of Environment & Sustainability by calling (513)352-3200.