

# City of Cincinnati

CHM

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## An Ordinance No. \_\_\_\_\_

- 2022

**AUTHORIZING** the City Manager to execute a *Supplemental Agreement* with the Cincinnati Museum Association, an Ohio nonprofit corporation doing business as the Cincinnati Art Museum, for the long-term use and maintenance of a portion of Eden Park in the Walnut Hills and Mt. Adams neighborhoods.

WHEREAS, the City owns the real property commonly known as Eden Park located in the Walnut Hills and Mt. Adams neighborhood (the “Property”), which is under the management and control of the Board of Park Commissioners for the City of Cincinnati (the “Park Board”); and

WHEREAS, pursuant to an *Agreement* by and between the City and the Cincinnati Museum Association, an Ohio nonprofit corporation doing business as the Cincinnati Art Museum (“CMA”), dated February 17, 1882, CMA maintains and uses a portion of the Property upon which CMA has constructed and operates a facility commonly known as the Cincinnati Art Museum (“Art Museum Grounds”); and

WHEREAS, CMA has requested a long-term, non-exclusive license to use and maintain an additional portion of the Property, as more particularly shown in the *Supplemental Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (“License and Maintenance Area”), as a new privately funded and constructed entrance from Eden Park Drive to the Art Museum Grounds and for associated private infrastructure improvements (“Improvements”) for a term that is coterminous with the term of the *Agreement*; and

WHEREAS, CMA has made a significant investment in designing and constructing the Improvements in contemplation of the execution of a supplemental agreement with the City pertaining thereto, and, under the proposed *Supplemental Agreement*, CMA will be required to keep and maintain the License and Maintenance Area and the Improvements in good, clean, and safe condition and repair and in accordance with the Park Board standards at no expense to the City; and

WHEREAS, in exchange for CMA’s agreement to keep and maintain the License and Maintenance Area and the Improvements in good, clean, and safe condition and repair at no expense to the City, and in recognition of the ongoing benefit to the City of having access to cultural and educational programs, activities, and opportunities in areas directly concerned with the arts, the City is agreeable to permitting CMA to use and maintain the License and Maintenance Area and the Improvements on the Property without payment of a license fee or rent; and

WHEREAS, the City has determined that CMA’s use and maintenance of the License and Maintenance Area and the Improvements will enhance and expand the community’s

exposure to cultural and educational programs, activities, and opportunities in areas directly concerned with the arts, while maximizing the Property's natural features to ensure a safe and attractive space for use by citizens and visitors for park purposes, and that it is therefore in the vital and best interests of the City and the health, safety, and welfare of its residents, and is consistent with the public purposes and provisions of applicable federal, state, and local laws and requirements; and

WHEREAS, the Park Board approved the construction and installation of the Improvements and the use and maintenance of the License and Maintenance Area at its meeting on November 17, 2016; and

WHEREAS, the City Planning Commission, having the authority to approve the change in use of City-owned property, approved the Improvements and the use and maintenance of the License and Maintenance Area at its meeting on June 3, 2022; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Supplemental Agreement* with the Cincinnati Museum Association, an Ohio nonprofit corporation doing business as the Cincinnati Art Museum ("CMA"), in substantially the form attached as Attachment A hereto and incorporated by reference, pursuant to which the City will grant CMA a non-exclusive license to use and maintain a portion of Eden Park to construct, use, and maintain a driveway entrance and associated infrastructure improvements, without payment of a license fee or rent, for a term that is coterminous with the term of the *Agreement* by and between the City and CMA dated February 17, 1882.

Section 2. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of the *Supplemental Agreement* and this ordinance, including, without limitation, executing any and all ancillary documents associated with the *Supplemental Agreement*, such as amendments or supplements to the *Supplemental Agreement* deemed by the City Manager to be in the vital and best interests of the City.

Section 3. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: \_\_\_\_\_, 2022

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

## Attachment A

Property: Eden Park

### SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **CINCINNATI MUSEUM ASSOCIATION**, an Ohio non-profit corporation, dba **CINCINNATI ART MUSEUM**, the address of which is 953 Eden Park Drive, Cincinnati, OH 45202, ("**CMA**").

#### Recitals:

A. By virtue of a deed recorded in Deed Book 524, Page 87, Hamilton County, Ohio Records, the City owns certain real property commonly known as Eden Park, which is under the management and control of the Board of Park Commissioners (the "**Park Board**"), as more particularly identified as Hamilton County, Ohio Auditor's Parcel Nos.: 499-0001-0001 & 71-0001-0106 (the "**Park Property**").

B. Pursuant to that certain *Agreement* by and between the City and CMA dated February 17, 1882, and recorded in Deed Book 529, Page 249, Hamilton County, Ohio Records (the "**1882 Agreement**") CMA maintains and uses a portion of the Park Property owned in fee by the City upon which CMA has built a facility commonly known as the Cincinnati Art Museum (the "**Art Museum Grounds**"). The Art Museum Grounds are more particularly described in the 1882 Agreement.

C. CMA desires to use and maintain a portion of the Park Property shown on Exhibit A (*License Area*) hereto (the "**License Area**") to construct a new entrance from Eden Park Drive to the Art Museum Grounds (the "**Project**"), which Project involves the excavation and grading of the License Area to establish sloping cuts, and fill to construct retaining walls, an asphalt access drive, curbs, gutters, sidewalks, fiber and electrical utility conduit lines, electric light poles and fixtures, stormwater and combined sewer lines and associated appurtenances and equipment, irrigation lines and associated appurtenances and equipment, landscaping, art (including but not limited to statuary), and entry-feature sign on, under, over, and across the License Area (the "**Improvements**"), as generally depicted on Exhibit B (*Site Plan*) hereto, and, with respect to the infrastructure portion of the Improvements, as more particularly detailed and depicted in the development plans submitted under Building Permit No. 2021P05445 (the "**Plans**"), which Plans are incorporated herein by reference and made a part hereof (the "Infrastructure Improvements").

D. The City has determined that the Project will expand exposure to cultural and educational programs, activities, and opportunities in areas directly concerned with the arts, while maximizing the Park Property's natural features to ensure a safe and attractive space for use by citizens and visitors for park purposes; therefore, the City believes that the Project is in the vital and best interests of the City and the health, safety, and general welfare of its residents because CMA is an important cultural asset that will continue to foster and encourage the development of the arts within the City for the economic benefit of the City.

E. CMA shall pay for the Project using its own funds, by fundraising, and obtaining grants and/or loans from third parties. CMA acknowledges that there will be no City funding for the construction of the Improvements and that, if City funding is provided, CMA's acceptance of such funding may impact the applicability of certain City and/or state requirements with respect to any portion of the Project involving City funding.

F. The City Manager, in consultation with the Park Board, has determined that granting this non-exclusive license will not have an adverse effect on the City's retained interest in the Park Property.

G. CMA has made a sizable investment in the Project, and as a material inducement for the City to enter into this Agreement, CMA at no cost to the City or Park Board, shall keep the area shown on Exhibit C (Maintenance Area) (the "**Maintenance Area**", and together with the License Area, the "**License and Maintenance Areas**") in good, clean, and safe condition and repair and in accordance with Park Board standards as applied to Park Board facilities and grounds. In exchange for CMA's agreement to maintain the Maintenance Area at no expense to the City, the City is agreeable to permit CMA to use the License and Maintenance Areas without paying a license fee or rent.

H. The Park Board approved CMA's construction of the Improvements at its meeting on November 17, 2016.

I. The City Planning Commission, having the authority to approve the change in use of City-owned property, approved the Improvements at its meeting on June 3, 2022.

J. Execution of this instrument was authorized by Ordinance No. [ ]-[ ], passed by Cincinnati City Council on [ ], 2022.

NOW THEREFORE, the City does hereby agree as follows:

**1. Grant of License.**

(A) Grant; Permitted Uses. Subject to the terms and conditions set forth herein, the City does hereby grant to CMA, its employees, agents, and contractors a non-exclusive license to perform all necessary and appropriate activities necessary (i) to construct, install, occupy, use, operate, maintain, repair, reconstruct, remove, and replace the Improvements on, under, over, and across the License Area for the benefit of, and incidental to, any activities related to or arising out of CMA's use of the Art Museum Grounds pursuant to the 1882 Agreement; and (ii) to keep the Maintenance Area in good, clean and safe condition and repair and in accordance with Park Board standards as applied to Park Board facilities and grounds in a professional businesslike and efficient manner, including utilizing properly trained employees, volunteers and contractors (collectively, the "**Permitted Uses**"). CMA shall not use or permit the use of the License Area in any manner that is inconsistent with the privileges granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the full use and enjoyment of the Park Property, as determined by the City.

(B) Due Diligence. CMA acknowledges and agrees that as part of the construction of the Improvements, CMA has conducted its own title search, environmental assessments, soil, and geotechnical studies, and other due diligence to familiarize itself with the condition and characteristics of the Park Property. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Park Property or the suitability or fitness of the Park Property for the Permitted Uses. CMA acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Park Property.

(C) No Interest in Real Property. CMA acknowledges and agrees that this Agreement creates a non-exclusive license only and does not create a leasehold interest or other interest in the Licensed Area or Maintenance Area. CMA acknowledges and agrees that the non-exclusive license granted herein is subject and subordinate to any and all easements, covenants, restrictions, and other matters of record, matters that would be disclosed upon an ordinary inspection or survey of the Park Property, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and the general public. CMA shall not have the right to grant any easements or otherwise encumber the City's title to the Park Property without the City's prior written consent. CMA acknowledges that any encumbrances may require approval of City Council under the Cincinnati Municipal Code.

(D) Sole Risk. Entry upon the License and Maintenance Areas shall be at the sole risk of CMA, its employees, agents, contractors, subcontractors, and volunteers. While on the License Area or Maintenance Area, CMA shall not interfere with the rights of Park Board staff or anyone else having the legal right to be on the Park Property.

(E) No City Funding; Ownership of Improvements. The parties acknowledge and agree that (i) the City is not providing any funding or compensation to CMA associated with the construction and maintenance of the Improvements under this Agreement; and (ii) upon completion, the Improvements shall remain under the ownership and control of CMA, and CMA shall be solely responsible for maintaining, repairing, replacing, reconstructing, reinstalling, restoring, removing, or abandoning the Improvements at no cost to the City or the Park Board.

(F) City's Right to Inspect. CMA acknowledges and agrees that the City retains the unrestricted right for its employees and agents to enter upon the License and Maintenance Areas from time to time for any proper purpose, provided, however, that in exercising such rights, (i) the City shall not unreasonably impair CMA's use of the License and Maintenance Areas for the Permitted Uses.

(G) Access by Public Utilities. Any and all public utilities that have existing utility facilities within the License and Maintenance Areas shall have continuous access to such utility facilities (24 hours/day, 7 days/week, 52 weeks/year) for the maintenance, repair and replacement thereof. CMA shall not undertake any action or construct any improvements within the License and Maintenance Areas that may interfere with any such utility company's rights without having first obtained such utility company's consent. If CMA, its employees, agents, contractors, subcontractors, licensees or invitees cause damage to such utility company's facilities, CMA shall promptly reimburse the affected utility company for the cost of repairing such damage.

(H) No Agency, Partnership, or Joint Venture. CMA acknowledges and agrees that the City and the Park Board are not retaining CMA to provide professional services to the City under this Agreement. CMA, its employees, agents, contractors, subcontractors, and volunteers, shall not be deemed to be agents, servants, or employees of the City or Park Board and no person performing any activities hereunder or otherwise engaged in activities related to or arising out of the Permitted Uses shall be considered an officer, agent, servant, or employee of the City or Park Board, nor shall any such person be entitled to any benefits available or granted to employees of the City. Except as otherwise expressly provided under this Agreement, CMA shall have the exclusive right to control the details of the installation, maintenance, landscaping, lawncare, or any other services provided to the Maintenance Area and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and volunteers, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and CMA. Under no circumstances shall CMA or its employees, agents, or volunteers hold themselves out as employees, agents, or representatives of the City or the Park Board.

(I) Third-Party Contracts. CMA shall have authority to enter into contracts with third-party independent contractors for labor, materials, and services required in connection with the installation,

physical maintenance, repair, improvement or replacement of the Improvements and maintenance of the Maintenance Area. Each such contract entered into by CMA shall (i) be either in the name of CMA or its designee as agent for CMA, and (ii) require the third-party contractor (e.g., general contractors and service providers) to provide evidence of reasonable insurance as it relates to such contract (e.g., worker's compensation, employer's liability covering all persons performing work, and commercial general liability insurance). All commercial general liability insurance coverage pertaining to the work shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, and shall name the City and Park Board as additional insureds. CMA may impose additional insurance requirements upon its third-party contractors as recommended by CMA's independent insurance consultant/broker or as otherwise deemed appropriate by CMA. Notwithstanding anything in this Agreement to the contrary, CMA shall not have the authority to enter into any contract in the name of, or to exercise any right or make any decision on behalf of, the City or Park Board.

(J) Open to Public Use. CMA acknowledges and agrees that the License and Maintenance Areas are public open space used for park purposes, and CMA must honor the public's fundamental rights to such space. CMA acknowledges that the License and Maintenance Areas are a public forum that is open and available to all members of the public pursuant to the United States and Ohio constitutions. Notwithstanding anything herein to the contrary, the License and Maintenance Areas shall remain a public open space used for park purposes and CMA shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements that attach to such public open spaces. CMA's temporary closing or barricading of the License and Maintenance Areas for maintenance, repairs, or alterations shall not constitute a violation of this section provided that CMA provides prior written notice to the Park Board.

2. Term (coterminous with the 1882 Agreement). The term ("Term") of this Agreement shall commence on the Effective Date, and unless sooner terminated as provided herein, shall end on the same date the 1882 Agreement expires or is terminated. All obligations of CMA under this Agreement that have accrued but have not been fully performed as of the end of the Term, including without limitation indemnity obligations, shall survive the expiration or termination of the Term until fully performed.

3. Termination. Notwithstanding anything herein to the contrary, this Agreement shall automatically terminate upon the permanent elimination of the Improvements within the License Area such that this Agreement would be rendered unnecessary.

4. Alterations; Utilities; Maintenance and Repairs; Signs; No Liens.

(A) Alterations. Once installed, CMA shall not make any enlargements or other modifications to the Infrastructure Improvements without the prior written consent of the Park Board. Provided CMA complies with the requirements under Section 4(C) hereof, CMA may (i) add, remove or change art installations within the License Area; and (ii) alter plantings and make other changes to the landscaping within the License and Maintenance Areas, in each instance without the prior written consent of the Park Board.

(B) Utilities. CMA shall pay for the cost of electricity, water, and any and all other utilities utilized at the License and Maintenance Areas in connection with the use of the Improvements. The City shall have no obligation to furnish utilities to the License and Maintenance Areas.

(C) Maintenance and Repairs. At no cost to the City, CMA shall maintain the Improvements in a continuous state of good condition and repair. CMA acknowledges that there may be existing easements for utility lines and related facilities in the vicinity of the License and Maintenance Areas ("**Third-Party Utility Lines**"). In connection with CMA's maintenance, repair, and use of the Improvements, CMA shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at CMA's expense, promptly repair any and all damage to Third-Party Utility Lines caused by CMA, its



agents, employees, contractors, or subcontractors. Any relocation of Third-Party Utility Lines necessitated by CMA's activities under this Agreement shall be handled entirely at CMA's expense. All activities undertaken by CMA under this Agreement shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines, and requirements, including, without limitation to the Americans with Disabilities Act ("ADA") regulations compliance or accessibility standards.

(D) Signs. CMA shall be permitted to install an entry-feature sign and such directional and informational signs within the License and Maintenance Areas as CMA deems appropriate, provided that all such signs are professionally prepared and comply with all applicable codes, laws, governmental standards, policies, guidelines, and requirements. CMA shall, at its expense, keep all signs in good condition and repair. The foregoing notwithstanding, if the City deems any of CMA's signs to be objectionable, CMA and the City shall cooperate in resolving the objection.

(E) No Liens. CMA shall not permit any mechanics liens to attach to the License and Maintenance Areas in connection with work performed by or at the request of CMA.

**5. Additional Maintenance Obligations**. As a material inducement for the Park Board to approve this Agreement, CMA, at no cost to the City or Park Board, shall keep the Maintenance Area, as depicted on Exhibit E in good, clean and safe condition and repair and in accordance with Park Board standards as applied to Park Board facilities and grounds. Neither the City nor the Park Board shall have any obligation to provide landscaping, lawn care, or any other services for the Maintenance Area. CMA shall use commercially reasonable efforts to minimize damage to the Maintenance Area related to the activities undertaken pursuant to this paragraph. CMA shall promptly repair any and all damage to the Maintenance Area caused by its activities under this paragraph at no cost to, and to the satisfaction of, the Park Board.

**6. Insurance; Indemnification**.

(A) Insurance. Throughout the Term, CMA shall maintain, or cause to be maintained, the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Improvements (or in such other amount as may be approved from time to time by the City's Risk Manager);

(ii) property insurance on any and all personal property of CMA from time to time located in the License Area, in such amount as CMA determines from time to time to be commercially reasonable;

(iii) Commercial General liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring within the License Area in an amount not less than One Million Dollars (\$1,000,000) per accident, combined single limit, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar improvements in the Cincinnati area, naming the City and Park Board as additional insureds; and

(iv) workers compensation insurance as required by law.

(B) Policy Requirements. CMA's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better (or a comparable rating from another rating agency), (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City.

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

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

7. Casualty. If any portion of the Infrastructure Improvements is damaged or destroyed by casualty, CMA shall repair and restore the Infrastructure Improvements, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Infrastructure Improvements were in immediately prior to such occurrence. If any other portion of the License and Maintenance Areas is damaged or destroyed by casualty, CMA shall repair and restore the License and Maintenance Areas, to the extent practicable, to a reasonably comparable condition to which the License and Maintenance Areas were in immediately prior to such occurrence, provided, however, that CMA will have sole discretion over any determinations regarding the repair, restoration or replacement of any art damaged by casualty. The City and CMA shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If insurance proceeds under CMA's insurance policies are paid to the City as the owner of the Park Property, the City shall turn over such proceeds to CMA for use in restoring the License and Maintenance Areas. If the proceeds are insufficient to fully repair and restore the License and Maintenance Areas, the City shall not be required to make up the deficiency. CMA shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications. CMA shall not be relieved of any obligations under this Agreement during any period in which the License and Maintenance Areas is being repaired or restored.

8. Coordinated Report Conditions (CR #47-2021). The following additional conditions shall apply:

(A) DOTe:

(i) Maintenance of the crosswalk in the driveway located along Eden Park Drive shall be included in this Agreement.

(ii) DOTe permits are required for any work related to Improvements located in Eden Park Drive roadway and sidewalk areas.

(B) Duke Energy: Duke Energy Gas has a standard pressure main that needs to be kept in consideration when installing new facilities in the License and Maintenance Areas. Please submit construction plans to Duke Energy so that it can assess potential conflicts.

(C) GCWW: There is an existing 12" public water main, a valve chamber and three public fire hydrants within the License Area. Any damage caused by CMA, its employees, contractors, or subcontractors to existing public water system, valve chamber or fire hydrants must be repaired at CMA's expense in the presence of a GCWW inspector.

(D) Cincinnati Bell: Cincinnati Bell has existing underground telephone facilities within the License Area. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities by CMA, its employees, contractors, or subcontractors, or any work done by CMA, its employees, contractors, or subcontractors to relocate the facilities as a result as of this Agreement will be handled entirely at CMA's expense.

#### **9. Default; Remedies.**

(A) Default. If CMA fails to perform or observe any of the other covenants, terms or conditions contained in this Agreement, and such failure continues for longer than thirty (30) days after CMA receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if CMA commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within one hundred eighty (180) days (or such longer period as may be agreed upon by the parties) after CMA receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if CMA fails to take corrective action immediately upon discovering such dangerous condition or emergency.

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

**10. Assignment**. CMA acknowledges that the City is entering into this Agreement because the City recognizes that CMA is a critical cultural and educational institution that has the financial backing, experience, and community support that are necessary to carry out the construction, operation, and maintenance of the Improvements in accordance with the provisions of this Agreement throughout the entire Term. CMA acknowledges that the City shall not be expected to consent to a proposed assignment by CMA of the privileges granted under this Agreement to any person or entity in whom the City does not have similar confidence. Any attempt by CMA to assign or otherwise transfer the privileges granted under this Agreement to a third party without the City's prior written consent shall be null and void and shall, at the option of the City, constitute a default of CMA under this Agreement.

**11. Notices.** All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

*To CMA:*  
Cincinnati Museum Association  
953 Eden Park Drive  
Cincinnati, OH 45202  
Attn: \_\_\_\_\_

*To the City:*  
Cincinnati Parks  
950 Eden Park Drive  
Cincinnati, OH 45202  
Attn: Director

If CMA sends a notice to the City alleging that the City is in breach of this Agreement, CMA shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202. If the City sends a notice to CMA alleging that CMA is in breach of this Agreement (and unless CMA shall have previously notified the City in writing to send copies of notices to a different law firm), the City shall simultaneously send a copy of such notice by U.S. certified mail to [\_\_\_\_\_].

**12. General Provisions.**

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

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

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

(D) 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.

(E) 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.

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

(G) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office. At the request of either party, the parties shall execute a memorandum of license for recording.

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

(I) No Third-Party Beneficiaries. The parties hereby agree that, except for the Park Board, no third-party beneficiary rights are intended to be created by this Agreement.

(J) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City and CMA 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 member, officer, agent or employee of the City or CMA in other than his or her official capacity. No official executing or approving the City's or CMA's participation in this Agreement shall be personally liable under this Agreement.

(K) Representation as to Authority. The City and CMA each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party, including the authorizations and approvals described in the Recitals to this Agreement.

(L) Authority of the Park Board. CMA acknowledges the legal authority of the Park Board (under the City's Charter and Ohio law) to act with respect to certain matters affecting the Park Property and agrees that, in instances under this Agreement when CMA is required to obtain the City's consent, or the City is required to take action, such decisions and actions will be made either by the City or Park Board, or both, as determined by the City and/or Park Board on a case-by-case basis (and in the event such decision or action is taken by the Park Board, CMA shall be entitled to reply upon the same, unless the City subsequently determines that the Park Board acted beyond the scope of its authority). CMA shall not be required to independently determine, in any particular instance under this Agreement, whether the City, the Park Board, or both has legal authority to act.

(M) 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. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

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

Exhibit A – *License Area*

Exhibit B – *Site Plan*

Exhibit C – *Maintenance Area*

Exhibit D – *Additional Requirements*

[ SIGNATURE PAGES FOLLOW ]

Executed by the City on the date of acknowledgement set forth below (the "Effective Date").

**CITY OF CINCINNATI**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
                                                  ) ss:  
COUNTY OF HAMILTON        )

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

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
Steve Pacella, Interim Director  
Cincinnati Park Board of Commissioners

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

[ CMA's Signature Page Follows ]

**Cincinnati Museum Association,**  
an Ohio nonprofit corporation, **dba Cincinnati Art Museum**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

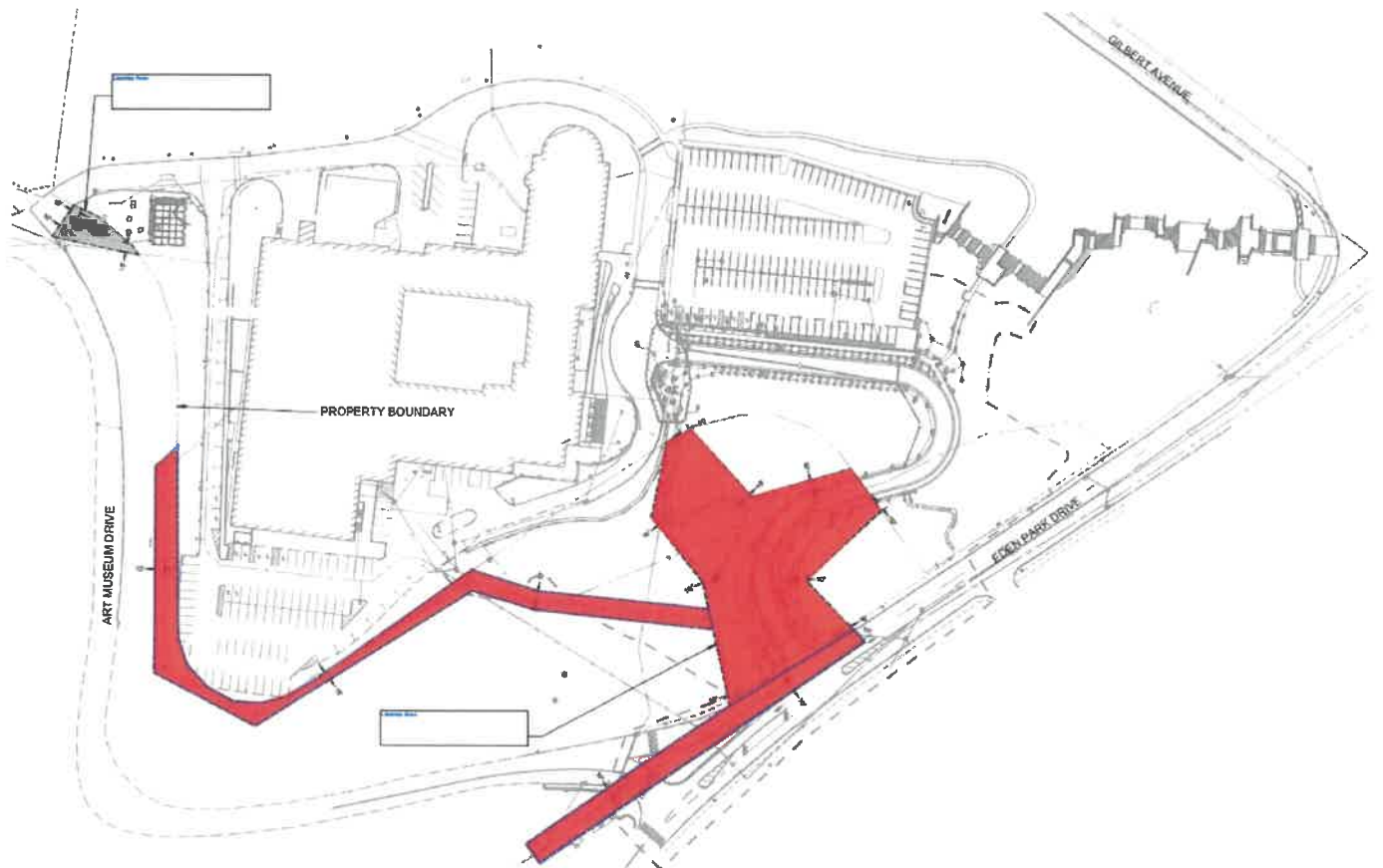
Date: \_\_\_\_\_, 2022

STATE OF OHIO                    )  
                                          ) ss:  
COUNTY OF HAMILTON         )

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

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**  
to  
**Supplemental Agreement**  
*License Area*



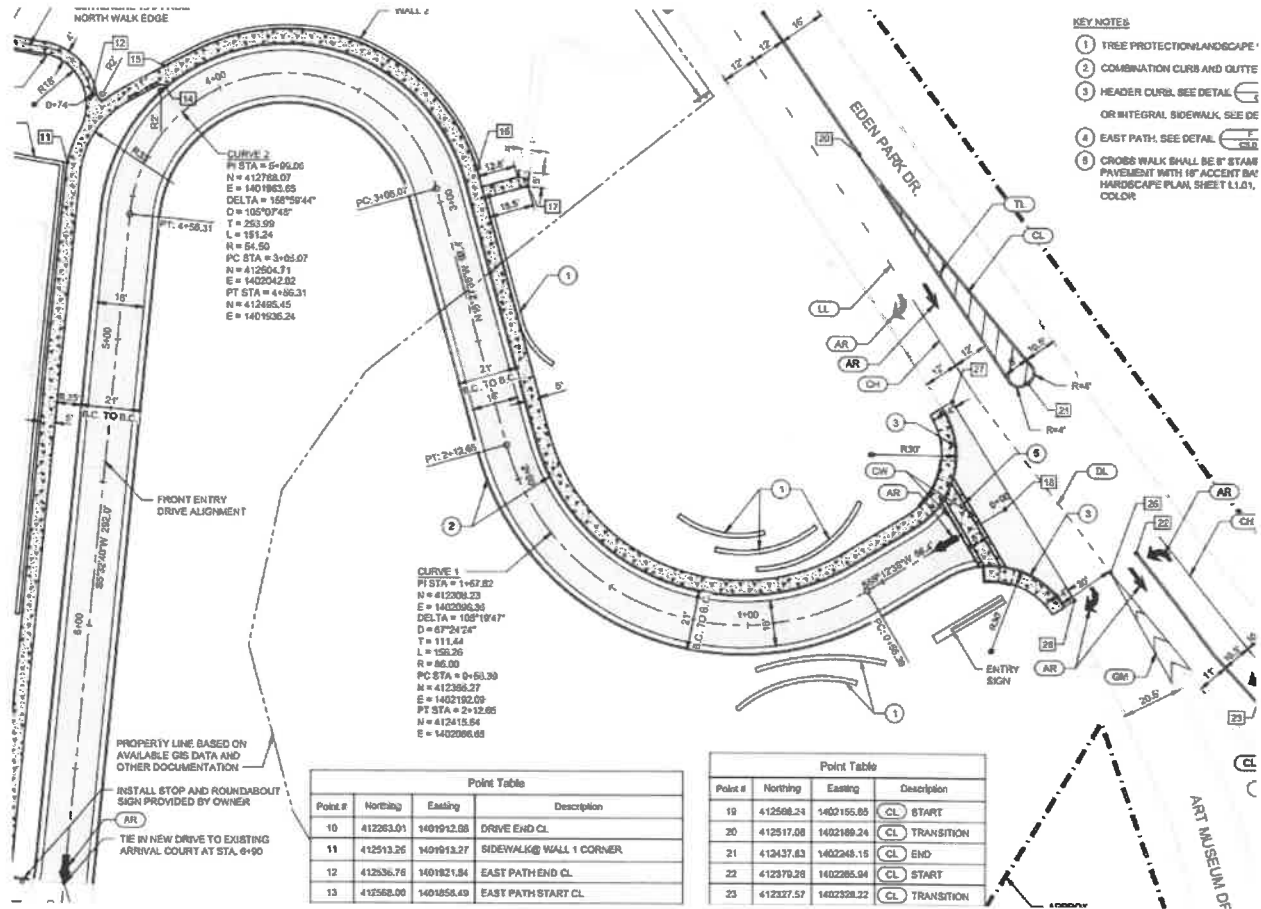


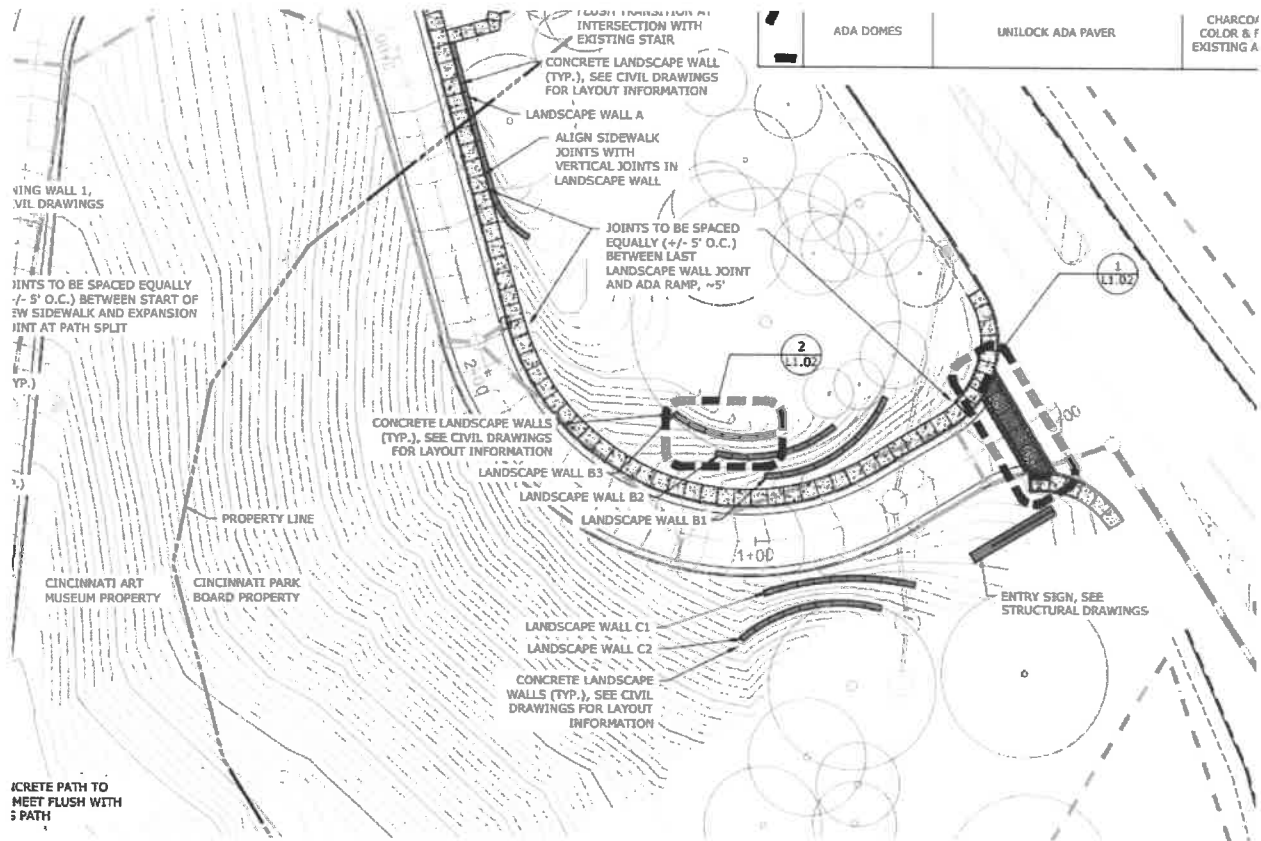
**EXHIBIT B**  
to  
**Supplemental Agreement**



# EXHIBIT C to Supplemental Agreement

## Site Survey





**EXHIBIT D**  
to  
Supplemental Agreement  
*Additional Requirements*

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

This Exhibit serves two functions:

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

This Exhibit identifies certain Government Requirements that may be applicable to the Project, CMA, or its contractors and subcontractors. Because this Agreement requires that CMA 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 CMAs, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a CMA is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if CMA is performing construction work for the City under a construction contract to which the City is a party, CMA shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and

6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in CMA and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which CMA receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to CMA 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 CMA receives City funds or other assistance, CMA and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by CMA or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, CMA and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following CMA and/or its general contractor's meet and confer activity, CMA shall provide to the City, in writing, a summary of CMA and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking

or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority," and "contract" as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

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

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

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

(b) Requirement. This Agreement requires that CMA 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 CMA; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

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

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

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

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

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

(E) Displacement. If the Project involves the displacement of CMAs, CMA 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 CMAs, under Cincinnati Municipal Code Chapter 740 or otherwise, CMA shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use

the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

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

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

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

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

(G) Equal Employment Opportunity.

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

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

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



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

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

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in CMA or in the Project, and CMA 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, CMA and its general contractor shall use its best efforts to post available employment opportunities with CMA, the general contractor's organization, or the organization of any subcontractor working with CMA or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

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

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

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

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

Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then CMA 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 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. CMA represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, CMA shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If CMA or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, CMA shall be considered in default under this Agreement.