



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final-revised

Budget and Finance Committee

Chairperson Reggie Harris
Vice Chair Jeff Cramerding
Councilmember Mark Jeffreys
Councilmember Scotty Johnson
Vice Mayor Jan-Michele Kearney
Councilmember Anna Albi
Councilmember Meeka Owens
Councilmember Seth Walsh
President Pro Tem Victoria Parks

Monday, May 20, 2024

1:00 PM

Council Chambers, Room 300

AGENDA

CONVENTION CENTER

1. [202401349](#) ORDINANCE (EMERGENCY) submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING the City Manager to take any and all steps as may be necessary in order to vacate as public right-of-way and retain approximately 0.7968 acres, being portions of public rights-of-way known as Elm Street, Convention Way, Opera Alley, Hatters Alley, Thorp Alley, and Sixth Street in the Central Business District of Cincinnati, and to release and quitclaim certain public walkway easements over and across the site of the former Millennium Hotel, all to facilitate the Duke Energy Convention Center renovation project.

Sponsors: City Manager

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

FUNDING AGREEMENT

2. [202401351](#) ORDINANCE (EMERGENCY) submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING the City Manager to execute a Funding Agreement with The Model Group, Inc., providing for a grant from the City to fund (i) the removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, and (ii) the restoration of the public right-of-way along Walnut Street, and the exterior, façade, and limited interior portions of those buildings; AUTHORIZING the removal of said skywalk bridge and the release and quitclaim of certain public walkway

easements over and through the Mercantile Library Building; AUTHORIZING the transfer and appropriation of the sum of \$1,753,337 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 (Downtown South/Riverfront TIF District) to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200 to provide resources for the demolition and removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, restoration of the façades of such buildings, and other public improvements in support of such project; and further DECLARING expenditures from such account related to the demolition of the skywalk bridge, the façade restoration activities, and the other public improvements in support of such project to be a public purpose and constitute a "Public Infrastructure Improvement" (as defined in Ohio Revised Code Section 5709.40(A)(8)) that will benefit and/or serve the District 2-Downtown South/Riverfront District Incentive District, subject to compliance with Ohio Revised Code Sections 5709.40 through 5709.43. (Subject to the Temporary Prohibition List <<https://www.cincinnati-oh.gov/law/ethics/city-business>>).

Sponsors: City Manager

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

PAYMENTS

3. [202401357](#) ORDINANCE (EMERGENCY), submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING a payment of \$37,336.16 from Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 as a moral obligation to Zayo Group Holdings, Inc., dba Zayo Group, LLC, for wide-area network connectivity services provided to the Cincinnati Health Department.

Sponsors: City Manager

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

4. [202401359](#) ORDINANCE (EMERGENCY), submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING the payment of \$2,325.05 from the Parks Department, Parks Private Endowment and Donations Fund 430, non-personnel operating budget account no. 430x202x3000x7361, to General Factory Supply pursuant to the attached certificate from the Director of Finance, for outstanding charges related to cables, adapters, and graffiti removal used by the Parks Department in December 2023.

Sponsors: City Manager

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

DONATIONS

5. [202401361](#) ORDINANCE, submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING the City Manager to accept an in-kind donation of goods from Activities Beyond the Classroom valued at up to \$35,000 for equipment to create a public technology lab at Hartwell Recreation Center.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
 [Ordinance](#)
6. [202401360](#) ORDINANCE, submitted by Sheryl M. M. Long, City Manager, on 5/15/2024, AUTHORIZING the City Manager to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$150,000 for the installation of a turf infield at the Bond Hill Recreation Area.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)
 [Ordinance](#)
7. [202401445](#) ORDINANCE, (B VERSION), submitted by Sheryl M. M. Long, City Manager, on 5/20/2024, ESTABLISHING new capital improvement program project account no. 980x199x241917, "Bond Hill Baseball Field RCF," to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; AUTHORIZING the City Manager to accept a donation of \$89,000 from the Reds Community Fund to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; AUTHORIZING the Director of Finance to deposit a donation of \$89,000 from the Reds Community Fund into Fund 319, "Contributions For Recreation Purposes," to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; AUTHORIZING the City Manager to transfer and appropriate \$89,000 from the unappropriated surplus of Fund No. 319, "Contributions For Recreation Purposes," into newly established capital improvement program project account no. 980x199x241917, "Bond Hill Baseball Field RCF," to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; and AUTHORIZING the City Manager to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$61,000 for the installation of a turf infield at the Bond Hill Recreation Area
- Sponsors:** City Manager

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

ROW SALE AND EASEMENT

8. [202401424](#) ORDINANCE (EMERGENCY) submitted by Sheryl M. M. Long, City Manager, on 5/20/2024, AUTHORIZING the City Manager to execute a Property Sale Agreement with 101 West Fifth LLC, pursuant to which the City will vacate and convey approximately 0.0382 acres of public right-of-way, being a portion of West Fifth Street in the Central Business District of Cincinnati; and AUTHORIZING the City Manager to execute a Grant of Easement in favor of 101 West Fifth LLC pursuant to which the City will grant an encroachment easement over a portion of Race Street in the Central Business District.

Sponsors: City Manager

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

ADJOURNMENT

May 15, 2024

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager

202401349

Subject: Emergency Ordinance - Vacating Convention Way & Elm Street (DECC)

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to take any and all steps as may be necessary in order to vacate as public right-of-way and retain approximately 0.7968 acres, being portions of public rights-of-way known as Elm Street, Convention Way, Opera Alley, Hatters Alley, Thorp Alley, and Sixth Street in the Central Business District of Cincinnati, and to release and quitclaim certain public walkway easements over and across the site of the former Millennium Hotel, all to facilitate the Duke Energy Convention Center renovation project.

This ordinance authorizes the vacation of portions of existing right-of-way proximate to the Duke Energy Convention Center and release of certain easements related to the former Millennium Hotel, all as part of the ongoing convention center redevelopment project. The City will maintain ownership of all vacated public right-of-way. The purpose of this authorization is to facilitate the creation of the public plaza planned for the area immediately east of the existing Duke Energy Convention Center.

The Administration recommends passage of this Emergency Ordinance.

cc: William "Billy" Weber, Assistant City Manager

EMERGENCY

SSB

- 2024

AUTHORIZING the City Manager to take any and all steps as may be necessary in order to vacate as public right-of-way and retain approximately 0.7968 acres, being portions of public rights-of-way known as Elm Street, Convention Way, Opera Alley, Hatters Alley, Thorp Alley, and Sixth Street in the Central Business District of Cincinnati, and to release and quitclaim any and all public walkway easements over and across the site of the former Millennium Hotel, all to facilitate the Duke Energy Convention Center renovation project.

WHEREAS, the City of Cincinnati (the “City”) owns approximately 0.7968 acres of public rights-of-way known as (i) the portion of Elm Street located between Fifth and Sixth Streets, (ii) Convention Way, (iii) Opera Alley, (iv) Hatters Alley, (v) Thorp Alley, and (vi) the residue portion of Sixth Street located at the southeast corner of Elm and Sixth Streets, all in the Central Business District of Cincinnati, and as more particularly described on Attachment A and depicted on Attachment B to this ordinance (collectively, the “City ROW”), which is under the management and control of the City’s Department of Transportation and Engineering (“DOTE”); and

WHEREAS, the City, Hamilton County, and Cincinnati Center City Development Corporation (3CDC) are partnering on the redevelopment of the City-owned Duke Energy Convention Center (the “DECC”), including through the creation of a plaza immediately adjacent thereto for coordinated programming for the DECC (collectively, the “Project”); and

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

WHEREAS, the City desires to (i) vacate as public right-of-way and retain ownership of the City ROW, and (ii) release and quitclaim any and all public walkway easements over and across the Millennium Site (the “Walkway Easements”), all to create a consolidated Project site when combined with the DECC and the Millennium Site; and

WHEREAS, a reputable attorney practicing in Hamilton County, Ohio, will have provided an Attorney’s Certificate of Title, certifying as to the owners of all real property abutting the City ROW, prior to the City Manager vacating the City ROW; and

WHEREAS, if applicable, all necessary abutters will have consented to the City’s vacation of the City ROW by executing and delivering quitclaim deeds prior to the City Manager vacating the City ROW; and

WHEREAS, pursuant to Ohio Revised Code Section 723.05, the City may vacate a street or alley if it has determined that there is good cause for the vacation and that the vacation will not be detrimental to the general interest; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that: (i) the City ROW and Walkway Easements are not needed for transportation or public right-of-way purposes, (ii) the Walkway Easements are not needed for any municipal purpose, (iii) there is good cause to vacate the City ROW and release the Walkway Easements, and (iv) the vacation of the City ROW as public right-of-way and the release of the Walkway Easements will not be detrimental to the general interest; and

WHEREAS, the City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and regulations; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation of the City ROW at its meeting on May 3, 2024; 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 any and all documents that may be necessary to (a) vacate as public right-of-way and retain approximately 0.7968 acres, being portions of public rights-of-way known as Elm Street, Convention Way, Opera Alley, Hatters Alley, Thorp Alley, and Sixth Street, all as more particularly described on Attachment A and depicted on Attachment B to this ordinance (the “City ROW”); and (b) release and quitclaim any and all public walkway easements over and across the site of the former Millennium Hotel (the “Walkway Easements”).

Section 2. That the City ROW and Walkway Easements are not needed for transportation or public right-of-way purposes, that the Walkway Easements are not needed for any other municipal purposes, that there is good cause to vacate and retain the City ROW and release the Walkway Easements, and that such vacation and release will not be detrimental to the general interest.

Section 3. That, pursuant to Ohio Revised Code Section 723.041, any affected public utility shall be deemed to have a permanent easement in the City ROW to maintain, operate, renew, reconstruct, and remove its utility facilities and for purposes of access to said facilities.

Section 4. That Council authorizes the proper City officials to take all necessary and proper actions to fulfill the terms of this ordinance, including, without limitation, executing all agreements, deeds, easements, conveyance documents, plats, amendments, and other documents to effectuate the vacation of the City ROW and the release of the Walkway Easements.

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 the urgency to commence the renovation of the Duke Energy Convention Center and auxiliary improvements in accordance with the established construction timeline.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

Date: April 16, 2024
Description: Parts of Elm Street, Convention Way, 6th Street
Thorp Alley, Opera Alley and Hatters Alley
Vacation
Location: City of Cincinnati
Hamilton County, Ohio



Situated in Section 18, Town 4, Fractional Range 1, Between the Miamis, Cincinnati Township, The City of Cincinnati, Hamilton County, Ohio, and being parts of Elm Street, Convention Way, 6th Street, Thorp Alley, Opera Alley and Hatters Alley containing 0.7968 acres being further described as follows:

Begin at a set cross notch at the intersection of the north right of way of West 5th Street and the west right of way of said Elm Street, said cross notch being the True Point of Beginning;

thence, from the True Point of Beginning, departing the north right of way of said West 5th Street and with the west right of way of said Elm Street, North 09° 56' 21" West, 437.23 feet to a set cross notch at the intersection of the south right of way of West 6th Street;

thence, departing the west right of way of said Elm Street and through the right of way of said West 6th Street, South 80° 42' 46" East, 72.02 feet to a found cross notch at the south right of way of said 6th Street;

thence, departing the south right of way of said West 6th Street and with the east right of way of said Elm Street which is part of the original 6th Street the following two courses: South 09° 56' 21" East, 16.40 feet to the original south right of way of said West 6th Street;

thence, with the original south right of way of said West 6th Street, South 80° 21' 29" West, 2.00 feet to the east right of way of said Elm Street;

thence, departing said original south right of way of said West 6th Street and with the east right of way of said Elm Street, South 09° 56' 21" East, 90.29 feet to the north right of way of Thorp Alley;

thence, departing the east right of way of said Elm Street and with said Thorp Alley the following three courses: North 80° 21' 59" East, 2.00 feet;

thence, South 09° 56' 21" East, 10.00 feet;

thence, South 80° 21' 59" West, 2.00 feet to the east right of way of said Elm Street;

thence, departing said Thorp Alley right of way and with east right of way of said Elm Street, South 09° 56' 21" East, 81.92 feet to the north right of way of Convention Way;

thence, departing the east right of way of said Elm Street and with the north right of way of said Convention Way the following five courses: North 80° 21' 59" East, 159.05 feet to a set cross notch;

thence, South 09° 38' 01" East, 3.79 feet;

thence, North 80° 03' 28" East, 38.97 feet;

thence, North 09° 38' 01" West, 3.58 feet;

thence, North 80° 21' 59" East, 10.45 feet to a found cross notch at the terminus of north right of way of said Convention Way;

thence, with said terminus, South 09° 56' 21" East, 30.00 feet to a found cross notch at the south right of way of said Convention Way;

thence, departing said terminus and with the south right of way of said Convention Way, South 80° 22' 19" West, 191.48 feet to a found cross notch on part of Opera Alley right of way;

thence, departing the south right of way of said Convention Way and with said Opera Alley right of way the following two courses: South 09° 56' 21" East, 10.00 feet;

thence, South 80° 21' 59" West, 17.00 feet to the east right of way of said Elm Street;

thence, departing said Opera Alley right of way and with the east right of way of said Elm Street, South 09° 56' 21" East, 60.00 feet to the north right of way of Hatters Alley;

thence, departing the east right of way of said Elm Street and with said Hatters Alley the following three courses: North 80° 21' 59" East, 17.00 feet;

thence, South 09° 56' 21" East, 16.00;

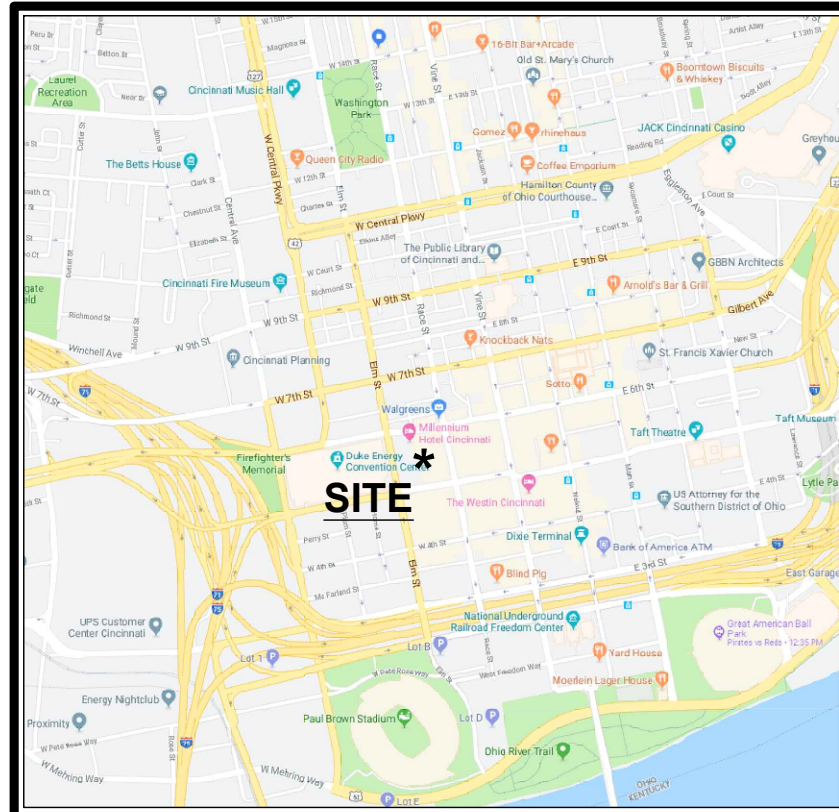
thence, South 80° 21' 59" West, 17.00 feet to the east right of way of said Elm Street;

thence, departing said Hatters Alley right of way and with the east right of way of said Elm Street, South 09° 56' 21" East, 99.16 feet to the north right of way of said West 5th Street;

thence, departing east right of way of said Elm Street, South 80° 15' 35" West, 66.00 feet to the True Point of Beginning containing 0.7968 acres, more or less, and being subject to all legal highways, easements restrictions and agreements of record.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from a Vacation plat made on April 16, 2024, under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.



VICINITY MAP
(Not to Scale)

CLOSURE

North: 407,313.244' East: 1,396,331.301'	Segment# 14: Line Course: N80°21'59"E Length: 10.45' North: 407,571.212' East: 1,396,564.748'
Segment# 1: Line Course: N9°56'21"W Length: 437.23' North: 407,743.912' East: 1,396,255.834'	Segment# 15: Line Course: S9°56'21"E Length: 30.00' North: 407,541.662' East: 1,396,569.926'
Segment# 2: Line Course: S80°42'46"E Length: 72.02' North: 407,732.289' East: 1,396,326.910'	Segment# 16: Line Course: S80°22'19"W Length: 191.48' North: 407,509.637' East: 1,396,381.143'
Segment# 3: Line Course: S9°56'21"E Length: 16.40' North: 407,716.136' East: 1,396,329.740'	Segment# 17: Line Course: S9°56'21"E Length: 10.00' North: 407,499.787' East: 1,396,382.869'
Segment# 4: Line Course: S80°21'29"W Length: 2.00' North: 407,715.801' East: 1,396,327.768'	Segment# 18: Line Course: S80°21'59"W Length: 17.00' North: 407,496.942' East: 1,396,366.109'
Segment# 5: Line Course: S9°56'21"E Length: 90.29' North: 407,626.866' East: 1,396,343.353'	Segment# 19: Line Course: S9°56'21"E Length: 60.00' North: 407,437.843' East: 1,396,376.465'
Segment# 6: Line Course: N80°21'59"E Length: 2.00' North: 407,627.200' East: 1,396,345.325'	Segment# 20: Line Course: N80°21'59"E Length: 17.00' North: 407,440.687' East: 1,396,393.225'
Segment# 7: Line Course: S9°56'21"E Length: 10.00' North: 407,617.350' East: 1,396,347.051'	Segment# 21: Line Course: S9°56'21"E Length: 16.00' North: 407,424.928' East: 1,396,395.987'
Segment# 8: Line Course: S80°21'59"W Length: 2.00' North: 407,617.016' East: 1,396,345.079'	Segment# 22: Line Course: S80°21'59"W Length: 17.00' North: 407,422.083' East: 1,396,379.227'
Segment# 9: Line Course: S9°56'21"E Length: 81.92' North: 407,536.325' East: 1,396,359.218'	Segment# 23: Line Course: S9°56'21"E Length: 99.16' North: 407,324.411' East: 1,396,396.342'
Segment# 10: Line Course: N80°21'59"E Length: 159.05' North: 407,562.942' East: 1,396,516.025'	Segment# 24: Line Course: S80°15'35"W Length: 66.00' North: 407,313.245' East: 1,396,331.293'
Segment# 11: Line Course: S9°38'01"E Length: 3.79' North: 407,559.205' East: 1,396,516.660'	Perimeter: 1,453.34' Area: 34,709 Sq. Ft. Error Closure: 0.007' Course: N86°12'08"W Error North: 0.0005' East: -0.0072
Segment# 12: Line Course: N80°03'28"E Length: 38.97' North: 407,565.934' East: 1,396,555.044'	Precision 1: 207,620.00
Segment# 13: Line Course: N9°38'01"W Length: 3.58' North: 407,569.463' East: 1,396,554.445'	

LEGEND

- R/W - Right of Way
- X - Found Cross Notch
- ▬ - Set Cross Notch
- 0000- - City Owned Parcels

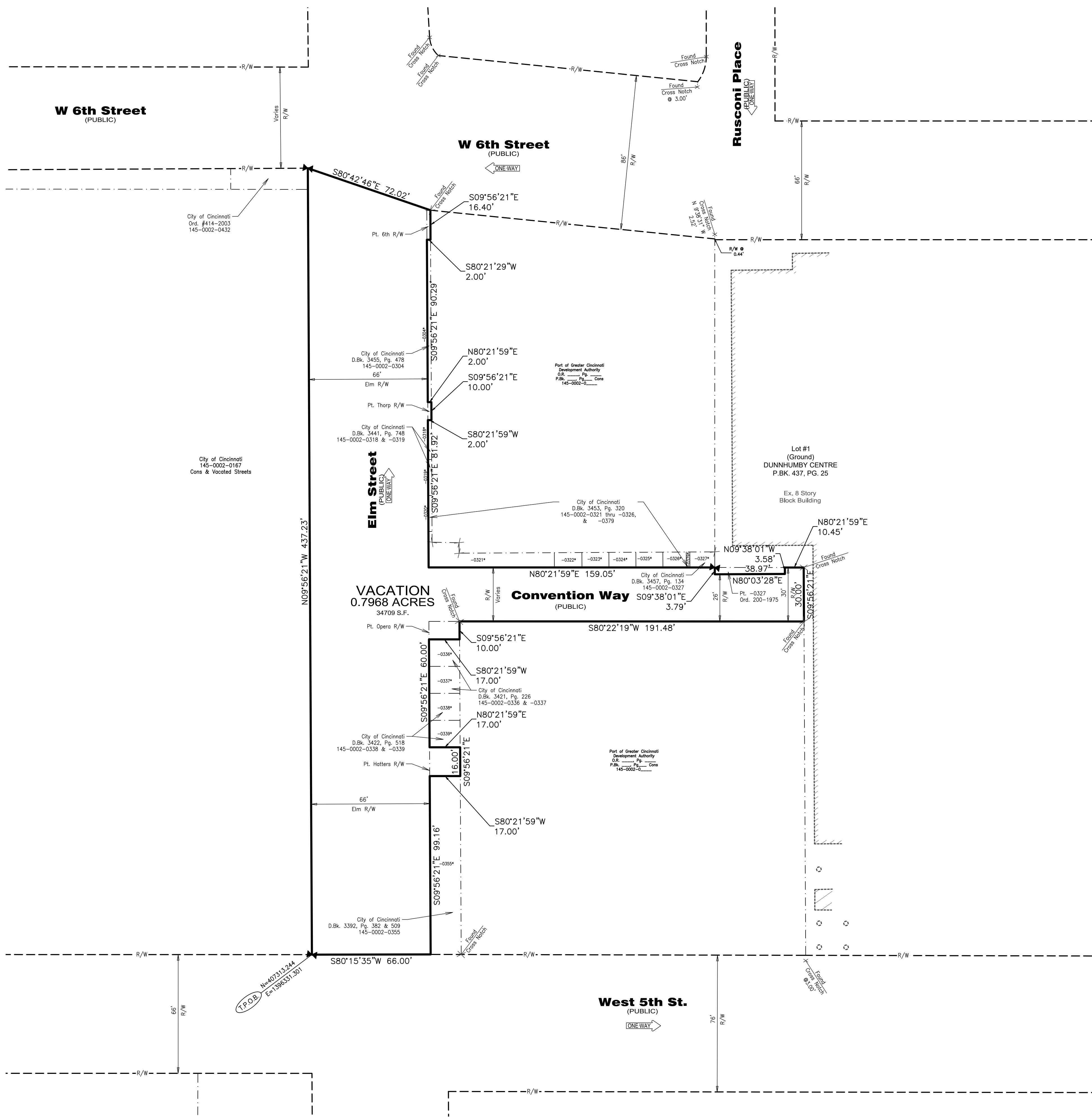
NOTES

- Basis of Bearing: State Plane Coordinates (3402) Ohio South Zone, NAD83.
- All monumentation is in good condition unless otherwise shown.
- Lines of occupation, wherever they exist, generally agree with the boundary lines except as noted.
- All documents used as shown.
- Fieldwork performed on January 5, 2023.
- Monumentation set as shown. Following this vacation the vacated parcel will be consolidated with the adjoining city owned parcels.

CERTIFICATION

I hereby state to the best of my knowledge, information and belief that the accompanying plat is the return of a survey made under my direction.

Jeffrey O. Lambert, P.S.
Registered Surveyor #7568 State of Ohio



Basis of Bearing: State Plane NAD83 (2011)

SCALE: 1" = 30'

Date	Dwn:	Chk:

Item	Revision Description

PARTS OF
ELM STREET, CONVENTION WAY, 6TH STREET
THORP ALLEY, OPERA ALLEY & HATTERS ALLEY
 SECTION 18, TOWN 4, F. RANGE 1 BTM
 CINCINNATI TOWNSHIP
 CITY OF CINCINNATI
 HAMILTON COUNTY, OHIO

VACATION PLAT

www.bayerbecker.com
6900 Tyersville Road, Suite A
Mason, OH 45040 - 513.336.6600

Drawing: 22-0134 VP
 Drawn by: j.o.l.
 Checked By: TME
 Issue Date: 4-16-24

Sheet:
1 of 1

Plot time: Apr 16, 2024 - 10:58am
 Drawing name: J:\2022\22-0134\SV\DWG\22-0134 VP.dwg - Layout Tab VP

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May 15, 2024

To: Mayor and Members of City Council

From: Sheryl M.M. Long, City Manager

202401351

Subject: Emergency Ordinance – Approving and Authorizing a Funding Agreement for the Walnut Street Skywalk Removal with The Model Group

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute a Funding Agreement with The Model Group, Inc., providing for a grant from the City to fund (i) the removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, and (ii) the restoration of the public right-of-way along Walnut Street, and the exterior, façade, and limited interior portions of those buildings; **AUTHORIZING** the removal of said skywalk bridge and the release and quitclaim of certain public walkway easements over and through the Mercantile Library Building; **AUTHORIZING** the transfer and appropriation of the sum of \$1,753,337 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 (Downtown South/Riverfront TIF District) to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200 to provide resources for the demolition and removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, restoration of the façades of such buildings, and other public improvements in support of such project; and further **DECLARING** expenditures from such account related to the demolition of the skywalk bridge, the façade restoration activities, and the other public improvements in support of such project to be a public purpose and constitute a “Public Infrastructure Improvement” (as defined in Ohio Revised Code Section 5709.40(A)(8)) that will benefit and/or serve the District 2-Downtown South/Riverfront District Incentive District, subject to compliance with Ohio Revised Code Sections 5709.40 through 5709.43.

BACKGROUND/CURRENT CONDITIONS

With the redevelopment of the Mercantile Building, the Walnut Street Skywalk, which connects the Mercantile Building (414 Walnut Street) and the US Bank Tower (425 Walnut Street), no longer contributes to the downtown pedestrian network, nor does it serve the new use of the Mercantile Building, which is being converted into a primarily residential use. The City intends to enter into a funding agreement with The Model

Group, Inc. to facilitate the demolition of the skywalk, restore the building exteriors, and interior restorations of the former skywalk easement paths.

CONTRACTOR INFORMATION

The Model Group has developed more than \$750 Million in real estate, including over 400 historic properties in Ohio. This includes a diverse mix of market rate and affordable residential, as well as commercial real estate. TMG has extensive experience working with multiple funding sources, routinely layering them together in complex financing structures to maximize the impact of scarce resources and get challenging projects completed. TMG is also presently mobilized for their work on the adjacent Mercantile Center and are best positioned to facilitate the demolition.

PROJECT INFORMATION

The City of Cincinnati intends to enter into a funding agreement, for \$1,753,337, with The Model Group to facilitate the demolition of the Walnut Street Skywalk. The Model Group, who is already renovating the Mercantile Building adjacent to the site, will then demolish the skywalk and restore the facades and limited interior restoration of public easement areas of the two buildings connected by the bridge.

The project will consist of three major public infrastructure improvements:

1. Removal of the existing skywalk bridge between the US Bank Tower and Mercantile Building.
2. Restore and rebuild the façade, exterior wall construction, windows to match the existing adjacent building façade, of the Mercantile Building
3. Restore and re-build the building façade, exterior wall construction, and windows to match the existing adjacent building façade of the US Bank Tower.

The project will also consist of private improvements within the interiors of both the Mercantile Building and the US Bank Tower.

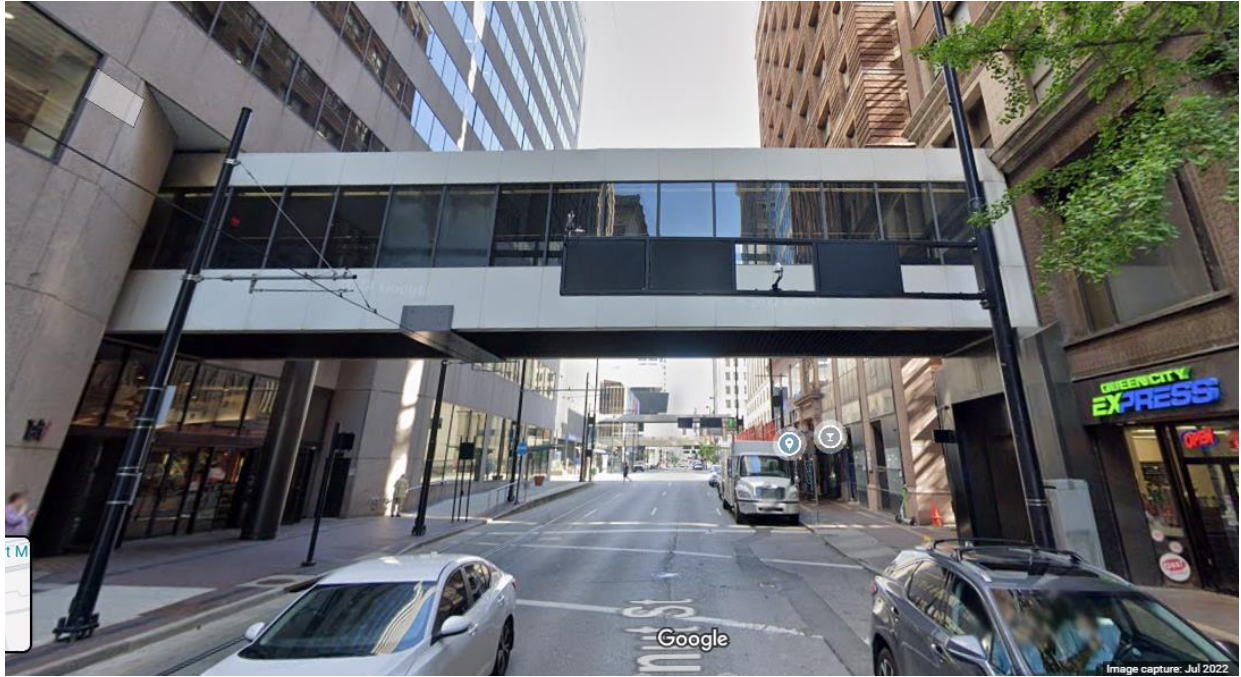
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance.

Attachment: Project Outline

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

Project Image



EMERGENCY

TJL

- 2024

AUTHORIZING the City Manager to execute a Funding Agreement with The Model Group, Inc., providing for a grant from the City to fund (i) the removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, and (ii) the restoration of the public right-of-way along Walnut Street, and the exterior, façade, and limited interior portions of those buildings; **AUTHORIZING** the removal of said skywalk bridge and the release and quitclaim of certain public walkway easements over and through the Mercantile Library Building; **AUTHORIZING** the transfer and appropriation of the sum of \$1,753,337 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 (Downtown South/Riverfront TIF District) to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200 to provide resources for the demolition and removal of the elevated pedestrian skywalk bridge above Walnut Street that connects the Mercantile Library Building to the US Bank Tower, restoration of the façades of such buildings, and other public improvements in support of such project; and further **DECLARING** expenditures from such account related to the demolition of the skywalk bridge, the façade restoration activities, and the other public improvements in support of such project to be a public purpose and constitute a “Public Infrastructure Improvement” (as defined in Ohio Revised Code Section 5709.40(A)(8)) that will benefit and/or serve the District 2-Downtown South/Riverfront District Incentive District, subject to compliance with Ohio Revised Code Sections 5709.40 through 5709.43.

WHEREAS, the City of Cincinnati (the “City”) is the owner of an elevated pedestrian skywalk bridge located above Walnut Street between Fourth and Fifth Streets in the Central Business District of Cincinnati (the “Skywalk”) which is attached to and connects the building located at 414 Walnut Street and 115 Fifth Street (the “Mercantile Library Building”) to the building located at 425 Walnut Street (the “US Bank Tower”); and

WHEREAS, MCA Center LLC (“MCA”), a subsidiary of The Model Group, Inc. (“Developer”), is undertaking a renovation of the Mercantile Library Building, pursuant to that certain Community Reinvestment Area Tax Exemption Agreement by and between the City and MCA, dated May 24, 2023 (the “CRA Agreement”), authorized by Ordinance No. 145-2023, passed on May 10, 2023, which authorizes a real property tax abatement for certain improvements that MCA will make to the Mercantile Library Building (the “Mercantile Project”); and

WHEREAS, pursuant to that certain Grant of Easement recorded on August 25, 1994 in Official Record 6554, Page 121, Hamilton County, Ohio Registered Land Records, the City was granted certain easement rights (the “Easement”) in and upon the Mercantile Library Building and other portions of the Mercantile Library Building associated with, and necessary for, allowing the general pedestrian public the right of ingress and egress through the property for use of the Skywalk; and

WHEREAS, as a result of MCA’s work on the Mercantile Project, Developer desires to demolish the Skywalk and thereafter complete various improvements to restore the areas impacted by the Skywalk removal, including, without limitation, restoring the façade and limited interior portions of the Mercantile Library Building and the US Bank Tower, and performing certain other construction restoration activities in the right-of-way impacted by the demolition of the Skywalk, at an estimated total cost of approximately \$1,753,337 (the “Public Infrastructure Project”) all as more particularly described in the Funding Agreement (the “Agreement”) attached as Attachment A hereto; and

WHEREAS, Developer has petitioned the City to close and remove the Skywalk and release and terminate any public pedestrian access rights associated with the same; and

WHEREAS, the City’s Real Estate Services Division has determined, by appraisal, that the fair market value of the Easement is approximately \$68,480; however, to facilitate the Mercantile Project, the City desires to terminate and release the Easement and allow for the removal of the Skywalk for Developer’s benefit for less than fair market value; namely, for \$1.00, because the City anticipates that it will receive economic and non-economic benefits that equal or exceed the fair market value of the Easement because terminating the Easement and removing the Skywalk will eliminate the financial costs on the City to maintain the Skywalk and will allow resources to be focused on the Mercantile Project; and

WHEREAS, under the proposed Agreement the City will provide a \$1,753,337 grant to Developer to fund the Public Infrastructure Project; and

WHEREAS, pursuant to Ordinance No. 412-2002, passed on December 18, 2002, Council created the District 2-Downtown South/Riverfront District Incentive District (the “TIF District”) to, in part, fund “Public Infrastructure Improvement[s]” (as defined in Section 5709.40 of the Ohio Revised Code) that benefit or serve the TIF District, including demolition and demolition on private property when determined to be necessary for economic development purposes; and

WHEREAS, the Skywalk, the Mercantile Library Building, the US Bank Tower, and the Public Infrastructure Project are all located within the boundaries of the TIF District; and

WHEREAS, the proposed expenditures set forth in the Agreement are valid public improvements as they will serve the public purpose of creating jobs and other beneficial economic impacts, supporting the redevelopment of the Central Business District; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, in order to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions to acquire, construct, enlarge, improve, or equip; and to sell, lease, exchange, or otherwise dispose of, property, structures, equipment, and facilities for industry commerce, distribution, and research; and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement, or equipment of such property, structures, equipment, and facilities; and

WHEREAS, the City has determined that, following demolition of the Skywalk (i) the Easement will no longer be needed for any transportation, public right-of-way, or municipal purposes; (ii) there is good cause to release the Easement; and (iii) release of the Easement will not be detrimental to the general interest; and

WHEREAS, the City believes that the Public Infrastructure Project will benefit and/or serve the TIF District; is in the vital and best interests of the City and health, safety, and welfare of its residents; and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; and

WHEREAS, the City Planning Commission, having the authority to approve the change in City-owned property, approved the removal of the Skywalk and termination of the Easement at its meeting on March 15, 2024; 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) a Funding Agreement with The Model Group, Inc. (“Developer”), in substantially the form attached to this ordinance as Attachment A (the “Agreement”), pursuant to which: (i) Developer will demolish and remove the elevated pedestrian skywalk bridge above Walnut Street located between Fourth and Fifth Streets in the Central Business District of Cincinnati (the “Skywalk”), which is attached to and connects the building located at 414 Walnut Street and 115 Fifth Street (the “Mercantile Library Building”) to the building located at 425 Walnut Street (the “US Bank Tower”), and thereafter complete various public infrastructure improvements to restore the areas impacts by the Skywalk removal, including, without limitation, restoring the façade and limited interior portions of the Mercantile Library Building and the US Bank Tower, and perform certain other construction restoration activities in the right-of-way impacted by the demolition of the Skywalk (collectively, the “Public Infrastructure Project”); and (ii) the City will make a \$1,753,337 grant to support the Public Infrastructure Project; and (b) any and all documents that may be necessary to release and quitclaim the public walkway easement granted to the City upon and through the Mercantile Library Building pursuant to that Grant of Easement recorded on August 25, 1994 in Official Record 6554, Page 121, Hamilton County, Ohio Registered Land Records (the “Easement”).

Section 2. That the Director of Finance is hereby authorized to transfer and appropriate the sum of \$1,753,337.00 from the unappropriated surplus of Downtown South/Riverfront Equivalent Fund 481 to the Department of Community and Economic Development non-personnel operating budget account no. 481x164x7200 to provide resources for the Public Infrastructure Project, as allowable by Ohio law and as further described in the Agreement.

Section 3. That Council hereby declares that (a) the improvements associated with the Public Infrastructure Project constitute a “Public Infrastructure Improvement” (as defined in Section 5709.40(A)(8) of the Ohio Revised Code), that will benefit and/or serve the District 2-Downtown South/Riverfront District Incentive District, subject to compliance with Ohio Revised Code Sections 5709.40 through 5709.43; and (b) the Public Infrastructure Improvements serve a public purpose.

Section 4. That, following the demolition of the Skywalk, (a) the Easement is not needed for transportation, public right-of-way, or municipal purposes; (b) there is good cause to release the Easement; and (c) release of the Easement will not be detrimental to the general interest.

Section 5. That Council authorizes the appropriate City officials to take all necessary and proper actions as they deem necessary or appropriate to fulfill the terms of this ordinance and the Agreement, including, without limitation, executing any and all releases, terminations, closing documents, agreements, amendments, and other instruments pertaining to the Easement, and the Public Infrastructure Project.

Section 6. That any proceeds from the sale of the Easement shall be deposited into Property Management Fund 209 to pay for the 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 any amount in excess thereof into the Miscellaneous Permanent Improvement Fund 757.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable Developer to move forward with the Public Infrastructure Project as soon as possible, which will result in the creation of jobs and the stimulation of economic growth in the Central Business District of Cincinnati at the earliest possible date.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____

Contract No: _____

FUNDING AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation

and

THE MODEL GROUP, INC.
an Ohio corporation

Project Name:
Walnut Street Skywalk Demolition and Infill

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

Dated: _____, 2024

FUNDING AGREEMENT

(Walnut Street Skywalk Demolition and Infill)

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

Recitals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Public Infrastructure Improvements.

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

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

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

7. Private Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Insurance; Indemnity.

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

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

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

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

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

All insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be cancelled or modified without at least 30 days prior written notice to the City. Within ten days following execution of this Agreement or following execution of the construction contract, as applicable, Developer shall send proof of all such insurance to DCED at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

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

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

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

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

12. Default; Remedies.

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, demand that the Developer repay to the City all previously disbursed Funds, (ii) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys’ fees, suffered or incurred by the City in connection with administration, enforcement, or termination of this Agreement or as a result of a default of Developer under this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy shall not constitute a waiver of the breach of such covenant or of such remedy. The foregoing shall be in addition to any and all rights and remedies provided for under any other documents executed by Developer in favor of the City in connection with the Project.

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

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

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

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

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

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

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

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

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

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

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

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

15. Reporting Requirements.

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

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

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

16. General Provisions.

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

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control. In the event that any of the provisions of this Agreement are in conflict or are inconsistent, the provision determined by the City to provide the greatest legal and practical safeguards with respect to the use of the Funds and the City's interests in connection with this Agreement shall control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURE PAGE FOLLOWS

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

CITY OF CINCINNATI

THE MODEL GROUP, INC.

By: _____
Sheryl M. M. Long, City Manager

By: _____
Robert L. Maly, Chief Executive Officer

Date: _____, 2024

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A-1
to Funding Agreement

Legal Description – Mercantile Building

PARCEL ONE:

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

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

PARCEL TWO:

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

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

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

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

PARCEL THREE:

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

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

EXHIBIT A-2
to Funding Agreement

Legal Description – US Bank Tower

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

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

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

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

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

EXHIBIT A-3
to Funding Agreement

Legal Description and Depiction - Walnut Skywalk

Legal Description:

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

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



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

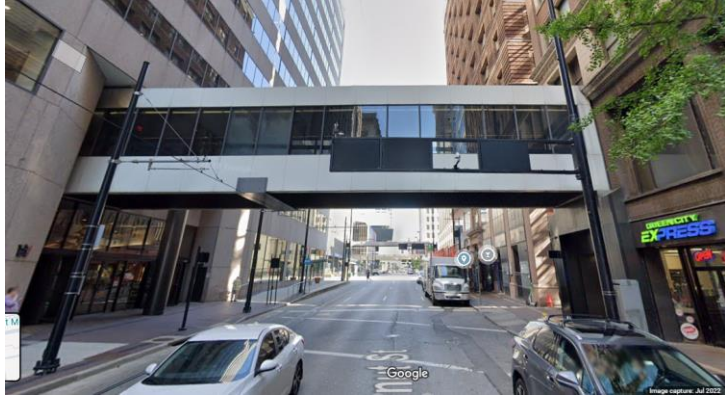


EXHIBIT B
to Funding Agreement

Statement of Work, Budget, and Sources of Funds

I. STATEMENT OF WORK

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

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

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

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

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

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

II. DEMOLITION SCHEDULE FOR SKYWALK

Walnut Street Skywalk Demolition Schedule

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

III. **BUDGET**

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

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

IV. SOURCES OF FUNDS

TOTAL SOURCES OF FUNDS (LEVERAGE)

City Funding Source	\$1,753,337
TOTAL	\$1,753,337

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

EXHIBIT C
to Funding Agreement

Disbursement of Funds

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

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

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis. Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to the Effective Date. Developer shall request the Funds and shall use the Funds solely for the purposes permitted under the Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, for the costs of the Private Improvements, or for any other purpose expressly disapproved in writing by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements from the project account shall be limited to an amount equal to the actual cost of the work, materials, and labor

incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Project are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate 30 days following completion of construction of the Project.

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

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

(C) Construction Draw Procedure

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

(ii) Documentation. Each disbursement request for construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City; (ii) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from the General Contractor, all subcontractors and materialmen covering all work, labor and materials for the work through the date of the disbursement and establishing that all such work, labor and materials have been paid for in full; (iii) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein, and (iv) such other documentation or information requested by the City that a prudent construction lender might request. All affidavits and lien waivers shall be signed, fully-executed originals and in such form approved and acceptable to the City.

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

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer that (i) all work done and materials supplied to date are in accordance with the approved plans and specifications and in strict compliance with all legal requirements as of the date of the

request, (ii) the construction is being completed in accordance with the approved budget and construction schedule, and (iii) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

EXHIBIT D
to Funding Agreement

Additional Requirements

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

This Exhibit serves two functions:

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

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 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, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans with Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

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

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

TO BE ATTACHED TO EXECUTION VERSION

May 15, 2024

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager 202401357

Subject: **Emergency Ordinance – Health: Moral Obligation Payment to Zayo Group Holdings, Inc.**

Attached is an Emergency Ordinance captioned:

AUTHORIZING a payment of \$37,336.16 from Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 as a moral obligation to Zayo Group Holdings, Inc., dba Zayo Group, LLC, for wide-area network connectivity services provided to the Cincinnati Health Department.

Approval of this Emergency Ordinance authorizes the payment of \$37,336.16 from Cincinnati Health Department Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 to Zayo Group Holdings, Inc., dba Zayo Group, LLC, for wide-area network (WAN) connectivity services provided to the Cincinnati Health Department.

On August 7, 2020, the Cincinnati Health Department (CHD) issued a purchase order for the provision of wide-area network connectivity services from Zayo Group Holdings, Inc. The services were meant to continue on an annual basis, but due to personnel changes in CHD, the purchase orders were not renewed internally, and funds for the services were not certified. Between September 1, 2021, and January 1, 2024, CHD continued to receive services but did not pay the invoices submitted by Zayo Group Holdings, Inc., which collectively amounted to \$37,336.16 for the time period.

CHD has now implemented a process to ensure that invoices are received and paid consistently, regardless of personnel changes in the department, and each fiscal year, CHD will renew its purchase order with Zayo Group Holdings, Inc. to ensure additional funds are certified.

The reason for the emergency is the immediate need to make payment to Zayo Group Holdings, Inc. in a timely manner for services provided to the Cincinnati Health Department.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

EMERGENCY

IMD

- 2024

AUTHORIZING a payment of \$37,336.16 from Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 as a moral obligation to Zayo Group Holdings, Inc., dba Zayo Group, LLC, for wide-area network connectivity services provided to the Cincinnati Health Department.

WHEREAS, on August 7, 2020, the Cincinnati Health Department (“CHD”) issued a purchase order for the provision of wide-area network connectivity services from Zayo Group Holdings, Inc. (“Zayo”); and

WHEREAS, the services were meant to continue on an annual basis, but due to personnel changes in CHD, the purchase orders were not renewed internally, and funds for the services did not continue to be certified; and

WHEREAS, between September 1, 2021, and January 1, 2024, CHD continued to receive services from Zayo but did not pay the invoices submitted by Zayo, which collectively amounted to \$37,336.16 for this time period; and

WHEREAS, CHD has now implemented a process to ensure that invoices are received and paid consistently, regardless of personnel changes in the department, and each fiscal year CHD will renew its purchase order with Zayo to ensure additional funds are certified; and

WHEREAS, sufficient funds are available in Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 to make the \$37,336.16 moral obligation payment to Zayo; and

WHEREAS, Council desires to provide a moral obligation payment to Zayo of \$37,336.16; now, therefore,

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

Section 1. That the Director of Finance is authorized to make a payment of \$37,336.16 from Community Health Center Activities Fund non-personnel operating budget account no. 395x265x1110x7288 as a moral obligation to Zayo Group Holding, Inc., dba Zayo Group, LLC, for wide-area network connectivity services provided to the Cincinnati Health Department.

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 to Zayo Group Holdings, Inc. in a timely manner for services provided to the Cincinnati Health Department.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk



May 15, 2024

To: Mayor and Members of City Council

202401359

From: Sheryl M. M. Long, City Manager

**Subject: Emergency Ordinance – Parks Department: Then and Now
Payment to General Factory Supply**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the payment of \$2,325.05 from the Parks Department, Parks Private Endowment and Donations Fund 430, non-personnel operating budget account no. 430x202x3000x7361, to General Factory Supply pursuant to the attached certificate from the Director of Finance, for outstanding charges related to cables, adapters, and graffiti removal used by the Parks Department in December 2023.

This Emergency Ordinance authorizes the payment of \$2,325.05 from the Parks Department, Parks Private Endowment and Donations Fund 430, non-personnel operating budget account no. 430x202x3000x7361, to General Factory Supply pursuant to the attached certificate from the Director of Finance, for outstanding charges related to cables, adapters, and graffiti removal materials used by the Parks Department in December 2023.

On December 13, 2023, General Factory Supply provided a quote for \$5,325.05 to the Parks Department for cables, adapters, and graffiti removal materials. A quote provided to the Parks Department of \$3,000 was used in error for the Cincinnati Financial System (CFS) submission, resulting in a shortage of \$2,325.05. Pursuant to Ohio Revised Code Section 5705.41(D)(1), the Director of Finance has issued a certificate, attached to this Emergency Ordinance, verifying that a sufficient sum was appropriated and in the City Treasury for the purpose of paying such charges under the contract both at the time the quote was issued and at the time the attached certificate was issued. This Emergency Ordinance will provide payment to General Factory Supply for its outstanding obligation of \$2,325.05 for cables, adapters, and graffiti removal materials used by the Parks Department.

The reason for the emergency is the immediate need to pay General Factory Supply for the outstanding charges in a timely manner.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

EMERGENCY

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- 2024

AUTHORIZING the payment of \$2,325.05 from the Parks Department, Parks Private Endowment and Donations Fund 430, non-personnel operating budget account no. 430x202x3000x7361, to General Factory Supply pursuant to the attached certificate from the Director of Finance, for outstanding charges related to cables, adapters, and graffiti removal used by the Parks Department in December 2023.

WHEREAS, on December 13, 2023, General Factory Supply provided a quote for \$5,325.05 to the Parks Department for cables, adapters, and graffiti removal; and

WHEREAS, a quote provided to the Parks Department of \$3,000 was used in error for the Cincinnati Financial System submission, resulting in a shortage of \$2,325.05; and

WHEREAS, pursuant to Ohio Revised Code Section 5705.41(D)(1), the Director of Finance has issued a certificate, attached to this ordinance, verifying that a sufficient sum was appropriated and in the City Treasury for the purpose of paying such charges under the contract both at the time the quote was issued and at the time the attached certificate was issued; and

WHEREAS, Council desires to provide payment to General Factory Supply for its outstanding obligation of \$2,325.05 for cables, adapters, and graffiti removal used by the Parks Department; now, therefore,

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

Section 1. That the Director of Finance is authorized to make a payment of \$2,325.05 from the Parks Department, Parks Private Endowment and Donations Fund 430, non-personnel operating budget account no. 430x202x3000x7361, to General Factory Supply pursuant to the attached certificate from the Director of Finance, for outstanding charges related to cables, adapters, and graffiti removal used by the Parks Department in December 2023.

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 pay General Factory Supply for the outstanding charges in a timely manner.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

CITY OF CINCINNATI
DIRECTOR OF FINANCE
THEN AND NOW CERTIFICATE

I, Karen Alder, Director of Finance for the City of Cincinnati, state the following:

WHEREAS, on December 13, 2023, General Factory Supply (“GFS”) provided a quote (“Quote”) to the Cincinnati Parks Department in the amount of \$5,325.05 for cables, adapters, and graffiti removal; and

WHEREAS, a quote provided to the Parks Department in the amount of \$3,000 was used in error for the Cincinnati Financial System submission, resulting in a shortage of \$2,325.05; and

WHEREAS, GFS provided the Parks Department with all of the goods contained in the Quote; and

WHEREAS, GFS therefore has not been compensated for the original materials in the amount of \$2,325.05;

NOW, THEREFORE,

1. As of December 13, 2023, and as of the date this certificate was executed, I hereby verify that the City Treasury held a sufficient sum that was appropriated and available for the purpose of paying for goods and services rendered under the Quote from General Factory Supply. This verification is conditioned upon and subject to Council’s approval of an ordinance authorizing the drawing of a warrant in payment of amount due to General Factory Supply under the Quote.

Signed,



Karen Alder, Director of Finance
City of Cincinnati

Date: 5/3/24

May 15, 2024

To: Mayor and Members of City Council

202401361

From: Sheryl M. M. Long, City Manager

Subject: Ordinance – Cincinnati Recreation Commission: Activities Beyond the Classroom In-Kind Donation

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to accept an in-kind donation of goods from Activities Beyond the Classroom valued at up to \$35,000 for equipment to create a public technology lab at Hartwell Recreation Center.

Approval of this Ordinance would authorize the City Manager to accept an in-kind donation from Activities Beyond the Classroom (ABC) of equipment valued at \$35,000 to create a public technology lab at Hartwell Recreation Center.

Activities Beyond the Classroom, a local Cincinnati company, generously offered to donate equipment to create a public technology lab at Hartwell Recreation Center. The new technology lab will allow members of the public to access state of the art equipment including Microsoft Surface Studio 2 computers, Apple iPad tablets, a color laser printer, and a 3D printer. This equipment is intended to help remove barriers to accessing technology.

This in-kind donation falls outside the parameters of Ordinance No. 0062-2024, which authorized ongoing in-kind donations valued in amounts up to \$5,000, and therefore requires discrete approval.

There are no new FTEs/full time equivalents or matching funds associated with the acceptance of this in-kind donation.

Acceptance of this donation 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 groups of people” as well as the “Collaborate” strategy to “[u]nite our [c]ommunities” as described on pages 149-151 and 210-211 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 accept an in-kind donation of goods from Activities Beyond the Classroom valued at up to \$35,000 for equipment to create a public technology lab at Hartwell Recreation Center.

WHEREAS, Activities Beyond the Classroom, a local Cincinnati company, generously offered to donate goods valued at up to \$35,000 for equipment to create a public technology lab at Hartwell Recreation Center; and

WHEREAS, the new technology lab will allow members of the public to access state of the art equipment including Microsoft Surface Studio 2 computers, Apple iPad tablets, a color laser printer, and a 3D printer; and

WHEREAS, this equipment is intended to help remove barriers to accessing technology; and

WHEREAS, authorization to accept this in-kind donation is necessary due to the value of the in-kind donation exceeding the \$5,000 maximum value for individual in-kind contributions authorized via Ordinance No. 62-2024; and

WHEREAS, acceptance of this in-kind donation requires no matching funds, and no FTEs/full time equivalents are associated with acceptance of this in-kind donation; and

WHEREAS, creating a technology lab at Hartwell Recreation Center 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 groups of people” as well as the “Collaborate” strategy to “[u]nite our [c]ommunities” as described on pages 149-151 and 210-211 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 accept an in-kind donation of goods from Activities Beyond the Classroom valued at up to \$35,000 for equipment to create a public technology lab at Hartwell Recreation Center.

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 take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

May 15, 2024

To: Mayor and Members of City Council

202401360

From: Sheryl M. M. Long, City Manager

Subject: Ordinance – Cincinnati Recreation Commission: Bond Hill Recreation Field In-Kind Donation

Attached is an Ordinance captioned:

AUTHORIZING the City Manager to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$150,000 for the installation of a turf infield at the Bond Hill Recreation Area.

Approval of this Ordinance would authorize the City Manager to accept an in-kind donation of goods and professional services valued at up to \$150,000 for the installation of a turf infield at the Bond Hill Recreation Area.

Playground Equipment Services, a local Cincinnati company, generously offered to donate a turf infield for the baseball field at the Bond Hill Recreation Area, including construction materials and labor associated with the installation. Playground Equipment Services will be responsible for ensuring the project is constructed in compliance with all applicable state and local rules, regulations, and building codes, and will provide necessary design drawings and obtain necessary permits.

This in-kind donation falls outside the parameters of Ordinance No. 0062-2024, which authorized ongoing in-kind donations valued in amounts up to \$5,000, and therefore requires discrete approval.

There are no new FTEs/full time equivalents or matching funds associated with the acceptance of this in-kind donation.

Acceptance of this donation is in accordance with the “Live” goal to “[b]uild a robust public life” and the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” as described on pages 149 and 209 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 accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$150,000 for the installation of a turf infield at the Bond Hill Recreation Area.

WHEREAS, Playground Equipment Services, a local Cincinnati company, generously offered to donate goods and professional services valued at up to \$150,000 to install a turf infield for the baseball field at Bond Hill Recreation Area, including construction materials and labor associated with the installation; and

WHEREAS, Playground Equipment Services will be responsible for ensuring the project is constructed in compliance with all applicable state and local rules, regulations, and building codes, and will provide necessary design drawings and obtain necessary permits; and

WHEREAS, the donated goods and services will be provided pursuant to a separate donation agreement being negotiated between the Cincinnati Recreation Commission and Playground Equipment Services; and

WHEREAS, this donation does not require matching funds, and there are no additional FTEs/full time equivalents associated with this donation; and

WHEREAS, acceptance of this donation is in accordance with the “Live” goal to “[b]uild a robust public life” and the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” as described on pages 149 and 209 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 accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$150,000 for the installation of a turf infield at the Bond Hill Recreation Area.

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

Section 3. That the City Manager is authorized to enter into any and all agreements necessary to accept and utilize the donated goods and services.

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

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

May 20, 2024

To: Members of the Budget and Finance Committee 202401445

From: Sheryl M. M. Long, City Manager

Subject: Ordinance – Cincinnati Recreation Commission: Bond Hill Recreation Field Donation (B Version)

Attached is an Ordinance captioned:

ESTABLISHING new capital improvement program project account no. 980x199x241917, “Bond Hill Baseball Field RCF,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the City Manager to accept a donation of \$89,000 from the Reds Community Fund to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the Director of Finance to deposit a donation of \$89,000 from the Reds Community Fund into Fund 319, “Contributions For Recreation Purposes,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the City Manager to transfer and appropriate \$89,000 from the unappropriated surplus of Fund No. 319, “Contributions For Recreation Purposes,” into newly established capital improvement program project account no. 980x199x241917, “Bond Hill Baseball Field RCF,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; and **AUTHORIZING** the City Manager to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$61,000 for the installation of a turf infield at the Bond Hill Recreation Area

The B Version of this Ordinance represents a change in the structure of the donation. Previously, the donation was an in-kind donation of goods and professional services valued at up to \$150,000 from Playground Equipment Services for the installation of a turf infield at the Bond Hill Recreation Area. The donation now includes an in-kind donation of goods and professional services valued at up to \$61,000 from Playground Equipment Services with an \$89,000 monetary donation from the Reds Community Fund (RCF). The monetary donation will be deposited into Contributions For Recreation Purposes Fund 319 and then transferred to newly established capital improvement program project account no. 980x199x241917, “Bond Hill Baseball Field RCF,” which is established by this Ordinance.

Playground Equipment Services, a local Cincinnati company, generously offered to donate a turf infield for the baseball field at the Bond Hill Recreation Area, including construction materials and labor associated with the installation. Playground

Equipment Services will be responsible for ensuring the project is constructed in compliance with all applicable state and local rules, regulations, and building codes, and will provide necessary design drawings and obtain necessary permits.

This in-kind donation falls outside the parameters of Ordinance No. 0062-2024, which authorized ongoing in-kind donations valued in amounts up to \$5,000, and therefore requires discrete approval.

There are no new FTEs/full time equivalents or matching funds associated with the acceptance of this in-kind donation.

Acceptance of this donation is in accordance with the “Live” goal to “[b]uild a robust public life” and the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” as described on pages 149 and 209 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachment

ESTABLISHING new capital improvement program project account no. 980x199x241917, “Bond Hill Baseball Field RCF,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the City Manager to accept a donation of \$89,000 from the Reds Community Fund to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the Director of Finance to deposit a donation of \$89,000 from the Reds Community Fund into Fund 319, “Contributions For Recreation Purposes,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; **AUTHORIZING** the City Manager to transfer and appropriate \$89,000 from the unappropriated surplus of Fund No. 319, “Contributions For Recreation Purposes,” into newly established capital improvement program project account no. 980x199x241917, “Bond Hill Baseball Field RCF,” to provide resources for the installation of a turf infield at the Bond Hill Recreation Center; and **AUTHORIZING** the City Manager to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$61,000 for the installation of a turf infield at the Bond Hill Recreation Area.

WHEREAS, the Cincinnati Reds Community Fund generously has donated funds and Playground Equipment Services has donated goods and professional services to allow for the installation of a turf infield at the Bond Hill Recreation Center; and

WHEREAS, Playground Equipment Services will be responsible for ensuring the project is constructed in compliance with all applicable state and local rules, regulations, and building codes, and will provide necessary design drawings and obtain necessary permits; and

WHEREAS, the donated goods and services will be provided by Playground Equipment Services pursuant to a separate donation agreement being negotiated between the Cincinnati Recreation Commission and Playground Equipment Services; and

WHEREAS, this donation does not require matching funds, and there are no additional FTEs/full time equivalents associated with this donation; and

WHEREAS, acceptance of this donation is in accordance with the “Live” goal to “[b]uild a robust public life” and the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” as described on pages 149 and 209 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. 980x199x241917, “Bond Hill Baseball Field RCF,” is established to provide resources for the installation of a turf infield at the Bond Hill Recreation Center.

Section 2. That the City Manager is authorized to accept a donation of \$89,000 from the Reds Community Fund to provide resources for the installation of a turf infield at the Bond Hill Recreation Center.

Section 3. That the Director of Finance is authorized to deposit a donation of \$89,000 from the Reds Community Fund into Fund 319, "Contributions For Recreation Purposes," to provide resources for the installation of a turf infield at the Bond Hill Recreation Center.

Section 4. That the City Manager is authorized to transfer and appropriate \$89,000 from the unappropriated surplus of Fund No. 319, "Contributions for Recreation Purposes," into newly established capital improvement program project account no. 980x199x241917, "Bond Hill Baseball Field RCF," to provide resources for the installation of a turf infield at the Bond Hill Recreation Center.

Section 5. That the City Manager is authorized to accept an in-kind donation of goods and professional services from Playground Equipment Services valued at up to \$61,000 for the installation of a turf infield at the Bond Hill Recreation Area.

Section 6. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the donations and Section 1 through 5.

Section 7. That the City Manager is authorized to enter into any and all agreements necessary to accept and utilize the donated goods and services.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2024

Attest: _____

Clerk

Aftab Pureval, Mayor

May 20, 2024

To: Members of the Budget and Finance Committee

202401424

From: Sheryl M.M. Long, City Manager

Subject: Emergency Ordinance – Authorizing a Property Sale Agreement with 101 West Fifth, LLC

Attached is an Emergency Ordinance captioned:

AUTHORIZING the City Manager to execute a Property Sale Agreement with 101 West Fifth LLC, pursuant to which the City will vacate and convey approximately 0.0382 acres of public right-of-way, being a portion of West Fifth Street in the Central Business District of Cincinnati; and **AUTHORIZING** the City Manager to execute a Grant of Easement in favor of 101 West Fifth LLC pursuant to which the City will grant an encroachment easement over a portion of Race Street in the Central Business District.

BACKGROUND/CURRENT CONDITIONS

The project involves the renovation of 101 West Fifth Street located in the Central Business District at the corner of 5th Street and Race Street. Council previously approved Ordinance No. 100-2024 authorizing a Property Sale, Funding, and Development Agreement which authorized the sale of the project property from the City to 3CDC and provided City incentives to support the project.

The renovation plans include ground floor restaurant space that will incorporate outdoor dining space within existing right of way. 3CDC and the City have conducted and reviewed traffic studies concluding that one of the eastbound right turn lanes along 5th Street can be removed to allow for expanding the sidewalk, accommodating the outdoor dining space and maintaining a proper width for the pedestrian path. The fair market value of the right of way to be vacated and sold to facilitate these plans is \$92,000. Additionally, the building renovation will also include facade elements from the second floor to the roofline that will protrude into the Race Street right of way. The fair market value of the easement is \$2,900. The agreement authorizes granting both property interests for below fair market value.

DEVELOPER INFORMATION

101 West Fifth, LLC is a subsidiary of Cincinnati Center City Development Corporation (3CDC). 3CDC is a non-profit organization that has invested over \$1.47 billion dollars in development in Downtown and Over-the-Rhine over the past 15 years. This investment has resulted in 300 apartment units, 534 condominiums, 156 hotel rooms, 320 shelter beds, 1,070,500 square feet of commercial space, and 4,925 parking spaces. Furthermore,

3CDC manages several of the City's public spaces, including Fountain Square, which is near this property.

RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. The emergency clause is necessary to confirm City support prior to financial closing and so that construction can commence at the earliest possible time.

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

EMERGENCY

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AUTHORIZING the City Manager to execute a Property Sale Agreement with 101 West Fifth LLC, pursuant to which the City will vacate and convey approximately 0.0382 acres of public right-of-way, being a portion of West Fifth Street in the Central Business District of Cincinnati; and **AUTHORIZING** the City Manager to execute a Grant of Easement in favor of 101 West Fifth LLC pursuant to which the City will grant an encroachment easement over a portion of Race Street in the Central Business District.

WHEREAS, the City of Cincinnati (the “City”) owns (i) approximately 0.0382 acres of public right-of-way, being a portion of West Fifth Street (the “Sale Property”), and (ii) approximately 0.0037 acres Race Street (the “Easement Property”), which are under the management of the City’s Department of Transportation and Engineering (“DOTE”), and which are more particularly depicted and described in the Property Sale Agreement attached as Attachment A hereto; and

WHEREAS, 101 West Fifth LLC (“Developer”), an affiliate of Cincinnati Center City Development Corporation (“3CDC”), owns real property abutting the Sale Property and the Easement Property, which property was most recently occupied by Saks Fifth Avenue, and which the City previously sold to Developer to facilitate the redevelopment of the vacant structure located thereon into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space (the “Project”); and

WHEREAS, Developer has requested that (i) the City vacate and convey the Sale Property to Developer, and (ii) grant an easement to Developer for an encroachment upon the Easement Property (the “Easement”) to facilitate the Project; and

WHEREAS, Angela L. Hahn, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified that Developer and the City own all real property abutting the Sale Property and the Easement Property; and

WHEREAS, pursuant to Ohio Revised Code Section 723.04, the City may, upon petition, vacate a street or alley if it has determined that there is good cause for the vacation and that the vacation will not be detrimental to the general interest; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-1, the City may sell real property that is not needed for municipal purposes; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that (i) the Sale Property is not needed for transportation purposes or any other municipal purpose, (ii) there is good cause to vacate the Sale Property, (iii) the vacation of the Sale Property will not be detrimental to the general interest, (iv) granting the Easement to Developer is not adverse to the

City's retained interest in the Easement Property, and (v) granting the Easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Easement Property; and

WHEREAS, the City's Real Estate Services Division has determined, by a professional appraisal, that (i) the fair market value of the Sale Property is approximately \$92,000, and (ii) the fair market value of the Easement is \$2,900; however, to facilitate the Project, the City desires to convey the Sale Property and grant the Easement to Developer for less than fair market value, namely, for \$1.00, because the City anticipates that it will receive economic and non-economic benefits that equal or exceed the fair market value of the Sale Property and the Easement because the City anticipates that the Project will stimulate economic activity and growth in the Central Business District; and

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

WHEREAS, eliminating competitive bidding in connection with the City's sale of the Sale Property and the grant of the Easement is appropriate because the City has developed a comprehensive strategy for the redevelopment of the area generally surrounding the Duke Energy Convention Center along Race Street, Central Avenue, Fourth Street, and Sixth Street (the "Convention Center Redevelopment District"), and the City has engaged 3CDC to provide general planning, development, and management services as it relates to the revitalization of certain properties located within the Convention Center Redevelopment District; 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 acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, in furtherance of the foregoing public purposes, the City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents because the Project will bring the Project site to productive use and stimulate economic growth in the Central Business District for the economic benefit of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and conveyance of the Sale Property and the grant of the Easement at its regularly scheduled meeting on March 15, 2024; 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 Agreement (the "Agreement") with 101 West Fifth LLC, an Ohio limited liability company

(“Developer”), in substantially the form attached as Attachment A hereto, pursuant to which the City of Cincinnati (the “City”) will (a) vacate and convey to Developer approximately 0.0382 acres of public right-of-way, being a portion of West Fifth Street, as more particularly described on Attachment B hereto (the “Sale Property”); and (b) grant to Developer an easement to construct and maintain an encroachment (“Easement”) over approximately 0.0037 acres of Race Street (the “Easement Property”), as more particularly described on Attachment A hereto.

Section 2. That the Sale Property is not needed for transportation or other municipal purposes, that there is good cause to vacate and convey the Sale Property, and that such vacation and sale will not be detrimental to the general interest.

Section 3. That granting the Easement to Developer (a) is not adverse to the City’s retained interest in the Easement Property; and (b) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Easement Property.

Section 4. That the City’s Real Estate Services Division has determined, by a professional appraisal, that (a) the fair market value of the Sale Property is approximately \$92,000; and (b) the fair market value of the Easement Property is \$2,900; however, the City is justified in conveying the Sale Property and granting the Easement to Developer for less than fair market value, namely, for \$1.00, because the City anticipates that it will receive economic and non-economic benefits that are anticipated to equal or exceed the aggregate fair market value of the Sale Property and the Easement because the City anticipates that Developer’s use of the Sale Property and the Easement will stimulate economic activity and growth in the Central Business District.

Section 5. That eliminating competitive bidding in connection with the City’s sale of the Sale Property is in the best interest of the City because the Sale Property and the Easement

Property are located in the Convention Center District, which surrounds Duke Energy Convention Center and is generally bounded by Race Street, Central Avenue, 4th Street, and 6th Street (collectively, the “District”), and the City has engaged Cincinnati Center City Development Corporation (3CDC), an affiliate of Developer, to provide general planning, development, and management services as it relates to the revitalization of certain properties located within the District.

Section 6. That the proceeds from the sale of the Sale Property and the grant of the Easement, if any, 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 the excess amount thereof into Miscellaneous Permanent Improvement Fund 757.

Section 7. That, pursuant to Ohio Revised Code Section 723.041, any affected public utility shall be deemed to have a permanent easement in the Sale Property to maintain, operate, renew, reconstruct, and remove its utility facilities and to access said utility facilities.

Section 8. That the Sale Property is hereby vacated as public right-of-way effective upon the City Manager’s approval and execution of documentation effectuating such vacation, and the City Manager and other City officials are hereby 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, deeds, plats, or other documents described in or contemplated by the Agreement to facilitate the vacation and sale of the Sale Property and the grant of the Easement to Developer.

Section 9. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the Hamilton County, Ohio Recorder’s Office.

Section 10. 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 urgency for Developer to commence its redevelopment efforts at the project site at the earliest possible time.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

Contract No: _____

Project: Vacation of a portion
of West 5th Street

PROPERTY SALE AGREEMENT

THIS PROPERTY SALE AGREEMENT is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Developer**").

Recitals:

A. The City formerly owned certain real property located at 101 West Fifth Street in the Central Business District of Cincinnati, which property is more particularly described on Exhibit A (*Legal Description – the Property*) hereto (the "**Property**"). The Property was under the management of the City's Department of Community and Economic Development ("**DCED**").

B. Pursuant to a separate *Property Sale, Funding, and Development Agreement* (the "**Development Agreement**"), authorized by Ordinance No. 100-2024 passed by Cincinnati City Council on March 20, 2024, the City sold the Property to Developer, an affiliate or wholly owned subsidiary of Cincinnati Center City Development Corporation ("**3CDC**"), to facilitate the redevelopment of the vacant structure located on the Property into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space, at an estimated total project cost of approximately \$28,031,300, including, without limitation, the undertaking of various public infrastructure improvements concerning the demolition of an existing skywalk over Race Street connecting the Property to the adjacent Carew Tower and certain streetscape improvements (the "**Project**").

C. The City owns the public rights-of-way adjoining the Property, namely, West Fifth Street and Race Street (the "**ROW Property**"), which ROW Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

D. In furtherance of the Project, Developer has petitioned the City to vacate and sell to Developer certain portions of the ROW Property, as more particularly depicted on Exhibit B (*Vacation Plat*) and described on Exhibit C (*Quitclaim Deed – the Property*) hereto (the "**Sale Property**"). Additionally, Developer has petitioned the City to grant and convey to Developer certain easement rights upon certain portions of the ROW Property, as more particularly described and depicted on Exhibit D (*Form Grant of Easement*) hereto (the "**Encroachment Easement**"). The City is agreeable to convey the Sale Property and the Encroachment Easement to Developer, subject to the terms and conditions set forth herein.

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

F. The City Manager, in consultation with DOTE, has determined that (i) the Sale Property is not needed for transportation or any other municipal purposes, and that the City's vacation and sale of the Sale Property will not be detrimental to the public interest; (ii) the Encroachment Easement will not have an adverse effect on the City's retained interest in the ROW Property; (ii) the Encroachment Easement will not unreasonably interfere with the City's use of the ROW Property for municipal purposes; (iii) granting the Encroachment Easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and (iv) conveying the Sale Property and granting the {00400720-4}

Encroachment Easement to Developer without competitive bidding is in the best interest of the City because, the City has developed a comprehensive strategy for the redevelopment of the area generally surrounding the Duke Energy Convention Center along Race Street, Central Avenue, Fourth Street, and Sixth Street (the “**Convention Center Redevelopment District**”), and has engaged 3CDC, or an affiliate or subsidiary thereof, to provide general planning, development, and management services as it relates to the revitalization of certain properties located within the Convention Center Redevelopment District, and, as a practical matter, no one other than an adjoining property owner would have any use for the Sale Property and the Encroachment Easement.

G. Angela L. Hahn, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney’s Certificate of Title dated [____], certifying that following the sale of the Property to Developer, Developer will own all real property abutting the Sale Property.

H. The City’s Real Estate Services Division has determined, by professional appraisal, that (i) the fair market value of the Sale Property is \$92,000, and (ii) the fair market value of the Encroachment Easement is \$2,900, however, the City is agreeable to convey the aforementioned real property interests for \$1.00 because the City will receive economic and non-economic benefits from the Project that are anticipated to equal or exceed the aggregate fair market value of the Sale Property and the Encroachment Easement because the City anticipates that the Project will stimulate economic activity and growth in the Central Business District through the renovation and reactivation of the vacant structure located at the Property and enhancing the streetscape surrounding the Property.

I. 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.

J. The City believes that the Project and associated vacation and sale of the Sale Property and grant of the Encroachment Easement is in the vital and best interests of the City and the health, safety, and welfare of their residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

K. Cincinnati City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s sale and vacation of the Sale Property to Developer, and the conveyance of the Encroachment Easement to Developer at its meeting on March 15, 2024.

L. Execution of this Agreement was authorized by Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

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

1. Purchase Price; Condition.

(A) Purchase Price. Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property and grant and convey the Encroachment Easement to Developer, and Developer hereby agrees to purchase the Sale Property and the Encroachment Easement from the City. The purchase price of the transaction shall be \$1.00 (the “**Purchase Price**”).

(B) Condition of Sale Property and Encroachment Easement Area. 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 and the Encroachment Easement to Developer in “as is” condition with all

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faults and defects, known or unknown. The City makes no representations or warranties concerning the title, condition, or characteristics of the Sale Property and the Encroachment Easement area or the suitability or fitness of the same for any purpose. Developer acknowledges and agrees that it is not relying upon any such representations or warranties from the City 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 and Encroachment Easement area.

2. Closing.

(A) Conditions. The closing on the City's conveyance of the Sale Property and Encroachment Easement to Developer (the "**Closing**") shall not occur unless and until the following conditions have been satisfied or waived (the "**Conditions**"); *provided, however*, that if the City, at its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, then the City may, if appropriate, include such Conditions in the conveyance instruments to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and obtain and prepare all necessary documents to satisfy the Conditions at no cost to the City.

- (i) Title & Survey: Developer's approval of title to the Sale Property and Encroachment Easement area, if obtained by Developer, an ALTA property survey of the Sale Property and Encroachment Easement area;
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: Developer's approval of inspections of the Sale Property and Encroachment Easement area, including, without limitation, environmental assessments and soil assessments, all matters concerning utility service for the Sale Property and Encroachment Easement area, and all zoning and building code requirements that apply to the Sale Property and Encroachment Easement area;
- (iii) Certificate of Title: Developer shall have provided the City with an attorney's certificate of title certifying the names of all abutters to the Sale Property;
- (iv) Plats and Legal Descriptions: Developer shall have provided the City with all plats and legal descriptions as required by DOTE, the Department of City Planning and Engagement, and the Hamilton County Auditor, Engineer, and Recorder in connection with the City's vacation and sale of the Sale Property and conveyance of the Encroachment Easement area, including, but not limited to an acceptable survey plat and legal description with closure of the Sale Property and Encroachment Easement area to accompany the transfer and recording of the conveyance instruments;
- (v) Coordinated Report Conditions CR #4-2024 & CR #60-2023:
 - (a) DOTE:
 - 1. The construction of a new curb and sidewalk to replace the right turn lane from 5th Street to Race Street must be built by Developer. The sidewalk and infrastructure plan must be approved by DOTE and be built in compliance with DOTE standards. Traffic infrastructure approval is required prior to installation.
 - 2. The existing traffic signal, street lights, and traffic control poles, as well as all existing street trees and tree wells, the existing fire hydrant, and the existing stormwater inlet, and all associated infrastructure facilities shall be removed and relocated to the new sidewalk curb line so as to align with the plan

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design of the adjacent east and west blocks. DOTE will direct what infrastructure is needed in the right of way.

3. The note for the street grate of "adjust to grade" will need more information as it appears the curb runs through it. This may need to be relocated.
4. Ten feet minimum of clear pedestrian width is required for the public sidewalk (14 feet from the curb). This is to be clear of all obstructions, including but not limited to tree wells.
5. [Intentionally Omitted].

(b) Greater Cincinnati Water Works ("GCWW"): Developer must relocate or adjust the location of the existing fire hydrant with respect to the new curb. Developer's engineer must prepare plans for GCWW approval for the fire hydrant relocation and disconnection of two abandoned branches (5/8" branch no. 26927 and 3/4" branch no. 229923) and complete construction. Please submit plans to Phil Young. Approved plans and contractor's bond and letter of intent will be required before construction can start. An inspector must be on site for all work related to the fire hydrant relocation. Plan review and Inspection/Chlorination fees will apply. Any damage caused to the public water system during the proposed construction must be repaired to GCWW's satisfaction entirely at Developer's cost.

(c) Altafiber: The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work required to relocate the facilities as a result of this request will be handled entirely at the Developer's expense.

(d) Parks:

1. A Public Tree Work Permit shall be required prior to proceeding work within 15 feet of a public street tree.
2. If proposed work requires removal of street trees, compensation shall be made prior to any removal.

(B) Right to Terminate. If either party determines, after exercising good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period, 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 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 within **12 months** of the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

(C) Closing Date. Provided the Conditions have been satisfied, the Closing shall take place **May 24, 2024** or on such earlier or later date as the parties may agree upon.

(D) Closing Costs and Closing Documents. At the Closing, (i) the City shall confirm that Developer has paid the Purchase Price in full, and (ii) the City shall convey all its right, title, and interest in and to the Sale Property in the form of Exhibit C and grant and convey the Encroachment Easement to Developer in the form of Exhibit D. Developer shall pay all Hamilton County, Ohio recording fees, transfer tax, and any and all other customary closing costs associated with the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer

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shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement and all other customary closing documents necessary for the Closing in such forms as approved by the City. The City shall not, however, be required to execute a title affidavit at Closing or other similar documents pertaining to title. Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer shall pay to the City all unpaid related and unrelated fines, penalties, judgments, water, or other utility charges, and any and all other outstanding amounts owed by Developer to the City. The provisions of this Agreement shall survive the City's execution and delivery of the conveyance instruments and shall not be deemed to have been merged therein.

3. Improvements to Public Right-of-Way.

(A) Design and Construction of Improvements. Developer hereby agrees to design and construct the Project, as depicted in the Development Agreement, in accordance with plans and specifications approved in writing by DOTE. After Closing, Developer shall have applied for the required permits from DOTE to improve the dedicated public right-of-way. The parties acknowledge and agree that upon completion of construction on West Fifth Street the public improvements are subject to approvals and warranties as required by DOTE.

(B) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary street opening permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the construction of the improvements, including without limitation those set forth on Exhibit F (Additional City 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 the City's Department of Planning and Engagement, DOTE, other City departments, the City Planning Commission, or City Council that may be required in connection with the improvement of the public right-of-way.

(C) Reports and Inspections during Construction. During construction, 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 improvements are 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 judgment and after giving Developer prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(D) Mechanics Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Dedication Property during construction. If a mechanics' lien shall at any time be filed, Developer shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record.

4. Insurance; Indemnification.

(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 one-hundred percent (100%) of the value of the improvements 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 prior to closing. 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

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VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

(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.

(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.

5. Default; Remedies.

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

(i) The failure of Developer to perform any obligation under this Agreement, and failure by Developer to correct such failure within thirty (30) days after Developer's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Developer shall not be in default so long as Developer commences to cure the default within such 30-day 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. The foregoing notwithstanding, if Developer'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 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 Developer, or the making by Developer of an assignment for the benefit of creditors; or

(iii) The filing of any bankruptcy or insolvency proceedings against Developer, or the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any of Developer's property, that, in each such event, is not released within 60 days after the filing thereof.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) demand immediate repayment of all previously disbursed funds if this Agreement provides for City funding, (ii) terminate this Agreement by giving Developer written notice thereof, (iii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iv) exercise any and all other rights and remedies under this Agreement or otherwise available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys' fees, suffered, or incurred by the City 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

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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.

6. 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
805 Central Avenue, 7th Floor
Attn: DCED Director
Cincinnati, OH 45202

To Developer:

101 West Fifth LLC
1203 Walnut Street, 4th Floor
Cincinnati, Ohio 45202
Attn: Legal

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, OH 45202.

7. Representations, Warranties, and Covenants. Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has been properly qualified to do business in the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. 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.

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

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

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

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the proposed development project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material

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fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) Neither Developer nor any of its affiliates owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

8. 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 the public right-of-way improvements, this Agreement, or Developer's involvement with the same, including, without limitation, audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the public right-of-way improvements, 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.

(B) City's Right to Inspect and Audit. During construction and for a reasonable period of time thereafter, 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.

9. General Provisions.

(A) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

(B) Entire Agreement. This Agreement (including all exhibits), together with the Property Sale, Funding, and Development Agreement contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of the Property Sale, Funding, and Development Agreement are in conflict with the specific provisions of the Property Sale, Funding, and Development Agreement, the specific provisions of the Property Sale, Funding, and Development Agreement shall control.

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

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

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

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

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

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

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

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

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

(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.

10. Counterparts; E-Signature. This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

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

Exhibit A (*Legal Description – the Property*)

Exhibit B (*Vacation Plat*)

Exhibit C (*Quitclaim Deed – the Property*)

Exhibit D (*Form Grant of Easement*)

Exhibit E (*Additional City Requirements*)

[SIGNATURE PAGES FOLLOW]

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

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Developer's Signature Page Follows*]

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101 WEST FIFTH LLC, an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 2024

{00400720-4}

Exhibit A

to Property Sale Agreement

Legal Description – the Property

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202

Auditor's Parcel No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of In Lots 265, 266, 267, 290, 291 and 292 by Israel Ludlow and Joel Williams as recorded in Deed Book E-2, Pages 66 and 67 Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

From the intersection of the South line of Fifth Street (now a 76-foot street) and the east line of Elm Street (now a 76-foot street) (as Fifth Street and Elm Street were widened by Ordinance No. 366-1985 of Cincinnati City Council, passed August 7, 1985); thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 192.69 feet to the Place of Beginning; thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 196.00 feet to the intersection of the south line of Fifth Street as widened and the west line of Race Street (now a 68 foot street as widened by the above Ordinance No. 366- 1985); thence along the west line of Race Street as widened South 8° 58' 50" East for a distance of 234.36 feet to a point in a line 154.00 feet north of and parallel with the north line of Fourth Street (a 66 foot street); thence along said line South 81° 11' West for a distance of 196.92 feet to a point in a line perpendicular to the south line of Fifth Street as widened at a point in the south line 196.00 feet West of Race Street as widened; thence along said perpendicular line North 8° 45' 20" West for a distance of 234.57 feet to the Place of Beginning.

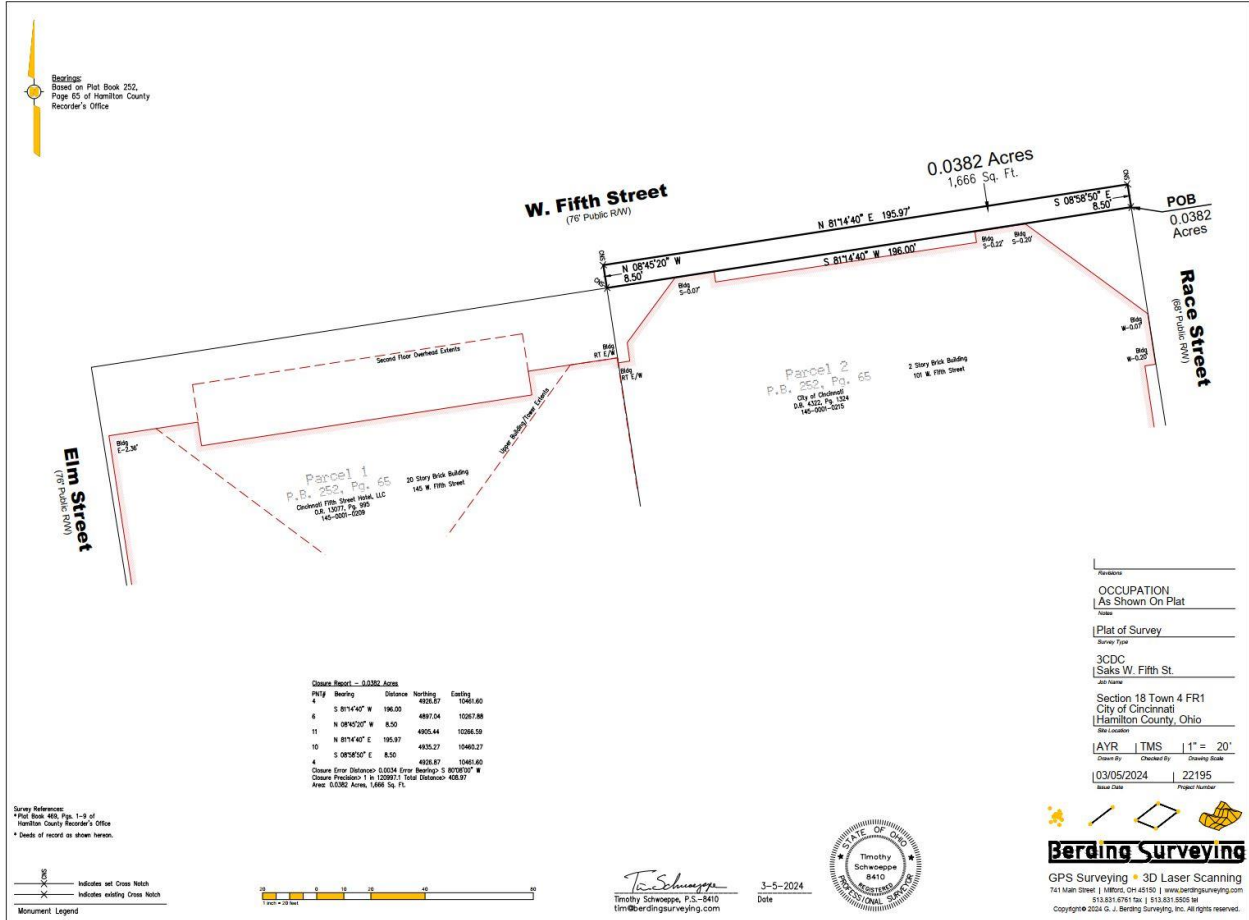
Containing an area of 46,063 square feet, more or less.

{00400720-4}

Exhibit B

to Property Sale Agreement

Vacation Plat



{00400720-4}

Exhibit C

to Property Sale Agreement

Quitclaim Deed – the Property

[SPACE ABOVE FOR RECORDER'S USE]

QUIT CLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Grantee**”), all of the City’s right, title and interest in and to the real property depicted on Exhibit A (*Vacation Plat*) and described on Exhibit B (*Legal Description*) hereto (the “**Property**”).

Property Address: None; a portion of former public right-of-way designated as West Fifth Street
Auditor’s Parcel ID Nos.: None
Prior instrument reference: None

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024, the Property is hereby vacated as public right-of-way by the City.

Creation of Utility Easement. This conveyance is subject to R.C. Section 723.041 so that any affected public utility existing at the time of the conveyance shall be deemed to have a permanent easement in such vacated portions of West Fifth Street for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities, unless and until such time as the public utility is re-located such that access to the public utility is no longer affected by the Property.

This conveyance was authorized by Ordinance No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

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

- Exhibit A – *Vacation Plat*
- Exhibit B – *Legal Description*
- Exhibit C – *Ordinance No. [____]-2024*

[SIGNATURE PAGE FOLLOWS]

{00400720-4}

Executed on the date of acknowledgment.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024 by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

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

{00400720-4}

Exhibit A
to Quitclaim Deed

Vacation Plat

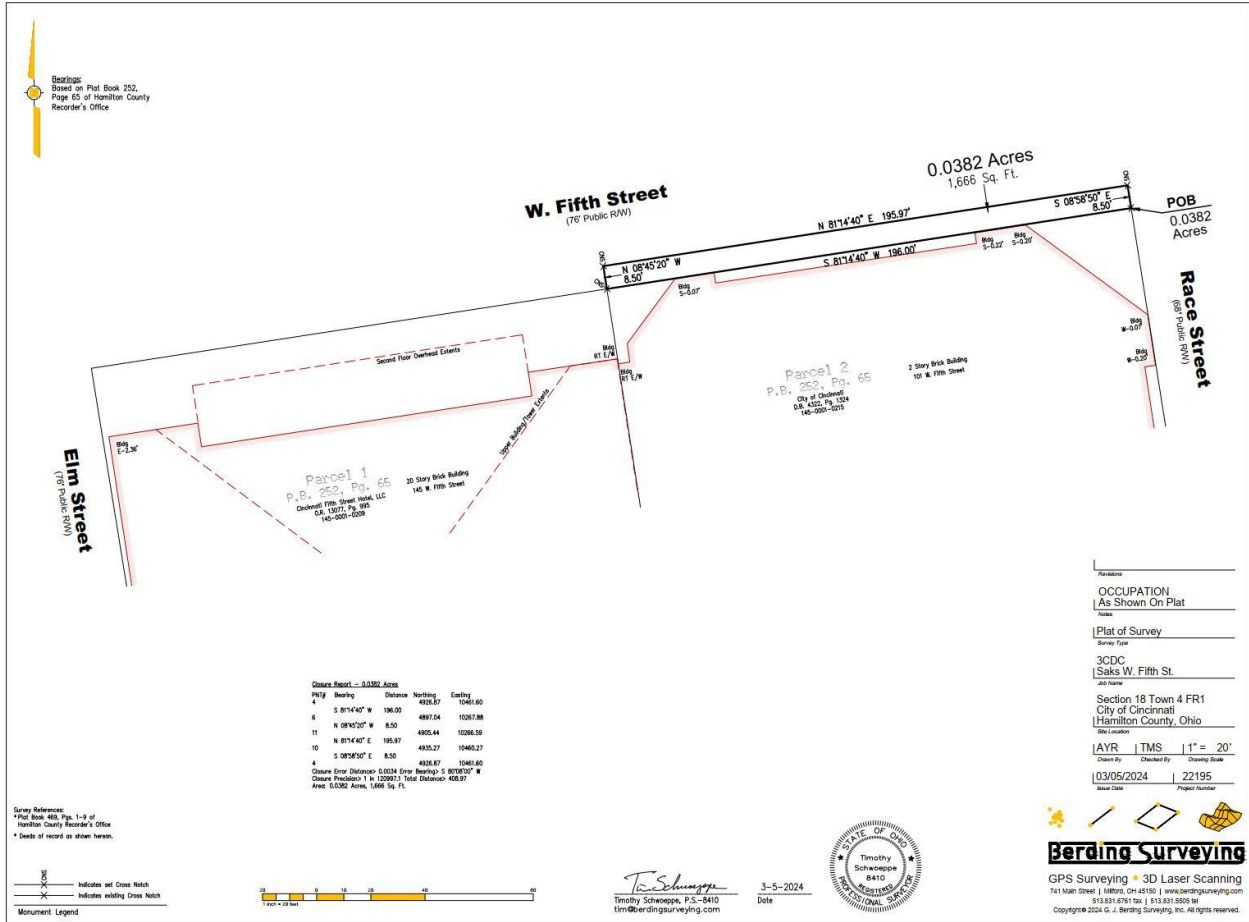
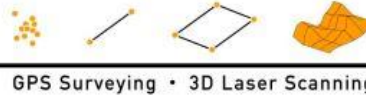


Exhibit B
to Quitclaim Deed

Legal Description

Berding Surveying



Description for: 3CDC – 0.0382 Acre Street Sale
Location: W. Fifth Street & Race Street, City of Cincinnati

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at an existing cross notch at the intersection of the west line of Race Street and the south line of W. Fifth Street, said point being the northeast corner of a tract conveyed to City of Cincinnati in Deed Book 4322, Page 1324 of the Hamilton County Recorder's Office;

Thence along the south line of said W. Fifth Street, South 81°14'40" West, 196.00 feet to a set cross notch;

Thence leaving said south line, North 08°45'20" West, 8.50 feet to a set cross notch;

Thence North 81°14'40" East, 195.97 feet to a set cross notch;

Thence South 08°58'50" East, 8.50 feet to the **POINT OF BEGINNING**.

CONTAINING 0.0382 ACRES. Together with and subject to all easements of record.

The bearings shown hereon are based on Plat book 252, Page 65 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024. Based on Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024.

The above-described area being part of W. Fifth Street right of way and is subject to additional easement area for utilities that may exist in the sale area.


Timothy Schwoeppe, P.S. 8410

3-5-2024
Date



G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

Exhibit C
to Quitclaim Deed

Ordinance No. []-2024

Exhibit C

to Property Sale Agreement

Form of Encroachment Easement

[SPACE ABOVE FOR RECORDER'S USE]

GRANT OF EASEMENT

(encroachment upon a portion of Race Street)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Grantee**").

Recitals:

A. By virtue of a *Quitclaim Deed* recorded on [___], in Official Record [___], Page [___], Hamilton County, Ohio Recorder's Office, Grantee holds title to certain real property located at [___] West Fifth Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Property*) and depicted on Exhibit B (*Survey*) hereto (the "**Benefitted Property**").

B. The City owns certain real property abutting the Benefitted Property designated as the public right-of-way known as Race Street, as more particularly depicted on Exhibit B (*Survey*) hereto (the "**Property**"). The Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant an easement for an encroachment upon a portion of the Property, namely, a façade encroachment, as more particularly depicted on Exhibit B and described on Exhibit C (*Legal Description–Easement Area*) hereto (the "**Encroachment**").

D. The City Manager, in consultation with DOTE, has determined that (i) this easement will not have an adverse effect on the City's retained interest in the Property; (ii) this easement will not unreasonably interfere with the City's use of the Property for municipal purposes; (iii) granting this easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and (iv) granting this easement without competitive bidding is in the best interest of the City because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for this easement.

E. The City's Real Estate Services Division has determined that this easement's fair market value, as determined by professional appraisal, is \$2,900, however, the City is agreeable to convey this easement for \$1.00 because the City will receive economic and non-economic benefits from this conveyance that is anticipated to equal or exceed the fair market value of this easement because the easement is associated with the redevelopment of the vacant structure located on the Benefitted Property into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space, at an estimated total project cost of approximately \$28,031,300, and the

City anticipates that the Project will stimulate economic activity and growth in the Central Business District.

F. Cincinnati City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the conveyance of this easement at its meeting on March 15, 2024.

G. Cincinnati City Council authorized the execution of this easement by No. [____]-2024, passed by Cincinnati City Council on [____], 2024.

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

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive easement to construct, install, use, maintain, repair, reconstruct, replace, and remove the Encroachment, as more particularly identified on Exhibit B, and described on Exhibit C hereto (the “**Easement**” or the “**Easement Area**,” as applicable). Once installed, Grantee shall only make alterations, additions, enlargements, or modifications to the Encroachment within the Easement Area with the prior written consent of the City. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Area. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Area or the suitability or fitness of the Easement Area for any purpose. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. The rights granted to Grantee herein shall be subordinate and subject to the City’s rights to manage, operate, and maintain the Main Street public right-of-way in the best interest of the public health, safety, and general welfare, as determined by the City.

2. Utilities. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Easement Area (“**Third-Party Utility Lines**”). The rights herein granted to Grantee are subject and subordinate to the rights of public utility providers to enter upon the Property from time to time to construct, install, operate, maintain, repair, reconstruct, reinstall, remove, replace, and abandon utility lines, and related facilities within and around the vicinity of the Easement Area. Grantee shall ensure that such utility lines and facilities are not disturbed and that the utility providers’ access to such facilities is not denied or unreasonably impaired. Grantee shall be responsible for paying all costs related to the repair of any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, licensees, or invitees. Grantee shall be responsible for paying all costs related to relocating such utilities if relocation is required in connection with Grantee’s construction, installation, use, occupancy, operation, or maintenance of the Encroachment.

3. Permitted Use. Grantee shall solely use the Easement Area to construct, install, establish, use, maintain, repair, reconstruct, reinstall, remove, and replace the Encroachment. Grantee shall not use or permit the use of the Easement Area in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the full use and enjoyment of the Property, as determined by the City.

4. Termination. Notwithstanding anything herein to the contrary, the Easement shall automatically terminate (i) upon the complete or respective partial demolition, without rebuilding within one year of such demolition, of the Encroachment within the Easement Area, such that the Easement would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Area or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act (“**ADA**”) regulations or accessibility standards; or (iii) upon written notice from the City if the City determines that the Encroachment is creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of the Property, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner.

5. Maintenance and Repairs. At no cost to the City, Grantee shall construct the Encroachment in accordance with the plans and specifications approved by DOTE and in accordance with applicable code standards. Once installed, Grantee shall maintain the Encroachment in continuous good condition and repair, ordinary wear and tear excepted, at no cost to the City. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, regulations, governmental standards, guidelines, and requirements.

6. Insurance; Indemnification. At all times, and in addition to whatever other insurance and bond requirements the City may from time to time require, Grantee, its successors-in-interest, and assigns shall continuously maintain or cause to be continuously maintained (i) a policy of Commercial General Liability insurance, naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require; or (ii) an umbrella policy, naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Such insurance shall be issued by insurance companies reasonably acceptable to the City. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, before undertaking any construction activities within the Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Encroachment, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, reasonable attorneys' fees), liability, and damages suffered or incurred by, or asserted against, the City in connection with the use, construction, maintenance, repair, and all other matters associated with the Encroachment and this grant of easement.

7. Access by City Departments. Grantee shall ensure continuous, unrestricted access to the Easement Area (24 hours/day, 7 days/week, 52 weeks/year) to the City for inspection and any other municipal purpose.

8. No Liens. Grantee shall not permit any mechanics liens to attach to the Easement Area in connection with the construction, installation, use, operation, maintenance, repair, reconstruction, removal, or replacement of the Encroachment.

9. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have the right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the Benefitted Property until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's Office to memorialize any outstanding amounts due under this instrument.

10. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

11. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law. All actions concerning or related to this instrument shall be brought in the Hamilton County Court of Common Pleas, and Grantee agrees that venue in such court is proper.

12. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal

delivery to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

13. Counterparts and Electronic Signatures. This instrument may be executed and delivered by electronic signature; any original signatures initially delivered electronically shall be physically delivered as soon as reasonably possible. The parties hereto may execute this instrument in two or more counterparts, and each executed counterpart shall be considered an original.

14. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description – Benefitted Property*
Exhibit B – *Survey*
Exhibit C – *Legal Description – Easement Area*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "**Effective Date**").

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Approved as to Form by:

Assistant City Solicitor

[Grantee Signature Page Follows]

ACCEPTED AND AGREED TO BY:

101 WEST FIFTH LLC,
an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of **101 WEST FIFTH LLC**, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, OH 45202

EXHIBIT A
to Grant of Easement

Legal Description – Benefitted Property

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202
Auditor's Parcel No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of In Lots 265, 266, 267, 290, 291 and 292 by Israel Ludlow and Joel Williams as recorded in Deed Book E-2, Pages 66 and 67 Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

From the intersection of the South line of Fifth Street (now a 76-foot street) and the east line of Elm Street (now a 76-foot street) (as Fifth Street and Elm Street were widened by Ordinance No. 366-1985 of Cincinnati City Council, passed August 7, 1985); thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 192.69 feet to the Place of Beginning; thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 196.00 feet to the intersection of the south line of Fifth Street as widened and the west line of Race Street (now a 68 foot street as widened by the above Ordinance No. 366- 1985); thence along the west line of Race Street as widened South 8° 58' 50" East for a distance of 234.36 feet to a point in a line 154.00 feet north of and parallel with the north line of Fourth Street (a 66 foot street); thence along said line South 81° 11' West for a distance of 196.92 feet to a point in a line perpendicular to the south line of Fifth Street as widened at a point in the south line 196.00 feet West of Race Street as widened; thence along said perpendicular line North 8° 45' 20" West for a distance of 234.57 feet to the Place of Beginning.

Containing an area of 46,063 square feet, more or less.

EXHIBIT B
to Grant of Easement
Survey

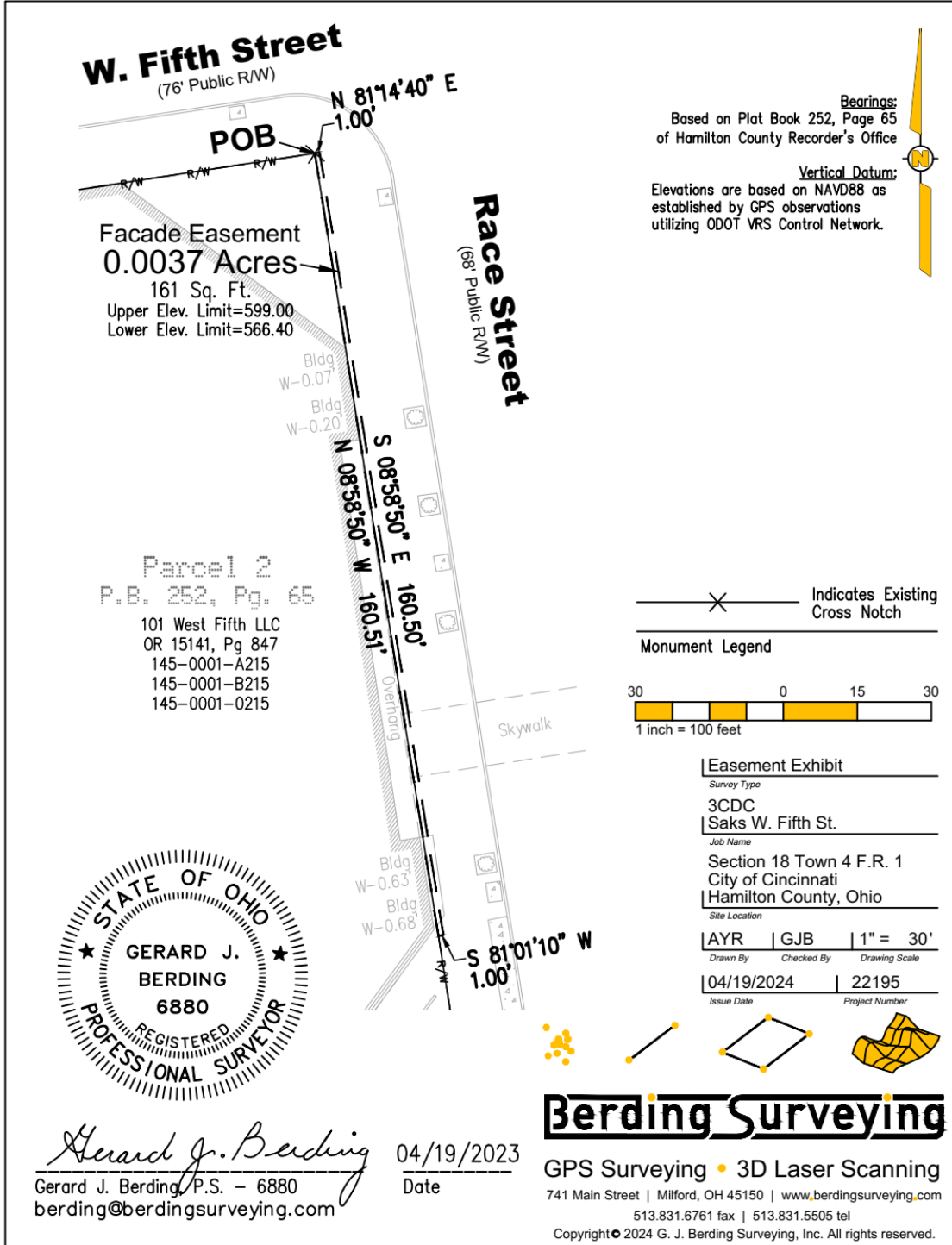
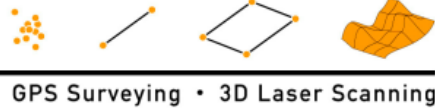


EXHIBIT C
to Grant of Easement

Legal Description – Easement Area

Berding Surveying



Description for: 3CDC – 0.0037 Acre Facade Easement
Location: Race Street, City of Cincinnati

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at an existing cross notch at the intersection of the south line of W. Fifth Street and the west line of Race Street, said point being the northeast corner of a tract conveyed to City of Cincinnati in Deed Book 4322, Page 1324 of the Hamilton County Recorder's Office;

Thence North 81°14'40" East, 1.00 feet;

Thence South 08°58'50" East, 160.50 feet;

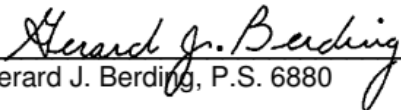
Thence South 81°01'10" West, 1.00 feet to a point in the west line of aforementioned Race Street;

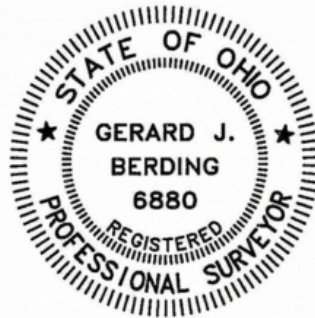
Thence with the west line of said Race Street, North 08°58'50" West, 160.51 feet to the **POINT OF BEGINNING.**

CONTAINING 0.0037 ACRES. Subject to legal highways and easements of record. The described easement lies entirely within the right of way of Race Street. The upper elevation limit of the easement is 566.40 feet and the lower elevation limit of the easement is 599.00 feet.

The bearings shown hereon are based on Plat book 252, Page 65 of the Hamilton County Recorder's Office. The vertical datum is based on NAVD88 as established by GPS observations utilizing ODOT VRS Control Network.

Prepared by G.J. BERDING SURVEYING, INC. on April 19, 2024. Based on Easement Exhibit prepared by G.J. BERDING SURVEYING, INC. on April 19, 2024.


Gerard J. Berding, P.S. 6880



04/19/2024
Date

G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

Exhibit F

to Property Sale Agreement

Additional City 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

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” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

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

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

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

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

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

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

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

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

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

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

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

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

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 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.

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

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

Attachment B

Legal Description



GPS Surveying • 3D Laser Scanning

Description for: 3CDC – 0.0382 Acre Street Sale
Location: W. Fifth Street & Race Street, City of Cincinnati

Situated in Section 18, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at an existing cross notch at the intersection of the west line of Race Street and the south line of W. Fifth Street, said point being the northeast corner of a tract conveyed to City of Cincinnati in Deed Book 4322, Page 1324 of the Hamilton County Recorder's Office;

Thence along the south line of said W. Fifth Street, South 81°14'40" West, 196.00 feet to a set cross notch;

Thence leaving said south line, North 08°45'20" West, 8.50 feet to a set cross notch;

Thence North 81°14'40" East, 195.97 feet to a set cross notch;

Thence South 08°58'50" East, 8.50 feet to the **POINT OF BEGINNING**.

CONTAINING 0.0382 ACRES. Together with and subject to all easements of record.

The bearings shown hereon are based on Plat book 252, Page 65 of the Hamilton County Recorder's Office.

Prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024. Based on Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on March 5, 2024.

The above-described area being part of W. Fifth Street right of way and is subject to additional easement area for utilities that may exist in the sale area.


Timothy Schwoeppe, P.S. 8410

3-5-2024
Date



G.J. Berding Surveying, Inc.

741 Main Street • Milford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com