



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Chairperson, Greg Landsman
Vice Chairperson, Reggie Harris
Councilmember Jeff Cramerding
Councilmember Mark Jeffreys
Councilmember Scotty Johnson
Vice Mayor Jan-Michele Kearney
Councilmember Liz Keating
Councilmember Meeka Owens
President Pro Tem Victoria Parks

Monday, February 28, 2022

1:00 PM

Council Chambers, Room 300

ROLL CALL

DEPARTMENTAL PRESENTATIONS

Finance
Transportation & Engineering (DOTE)

AGENDA

- [202200493](#) ORDINANCE (EMERGENCY), submitted by Mayor Aftab Pureval, from Andrew W. Garth, City Solicitor, AMEDNING the policy of managing the Stabilization Funds for the City of Cincinnati.

Sponsors: Mayor

Attachments: [Transmittal](#)
[Ordinance](#)
- [202200494](#) ORDINANCE (EMERGENCY), submitted by Mayor Aftab Pureval, from Andrew W. Garth, City Solicitor, AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$5,150,000 from American Rescue Plan grant project account no. 469x101xARP050, "FY 2021 COVID Expenses," for the purpose of realigning sources with uses; ESTABLISHING new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP200, "Affordable Housing Trust Fund," for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; ESTABLISHING new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP201, "Housing Strategies," for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; AUTHORIZING the transfer and appropriation of the sum of \$5,000,000

from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP200, "Affordable Housing Trust Fund," for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; AUTHORIZING the transfer and appropriation of the sum of \$150,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP201, "Housing Strategies," for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; AUTHORIZING the City Manager to execute any and all necessary agreements related to the Affordable Housing Trust Fund with Cincinnati Development Fund, Inc. or an affiliate; and DECLARING expenditures from American Rescue Plan grant project account no. 469x101xARP200, "Affordable Housing Trust Fund," and American Rescue Plan grant project account no. 469x101xARP201, "Housing Strategies," to be for a public purpose.

Sponsors: Mayor

Attachments: [Transmittal](#)
[Ordinance](#)

3. [202200471](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the City Manager to apply for grant resources awarded by the Ohio Department of Transportation's Safe Routes to School program in an amount of up to \$400,000 for the purpose of constructing sidewalks on Westwood Northern Boulevard between McHenry Avenue and Baltimore Avenue.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)

4. [202200472](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the payment of \$3,285 from Emergency Communications Center General Fund non-personnel operating budget account no. 050x103x0000x7215 as a moral obligation to US Bank for training and certification that was billed to a purchase card resulting in charges that exceeded the State of Ohio's \$3,000 purchasing limit without certification.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)

5. [202200475](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, ESTABLISHING new capital improvement program project account no. 980x199x221915, "Oakley Recreation Center," for the

purpose of providing resources to acquire real estate or interest therein for parks, parkways, playgrounds and recreation centers, improving and equipping such real estate, rehabilitating existing parks, parkways, playgrounds and recreation centers, including the design and construction of a recreation center in the Oakley neighborhood as part of the Recreation Master Plan designed to meet the current demands and programming needs of the public, said recreation center to be larger than the existing center and include a gymnasium and rooms for specific activities, comply with current building codes, and provide ADA access and life safety requirements; and AUTHORIZING the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of the Park and Recreation Improvement Bond Fund 860 to newly established capital improvement program project account no. 980x199x221915, "Oakley Recreation Center."

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)

6. [202200478](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the transfer and return to source, Emergency Shelter Grant Fund 445, of the sum of \$559,380.39 from various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer; and AUTHORIZING the transfer and appropriation of the sum of \$559,380.39 from the unappropriated surplus of Emergency Shelter Grant Fund 445 to various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer, for the purpose of appropriating Emergency Shelter Grant administrative resources to Emergency Shelter Grant project accounts to completely fund emergency shelter renovations for increased safety related to COVID-19.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

7. [202200479](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the transfer and return to source Fund 411, "Home Investment Trust," of the sum of \$3,523,076 from various Home Investment Trust Fund 411 project accounts, according to the attached Schedule of Transfer; and AUTHORIZING the transfer and appropriation of the sum of \$3,523,076 from the unappropriated surplus of Fund 411, "Home Investment Trust," to various new and existing Home Investment Trust Fund 411 project accounts, according to the attached schedule of transfer, for the purpose of appropriating resources to projects consistent with guidance issued by the United States Department of Housing and Urban

Development.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment](#)

8. [202200483](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the City Manager to enter into an agreement on behalf of the Greater Cincinnati Water Works with the Water Research Foundation for the purpose of co-funding, along with five other water utilities, a collaborative research project known as "Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs."
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
[Attachment](#)
9. [202200484](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the establishment of a new capital improvement program project account no. 980x233x222362, "Kirby Improvements PID 115448 SRTS Grant," for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; AUTHORIZING the City Manager to accept and appropriate a grant in the amount of up to \$400,000 from the federal Safe Routes to School program (ALN 20.205), as administered by the Ohio Department of Transportation, to new capital improvement program project account no. 980x233x222362, "Kirby Improvements PID 115448 SRTS Grant," for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; and further AUTHORIZING the Director of Finance to deposit the grant funds into newly established capital improvement program project account no. 980x233x222362, "Kirby Improvements PID 115448 SRTS Grant."
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
[Ordinance](#)
10. [202200486](#) ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the City Manager to execute a Property Transfer and Development Agreement with the Board of County Commissioners of Hamilton County, Ohio, pursuant to which the

City will vacate and convey a portion of the public right-of-way known as Logan Street in the Over-the-Rhine neighborhood of Cincinnati in connection with the construction of a public parking garage.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

11. [202200491](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other project immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

12. [202200492](#) ORDINANCE submitted by John P. Curp, Interim City Manager, on 2/24/2022, AUTHORIZING the City Manager to execute a Property Sale and Development Agreement with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

SUPPLEMENTAL AGENDA

13. [202200545](#) PRESENTATION submitted by John P. Curp, Interim City Manager, dated 2/28/2022, regarding is the Department of Finance's FY 2023 Budget Update.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Presentation](#)

14. [202200546](#) PRESENTATION submitted by John P. Curp, Interim City Manager, dated 2/28/2022, regarding the Department of Transportation & Engineering's FY 2023 Budget Update.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Presentation](#)

ADJOURNMENT

Date: February 18, 2022

To: Mayor Aftab Pureval
From: Andrew W. Garth, City Solicitor *AWG*
Subject: **Emergency Ordinance – Amending Stabilization Policy**

Transmitted herewith is an emergency ordinance captioned as follows:

AMENDING the policy of managing the Stabilization Funds for the City of Cincinnati.

AWG/KKF(lnk)
Attachment
358262

City of Cincinnati

KKF
AWB

An Ordinance No. _____

- 2022

AMENDING the policy of managing the Stabilization Funds for the City of Cincinnati.

WHEREAS, Ordinance No. 253-2015 established a policy to manage the fund balance reserves now referred to as the Stabilization Funds; and

WHEREAS, Ordinance No. 213-2019 amended Ordinance No. 253-2015 to better comply with Government Finance Officers Association recommendations to maintain reserves equaling two months of current estimated revenue, which is equal to 16.7 percent of prior year General Fund operating revenues; and

WHEREAS, the City has made substantial progress in funding its reserve balances and will likely achieve its goal of maintaining reserves totaling 16.7 percent of prior year General Fund operating revenues within the next several fiscal years; and

WHEREAS, it is a priority of the Mayor, Council, and Administration to make transformative investments in housing at all income levels, with an eye towards improved affordable and workforce housing options within the City; and

WHEREAS, this amendment will add an additional priority of setting aside an amount of up to \$5,000,000 per year to the City’s Affordable Housing Trust Fund, of which revenues will be available annually as a percentage of carryover balance; and

WHEREAS, this amendment is intended to better define parameters for allocation of the remaining carryover balance, once the financial reserve balances are materially achieved; and

WHEREAS, this amendment is intended to increase the health of the City’s overall finances by utilizing the remaining carryover balance to address continuing financial challenges of the City and to fund strategic priorities; now, therefore,

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

Section 1. That Section 16 of Ordinance No. 213-2019 is amended as follows:

Section 16. That the “Waterfall Funding Mechanism” shall next allocate any and all remaining year-end General Fund Surplus as follows:

- a. Thirty-four percent (34%) of the remaining General Fund Surplus to the Economic Downturn Reserve Account until its balance achieves the minimum policy level

stated herein. To the extent that the Economic Downturn Reserve Account minimum policy level is met and the Working Capital Reserve Fund minimum policy level is not met, then any portion of the thirty-four percent (34%) not needed to meet the Economic Downturn Reserve Account minimum policy level will be dedicated to the Working Capital Reserve Fund until its minimum policy level is achieved;

- b. Thirty-three percent (33%) of the remaining General Fund Surplus to the Working Capital Reserve Fund until its balance achieves the minimum policy level stated herein. To the extent that the Working Capital Reserve Fund minimum policy level is met and the Economic Downturn Reserve Account minimum policy level is not met, then any portion of the thirty-three percent (33%) not needed to meet the Working Capital Reserve Fund minimum policy level will be dedicated to the Economic Downturn Reserve Account until its minimum policy level is achieved;
- c. Thirty-three percent (33%) of the remaining General Fund Surplus ~~to either,~~ aggregated with any additional funding available pursuant to Section 18 of this ordinance, distributed as follows:
 - i. The lesser of (1) fifty percent (50%) of the available amount or (2) \$5 million as a one-time contribution to the City's Affordable Housing Trust Fund.
 - ii. The lesser of (1) thirty-three percent (33%) of the available amount, (2) \$2 million, or (3) the amount needed to address any remaining unfunded liability of the pension trust and health care trust, with such amount utilized

as a one-time contribution to address the City's pension obligations as follows:

- A. First, all available funds contributed as a one-time employer contribution to the pension trust, until such time as the pension trust has no unfunded liability;
 - B. Second, if the above is achieved and the healthcare trust has an unfunded liability, then all remaining available funds to the healthcare trust until such time as the healthcare trust has no unfunded liability.
- iii. The lesser of (1) 17 percent of the available amount or (2) \$500,000 shall be contributed to the Operating Budget Contingencies Account, to be utilized as a contingency reserve for subsequent appropriation for one-time, unforeseen operating needs that arise during the remainder of the ongoing fiscal year.
 - iv. Any remaining amount shall be contributed to an Infrastructure and Capital Project Reserve for subsequent appropriation by Council for identified one-time infrastructure and capital projects for identified urgent needs or as part of the next annual budget cycle.
 - ~~i. Further enhance the funding level in any of the Stabilization Funds with a priority to any Stabilization Funds that are not funded at their minimum policy level; or~~
 - ~~ii. One-time expenditures.~~

Section 2. That Section 18 of Ordinance No. 213-2019 is amended as follows:

Section 18. That if all of the Stabilization Funds identified herein are fully funded at their respective minimum policy levels and the Recommended Aggregate Reserve Balance is met ~~the City may direct any additional General Fund surplus to either;~~ then any additional General Fund surplus shall be aggregated with and distributed in the same manner as those funds distributed as provided in Section 16(c) of this ordinance.

- ~~a. Further enhance the funding level in any of the Stabilization Funds with a priority to any Stabilization Funds that are not funded at their minimum policy level; or,~~
- ~~b. One-time expenditures including Capital Projects or other one-time General Fund needs.~~

Section 3. That existing Sections 16 and 18 of Ordinance No. 213-2019 are hereby repealed.

Section 4. That existing Section 17 of Ordinance No. 213-2019 is hereby repealed.

Section 5. That all terms of Ordinance No. 213-2019 not amended by this ordinance remain in full force and effect.

Section 6. That the proper City officials are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 through 5 of this Ordinance.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

New language underscored. Deleted language indicated by strikethrough.

Date: February 18, 2022

To: Mayor Aftab Pureval
From: Andrew W. Garth, City Solicitor *AWG*
Subject: **Emergency Ordinance – American Rescue Plan Funds for Affordable Housing**

Transmitted herewith is an emergency ordinance captioned as follows:

AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$5,150,000 from American Rescue Plan grant project account no. 469x101xARP050, “FY 2021 COVID Expenses,” for the purpose of realigning sources with uses; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; **AUTHORIZING** the transfer and appropriation of the sum of \$5,000,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; **AUTHORIZING** the transfer and appropriation of the sum of \$150,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; **AUTHORIZING** the City Manager to execute any and all necessary agreements related to the Affordable Housing Trust Fund with Cincinnati Development Fund, Inc. or an affiliate; and **DECLARING** expenditures from American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” and American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” to be for a public purpose.

AWG/AKS(lnk)

Attachment
357870

{00358482-1}

EMERGENCY

City of Cincinnati

AKS

An Ordinance No. _____

- 2022

AUTHORIZING the transfer and return to source Local Fiscal Recovery Fund 469 of the sum of \$5,150,000 from American Rescue Plan grant project account no. 469x101xARP050, “FY 2021 COVID Expenses,” for the purpose of realigning sources with uses; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; **ESTABLISHING** new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; **AUTHORIZING** the transfer and appropriation of the sum of \$5,000,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic; **AUTHORIZING** the transfer and appropriation of the sum of \$150,000 from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic; **AUTHORIZING** the City Manager to execute any and all necessary agreements related to the Affordable Housing Trust Fund with Cincinnati Development Fund, Inc. or an affiliate; and **DECLARING** expenditures from American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” and American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” to be for a public purpose.

WHEREAS, it is a priority of this Mayor, Council, and the City Administration to make transformative investments in housing at all income levels, with an eye towards improved affordable and workforce housing options within the City of Cincinnati; and

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

WHEREAS, a portion of those funds was appropriated to American Rescue Plan grant project account no. 469x101xARP050, “FY 2021 COVID Expenses,” which was designated to provide fiscal stability for FY 2021; and

WHEREAS, with the City’s FY 2021 budget now being closed, remaining funds identified for FY 2021 fiscal stability are available to be reallocated for another purpose; and

WHEREAS, the COVID-19 pandemic negatively impacted the supply of affordable housing in the United States, including the City of Cincinnati, and \$5,000,000 of American Rescue Plan funds is being made available for affordable housing; and

WHEREAS, pursuant to Ordinance No. 364-2018, passed December 12, 2018, the City established Fund 439, "Affordable Housing Trust Fund," for the purpose of receiving and disbursing funds to preserve and develop affordable housing and prevent homelessness in the City of Cincinnati, and to fund any of the City of Cincinnati's administrative costs associated therewith; and

WHEREAS, subsequent to creation of Fund 439, "Affordable Housing Trust Fund," additional capital improvement program project accounts were established for the purpose of providing resources for the preservation and development of affordable housing in the City of Cincinnati; and

WHEREAS, the City desires to further engage Cincinnati Development Fund, Inc., and its affiliates to create additional financing and development opportunities for affordable housing in the City of Cincinnati; and

WHEREAS, a residential housing strategy for the City is necessary to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic and \$150,000 of American Rescue Plan Funds are being made available for such purpose; now, therefore,

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

Section 1. That the sum of \$5,150,000 is hereby transferred and returned to source Local Fiscal Recovery Fund 469 from American Rescue Plan grant project account no. 469x101xARP050, "FY 2021 COVID Expenses," for the purpose of realigning sources with uses.

Section 2. That the Director of Finance is hereby authorized to establish new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP200, "Affordable Housing Trust Fund," for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic.

Section 3. That the Director of Finance is hereby authorized to establish new Local Fiscal Recovery Fund 469 American Rescue Plan grant project account no. 469x101xARP201, "Housing

Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic.

Section 4. That the sum of \$5,000,000 is hereby transferred and appropriated from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” for the purpose of providing funds to enhance the availability of affordable housing within the City which is necessary because of the impacts of the COVID-19 pandemic (the “ARPA Affordable Housing Trust Funds”).

Section 5. That the sum of \$150,000 is hereby transferred and appropriated from the unappropriated surplus of Local Fiscal Recovery Fund 469 to newly established American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” for the purpose of providing funds to develop a residential housing strategy to improve the efficacy of the City at addressing the negative economic impacts of the COVID-19 pandemic.

Section 6. That expenditures from American Rescue Plan grant project account no. 469x101xARP200, “Affordable Housing Trust Fund,” and American Rescue Plan grant project account no. 469x101xARP201, “Housing Strategies,” are hereby declared to be for a public purpose because support for affordable housing improves the economic and general well-being of the people of the City, which is necessary because of the impacts of the COVID-19 pandemic.

Section 7. That the City Manager is hereby authorized to execute any and all necessary agreements with Cincinnati Development Fund, Inc., or one of its affiliates, to deploy the ARPA Affordable Housing Trust Funds, all available funds in Fund 439, “Affordable Housing Trust Fund,” and all available funds in the capital improvement program project accounts related to Fund

439, "Affordable Housing Trust Fund," on such terms and conditions as deemed acceptable by the City Manager.

Section 8. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 7 hereof.

Section 9. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to implement authorized American Rescue Plan-related support programs and projects.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

February 24, 2022

To: Mayor and Members of Council 202200471
From: John P. Curp, Interim City Manager
Subject: Ordinance – DOTE: Safe Routes to School Grant Application

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to apply for grant resources awarded by the Ohio Department of Transportation’s Safe Routes to School program in an amount of up to \$400,000 for the purpose of constructing sidewalks on Westwood Northern Boulevard between McHenry Avenue and Baltimore Avenue.

This Ordinance authorizes the City Manager to apply for grant resources awarded by the Ohio Department of Transportation (ODOT)’s Safe Routes to School (SRTS) program in the amount of up to \$400,000 for the purpose of constructing sidewalks on Westwood Northern Boulevard between McHenry Avenue and Baltimore Avenue.

The grant does not require matching funds as long as the project costs are less than or equal to the grant amount. In an effort to ensure the project costs stay below the \$400,000 amount, preliminary engineering and design tasks will be completed using existing and future Department of Transportation and Engineering (DOTE) capital improvement program project account resources. No new FTEs are required.

The application deadline is March 4, 2022, and the application may be submitted prior to the effective date of this Ordinance. Grant resources will not be accepted without authorization from the City Council.

The implementation of various safety improvements within two miles of schools is in accordance with the “Connect” goal to “develop an efficient multi-modal transportation system that supports neighborhood livability,” as well as the strategies to “expand options for non-automotive travel” and to “plan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachment

AUTHORIZING the City Manager to apply for grant resources awarded by the Ohio Department of Transportation’s Safe Routes to School program in an amount of up to \$400,000 for the purpose of constructing sidewalks on Westwood Northern Boulevard between McHenry Avenue and Baltimore Avenue.

WHEREAS, various safety improvements within the City of Cincinnati would provide a safe and secure route within two miles of schools for local students; and

WHEREAS, a grant is available from the Ohio Department of Transportation through the Safe Routes to School grant program in an amount of up to \$400,000; and

WHEREAS, the grant does not require matching funds so long as the project costs are less than or equal to the total grant amount; and

WHEREAS, in an effort to ensure that the project costs stay below the \$400,000 grant cap, preliminary engineering and design tasks will be completed using existing and future Department of Transportation and Engineering capital improvement program project account resources; and

WHEREAS, in order to meet the March 4, 2022 submission deadline for this grant, the application may be submitted prior to the effective date of this Ordinance, although no grant funds will be accepted without Council approval; and

WHEREAS, no additional FTEs are necessary for this grant; and

WHEREAS, implementation of various safety improvements within two miles of schools is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” as well as the strategies to “[e]xpand options for non-automotive travel” and to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for grant resources from the Ohio Department of Transportation’s Safe Routes to School program in an amount of up to \$400,000 for the purpose of constructing sidewalks on Westwood Northern Boulevard between McHenry Avenue and Baltimore Avenue.

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

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

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

February 24, 2022

To: Mayor and Members of City Council

202200472

From: John P. Curp, Interim City Manager

Subject: Emergency Ordinance – ECC: Moral Obligation Payment to US Bank

Attached is an Emergency Ordinance captioned:

AUTHORIZING the payment of \$3,285 from Emergency Communications Center General Fund non-personnel operating budget account no. 050x103x0000x7215 as a moral obligation to US Bank for training and certification that was billed to a purchase card resulting in charges that exceeded the State of Ohio’s \$3,000 purchasing limit without certification.

This Emergency Ordinance authorizes the payment of \$3,285 from the Emergency Communications Center (ECC)’s General Fund non-personnel operating budget account no. 050x103x0000x7215 as a moral obligation to US Bank for training and certification that was billed to a purchase card resulting in charges that exceeded the State of Ohio’s \$3,000 purchasing limit without certification.

The Emergency Communications Center purchased emergency medical dispatch training and certification for new hires in the City’s 9-1-1 Call Center from Priority Dispatch Corporation. A purchase card (“P-card”) was used to purchase the training and certification, but the total charge exceeded the State of Ohio’s purchasing limit of \$3,000 without certification, resulting in a moral obligation. Accounting staff within the Emergency Communications Center have been advised regarding the issue that resulted in this oversight and have taken steps to ensure it is not repeated.

The reason for the emergency is the immediate need to make payment on the impacted purchase card.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

EMERGENCY

AKS

- 2022

AUTHORIZING the payment of \$3,285 from Emergency Communications Center General Fund non-personnel operating budget account no. 050x103x0000x7215 as a moral obligation to US Bank for training and certification that was billed to a purchase card resulting in charges that exceeded the State of Ohio's \$3,000 purchasing limit without certification.

WHEREAS, the State of Ohio requires any purchase over \$3,000 to be certified; and

WHEREAS, the Emergency Communications Center purchased emergency medical dispatch training and certification for new hires in the City's 9-1-1 Call Center from Priority Dispatch Corporation; and

WHEREAS, a purchase card (P-card) was used to purchase the training and certification, but the total charge exceeded the State of Ohio's purchasing limit of \$3,000; and

WHEREAS, accounting staff within the Emergency Communications Center have been advised regarding the issue that resulted in this oversight, and steps have been taken to ensure that this issue is not repeated; and

WHEREAS, sufficient funds are available from Emergency Communications Center General Fund non-personnel operating budget account no. 050x103x0000x7215 to pay for the services provided by the vendor; and

WHEREAS, Council desires to provide payment for such services in an amount totaling \$3,285; now, therefore,

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

Section 1. That the Finance Director is authorized to make a payment of \$3,285 from Emergency Communications Center General Fund non-personnel operating budget account no. 050x103x0000x7215 as a moral obligation to US Bank for training and certification provided to the City of Cincinnati.

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

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to make payment on the impacted purchase card.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

February 24, 2022

To: Mayor and Members of City Council **202200475**

From: John P. Curp, Interim City Manager

Subject: Ordinance – CRC: Funding for Oakley Recreation Center

Attached is an Ordinance captioned:

ESTABLISHING new capital improvement program project account no. 980x199x221915, “Oakley Recreation Center,” for the purpose of providing resources to acquire real estate or interest therein for parks, parkways, playgrounds and recreation centers, improving and equipping such real estate, rehabilitating existing parks, parkways, playgrounds and recreation centers, including the design and construction of a recreation center in the Oakley neighborhood as part of the Recreation Master Plan designed to meet the current demands and programming needs of the public, said recreation center to be larger than the existing center and include a gymnasium and rooms for specific activities, comply with current building codes, and provide ADA access and life safety requirements; and **AUTHORIZING** the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of the Park and Recreation Improvement Bond Fund 860 to newly established capital improvement program project account no. 980x199x221915, “Oakley Recreation Center.”

Approval of this Ordinance authorizes the establishment of new capital improvement program project account no. 980x199x221915, “Oakley Recreation Center,” for the purpose of providing resources to acquire real estate or interest therein for parks, parkways, playgrounds and recreation centers, improving and equipping such real estate, rehabilitating existing parks, parkways, playgrounds and recreation centers, including the design and construction of a recreation center in the Oakley neighborhood as part of the Recreation Master Plan designed to meet the current demands and programming needs of the public, said recreation center to be larger than the existing center and include a gymnasium and rooms for specific activities, comply with current building codes, and provide Americans with Disabilities Act (ADA) access and life safety requirements. Approval of this Ordinance will also authorize the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of the Park and Recreation Improvement Bond Fund 860 to newly established capital improvement program project account no. 980x199x221915, “Oakley Recreation Center.”

On June 22, 2016, the City Council passed Ordinance No. 0202-2016, which authorized financing not to exceed \$2,000,000 of parks and recreation bonds for the

Oakley Recreation Center project, and Ordinance No. 0165-2016, which authorized the transfer and appropriation of \$2,000,000 from the unappropriated surplus of Park and Recreation Bond Fund 860 to the capital improvement project account “Oakley Recreation Center.” Since the project was not ready to proceed at that time, debt was never issued for the project.

On March 6, 2019, the City Council passed Ordinance No. 0076-2019, which authorized an amendment to Ordinance No. 0165-2016, and ordained that when the Oakley Recreation Center project was ready to proceed, the City Council shall consider passage of an appropriation to the recreation center capital improvement program project to be generated with the debt issuance authority granted in Ordinance No. 0202-2016. Since the project is now ready to proceed, the debt can now be issued for the project and an appropriation is necessary in order to authorize the expenditure of resources.

The Oakley Recreation Center project is in accordance with the “Live” goal to “Build a robust public life” and strategy to “Develop and maintain inviting and engaging public spaces to encourage social interaction between different types of people” as described on pages 149 - 152 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachment



City of Cincinnati

KKF

An Ordinance No. _____

- 2022

ESTABLISHING new capital improvement program project account no. 980x199x221915, “Oakley Recreation Center,” for the purpose of providing resources to acquire real estate or an interest therein for parks, parkways, playgrounds, and recreation centers, improving and equipping such real estate, rehabilitating existing parks, parkways, playgrounds, and recreation centers, including the design and construction of a recreation center in the Oakley neighborhood as part of the Recreation Master Plan designed to meet the current demands and programming needs of the public, said recreation center to be larger than the existing center and include a gymnasium and rooms for specific activities, comply with current building codes, and provide ADA access and life safety requirements; and **AUTHORIZING** the transfer and appropriation of \$2,000,000 from the unappropriated surplus of the Park and Recreation Improvement Bond Fund 860 to newly established capital improvement program project account no. 980x199x221915, “Oakley Recreation Center.”

WHEREAS, the Oakley Recreation Center is part of the Recreation Master Plan, designed to meet the current demands and programming needs of the public; and

WHEREAS, the new recreation center is designed to be larger than the existing center and will include a gymnasium and rooms for specific activities, and will meet current building codes, provide Americans with Disabilities Act (ADA) access, and meet life safety requirements; and

WHEREAS, on June 22, 2016, Council passed Ordinance No. 0202-2016, which authorized financing not to exceed \$2,000,000 of parks and recreation bonds for the Oakley Recreation Center project, and Ordinance No. 0165-2016, which authorized the transfer and appropriation of \$2,000,000 from the unappropriated surplus of Park and Recreation Bond Fund 860 to the capital improvement project account “Oakley Recreation Center”; and

WHEREAS, since the project was not ready to proceed at that time, debt was never issued for the project; and

WHEREAS, on March 6, 2019, Council passed Ordinance No. 0076-2019, which authorized an amendment to Ordinance No. 0165-2016, and ordained that when the Oakley Recreation Center project is ready to proceed Council shall consider passage of an appropriation to the recreation center project to be generated with the debt issuance authority granted in Ordinance No. 0202-2016; and

WHEREAS, since the project is now ready to proceed, debt can now be issued for the project; and

WHEREAS, the Oakley Recreation Center project is in accordance with the “Live” goal to “[b]uild a robust public life” and strategy to “[d]evelop and maintain inviting and engaging public spaces to encourage social interaction between different types of people,” as described on pages 149 - 152 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is hereby authorized to establish new capital improvement program project account no. 980x199x221915, "Oakley Recreation Center," for the purpose of providing resources to acquire real estate or an interest therein, for parks, parkways, playgrounds, and recreation centers, improving and equipping such real estate, rehabilitating existing parks, parkways, playgrounds, and recreation centers, including the design and construction of a recreation center in the Oakley neighborhood as part of the Recreation Master Plan designed to meet the current demands and programming needs of the public, said recreation center to be larger than the existing center and include a gymnasium, rooms for specific activities, to comply with current building codes, and to provide ADA access and life safety requirements.

Section 2. That the sum of \$2,000,000 is hereby transferred and appropriated from the unappropriated surplus of the Park and Recreation Improvement Bond Fund 860 to the newly established capital improvement program project account no. 980x199x221915, "Oakley Recreation Center."

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

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

February 24, 2022

To: Mayor and Members of City Council **202200478**
From: John P. Curp, Interim City Manager
**Subject: Emergency Ordinance – 2022 Emergency Solutions Grant (ESG)
Program Reconciliation**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the transfer and return to source, Emergency Shelter Grant Fund 445, of the sum of \$559,380.39 from various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer; and **AUTHORIZING** the transfer and appropriation of the sum of \$559,380.39 from the unappropriated surplus of Emergency Shelter Grant Fund 445 to various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer, for the purpose of appropriating Emergency Shelter Grant administrative resources to Emergency Shelter Grant project accounts to completely fund emergency shelter renovations for increased safety related to COVID-19.

As indicated in Section 1 of the attached Schedule of Transfer, approval of this Emergency Ordinance authorizes the transfer and return to source, Emergency Shelter Grant Fund 445, the sum of \$559.380.39 from various Emergency Shelter Grant project accounts.

As indicated in Section 2 of the attached Schedule of Transfer, this Emergency Ordinance also authorizes the transfer and appropriation of the sum of \$559,380.39 from the unappropriated surplus of Emergency Shelter Grant Fund 445 to various Emergency Shelter Grant project accounts for the purpose of appropriating Emergency Shelter Grant administrative resources to Emergency Shelter Grant project accounts to completely fund emergency shelter renovations for increased safety related to COVID-19.

The Emergency Solutions Grant Program (ESG) provides annual grants to local communities for projects that engage persons living on the street, improve the number and quality of shelters, help operate shelters, provide essential services to shelter residents, rapidly re-house persons experiencing homelessness, and prevent people from experiencing homelessness.

The United States Department of Housing and Urban Development (HUD) awarded the initial grant allocation of \$1,013,616 for the ESG program on February 14, 2020,

which City Council accepted and appropriated through Ordinance Nos. 0020-2020 and 0107-2020.

HUD later awarded two additional tranches of stimulus funding (ESG-CV) to address the impacts of COVID-19. The first tranche totaled \$3,495,228 and was accepted and appropriated by the City Council through Ordinance Nos. 0107-2020 and 0121-2020. The second tranche of stimulus funding totaled \$4,156,549 and was accepted and appropriated by the City Council through Ordinance No. 0240-2020.

HUD requires the ESG-CV resources to be spent by September 30, 2022. A portion of the stimulus resources needs to be reallocated from administrative project accounts to other ESG-CV project accounts to complete emergency shelter renovations for increased safety related to COVID-19.

The ESG 2020 Program is in accordance with the “Live” strategy to “support and stabilize our neighborhoods,” as described on pages 160 - 163 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to fund vital City programs with Emergency Solutions Grant resources according to the United States Department of Housing and Urban Development’s established timeline.

The Administration recommends passage of this Emergency Ordinance.

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



Attachment

EMERGENCY

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- 2022

AUTHORIZING the transfer and return to source, Emergency Shelter Grant Fund 445, of the sum of \$559,380.39 from various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer; and **AUTHORIZING** the transfer and appropriation of the sum of \$559,380.39 from the unappropriated surplus of Emergency Shelter Grant Fund 445 to various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer, for the purpose of appropriating Emergency Shelter Grant administrative resources to Emergency Shelter Grant project accounts to completely fund emergency shelter renovations for increased safety related to COVID-19.

WHEREAS, the Emergency Solutions Grants Program (“ESG”) provides annual grants to local communities for projects that engage persons living on the street, improve the number and quality of shelters, help operate shelters, provide essential services to shelter residents, rapidly re-house persons experiencing homelessness, and prevent persons from experiencing homelessness; and

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) awarded the initial grant allocation of \$1,013,616 for the ESG program (ALN 14.231) via Award E-20-MC-39-0003 on February 14, 2020, which Council accepted and appropriated through Ordinance Nos. 0020-2020 and 0107-2020; and

WHEREAS, HUD later awarded two additional tranches of stimulus funding to address the impacts of the COVID-19 pandemic; and

WHEREAS, the first tranche of stimulus funding (“ESG-CV”) totaled \$3,495,228 (ALN 14.231) via Award E-20-MW-39-0003 and was accepted and appropriated by Council through Ordinance Nos. 0107-2020 and 0121-2020; and

WHEREAS, the second tranche of stimulus funding totaled \$4,156,549, also via Award E-20-MW-39-0003, and was accepted and appropriated by Council through Ordinance No. 0240-2020;

WHEREAS, HUD requires the ESG-CV funding to be fully spent by September 30, 2022; and

WHEREAS, a portion of the stimulus resources needs to be reallocated from administrative project accounts to other ESG-CV project accounts to complete emergency shelter renovations for increased safety related to COVID-19; and

WHEREAS, the ESG 2020 Program is in accordance with the “Live” strategy to “[s]upport and stabilize our neighborhoods,” as described on pages 160-163 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the sum of \$559,380.39 is hereby transferred and returned to source Emergency Shelter Grant Fund 445 from various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer.

Section 2. That the sum of \$559,380.39 is hereby transferred and appropriated from the unappropriated surplus of Emergency Shelter Grant Fund 445 to various Emergency Shelter Grant project accounts, in accordance with the attached Schedule of Transfer, for the purpose of transferring Emergency Shelter Grant administrative resources to Emergency Shelter Grant project accounts to completely fund emergency shelter renovations for increased safety related to COVID-19.

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

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to fund vital City programs with Emergency Solutions Grant resources according to the United States Department of Housing and Urban Development’s established timeline.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

TRANSFER SCHEDULE

DECREASE OF EXISTING EMERGENCY SOLUTIONS GRANT - CV APPROPRIATION SCHEDULE

Section 1

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Decreased	Revised Authorization
ESG-CV	445	162	4452020	ESG Stimulus Admin '20	\$349,522.00	\$349,522.00	\$0.00
ESG-CV	445	162	4452018	ESG Stimulus CV2 Admin '20	\$415,654.00	\$209,858.39	\$205,795.61
TOTAL					\$765,176.00	\$559,380.39	\$205,795.61

INCREASE OF EXISTING EMERGENCY SOLUTIONS GRANT - CV APPROPRIATION SCHEDULE

Section 2

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Increased	Revised Authorization
ESG-CV	445	162	4452017	ESG Stimulus '20	\$3,145,706.00	\$349,522.00	\$3,495,228.00
ESG-CV	445	162	4452029	ESG Stimulus CV2 '20	\$3,740,895.00	\$209,858.39	\$3,950,753.39
TOTAL					\$6,886,601.00	\$559,380.39	\$7,445,981.39

February 24, 2022

To: Mayor and Members of City Council 202200479
From: John P. Curp, Interim City Manager
Subject: **Emergency Ordinance – HOME-ARP Reconciliation**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the transfer and return to source Fund 411, “Home Investment Trust,” of the sum of \$3,523,076 from various Home Investment Trust Fund 411 project accounts, according to the attached Schedule of Transfer; and **AUTHORIZING** the transfer and appropriation of the sum of \$3,523,076 from the unappropriated surplus of Fund 411, “Home Investment Trust,” to various new and existing Home Investment Trust Fund 411 project accounts, according to the attached schedule of transfer, for the purpose of appropriating resources to projects consistent with guidance issued by the United States Department of Housing and Urban Development.

This Emergency Ordinance authorizes the transfer and return to source Fund 411, “Home Investment Trust,” of the sum of \$3,523,076 from various Home Investment Trust Fund 411 project accounts. This Emergency Ordinance also authorizes the transfer and appropriation of the sum of \$3,523,076 from the unappropriated surplus of Fund 411, “Home Investment Trust,” to various new and existing Home Investment Trust Fund 411 project accounts for the purpose of appropriating resources to projects approved by the United States Department of Housing and Urban Development (HUD).

The City received an initial entitlement grant award of \$2,737,925 from the HUD HOME Investment Partnership Program (HOME), which the City Council authorized in Ordinance No. 0132-2021 on February 25, 2021. HUD later awarded \$9,923,076 in additional HOME grant resources as part of the American Rescue Plan (ARP), which the City accepted and appropriated to the Home Investment Trust Fund 411 project, “HOME – American Rescue Plan,” as authorized by the City Council in Ordinance No. 0153-2021 on May 5, 2021.

On May 19, 2021, Council approved Ordinance No. 0166-2021, which returned to source the sum of \$9,900,000 from Home Investment Trust Fund 411 project, “HOME – American Rescue Plan,” and appropriated \$9,900,000 from the unappropriated surplus of Home Investment Trust Fund 411 to newly established projects, including \$3,000,000 to “Bethany House Services,” and \$500,000 to “HARBOR.”

To align use of HOME resources previously approved for the HARBOR program to eligible uses and to categorize the resources previously appropriated by the Bethany House project in a manner that the City will report the use of such resources to HUD, based on guidance received by HUD, the City Council desires to transfer the HOME resources in accordance with the attached schedule of transfer.

The \$23,076 previously appropriated to the “HOME – American Rescue Plan” project, but unallocated to a specific project will be appropriated for “HOME – ARP Administration.” The \$3,000,000 previously appropriated to the “Bethany House Services” project will continue to serve the Bethany House in the new “Non-congregate Shelter Development” project. The \$500,000 previously appropriated to the “HARBOR” project will instead be appropriated to the existing “Affordable Housing Trust Fund” project. Funding for the HARBOR program will be replaced with other Community Development Block Grant (CDBG) resources.

The HOME and ARP grant programs are in accordance with the “Live” strategy to “[s]upport and stabilize our neighborhoods,” as described on pages 160 - 163 of Plan Cincinnati (2012).

The reason for the emergency is so the resources referenced herein may be deployed at the earliest possible time.

The Administration recommends passage of this Emergency Ordinance.

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



Attachment

EMERGENCY

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- 2022

AUTHORIZING the transfer and return to source Fund 411, “Home Investment Trust,” of the sum of \$3,523,076 from various Home Investment Trust Fund 411 project accounts, according to the attached Schedule of Transfer; and **AUTHORIZING** the transfer and appropriation of the sum of \$3,523,076 from the unappropriated surplus of Fund 411, “Home Investment Trust,” to various new and existing Home Investment Trust Fund 411 project accounts, according to the attached schedule of transfer, for the purpose of appropriating resources to projects consistent with guidance issued by the United States Department of Housing and Urban Development.

WHEREAS, the City received an initial entitlement grant award of \$2,737,925 from the United States Department of Housing and Urban Development (“HUD”) HOME Investment Partnerships Program (“HOME”) through Award No. M-21-MC-39-0213 (ALN 14.239) on February 25, 2021, which Council accepted and appropriated through Ordinance No. 0132-2021; and

WHEREAS, HUD later awarded \$9,923,076 through Award No. M-21-MP-39-0213 in additional HOME grant resources pursuant to the American Rescue Plan (“ARP”) Act, which Council accepted and appropriated to Home Investment Trust Fund 411 project account no. 411x162x4112131, “HOME – American Rescue Plan,” on May 5, 2021, through Ordinance No. 0153-2021; and

WHEREAS, on May 19, 2021, Council approved Ordinance No. 0166-2021, which returned to source the sum of \$9,900,000 from Home Investment Trust Fund 411 project account no. 411x162x4112131, “HOME – American Rescue Plan,” and appropriated the sum of \$9,900,000 from the unappropriated surplus of Home Investment Trust Fund 411 to newly established project accounts, including \$3,000,000 to project account no. 411x162x4112135, “Bethany House Services,” and \$500,000 to project account no. 411x162x4112137, “HARBOR”; and

WHEREAS, to (i) align the use of HOME resources previously appropriated for the HARBOR program to eligible uses, and (ii) categorize the resources previously appropriated for the Bethany House project in the manner that the City will report the use of such resources to HUD, Council desires to transfer the HOME resources in accordance with the attached Schedule of Transfer; and

WHEREAS, the HOME and ARP grant programs are in accordance with the “Live” strategy to “[s]upport and stabilize our neighborhoods,” as described on pages 160-163 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the sum of \$3,523,076 is hereby transferred and returned to source Fund 411, "Home Investment Trust," from various existing Home Investment Trust Fund 411 project accounts, according to the Schedule of Transfer attached hereto.

Section 2. That the sum of \$3,523,076 is hereby transferred and appropriated from the unappropriated surplus of Fund 411, "Home Investment Trust," to various new and existing Home Investment Trust Fund 411 project accounts, according to the Schedule of Transfer attached hereto, for the purpose of appropriating resources to projects consistent with guidance issued by the United States Department of Housing and Urban Development ("HUD").

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

Section 4. That the City Manager is hereby authorized to submit, modify, or amend any and all necessary documents required to be sent to HUD to carry out the provisions of the HOME Investment Partnerships Program and the American Rescue Plan grants referenced in this ordinance, including filing of the 2021 Annual Action Plan Amendment.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is so the resources referenced herein may be deployed at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

RECONCILIATION SCHEDULE

DECREASE OF EXISTING HOME INVESTMENT PARTNERSHIPS PROGRAM - ARP APPROPRIATION SCHEDULE

Section 1

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Decreased	Revised Authorization
HOME	411	162	4112131	HOME-American Rescue Plan	\$23,076.00	\$23,076.00	\$0.00
HOME	411	162	4112135	Bethany House Services	\$3,000,000.00	\$3,000,000.00	\$0.00
HOME	411	162	4112137	HARBOR	\$500,000.00	\$500,000.00	\$0.00
TOTAL					\$3,523,076.00	\$3,523,076.00	\$0.00

INCREASE OF HOME INVESTMENT PARTNERSHIPS PROGRAM - ARP APPROPRIATION SCHEDULE

Section 2

Grant Program	Fund	Agency	Project Account No.	Project Title	Original Authorization	Amount to be Increased	Revised Authorization
HOME	411	162	4112130	HOME-ARP Administration	\$0.00	\$23,076.00	\$23,076.00
HOME	411	162	4112132	Non-congregate Shelter Development	\$0.00	\$3,000,000.00	\$3,000,000.00
HOME	411	162	4112136	Affordable Housing Trust Fund	\$6,400,000.00	\$500,000.00	\$6,900,000.00
TOTAL					\$6,400,000.00	\$3,523,076.00	\$9,923,076.00

February 24, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202200483**

Subject: **Emergency Ordinance – Water Research Foundation Agreement**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to enter into an agreement on behalf of the Greater Cincinnati Water Works with the Water Research Foundation for the purpose of co-funding, along with five other water utilities, a collaborative research project known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs.”

This Emergency Ordinance authorizes the City Manager to enter into an agreement with the Water Research Foundation (WRF) to provide co-funding, along with five other water utilities, to support a collaborative research project known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs”.

The United States Environmental Protection Agency recently updated the standards in the Lead and Copper Rule to require water utilities such as the City of Cincinnati’s Greater Cincinnati Water Works (GCWW) to develop a plan for replacement of a minimum of 3.5% of all lead service lines (LSLs) each year. In order to properly plan for the systematic removal of lead lines, it is essential to be able to determine whether a property has a lead water service line. GCWW currently relies on historic records, excavation of the pipe, and checking inside the building to identify the underground service line material, which in some cases may not identify lead pipe in a portion of the service line that is not visible at the excavation site.

WRF is willing to contribute \$100,000 from its Tailored Collaboration Program to co-fund a collaborative research project led by Cornwell Engineering Group known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs” that aims to conduct proof of concept testing on three innovative, no-dig detection platforms for underground water service line material and compare them to traditional means of material identification. The completion of the research will allow GCWW and the water industry to identify the best method to locate lead service lines for removal, ideally without digging or entering the home.

The *Letter of Agreement for Co-Funding* between the City and WRF attached as Exhibit A hereto outlines the responsibilities and rights of WRF and the City in connection with the collaborative research project. GCWW is willing to contribute \$16,000 in funding and up to \$12,000 in in-kind on-site testing participation for the project, which will be matched by similar co-funding and in-kind participation from DC Water, Aquarion Water, Pittsburgh Water and Sewer Authority (PSWA), American Water, and Aqua America (Pennsylvania). GCWW's contribution can be made from their existing FY 2022 appropriation. The co-funding contribution from utilities of \$100,000, combined with WRF co-funding adds up to a total of \$200,000 plus additional on-site research services for the project.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Verna Arnette, GCWW Deputy Director

EMERGENCY

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- 2022

AUTHORIZING the City Manager to enter into an agreement on behalf of the Greater Cincinnati Water Works with the Water Research Foundation for the purpose of co-funding, along with five other water utilities, a collaborative research project known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs.”

WHEREAS, the United States Environmental Protection Agency recently updated the standards in the Lead and Copper rule to require water utilities such as the City of Cincinnati’s Greater Cincinnati Water Works (“GCWW”) to develop a plan for replacement of a minimum of 3.5 percent of all lead water service lines each year; and

WHEREAS, in order to properly plan for removal of lead lines, it is vital to be able to determine whether a property has a lead water service line; and

WHEREAS, GCWW currently relies on historic records, excavation of the pipe, and checking inside the building to identify the underground service line material, which in some cases may not identify lead pipe in a portion of the service line that is not visible at the excavation site; and

WHEREAS, the Water Research Foundation (“WRF”) is willing to contribute \$100,000 from its Tailored Collaboration Program to co-fund a collaborative research project led by Cornwell Engineering Group known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs” that aims to conduct proof of concept testing on three innovative, no-dig detection platforms for underground water service line material and compare them to traditional means of material identification; and

WHEREAS, GCWW is willing to contribute \$16,000 in funding and up to \$12,000 in in-kind on-site testing participation for the project, which contribution will be matched by similar co-funding and in-kind participation from DC Water, Aquarion Water, Pittsburgh Water and Sewer Authority, American Water, and Aqua America (Pennsylvania), for a total utility funding contribution of \$100,000, so the overall project funding from all sources will total \$200,000 plus additional on-site research services; and

WHEREAS, the completion of the research will allow GCWW and the water industry to identify the best method to locate lead service lines for removal, ideally without digging or entering the home; and

WHEREAS, the *Letter of Agreement for Co-Funding* between the City and WRF attached as Exhibit A hereto outlines the responsibilities and rights of WRF and the City in connection with the collaborative research project; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Letter of Agreement for Co-Funding* with the Water Research Foundation (“WRF”) in a form substantially similar to Exhibit A hereto, and any other necessary and appropriate documents for the purpose of co-funding a collaborative research project known as “Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs” involving Cornwell Engineering, the Greater Cincinnati Water Works, and other collaborating water utilities.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the *Letter of Agreement for Co-Funding* and Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to enter into the *Letter of Agreement for Co-Funding* in order to secure the co-funding from WRF and other utilities and to avoid delay of this important research necessary to identify technologies to facilitate removal of lead as a risk to drinking water.

Passed: _____, 2022

Mayor Aftab Pureval

Attest: _____
Clerk



6666 W. Quincy Ave.
Denver, CO 80235-3098

1199 N. Fairfax St., Ste. 900
Alexandria, VA 22314-1445

February 1, 2022

<p>John Curp City Manager City of Cincinnati 801 Plum Street Cincinnati, OH 45202</p>	<p>Verna Arnette Deputy Director Greater Cincinnati Water Works 4747 Spring Grove Avenue Cincinnati, OH 45232</p>
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Re: Letter of Agreement for Co-Funding by the City of Cincinnati’s Greater Cincinnati Water Works for The Water Research Foundation Project #5152 titled, **“Identifying Service Line Materials without Excavation Distinguishing LSLs from Non-LSLs.”**

Dear Ms. Arnette:

This Letter of Agreement (“LOA”) is entered between **The Water Research Foundation** (“WRF”) a Colorado non-profit corporation, whose principal place of business is located at 6666 W. Quincy Ave., Denver, Colorado 80235 and the **City of Cincinnati** on behalf of its **Greater Cincinnati Water Works** (“GCWW” or “Co-Funder”), whose address for the purposes of this LOA is 4747 Spring Grove Avenue, Cincinnati, Ohio 45232, in furtherance of their common interest to support research on behalf of the water community.

Project #5152 (the “Project” as described in the Attachments) is a co-funded research project being funded by WRF, GCWW and other co-funding water utilities. The work for the Project has been awarded to **Cornwell Engineering**, the chosen awardee (hereafter “Sub-recipient”). WRF and the Sub-recipient will enter into and execute a separate contract a called Project Funding Agreement (hereafter “PFA”). The Sub-recipient will perform the tasks and activities outlined in the PFA to meet the Project objectives. Upon request, a copy of the executed PFA can be provided.

GCWW Duties. GCWW will provide Sixteen Thousand US dollars (\$16,000.00) to WRF in support of WRF’s Project #5152. GCWW will also provide in-kind services for this project as described in the Attachments of an estimated value of \$12,000. Funding from GCWW will be paid in full to WRF upon full execution of this LOA and upon invoicing GCWW as provided below under Contacts. If a purchase order number is required for payment of an invoice, please provide.

WRF Duties. Upon execution of this LOA, WRF will invoice GCWW for the funding that is to be paid in full. WRF will enter into similar LOAs with the other co-funding utilities for their contribution to the Project. WRF will provide One Hundred Thousand US dollars (\$100,000) in co-funding toward the

Project to match the \$100,000 total to be provided by GCWW and other co-funding utilities, for a total Project funding amount of \$200,000.

Sub-recipient costs will be recognized proportionally as costs are incurred. In the event Sub-recipient's costs incurred are less than the total funding received from WRF, the funding will be returned on a proportional basis to the Co-Funder.

WRF will reasonably monitor the Project with consideration to **GCWW's** input and needs for this Project. A Project Advisory Committee (PAC) has been formed for Project #5152 that consists of independent volunteers selected by WRF and Co-funder to provide technical review, assistance, and/or expertise related to the Project. The number of volunteers to serve on the PAC will be determined by WRF. WRF and the PAC will make mutually agreed management decisions regarding this Project. In the event of any disagreement, however, WRF shall have final decision-making authority regarding the Project.

Copyright. If the Project is satisfactorily completed in WRF's sole discretion, WRF may publish the results of the Project. WRF will own all U.S. and world-wide copyright in the reports created as a result of the research deliverables for the Project as defined in the PFA. WRF will provide an electronic PDF of any Final Report published to **GCWW** for placement on **GCWW's** website for internal use and for public viewing. **GCWW** agrees that they will not make any other use of the WRF's copyrighted materials without WRF's prior written permission. Approval for use of such materials for educational, noncommercial purposes, however, will not be unreasonably withheld. Further, any requests **GCWW** receives for a printed copy of any printed Final Report should be forwarded to WRF to fulfill the order.

Nonexclusive license. WRF grants **GCWW**, a non-exclusive, non-transferrable, royalty free, nonterminable, without any requirement of accounting, the right to use Intellectual Property developed through this research Project.

Acknowledgement. WRF and **GCWW** will be recognized as a Co-funder of the Project in the Final Report publication.

Amendments. This Agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this Paragraph, except in writing, signed by all parties.

Project Termination. In the event the Project is not progressing as required by the PFA, WRF may terminate that Project and, in such event, will reimburse **GCWW** for the portion of their contribution allocated to the Project which has not already been distributed or earmarked by WRF but not yet invoiced by the Sub-recipient.

Liability/Construction/Headings. In no event, shall any judgment/order against WRF and/or **GCWW** exceed the amount of funds provided by WRF (for claims against WRF) or **GCWW** (for claims against **GCWW**) relating in any manner to this Agreement. Further, this Agreement shall not be construed against the drafter; headings are for convenience only.

Dispute Resolution/Mediation. In the event, any co-funder has a disagreement with another co-funder, each agrees to submit such dispute to a mediator chosen by both parties, with each party shall be responsible for their own costs of mediation.

Independent Contractors. The parties are independent contractors to each other. Nothing in this Agreement shall be construed to create an agency, partnership, joint venture, employment, or franchise relationship between the parties. No party shall have any right or authority to assume or create any obligation, commitment or responsibility for or on behalf of the others except as the other may expressly authorize in writing.

Contacts. Co-funder contacts for this Project are:

Organization	Contact	Contribution
Greater Cincinnati Water Works (GCWW)	Verna Arnette Deputy Director Phone: 513.591.6898 Email: verna.arnette@cincinnati-oh.gov Jeff Swertfeger Water Quality Superintendent Phone: 513.624.5068 Email: Jeff.Swertfeger@gcww.cincinnati-oh.gov John Ridder Supervising Accountant Phone: 513.591.5065 Email: john.ridder@cincinnati-oh.gov	\$16,000.00 USD \$12,000.00 in-kind

<p>The Water Research Foundation (WRF)</p>	<p>Jonathan Cuppett Research Program Manager Phone: 303.347.6122 Email: jcuppett@WaterRF.org</p> <p>Valerie Roundy Project Coordinator Phone: 303.347.6124 Email: vroundy@WaterRF.org</p> <p>Christine Conville Contracts Manager Phone: 303.734.3424 Email: cconville@WaterRF.org</p> <p>Connie Schonlau Contracts Assistant Phone: 303.347.6211 Email: cschonlau@WaterRF.org</p>	<p>\$100,000</p>
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This Agreement may be executed on separate originals or copies and shall be valid as if all parties had executed the same document. Facsimile or electronic signatures shall be valid as written signatures.

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Project 5152

IN WITNESS, WHEREOF, the parties have caused this LOA to be signed and dated as shown below.

The Water Research Foundation

By: Peter C. Grevatt, PhD
Title: Chief Executive Officer

Date: _____

City of Cincinnati

By: _____
John P. Curp, Interim City Manager
Date: _____

Recommended by GCWW:

Verna Arnette, Deputy Director

Approved by City Purchasing:

Bobbi Hageman, Chief Procurement Officer

Approved by Department of Economic
Inclusion:

Edgar DeVeyra, Interim Director

Approved as to form by:

Assistant City Solicitor

CERTIFICATION OF FUNDS:

Date: _____

Funding: _____

Amount: _____

Karen Alder, Finance Director

ATTACHMENT A
(Commitment Letter)



September 10, 2021

Richard Brown
Cornwell Engineering Group
712 Gum Rock Ct
Newport News, VA 23606

RE: Water Research Foundation (WRF) Tailored Collaboration Proposal
Identifying Service Line Materials without Excavation: Distinguishing LSLs from non-LSLs

Dear Mr. Brown,

The Greater Cincinnati Water Works (GCWW) is pleased to participate as a member of the research team submitting the tailored collaboration proposal listed above. Our water system has currently identified almost 40,000 complete or partial lead service lines (LSLs) and around 700 unknown or unidentified service lines. Consequently, we are very interested in working with the research team to develop suitable methods for identification of service line material and determine the advantages and disadvantages of each approach. We feel this research will not only benefit our system and our customers, but water systems throughout the US.

The project objectives as we understand them are to compare different methods to identify service line material composition (e.g., at minimum lead versus non-lead, and perhaps breaking down non-lead into copper, galvanized, plastic, etc.) by as many of the following means as possible:

1. Water system records (e.g., tap cards)
2. Profile sampling (collected before any other activities at the study location)
3. Potholing (i.e., local excavation at curb stop or meter) plus inspection of pipe entering house
4. Up to two non-destructive identification technologies, such as acoustic or stress wave propagation techniques
5. Excavation and visual inspection of the entire service line, when possible.

We will participate in all of these tasks, except items 3 (potholing) and 5 (excavation). However, we will gather information about lines in which we are otherwise partially uncovering to replace.

We anticipate participation in these tasks will involve our water system contributing staff time, equipment, materials, analytical services, and contractors hired by the water system to perform the following:

- Review water system records, identify candidate study locations, recruit customers at these locations to volunteer for the study, and coordinate activities with customers during the study (i.e., allowing access to site, working within the project schedule, collecting samples, etc.)
- Work with the project team and vendors from item 4 above to schedule work at study locations, and provide support as needed
- Collect and analyze water samples as defined in item 2 above

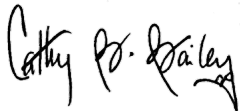


- Conduct site work as needed (surveying, service line replacement, etc.)
- After completion of activities at each study location:
 - Provide water filters certified for lead removal (pitcher), replacement filters, and instructions for filter use and maintenance to customers who have lead service lines who participate in the project
 - Provide instructions and training support (as needed) for customer who have lead service lines to conduct whole-house, high velocity flushing (HVF) as outlined in Brown et al. (2021 - WRF 4713) and AWWA Standard C810-17 (or latest version when updated)
- Review and comment on the project Final Report.

GCWW will provide a direct cash contribution to the Foundation (WRF) in the amount of \$16,000 to cover costs of the research team. In addition, GCWW anticipates total in-kind/cost-share contribution towards this project \$12,000 to cover analytical costs, labor, expenses, and materials. We will work with the research team to conduct the above described study efforts at 10 to 16 locations in our system.

We look forward to participating in this important project. If you have any questions regarding our involvement in the project, please contact Jeff Swertfeger at (513) 624-5608.

Sincerely,



Cathy B. Bailey
Executive Director,
Greater Cincinnati Water Works

ATTACHMENT B

(Project Summary)

RESEARCH OBJECTIVE

Lead service line replacements (LSLRs) are a pressing need for drinking water utilities to safeguard consumer health. However, lead service lines (LSLs) cannot be removed until their locations are identified. Unfortunately, no rapid, user-friendly and cost-effective technologies are commercially available to accurately identify LSLs, without excavation (and consequent potential disturbance of pipe protective scales). This tailored collaboration project will test three innovative and non-invasive detection platforms (acoustic monitoring, x-ray diffraction/fluorescence and stress wave propagation/attenuation) to perform buried service line characterization in blind trials using a pipe farm testing facility followed by extensive field testing in collaboration with six large geographically dispersed water utilities.

The specific test objectives will be to:

- Conduct blind trials with multiple rapid, non-invasive detection technology platforms to assess accuracy of service line characterization
- Assess performance of promising technologies (up to three) in extensive field application studies with SLs from up to 6 geographically dispersed utilities
- Examine impact of technology deployment on changes in baseline water quality
- Compare performance of test technologies to each other and to conventional physical inspection methods (e.g., potholing, profile water sampling, excavation, etc.) to validate performance
- Provide recommendations to the water industry, regulators, and WRF on approaches that can expedite LSL inventory development

BACKGROUND/UNDERSTANDING OF THE PROBLEM

Presently “15 to 22 million Americans nationally are served drinking water by lead lines” according to Cornwell et al. (2016). Given the recent attention from the public health community related to the potential impacts from lead in drinking water, it is understandable that USEPA is promoting Lead Service Line Replacements (LSLRs). Many drinking water systems are struggling to accurately develop inventories that can be used to both educate consumers and efficiently deploy a LSL replacement strategy. The traditional indirect methods (e.g., institutional knowledge, water quality data, information captured from tap cards, date of service line installation, records of recent repairs, etc.) presently available to utilities tend to be unreliable. The revisions to the LCR require identification of all unknown service lines to the greatest extent possible. Most utilities have limited records and therefore need industry accepted identification tools. This complex and challenging situation is unlikely to be solved through indirect methods. While direct methods (e.g., potholing or full excavation) can identify service line pipe materials, these approaches are time consuming and costly. Furthermore, vibrations from these activities may indirectly do harm to pipe protective scales and potentially expose customers to contaminants.

In WRF 4693, literature reviews and industry practices were explored to search for detection technologies that are fast, portable, economical, user-friendly, minimally invasive, and sufficiently sensitive to identify lead pipes buried in soils of various types (Bukhari et al. 2020).

That study concluded that there was a significant absence of convenient and/or cost-effective methodologies while utilities urgently needed practical solutions that could accurately identify buried LSLs.

Recognizing this urgent need (for rapid tools to improve the speed, efficiency, and reduce the costs of finding LSLs) was the impetus for this tailored collaboration. This tailored collaboration will examine three promising technology platforms in both blind trials and field studies. Having such tools will allow utilities to focus their efforts on premises that actually have LSLs which can then be replaced. Another need for this project is to provide utilities with multiple tools to use., Some tools can be used in conjunction with other tools, while some tools perhaps may be more suitable for certain situations over others. Therefore, this project will look not only at these alternative technological tools, but also develop a collection of tools for water systems to pick and choose. This menu will provide utilities options depending on budget, speed/urgency, and difficulty in finding the LSLs using conventional tools.

TECHNICAL APPROACH

Evaluation of the proposed technologies will be conducted in two distinct phases. In the first phase, performance of all three technologies will be tested in parallel in blind trials. This phase will use a pipe farm which has pipes of known composition (lead, copper, galvanized steel, brass and/or other materials) buried at depths of 4-5 feet. The pipe farm will have various interconnections (e.g., lead and galvanized) and be overlaid with materials including soil, sand, clay, gravel, or a combination of the four. The pipe farm testing will provide comparative testing of the different technologies and serve for prioritization of technologies for field testing. It will also provide the opportunity for participants to refine and calibrate their methodologies before these technologies advance to the extensive field during the 2nd Phase of the test plan.

In the 2nd phase, testing will evaluate material composition of at least 50 service lines from up to six participating water systems (DC Water, Aquarion, Pittsburgh Water and Sewer, Greater Cincinnati, American Water, Aqua). Comparisons of the three innovative detection technologies (acoustic monitoring, x-ray diffraction/fluorescence and stress wave propagation/attenuation) will be made relative to traditional methods, which include:

- Water system record reviews (i.e., tap cards, historic records, plans, tax records, etc.)
- Sequential Profile sampling (collected before any other activities at the study location) using techniques from Lytle, Deshommies, and others)
- Potholing (i.e., local excavation at curbstop or meter) plus inspection of pipe entering house
- Excavation

Based on these evaluations, it is anticipated that the research team will be able to capture data for each property to define the specific material (i.e., “material count”) and by the length of that specific pipe (i.e., “ft. of each material”). The ability to differentiate lead from non-lead materials and the ability to characterize non-lead materials successfully will be key success criteria for each technology.

ORIGINALITY AND INNOVATION OF THE RESEARCH

Recent and extensive literature reviews by our team as well as outreach to various industry partners and technology developers have indicated an urgent need for better tools to identify

lead pipes buried in soils of various types. Tools need to be faster, portable, economical, user-friendly, minimally invasive, and sufficiently sensitive. . Additionally, it isn't adequate just to identify lead service lines, but it is also necessary for non-lead service lines to be characterized. This requires a unique strategy in which a signal can be transmitted from a device, penetrate through the soil profile, reflect off the buried pipe, and then be retrieved and analyzed to generate a unique fingerprint for the material under interrogation. In this proposed research, three different technology platforms will be tested to evaluate their performance. By examining acoustic waves, XRF and stress waves individually, it is anticipated that the performance of these technology platforms will be tested in a controlled environment (pipe farm) and in expanded field analyses in geographically dispersed water systems. Both will be performed under blind conditions to the technology providers. As the field testing will be corroborated through a variety of validation methods ranging from historic records to excavation, the robustness of each technology for accurately determining presence of specific materials will be ascertained.

To the best of the authors' knowledge, no previous attempts have been made to conduct such comprehensive tests for user-friendly/non-invasive options to identify the material of water service lines. While NDE approaches (for instance Ground Penetrating Radar) exist to identify the location of buried pipelines, no effective tools exist to characterize the material of underground service lines.

ANTICIPATED RESULTS AND BENEFITS

Based on the data generated from this study, we anticipate identifying one or more user-friendly service line characterization technology platforms that can yield practical solutions for service line inventory development. The data from both phases of the study will specifically help:

- Vendors to refine their detection methodologies to improve sensitivity/specificity of materials analyses (if needed).
- The field comparisons will identify existing technology limitations (if any) and help define additional criteria to be considered for the technologies to be deemed successful.
- As six large utility partners will be participating in the project, the field studies will provide an opportunity to directly capture feedback from water utility practitioners on the useability and likely adoption rate (or possible impediments) of each technology.
- Importantly, data generated in this study will inform the water industry, regulators, consultants, academics, and technology manufacturers whether rapid, user-friendly and cost-effective service line characterization tools are viable.

STATEMENT OF QUALIFICATIONS

Members of the research team from Cornwell, DC Water, and American Water have cooperated on various lead projects before, including several WRF studies (4713, 4639, etc.) and can produce useful interpretation of results and guidance to WRF subscribers and other water systems. The project team will seek advice from the following technical advisors: Dr. Charles Haas, Drexel University, Elizabeth Holst, Cleveland Water Alliance and Dr. David Cornwell, Cornwell Engineering.

February 24, 2022

To: Mayor and Members of Council

From: John P. Curp, Interim City Manager **202200484**

Subject: Ordinance – DOTE: Accept and Appropriate Safe Routes to School Grant – Kirby Avenue

Attached is an Ordinance captioned:

AUTHORIZING the establishment of a new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; **AUTHORIZING** the City Manager to accept and appropriate a grant in the amount of up to \$400,000 from the federal Safe Routes to School program (ALN 20.205), as administered by the Ohio Department of Transportation, to new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; and further **AUTHORIZING** the Director of Finance to deposit the grant funds into newly established capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant.”

This Ordinance authorizes the establishment of a new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood. This Ordinance also authorizes the City Manager to accept and appropriate a grant in the amount of up to \$400,000 from the federal Safe Routes to School (SRTS) program (ALN 20.205), as administered by the Ohio Department of Transportation (ODOT), to new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant.” Finally, this Ordinance authorizes the Director of Finance to deposit the grant funds into newly established capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant.”

On March 17, 2021, the City Council passed Ordinance No. 0077-2021, which authorized the City Manager to apply for grant resources awarded by the Ohio Department of Transportation from the Safe Routes to School program in the amount of up to \$400,000 for the purpose of implementing various safety improvements within two miles of schools within the City of Cincinnati. The Department of Transportation and Engineering (DOTE) was awarded up to \$400,000 for the Kirby Improvements PID 115448 SRTS Grant project. City Council authorization is required to accept and appropriate the grant.

No local match is required for this grant. However, DOTE will be required to provide existing capital resources for engineering and right-of-way tasks of design, surveying, materials testing, appraisals, property negotiations, right-of-way certifications, and project administration. No new FTEs are required.

The Kirby Improvements PID 115448 SRTS Grant project is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability,” as well as the strategies to “[e]xpand options for non-automotive travel” and to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachment

AUTHORIZING the establishment of a new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; **AUTHORIZING** the City Manager to accept and appropriate a grant in the amount of up to \$400,000 from the federal Safe Routes to School program (ALN 20.205), as administered by the Ohio Department of Transportation, to new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; and further **AUTHORIZING** the Director of Finance to deposit the grant funds into newly established capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant.”

WHEREAS, on March 17, 2021, City Council passed Ordinance No. 0077-2021, which authorized the City Manager to apply for grant resources awarded by the Ohio Department of Transportation from the Safe Routes to School program in an amount of up to \$400,000 for the purpose of implementing various safety improvements within two miles of schools within the City of Cincinnati; and

WHEREAS, the Department of Transportation and Engineering was awarded a Safe Routes to School Grant, which provides a maximum of \$400,000 for eligible costs for construction of a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood; and

WHEREAS, no local match is required for this grant; however, DOTE will be required to provide existing capital resources for engineering and right-of-way tasks of design, surveying, materials testing, appraisals, property negotiations, right-of-way certifications, and project administration; and

WHEREAS, no additional FTEs are associated with this project; and

WHEREAS, the Kirby Improvements PID 115448 SRTS Grant project is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” as well as the strategies to “[e]xpand options for non-automotive travel,” and to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That new capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” is hereby established for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood.

Section 2. That the City Manager is hereby authorized to accept and appropriate a grant in the amount of up to \$400,000 from the federal Safe Routes to School program (ALN 20.205), as administered by the Ohio Department of Transportation, to the newly established capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant,” for the purpose of constructing a sidewalk on Kirby Avenue from the Sun Valley Apartments to West North Bend Road in the Mt. Airy neighborhood and also constructing up to four flashing beacons in the area of Woodward High School in the Roselawn neighborhood.

Section 3. That the Director of Finance is hereby authorized to deposit the grant funds into newly established capital improvement program project account no. 980x233x222362, “Kirby Improvements PID 115448 SRTS Grant.”

Section 4. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 hereof.

Section 5. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

February 24, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202200486**

Subject: **EMERGENCY ORDINANCE – PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute a *Property Transfer and Development Agreement* with the Board of County Commissioners of Hamilton County, Ohio, pursuant to which the City will vacate and convey a portion of the public right-of-way known as Logan Street in the Over-the-Rhine neighborhood of Cincinnati in connection with the construction of a public parking garage.

BACKGROUND/CURRENT CONDITIONS

The Board of County Commissioners of Hamilton County, Ohio is acting on behalf of Hamilton County, Ohio (the “County”). The County has or intends to obtain site control over approximately 0.915 acres of property in the Over-the-Rhine neighborhood of Cincinnati located between Central Parkway on the west, Campbell Street on the east, and Elder Street on the south (the “Project Site”), and in close proximity to Findlay Market.

The Project Site is currently bifurcated by a portion of Logan Street (the “City ROW”). The County desires to acquire the City ROW for consolidation with the remainder of the Project Site.

DEVELOPER INFORMATION

The Board of County Commissioners of Hamilton County develops and maintains public parking adjacent to the sports and event venues within the City of Cincinnati.

PROJECT DESCRIPTION

The County intends to undertake a project on the Project Site consisting of the design and construction of a new public parking garage with approximately 515 parking spaces, at an estimated total project cost of approximately \$19,200,000.

In addition to the construction of the parking garage, the County intends to (i) construct a street that will be open to the general public, (ii) rehabilitate the public streets adjacent to or adjoining the Project Site following completion of the garage construction, and (iii)

complete a Traffic Impact Study and implement any further Department of Transportation and Engineering (“DOTE”) recommendations or requirements in response thereto, at an estimated total project cost of approximately \$1,052,000.

The proposed vacation and transfer of the City ROW was approved by the City Planning Commission on September 17, 2021.

City Planning and the County conducted a public engagement meeting with Over-the-Rhine stakeholders on September 8, 2021. A written summary of the engagement session can be found on City Planning’s website.

PROPOSED INCENTIVE

DCED is recommending the sale of the City ROW for \$1.00. The approximate Fair Market Value (“FMV”) of the City ROW was determined by appraisal to be \$56,350.

DCED is recommending a \$1.00 sale because the City will receive economic and non-economic benefits exceeding the determined FMV in connection with the project, including:

- The benefit of the infrastructure improvements, including the new street connecting Logan Street to Central Parkway, which the County intends to dedicate for use by the general public.
- Additional parking in support of the City-owned Findlay Market House and surrounding businesses and residents.

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance
- March 2, 2022: City Council for Final Approval

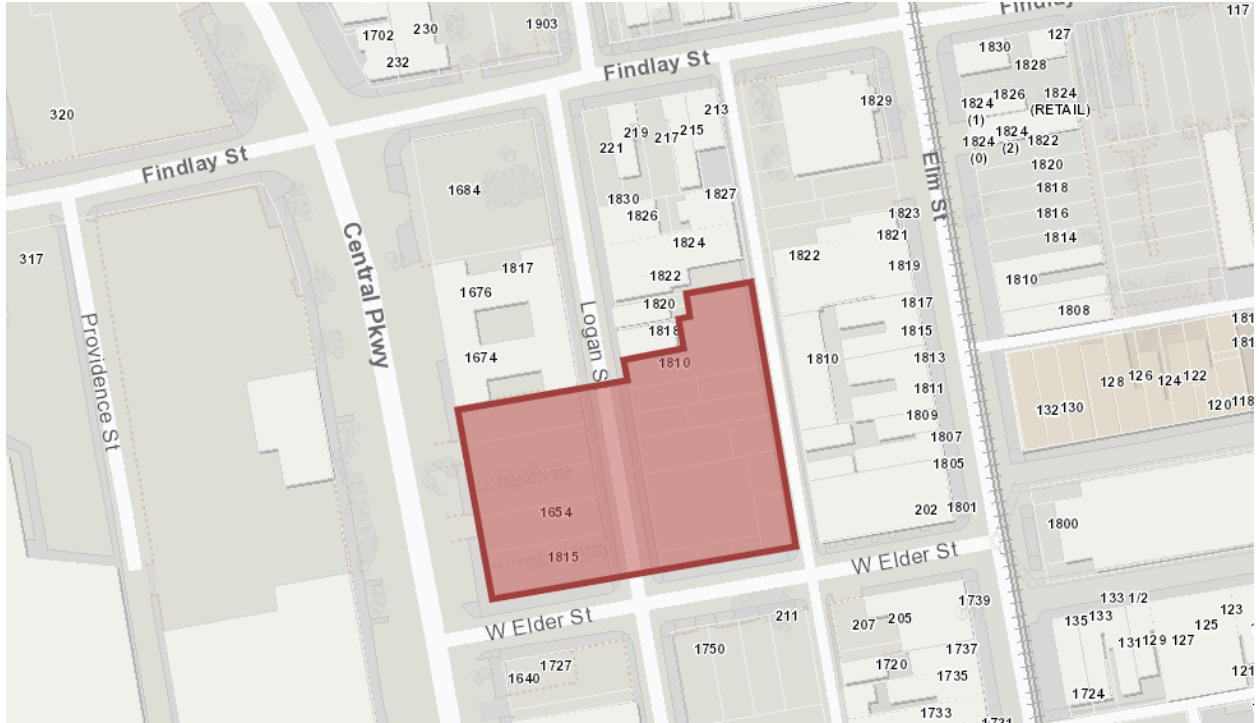
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance.

Attachment: A. Property location and rendering

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

Attachment A: Location & Rendering



Property Location



Project Rendering

EMERGENCY
City of Cincinnati

ZDS

An Ordinance No. _____

- 2022

AWB

AUTHORIZING the City Manager to execute a *Property Transfer and Development Agreement* with the Board of County Commissioners of Hamilton County, Ohio, pursuant to which the City will vacate and convey a portion of the public right-of-way known as Logan Street in the Over-the-Rhine neighborhood of Cincinnati in connection with the construction of a public parking garage.

WHEREAS, the Board of County Commissioners of Hamilton County, Ohio (the "County") owns certain real property consisting of approximately 0.915 acres of real property in the Over-the-Rhine neighborhood of Cincinnati, which property is currently bifurcated by a portion of the public right-of-way known as Logan Street (the "City ROW"), as more particularly described and depicted in the *Property Transfer and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Property"), which is under the management and control of the City's Department of Transportation and Engineering ("DOT"); and

WHEREAS, the County desires to purchase the City ROW from the City to consolidate with the County's adjoining real property (collectively, the "Project Site"), and thereafter construct a public parking garage consisting of approximately 515 parking spaces, at an estimated total project cost of \$19,200,000 (the "Garage Project") on the consolidated Project Site; and

WHEREAS, as a material inducement to the City to vacate and convey the City ROW to the County, the County has agreed to, among other things, construct a street that will be dedicated as right-of-way for use by the general public, as more particularly described in the Agreement (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure required in support of the Garage Project and surrounding area by Greater Cincinnati Water Works ("GCWW"), Stormwater Management Utility ("SMU"), the Metropolitan Sewer District of Greater Cincinnati ("MSD"), or any other public utility) being referred to collectively herein as the "Infrastructure Project"; and together with the Garage Project, the "Project"); and

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the City ROW is approximately \$56,350; however, to facilitate the Project and promote its economic feasibility, the City is willing to vacate the City ROW as public right-of-way and convey it to the County for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the City ROW because (i) the Project will create employment opportunities and stimulate economic growth and development of other property in the area; (ii) the Garage Project will provide additional public parking for the Over-the-Rhine neighborhood, including in support of the City-owned Findlay Market House and surrounding businesses and residents; and (iii) the City

will receive the benefit of the Infrastructure Project, including the new street connecting Logan Street and Central Parkway; and

WHEREAS, the County has delivered to the City an Attorney's Certificate of Title certifying that the County is the owner of all of the property that abuts the City ROW; and

WHEREAS, if applicable, all necessary abutters will have consented to the City's vacation and sale of the City ROW to the County by executing and delivering Quitclaim Deeds prior to the City Manager vacating and conveying the City ROW to the County; and

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

WHEREAS, pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets if it has determined that the City ROW is not needed for municipal purposes and that the sale will not be detrimental to the general interest; and

WHEREAS, the City Manager, being the officer having the custody and control of the City ROW, and upon verification from DOTE, MSD, GCWW, and SMU, has determined that the City ROW is not needed for transportation or other municipal purposes, that there is good cause for vacating the City ROW as public right-of-way, and that such vacation will not be detrimental to the general interest; and

WHEREAS, pursuant to Section 723.041 of the Ohio Revised Code, any affected public utility, including, without limitation, MSD, GCWW, SMU, Duke Energy, and Cincinnati Bell, shall be deemed to have permanent easements in the City ROW for their existing utility facilities, if any; and

WHEREAS, the City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the sale of the City ROW because the City desires to vacate and convey the City ROW to the County to facilitate the Project; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the City ROW at its meeting on September 17, 2021; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Transfer and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the

“Agreement”), pursuant to which the City will vacate and convey to the Board of County Commissioners of Hamilton County, Ohio (the “County”) a portion of the public right-of-way known as Logan Street north of Elder Street in the Over-the-Rhine neighborhood of Cincinnati (the “City ROW”), for the County to (a) consolidate with adjoining property the County owns (together with the City ROW, the “Project Site”), and (b) construct a public parking garage consisting of approximately 515 parking spaces at the consolidated Project Site, at an estimated total project cost of approximately \$19,200,000 (the “Project”).

Section 2. That the fair market value of the City ROW, as determined by appraisal by the City’s Real Estate Services Division, is approximately \$56,350; however, the City is agreeable to conveying the City ROW to the County for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the City ROW because (a) the Project will create employment opportunities and stimulate economic growth and development of other property in the area; (b) the Project will provide additional public parking for the Over-the-Rhine neighborhood, including in support of the City-owned Findlay Market House and surrounding businesses and residents; and (c) the County has agreed to construct a new street and corresponding public infrastructure improvements to create access between Logan Street and Central Parkway.

Section 3. That the City ROW is not needed for transportation or other municipal purposes, and that the vacation and sale of the City ROW (subject to the creation of utility easements for existing utilities, if any, as provided for under Section 723.041, Ohio Revised Code) will not be detrimental to the general interest.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the City Row is in the best interest of the City because the County owns and controls the adjoining

property, and consolidation of the City ROW with the remainder of the Project Site is necessary for the County to undertake the Project.

Section 5. That proceeds from the sale of the City ROW shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, deeds, plats, terminations, releases, and other documents.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to expedite the parties' execution of the Agreement, so that the County can move forward with the Project without delay, enabling the City ROW to be put to its highest and best use, for the economic benefit of the City, at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO

Project Name: Findlay Market County Parking Garage

(sale/vacation of portion of Logan Street for consolidation with County property
for construction of public parking garage in vicinity of Findlay Market)

Dated: _____, 2022

PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT

This Property Transfer and Development Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, the address of which for purposes of this Agreement is County Administration Building, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the "**County**").

Recitals:

A. The County has or intends to obtain site control over approximately 0.915 acres of real property in the Over-the-Rhine neighborhood of Cincinnati located between Central Parkway on the west, Campbell Street on the east, and Elder Street on the south, as the same is shown on Exhibit A (Site Plan) hereto (the "**Project Site**").

B. The Project Site is currently bifurcated by a portion of Logan Street north of Elder Street, as more particularly described on Exhibit B (Legal Description – City ROW) and depicted on Exhibit C (Survey Plat – City ROW) hereto (the "**City ROW**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. The County desires to acquire the City ROW for consolidation with the remainder of the Project Site, upon which consolidated Project Site the County intends to undertake a redevelopment project consisting of the design and construction of a public parking garage consisting of approximately 515 parking spaces, as more particularly described on Exhibit D (Statement of Work) hereto, at an estimated total project cost of approximately \$19,200,000, as more particularly described on Exhibit E (Budget) hereto (the "**Garage Project**").

D. In addition to and in support of the Garage Project, the County intends to (i) construct a street that will be open to the general public, which is depicted on Exhibit A as "Logan Access Street", in accordance with plans and specifications that will be reviewed and approved by DOT, (ii) rehabilitate the public streets adjacent to or adjoining the Project Site following completion of the Garage Project, and (iii) complete a Traffic Impact Study and implement any further DOT recommendations or requirements in response thereto, all as more particularly described on Exhibit D hereto, at an estimated total project cost of approximately \$1,052,000, as more particularly described on Exhibit E hereto (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure required in support of the Garage Project and the surrounding area by Greater Cincinnati Water Works, Stormwater Management Utility, the Metropolitan Sewer District of Greater Cincinnati, or any other public utility) being referred to collectively herein as the "**Infrastructure Improvements**" or the "**Infrastructure Project**", as applicable; the Infrastructure Project and the Garage Project are referred to collectively herein as the "**Project**").

E. The County currently anticipates that it will (i) commence on-site construction of the Garage Project no later than April 1, 2022 (the "**Garage Project Commencement Date**"); and (ii) complete construction of (a) the Infrastructure Project no later than July 1, 2023 (the "**Infrastructure Project Completion Date**"), and (b) the Garage Project no later than July 1, 2023 (the "**Garage Project Completion Date**").

F. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the City ROW is \$56,350; however, the City is willing to sell the City ROW for less than fair market value, namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (i) the benefit of the Infrastructure Improvements, including the new street connecting Logan Street to Central Parkway, which the County intends to dedicate for use by the general public, (ii) additional parking in support of the City-

owned Findlay Market House and surrounding businesses and residents, and (iii) urban redevelopment of Over-the-Rhine.

G. Pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets if it has determined that the property is not needed for municipal purposes.

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

I. The City has determined that (i) in consultation with the City's Department of Community and Economic Development ("DCED") and DOTE, the City ROW is not needed for transportation or other municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the City ROW because the City ROW is necessary in order for the County to undertake the Garage Project.

J. In connection with City Council's passage of the ordinance authorizing the vacation and sale of the City ROW to the County, the County provided the City with (i) an Attorney's Certificate of Title from [_____], an Ohio licensed attorney, certifying that the City, the County, and [_____] are the owners of all of the property that abuts the City ROW, and (ii) the written consent of all necessary abutting property owners.

K. The City, upon recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

L. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and transfer of the City ROW at its meeting on September 17, 2021.

M. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on December _____, 2022.

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

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to vacate and transfer the City ROW to the County, and the County hereby agrees to acquire the City ROW from the City, for a purchase price of \$1.00 (the "Purchase Price"). The County acknowledges that it is familiar with the condition of the City ROW and, at the Closing (as defined below), the City shall convey the City ROW to the County in "as is" condition. The City makes no representations or warranties to the County with respect to the condition of the City ROW and, from and after the Closing, the City shall have no liability of any kind to the County for any defects, adverse environmental condition, or any other matters affecting the City ROW.

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing on the City's sale of the City ROW to the County shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City's Coordinated Report #CR26-2021, including those conditions outlined in Section 11 below (collectively, the "Conditions"); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Deed (as defined below) or handle such Conditions post-Closing. The County shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations*: County's approval of its due diligence inspections with respect to the City ROW, including, without limitation, title, survey, and environmental assessments of the City ROW;
- (ii) *Budget*: The County shall have provided to the City a detailed and updated budget for the Project;
- (iii) *Construction Schedule*: The County shall provide to the City a detailed construction timeline showing anticipated construction commencement and completion dates for the Project, including significant milestones;
- (iv) *Sale Plats and Legal Descriptions*: The parties' approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the City ROW on the tax maps of the Hamilton County Auditor;
- (v) *Dedication Plat*: The County shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Infrastructure Improvements; and
- (vi) *Other Information*: Such other information and documents pertaining to the County or the Project as the City may reasonably require.

(B) Copies of Due Diligence Items to be Provided to City. Without limitation of the County's other obligations under this Agreement, prior to the Closing, and as such due diligence items are obtained by the County, the County, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by the County prior to the Closing that pertain to the Project.

(C) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of March 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to the County.

(D) Closing Date. The closing on the City's sale of the City ROW to the County (the "Closing") shall take place on approximately [____], 202[], or on such earlier or later date upon which the parties may mutually agree.

(E) Closing Costs and Closing Documents. At the Closing, (i) the County shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the City ROW to the County by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed) hereto (the "**City's Deed**"). The County shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, the County and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the City ROW. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, the County shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by the County or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(F) Maintenance of Property Between Closing and Prior to Construction. Between the Closing and the County's commencement of on-site construction on the City ROW, the County, at no expense to the City, shall maintain the City ROW in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(G) Environmental Remediation. As a material inducement to the City to enter into this Agreement, the County does hereby agree that, with respect to any environmental condition on or otherwise affecting the Project Site, including, without limitation, the City ROW and the property on which the Infrastructure Improvements will be located, that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by the County to the City or otherwise obtained by the City, the County shall, at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability ("**OES**"). The County's remediation obligation under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence Construction.

(A) Construction Commencement & Completion.

(i) Infrastructure Project. Following Closing, the County shall (a) (1) apply for and receive the required street opening and utility construction permits from DOTE, the public utilities, and other relevant agencies and departments for construction of the Infrastructure Project, and (2) promptly thereafter commence construction of the Infrastructure Project in accordance with City-approved plans and specifications; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Infrastructure Project (as evidenced by DOTE's written approval to open the street associated therewith to public traffic) no later than the Infrastructure Project Completion Date.

(ii) Garage Project. Following Closing, the County shall (a) (1) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Garage Project, and (2) commence on-site construction of the Garage Project in accordance with City-approved plans and specifications ("**Construction Commencement**") no later than the Garage Project Commencement Date; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Garage Project (as evidenced by a certificate of occupancy for the garage) no later than the Garage Project Completion Date.

(B) Reacquisition Option for Failure to Timely Commence Construction of Garage Project. If Construction Commencement has not occurred on or before the Garage Project Commencement Date, then, at any time thereafter, the City shall have the option to reacquire the City ROW for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Reacquisition Option**"), exercisable by giving written notice thereof to the County at any time after the Garage Project Commencement Date, but prior to the date of Construction Commencement.

(C) Reacquisition Option Closing. If the City elects to exercise the Reacquisition Option, the reconveyance of the City ROW to the City pursuant to the Reacquisition Option shall take place on the date specified in the City's notice of election. On the date of reconveyance: (i) the County shall reconvey the City ROW (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by the County to the City ROW); (ii) County shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for the re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(C) hereof shall be reflected in the City's Deed.

(D) Plans and Specifications. The County shall design and construct the Project in accordance with City-approved plans and specifications that are consistent with Exhibit D, including, without limitation, the County's proposed site plan for driveway locations, parking, stormwater detention, public access

easement(s), and other ancillary improvements. Once the City has approved the County's plans and specifications, the County shall not make any material changes thereto without the City's prior written consent.

(E) Dedication and Acceptance of Infrastructure Improvements. The parties acknowledge that, upon completion, the County intends to dedicate the Infrastructure Improvements for public use, and intends for the City to accept the Infrastructure Improvements (subject to all approvals as required by DOTE, OES, and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). The County shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City. The County acknowledges that, (i) if the County does not construct the Infrastructure Improvements in accordance with DOTE requirements, the City may refuse to accept the dedication of the Infrastructure Improvements, and (ii) the City makes no guarantee that City Planning Commission will approve the dedication or that Cincinnati City Council will pass an ordinance to accept the dedication.

(F) Contractors and Subcontractors. The County shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(G) Applicable Laws. The County shall obtain, pay for, and maintain all necessary street-opening permits, building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to the County that the County will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(H) Inspection of Work. During construction of the Project and the related improvements, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether the County is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving the County reasonable prior written notice thereof, to stop such work and order its replacement at the County's expense.

(I) Reporting During Construction. Upon the City's request throughout construction, the County shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. The County shall submit a final report to the City upon completion of the Project.

(J) Fees and Expenses. The County acknowledges and agrees that it is subject to any and all standard City fees and permit costs applicable to the Project.

4. Insurance.

(A) Insurance. Throughout construction, the County shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by the County's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. The County's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to

do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City.

(B) **Waiver of Subrogation.** The County hereby waives all claims and rights of recovery, and on behalf of the County'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 the County, 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 the County shall at all times protect against such loss or damage by maintaining adequate insurance. The County shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

5. **Casualty; Eminent Domain.** If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), the County shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. For the avoidance of doubt, the City currently has no plans to take the property by eminent domain. To the extent the City's participation is required, the City and the County shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. The County shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. The County shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. **Default; Remedies.**

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

(i) the failure of the County to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which the County and the City are parties, and failure by the County to correct such failure within 30 days after the County's receipt of written notice thereof from the City (the "Cure Period"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, the County shall not be in default under this Agreement so long as the County commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after the County's receipt of the City's initial notice of default. Notwithstanding the foregoing, if the County's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if the County fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

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

(iii) any representation, warranty, or certification of the County made in connection with this Agreement or any other related agreements or documents shall prove to have been false or materially misleading when made.

(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 the County written notice thereof, (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 the County, and (iii) exercise any and all other rights and

remedies under this Agreement or otherwise available at law or in equity. The County shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of the County under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, 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
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To the County:

Board of County Commissioners
of Hamilton County
135 E. Court Street, Room 603
Cincinnati, Ohio 45202

If the County sends a notice to the City alleging that the City is in default under this Agreement, the County shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

If the City sends a notice to the County alleging that the County is in default under this Agreement, the City shall simultaneously send a copy of such notice by U.S. certified mail to: Hamilton County Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202.

8. **Representations, Warranties, and Covenants.**

(A) The County makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) The County 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 relevant to the transactions contemplated by this Agreement.

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

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

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of the County, threatened against or affecting the County, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of the County or its ability to perform its obligations with respect to the matters contemplated herein.

(v) The County shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings or investigation affecting the County that could reasonably be expected to materially and adversely affect its completion of the Project.

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

(vii) The Board of County Commissioners is unaware of any outstanding fines, penalties, judgments, water, or other utility charges or other amounts owed to the City by the County.

(B) The City makes the following representations, warranties, and covenants:

(i) The City 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 relevant to the transactions contemplated by this Agreement.

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

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

9. Reporting Requirements.

(A) **Submission of Records and Reports; Records Retention.** The County 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 the County, the Project, or this Agreement, including, without limitation, financial statements, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects relating to the Project as may be funded by the City, Hamilton County, or the State of Ohio (collectively, "**Records and Reports**"). All Records and Reports compiled by the County and furnished to the City shall be in such form as the City reasonably may from time to time require. The County shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

10. General Provisions.

(A) **Assignment.** The County shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 the County agrees that venue in such court is proper. The County 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 Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(I) No Brokers. The County represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

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

(K) Time. Time is of the essence with respect to the performance by the County of its obligations under this Agreement.

(L) 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.

(M) 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 the County or in the Project, and the County shall take appropriate steps to assure compliance.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, 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.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. The County shall abide by the additional conditions identified in Coordinated Report #, including, without limitation, the following:

(A) DOTE. The County must complete a Traffic Impact Study (“TIS”) and implement any recommendations of the TIS and any DOTE requirements related thereto, including to create public access to exit the remainder of Logan Street. Adjacent streets must be finished with a curb, sidewalk, and/or drive approach, each to be approved by DOTE. A street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTE.

(B) MSD. An Excavation Fill permit approval and/or bond from the Metropolitan Sewer District of Greater Cincinnati (“MSD”) may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSD requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plans and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(C) GCWW. The County shall perform all work described in Preliminary Application CIN 332 to the satisfaction of Greater Cincinnati Water Works (“GCWW”), including the relocation of existing GCWW infrastructure located under the City ROW.

(D) Duke Energy. Duke Energy has an OH Primary, a standard pressure gas main, and overhead and underground facilities to which access must be maintained at all times.

(E) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at the County’s expense.

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

- Exhibit A – Site Plan
- Exhibit B – Legal Description – City ROW
- Exhibit C – Survey Plat – City ROW
- Exhibit D – Statement of Work
- Exhibit E – Budget
- Exhibit F – Form of Quitclaim Deed
- Exhibit G – Additional Requirements

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Transfer and Development Agreement

Site Plan

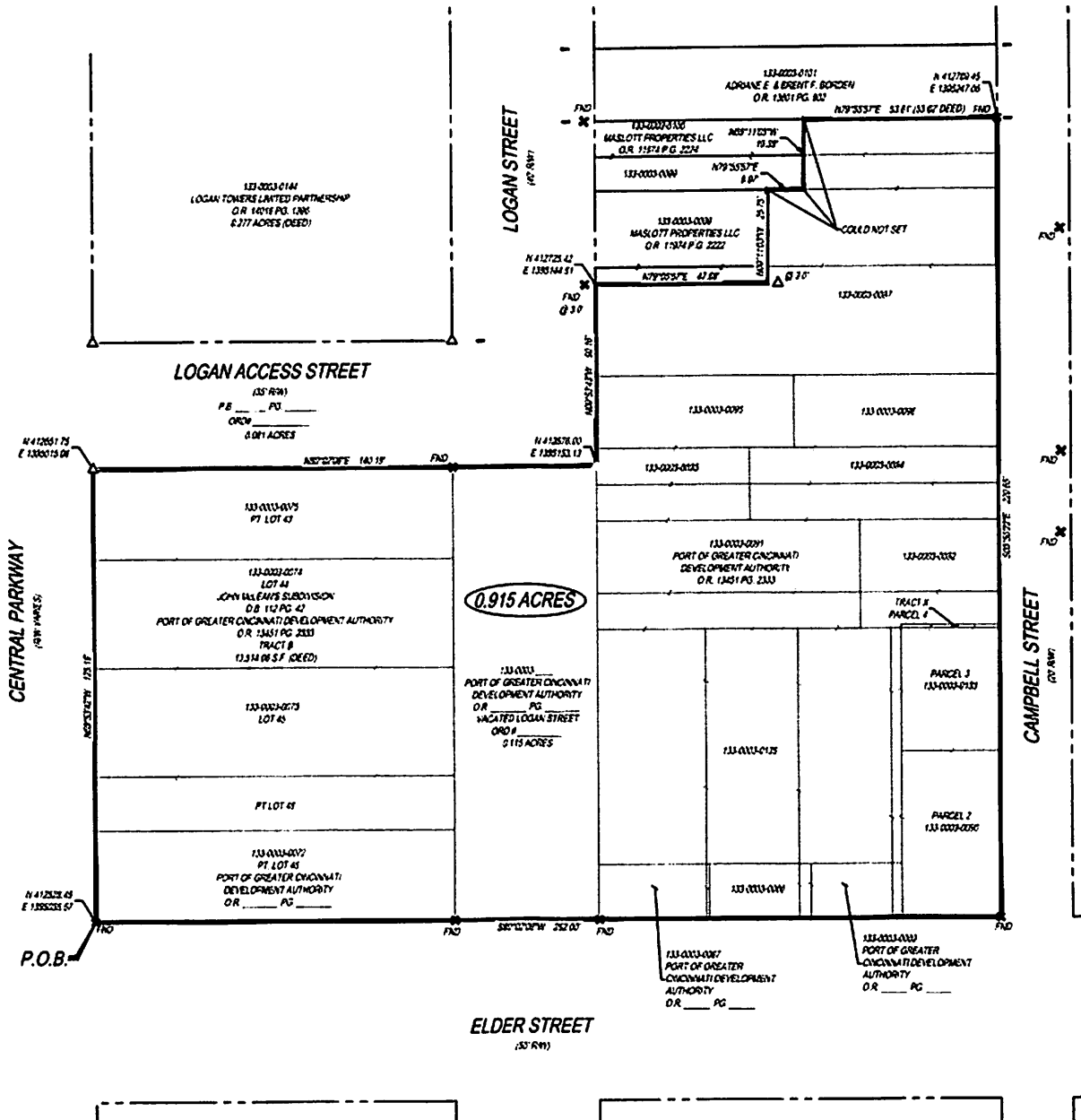


Exhibit B
to Property Transfer and Development Agreement

Legal Description – City ROW

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

Thence with said west right of way line, N09°53'43"W a distance of 125.16 feet to a cross notch set;

Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

Thence, S80°02'08"W a distance of 40.00 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

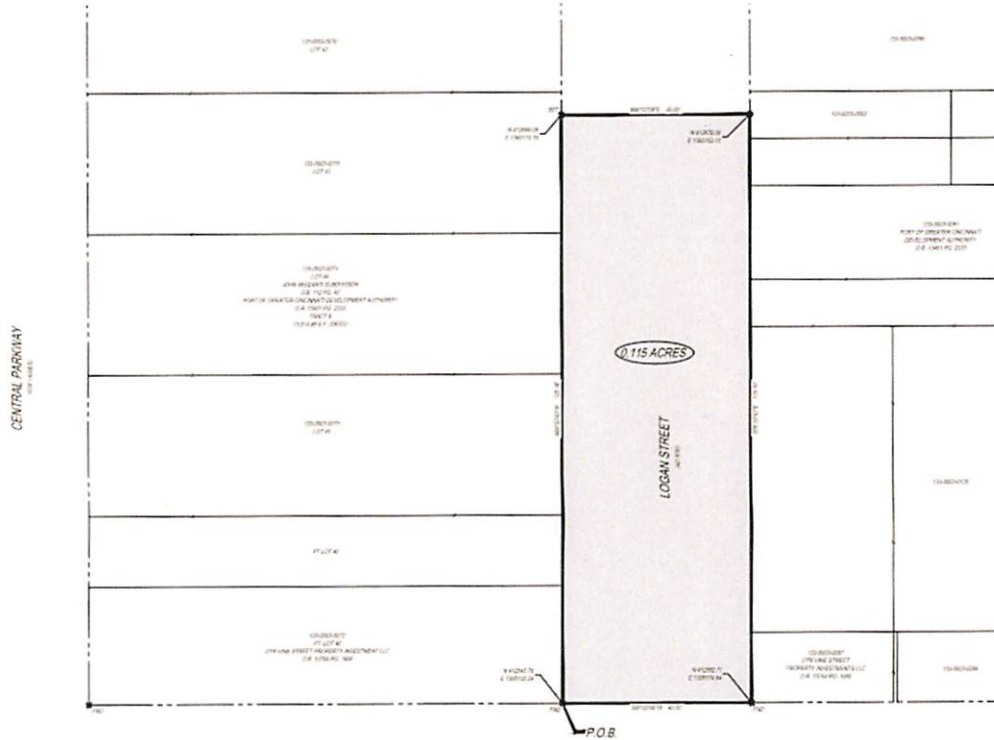
All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

Exhibit C
to Property Transfer and Development Agreement
Survey Plat – City ROW

SEE ATTACHED

LEGEND

- SET BACK PERMIT
- CLOSURE AREA
- PROPERTY LINE
- AREA TO BE ACQUIRED



CLOSURE 0.115 ACRES

NORTH 40°15'00" EAST 100.00 FT
 QUADRYN A, L&P
 COURSE N67°45'00" WEST 100.00 FT
 NORTH 40°15'00" EAST 100.00 FT

QUADRYN A, L&P
 COURSE N67°45'00" WEST 100.00 FT
 NORTH 40°15'00" EAST 100.00 FT

QUADRYN A, L&P
 COURSE N67°45'00" WEST 100.00 FT
 NORTH 40°15'00" EAST 100.00 FT

QUADRYN A, L&P
 COURSE N67°45'00" WEST 100.00 FT
 NORTH 40°15'00" EAST 100.00 FT

SECTION 13, T4N, R10E, S10W
 PART OF (UNRECORDED) 1/4 SECTION 13, T4N, R10E, S10W
 PREVIOUSLY PLATTED EAST 1/2 SECTION 13, T4N, R10E, S10W

NOTES

1. SOURCE OCCUPANTS AS NOTED
2. OCCUPANTS IN GENERAL ARE SUBJECT
3. DEMONSTRATION OF WORK CONSTRUCTION AND OCCUPANCY NOTED
4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH ALL APPLICABLE ORDINANCES AND REGULATIONS
5. ADDITIONAL DATA IS BASED ON THE LAND SURVEY AND OCCUPANCY SYSTEMS
6. SURVEYOR'S CERTIFICATION IS BASED ON THE LAND SURVEY AND OCCUPANCY SYSTEMS

SURVEYOR'S CERTIFICATION

I, THE SURVEYOR, CERTIFY THAT THE PLAT OF CLOSURE WAS PREPARED UNDER MY
 SUPERVISION AND IN ACCORDANCE WITH THE LAND SURVEYING ACT AND ALL APPLICABLE
 ORDINANCES AND REGULATIONS. I AM A LICENSED SURVEYOR IN THE STATE OF ILLINOIS.
 THE PLAT IS CORRECT AND ACCURATE.

DATE: 10/15/2024
 SURVEYOR: [Signature]

PLANNING COMMISSION APPROVAL
 PLAT APPROVED BY THE CITY OF GARDENHILL PLANNING COMMISSION ON THE _____ DAY OF _____, 2024.

DIRECTOR OF PLANNING
 DIRECTOR, DEPARTMENT OF CITY PLANNING



KLEINGERS GROUP

1000 PINE BLVD, SUITE 100
 GARDENHILL, OHIO 44131
 (440) 325-1234



CITY OF GARDEN HILL
 1000 PINE BLVD, SUITE 100
 GARDENHILL, OHIO 44131
 (440) 325-1234

**SURVEY PLAT FOR
 A PORTION OF
 LOGAN STREET
 0.115 ACRES**

SECTION 13, T4N, R10E, S10W
 WILBERCEK TOWNSHIP
 CITY OF GARDEN HILL
 HAMILTON COUNTY, OHIO

PROJECT NO: 202400000000
 DATE: 10/15/2024



0 10 20 30
 FEET

FINDLAY GARAGE

1 OF 1

Exhibit D
to Property Transfer and Development Agreement

Statement of Work

Following the Closing on the City's sale of the City ROW to the County, the County will complete construction of the following public improvements and a 515-space structured parking garage.

- I. Demolition: Demolition of existing surface parking lots, roadway, sidewalks, lighting, and signage located within the Project Site.

- II. Site Preparation:
 - a. Prepare the Project Site for installation of infrastructure and vertical development, including, without limitation, shoring, soil stabilization, and grading activities.
 - b. General conditions, including jobsite fencing, road and sidewalk closing fees, and surveying.

- III. Public Infrastructure Improvements:
 - a. To prepare the Project Site for vertical development, the County will first construct a new public street, being approximately 35' wide and designed to Department of Transportation & Engineering standards, that will connect Central Parkway to the existing Logan Street.
 - b. Abandon a portion of the City-owned right-of-way known as Logan Street, including the relocation of utilities, water, sewer, gas, and electric to the new public street to be constructed between Central Parkway and Logan Street.
 - c. Streetscape, sidewalk, and signage improvements in the adjacent public rights of way, including, without limitation, granite curbs and concrete sidewalks to match the south side of Elder Street, post top street lighting, signage, and tree wells.
Upon completion of the Garage Project, the County shall complete the rehabilitation of the public streets adjoining or adjacent to the Project Site, or otherwise impacted by the Project, all per DOTE requirements.

- IV. Public Parking Garage:
 - a. Construct an above-grade, 6.5 story public parking garage located along the north side of Elder Street, east of Central Parkway (the "**Garage**"). The Garage will have a capacity of approximately 515 spaces, a footprint of 30,256 square feet, and a total building area of 194,500 square feet. There will be one vehicular entry/exit along the north side of the Garage.
 - b. The Garage will also include approximately 15,000 square feet of retail space and accompanying support space on the ground level. The retail space will be designed as a "white box" level of finish, including major HVAC and electrical utility runs only, slab on grade, and exterior walls of the space.
 - c. Architectural finishes are incorporated into the perimeter façade to break down the scale of the Garage and relate to the surrounding Over-the-Rhine historical buildings. A 4-story mural will be incorporated into the section of the south façade above the vacated section of Logan Street.

Exhibit E
to Property Transfer and Development Agreement

Budget

1. **PRELIMINARY BUDGET**

Uses		Total
Infrastructure Project		1,052,000.00
Utility Relocation	1,000,000.00	
Logan Access Street	52,000.00	
Garage Project		19,200,000.00
Land Acquisition	2,200,000.00	
Deep Foundations	1,000,000.00	
Core & Shell	16,000,000.00	
Soft Costs		2,500,000.00
Total		\$22,752,000.00

2. **SOURCES OF FUNDS**

Sources		Total
County Parking Fund Revenues		\$22,752,000.00

Exhibit F
to Property Transfer and Development Agreement
Form of Quitclaim Deed

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “City”), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, the address of which is 138 E. Court Street, Room 603, County Administration Building, Cincinnati, Ohio 45202 (“Grantee”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto and depicted on Exhibit B (*Survey Plat*) hereto (the “Property”).

Property Address: None. Vacated public right-of-way.

Auditor’s Parcel Nos.: None. Vacated public right-of-way.

Pursuant to Ohio Revised Code Section 723 and Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022, the portion of right-of-way described on Exhibit A and depicted on Exhibit B are hereby vacated as public right-of-way by the City.

(A) Creation of Utility Easements. This conveyance is subject to Ohio Revised Code §723.041 so that any affected public utility shall have a permanent easement in such vacated portion of the public right-of-way for the purpose of operating, maintaining, repairing, reconstructing, and removing any existing utility facilities and for purposes of access to said facilities. Following the relocation of any utilities in such vacated portion of the public right-of-way to the satisfaction of the affected public utility, upon Grantee’s request, the affected public utility will execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder’s Office, at Grantee’s cost.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) *Re-conveyance to City upon Failure to Timely Commence Construction*: The City and Grantee are parties to a *Property Transfer and Development Agreement* dated _____, 20____ (the “**Agreement**”), pursuant to which Grantee is required to redevelop the Property. If Grantee does not commence construction at the Property on or before the Garage Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee’s request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder’s Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

Exhibit A
to Quitclaim Deed

Legal Description

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

Thence with said west right of way line, N09°53'43"W a distance of 125.16 feet to a cross notch set;

Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

Thence, S80°02'08"W a distance of 40.00 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

Exhibit B
to Quitclaim Deed

Survey Plat

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit G
to Property Sale and Development Agreement

Additional Requirements

The phrase "Developer" shall refer to the County for purposes of this Exhibit.

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.

Notwithstanding the provisions of this Agreement and this Exhibit:

(A) The City acknowledges that Developer has an economic inclusion policy pertaining to the inclusion of minority, female and small business enterprises, and non-discrimination, as well as its own procurement and competitive bidding policy. Developer shall use its best efforts, and shall require each contractor and subcontractor working on the Project to use its best efforts, to promote Developer's economic inclusion policy. In consideration of those efforts, the City hereby waives compliance with the City's Small Business Enterprise policy, the City's Equal Employment Opportunity Program, construction workforce goals, and procurement policy (each of which policies and programs are described more fully below) with respect to the Project.

(B) Notwithstanding clause (A) above, **Developer specifically agrees that, regardless of the legal applicability or inapplicability of Ordinance No. 130-2002 (regarding Meet and Confer), as described in Section (A)(i) of this Exhibit, Developer shall fully comply with the meet and confer requirement identified in clause (A)(i)(b) of this Exhibit as if Ordinance No. 130-2002 applies to Developer.** The City affirms to Developer that Meet and Confer meetings occur twice monthly at the offices of the Department of Community and Economic Development; to the extent such meetings occur less frequently than bi-monthly, Developer shall not be obligated to wait to bid for longer than two weeks for a Meet and Confer meeting to take place.

A. 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.

B. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Developer shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Developer may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Developer shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

(i) Including qualified SBEs on solicitation lists.

(ii) Assuring that SBEs are solicited whenever they are potential sources.

The Developer must conduct an advertising campaign designed to reach all segments of the Cincinnati community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers or other media (i.e. emails), as applicable.

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

(iv) If any subcontracts are to be let, the Developer shall require the prime contractor (if different from the Developer) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Developer shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Developer shall update the report monthly.

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

C. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Developer or its contractors and subcontractors to take the affirmative steps specified in Section B and Section 8(L) of this Agreement, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Developer to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

D. 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. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

(a) This contract is or may be subject to the Wage Enforcement provisions of the 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 CMC Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

Contract No. _____

PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO

Project Name: Findlay Market County Parking Garage

(sale/vacation of portion of Logan Street for consolidation with County property
for construction of public parking garage in vicinity of Findlay Market)

Dated: _____, 2022

PROPERTY TRANSFER AND DEVELOPMENT AGREEMENT

This Property Transfer and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, the address of which for purposes of this Agreement is County Administration Building, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the “**County**”).

Recitals:

A. The County has or intends to obtain site control over approximately 0.915 acres of real property in the Over-the-Rhine neighborhood of Cincinnati located between Central Parkway on the west, Campbell Street on the east, and Elder Street on the south, as the same is shown on Exhibit A (Site Plan) hereto (the “**Project Site**”).

B. The Project Site is currently bifurcated by a portion of Logan Street north of Elder Street, as more particularly described on Exhibit B (Legal Description – City ROW) and depicted on Exhibit C (Survey Plat – City ROW) hereto (the “**City ROW**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOTe**”).

C. The County desires to acquire the City ROW for consolidation with the remainder of the Project Site, upon which consolidated Project Site the County intends to undertake a redevelopment project consisting of the design and construction of a public parking garage consisting of approximately 515 parking spaces, as more particularly described on Exhibit D (Statement of Work) hereto, at an estimated total project cost of approximately \$19,200,000, as more particularly described on Exhibit E (Budget) hereto (the “**Garage Project**”).

D. In addition to and in support of the Garage Project, the County intends to (i) construct a street that will be open to the general public, which is depicted on Exhibit A as “Logan Access Street”, in accordance with plans and specifications that will be reviewed and approved by DOTe, (ii) rehabilitate the public streets adjacent to or adjoining the Project Site following completion of the Garage Project, and (iii) complete a Traffic Impact Study and implement any further DOTe recommendations or requirements in response thereto, all as more particularly described on Exhibit D hereto, at an estimated total project cost of approximately \$1,052,000, as more particularly described on Exhibit E hereto (the public street and associated public sidewalks and/or other public improvements (including, without limitation, any infrastructure required in support of the Garage Project and the surrounding area by Greater Cincinnati Water Works, Stormwater Management Utility, the Metropolitan Sewer District of Greater Cincinnati, or any other public utility) being referred to collectively herein as the “**Infrastructure Improvements**” or the “**Infrastructure Project**”, as applicable; the Infrastructure Project and the Garage Project are referred to collectively herein as the “**Project**”).

E. The County currently anticipates that it will (i) commence on-site construction of the Garage Project no later than April 1, 2022 (the “**Garage Project Commencement Date**”); and (ii) complete construction of (a) the Infrastructure Project no later than July 1, 2023 (the “**Infrastructure Project Completion Date**”), and (b) the Garage Project no later than July 1, 2023 (the “**Garage Project Completion Date**”).

F. The City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the City ROW is \$56,350; however, the City is willing to sell the City ROW for less than fair market value, namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (i) the benefit of the Infrastructure Improvements, including the new street connecting Logan Street to Central Parkway, which the County intends to dedicate for use by the general public, (ii) additional parking in support of the City-

owned Findlay Market House and surrounding businesses and residents, and (iii) urban redevelopment of Over-the-Rhine.

G. Pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets if it has determined that the property is not needed for municipal purposes.

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

I. The City has determined that (i) in consultation with the City's Department of Community and Economic Development ("DCED") and DOTE, the City ROW is not needed for transportation or other municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the City ROW because the City ROW is necessary in order for the County to undertake the Garage Project.

J. In connection with City Council's passage of the ordinance authorizing the vacation and sale of the City ROW to the County, the County provided the City with (i) an Attorney's Certificate of Title from [_____], an Ohio licensed attorney, certifying that the City, the County, and [_____] are the owners of all of the property that abuts the City ROW, and (ii) the written consent of all necessary abutting property owners.

K. The City, upon recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

L. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and transfer of the City ROW at its meeting on September 17, 2021.

M. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on December _____, 2022.

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

1. Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to vacate and transfer the City ROW to the County, and the County hereby agrees to acquire the City ROW from the City, for a purchase price of \$1.00 (the "**Purchase Price**"). The County acknowledges that it is familiar with the condition of the City ROW and, at the Closing (as defined below), the City shall convey the City ROW to the County in "as is" condition. The City makes no representations or warranties to the County with respect to the condition of the City ROW and, from and after the Closing, the City shall have no liability of any kind to the County for any defects, adverse environmental condition, or any other matters affecting the City ROW.

2. Closing and Conditions to Closing.

(A) Conditions. The Closing on the City's sale of the City ROW to the County shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City's Coordinated Report #CR26-2021, including those conditions outlined in Section 11 below (collectively, the "**Conditions**"); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Deed (as defined below) or handle such Conditions post-Closing. The County shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations*: County's approval of its due diligence inspections with respect to the City ROW, including, without limitation, title, survey, and environmental assessments of the City ROW;
- (ii) *Budget*. The County shall have provided to the City a detailed and updated budget for the Project;
- (iii) *Construction Schedule*: The County shall provide to the City a detailed construction timeline showing anticipated construction commencement and completion dates for the Project, including significant milestones;
- (iv) *Sale Plats and Legal Descriptions*: The parties' approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the City ROW on the tax maps of the Hamilton County Auditor;
- (v) *Dedication Plat*: The County shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Infrastructure Improvements; and
- (vi) *Other Information*: Such other information and documents pertaining to the County or the Project as the City may reasonably require.

(B) Copies of Due Diligence Items to be Provided to City. Without limitation of the County's other obligations under this Agreement, prior to the Closing, and as such due diligence items are obtained by the County, the County, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by the County prior to the Closing that pertain to the Project.

(C) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of March 1, 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to the County.

(D) Closing Date. The closing on the City's sale of the City ROW to the County (the "**Closing**") shall take place on approximately [_____], 202[], or on such earlier or later date upon which the parties may mutually agree.

(E) Closing Costs and Closing Documents. At the Closing, (i) the County shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the City ROW to the County by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed) hereto (the "**City's Deed**"). The County shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, the County and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the City ROW. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, the County shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by the County or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(F) Maintenance of Property Between Closing and Prior to Construction. Between the Closing and the County's commencement of on-site construction on the City ROW, the County, at no expense to the City, shall maintain the City ROW in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(G) Environmental Remediation. As a material inducement to the City to enter into this Agreement, the County does hereby agree that, with respect to any environmental condition on or otherwise affecting the Project Site, including, without limitation, the City ROW and the property on which the Infrastructure Improvements will be located, that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by the County to the City or otherwise obtained by the City, the County shall, at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability ("**OES**"). The County's remediation obligation under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence Construction.

(A) Construction Commencement & Completion.

(i) Infrastructure Project. Following Closing, the County shall (a) (1) apply for and receive the required street opening and utility construction permits from DOTE, the public utilities, and other relevant agencies and departments for construction of the Infrastructure Project, and (2) promptly thereafter commence construction of the Infrastructure Project in accordance with City-approved plans and specifications; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Infrastructure Project (as evidenced by DOTE's written approval to open the street associated therewith to public traffic) no later than the Infrastructure Project Completion Date.

(ii) Garage Project. Following Closing, the County shall (a) (1) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Garage Project, and (2) commence on-site construction of the Garage Project in accordance with City-approved plans and specifications ("**Construction Commencement**") no later than the Garage Project Commencement Date; and (b) complete construction, in accordance with City-approved plans and specifications and all other City approvals, of the Garage Project (as evidenced by a certificate of occupancy for the garage) no later than the Garage Project Completion Date.

(B) Reacquisition Option for Failure to Timely Commence Construction of Garage Project. If Construction Commencement has not occurred on or before the Garage Project Commencement Date, then, at any time thereafter, the City shall have the option to reacquire the City ROW for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Reacquisition Option**"), exercisable by giving written notice thereof to the County at any time after the Garage Project Commencement Date, but prior to the date of Construction Commencement.

(C) Reacquisition Option Closing. If the City elects to exercise the Reacquisition Option, the reconveyance of the City ROW to the City pursuant to the Reacquisition Option shall take place on the date specified in the City's notice of election. On the date of reconveyance: (i) the County shall reconvey the City ROW (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by the County to the City ROW); (ii) County shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for the re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(C) hereof shall be reflected in the City's Deed.

(D) Plans and Specifications. The County shall design and construct the Project in accordance with City-approved plans and specifications that are consistent with Exhibit D, including, without limitation, the County's proposed site plan for driveway locations, parking, stormwater detention, public access

easement(s), and other ancillary improvements. Once the City has approved the County's plans and specifications, the County shall not make any material changes thereto without the City's prior written consent.

(E) Dedication and Acceptance of Infrastructure Improvements. The parties acknowledge that, upon completion, the County intends to dedicate the Infrastructure Improvements for public use, and intends for the City to accept the Infrastructure Improvements (subject to all approvals as required by DOTE, OES, and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). The County shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City. The County acknowledges that, (i) if the County does not construct the Infrastructure Improvements in accordance with DOTE requirements, the City may refuse to accept the dedication of the Infrastructure Improvements, and (ii) the City makes no guarantee that City Planning Commission will approve the dedication or that Cincinnati City Council will pass an ordinance to accept the dedication.

(F) Contractors and Subcontractors. The County shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(G) Applicable Laws. The County shall obtain, pay for, and maintain all necessary street-opening permits, building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to the County that the County will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(H) Inspection of Work. During construction of the Project and the related improvements, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether the County is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving the County reasonable prior written notice thereof, to stop such work and order its replacement at the County's expense.

(I) Reporting During Construction. Upon the City's request throughout construction, the County shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. The County shall submit a final report to the City upon completion of the Project.

(J) Fees and Expenses. The County acknowledges and agrees that it is subject to any and all standard City fees and permit costs applicable to the Project.

4. Insurance

(A) Insurance. Throughout construction, the County shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by the County's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. The County's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to

do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City.

(B) Waiver of Subrogation. The County hereby waives all claims and rights of recovery, and on behalf of the County'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 the County, 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 the County shall at all times protect against such loss or damage by maintaining adequate insurance. The County shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

5. Casualty; Eminent Domain. If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), the County shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. For the avoidance of doubt, the City currently has no plans to take the property by eminent domain. To the extent the City's participation is required, the City and the County shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. The County shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. The County shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. Default; Remedies.

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

(i) the failure of the County to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which the County and the City are parties, and failure by the County to correct such failure within 30 days after the County's receipt of written notice thereof from the City (the "**Cure Period**"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, the County shall not be in default under this Agreement so long as the County commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after the County's receipt of the City's initial notice of default. Notwithstanding the foregoing, if the County's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if the County fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

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

(iii) any representation, warranty, or certification of the County made in connection with this Agreement or any other related agreements or documents shall prove to have been false or materially misleading when made.

(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 the County written notice thereof, (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 the County, and (iii) exercise any and all other rights and

remedies under this Agreement or otherwise available at law or in equity. The County shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of the County under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, 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
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To the County:

Board of County Commissioners
of Hamilton County
135 E. Court Street, Room 603
Cincinnati, Ohio 45202

If the County sends a notice to the City alleging that the City is in default under this Agreement, the County shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

If the City sends a notice to the County alleging that the County is in default under this Agreement, the City shall simultaneously send a copy of such notice by U.S. certified mail to: Hamilton County Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants.

(A) The County makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) The County 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 relevant to the transactions contemplated by this Agreement.

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

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

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of the County, threatened against or affecting the County, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of the County or its ability to perform its obligations with respect to the matters contemplated herein.

(v) The County shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings or investigation affecting the County that could reasonably be expected to materially and adversely affect its completion of the Project.

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

(vii) The Board of County Commissioners is unaware of any outstanding fines, penalties, judgments, water, or other utility charges or other amounts owed to the City by the County.

(B) The City makes the following representations, warranties, and covenants:

(i) The City 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 relevant to the transactions contemplated by this Agreement.

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

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

9. Reporting Requirements.

(A) Submission of Records and Reports; Records Retention. The County 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 the County, the Project, or this Agreement, including, without limitation, financial statements, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects relating to the Project as may be funded by the City, Hamilton County, or the State of Ohio (collectively, "**Records and Reports**"). All Records and Reports compiled by the County and furnished to the City shall be in such form as the City reasonably may from time to time require. The County shall retain all Records and Reports for a period of 3 years after the completion of the Project.

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

10. General Provisions.

(A) Assignment. The County shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 the County agrees that venue in such court is proper. The County 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 Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(I) No Brokers. The County represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

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

(K) Time. Time is of the essence with respect to the performance by the County of its obligations under this Agreement.

(L) 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.

(M) 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 the County or in the Project, and the County shall take appropriate steps to assure compliance.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, 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.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. The County shall abide by the additional conditions identified in Coordinated Report #, including, without limitation, the following:

(A) DOTE. The County must complete a Traffic Impact Study (“**TIS**”) and implement any recommendations of the TIS and any DOTE requirements related thereto, including to create public access to exit the remainder of Logan Street. Adjacent streets must be finished with a curb, sidewalk, and/or drive approach, each to be approved by DOTE. A street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTE.

(B) MSD. An Excavation Fill permit approval and/or bond from the Metropolitan Sewer District of Greater Cincinnati (“**MSD**”) may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSD requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plans and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(C) GCWW. The County shall perform all work described in Preliminary Application CIN 332 to the satisfaction of Greater Cincinnati Water Works (“**GCWW**”), including the relocation of existing GCWW infrastructure located under the City ROW.

(D) Duke Energy. Duke Energy has an OH Primary, a standard pressure gas main, and overhead and underground facilities to which access must be maintained at all times.

(E) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at the County’s expense.

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

- Exhibit A – *Site Plan*
- Exhibit B – *Legal Description – City ROW*
- Exhibit C – *Survey Plat – City ROW*
- Exhibit D – *Statement of Work*
- Exhibit E – *Budget*
- Exhibit F – *Form of Quitclaim Deed*
- Exhibit G – *Additional Requirements*

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "**Effective Date**").

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Transfer and Development Agreement

Site Plan

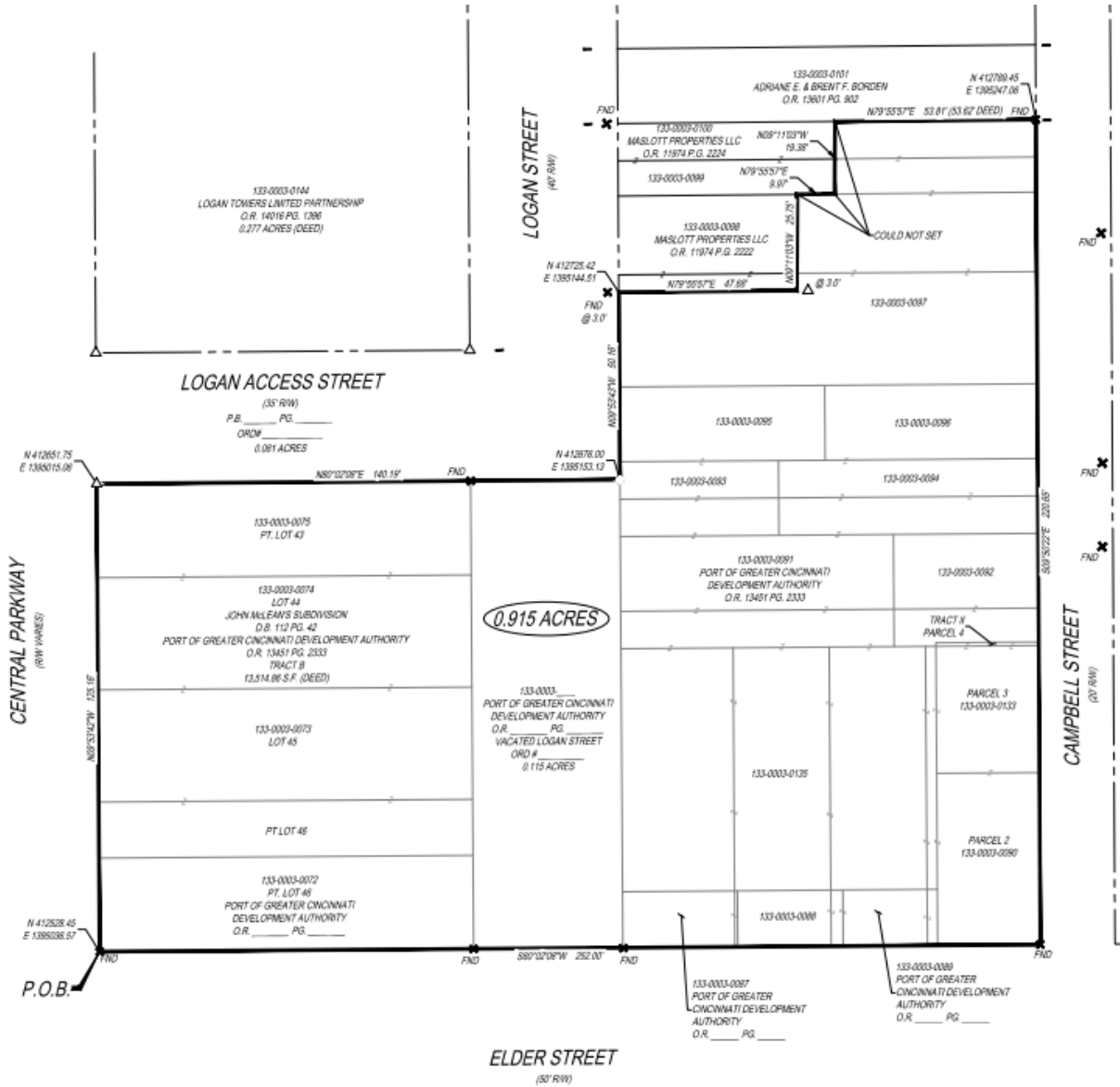


Exhibit B
to Property Transfer and Development Agreement

Legal Description – City ROW

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

Thence with said west right of way line, N09°53'43"W a distance of 125.16 feet to a cross notch set;

Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

Thence, S80°02'08"W a distance of 40.00 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

Exhibit C
to Property Transfer and Development Agreement

Survey Plat – City ROW

SEE ATTACHED

Exhibit D
to Property Transfer and Development Agreement

Statement of Work

Following the Closing on the City's sale of the City ROW to the County, the County will complete construction of the following public improvements and a 515-space structured parking garage.

- I. Demolition: Demolition of existing surface parking lots, roadway, sidewalks, lighting, and signage located within the Project Site.
- II. Site Preparation:
 - a. Prepare the Project Site for installation of infrastructure and vertical development, including, without limitation, shoring, soil stabilization, and grading activities.
 - b. General conditions, including jobsite fencing, road and sidewalk closing fees, and surveying.
- III. Public Infrastructure Improvements:
 - a. To prepare the Project Site for vertical development, the County will first construct a new public street, being approximately 35' wide and designed to Department of Transportation & Engineering standards, that will connect Central Parkway to the existing Logan Street.
 - b. Abandon a portion of the City-owned right-of-way known as Logan Street, including the relocation of utilities, water, sewer, gas, and electric to the new public street to be constructed between Central Parkway and Logan Street.
 - c. Streetscape, sidewalk, and signage improvements in the adjacent public rights of way, including, without limitation, granite curbs and concrete sidewalks to match the south side of Elder Street, post top street lighting, signage, and tree wells.
Upon completion of the Garage Project, the County shall complete the rehabilitation of the public streets adjoining or adjacent to the Project Site, or otherwise impacted by the Project, all per DOTE requirements.
- IV. Public Parking Garage:
 - a. Construct an above-grade, 6.5 story public parking garage located along the north side of Elder Street, east of Central Parkway (the "**Garage**"). The Garage will have a capacity of approximately 515 spaces, a footprint of 30,256 square feet, and a total building area of 194,500 square feet. There will be one vehicular entry/exit along the north side of the Garage.
 - b. The Garage will also include approximately 15,000 square feet of retail space and accompanying support space on the ground level. The retail space will be designed as a "white box" level of finish, including major HVAC and electrical utility runs only, slab on grade, and exterior walls of the space.
 - c. Architectural finishes are incorporated into the perimeter façade to break down the scale of the Garage and relate to the surrounding Over-the-Rhine historical buildings. A 4-story mural will be incorporated into the section of the south façade above the vacated section of Logan Street.

Exhibit E
to Property Transfer and Development Agreement

Budget

1. PRELIMINARY BUDGET

Uses		Total
Infrastructure Project		1,052,000.00
Utility Relocation	1,000,000.00	
Logan Access Street	52,000.00	
Garage Project		19,200,000.00
Land Acquisition	2,200,000.00	
Deep Foundations	1,000,000.00	
Core & Shell	16,000,000.00	
Soft Costs		2,500,000.00
Total		\$22,752,000.00

2. SOURCES OF FUNDS

Sources		Total
County Parking Fund Revenues		\$22,752,000.00

Exhibit F
to Property Transfer and Development Agreement
Form of Quitclaim Deed

SEE ATTACHED

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20 __, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

Exhibit A
to Quitclaim Deed

Legal Description

Situated in Section 13, Town 3, Fractional Range 2, BTM, Millcreek Township, City of Cincinnati, Hamilton County, Ohio, being a portion of Logan Street, the boundary of which being more particularly described as follows:

Beginning at a cross notch found at the intersection of the north right of way line of Elder Street with the west right of way line of Logan Street;

Thence with said west right of way line, N09°53'43"W a distance of 125.16 feet to a cross notch set;

Thence, N80°02'08"E a distance of 40.00 feet to a 5/8" iron pin set in the east right of way line of Logan Street;

Thence along said east right of way line, S09°53'43"E a distance of 125.16 feet to a cross notch found at the intersection of said east right of way line with the aforementioned north right of way line of Elder Street;

Thence, S80°02'08"W a distance of 40.00 feet to the Point of Beginning.

Containing 0.115 acres of land, more or less.

Bearings are based on the Ohio State Plane Coordinate System South Zone as derived from the Ohio Department of Transportation's Virtual Reference Stationing System (VRS)(NAD 83)

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

Exhibit B
to Quitclaim Deed

Survey Plat

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit G
to Property Sale and Development Agreement

Additional Requirements

The phrase "Developer" shall refer to the County for purposes of this Exhibit.

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.

Notwithstanding the provisions of this Agreement and this Exhibit:

(A) The City acknowledges that Developer has an economic inclusion policy pertaining to the inclusion of minority, female and small business enterprises, and non-discrimination, as well as its own procurement and competitive bidding policy. Developer shall use its best efforts, and shall require each contractor and subcontractor working on the Project to use its best efforts, to promote Developer's economic inclusion policy. In consideration of those efforts, the City hereby waives compliance with the City's Small Business Enterprise policy, the City's Equal Employment Opportunity Program, construction workforce goals, and procurement policy (each of which policies and programs are described more fully below) with respect to the Project.

(B) Notwithstanding clause (A) above, **Developer specifically agrees that, regardless of the legal applicability or inapplicability of Ordinance No. 130-2002 (regarding Meet and Confer), as described in Section (A)(i) of this Exhibit, Developer shall fully comply with the meet and confer requirement identified in clause (A)(i)(b) of this Exhibit as if Ordinance No. 130-2002 applies to Developer.** The City affirms to Developer that Meet and Confer meetings occur twice monthly at the offices of the Department of Community and Economic Development; to the extent such meetings occur less frequently than bi-monthly, Developer shall not be obligated to wait to bid for longer than two weeks for a Meet and Confer meeting to take place.

A. 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.

B. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Developer shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Developer may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Developer shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Developer must conduct an advertising campaign designed to reach all segments of the Cincinnati community by advertising in newspapers, trade association publications, special interest publications, trade journals, community papers or other media (i.e. emails), as applicable.

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

(iv) If any subcontracts are to be let, the Developer shall require the prime contractor (if different from the Developer) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Developer shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Developer shall update the report monthly.

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

C. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Developer or its contractors and subcontractors to take the affirmative steps specified in Section B and Section 8(L) of this Agreement, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Developer to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

D. 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. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

(a) This contract is or may be subject to the Wage Enforcement provisions of the 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 CMC Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

February 24, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202200491**

Subject: ORDINANCE – CRA AGREEMENT WITH OAKLEY CROSSINGS HOLDINGS, LLC

Attached is an Ordinance captioned:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other project immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

BACKGROUND/CURRENT CONDITIONS

Oakley Crossings Holdings, LLC (the “Developer”) recently acquired approximately 2.6588 acres of property located at 3628-3646 Madison Road in the Oakley neighborhood of Cincinnati (the “Developer Property”). The City owns approximately 0.0617 acres of property directly adjacent to the Developer’s property (the “City Property”). The Developer desires to purchase the City Property for consolidation with the Developer Property to facilitate a redevelopment project.

City Council previously approved the amendment of the Energy Special Improvement District (“ESID”) boundaries to add this property to the ESID and to levy special assessments on the property.

DEVELOPER INFORMATION

The Developer is affiliated with Morelia Group, LLC (“Morelia”). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister’s Deli, Tropical Smoothie Café, Holtman’s Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning

Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs in the City.

PROJECT DESCRIPTION

The Developer plans to demolish the existing structures on the Developer Property and relocate existing sewer lines to facilitate the project. The Developer plans to consolidate the City Property with the Developer Property to create the Project Site.

The Developer plans to construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants, as well as another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

In connection with the construction of the project, the Developer intends to dedicate approximately 0.0847 acres along Madison Road as right-of-way (the “Dedication Property”).

The project is expected to have an estimated total cost of \$9,100,000. The project will result in the creation of 255 full-time equivalent employees (“FTEs”) with a total annual payroll of approximately \$6,240,000. The project will also result in the creation of 80 full-time temporary construction jobs with an associated annual payroll of \$2,500,000.

The proposed sale of property was approved by the City Planning Commission on December 17, 2021.

City Planning and the Developer conducted a public engagement meeting with Oakley stakeholders on December 6, 2021. A written summary of the engagement session can be found on City Planning’s website.

PROPOSED INCENTIVE

DCED is recommending an 8-year, net 52% CRA tax exemption.

DCED is also recommending the sale of the City-owned property (0.0617 acres) for \$1.00. This proposed incentive is outlined in a separate ordinance.

Pursuant to the Commercial CRA policy established by City Council, this project scored 8 points as indicated below which would merit an 8-year net 52% CRA Tax Abatement:

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

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	(\$232,038)
VTICA (Forgone New Revenue)	(\$105,472)
Income Tax (Forgone New Revenue)	(\$966,060)
Total Public Benefit Lost	(\$1,303,570)
Incentive Value	
Annual Net Incentive to Developer	\$45,704
Total Term Incentive to Developer	\$365,636
City's Portion of Property Taxes Forgone	\$98,814
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$29,005
Total Term CPS PILOT	\$232,038
VTICA	
Annual VTICA	\$13,184
Total Term VTICA	\$105,472
Income Tax (Max)	\$966,060
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$1,303,570
Total Public Benefit ROI*	\$3.57
City's ROI*	\$13.19

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance (1)
- March 7, 2022: Budget and Finance (2)
- March 14, 2022: Budget and Finance (3)
- March 16, 2022: City Council for Final Approval

RECOMMENDATION

The Administration recommends approval of this Ordinance.

CRA Agreement
Oakley Crossings Holdings, LLC
Page 4 of 4

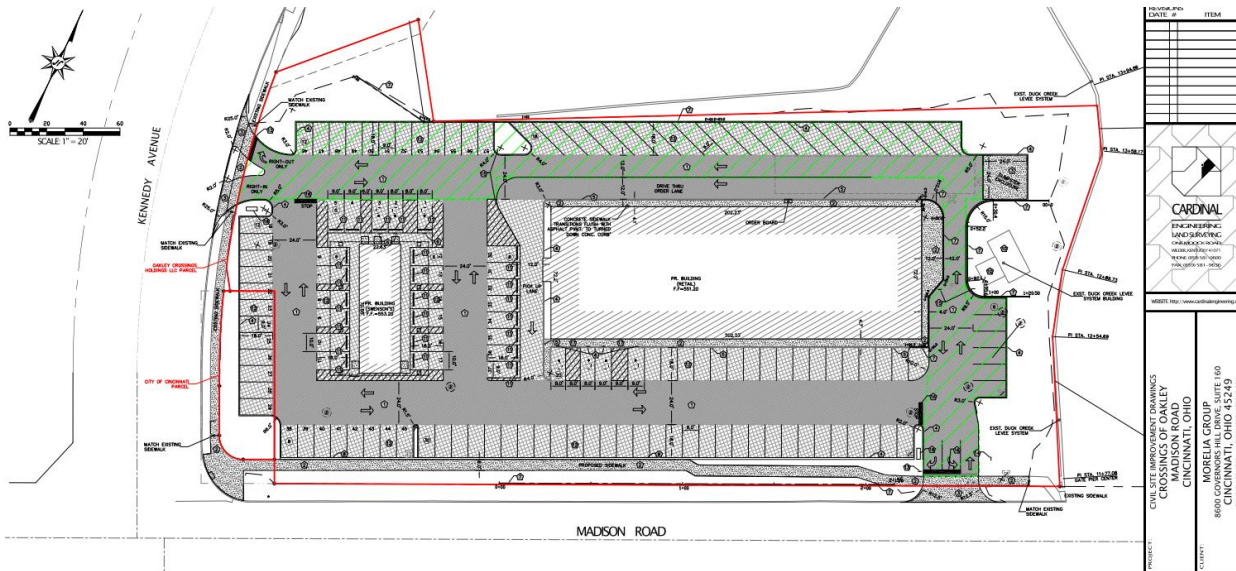
Attachment: A. Property location and site plan

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

Attachment A: Location and Site Plan



Property Location



Site Plan

City of Cincinnati

ZDS

AWB

An Ordinance No. _____ - 2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC, thereby authorizing an 8-year tax exemption for 100% of the value of improvements made to real property located at 3628-3646 Madison Road and other property immediately adjacent thereto, all in the Oakley neighborhood of Cincinnati, in connection with the construction of approximately 16,200 square feet of commercial space, at a total construction cost of approximately \$5,125,000.

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

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

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

WHEREAS, Oakley Crossings Holdings, LLC (the "Company") desires to construct approximately 16,200 square feet of commercial space on real property at 3628-3646 Madison Road and other property immediately adjacent thereto located within the corporate boundaries of the City of Cincinnati (the "Improvements"), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

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

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

WHEREAS, the Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the "Board of Education Agreement"), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review

such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

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

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the neighborhood of the Improvements and to support affordable housing on a City-wide basis; and

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

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with Oakley Crossings Holdings, LLC (the "Agreement"), thereby authorizing an 8-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 3628-3646 Madison Road, and other property immediately adjacent thereto, in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of approximately 16,200 square feet of commercial space, to be completed at a total construction cost of approximately \$5,125,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and

- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

Attachment A to Ordinance

CRA Tax Exemption Agreement

SEE ATTACHED

Community Reinvestment Area Tax Exemption Agreement

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

Recitals:

- A. The City and the Company are parties to a certain *Property Sale and Development Agreement* dated _____, 2022 (the "Development Agreement"). Pursuant to the Development Agreement, the City agreed to convey a portion of the Property (as defined below) to the Company.
- B. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- C. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- D. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- E. The Company is the sole owner of certain real property within the City, located at 3628-3646 Madison Road, Cincinnati, Ohio 45209, and real property immediately adjacent thereto that the City conveyed to the Company pursuant to the Development Agreement (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of two buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

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

administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the Oakley neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

Q. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.

R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

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

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct two buildings on the Property into approximately 16,200 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$5,125,000 to commence after the execution of this Agreement and to be completed no later than August 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of eight (8) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The

Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2032 or (ii) the end of the eighth (8th) year of exemption.

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

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

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

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

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

will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

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

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

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

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

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

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

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

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

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

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 255 full-time permanent jobs, and (ii) 80 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,240,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$2,500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

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

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

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

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

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement including, without limitation, its obligation to comply with the Development Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

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

Section 18. Revocation.

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

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

Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

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

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

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

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

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in

Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

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

To the City:

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

To the Company:

Oakley Crossings Holdings, LLC
Attention: Christopher Hildebrandt
8600 Governors Hill Drive, Ste. 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

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

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

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or

of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

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

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

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

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

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

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

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

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

Section 36. Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "Wage Enforcement Chapter"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons

entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

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

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

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

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

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

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

Section 37. Legal Requirements. In completing and operating the Project, the Company shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

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

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

CITY OF CINCINNATI,
an Ohio municipal corporation

OAKLEY CROSSINGS HOLDINGS, LLC,
a Delaware limited liability company

By: _____
John P. Curp, Interim City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

Property Address: 3628-3646 Madison Road, Cincinnati, Ohio 45209, cons.
Auditor's Parcel No.: 051-0002-0316-00

2.6588 ACRES

Situated in Section 22, Town 4, Fractional Range 2, B.T.M., City of Cincinnati, Hamilton County, Ohio being all of the tracts of land conveyed to Queen City Flats, LLC in O.R. 14538 Pg. 2293, O.R. 14470 Pg. 2448, O.R. 14536 Pg. 1102, O.R. 14536 Pg. 1069, O.R. 14536 Pg. 984, O.R. 14536 Pg. 987, O.R. 14357 Pg. 897, O.R. 14538 Pg. 1422 and O.R. 14538 Pg. 1654, the boundary of which is more particularly described as follows:

BEGINNING at the intersection of the North right of way line of Madison Road with the East right of way line of Kennedy Avenue;

Thence along said right of way line of Kennedy Avenue the following **FOUR (4)** courses:

1. North 25°13'33" West a distance of 105.00 feet to a 5/8" iron pin set;
2. North 64°56'58" East a distance of 24.25 feet to a 5/8" iron pin set;
3. Along a curve to the left for an arc distance of 13.06 feet to a 5/8" iron pin (P.L.S. 7181) found, said curve having a radius of 530.01 feet, a central angle of 01°24'44" and a chord which bears, North 34°01'57" West a distance of 13.06 feet;
4. Along curve to the right for an arc distance of 110.14 feet to a 5/8" iron pin set, said curve having a radius of 454.67 feet, and a central angle of 13°52'45" and a chord which bears, North 10°59' 51" West a distance of 109.87 feet;

Thence leaving said right of way through the lands of Queen City Flats for the following **five (5)** courses:

1. North 44°27'49" East a distance of 82.73 feet to a 5/8" iron pin set;
2. South 33°50'53" East a distance of 56.13 feet to a 5/8" iron pin set;
3. North 63°22'51" East a distance of 362.12 feet to a cross notch set;
4. South 30°35'45" East a distance of 12.63 feet to a cross notch set;
5. North 63°42'43" East a distance of 66.40 feet to a 5/8" iron pin (Rosenfeld) found in the western line of Southwest Ohio Regional Transit Authority (O.R. 6507, Pg. 257);

Thence with said common line the following **two (2)** courses:

1. South 41°12'33" East a distance of 118.40 feet to a 5/8" iron pin set;
2. South 41°33'33" East a distance of 117.88 feet to the centerline of Madison Avenue, passing a 5/8" iron pin set a distance of 86.59 feet at the right of way of Madison Avenue;

Thence along said centerline South 64°56'58" West a distance of 13.15 feet;

Thence leaving said centerline North 83°37'33" West a distance of 57.54 feet to a 5/8" iron pin set in the north right of way line of Madison Avenue;

Thence along said right of way South 64°56'58" West a distance of 519.93 feet to the **POINT OF BEGINNING** of this description.

Containing 2.6588 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

PARCEL TWO:

Property Address: Madison Road, Cincinnati, Ohio 45209
Auditor's Parcel No.: part of 051-0002-0139-00

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement

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

Recitals:

- A. The City and the Company are parties to a certain *Property Sale and Development Agreement* dated _____, 2022 (the "Development Agreement"). Pursuant to the Development Agreement, the City agreed to convey a portion of the Property (as defined below) to the Company.
- B. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- C. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- D. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- E. The Company is the sole owner of certain real property within the City, located at 3628-3646 Madison Road, Cincinnati, Ohio 45209, and real property immediately adjacent thereto that the City conveyed to the Company pursuant to the Development Agreement (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of two buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

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

administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the Oakley neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

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

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

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct two buildings on the Property into approximately 16,200 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$5,125,000 to commence after the execution of this Agreement and to be completed no later than August 1, 2024; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of eight (8) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The

Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2032 or (ii) the end of the eighth (8th) year of exemption.

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

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

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

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

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

will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

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

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

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

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council.

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

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

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

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 255 full-time permanent jobs, and (ii) 80 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$6,240,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$2,500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

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

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

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

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

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement including, without limitation, its obligation to comply with the Development Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

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

Section 18. Revocation.

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

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

Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

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

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

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

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

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in

Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

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

To the City:

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

To the Company:

Oakley Crossings Holdings, LLC
Attention: Christopher Hildebrant
8600 Governors Hill Drive, Ste. 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

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

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

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or

of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

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

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

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

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

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

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

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

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

Section 36. Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "Wage Enforcement Chapter"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons

entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

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

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

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

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

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

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

Section 37. Legal Requirements. In completing and operating the Project, the Company shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

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

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

CITY OF CINCINNATI,
an Ohio municipal corporation

OAKLEY CROSSINGS HOLDINGS, LLC,
a Delaware limited liability company

By: _____
John P. Curp, Interim City Manager

By: _____

Date: _____, 2022

Printed Name: _____

Title: _____

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

Property Address: 3628-3646 Madison Road, Cincinnati, Ohio 45209, cons.
Auditor's Parcel No.: 051-0002-0316-00

2.6588 ACRES

Situated in Section 22, Town 4, Fractional Range 2, B.T.M., City of Cincinnati, Hamilton County, Ohio being all of the tracts of land conveyed to Queen City Flats, LLC in O.R. 14538 Pg. 2293, O.R. 14470 Pg. 2448, O.R. 14536 Pg. 1102, O.R. 14536 Pg. 1069, O.R. 14536 Pg. 984, O.R. 14536 Pg. 987, O.R. 14357 Pg. 897, O.R. 14538 Pg. 1422 and O.R. 14538 Pg. 1654, the boundary of which is more particularly described as follows:

BEGINNING at the intersection of the North right of way line of Madison Road with the East right of way line of Kennedy Avenue;

Thence along said right of way line of Kennedy Avenue the following FOUR (4) courses:

1. North 25°13'33" West a distance of 105.00 feet to a 5/8" iron pin set;
2. North 64°56'58" East a distance of 24.25 feet to a 5/8" iron pin set;
3. Along a curve to the left for an arc distance of 13.06 feet to a 5/8" iron pin (P.L.S. 7181) found, said curve having a radius of 530.01 feet, a central angle of 01°24'44" and a chord which bears, North 34°01'57" West a distance of 13.06 feet;
4. Along curve to the right for an arc distance of 110.14 feet to a 5/8" iron pin set, said curve having a radius of 454.67 feet, and a central angle of 13°52'45" and a chord which bears, North 10°59' 51" West a distance of 109.87 feet;

Thence leaving said right of way through the lands of Queen City Flats for the following five (5) courses:

1. North 44°27'49" East a distance of 82.73 feet to a 5/8" iron pin set;
2. South 33°50'53" East a distance of 56.13 feet to a 5/8" iron pin set;
3. North 63°22'51" East a distance of 362.12 feet to a cross notch set;
4. South 30°35'45" East a distance of 12.63 feet to a cross notch set;
5. North 63°42'43" East a distance of 66.40 feet to a 5/8" iron pin (Rosenfeld) found in the western line of Southwest Ohio Regional Transit Authority (O.R. 6507, Pg. 257);

Thence with said common line the following two (2) courses:

1. South 41°12'33" East a distance of 118.40 feet to a 5/8" iron pin set;
2. South 41°33'33" East a distance of 117.88 feet to the centerline of Madison Avenue, passing a 5/8" iron pin set a distance of 86.59 feet at the right of way of Madison Avenue;

Thence along said centerline South 64°56'58" West a distance of 13.15 feet;

Thence leaving said centerline North 83°37'33" West a distance of 57.54 feet to a 5/8" iron pin set in the north right of way line of Madison Avenue;

Thence along said right of way South 64°56'58" West a distance of 519.93 feet to the POINT OF BEGINNING of this description.

Containing 2.6588 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

PARCEL TWO:

Property Address: Madison Road, Cincinnati, Ohio 45209
Auditor's Parcel No.: part of 051-0002-0139-00

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

February 24, 2022

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager **202200492**

Subject: ORDINANCE – AUTHORIZING PROPERTY SALE AND DEVELOPMENT AGREEMENT WITH OAKLEY CROSSINGS HOLDINGS, LLC

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

BACKGROUND/CURRENT CONDITIONS

Oakley Crossings Holdings, LLC (the “Developer”) recently acquired approximately 2.6588 acres of property located at 3628-3646 Madison Road in the Oakley neighborhood of Cincinnati (the “Developer Property”). The City owns approximately 0.0617 acres of property directly adjacent to the Developer’s property (the “City Property”). The Developer desires to purchase the City Property for consolidation with the Developer Property to facilitate a redevelopment project.

City Council previously approved the amendment of the Energy Special Improvement District (“ESID”) boundaries to add this property to the ESID and to levy special assessments on the property.

DEVELOPER INFORMATION

The Developer is affiliated with Morelia Group, LLC (“Morelia”). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister’s Deli, Tropical Smoothie Café, Holtman’s Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning

Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs in the City.

PROJECT DESCRIPTION

The Developer plans to demolish the existing structures on the Developer Property and relocate existing sewer lines to facilitate the project. The Developer plans to consolidate the City Property with the Developer Property to create the Project Site.

The Developer plans to construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants, as well as another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

In connection with the construction of the project, the Developer intends to dedicate approximately 0.0847 acres along Madison Road as right-of-way (the “Dedication Property”).

The project is expected to have an estimated total cost of \$9,100,000. The project will result in the creation of 255 full-time equivalent employees (“FTEs”) with a total annual payroll of approximately \$6,240,000. The project will also result in the creation of 80 full-time temporary construction jobs with an associated annual payroll of \$2,500,000.

The proposed sale of property was approved by the City Planning Commission on December 17, 2021.

City Planning and the Developer conducted a public engagement meeting with Oakley stakeholders on December 6, 2021. A written summary of the engagement session can be found on City Planning’s website.

PROPOSED INCENTIVE

DCED is recommending the sale of the City-owned property (0.0617 acres) for \$1.00.

The approximate Fair Market Value (“FMV”) of the City-owned property was determined by appraisal to be \$53,750.

DCED is recommending a \$1.00 sale because the City will receive economic and non-economic benefits exceeding the determined FMV in connection with the project, including:

- The benefit of the Dedication Property being dedicated for use by the general public.
- The creation of jobs and urban redevelopment of Oakley.

DCED is also recommending an 8-year, net 52% CRA tax exemption. This proposed incentive is outlined in a separate ordinance.

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline is as follows:

- February 24, 2022: Introduction to City Council
- February 28, 2022: Budget and Finance (1)
- March 7, 2022: Budget and Finance (2)
- March 14, 2022: Budget and Finance (3)
- March 16, 2022: City Council for Final Approval

RECOMMENDATION

The Administration recommends approval of this Ordinance.

Attachment: A. Property location and site plan

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

City of Cincinnati

ZDS

AWB

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Property Sale and Development Agreement* with Oakley Crossings Holdings, LLC, an affiliate of Morelia Group, LLC, for the sale of City-owned real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati, for a commercial development project consisting of approximately 16,200 square feet of commercial retail space.

WHEREAS, the City owns certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in Oakley, which is under the management and control of the City's Department of Transportation and Engineering (the "City Property"); and

WHEREAS, Oakley Crossings Holdings, LLC ("Developer") desires to purchase a portion of the City Property, being approximately 0.0617 acres, as more particularly described and depicted in the *Property Sale and Development Agreement* (the "Agreement") attached to this ordinance as Attachment A (the "Sale Property"), from the City to consolidate with Developer's adjoining real property (together with the Sale Property, the "Project Site"), and thereafter construct on the consolidated Project Site approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000 (the "Project"); and

WHEREAS, in connection with the construction of the Project, Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, as more particularly described in the Agreement (the "Dedication Property"), on the terms and conditions of the Agreement; and

WHEREAS, Developer estimates that the Project will create approximately (i) 80 full-time temporary construction jobs during the construction period with an approximate annual payroll of \$2,500,000; and (ii) approximately 255 full-time permanent jobs following completion of construction of the Project with an approximate annual payroll of \$6,240,000; and

WHEREAS, the City desires that the Sale Property be put to its highest and best use; and

WHEREAS, the City's Real Estate Services Division has determined, by appraisal, that the fair market value of the Sale Property is approximately \$53,750; however, to facilitate the Project and promote its economic feasibility, the City desires to sell the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market value of the Sale Property in connection with the Project, including (i) the creation of jobs and stimulation of economic growth in the Oakley neighborhood of Cincinnati, and (ii) the benefit of the Dedication Property being dedicated for use by the general public; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that to create or preserve jobs and employment opportunities and to improve the economic welfare of the people

of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research; and

WHEREAS, the City has determined that: (i) the Sale Property is not needed for municipal purposes; (ii) the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Sale Property to Developer because Developer owns the adjoining property and consolidation of the Project Site will put the Sale Property to the highest and best use; and (iv) the City's sale of the Sale Property to Developer to complete the Project will create jobs and stimulate economic growth in the Oakley neighborhood of Cincinnati, thereby contributing to the social and economic viability and stability of the neighborhood; and

WHEREAS, City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Sale Property at its meeting on December 17, 2021; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement*, in substantially the form attached to this ordinance as Attachment A (the "Agreement"), pursuant to which the City will sell to Oakley Crossings Holdings, LLC ("Developer") certain real property located at the northeast corner of the intersection of Kennedy Avenue and Madison Road in the Oakley neighborhood of Cincinnati (the "Sale Property"), for Developer to (a) consolidate with adjoining property Developer owns or controls (together with the Sale Property, the "Project Site"); and (b) construct approximately 16,200 square feet of retail space at the consolidated Project Site, at an estimated total project cost of approximately \$9,100,000 (the "Project").

Section 2. That the Sale Property is not needed for municipal purposes.

Section 3. That the fair market value of the Sale Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$53,750; however, the City is justified in selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the fair market

value of the Sale Property because (a) the Project will create jobs and stimulate economic growth in the Oakley neighborhood; and (b) Developer has agreed to dedicate as public right-of-way forever property at the intersection of Kennedy Avenue and Madison Road, including certain real property currently owned by Developer, for the benefit of the general public.

Section 4. That eliminating competitive bidding in connection with the City’s sale of the Sale Property to Developer is in the best interest of the City because Developer owns the adjoining property and consolidation and redevelopment within the Project Site will put the Sale Property to the highest and best use.

Section 5. That proceeds from the sale of the Sale Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the sale, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Agreement, including, without limitation, executing any and all ancillary agreements, amendments, deeds, plats, covenants, terminations, releases, and other documents.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

OAKLEY CROSSINGS HOLDINGS, LLC

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at
3628-3646 Madison Road and construction of
approximately 16,200 square feet of commercial retail space)

Dated: _____, 2022

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the "**Developer**"), an affiliate of Morelia Group, LLC.

Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (*Site Plan*) hereto (the "**Developer Property**").

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (*Legal Description – Sale Property*) and Exhibit B-2 (*Survey Plat – Sale Property*) hereto (the "**Sale Property**"; and collectively with the Developer Property, the "**Property**" or the "**Project Site**", as applicable), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (*Statement of Work, Budget, and Sources of Funds*) hereto (the "**Project**").

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (*Dedication Plat*) hereto (together with the Remainder Property (as defined below), the "**Dedication Property**").

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the "**Project Commencement Date**"), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the "**Project Completion Date**").

F. The City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* ("**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

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

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“DCED”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on _____, 2022.

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

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Developer, and Developer hereby agrees to purchase the Sale Property from the City, for a purchase price of \$1.00 (the “Purchase Price”). Developer acknowledges that it is familiar with the condition of the Sale Property and, at the Closing (as defined below), the City shall convey the Sale Property to Developer in “as is” condition. The City makes no representations or warranties to Developer with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. **Closing and Conditions to Closing.**

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “Closing”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “Conditions”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (Form of Quitclaim Deed – Cut-Up) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “Remainder Property”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Sale Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Sale Property. Developer shall promptly repair any damage to the Sale Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Sale Property. Entry shall be at the sole risk of Developer.

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of [____], 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

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hereto (the "City's Deed"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City's execution and delivery of the City's Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer's commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Sale Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys' fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City's Department of Buildings and Inspections ("**B&I**") for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, "**Construction Commencement**") no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals ("**Construction Completion**") no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director's judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City's Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**First Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(F) Dedication and Acceptance of Dedication Property. The parties acknowledge that, Developer intends to dedicate the Dedication Property for public use, and intends for the City to accept the Dedication Property (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(I) Inspection of Work. During construction at the Property, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(J) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Project Site during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(K) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(L) Recognition of City Support. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible 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. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which construction has been completed.

4. Insurance; Indemnity.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

(B) Waiver of Subrogation. 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 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) 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 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 obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. **Casualty; Eminent Domain.** If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. **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 or observe any obligation, duty, or responsibility under this Agreement, the CRA Agreement, or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "Cure Period"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement or the CRA Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of Developer, 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 of the property of Developer; or

(iii) any representation, warranty, or certification of Developer made in connection with this Agreement, the CRA Agreement, or any other related agreements or documents shall prove to have been false or materially misleading when made.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof if the default occurs prior to the Closing, (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 event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, 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
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC
Attn: Christopher Hildebrandt
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

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 by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(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 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. This Agreement has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(C) Developer's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, 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 its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(E) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings 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 statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or other amounts to the City.

9. 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, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, 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 3 years after the completion of the Project.

(B) City's Right to Inspect and Audit. During construction of the Project and for a period of 3 years completion thereof, Developer shall permit the City and its designees 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.

10. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 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 Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

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(I) No Brokers. Developer represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

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

(K) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

(L) 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.

(M) 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.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, 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.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

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

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

OAKLEY CROSSINGS HOLDINGS, LLC,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement
Site Plan

TO BE ATTACHED

Exhibit B-1
to Property Sale and Development Agreement

Legal Description – Sale Property

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

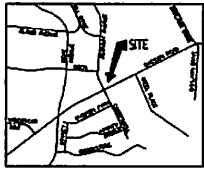
Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2
to Property Sale and Development Agreement
Survey Plat – Sale Property

SEE ATTACHED



VICINITY MAP
NTS

DATE	BY	REVISION
11/13/2020	D.K. YORK	1. IN 84-58-58 E 5/8"

CHORD	BEARING	LENGTH	CHORD BEARING	CHORD LENGTH
C1	N 89°14'41" E	20.47	N 70°27'23" W	15.174
C2	S 64°44'34" W	17.09	N 25°15'28" W	12.135
C3	S 64°44'34" W	17.09	N 25°15'28" W	12.135

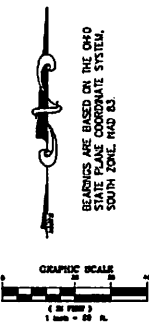
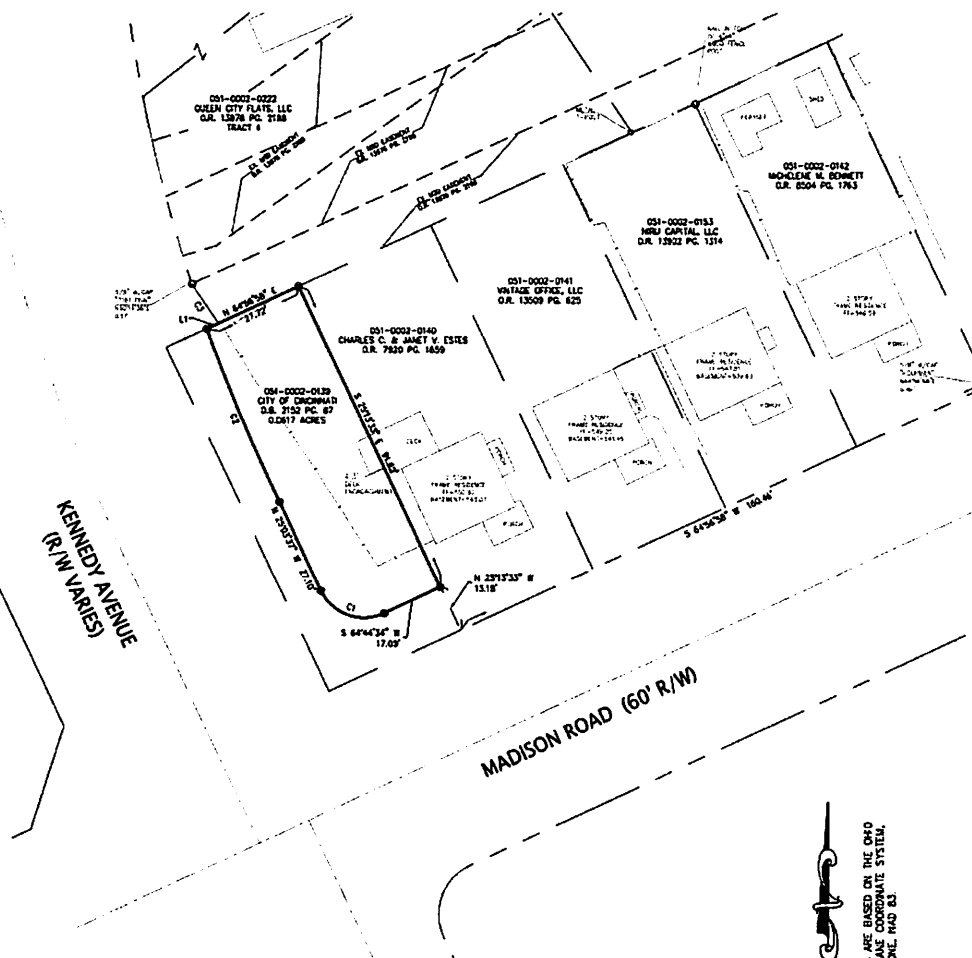
CLOSURE

Pm 1/ Bearing Distance Northings Eastings
 D1 5 64°44'34" W 17.09 428244.1062 1424062.0833
 LOTION 428236.8147 1424576.6283
 Radius: 13.00 Length: 20.47 Chord: 18.43 Date: 9/17/14
 Chord Brg: N 70°27'23" W Rad-In: N 25°15'28" W Rad-Out: N 64°58'23" E
 Radius Pt: L07107 428248.0718 1424671.0833 Tangent: 13.04 Dk: Right
 Tangent-In: S 64°44'34" W Tangent-Out: N 25°15'28" W Tangent-In-Tangent-Out
 LOTION 428243.0055 1424558.3053
 N 25°03'37" W 27.30 428287.6144 1424047.8263
 Radius: 483.04 Length: 57.86 Chord: 31.83 Date: 4/24/16
 Chord Brg: N 22°41'24" W Rad-In: N 64°58'23" E Rad-Out: N 70°27'43" E
 Radius Pt: L07109 428270.0371 1424865.1841 Tangent: 23.98 Dk: Right
 Tangent-In: N 25°33'32" W Tangent-Out: N 19°29'17" W Non-Tangent-In Non-Tangent-Out
 LOTION 428370.4335 1424827.8335
 R211 5 25°17'33" E 11.82 428327.1725 1424552.8494
 D1 5 25°17'33" E 11.82 428244.1062 1424062.0833
 Closure Precision: 1 in 24196.9
 Area: 0.0617 ACRES

I DANIEL K. YORK, A REGISTERED LAND SURVEYOR IN THE STATE OF OHIO, DO HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS PERFORMED BY CARDINAL ENGINEERING CORPORATION UNDER MY DIRECT SUPERVISION IN ACCORD WITH DAC 4733-37, AND THAT THE MONUMENTS SHOWN HEREON WERE FOUND OR SET AS NOTED.

DANIEL K. YORK 5-8729 DATE

- - 5/8" IRON PIV SET WITH ID CAP STAMPED "DKY #8729"
- - MONUMENT FOUND (SIZE AND TYPE AS NOTED)
- x - CROSS NOTCH FOUND



- NOTES:
1. ALL MONUMENTS FOUND IN GOOD CONDITION.
 2. SOURCE DOCUMENTS ARE AS NOTED.
 3. EVIDENCE OF OCCUPATION IS AS SHOWN.
 4. TOPOGRAPHIC SURVEY INFORMATION SHOWN IS BASED ON A FIELD SURVEY BY CARDINAL ENGINEERING IN OCTOBER OF 2020.

REVISION	DATE	BY	ITEM



NOTICE: See www.cardinaleng.com

SURVEY PLAT
 0.0617 ACRES
 SECTION 22, TOWN 4 N, RANGE 10 E, S. 1/4, CITY OF CINCINNATI, HAMILTON COUNTY, OHIO
 MORELIA GROUP
 8600 GOVERNORE HILL DRIVE
 CINCINNATI, OHIO 45249

PROJECT	SCALE
CLIENT	DATE
PROJECT NO. 20-153	SCALE 1" = 20'
DATE 11/13/2020	SURVEY PLAT
SHEET	1 OF 1

Exhibit C
to Property Sale and Development Agreement
Statement of Work, Budget, and Sources of Funds

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

Acquisition	\$4,320,000.00
Site Work	\$1,430,000.00
Retail Shell	\$2,002,000.00
Retail Tenant Improvements	\$291,200.00
Soft Costs	\$295,566.49
Commissions	\$409,200.00
Builder & Development Fee	\$85,000.00
Interest Reserve	\$233,311.64
Contingency	\$26,638.36
TOTAL PROJECT COSTS	\$9,092,916.49

III. Sources of Funds

Debt	\$6,353,282.00
Pace Financing	\$1,771,846.00
Owner Equity	\$967,788.49
TOTAL	\$9,092,916.49

Exhibit D
to Property Sale and Development Agreement

Dedication Plat

TO BE ATTACHED

Exhibit E
to Property Sale and Development Agreement

Form of Quitclaim Deed – Cut-Up

TO BE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: _____ acre parcel along Madison Road

(cut-up to create _____ acre parcel (Parcel "A")
and 0.0617 acre parcel (Parcel "B"))

QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "City"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of _____ acre parcel

Auditor's parcel #: 051-0002-0139-00

This Deed is executed and recorded in connection with the cut-up of a _____ acre parcel of land into two parcels containing _____ acres (Parcel "A") and 0.0617 acres (Parcel "B").

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Plat of Survey*
Exhibit B – *Legal Description – Parcel "A"*
Exhibit C – *Legal Description – Parcel "B"*

Exhibit A
to Quitclaim Deed – Cut-Up

Plat of Survey

cut-up of _____ acre parcel to create
_____ acre parcel (Parcel "A") & 0.0617 acre parcel ("Parcel "B")

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Cut-Up
Legal Description – Parcel "A"

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Cut-Up
Legal Description – Parcel “B”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F
to Property Sale and Development Agreement
Form of Quitclaim Deed – Conveyance

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description*) hereto (the "**Property**").

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor's Parcel No(s): _____

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY CREATES, THE FOLLOWING EASEMENTS, COVENANTS AND RESTRICTIONS.

(A) *Permanent Sewer Easement in Favor of the City of Cincinnati.* The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (*Legal Description – Sewer Easement*) hereto, and depicted on Exhibit C (*Easement Plat – Sewer Easement*) hereto (the "**Easement Area**"), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items that may be placed upon the Easement Area shall be so placed at the sole expense of Grantee, its successors, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Easement Area, resulting from the existence or use of the Easement Area by Grantee, its successors or assigns.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the Easement Area line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) *Re-conveyance to City upon Failure to Timely Commence or Complete Construction.* The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 20__ (the "Agreement"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not (i) commence construction at the Property on or before the Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (ii) complete construction at the Property on or before the Project Completion Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Legal Description – Property*
Exhibit B – *Legal Description – Sewer Easement*
Exhibit C – *Easement Plat – Sewer Easement*

Exhibit A
to Quitclaim Deed – Conveyance

Legal Description – Property

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Conveyance

Legal Description – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Conveyance
Easement Plat – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G
to Property Sale and Development 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 a 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

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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" {00356362-12}

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.¹

(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.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

(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 15th. 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, {00356362-12}

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.

{00356362-12}

(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 {00356362-12}

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

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 2/11/22

ORIGINAL ASSIGNED NUMBER: 2022-034

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

DECISION NUMBER: n/a

MODIFICATIONS: n/a

DECISION DATE: n/a

EXPIRATION DATE: n/a

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

APPROVED BY:

Edgar De Veyra, Interim Director
DIRECTOR, DEPARTMENT OF ECONOMIC
INCLUSION

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

Local wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

REQUESTING AGENCY OR DEPT:
DCED

CONTACT PERSON AND PHONE NUMBER:

Taylor German x4546

Requested Date: 02/11/2022
Estimated Advertising Date: 05/01/2022
Estimated Bid Opening Date: 05/01/2022
Estimated Starting Date: 06/01/2022

SOURCE AND FUND NUMBER

CITY	FUND
STATE	FUND
COUNTY	FUND
FEDERAL	FUND

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 0

TOTAL PROJECT DOLLARS: 9,092,916.49

NAME OF PROJECT

Crossings of Oakley

TYPE OF WORK

- | | | | |
|---------------|---|----------------|---|
| 1. Building | X | 2. Heavy | X |
| 3. Highway | | 4. Residential | |
| 5. Demolition | X | | |
| 6. Other | | | |

PROJECT LOCATION

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

PROJECT FUNDING SOURCE

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

PROJECT SCOPE OF WORK AND BUDGET

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

DEI 217 Form
REV: 6/12/2017

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

OAKLEY CROSSINGS HOLDINGS, LLC

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at
3628-3646 Madison Road and construction of
approximately 16,200 square feet of commercial retail space)

Dated: _____, 2022

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the “**Developer**”), an affiliate of Morelia Group, LLC.

Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (Site Plan) hereto (the “**Developer Property**”).

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (Legal Description – Sale Property) and Exhibit B-2 (Survey Plat – Sale Property) hereto (the “**Sale Property**”; and collectively with the Developer Property, the “**Property**” or the “**Project Site**”, as applicable), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (Statement of Work, Budget, and Sources of Funds) hereto (the “**Project**”).

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (Dedication Plat) hereto (together with the Remainder Property (as defined below), the “**Dedication Property**”).

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the “**Project Commencement Date**”), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the “**Project Completion Date**”).

F. The City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* (“**CRA Agreement**”), subject to passage by City Council of a separate ordinance authorizing such abatement.

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

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“**DCED**”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on _____, 2022.

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

1. Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Developer, and Developer hereby agrees to purchase the Sale Property from the City, for a purchase price of \$1.00 (the “**Purchase Price**”). Developer acknowledges that it is familiar with the condition of the Sale Property and, at the Closing (as defined below), the City shall convey the Sale Property to Developer in “as is” condition. The City makes no representations or warranties to Developer with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Developer for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. Closing and Conditions to Closing.

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “**Closing**”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “**Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (*Form of Quitclaim Deed – Cut-Up*) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “**Remainder Property**”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Sale Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Sale Property. Developer shall promptly repair any damage to the Sale Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Sale Property. Entry shall be at the sole risk of Developer.

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of [____], 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

hereto (the “**City’s Deed**”). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City’s execution and delivery of the City’s Deed and shall not be deemed to have been merged therein.

(G) Maintenance of Sale Property Between Closing and Prior to Construction. Between the Closing and Developer’s commencement of on-site construction on the Sale Property, Developer, at no expense to the City, shall maintain the Sale Property in presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Sale Property that exists at or prior to the time of the City’s execution of this Agreement (herein, a “**Pre-existing Environmental Condition**”), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City’s Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys’ fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer’s remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections (“**B&I**”) for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, “**Construction Commencement**”) no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (“**Construction Completion**”) no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director’s judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City’s Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the “**First Repurchase Option**”), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(F) Dedication and Acceptance of Dedication Property. The parties acknowledge that, Developer intends to dedicate the Dedication Property for public use, and intends for the City to accept the Dedication Property (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(I) Inspection of Work. During construction at the Property, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(J) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Project Site during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(K) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

(L) Recognition of City Support. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible 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. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date on which construction has been completed.

4. Insurance; Indemnity.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

(B) Waiver of Subrogation. 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 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) 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 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 obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. Casualty; Eminent Domain. If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. 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 or observe any obligation, duty, or responsibility under this Agreement, the CRA Agreement, or any other agreement to which Developer and the City are parties, and failure by Developer to correct such failure within 30 days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"); *provided, however,* that if the nature of the default is such that it cannot reasonably be cured during the Cure period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within the Cure Period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement or the CRA Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) the dissolution of Developer, 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 of the property of Developer; or

(iii) any representation, warranty, or certification of Developer made in connection with this Agreement, the CRA Agreement, or any other related agreements or documents shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof if the default occurs prior to the Closing, (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 event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, 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
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC
Attn: Christopher Hildebrant
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

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 by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

8. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(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 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. This Agreement has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(C) Developer's execution, delivery, and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, 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 its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(E) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceedings 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 statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(G) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor its affiliates owe any outstanding fines, penalties, judgments, water, or other utility charges or other amounts to the City.

9. 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, or this Agreement, including, without limitation, financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, 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 3 years after the completion of the Project.

(B) City's Right to Inspect and Audit. During construction of the Project and for a period of 3 years completion thereof, Developer shall permit the City and its designees 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.

10. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(C) Amendments and Waivers. This Agreement may be amended, waived, or otherwise modified 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 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 Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

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(I) No Brokers. Developer represents to the City that it has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from either party as a result of the parties' execution of this Agreement.

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

(K) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

(L) 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.

(M) 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.

(N) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, 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.

(O) Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

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

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

[signature pages follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "**Effective Date**").

OAKLEY CROSSINGS HOLDINGS, LLC,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement

Site Plan

TO BE ATTACHED

Exhibit B-1
to Property Sale and Development Agreement

Legal Description – Sale Property

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportation's virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2
to Property Sale and Development Agreement

Survey Plat – Sale Property

SEE ATTACHED

Exhibit C
to Property Sale and Development Agreement

Statement of Work, Budget, and Sources of Funds

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

Acquisition	\$4,320,000.00
Site Work	\$1,430,000.00
Retail Shell	\$2,002,000.00
Retail Tenant Improvements	\$291,200.00
Soft Costs	\$295,566.49
Commissions	\$409,200.00
Builder & Development Fee	\$85,000.00
Interest Reserve	\$233,311.64
Contingency	\$26,638.36
TOTAL PROJECT COSTS	\$9,092,916.49

III. Sources of Funds

Debt	\$6,353,282.00
Pace Financing	\$1,771,846.00
Owner Equity	\$967,788.49
TOTAL	\$9,092,916.49

Exhibit D
to Property Sale and Development Agreement

Dedication Plat

TO BE ATTACHED

Exhibit E
to Property Sale and Development Agreement

Form of Quitclaim Deed – Cut-Up

TO BE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: _____ acre parcel along Madison Road

(cut-up to create _____ acre parcel (Parcel "A")
and 0.0617 acre parcel (Parcel "B"))

QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of _____ acre parcel

Auditor's parcel #: 051-0002-0139-00

This Deed is executed and recorded in connection with the cut-up of a _____ acre parcel of land into two parcels containing _____ acres (Parcel "A") and 0.0617 acres (Parcel "B").

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Plat of Survey*
Exhibit B – *Legal Description – Parcel “A”*
Exhibit C – *Legal Description – Parcel “B”*

Exhibit A
to Quitclaim Deed – Cut-Up

Plat of Survey

cut-up of _____ acre parcel to create
_____ acre parcel (Parcel “A”) & 0.0617 acre parcel (“Parcel “B”)

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “A”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “B”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F
to Property Sale and Development Agreement
Form of Quitclaim Deed – Conveyance

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (Legal Description) hereto (the “**Property**”).

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor’s Parcel No(s): _____

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY CREATES, THE FOLLOWING EASEMENTS, COVENANTS AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (Legal Description – Sewer Easement) hereto, and depicted on Exhibit C (Easement Plat – Sewer Easement) hereto (the “**Easement Area**”), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items that may be placed upon the Easement Area shall be so placed at the sole expense of Grantee, its successors, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Easement Area, resulting from the existence or use of the Easement Area by Grantee, its successors or assigns.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the Easement Area line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 20__ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not (i) commence construction at the Property on or before the Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (ii) complete construction at the Property on or before the Project Completion Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

[Signature Page Follows]

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Legal Description – Property*
Exhibit B – *Legal Description – Sewer Easement*
Exhibit C – *Easement Plat – Sewer Easement*

Exhibit A
to Quitclaim Deed – Conveyance

Legal Description – Property

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Conveyance

Legal Description – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Conveyance
Easement Plat – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G
to Property Sale and Development 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 a 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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which 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”

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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.¹

(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.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

(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 15th. 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, {00356362-12}

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.

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(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

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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

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 2/11/22

ORIGINAL ASSIGNED NUMBER: 2022-034

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

DECISION NUMBER: n/a

MODIFICATIONS: n/a

DECISION DATE: n/a

EXPIRATION DATE: n/a

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

APPROVED BY:

Edgar De Veyra, Interim Director
DIRECTOR, DEPARTMENT OF ECONOMIC
INCLUSION

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

Local wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

REQUESTING AGENCY OR DEPT:
DCED

CONTACT PERSON AND PHONE NUMBER:

Taylor German x4546

Requested Date: 02/11/2022

Estimated Advertising Date: 05/01/2022

Estimated Bid Opening Date: 05/01/2022

Estimated Starting Date: 06/01/2022

SOURCE AND FUND NUMBER

CITY	FUND
STATE	FUND
COUNTY	FUND
FEDERAL	FUND

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 0

TOTAL PROJECT DOLLARS: 9,092,916.49

NAME OF PROJECT

Crossings of Oakley

TYPE OF WORK

- | | | | |
|---------------|---|----------------|---|
| 1. Building | X | 2. Heavy | X |
| 3. Highway | | 4. Residential | |
| 5. Demolition | X | | |
| 6. Other | | | |

PROJECT LOCATION

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

PROJECT FUNDING SOURCE

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

PROJECT SCOPE OF WORK AND BUDGET

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

**DEI 217 Form
REV: 6/12/2017**

February 28, 2022

To: Budget and Finance Committee 202200545
From: John P. Curp, Interim City Manager
Subject: Presentation – Department of Finance: FY 2023 Budget Update

Attached is the Department of Finance’s FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on February 28, 2022.

cc: William “Billy” Weber, Assistant City Manager
Andrew Dudas, Budget Director



Department of Finance Budget Presentation

Budget & Finance Committee

February 28, 2022

Finance Department Table of Organization



Finance Department Purpose

Mission: The Finance Department works to ensure a strong financial foundation for the City of Cincinnati and its residents. Our core mission is to protect the fiscal integrity of the City through the financial management of taxpayer resources, collection of revenue, disbursements, employee safety programs, administration of payroll and benefits for City employees, debt management, prudent investments and the preparation of financial statements, among other duties.



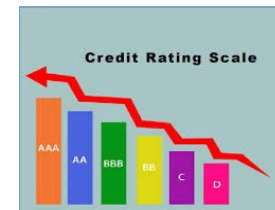
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Finance Department Operations

- ***Accounts and Audits Division:*** monitor over 200 funds, expenditures, cash receipts, and contracts in the Cincinnati Financial System (CFS); prepare annual revenue estimates; compile the Annual Comprehensive Financial Report (ACFR); provide capital project and grant management; and manage city payroll
- ***Income Tax Division:*** review and audit City income tax returns; process income tax refunds; and collect income tax payments
- ***Risk Management Division:*** responsible for employee benefits, the Healthy Lifestyles Program, employee safety, workers' compensation, PEAP, and the Employee Health Services (EHS) Clinic
- ***Treasury Division:*** manage all City investments; print all City checks and process all electronic payments; administer City license programs and the Short-term Rental Tax Program; process all Admission Tax and Transient Occupancy Tax (TOT) returns; perform bank reconciliations and cash receipting functions; and oversee the City's Debt Program

Finance Department Accomplishments

- GFOA Certificate of Achievement for Excellence in Financial Reporting
- Launched a rapid COVID-19 testing and vaccination clinic for employees
- AA rating with Standard & Poor's and Aa2 rating with Moody's
- The Income Tax Division was able to reduce the processing cycle for posting a return from 18 months to just over 12 months while dealing with an 10/2/2020 tax rate change from 2.1% to 1.8%
- Named one of the top 100 Healthiest Employers in Greater Cincinnati by the Cincinnati Business Courier



Finance Department Accomplishments

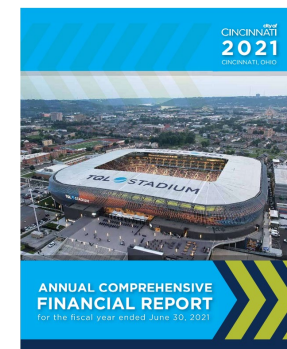
- Accounts and Audits processed over 22,000 certifications, 25,000 payments and approximately 15,700 cash receipts
- 99% of full-time employees (4,968 out of 5,026), completed open enrollment, whether over the phone or by logging in to COCBenefits.com
- Income Tax managed over 50,000 Individual Accounts, 16,000 Business Accounts and 18,500 Withholding Accounts, resulting in 72,000 annual returns processed, 9,000 refund claims and over 350,000 payment transactions processed
- Reduced the turn-around time for the Income Tax Audit Team to review nearly 50 JCTC Annual reports in less than two weeks for employer
- Employee Safety conducted 384 audits, training sessions and consultations within various departments



Finance Department

FY 2022 Key Performance Indicators

- Creation of Income Tax Selective Audit Program
- Invested approximately \$1 billion of cash generating investment income of more than \$4 million
- Increased reserves from 13.28% to 13.5% in accordance with the Stabilization Policy
- Completion of the FY 2022 Bond Sale
- Update Administrative Regulation 65
- Refunded bonds which generated 4.4% in NPV, or \$522,362, in GO debt service savings and 6.39% in NPV, or \$3.2 million, in Water debt service savings
- Completion of the FY 2021 Annual Comprehensive Financial Report (ACFR)



Finance Department Budget History

General Fund Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personnel Compensation	4,564,068	4,580,460	4,753,500	4,546,490	4,335,700
Fringe Benefits	1,580,483	1,569,300	1,598,970	1,428,700	1,500,300
Non-Personnel Expenses	1,207,242	1,014,980	966,200	1,002,275	1,367,800
Total	\$ 7,351,793	\$7,164,740	\$7,318,670	\$6,977,465	\$7,203,800

Finance Department Budget History

Bond Retirement Fund Operating Budget FY 2018 – FY 2022

Bond Retirement Fund 151	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personnel Compensation	334,354	317,090	304,780	236,100	300,200
Fringe Benefits	99,077	119,010	93,960	96,399	121,310
Non-Personnel Expenses	116,683,950	124,730,100	128,816,350	147,173,220	183,777,970
Total	\$117,117,381	\$ 125,166,200	\$ 129,215,090	\$ 147,505,719	\$ 184,199,480

Bond Retirement Fund 151 is the primary Principal Restricted Fund for the Finance Department. The Finance Department also receives appropriations from Parking System Facilities Fund 102, Income Tax Infrastructure Fund 302, Parking Meter Fund 303, and Urban Renewal Debt Retirement Fund 349.

Finance Department Budget History

- ERIP caused high staff turnover in financial positions across City departments resulting in lost knowledge base.
- Pandemic created additional workload including:
 - ✓ Change to Income Tax withholding rules and shift to remote work resulted in increased number of refunds to process.
 - ✓ New employee safety concerns, programs & procedures to implement and monitor.
 - ✓ Increased financial monitoring & reporting requirements due to pandemic related grants.

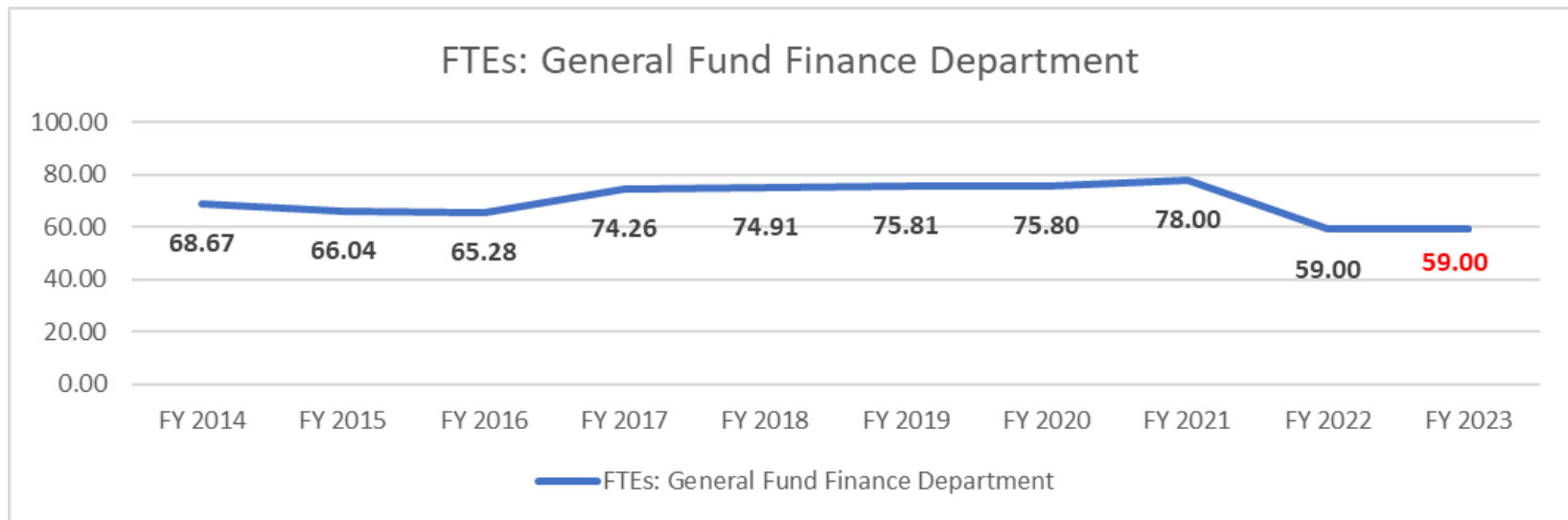
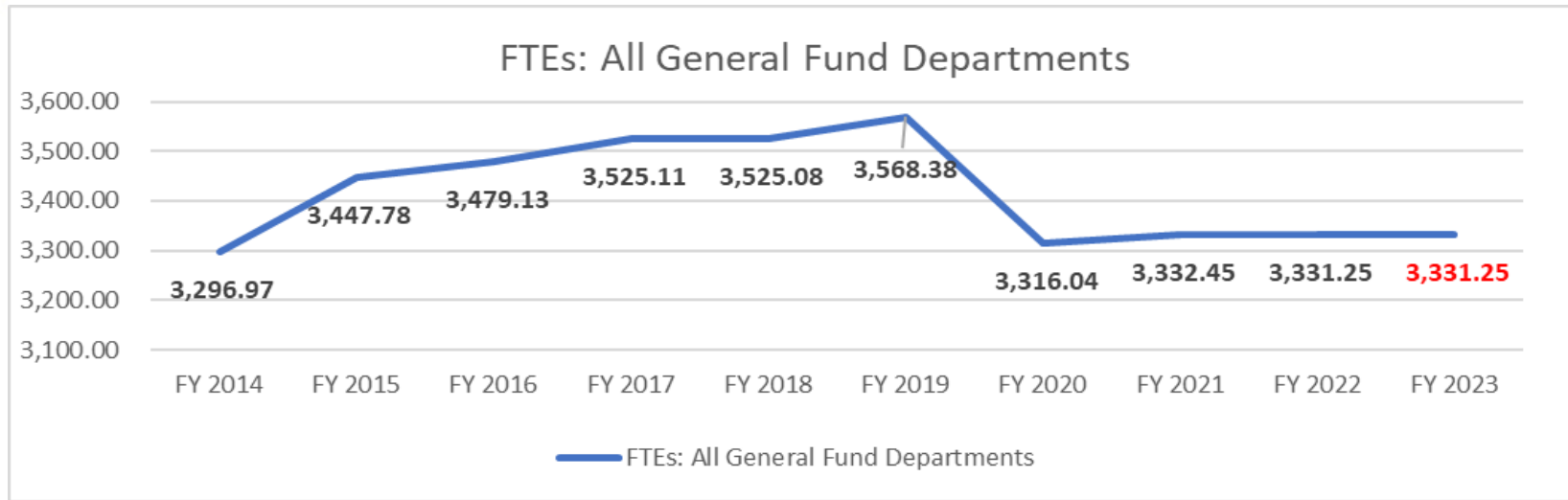
Finance Department FTE History

All Funds Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
General Fund 050	74.91	75.81	75.80	78.00	59.00
Bond Retirement Fund 151	3.45	3.00	3.00	2.00	3.00
Employee Safety & Risk Management Fund 212	10.83	8.75	9.00	17.00	15.00
Employee Workers' Comp Fund 213	1.00	1.00	1.00	1.00	1.00
Income Tax-Infrastructure Fund 302	3.00	3.00	3.00	3.00	2.00
Urban Renewal Debt Retirement Fund 349	2.36	2.00	2.00	2.00	2.00
Public Employee Assistance Program Fund 420	0.00	0.00	5.70	5.70	5.70
Risk Management Fund 711	4.00	5.00	4.00	4.00	4.00
Reproduction And Printing Fund 201	6.00	6.00	4.00	4.00	0.00
Total FTE	105.55	104.56	107.50	116.70	91.70

*The Purchasing Division was transferred to the City Manager's Office for FY 2022.

General Fund and Finance Department FTE History: FY 2014 – FY 2023



Finance Department

Significant Budget Issues – Operating

- Staffing – continued concerns about the ability to segregate duties to avoid theft or mismanagement of funds if additional positions are cut.
- Training – need to keep up on professional licensing requirements, GASB updates, cyber securities fraud, etc.

Finance Department Significant Budget Issues – Capital

- The Income Tax Call Center is outdated.



QUESTIONS?

February 28, 2022

To: Budget and Finance Committee 202200546

From: John P. Curp, Interim City Manager

Subject: Presentation – Department of Transportation & Engineering (DOTE): FY 2023
Budget Update

Attached is the Department of Transportation & Engineering's FY 2023 Budget Update presentation for the Budget and Finance Committee meeting on February 28, 2022.

cc: William "Billy" Weber, Assistant City Manager
Andrew Dudas, Budget Director



Department of Transportation and Engineering (DOTE)

Budget & Finance Committee
February 28, 2022

Mission and Purpose

- Improve mobility and safety in each of Cincinnati's 52 neighborhoods.
- Support neighborhood livability and economic vitality.
- Steward construction, maintenance and preservation of public streets, bridges, sidewalks and bike paths.
- Own and manage public steps, traffic signals, streetlights, general aviation airport and downtown streetcar.



Operations

- **Director's Office: 231**
- **TPUD: 232**
 - Pedestrian Safety and Bicycle Programs
- **Engineering: 233**
 - Street Rehab, Structures (Western Hills Viaduct)
- **General Aviation: 234**
 - Lunken Airport

Operations

- **Streetcar: 236**
- **Traffic Services: 238**
 - School flashers, traffic signals, streetlight maintenance
- **Traffic Engineering: 239**
 - Design of school flashers, traffic signals, streetlights

Operations

By the Numbers

STREETS 900 linear miles	PERMITS 9,000 per year	STREETLIGHTS 30,000+	HILLSIDE STAIRWAYS 398	RETAINING WALLS 50 linear miles
SIDEWALKS 1,700 miles	TRAFFIC SIGNAL NETWORK 10,000+	BRIDGES 238	BICYCLE LANES/PATHS 62.5 miles	LUNKEN AIRPORT 250 daily ops

Key Performance Indicators FY 2022

- Street Rehab and Preventative Maintenance: 100 lane miles

Fiscal Year	Budgeted \$	# LM Rehab	# LM PM	Total
2022	\$17M	46	35	81

- Note: Rehab cost per lane mile has increased 21.4% since 2019.

- Traffic Services: School flashers and Customer Service Requests (CSRs) for traffic signals and streetlights

- Pedestrian Safety Improvements

Fiscal Year	Budgeted \$	Project Type	# Locations	# Neighborhoods
2022	\$1.35M	Speed cushions	30	10

Budget History

General Fund Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personnel Compensation	\$ 624,530	\$ 562,090	\$ 309,520	\$ 250,660	\$ 560,400
Fringe Benefits	\$ 114,028	\$ 77,320	\$ 160,060	\$ 13,500	\$ 87,430
Non-Personnel Expenses	\$ 2,460,743	\$ 2,414,030	\$ 1,932,240	\$ 2,013,000	\$ 2,060,560
Total	\$ 3,199,301	\$ 3,053,440	\$ 2,401,820	\$ 2,277,160	\$ 2,708,390

Budget History

Restricted Funds Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personnel Compensation	\$ 5,585,045	\$ 6,216,370	\$ 5,515,180	\$ 7,926,155	\$ 9,244,644
Fringe Benefits	\$ 1,875,952	\$ 1,658,910	\$ 2,226,410	\$ 2,477,755	\$ 3,161,710
Non-Personnel Expenses	\$ 2,117,000	\$ 2,062,150	\$ 2,860,680	\$ 7,728,720	\$ 8,189,368
Total	\$ 9,577,997	\$ 9,937,430	\$ 10,602,270	\$ 18,132,630	\$ 20,595,722

Restricted Funds include General Aviation Fund 104; Street Construction, Maintenance and Repair Fund 301; Income Tax–Infrastructure Fund 302; Municipal Motor Vehicle License Tax Fund 306; Streetcar Operations Fund 455; Income Tax–Transit Fund 759; Sidewalk Assessments Fund 791; and Boulevard Light Energy and Maintenance (BLEM) Fund 793.

Note: The FY 2021 Restricted Funds budget increase is due to the transfer of the Traffic Services Bureau (TSB) from the Department of Public Services (DPS) to DOTE during FY 2020.

Budget History

- FY 2020 took over Streetcar Operations from SORTA (January 2020).
- FY 2020 took over Traffic Services from DPS (September 2019).
- FY 2021 pandemic related reductions.
- FY 2021 Capital Acceleration Plan (CAP) ended.

FTE History

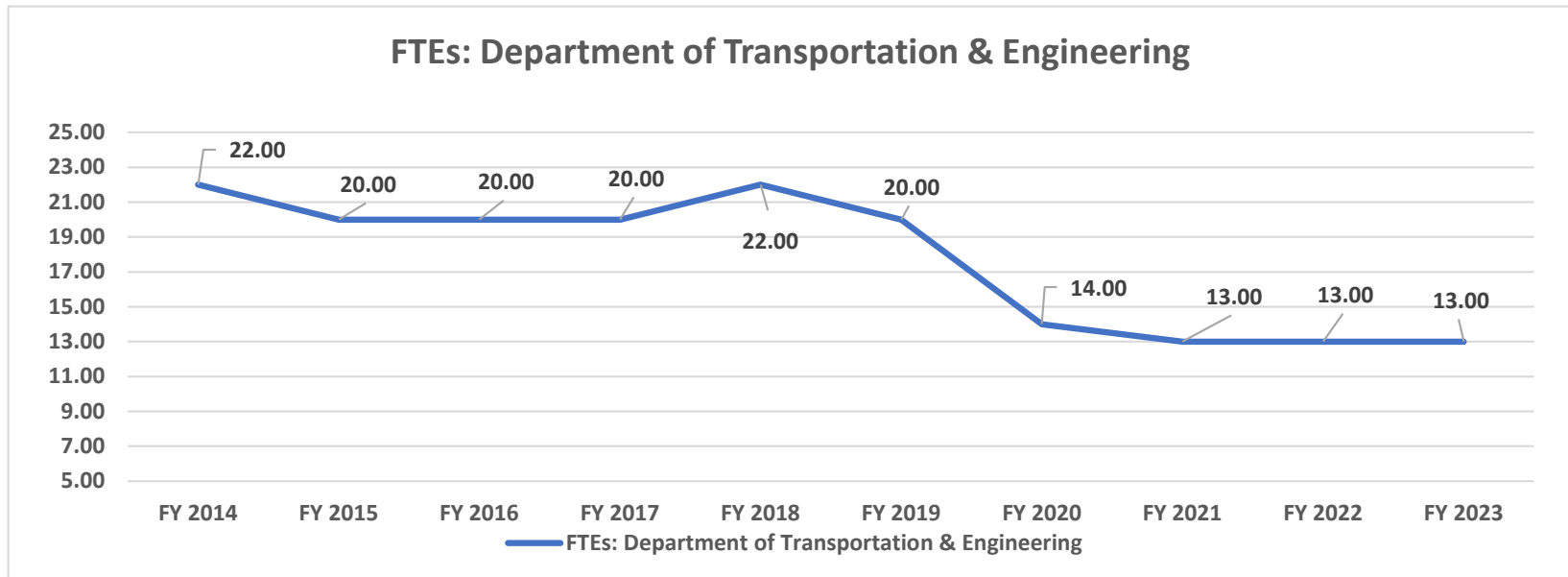
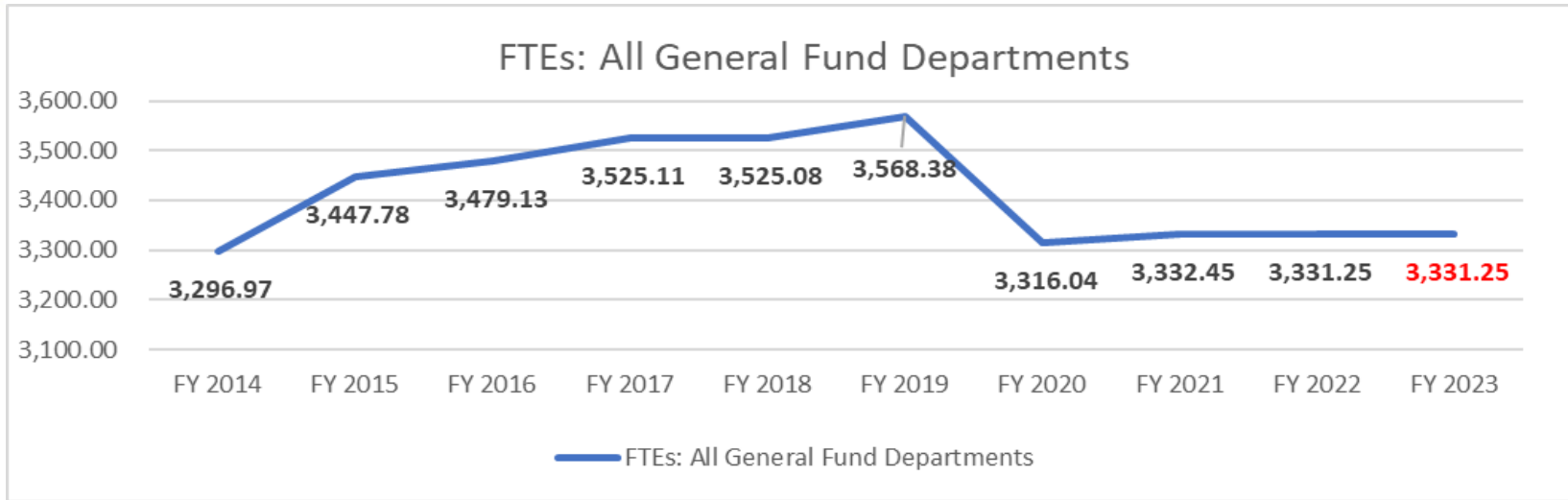
All Funds Operating Budget FY 2018 – FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
General Fund	22.00	20.00	14.00	13.00	13.00
Restricted Funds	154.45	157.00	144.30	190.30	184.80
Total	176.45	177.00	158.30	203.30	197.80

Restricted Funds include General Aviation Fund 104; Street Construction, Maintenance and Repair Fund 301; Income Tax–Infrastructure Fund 302; Municipal Motor Vehicle License Tax Fund 306; Streetcar Operations Fund 455; Income Tax–Transit Fund 759; Sidewalk Assessments Fund 791; and Boulevard Light Energy and Maintenance (BLEM) Fund 793.

Note: The FY 2021 Restricted Funds FTE increase is due to the transfer of the Traffic Services Bureau (TSB) from the Department of Public Services (DPS) to DOTE during FY 2020.

General Fund and DOTE FTE History: FY 2014 – FY 2023



Significant Budget Issues: Operating

- **Current staffing: 170/201 Positions**
 - 30+ vacancies
- **Concerns**
 - Software/hardware upgrades to improve customer service

Significant Budget Issues: Capital

- **Primary Concerns**

- Increasing construction costs
- Balancing need for new infrastructure vs. replacing current infrastructure
- Very successful at leveraging grant funds to stretch our capital resources

QUESTIONS?