

Contract No: \_\_\_\_\_

**FUNDING AGREEMENT**

*between the*

**CITY OF CINCINNATI,**  
an Ohio municipal corporation

*and*

**THE MODEL GROUP, INC.**  
an Ohio corporation

Project Name:  
Walnut Street Skywalk Demolition and Infill

(grant of TIF funds for the demolition of the Walnut Street Skywalk connecting the Mercantile Building and the US Bank Tower in the Central Business District of Cincinnati)

Dated: \_\_\_\_\_, 2024

## FUNDING AGREEMENT

(Walnut Street Skywalk Demolition and Infill)

This FUNDING AGREEMENT (this “**Agreement**”) is made and entered into as of the Effective Date (as defined on the signature page hereof) between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”) and **THE MODEL GROUP, INC.**, an Ohio corporation, 1826 Race Street, Cincinnati, Ohio 45202 (“**Developer**”).

### Recitals:

A. Developer indirectly controls through a wholly-owned affiliate MCA CENTER LLC, an Ohio limited liability company (“**MCA**”), which owns fee simple title to certain real property located at 414 Walnut Street and 115 Fifth Street in the Central Business District of Cincinnati, as more particularly described on Exhibit A-1 (Legal Description – Mercantile Building) attached hereto (the “**Mercantile Building**”).

B. The City owns and leases to US Bank National Association (“**US Bank**”) certain real property adjacent to the Mercantile Building located at 425 Walnut Street in the Central Business District of Cincinnati, as more particularly described on Exhibit A-2 (Legal Description – US Bank Tower) attached hereto (the “**US Bank Tower**”).

C. The City is the owner of an elevated, second level public pedestrian walkway located above and across the Walnut Street public right-of-way, abutting and connecting the Mercantile Building to the east and the US Bank Tower to the west, for use by the general pedestrian public at 565 feet above mean sea level, as more particularly described and depicted on Exhibit A-3 (Legal Description and Depict - Walnut Street Skywalk) attached hereto (the pedestrian walkway, and related improvements are referred to herein as the “**Skywalk**”).

D. MCA is undertaking a mixed-use redevelopment of the two buildings making up the Mercantile Building (the “**Mercantile Redevelopment**”), and the City has assisted MCA in that redevelopment by facilitating a real property tax abatement for MCA’s improvements to the Mercantile Building pursuant to that *Community Reinvestment Area Tax Exemption Agreement* between the City and MCA dated May 24, 2023 (the “**CRA Agreement**”).

E. Developer desires to cause the demolition of the Skywalk as part of the Mercantile Redevelopment (the “**Skywalk Demolition**”) and subsequently cause the restoration of the exterior, façade, and limited interior portions of the Mercantile Building and the US Bank Tower (separately and collectively, the “**Limited Building Restoration**”; and together with the Skywalk Demolition, the “**Public Infrastructure Improvements**”) all as further described and in accordance with Exhibit B (Statement of Work, Budget, and Sources of Funds) attached hereto.

F. Following the Skywalk Demolition, Developer shall cause to be constructed private improvements within the Mercantile Building in accordance with the CRA Agreement, and within the US Bank Tower (if any), each as further described on Exhibit B hereto (collectively, the “**Private Improvements**”). The completion of the Public Infrastructure Improvements and the Private Improvements are referred to herein as the “**Project**”.

G. Developer will fully fund the Private Improvements with private funding and will pay for all remaining expenses of the Project (including the Public Infrastructure Improvements) not covered by the Funds.

H. The City, upon the recommendation of the City’s Department of Community and Economic Development (“**DCED**”), desires to provide finance assistance for the Public Infrastructure Improvements using funds from the District 2-Downtown South/Riverfront District Incentive District, which will be provided to Developer, as further described herein, for project work completed and in an amount up to but not to exceed \$1,753,337 (the “**Funds**”).

I. In order to increase efficiency and meet the timing needs, the parties have determined that Developer or MCA (or one of Developer's affiliates) will, in accordance with the terms herein, bid out and contract for construction of the Project with Model Construction, LLC, an Ohio limited liability company (the "**General Contractor**"), as the single construction manager for the Skywalk Demolition, the Limited Building Restoration, the Private Improvements associated with the Mercantile Building, and any Private Improvements associated with the US Bank Tower pursuant to that certain agreement and right-of-entry between Developer and/or the General Contractor and the owner of the US Bank Tower (the "**US Bank Tower Agreements**"; and the "**US Bank Tower Owner**"; respectively), and the General Contractor will in turn contract with necessary subcontractors for completion of the Project.

J. Pursuant to this Agreement, the City is engaging Developer to manage, oversee, and contract for the Project, and the parties acknowledge that such services are considered "professional services" (as defined in Cincinnati Municipal Code 321-1-P) and require exercise by Developer of discretion and independent judgment to perform such services and an advanced specialized expertise acquired by Developer and its affiliates through completion of other similar public space redevelopments throughout the City.

K. The City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; and is consistent with the public purpose and provisions of applicable federal, state, and local laws and requirements.

L. Section 13 of Article VIII of the Ohio Constitution provides that, in order to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, or not-for-profit corporations designated by them, to acquire, construct, enlarge, improve or equip, and to sell, lease, exchange or otherwise dispose of, property, structures, equipment and facilities for industry, commerce, distribution and research, and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement or equipment of such property, structures, equipment and facilities.

M. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the Skywalk Demolition at its meeting on March 15, 2024.

N. Execution of this Agreement on behalf of the City was authorized by Ordinance No. \_\_\_ - 2024, passed by City Council on \_\_\_\_\_, 2024, which appropriated funds for the Public Infrastructure Improvements for the Project, which the City has determined constitutes a Public Infrastructure Improvement (as defined in Section 5709.40(A)(8) of the Ohio Revised Code), that will benefit and/or serve the District 2-Downtown South/Riverfront District Incentive District.

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

1. **Term.** The term of this Agreement shall commence on the Effective Date and shall end on the date on which Developer has satisfied all other obligations to the City under this Agreement (the "**Term**") unless sooner terminated as provided herein.

2. **Due Diligence Materials.** Following the Effective Date, Developer shall prepare and deliver, if not previously delivered, the following items (the "**Due Diligence Materials**") to the City for its review and approval:

(A) **Abutter's Consent:** fully executed original of the Quitclaim Deed from US Bank Tower Owner consenting to the closure of, and conveying to the City all of US Bank Tower Owner's rights, title, and interest in and to the Skywalk ("**Abutter's Consent**"), which, following the City's receipt and approval

of the Abutter's Consent, Developer shall record in the real property records of Hamilton County, Ohio, all at Developer's expense;

(B) US Bank Tower Agreements: fully executed copies of the US Bank Tower Agreements granting Developer (or its affiliate) permission to enter the US Bank Tower, and perform and complete the Skywalk Demolition, the Limited Building Restoration associated with the US Bank Tower, the Private Improvements associated with the US Bank Tower (if any), any other construction work that impacts or may impact the US Bank Tower as a result of Developer's construction of the Project, and any other construction activities agreed to by Developer and the US Bank Tower Owner under the US Bank Tower Agreements, which Developer shall undertake at no expense to the City;

(C) Preliminary Design Plans – Public Infrastructure Improvements: preliminary plans and specifications for the Public Infrastructure Improvements, including without limitation, those demolition plans for the Skywalk Demolition, which Developer shall coordinate with the City's Department of Transportation and Engineering ("**DOTE**"), Department of Buildings & Inspections ("**B&I**"), DCED, and other various relevant City Departments (including, as necessary, Greater Cincinnati Water Works, Stormwater Management Utility, and the Metropolitan Sewer District) to develop, and the Developer shall submit such plans and specifications to the City for review and approval;

(D) Private Improvements: preliminary plans and specifications for the Private Improvements, available information regarding the intended timing, costs, and scope of the Private Improvements being constructed as a result of the Project, as described in Exhibit B;

(E) Project Schedule: the proposed construction schedule for completion of the Project;

(F) Final Budget: a final itemized budget for the Public Infrastructure Improvements that is separate from the Private Improvements (as the same may be amended from time to time and approved by the City, the "**Budget**");

(G) Final Plans: the final demolition plans, drawings, plans, and specifications for the Project and upon completion shall submit copies to the City for the City's final review and approval. The parties agree to work diligently and cooperatively with each other in order that the drawings, plans, and specifications can be finalized and approved by the City as expeditiously as possible. The drawings, plans, and specifications (including any and all changes thereto reflected on properly executed Change Orders (as defined below)) for each category of improvements, as approved by the City are referred to herein as the "**Final Plans**."

(H) Permits: evidence that Developer has obtained a roadway barricade permit from DOTE, and any other necessary City permits for the Project have been secured;

(I) Approval of Contractors: a list of proposed contractors and subcontractors for the Public Infrastructure Improvements, none of whom shall be identified as being debarred on lists maintained by the City or by the federal or state governments; and

(J) Insurance: proof of insurance as required by Section 10 below, naming the City as an additional insured;

(K) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably request.

3. **Change Order.** Once approved by the City, Developer shall not make any changes to the Public Infrastructure Improvements set forth in the Final Plans without the consent of the City. Any material changes to the Final Plans shall be evidenced by a written change order signed by Developer, B&I (as applicable), DOTE (as applicable), and DCED (each a “**Change Order**”). The City shall review and either approve or deny each proposed Change Order as expeditiously as possible and such approval shall not be unreasonably withheld, conditioned, or delayed. The City may deny Change Orders to the Public Infrastructure Improvements in its reasonable discretion. The City shall not require any material changes to the Final Plans without Developer’s consent, which shall not be unreasonably withheld, conditioned, or delayed. Developer shall promptly execute Change Orders to reflect approved changes. Funding of Change Orders shall be handled as set forth in Section 6 below.

4. **Bidding Phase.** Developer shall work cooperatively with the City in soliciting, reviewing, and selecting the bids for the construction of the Public Infrastructure Improvements. All bids shall be solicited in accordance with the City’s competitive bidding requirements, as further described in Exhibit D (Additional Requirements). If there is a public bid opening, Developer shall permit City representatives to be present at the opening of the bids. Developer shall not solicit bids from any contractors or subcontractors who are listed as debarred by the federal or state government or on the City’s Vendor’s Performance list. In reviewing and considering bids, Developer shall bear in mind that all contractors and subcontractors performing any work in connection with the Public Infrastructure Improvements shall be subject to the City’s approval in its sole discretion. Developer and the City shall work cooperatively to select the winning bids. The City shall use reasonable efforts to notify Developer, within 10 business days after the opening of the bids, of the City’s approval or disapproval of the bids, as the case may be. If the City does not approve of the bids, Developer shall work cooperatively with the City to resolve the City’s objections, including for example revising the Final Plans and re-bidding all or part of the Project. The City shall, in its sole discretion, have final approval of all bids for the Public Infrastructure Improvements. The final bids, as approved by the parties, and as the same be adjusted from time to time by Change Orders, are hereinafter referred to as the “**Final Bids.**”

Notwithstanding the foregoing, if the City does not approve of the bids proposed by the Developer for the Public Infrastructure Improvements and the Developer cannot resolve all City objections, then either party may terminate this Agreement, and both parties thereafter shall have no obligations or rights under this Agreement. Additionally, if Developer does not approve of the bids it receives for the Public Infrastructure Improvements, Developer may terminate this Agreement, and both parties thereafter shall have no obligations or rights under this Agreement.

5. **Budget; Construction; Inspections.**

(A) **Budget.** Prior to commencement of construction of the Project, Developer shall present to the City a final itemized budget for the Project, with independent itemized sections detailing expenditures for the Private Improvements and the Public Infrastructure Improvements (as the same may be amended from time to time and approved by the City, the “**Budget**”), generally consistent with the preliminary sources and uses budget attached hereto as Exhibit B.

(B) **Construction Contracts.** Upon the City’s receipt and approval of the Due Diligence Materials for the Project and the parties’ approval of the Final Plans, Budget, and Final Bids, and once the parties are otherwise ready to move forward with construction of the Project, the Developer shall enter into a guaranteed maximum price or stipulated sum construction contract, in such form as approved by the City, with the General Contractor in an amount not to exceed \$1,753,337 for the Project. The cost of the Private Improvements, as incorporated into the Final Bids, shall be approved by Developer, in its sole discretion. Developer shall be responsible for reviewing and approving all construction contracts and, upon the City’s request, provide a copy of the construction contracts to the City. Developer shall require in all contracts that it enters into relating to the Project, including the construction contract with the General Contractor, compliance with the terms of this Agreement and that all subcontracts incorporate and comply with the terms of this Agreement.

(C) Construction Commencement and Completion. Following execution of the construction contracts described in Section 5(B), Developer shall commence construction of the Project. Developer shall cause the Project to be completed in accordance with the approved Final Plans, in accordance with the City-approved construction schedule, and in a good and workmanlike manner. Developer shall provide all supervision, technical personnel, labor, materials, and services necessary to complete the Project. Developer shall complete construction of the Public Infrastructure Improvements no later than December 31, 2024. Developer shall (i) complete construction of the Private Improvements with respect to the Mercantile Building in accordance with the completion requirements under the CRA Agreement, and (ii) complete construction of the Private Improvements with respect to the US Bank Tower (if any), in accordance with the completion requirements under the US Bank Tower Agreements.

(D) Verification of Construction Costs. During construction of the Project and upon completion thereof, Developer shall provide the City with verification of actual construction costs for the Project, including individual and actual construction costs for the Project and such other pertinent information pertaining to the demolition and construction of the Project or performance by Developer of its obligations under this Agreement as the City may reasonably request. Developer shall not be responsible for verifying to the City the quantities of materials utilized in the Public Infrastructure Improvements; the City shall assume the responsibility for oversight, inspection, and verification as to the quantity of materials installed and utilized in the Project. Developer and the City agree to work collaboratively to ensure that the General Contractor and subcontractors provide adequate information to the City in order to assist in tracking of quantities installed and utilized in the Project.

(E) Inspection of Work. During construction of the Project, the City, its employees, and its agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations hereunder. If the City determines that work on the Project is not in accordance with the Final Plans or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, then the City shall notify Developer who shall have 30 days to cure such error or if it cannot be cured within 30 days Developer shall initiate and diligently pursue such cure. If Developer fails to cure or initiate and diligently pursue such cure within 30 days, the City shall have the right, in its reasonable judgment, to stop such work and order its replacement at Developer's expense (not to be paid for using the Funds), whether or not such work has been incorporated into the Public Infrastructure Improvements by giving notice of such nonconforming work to Developer.

(F) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the City or any third-party owned real property related to the Project. Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(G) Project Information; As-Built Plans. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project as the City may reasonably request. Following completion of construction, the Developer shall provide the City with a set of as-built plans and shall provide the City such other information pertaining to the Project as the City may reasonably request.

(H) Permits and Fees Payable to DOTE. Developer acknowledges that (i) it is necessary to close Walnut Street between Fourth and Fifth Streets at certain times during the demolition of the Skywalk, (ii) Developer will be required to obtain all necessary permits and approvals concerning the demolition of the Skywalk, including without limitation, any and all temporary street closure, streetcar shutdown, streetcar track access permits, barricade, street opening, meter permits, and other related permits when the Project necessitates closing meters, opening and/or closing the adjoining streets or portions thereof, or when otherwise required by DOTE for the Project (iii) Developer will be required to pay DOTE for any such permit fees, and (iv) with many entities competing for space on City street, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians and businesses; therefore, DOTE shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOTE determines that a barricade is not needed, DOTE shall have the right to withdraw the permit.

**6. Public Infrastructure Improvements.**

(A) Funding Terms. Subject to the terms and conditions of this Agreement, the City agrees to make available up to the full amount of the Funds to pay for the Public Infrastructure Improvements. Developer shall be permitted to use the Funds only to pay for hard construction costs and related soft costs of the Public Infrastructure Improvements as itemized in the Budget and for no other purpose. For purposes of clarity, Developer shall not use any portion of the Funds to pay for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property; to establish a working capital fund; or to pay for costs or expenses of the Private Improvements.

(B) Funding of Change Orders and Cost Overruns to Public Infrastructure Improvements. Under no circumstances shall the City be required to provide funds in excess of the Funds for completion of the Project, and the Developer agrees to provide any additional funding required to complete the Project in excess of the Funds. To the extent available, the Funds may be used for Change Orders approved by the City.

(C) US Bank Tower Owner Approval. Developer acknowledges and agrees that as part of its obligations to the City to enter into the US Bank Tower Agreements with the US Bank Tower Owner, Developer shall submit and obtain approval from the US Bank Tower Owner, prior to its submission to the City, of its proposed Final Plans for the Skywalk Demolition, and the Limited Building Restoration associated with the US Bank Tower.

**7. Private Improvements.**

(A) Costs and Funding of Private Improvements. Developer shall pay for all costs of the Private Improvements using private funds, including, without limitation, the costs of any Private Improvements associated with the US Bank Tower. No portion of the Funds shall be utilized on the Private Improvements, and the Developer shall put in place appropriate controls in order to independently track the funding and costs of the Private Improvements and the Public Infrastructure Improvements.

(B) Timing. Developer shall use its best efforts to coordinate the construction of the Public Infrastructure Improvements and the Private Improvements so as to avoid damage or destruction to the Public Infrastructure Improvements during the course of subsequent construction activities.

(C) Owner Approval. For all Private Improvements that will occur on properties not owned or controlled by Developer or its affiliates, Developer shall acquire a signed written consent and approval of such property owners to conduct the portions of the Private Improvements that will impact such owner's property. Developer shall provide a copy of such signed written consent and approval to the City upon its request.

(D) US Bank Tower Owner Approval. Developer acknowledges and agrees that as part of its obligations to the City to enter into the US Bank Tower Agreements with the US Bank Tower Owner, Developer shall submit and obtain approval from the US Bank Tower Owner, prior to its submission to the City, of its proposed Final Plans for any Private Improvements associated with the US Bank Tower (as applicable) and any other construction activities that are associated with or may otherwise impact the US Bank Tower.

**8. Disbursement of Funds.** The City shall disburse the Funds to Developer in accordance with Exhibit C (Disbursement of Funds) hereto. At all times during demolition of the Skywalk and until completion of the same, the City shall be deemed to be the owner of the Skywalk. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the City be obligated to make disbursements of Funds (i) if any portion of the Public Infrastructure Improvements does not meet the requirements of the City; (ii) except to reimburse Developer for actual costs of constructing the Public Infrastructure Improvements incurred in accordance with the terms herein; or (iii) in excess of the Funds. Except for the City's agreement to provide the Funds to the Developer as described in this Agreement, the City shall not be responsible for any costs associated with the completion of the Project.

**9. Applicable Laws and Programs; Fees; Developer Compensation.**

(A) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary permits (including without limitation DOTE right-of-way permits), licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, judicial orders, and other governmental requirements applicable to the construction of the Project, including without limitation those set forth on Exhibit D. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from the City's Department of Buildings and Inspections, DOTE, City Planning Commission, City Council, or any other governmental agency that may be required in connection with the Project.

(B) Applicability of City Programs and Policies. Notwithstanding anything to the contrary in this Agreement and regardless of applicability under existing law and regulation, the Developer shall comply and shall cause the General Contractor and other contractors to comply with the requirements, as further described in Exhibit D, of the following City programs and policies:

(i) The requirements of the Construction Workforce Goals, as defined in Section A of Exhibit D, relating to contracting with minority-owned businesses and women-owned businesses;

(ii) As stated above, all bids for the Public Infrastructure Improvements shall be solicited in accordance with the City's competitive bidding requirements, and Developer shall comply with the meet and confer meeting requirements, all as more particularly described in Section B of Exhibit D;

(iii) the Business Enterprise program, as further described in Section F of Exhibit D;  
and

(iv) Equal Employment Opportunity program, as further described in Section G of Exhibit D.

It is not the intent of this provision to limit Developer's obligations to comply with all applicable law and regulation; this provision is intended as a covenant to the City that, in addition to other applicable law and regulation, Developer shall comply with the requirements of the above-listed City programs and policies during the Project.

(C) Prevailing Wage. Developer shall comply and cause the General Contractor and other contractors to comply with the requirements of the State of Ohio's Prevailing Wage Law, set forth in Ohio Revised Code 4115.03 to 4115.16. To the extent that Developer's contractors are unable to segregate work on the Private Improvements from the Public Infrastructure Improvements, then Developer shall pay the applicable prevailing wage rates on the Private Improvements as if it were a part of the Public Infrastructure Improvements.

(D) Fees. Developer shall be responsible for payments of all standard fees associated with the Private Improvements.

**10. Insurance; Indemnity.**

(A) Insurance during Construction. Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance:

(i) Developer shall maintain (a) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (b) worker's compensation insurance in such amount as required by law, (c) all



insurance (including the amount of coverage) as may be required by any and all lenders for the Project, and (d) such other insurance as may be reasonably required by the City;

(ii) Developer shall cause the General Contractor, all other prime contractors, and all subcontractors to maintain (a) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City and Developer as an additional insured, (b) unless otherwise waived by the City, proper endorsements to all Commercial General Liability insurance policies required hereunder to ensure that such policies cover defective construction or workmanship by the policy holder and its subcontractors, (c) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed under the contract with such policy holder, (d) worker's compensation insurance in such amount as required by law, (e) all insurance (including the amount of coverage) as may be required by any and all lenders for the Project, and (f) such other insurance as may be reasonably required by the City; and

(iii) Developer or the prime contractor (including General Contractor), unless otherwise waived by the City in writing, shall maintain builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed under the contract with such policy holder.

All 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 cancelled or modified without at least 30 days prior written notice to the City. Within ten days following execution of this Agreement or following execution of the construction contract, as applicable, Developer shall send proof of all such insurance to DCED at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

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

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

**11. Casualty; Eminent Domain.** If, during the Term of this Agreement, any improvements constructed as part of the Project are damaged or destroyed by fire or other casualty during construction, or if any portion of the improvements constructed as part of the Project are taken by exercise of eminent domain (federal, state, or local), except in the case of an exercise by the City, Developer shall cause such improvements to be repaired and restored, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If available condemnation or insurance proceeds or other funds received related to a taking are insufficient to fully repair and restore the affected improvements, the City shall not be required to make up the deficiency;

provided, however, no repair or restoration shall be required for damage to the Skywalk, which is being demolished as part of the Public Infrastructure Improvements. Developer shall handle all reconstruction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications for the construction of the Project if they deviate from the Final Plans as initially approved by the City hereunder. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the affected improvements are being repaired or restored.

**12. Default; Remedies.**

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

(i) The failure of Developer to perform any obligation under this Agreement (including, without limitation, its obligations to comply with the CRA Agreement), and failure to correct such failure within 30 days after its receipt of written notice thereof from the City; or

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, demand that the Developer repay to the City all previously disbursed Funds, (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 Developer, and (iii) exercise any and all other rights and remedies available at law or in equity. Developer 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 Developer under this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy shall not constitute a waiver of the breach of such covenant or of such remedy. The foregoing shall be in addition to any and all rights and remedies provided for under any other documents executed by Developer in favor of the City in connection with the Project.

**13. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, 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 either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:  
City of Cincinnati  
Department of Community and  
Economic Development  
Attention: Director  
805 Central Avenue, Suite 700  
Cincinnati, OH 45202

To Developer:  
The Model Group, Inc.,  
Attn: Bobby Maly, CEO  
1826 Race Street,  
Cincinnati, OH 45202  
bmalym@modelgroup.net

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

**14. Representations, Warranties, and Covenants.** Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement (and shall be deemed as having made these representations, warranties, and covenants again upon receipt of each disbursement of the Funds):

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

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

(C) The execution, delivery, and performance of this Agreement by Developer 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 Developer; or any mortgage, indenture, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets; nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer or the Project, at law or in equity or before or by any governmental authority which would materially adversely affect Developer's ability to perform its respective obligations set forth in this Agreement.

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

(F) The information contained in the documentation provided by Developer to the City that is descriptive of Developer, its existing businesses, and its proposed business has been reviewed by Developer and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such information, in light of the circumstances under which they were made, not misleading.

(G) Pursuant to Section 301-20, Cincinnati Municipal Code, neither Developer 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.

**15. Reporting Requirements.**

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

(B) City's Right to Inspect and Audit. During construction of the Project and for a period of three years thereafter, Developer shall permit the City, its employees, agents, and auditors to have

reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

**16. General Provisions.**

(A) Assignment. Developer shall not assign its rights or interests under this Agreement or any ancillary agreements with the City without the prior written consent of the City; provided that a collateral assignment of its rights under this Agreement to its lender for Project (and subsequent assignments by such lender) shall be permitted. Developer's assignment of its rights or interests under this Agreement to an affiliate of Developer shall be subject to the City's prior written approval, not to be unreasonably withheld.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain 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 agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control. In the event that any of the provisions of this Agreement are in conflict or are inconsistent, the provision determined by the City to provide the greatest legal and practical safeguards with respect to the use of the Funds and the City's interests in connection with this Agreement shall control.

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

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

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

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

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

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

(I) Time. Time is of the essence with respect to Developer's performance of its obligations under this Agreement.

(J) Recognition of City Assistance. Developer shall acknowledge the financial support of the City with respect to the Project in all printed promotional materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage, and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio, or in the press or any other printed media) relating to the Project. In identifying the City as a funding source for the Public Infrastructure Improvements, Developer shall use either the phrase "Funded by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

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

(L) No Brokers. The parties represent that they have not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

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

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

(O) Administrative Actions. To the extent permitted by applicable laws, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement and the funding hereunder.

(P) 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.

10. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof:  
Exhibit A-1 – *Legal Description – Mercantile Building*  
Exhibit A-2 – *Legal Description – US Bank Tower*  
Exhibit A-3 – *Walnut Skywalk Depiction*  
Exhibit B – *Statement of Work, Budget and Sources of Funds*  
Exhibit C – *Disbursement of Funds*  
Exhibit D – *Additional Requirements (incl. Addendum I to Additional Requirements Exhibit – City's Prevailing Wage Determination)*

SIGNATURE PAGE FOLLOWS

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

**CITY OF CINCINNATI**

**THE MODEL GROUP, INC.**

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

By: \_\_\_\_\_  
Robert L. Maly, Chief Executive Officer

Date: \_\_\_\_\_, 2024

Date: \_\_\_\_\_, 2024

Approved as to Form:

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

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

EXHIBIT A-1  
to Funding Agreement

*Legal Description – Mercantile Building*

**PARCEL ONE:**

**Auditor's Parcel No.: 083-0001-0163 and 0169, cons.**

Situate in Section 18, Town 4, Fractional Range 1, Miami Purchase, Cincinnati Township, in the City of Cincinnati, Hamilton County, Ohio, being part of In Lots 139 and 140 of said city and being more particularly described as follows: Beginning at a point in the east line of Walnut Street (a 66 foot street) which is North 16°11' West, 51.33 feet from the north line of Fourth Street (a 66 foot street); thence North 16 deg. 11' West, along the east line of Walnut Street, 148.47 feet to the south line of Mercantile Place; thence North 74°03'30" East, along the south line of Mercantile Place, 110.13 feet to the westerly line of the land described in Registered Land Certificate of Title 62144; thence along the westerly line of said Registered Land, South 16°13' East 60.17 feet, South 74°03'30" West 10 feet, South 16°13' East 76.46 feet, North 74°00' East 0.73 feet and South 16°13' East 11.73 feet; and thence South 74°00' West 100.95 feet to the place of beginning.

**PARCEL TWO:**

**Auditor's Parcel No.: 083-0001-0141 thru 0144, 0164 thru 0168, 0170 thru 0172, 0180, 0254 & 0255, cons.**

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being all of Lots 12 through 15 and part of Lot 11 of Hamilton County Subdivision as recorded in Deed Book V-2, Page 417, Hamilton County Recorder's Office, and also being part of In Lots 139 and 140 of the In Lots as recorded in Deed Book E-2, Pages 62 to 66, Hamilton County Recorder's Office and also being all of Tract B (a fee simple estate), all of Tract C (a fee simple estate) and all of Tract E (a fee simple estate) and also being part of Tract A (a fee simple estate) and part of Tract D (a fee simple estate) of Registered Land Certificate No. 78982 (City of Cincinnati) which is recorded in Hamilton County, Ohio Registered Land Records, and also being all of Traction Place (a 10 foot alley), and also being part of Mercantile Place (an 18 foot street), and being more particularly described as follows:

Beginning at the intersection of the south line of Fifth Street (a 130 foot street) and the west line of Traction Place (a 10 foot alley); thence North 81°08'30" East along the south line of Fifth Street 112.70 feet to the west line of Tract B-2, Parcel 2 (Federal Reserve Bank); thence South 9°23'30" East along the west line of Tract B-2, Parcel 2, and the west line of Tract B-2, Parcel 1 (Federal Reserve Bank) 334.83 feet to a point in the north line of Fourth Street (said point being 225.00 feet westwardly from the northwest corner of Fourth Street and Main Street (a 66 foot street)); thence South 81°04'50" West along the north line of Fourth Street 172.52 feet to the east line of Walnut Street (a 66 foot street); thence North 9°06'00" West along the east line of Walnut Street 51.33 feet to the south line of the property presently owned by the Cincinnati College, an Ohio corporation, thence North 81°04'50" East along said south line and 51.33 feet north of and parallel to the north line of Fourth Street 100.95 feet to the west line of Tract C of Registered Land Certificate No. 78982; thence North 9°08'10" West along said west line 11.73 feet to the south line of Tract E of Registered Land Certificate No. 78982; thence South 81°04'50" West along said south line 0.73 feet to the west line of said Tract E; thence North 9°08'10" West along said west line 76.46 feet to the north line of said Tract E; thence North 81°08'20" East along said north line 10.00 feet to a point in the west line of Tract C of Registered Land Certificate No. 78982; thence North 9°08'10" West along said west line and the west line extended northwardly 75.17 feet to a point 15 feet north of the south line of Mercantile Place (an 18 foot street); thence South 81°08'30" West along a line 15 feet north of and parallel to the south line of Mercantile Place 51.99 feet to the west line of Traction Place; thence North 9°06'00" West along the west

line of Traction Place 120.20 feet to the south line of Fifth Street and the Place of Beginning and containing 33,378 square feet, more or less.

**PARCEL THREE:**

**Auditor's Parcel No.: 083-0001-0257**

Beginning at the intersection of the east line of Walnut Street (a 66 foot street) and the south line of Mercantile Place (a 15 foot alley), thence North 81°08'30" East, along the south line of said Mercantile UCFDisney Springs Place, a distance of 110.14 feet to the westerly line of that part of Mercantile Place vacated by Ordinance 345-1968, City of Cincinnati; thence North 9°08'10" West along the westerly line of said vacated Mercantile Place, a distance of 15 feet; thence South 81°08'30" West, along the northerly line of said Mercantile place, as narrowed, and the North line of Mercantile Place a distance of 110.13 feet to the east line of said Walnut Street; thence South 9°06' East, along the east line of said Walnut Street, a distance of 15 feet to the place of beginning.



EXHIBIT A-2  
to Funding Agreement

*Legal Description – US Bank Tower*

**Situate in the City of Cincinnati, County of Hamilton, State of Ohio and being all that part of the below-described tract located above 544 17 feet above sea level as ascertained by the City of Cincinnati datum plane.**

**Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County, Ohio and being part of In Lots 164, 165, 166 and 167 as recorded in Deed Book "E-2", Pages 62-66, Hamilton County Recorder's Office and more particularly described as follows.**

**Beginning at the point of intersection of the south line of Fifth Street and the west line of Walnut Street, thence South 81° 10' 30" West, along the south line of Fifth Street, 129.25 feet to a point; thence South 8° 49' 30" East, 225 00 feet to a point in the north line of R. A. Skilken's property as recorded in Certificate 68857 Registered Land Records of Hamilton County; thence North 81° 05' 45" East, along the north line of said registered land, 61.33 feet to a point; thence South 8° 54' 15" East, 2.58 feet to a point; thence North 81° 05' 45" East, along the north line of said registered land, 69 00 feet to a point in the west line of Walnut Street; thence North 9° 06' West, along the west line of Walnut Street, 227.40 feet to the Point of Beginning, containing 29,367 square feet.**

**The description of this parcel is based on a survey made by the City of Cincinnati under the direction of Marvin W. Duermit.**

**Being part of the premises heretofore conveyed by deed recorded in Deed Book 3282, Page 132, Hamilton County Records.**

EXHIBIT A-3  
to Funding Agreement

*Legal Description and Depiction - Walnut Skywalk*

Legal Description:

Located in the City of Cincinnati, Hamilton County, Ohio, beginning at a point located S 8°29'30" E for 125.92' from the Southwest intersection of the right-of-ways of Fifth Street and Walnut Street, thence continuing S 8°29'30" E for 14.50' and there end. Said easement is located between elevations 562.86 and 578.86 Sea Level Datum, City of Cincinnati Benchmarks, and extends Westwardly 0.50' into the First National Bank Center Building. Containing 116 cubic feet, more or less.

Depiction: The Skywalk is depicted below in the red square, located on Walnut Street south of Fifth Street, north of Fourth Street, connecting the US Bank Tower (formerly the First National Bank Center Building) to the West and the Mercantile Building to the East:



*Street view of the Skywalk from Walnut Street, facing North:*



{00399958-8}

EXHIBIT B  
to Funding Agreement

*Statement of Work, Budget, and Sources of Funds*

**I. STATEMENT OF WORK**

Developer shall undertake all of the following as part of the Project:

**(A) Public Infrastructure Improvements.** The following descriptions are preliminary descriptions for informational purposes; such designs describing the Public Infrastructure Improvements set forth in the Final Plans shall control.

- 1) **Skywalk Demolition.** Remove existing skywalk bridge between the 2nd floors of the US Bank Tower (425 Walnut St.) and the Mercantile Building (414 Walnut St.) in its entirety, without damage to the existing to remain elements of each building. Remove existing skywalk supporting structure at east side of skywalk (the US Bank Tower) down to just beneath the existing structural sidewalk slab. Remove interior skywalk ramp structure and non-historic means of egress related to skywalk structure and easement. Take care to preserve and protect the existing buildings' facades and structure, including the existing historic elements and details on the façade of the Mercantile Building, as dictated by the State Historic Preservation Office (SHPO) given the active Historic Tax Credit renovation currently underway. Take care to protect and not damage existing streetcar and utility infrastructure in the right-of-way, beneath the skywalk.
- 2) **Limited Building Restoration – Mercantile Building, 414 Walnut St.** At the location of the removed skywalk, restore and re-build the building façade, exterior wall construction, windows to match the existing adjacent building façade, including historic elements, features, and detailing. At the interior of the restored façade and along the former skywalk easement/egress path, provide new interior finishes matching the existing adjacent interior finishes restoring the former easement area to occupiable condition. At the locations of the removed skywalk support pilaster columns, patch the existing concrete structural slab assembly to match the existing adjacent sidewalk.
- 3) **Limited Building Restoration – US Bank Tower, 425 Walnut St.** At the location of the removed skywalk, restore and re-build the building façade, exterior wall construction, and windows to match the existing adjacent building façade. The existing exterior wall assembly and connection to the existing building structure, and existing steel fire-proofing condition is unknown and must be field-verified after removal of the skywalk. At the interior of the restored façade, provide new interior finishes matching the existing adjacent interior finishes, restoring the former easement area to occupiable condition

**(B) Private Improvements.** The following description is a preliminary description for informational purposes; such designs describing the Private Improvements set forth in the Final Plans shall control. The Private Improvements will include the following:

- 1) **Interior Restoration – Mercantile Building, 414 Walnut St.** Along the former skywalk easement/egress path, construct a replacement egress stair, as required by SHPO given the active Historic Tax Credit renovation currently underway at 414 Walnut St., to replace the egress within the Mercantile Building.
- 2) **Interior Restoration – US Bank Tower, 425 Walnut St.** Any and all construction work agreed to between Developer and the US Bank Tower Owner pursuant to the US Bank Tower Agreements that are separate from the Public Infrastructure Improvements included in I(A)(3) above, if any.

Developer will complete all construction in accordance with the Final Plans approved by the City.

II. DEMOLITION SCHEDULE FOR SKYWALK

**Walnut Street Skywalk Demolition Schedule**

<b>Task</b>	<b>Start</b>	<b>Duration</b>	<b>Finish</b>
Schedule starting date	2/15/2024		
<b>Easement Vacation</b>			
US Bank Approval	3/28/2024		[5/30/2024]
City Approval	4/30/2024		[5/22/2024]
Vacation Finalization	4/30/2024		[7/1/2024]
<b>City Funding Request</b>			
DCED Review	2/15/2024	83	5/8/2024
City Council Introduction			[5/15/2024]
City Council Approval			[5/22/2024]
<b>Demolition Plans (including US Bank)</b>	2/15/2024		[5/31/2024]
<b>Demolition Permit</b>			
DCED/DOTE Permit process meeting	2/15/2024	10	2/25/2024
City Permit	3/27/2024	60	5/26/2024
SORTA / Streetcar / DOTE Permits	3/27/2024	60	5/26/2024
<b>Demolition / Construction</b>			
Final Bid Confirmations	3/27/2024		[5/26/2024]
Street Closure / Intermittent	5/26/2024	10	6/5/2024
Mercantile Interior Demolition	5/26/2024	10	6/5/2024
Removal of Skywalk	5/26/2024	10	6/5/2024
Façade Restorations	6/5/2024	60	8/4/2024
Interior Restorations	6/5/2024	60	8/4/2024
Sidewalk Repairs	8/4/2024	15	8/19/2024

III. **BUDGET**

	Cost
<b>SKYWALK DEMOLITION</b>	
Design Allowance for repair work	\$50,000
Building Permits Allowance	\$25,000
Streetcar/SORTA Permitting and Special requirements allowance	\$50,000
Builders Risk Insurance Allowance	\$10,000
MEP Make Safes	\$24,000
O'Rourke – Skywalk Removal bid – Exterior Only	\$315,000
Road and Sidewalk closures – Mass demo	included
Rumpke Demo – Mercantile interior demo of Skywalk Ramp Structure	\$105,600
Demo Allowance for US Bank interior work	\$18,000
Temp Partitions	\$12,000
Sidewalk Patching	\$6,000
Sidewalk Improvements	\$60,000
West Storefronts Improvements	\$96,000
Outdoor Retail Improvements	\$60,000
Exterior Building Lighting	\$90,000
Pedestrian Safety Measures	\$30,000
Building Signage	\$60,000
<b>SUBTOTAL DEMOLITION COSTS</b>	<b>\$1,011,600</b>
<b>MERCANTILE SHELL RESTORATION &amp; BUILDING CLOSE UP COSTS</b>	
Skywalk Closure Permits for restoration	\$15,000
Structural Support system removal allowance	\$60,000
Historic Window Restoration – 6x	\$28,800
2 <sup>nd</sup> Floor Fenestration Restoration	\$21,420
1 <sup>st</sup> Floor Column Restoration	\$3,600
Masonry restoration	\$54,000
Interior Restoration – Drywall and Metal Stud Framing	\$9,720
Interior Restoration – Insulation	\$1,620
Interior Restoration – Painting	\$5,400
Interior Restoration – Floor Restoration	\$21,600

Interior Restoration – Electrical	\$4,200
<b>SUBTOTAL MERCANTILE SHELL RESTORATION &amp; BUILDING CLOSE UP COSTS</b>	<b>\$225,360</b>
<b>US BANK TOWER SHELL RESTORATION &amp; BUILDING CLOSE UP COSTS</b>	
Skywalk Closure Permits for restoration	\$15,000
Structural Support system removal allowance	\$60,000
Final Steel Connection removal Touch-up	\$9,000
Granite Cladding Restoration	\$24,000
2 <sup>nd</sup> Floor Fenestration Restoration	\$21,420
Interior Restoration – Drywall and Metal Stud Framing	\$9,000
Interior Restoration – Insulation	\$900
Interior Restoration – Painting/Wall Covering	\$6,000
Interior Restoration – Flooring	\$3,000
Interior Restoration – Electrical	\$3,000
<b>SUBTOTAL US BANK TOWER SHELL RESTORATION &amp; BUILDING CLOSE UP COSTS</b>	<b>\$151,320</b>
<b>Project Contingency – 15%</b>	<b>\$186,867</b>
<b>General Requirements – 6%</b>	<b>\$85,959</b>
<b>Overhead – 2%</b>	<b>\$30,272</b>
<b>Profit – 4%</b>	<b>\$61,959</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$1,753,337</b>

**IV. SOURCES OF FUNDS**

**TOTAL SOURCES OF FUNDS (LEVERAGE)**

City Funding Source	\$1,753,337
<b>TOTAL</b>	<b>\$1,753,337</b>

The City may, at its sole discretion, elect to revise the Budget through a letter signed by both the City and Developer. However, in no event will the City contribute any additional funds to the Budget. In the event of cost overruns, it shall be Developer's responsibility to complete the Project.

EXHIBIT C  
to Funding Agreement

*Disbursement of Funds*

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

- (i) Developer shall have delivered to the City all Due Diligence Materials for the Project;
- (ii) Developer shall have delivered to the City fully executed copies of the US Bank Tower Agreements;
- (iii) The City shall have approved the Final Plans for the Project;
- (iv) The City shall have approved the construction schedule for the Project;
- (v) Developer shall have provided evidence satisfactory to the City that Developer has obtained all financing (in addition to the Funds) required for completion of the Project;
- (vi) Developer shall have provided the City with evidence of the insurance required under this Agreement;
- (vii) Developer shall have deposited with the City the surety bond(s) required under this Agreement, if any;
- (viii) Developer shall have provided the City with evidence that it has obtained all licenses, permits, governmental approvals and the like necessary for the completion of the Project;
- (ix) Construction shall have commenced and be proceeding in accordance with the City-approved Budget, construction schedule, and Final Plans; and
- (x) Developer shall not then be in default under this Agreement.
- (xi) Developer shall be prepared and capable of otherwise undertaking and completing all necessary actions to commence the Project promptly following the Effective Date and thereafter to pursue completion of this Project in a timely manner and otherwise in accordance with the terms of the Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis. Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to the Effective Date. Developer shall request the Funds and shall use the Funds solely for the purposes permitted under the Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of 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, for the costs of the Private Improvements, or for any other purpose expressly disapproved in writing by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City'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 Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Project are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate 30 days following completion of construction of the Project.

Notwithstanding anything in this Agreement to the contrary, no Funds shall be used for any costs that were incurred prior to the Effective Date of this Agreement. The Funds shall be requested and used by Developer solely to pay for costs of the Public Infrastructure Improvements, as described in this Agreement and as reflected on the Final Plans and Budget and for no other purpose.

Developer shall not use any portion of the Funds to pay for any costs associated with any privately-owned improvements. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction of the Public Infrastructure Improvements, for establishing a working capital fund, or for any other purpose expressly disapproved by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the Budget, Final Plans, or Final Bids or otherwise permitted under this Agreement.

(C) Construction Draw Procedure

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

(ii) Documentation. Each disbursement request for construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City; (ii) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from the General Contractor, all subcontractors and materialmen 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. All affidavits and lien waivers shall be signed, fully-executed originals and in such form approved and acceptable to the City.

(D) Retainage. After review and approval of a disbursement request, the City shall disburse 90% of the amount requested (with retainage of 10%). The retained amount shall be disbursed when (i) construction of the Project have been completed and evidence thereof, in form satisfactory to the City, has been delivered to the City; (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment; and (iii) Developer has complied with all of its other obligations, as it relates to the Project, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Project, and upon the provision of the required documentation and the satisfaction of the other disbursement conditions in this Exhibit, request disbursement of the entire amount of Funds in one lump sum, in which case such amount would not be subject to retainage.

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer 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) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

EXHIBIT D  
to Funding Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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

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

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

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

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

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

(G) Equal Employment Opportunity.

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

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

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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



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

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

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

(N) Americans with Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

*Addendum I*  
*to*  
*Additional Requirements Exhibit*

City's Prevailing Wage Determination

**TO BE ATTACHED TO EXECUTION VERSION**