

City of Cincinnati

CHM

An Ordinance No. 241

- 2021

BWB

AUTHORIZING the City Manager to vacate approximately 0.8573 acres of the public right-of-way designated as Gest Street; **AUTHORIZING** the City Manager to execute a *First Amendment to Amended and Restated Lease Agreement* with CBT Partners, LLC pursuant to which the City will add approximately 0.8573 acres of the vacated portion of Gest Street and approximately 0.6112 acres of public right-of-way designated as Baymiller Street to an existing lease of approximately 35 acres of City-owned land located south of West Mehring Way and east of the Mill Creek in the Queensgate neighborhood; and **AUTHORIZING** the City Manager to execute a *Grant of Easement* in favor of CBT Partners, LLC and Mehring Investors, LLC, pursuant to which the City will grant an aerial encroachment easement to permit an aerial conveyor above and across the West Mehring Way public right-of-way, in order to facilitate the redevelopment and safe and efficient use of the City's leased property by CBT Partners, LLC.

WHEREAS, pursuant to an *Amended and Restated Lease Agreement* dated June 18, 2020 (the "Lease"), the City leases approximately 35 acres of City-owned land located east of the Mill Creek and south of Mehring Way in the Queensgate neighborhood (the "Leased Property") to CBT Partners, LLC, an Ohio limited liability company ("CBT") for a 40-year term; and

WHEREAS, the City owns the following real property generally located east of the Mill Creek: (i) approximately 0.8573 acres of unimproved public right-of-way designated as Gest Street (the "Gest Street Property"); (ii) approximately 0.6112 acres of unimproved public right-of-way designated as Baymiller Street (the "Baymiller Street Property"); and (iii) improved public right-of-way designated as West Mehring Way abutting portions of the Leased Property, which properties are under the management of the Department of Transportation and Engineering ("DOT"); and

WHEREAS, the City's Law Department has certified that the City owns all the abutting property to the Gest Street Property, and the City Manager, in consultation with DOT, recommends that Council vacate the Gest Street Property, finding there is good cause for the vacation of the Gest Street Property, and that such vacation will not be detrimental to the general interest; and

WHEREAS, the City and CBT seek to amend the Lease to incorporate the Gest Street Property and the Baymiller Street Property therein, as more particularly detailed in the *First Amendment to Amended and Restated Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, CBT desires to construct an elevated conveyor above and across the West Mehring Way public right-of-way and has requested an aerial encroachment easement from the

City, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment B and incorporated herein by reference; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-1, the City may lease or encumber real property if it is not needed for municipal purposes for the duration of the lease term and the lease or encumbrance is not adverse to the City's retained interest in the real property; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that (i) the Gest Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease, (ii) the above-grade portion of the Baymiller Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease, (iii) leasing the Gest Street Property and the Baymiller Street Property to CBT is not adverse to the City's retained interest in said City-owned property, (iv) granting the aerial encroachment easement to CBT is not adverse to the City's retained interest in the West Mehring Way public right-of-way, and (v) granting the aerial encroachment easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and

WHEREAS, the City's Real Estate Services Division has determined by appraisal that the fair market rental value of the Gest Street Property is approximately \$3,640 per year, the fair market rental value of the Baymiller Street Property is approximately \$2,595 per year, and the fair market value of the easement is approximately \$8,250, which figures CBT has agreed to pay; and

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

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

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation of the Gest Street Property, the lease of the Gest Street Property, the lease of the Baymiller Street Property, and the aerial encroachment easement at its meeting on December 18, 2020; now, therefore,

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

Section 1. That the City Manager is hereby authorized to do all things necessary to vacate 0.8573 acres of real property designated as a portion of the Gest Street public right-of-

way. The portion of Gest Street to be vacated is more particularly described as follows, (the “Gest Street Property”):

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part Gest Street, formally known as Mill Street, as shown on Yeatman and Anderson’s Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder’s Office and being more particularly described as follows: BEGINNING at a set iron pin in the east line of Gest Street, said iron pin being South 33°49’46” West, 25.00 feet from the northwest corner of Lot 50 of Yeatman and Anderson’s Subdivision and at the intersection of south line of Mehring Way with the east line of Gest Street; Thence along said east line, South 33°49’46” West, 621.63 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder’s Office, passing a set iron pin at 355.00 feet; Thence along said low water mark, North 57°39’48” West, 60.02 feet to the west line of Gest Street; Thence along said west line, North 33°49’46” East, 623.19 feet to a set iron pin, passing a set iron pin at 263.19 feet; Thence leaving said west line, South 56°10’14” East, 60.00 feet to the POINT OF BEGINNING. CONTAINING 0.8573 ACRES. Being part of Gest Street, formerly known as Mill Street, of Yeatman and Anderson’s Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder’s Office.

Section 2. That the City Manager is hereby authorized to execute the *First Amendment to Amended and Restated Lease Agreement* with CBT Partners, LLC, an Ohio limited liability company (“CBT”), in substantially the form attached to this ordinance as Attachment A (the “First Amendment”), which First Amendment amends that certain *Amended and Restated Lease Agreement*, dated June 18, 2020, between the City and CBT (the “Lease”) by incorporating into the Lease the Gest Street Property and approximately 0.6112 acres of unimproved real property comprising a portion of the Baymiller Street public right-of-way (the “Baymiller Street Property”).

Section 3. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of CBT, in substantially the form attached to this ordinance as Attachment B and incorporated by reference herein, pursuant to which the City of Cincinnati will grant to CBT and Mehring Investors, LLC, an Ohio limited liability company, an aerial encroachment easement to construct, operate, and maintain an elevated conveyor above and across portions of the West Mehring Way public right-of-way (the “Encroachment Easement”).

Section 4. That Council finds (i) that there is good cause to vacate the Gest Street Property, that such vacation will not be detrimental to the general interest, and the Gest Street Property is not needed for any municipal purpose for the duration of the Lease; (ii) that the above grade portion of the Baymiller Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease; (iii) that leasing the Gest Street Property and the Baymiller Street Property to CBT is not adverse to the City’s retained interest in said City-owned properties; (iv) that granting the Encroachment Easement to CBT and Mehring Investors, LLC is not adverse to the City’s retained interest in the West Mehring Way public right-of-way; and (v) that granting the Encroachment Easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities.

Section 5. That eliminating competitive bidding in connection with the City’s lease of the Gest Street Property and lease of the Baymiller Street Property is in the best interest of the City because as a practical matter, no one other than CBT, a long-term leasehold tenant of the properties that abut and surround the Gest Street Property and the Baymiller Street Property, would have any interest in leasing said City-owned properties and assuming responsibility for the maintenance and care thereof. That eliminating competitive bidding in connection with the City’s grant of the Encroachment Easement is in the best interest of the City because as a

practical matter, no one other than CBT and Mehring Investors, LLC, a long-term leasehold tenant and the owner of property on the north and south sides of the West Mehring Way public right-of-way, would have any use for the Encroachment Easement.

Section 6. That the City's Real Estate Services Division has determined by appraisal that the fair market rental value of the Gest Street Property is approximately \$3,640 per year, the fair market rental value of the Baymiller Street Property is approximately \$2,595 per year, and the fair market value of the Encroachment Easement is approximately \$8,250, which figures CBT has agreed to pay.

Section 7. That the proceeds from the *Grant of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the *Grant of Easement*, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof related to the *Grant of Easement*, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 8. That the City's Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements," in which "YY" represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 9. That proceeds from the lease of the Gest Street Property and the Baymiller Street Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the First Amendment, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Urban Development Property Operations Fund 317.

Section 10. That, pursuant to Ohio Revised Code Section 723.041, any affected public utility shall be deemed to have a permanent easement in the Gest Street Property for the purpose of maintaining, operating, renewing, reconstructing, and removing its utility facilities and for purposes of access to said facilities.

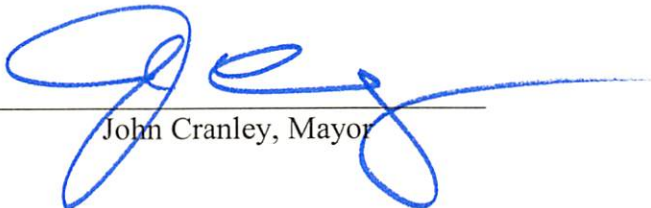
Section 11. That Council authorizes the proper City officials to take all necessary and proper actions as they deem necessary or appropriate to fulfill the terms of this ordinance and the transactions described herein, including without limitation, executing any and all plats, deeds, leases, closing documents, agreements, amendments, memorandums of lease, and other instruments otherwise described in or required to fulfill the terms of the transactions described herein.

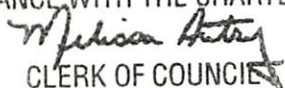
Section 12. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

Section 13. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: June 16, 2021

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO. 241-2021
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 6-29-2021

CLERK OF COUNCIL