

Contract no. _____

Property: Lunken Airport – Lease Areas 41 & 45 (Hangar 30) – Expansion for Lease Areas 59, 60, & 61
500 Wilmer Avenue

FIRST AMENDMENT TO AMENDED AND RESTATED LUNKEN AIRPORT LEASE AGREEMENT

(Addition of property to Lease Area)

This First Amendment to the Amended and Restated Lunken Airport Lease Agreement (this “**Amendment**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **JGAS AVIATION, LLC**, an Ohio limited liability company, the address of which is 6265 Hunters Trail, Cincinnati, Ohio 45243 (“**Lessee**”).

Recitals:

A. The City owns the property known as Lunken Airport (the “**Airport**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. The City and Lessee are parties to that certain *Amended and Restated Lunken Airport Lease Agreement* dated April 2, 2024 (the “**Lease**”), pursuant to which Lessee leases from the City the portion of the Airport known as Lease Areas 41 & 45 and the hangar thereon known as Hangar 30 (the “**Leased Premises**”). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Lease.

C. The City owns approximately 6.41 acres of undeveloped vacant land formerly used as runway safety zone, identified as Lease Areas 59, 60, and 61, as more particularly depicted on Exhibit A (*Exhibit A-1 of Ground Lease-Site Map– Lease Area Expansion Property*) hereto (the “**Lease Area Expansion Property**”).

D. Lessee desires to amend the Lease to extend the term by an additional five years and add the Lease Area Expansion Property to the Lease to expand its operation and construct additional hangars and ramp space, as further detailed in Exhibit B (*Work*) hereto (the “**Work**”).

E. The City has determined that eliminating competitive bidding in connection with the City’s lease of the Lease Area Expansion Property is in the best interest of the City because the City has determined that Lessee’s use of the Lease Area Expansion Property for the expansion of Lessee’s business is a unique and appropriate use of the Lease Area Expansion Property that will benefit the Airport.

F. The rent set forth in this Lease reflects the current fair market rental value of the Leased Premises, as determined by analysis by the City’s Real Estate Services Division and the Airport Manager taking into consideration airport industry standards and FAA requirements.

G. Cincinnati Planning Commission, having the authority to approve the change in the use of City owned property, approved the City’s lease of the Lease Area Expansion Property to Lessee at its meeting on June 6, 2025.

H. Execution of this Lease was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____.

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

{00420169-1}

1. **Term.** That Section 2, "Term; Renewal Periods", subsection B, "Renewal Periods," of the Lease is hereby deleted in its entirety and replaced with the following:

(B) Renewals Periods (5-years each, up to 45 years). Provided Lessee is not in default under this Lease at the time it exercises each renewal option, Lessee shall have the option to extend the Term of this Lease, for eight renewal periods of 5 years each (for a total Term, including the initial Term, of 45 Lease Years), exercisable by giving written notice thereof to the City at least ninety (90) days (but no earlier than 9 months) prior to the expiration of the initial Term or then current renewal period (each, a **"Written Notice of Renewal"**). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 8th Renewal Period, there shall be no additional renewal options). Lessee acknowledges and understands any requests for additional renewals will be denied so as to not violate any FAA Grant Assurances. As used herein, the **"Term"** of this Lease means the Initial Term and, if applicable, the Renewal Periods.

2. **Grant.** The City does hereby lease the Lease Area Expansion Property to Lessee, and Lessee does hereby lease the Lease Area Expansion Property from the City, on the terms and conditions set forth in the Lease, as hereby amended. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions, and other matters of record affecting the Lease Area Expansion Property as of the Effective Date. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Lease Area Expansion Property or the suitability or fitness of the Lease Area Expansion Property for any purpose, and, on the Effective Date (defined below), Lessee shall accept the Lease Area Expansion Property in "as is," "where is" condition with all faults and defects, known or unknown. Lessee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Lease Area Expansion Property. Lessee will be deemed the owner of the Leasehold Improvements on the Lease Area Expansion Property until expiration of the Term or termination of the Lease, whichever is earlier. Title and ownership to the Leasehold Improvements on the Lease Area Expansion Property shall vest with the City on expiration of the Term or termination of the Lease, whichever is earlier.

3. **Exhibit A-1.** Exhibit A (Site Map) to the Lease is hereby amended and supplemented by adding Exhibit A of this Amendment attached hereto as Exhibit A-1 of the Lease. For clarity, this amendment is solely intended to add the attached Exhibit A of this Amendment to the Exhibit A of the Lease and is not intended to delete any portion of Exhibit A as it currently exists in the Lease. All references within the Lease to Exhibit A shall be read to refer to Exhibit A and Exhibit A-1 on and after the Effective Date. Any reference in the Lease to the Property or Leased Premises shall be deemed to include all of the real property depicted in Exhibit A and Exhibit A-1, including but not limited to the Lease Area Expansion Property, as applicable. All provisions of the Lease shall apply to the Lease Area Expansion Property.

4 **Rent.**

(A) Rent Commencement Date. Beginning on the Effective Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month, in the amounts calculated in this section for the entirety of the Lease Area Expansion Property. This amount is in addition to the annual base rent in the Lease. The monthly installment of rent for any partial calendar month at the beginning or end of the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in no event shall annual base rent decrease.

(i) Annual Base Rent. From the Effective Date until expiration of Lease Year 10, (May 31, 2029) annual base rent for the Lease Area Expansion Property shall be equal to the following amount:

\$93,177/year (\$7,764.75/month)

(ii) Renewal Period Rent Increases. The annual base rent for the Lease Area Expansion Property shall increase in accordance with all applicable provisions of the Lease including the CPI adjustment provision and the fair market value adjustments provision in the Lease, Sections 3(iii) and 3(iv). However, the Leasehold Improvements to the Lease Area Expansion Property will not be included in calculating the annual base rent during the Term as such will be considered owned by Lessee.

5. Parties' Right to Terminate Early if Lessee Fails to Commence the Work. Notwithstanding anything in this Lease to the contrary, each party shall have the right to terminate this Lease early, by giving a Termination Notice to the other party no less than 30 days prior to the effective date of termination as specified in the Termination Notice, if Lessee fails to notify DOTE in writing that it has commenced the Work for the specific lease area of the Lease Area Expansion Property in accordance with the timeline provided for in Exhibit B. (the "Deadline"). This termination provision shall only apply to each lease area of the Lease Area Expansion Property individually and as such corresponds to the timeline provided for in Exhibit B. If a lease area is terminated from the Lease, then the annual base rent will be recalculated for the remaining lease areas remaining under the Lease. Upon such termination, neither party shall thereafter have any rights or obligations hereunder (except that Lessee shall remove its stored materials and do all things necessary to restore the Leased Premises to the same condition it was in on the Effective Date, unless otherwise agreed to by the City). At such time as Lessee commences each phase of the Work for the specific lease area of the Lease Area Expansion Property (and provided neither party has previously delivered a Termination Notice to the other party), the parties' termination rights under this paragraph shall automatically terminate for such lease area.

6. Potential Access Roads. The City may elect to develop or lease additional lease areas in the areas surrounding the Lease Premises and the Lease Area Expansion Property. If the City develops or leases such areas, then the City or other persons may construct access roads or improve the pavements to create access roads to the surrounding areas. The access roads may be placed near or along the border of the Leased Premise and the Lease Area Expansion Property. After creation of the access roads, Lessee shall at all times keep such access roads open and not impede or place anything on the access roads. The creation of the access roads will not reduce Lessee's rents or reduce any amounts owed to the City under this Lease. Lessee shall be responsible for its share of the costs to maintain and improve the access roads if Lessee uses the access roads.

7. Coordinated Report Conditions (CR #25-2025). All conditions set forth in the City's Coordinated Report #25-2025 shall apply to the Lease and Lease Area Expansion Property (summarized generally as follows):

(A) Metropolitan Sewer District of Greater Cincinnati and Stormwater Management Utility. Lessee shall comply with all requirements of the Metropolitan Sewer District of Greater Cincinnati ("MSD"), the City's Stormwater Management Utility (SMU), and the Ohio EPA with respect to sewer service, storm water, detention, and flood plain requirements. Future development requires all sanitary sewer connections to be flood proofed or plumbing fixtures must be 1 foot above the base flood elevation.

(B) Greater Cincinnati Water Works. Lessee must conform to Greater Cincinnati Water Works' requirements for water service, including backflow prevention requirements, entirely at their cost. No building, structure or improvement of any kind shall be made in the lease area which will interfere with access to or operation of the existing water infrastructure. The proposed New Fuel Farm (Phase 1) overlaps with the existing GCWW infrastructure which provides fire protection to this location of the airport. GCWW is recommending this phase be moved to an area where there is no conflict with GCWW infrastructure. GCWW will allow other uses of the area that do not create conflicts with the public water main such as a parking lot etc. Structures or uses that may contaminate the soil in the vicinity of the public water main will not be allowed.

(C) Buildings & Inspections. If the Leased Premises do not constitute a separate tax parcel on the Hamilton County Auditor's tax maps, Lessee shall take all steps to accomplish the same, in cooperation with DOTE and the City's Real Estate Services Division. Lessee shall construct and maintain

all structures in compliance with Section 1109-3.5 of the Cincinnati Municipal Code. Any and all construction, additions, alterations, repairs, of the structures, HVAAC, Plumbing, or electrical systems shall require building permits and flood development permits and all work shall be in accordance with flood development regulations.

8. Ratification. All terms of the Lease not amended by this Amendment or not inconsistent with this Amendment shall remain in full force and effect, and by this reference are incorporated herein as if fully rewritten herein. The Lease, as amended by this Amendment, is hereby ratified by the parties.

9. Counterparts; E-Signature. The parties hereto agree that this Amendment may be executed and delivered by electronic signature, which shall have the same force and effect as an original signature. Electronic signatures may be delivered via email or other electronic means agreed upon by the parties. The parties hereto may execute this Amendment in two or more counterparts, and each executed counterpart shall be considered an original and all of which shall constitute one and the same Amendment.

10. Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Exhibit A-1 of Ground Lease-Site Map– Lease Area Expansion Property*
Exhibit B- *Work*
Exhibit C – *Construction Requirements*
Exhibit D – *Additional Requirements*

Executed by the parties on the dates of acknowledgement below their respective signatures, effective as of the later of such dates (the “**Effective Date**”).

JGAS AVIATION LLC, an Ohio limited liability company

By: _____

Printed Name: _____

Title: _____

Date: _____, 202__

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__ by _____, the _____ of **JGAS AVIATION LLC**, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

[City Signature Page Follows]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

Recommended by:

Greg Long, P.E., Interim Director
Department of Transportation and Engineering

Jaime Edrosa, Division Manager, Lunken Airport

Approved as to Form:

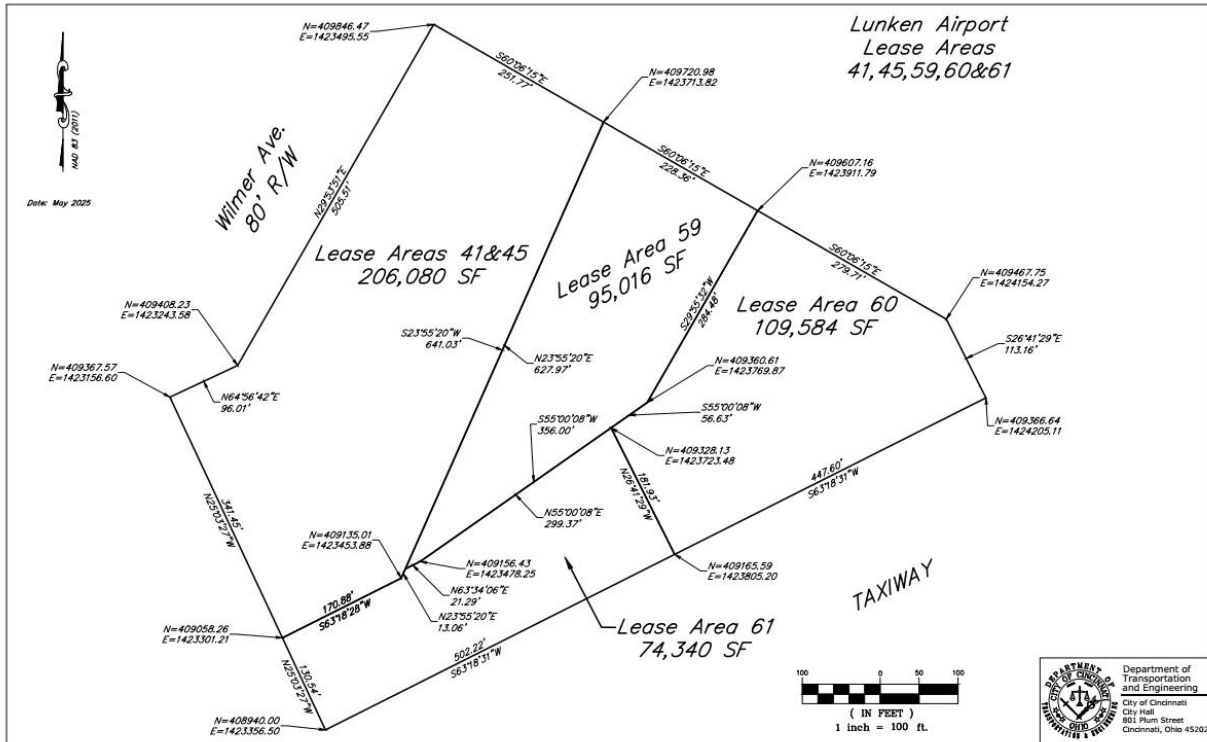
Assistant City Solicitor

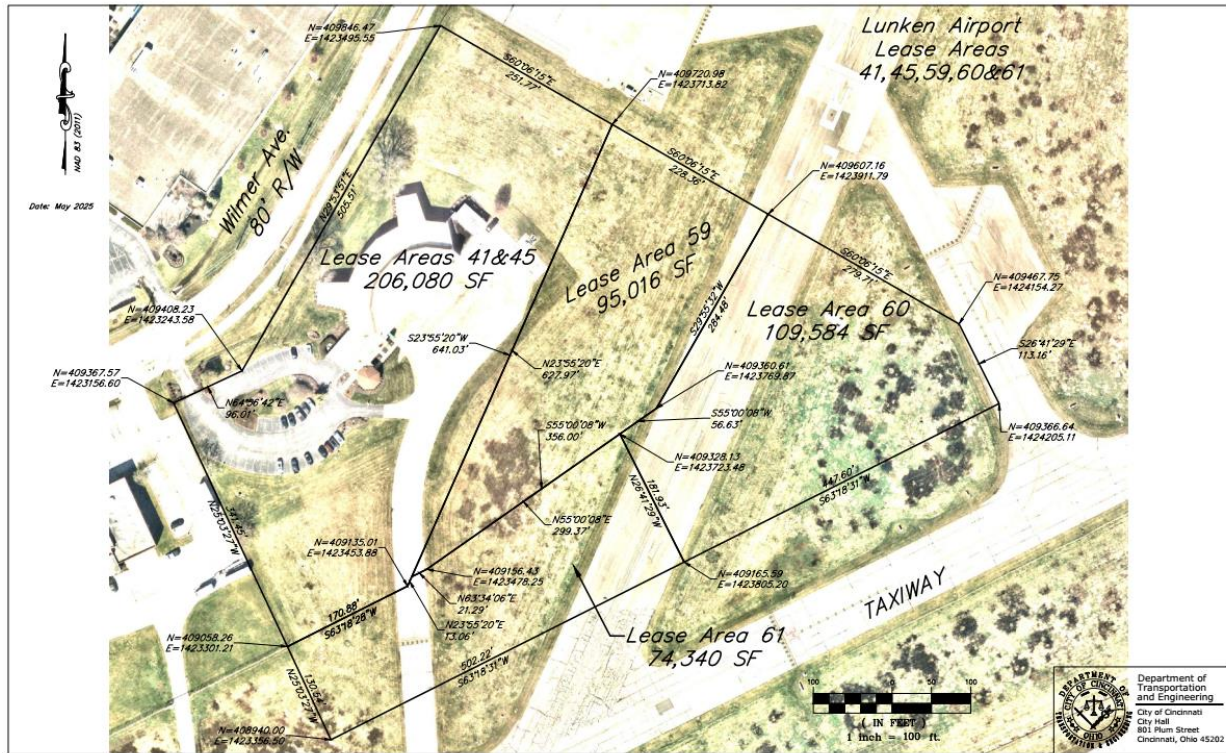
No Certification of Funds

By: _____
Steve Webb, City Finance Director

EXHIBIT A to Amendment

Exhibit A-1 of Ground Lease-Site Map– Lease Area Expansion Property





**CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION
and ENGINEERING**

**LUNKEN AIRPORT
LEASE AREA 59**

May 7, 2025

Situate in Section 19, Fractional Range 2, Town 4, Columbia Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

Beginning at a point with coordinates (409,720.98 N., 1,423,713.82 E.); thence South 60°06'15" East, 228.36 feet to a point with coordinates (409,607.16 N., 1,423,911.79 E.); thence South 29°55'32" West, 284.48 feet to a point with coordinates (409,360.61 N., 1,423,769.87 E.); thence South 55°00'08" West, 356.00 feet to a point with coordinates (409,156.43 N., 1,423,478.25 E.); thence South 63°34'06" West, 21.29 feet to a point; thence North 23°55'20" East, 627.97 feet to the Place of Beginning. Containing 95,016 square feet (2.1813 acres) of land, more or less. Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2011). Subject to all legal highways, easements and restrictions of record.

**CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION
and ENGINEERING**

**LUNKEN AIRPORT
LEASE AREA 60**

May 7, 2025

Situate in Section 19, Fractional Range 2, Town 4, Columbia Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

Beginning at a point with coordinates (409,607.16 N., 1,423,911.79 E.); thence South 60°06'15" East, 279.71 feet to a point with coordinates (409,467.75 N., 1,424,154.27 E.); thence South 26°41'29" East, 113.16 feet to a point with coordinates (409,366.64 N., 1,424,205.11 E.); thence South 63°18'31" West, 447.60 feet to a point with coordinates (409,165.59 N., 1,423,805.20 E.); thence North 26°41'29" West, 181.93 feet to a point with coordinates (409,328.13 N., 1,423,723.48 E.); thence North 55°00'08" East, 56.63 feet to a point with coordinates (409,360.61 N., 1,423,769.87 E.); thence North 29°55'32" East, 284.48 feet to the Place of Beginning.

Containing 109,584 square feet (2.5157 acres) of land, more or less.

Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2011). Subject to all legal highways, easements and restrictions of record.

**CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION
and ENGINEERING**

**LUNKEN AIRPORT
LEASE AREA 61
May 7, 2025**

Situate in Section 19, Fractional Range 2, Town 4, Columbia Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

Beginning at a point with coordinates (409,058.26 N., 1,423,301.21 E.); thence North $63^{\circ}18'28''$ East, 170.88 feet to a point with coordinates (409,135.01 N., 1,423,453.88 E.); thence North $23^{\circ}55'20''$ East, 13.06 feet to a point; thence North $63^{\circ}34'06''$ East, 21.29 feet to a point with coordinates (409,156.43 N., 1,423,478.25 E.); thence North $55^{\circ}00'08''$ East, 299.37 feet to a point with coordinates (409,328.13 N., 1,423,723.48 E.); thence South $26^{\circ}41'29''$ East, 181.93 feet to a point with coordinates (409,165.59 N., 1,423,805.20 E.); thence South $63^{\circ}18'31''$ West, 502.22 feet to a point with coordinates (408,940.00 N., 1,423,356.50 E.); thence North $25^{\circ}03'27''$ West, 130.54 feet to the Place of Beginning. Containing 74,340 square feet (1.7066 acres) of land, more or less. Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2011). Subject to all legal highways, easements and restrictions of record.

Exhibit B
to
Amendment

Work

DESCRIPTION OF WORK

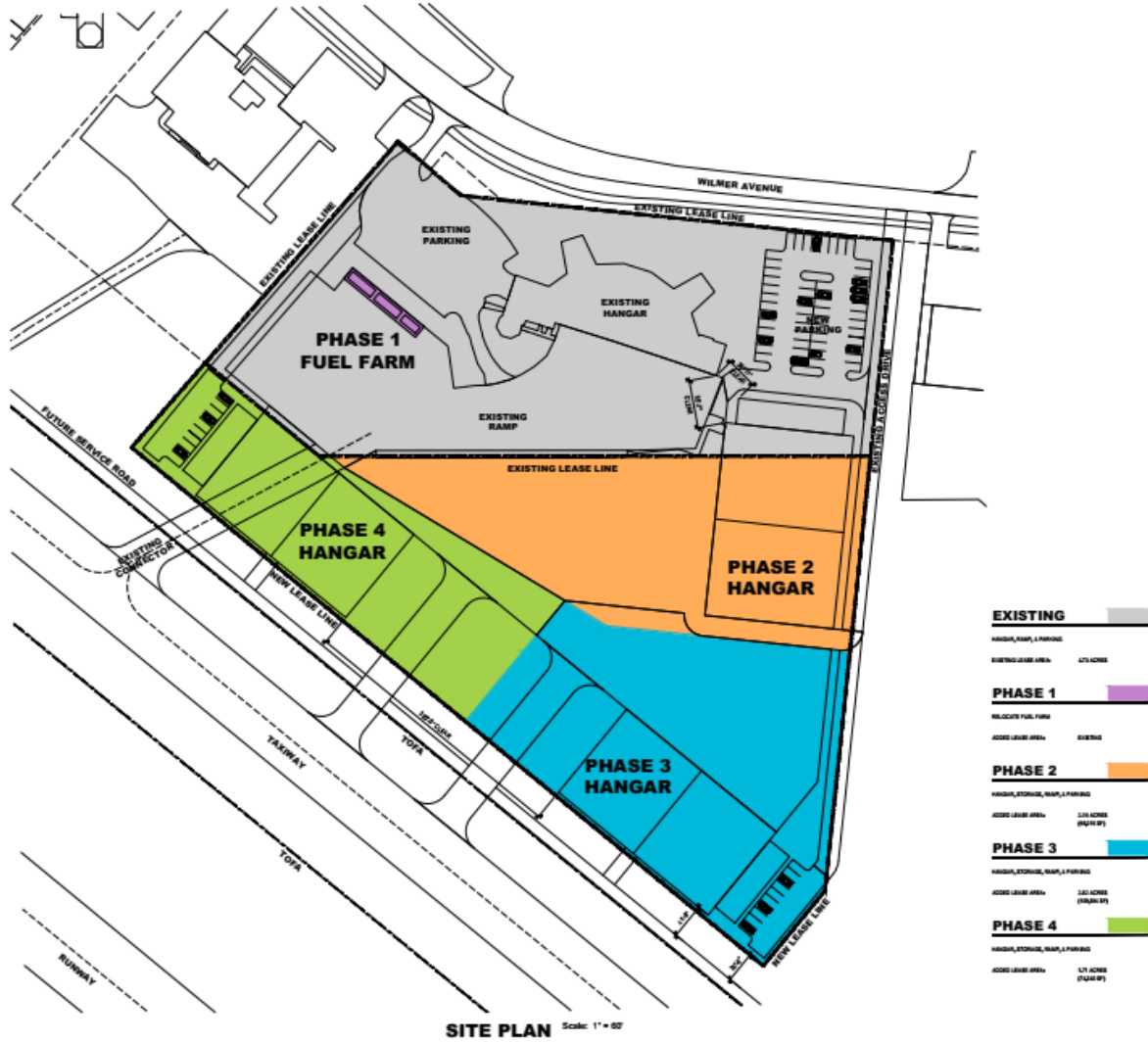
Lessee wants to develop and build out 90,000 to 120,000 square feet of hangar/shop space along with 140,000 square feet of ramp and taxi way in four phases. The early estimates for all phases range from \$20m to \$40M. The phases are generally depicted on the map below.

Phase 1 which is partially within the existing Lease Premises, will include 30,000 SF +/- of hangar space, 30,000 SF +/- of ramp space and additional vehicle parking. Lessee intends to start Phase 1 as soon as the Amendment is signed. For Phases 2, 3, and 4, the below graph provides the Work commencement dates for each phase and will be used to determine the termination date as provided in Section 4 (*Parties' Right to Terminate Early if Lessee Fails to Commence the Work*) of the Amendment.

<u>Phases</u>	<u>Deadline to Commence Work for the Phase</u>
Phase 2 - Lease Area 59	December 31, 2026
Phase 3 – Lease Area 60	December 31, 2030
Phase 4 – Lease Area 61	December 31, 2034

Lessee shall provide the City with schedules and detailed plans for the Work and otherwise comply with Exhibits C and D.

LUNKEN AIRPORT CINCINNATI



WAYPOINT MASTER PLAN
11.14 ACRES (4.73 EXISTING, 6.41 NEW)



EXHIBIT C
To Amendment

CONSTRUCTION REQUIREMENTS

As used in this exhibit, the word "Project" shall mean the Work.

1. Construction Schedule.

(A) Verification of Actual Commencement and Completion Dates. Lessee shall notify DOTE promptly after commencing the Work, and shall notify DOTE within 10 days following the date on which Lessee completes the Work (a "**Notice of Completion**").

2. Design & Construction. Prior to commencing construction, Lessee shall provide DOTE with plans and specifications for the Work for DOTE's review and approval (as approved, the "**Final Plans**"). Once approved by DOTE, Lessee shall not make any changes without DOTE's written approval. Lessee shall obtain all other required approvals pertaining to the Final Plans, and any and all changes thereto, from the City's Building Department. Lessee shall cause the Work to be performed in accordance with the Final Plans. All construction shall be performed in a good and workmanlike manner and in accordance with all legal requirements. All materials and workmanship shall be of good quality, and upon completion of construction, all improvements will be structurally safe and sound, and all parts therefor and all mechanical equipment therein and all utilities serving the improvements will be in good working order and will have been properly installed, tested, and paid for. Upon completion of construction, Lessee shall deliver a copy of all final "as-built" drawings to DOTE.

3. City's Approval of General Contractor and Subcontractors. Lessee's general contractor and subcontractors for the Project shall be subject to the prior written approval of DOTE. Lessee shall not hire any contractor or subcontractor who is listed on the Federal Debarred List or State Debarred List, or any contractor or subcontractor who is identified as being debarred on the City's Vendor's Performance list (as identified on the applicable federal, state and local government websites).

4. Monthly Project Reports. Until such time as the Work has been completed, Lessee shall submit a monthly progress report to DOTE so that the City can be kept up-to-date on all matters pertaining to the Work.

5. Inspections. The City shall have the right to periodically inspect the Work. If the City discovers any defects in the Work or deviation from the Final Plans, Lessee shall promptly correct the same upon receipt of written notice from the City. The City shall use reasonable efforts to verbally notify Lessee prior to each inspection (except that no prior notice shall be needed in the event of inspections by the City's Building Department or Health Department), and shall use reasonable efforts not to disrupt construction.

6. Signs. During construction, the City shall have the right to review and approve all construction-related, financing-related and other signs relating to the Project that are posted at the site.

7. No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Premises in connection with the Project. If any such liens attach, Lessee shall cause them to be released within thirty (30) days after receiving notification of the filing thereof.

8. Insurance. Throughout construction of the Project, Lessee shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least Two Million Dollars (\$2,000,000) per occurrence, combined single limit, 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 Lessee's construction lenders, and (v) such other insurance as

may be reasonably required by the City. All insurance maintained pursuant to this Lease shall be written by companies of recognized responsibility and credit reasonably acceptable to the City and authorized to do business in the State of Ohio, and in the form customarily in use or otherwise reasonably acceptable to the City. Lessee shall provide all applicable certificates of insurance to the City prior to the commencement of construction.

9. Environmental Issues. During construction, Lessee shall not accumulate, process, store, treat, or dispose of any Hazardous Materials (as hereinafter defined) at the site, nor shall Lessee allow any other person or entity to do so, except that Lessee may, in accordance with all applicable legal requirements, accumulate, process, store, treat and dispose of such Hazardous Materials as are necessary or incidental in connection with the Project. Under no circumstances shall the City have any liability to Lessee, nor shall the City be expected to take any remedial or other actions, with respect to pre-existing Hazardous Materials or other pre-existing environmental conditions at the site. For purposes of this Lease, "Hazardous Materials" shall mean: (i) any "hazardous substance," "pollutant" or "contaminant" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14) and (33) or 40 C.F.R. Part 302 (including asbestos, asbestos containing materials and polychlorinated biphenyls (PCBs)), and (ii) any substance containing "petroleum," as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6991(8), or 40 C.F.R. §280.12.

10. Prevailing Wage. Lessee shall comply with applicable prevailing wages for the Project as determined by state and local law. If available on the Effective Date, a copy of the City's prevailing wage determination is attached as *Addendum I* to this Exhibit. Lessee acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City, its employees or agents regarding applicability of state and local prevailing wage laws and that Lessee's decisions regarding applicability of and compliance with such laws shall be based upon its own and its counsel's investigations, determinations and opinions. Without limitation of other rights and remedies available to the City under this Lease or under state or local laws, Lessee shall defend, indemnify and hold the City harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against them as a result of or arising from Lessee's failure to comply with applicable prevailing wage laws.

* * *

EXHIBIT D
To Amendment
ADDITIONAL REQUIREMENTS

As used in this exhibit, the term "Project" shall mean the Work, and the term "Developer" shall mean Lessee.

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 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, without limitation, 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 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 (“**CMC**”) Chapter 321. CMC 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 (“**ORC**”), 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 CMC Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City’s written demand.

(F) Small Business Enterprise Program.¹

(i) Applicability. The applicability of CMC Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. CMC 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 CMC 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 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 Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

- (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 ORC Section 2921.12.

(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 CMC 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. CMC Chapter 325 (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. CMC Chapter 325 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 CMC Chapter 325, 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 CMC Chapter 319, which provides for a "Prompt Payment System", may apply to this Agreement. CMC 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 ORC Section 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 CMC Chapter 326 (Wage Enforcement) (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

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

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

Theft or Payroll Fraud, shall provide an “Ampended 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 Work Period 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 ORC Section 3735.67, et seq., or Job Creation Tax Credits pursuant to ORC Section 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.