

CONTRACT NO: _____

PUBLIC INFRASTRUCTURE FUNDING AGREEMENT

between the

CITY OF CINCINNATI

and

OTR HOLDINGS, INC.,
an Ohio non-profit corporation

Project: Court Street Streetscape Redevelopment

Dated as of _____, 2020

PUBLIC INFRASTRUCTURE FUNDING AGREEMENT

This PUBLIC INFRASTRUCTURE FUNDING AGREEMENT (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **OTR HOLDINGS, INC.**, an Ohio non-profit corporation, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, OH 45202 (“**Developer**”).

Recitals:

A. In the northern portion of the City’s central business district, in an area more particularly depicted in the attached Exhibit A (Site Plan) (the “**Area**”), the City seeks to construct certain public streetscape improvements, including creation of a new public plaza (collectively, the “**Public Infrastructure Improvements**”), as further described in the attached Exhibit B (Public Infrastructure Improvements).

B. Developer owns or controls several properties in the Area and intends on conducting certain private improvements on such properties and, with consent and approval of the owners, on several other properties in the Area, as further described in the attached Exhibit C (Private Improvements) (the “**Private Improvements**”). Developer has conducted certain fundraising and intends to contribute significant funding for completion of the Public Infrastructure Improvements. Finally, Developer has invested \$2,340,800 in acquiring and developing real property that is proximate to the Area for the purpose of creating a public surface parking lot to ensure that there is adequate, convenient, and affordable parking available to serve the businesses in the Area.

C. The parties have determined that coordinated bidding and construction of the Public Infrastructure Improvements and the Private Improvements are in all parties’ best interests, providing both cost and other efficiencies. The completion of the Public Infrastructure Improvements and the Private Improvements (as defined below) are referred to herein as the “**Project**.”

D. The parties have determined that Developer will, in accordance with the terms herein, bid out and contract for construction of the Project with a single construction manager (the “**General Contractor**”), who will in turn contract with necessary subcontractors for completion of the Project.

E. In order to generate increased economic activity and provide community programming and events, Developer also seeks to provide certain management services to the City for the plaza and streetscape that will be developed as part of the Project. Therefore, the parties seek to enter into a Professional Services Management Agreement substantially in the form attached as Exhibit D (Professional Services Management Agreement) (the “**Management Agreement**”).

F. The City, upon the recommendation of the City’s Department of Community and Economic Development (“**DCED**”), has agreed to pay for a portion of the Public Infrastructure Improvements using funds from the Central Business District-OTR East Tax Increment Financing District (the “**TIF 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 \$4,000,000 (the “**Funds**”).

G. The 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; a preliminary sources and uses budget for the Public Infrastructure Improvements and the Private Improvements is attached as Exhibit E (Project Budget).

H. 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 streetscape and public space redevelopments throughout the City.

I. 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; is in accordance with the provisions of applicable federal, state, and local laws and requirements; is in accordance with the public purpose of upgrading streetscapes, pedestrian infrastructure in the Area; and finds that the Public Infrastructure Improvements will both benefit and serve the TIF District, as the City believes that the Public Infrastructure Improvements will create beneficial economic impacts for the TIF District and will provide job opportunities to its residents.

J. The Funds were appropriated by Ordinance No. [____], passed by City Council on [____], which authorized the execution of this Agreement and the funding of the Public Infrastructure Improvements using funds from the TIF District. City Planning Commission approved of the Project at its meeting on July 17, 2020.

NOW, THEREFORE, the parties agree as follows:

1. **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:

- (i) Project Schedule: the proposed construction schedule for completion of the Project;
- (ii) Community Engagement: information regarding community engagement activities conducted by Developer regarding the Public Infrastructure Improvements and Funds;
- (iii) Private Improvements: available information regarding the intended timing, costs, and scope of the Private Improvements and documentation of approval of impacted property owners; and
- (iv) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably request.

2. **Design Phase.**

(A) Preliminary Plans. As soon as available, if not already delivered, the parties shall deliver the following preliminary plans for each of the Private Improvements and the Public Infrastructure Improvements:

- (i) Public Infrastructure Improvements: The Developer shall coordinate with a citizen-led task force, the City’s Department of Transportation and Engineering (“**DOTE**”), and other various relevant City Departments (including Greater Cincinnati Water Works, Stormwater Management Utility, and the Metropolitan Sewer District) to develop preliminary plans and specifications for the Public Infrastructure Improvements, and the Developer shall submit such plans and specifications to City for review and approval; and
- (ii) Private Improvements: The Developer shall develop preliminary plans and specifications for the Private Improvements and deliver such plans and specifications to the City for review and approval.

(B) Final Plans.

(i) Plan Revisions. Following delivery of the preliminary plans in accordance with Section 2(A), Developer and the City shall work collaboratively to revise the preliminary plans to incorporate all parties' comments and otherwise combine the preliminary plans into a set of comprehensive construction drawings and specifications.

(ii) Final Plans. Following revision of the preliminary plans, Developer shall proceed with preparing final 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.**"

(C) Project Change Orders. 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 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 to 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 5 below.

3. Bidding Phase. Developer shall work cooperatively with the City in soliciting, reviewing, and selecting the bids for the construction of the Project. All bids shall be solicited in accordance with the City's competitive bidding requirements, as further described in Exhibit G (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 ten (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.

4. 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 E.

(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 \$6,500,000 for the Public Infrastructure Improvements. 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) Reserved.

(D) Construction Commencement and Completion. Following execution of the construction contracts described in Section 4(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.

(E) 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 Public Infrastructure Improvements and the Private Improvements and such other pertinent information pertaining to the 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 Public Infrastructure Improvements. 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 Public Infrastructure Improvements.

(F) 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.

(G) Mechanics’ Liens. Developer shall settle, have released, or obtain a bond related to any mechanics’ or other similar liens filed on any City or third-party owned real property related to the Project within 45 days of the filing of any such lien.

(H) 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.

5. 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. The parties anticipate that the Funds will only cover a portion of the cost of the 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) Reserved.

(D) Granite Curbs. At no expense to Developer and subject to availability within existing City inventory, DOTE will provide granite street curbs for installation by Developer or General Contractor as part of the Public Infrastructure Improvements; provided however, that the City-provided granite curbs shall only be used as exposed curbs. The Developer shall be responsible for all costs and expenses of transportation from City-storage to the Project site and installation of such curbs.

(E) Street Signage. Subject to the City having adequate capacity, the City will provide Developer or General Contractor with all necessary street signage, either new or previously utilized, required to be installed as part of the Public Infrastructure Improvements. Poles and foundational items for the street signage shall not be provided by the City under this section. Notwithstanding the foregoing, in the event that the City determines that it does not have the capacity and ability to produce the necessary signage, then the Developer shall be responsible for direct procurement of necessary street signage and related poles and foundational items as necessary to complete the Project in accordance with the Final Plans and this Agreement.

(F) Street Trees. Following completion of the Project but subject to funding availability, the City will provide and plant street trees within the newly installed street wells, at no expense to Developer.

(G) Parking Meters and/or Kiosks. Following completion of the Project but subject to funding availability, the City will provide and install parking meters and/or parking meter kiosks, at no expense to Developer.

(H) Street Planters. Following completion of the Project, Developer will provide street planters for the Area. Developer shall seek all necessary City approvals and any revocable street privileges necessary for any such installation.

6. Private Improvements.

(A) Costs and Funding of Private Improvements. Developer shall pay for all costs of the Private Improvements using private funds. No 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.

7. Disbursement of Funds. The City shall disburse the Funds to Developer in accordance with Exhibit F (Disbursement of Funds) hereto. At all times during construction of the Project and following completion of the Project, the City shall be deemed to be the owner of the Public Infrastructure Improvements. 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. As described in Section B of Exhibit F, the City agrees to disburse up to \$200,000 in Funds for hard construction costs incurred prior to the Effective Date, as such work will assist in maintaining pedestrian access on Court Street throughout the course of the Project.

8. Professional Services Management Agreement. Simultaneous with the execution of this Agreement, the parties agree to execute or have executed the Management Agreement. Pursuant to such Management Agreement, Developer or Developer's affiliates approved by the City will take on certain management and programming services for the City on the Court Street Plaza and will be responsible for undertaking any needed capital repairs needed during the term of the Management Agreement in order to keep the Public Infrastructure Improvements in good condition and repair. Upon execution of the Management Agreement, it is the intent of the City to terminate a certain *Maintenance Agreement for Court Street* executed between the City and The Kroger Company and dated November 15, 1988, which covers maintenance of the Area.

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 G (Additional Requirements). 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 G, of the following City programs and policies:

- (i) The requirements of the Construction Workforce Goals, as defined in Section A of Exhibit G, relating to contracting with minority-owned businesses and women-owned businesses;
- (ii) As stated above, all bids for the Project 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 G;
- (iii) the Business Enterprise program, as further described in Section F of Exhibit G; and
- (iv) Equal Employment Opportunity program, as further described in Section G of Exhibit

G.

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.

(E) Developer Administrative Fee. The City shall have no obligation to pay to Developer additional compensation for the work and services provided under this Agreement, except the disbursement of Funds in accordance with the terms herein and a reasonable administrative fee of \$200,000 dollars, which represents a 3.5% development fee for the anticipated hard costs of the Public Infrastructure Improvements, for Developer oversight and management of the Public Infrastructure Improvements. Such administrative fee shall be set forth in the final Budget as part of the Public Infrastructure Improvements and approved by the City and shall be payable following completion of the Public Infrastructure Improvements.

(F) Barricade, Street Opening, Meter Closing, and Permit Inspection Fees Payable to DOTE. Notwithstanding anything to the contrary herein, Developer acknowledges that it will be required to obtain barricade, street opening, and/or meter permits when the Project necessitates closing meters and/or opening/closing the adjoining streets or portions thereof. In consideration of the economic and community benefits afforded the City by the Project, the City agrees to waive the portion of such fees for barricade, street opening, meter closing, but not the portion of the fee allocable to DOTE's direct costs for cost of permit issuance and inspections associated with such issued permits.

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 (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) worker's compensation insurance in such amount as required by law, (iii) all insurance (including the amount of coverage) as may be required by any and all lenders for the Project, and (iv) 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 (i) 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, (ii) 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, (iii) 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, (iv) worker's compensation insurance in such amount as required by law, (v) all insurance (including the amount of coverage) as may be required by any and all lenders for the Project, and (vi) 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 thirty (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 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 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. 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, and failure to correct such failure within thirty (30) days after their 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 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 Econ. Development
Attention: Director
805 Central Avenue, Suite 700
Cincinnati, OH 45202

To Developer:
Cincinnati Center City Development
Corporation
1203 Walnut Street, 4th Floor
Cincinnati, OH 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice 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:

- (i) 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.
- (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 so that this Agreement, when executed and delivered,

shall contain 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 (if applicable) 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, 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 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 Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.
- (vii) Neither Developer (nor its affiliates) owes any outstanding fines, penalties, judgments, water, or other utility charges or other amounts 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 (3) 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) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to carry out the terms of this Agreement.

(P) 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.

17. **Exhibits**. The following exhibits are attached to this Agreement and made a part hereof:

Exhibit A – *Site Plan*

Exhibit B – *Description of Private Improvements*

Exhibit C – *Description of Public Infrastructure Improvements*

Exhibit D – *Professional Services Management Agreement*

Exhibit E – *Project Budget*

Exhibit F – *Disbursement of Funds*

Exhibit G – *Additional Requirements*

SIGNATURE PAGE FOLLOWS

The parties have executed this Agreement on the dates indicated below, effective as of the later of such dates (the **"Effective Date"**).

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____

RECOMMENDED BY:

John S. Brazina, Director
Department of Transportation and Engineering

RECOMMENDED BY:

Markiea Carter, Interim Director
Department of Community and Economic Development

APPROVED BY:

Jennifer Mackenzie, Interim Director
Department of Economic Inclusion

APPROVED BY CITY PURCHASING:

Bobbi K. Hageman, Chief Procurement Officer

APPROVED AS TO FORM BY:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____

Karen Alder, Interim City Finance Director

OTR HOLDINGS, INC.

By: _____

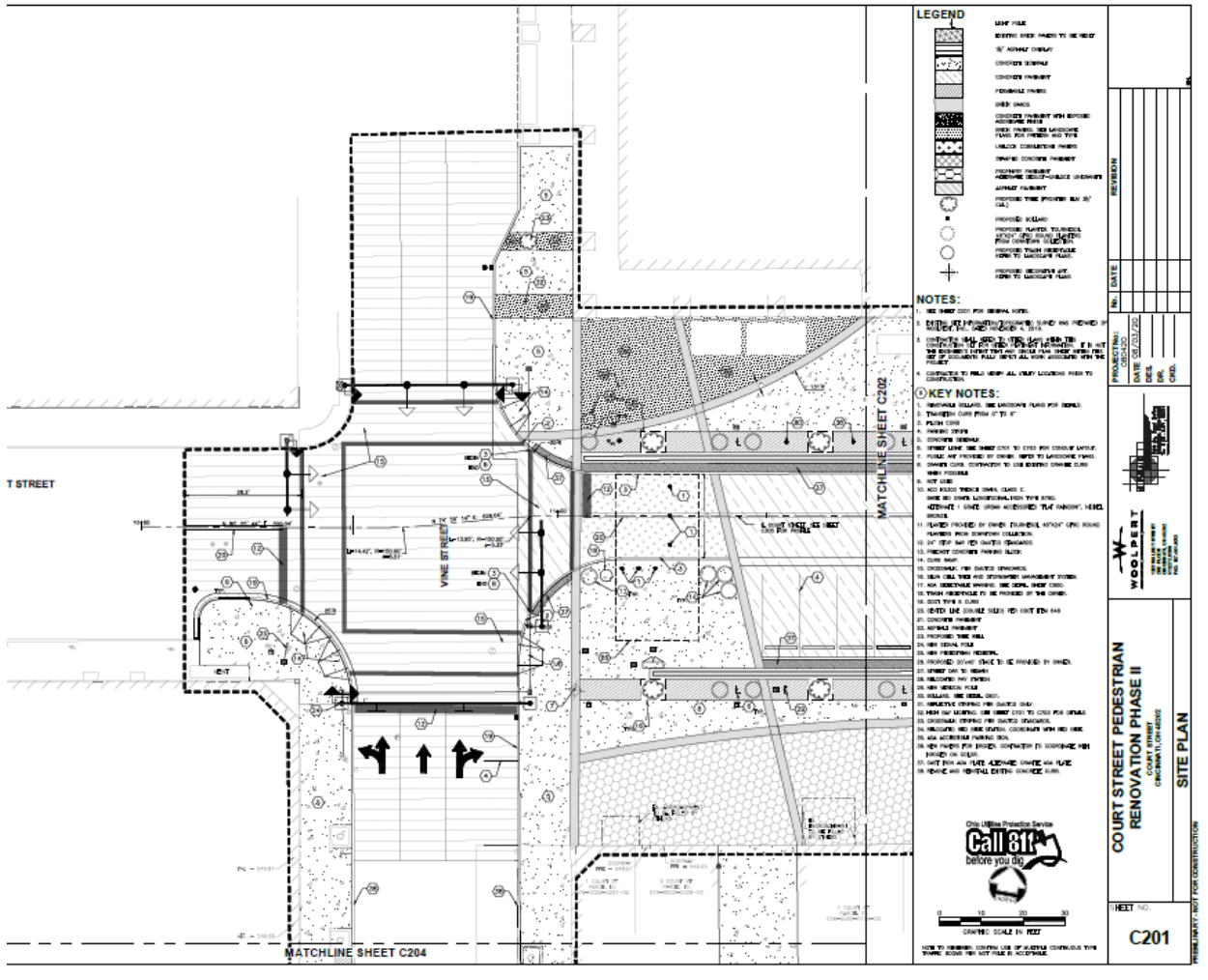
Printed name: _____

Title: _____

Date: _____

to Public Infrastructure Funding Agreement

SITE PLAN



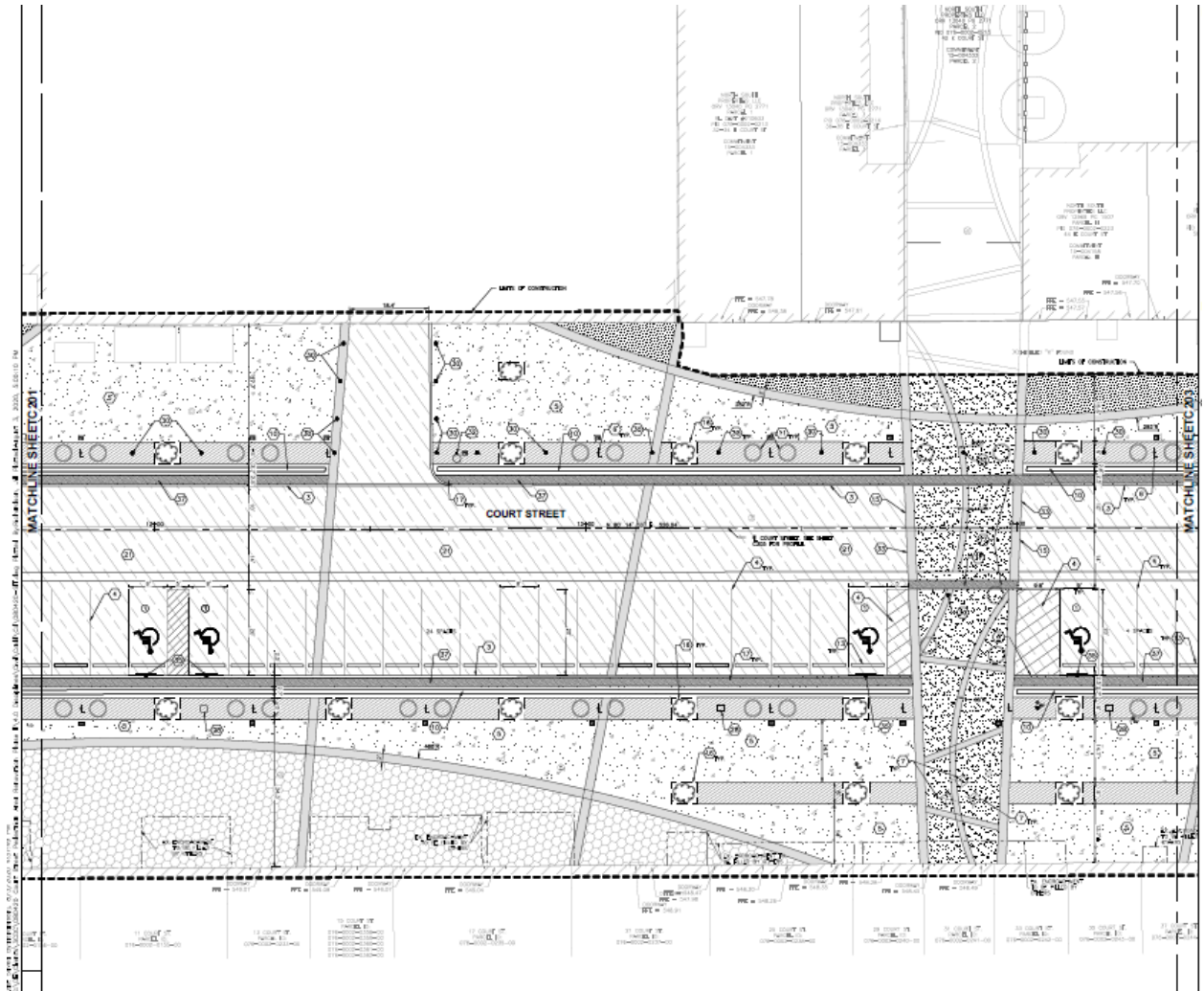


EXHIBIT B
to Public Infrastructure Funding Agreement

DESCRIPTION OF PRIVATE IMPROVEMENTS

The following descriptions is 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:

- Private Encroachments – The Developer will conduct work related to filling and sealing or rehabilitating to current building code standards all existing private encroachments onto the Court Street public right-of-way in the Project area, including all sidewalk vaults, former coal chutes, etc. Developer will conduct such work on properties owned or controlled by Developer and its affiliates and, with written approval and consent from such owners, on properties owned or controlled by third parties.
- Electric Infrastructure – The Developer will replace subsurface electrical conduit as necessary to ensure continued provision of electrical service to applicable properties and allow for future upgrades to electrical infrastructure that will support redevelopment of properties.
- Communications Infrastructure – Contingent upon resolution of outstanding issues with the utility provider, the Developer may install or upgrade communications infrastructure for applicable properties.

EXHIBIT C
to Public Infrastructure Funding Agreement

DESCRIPTION OF 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.

Public Infrastructure Description:

The Public Infrastructure Improvements will include the following:

- Roadway – The road surface of Court Street will be paved and furnished with pavement markings, incorporated into the plaza area described herein, and will provide for approximately 28 metered parking spaces.
- Plaza – A pedestrian plaza made of a concrete walk or pavers, or mix of the two, shall be built between the properties boarding the Court Street right-of-way on the North and South, including open space for pedestrian traffic adjacent to such bordering properties.
- Curbs – Granite curbs will be exposed at the Vine Street and Walnut Street ends of the project. Concrete curb, flush with adjacent surfaces, may be installed between the intersections.
- Brick Pavers – Brick pavers may be installed in the plaza area.
- Street Lighting – Installation of new street light poles (approx. 40' in height), electrical infrastructure, and lights.
- Pedestrian Lighting – Installation of new pedestrian level light poles (approx. 15' in height), electrical infrastructure, and lights.
- Trees – Installation of new trees
- Tree Grates and Wells – New street tree wells and tree grates will be installed.
- Parking Meters– Poles and foundations to support parking meters and parking meter kiosks will be installed.
- Street Signage – Installation of poles and foundations for street signage and installation or re-installation of City-provided street signage for pedestrian and vehicular traffic.
- Wayfinding and Placemaking Signage – Installation of poles and foundations for signage installations for directing and informing plaza users.
- Intersection Signals – Modifications to existing signals for the intersections of Court Street and Vine Street, as well as Court Street and Walnut Street.
- Drainage – Installation of new drainage structures and conduit connecting to existing sewer infrastructure.
- Electric Infrastructure – Installation of new subsurface electric infrastructure, including pull boxes and connecting conduit for event use. *** Duke Energy may not allow Developer to install such public infrastructure from the right-of-way to the pull boxes, in which case, Developer have no liability to the City to complete such installation. The final scope of work shall be approved by the City.*

EXHIBIT D
to Public Infrastructure Funding Agreement

PROFESSIONAL SERVICES MANAGEMENT AGREEMENT

Contract No: _____

PROFESSIONAL SERVICES MANAGEMENT AGREEMENT
(Engagement of [_____] to manage Court Street Plaza)

THIS PROFESSIONAL SERVICES MANAGEMENT AGREEMENT ("**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and [_____] an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th floor, Cincinnati, OH 45202 ("**Manager**"; being a wholly-owned subsidiary of Cincinnati Center City Development Corporation, an Ohio nonprofit corporation "**3CDC**").

RECITALS:

A. The City owns certain real property consisting of a public plaza and right-of-way in downtown Cincinnati on Court Street, as further described and depicted in the attached Exhibit A (*Description and Depiction of Court Street Plaza*) ("**Court Street Plaza**").

B. The City and OTR Holdings, Inc., a subsidiary of 3CDC, previously executed that certain *Public Infrastructure Funding Agreement*, dated October [_____] (the "**Funding Agreement**"), which provided for redevelopment of the Court Street streetscape and creation of the Court Street Plaza.

C. Court Street Plaza is intended to be a functional civic space that will generate economic activity and other benefits for the City and its citizens, and the City, through this Agreement, seeks to secure high quality management services for Court Street Plaza in order to ensure that the area is a safe and attractive space for use by citizens and visitors.

D. Manager acknowledges that its actions at all times during performance of this Agreement must conform with the level of responsibility and respect merited for the manager of a civic space, and the Manager must honor and protect the public's fundamental rights to such space.

E. Pursuant to this Agreement, the City is engaging Manager to manage and oversee certain operations of Court Street Plaza throughout the Term (as defined below) of this Agreement, and the parties acknowledge that the Services (as defined below) are considered "professional services" (as defined in Cincinnati Municipal Code ("**CMC**") 321-1-P) and require exercise by Manager of discretion and independent judgment to perform the Services and an advanced specialized expertise acquired by Manager and its affiliates through management of other similar civic spaces throughout the City, such as Fountain Square.

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

1. MANAGER ACKNOWLEDGEMENT. Manager acknowledges that Court Street Plaza intended to be a functional civic space that will generate economic activity and other benefits for the City and its citizens. Manager's actions at all times must conform with the level of responsibility and respect merited for the manager of a civic space, and the Manager must honor and protect the public's fundamental rights to such space. The parties acknowledge that Court Street Plaza is a public forum that is open and available to all members of the public pursuant to the United States and Ohio constitutions. Notwithstanding anything

herein to the contrary, the Manager shall maintain Court Street Plaza as a public forum and shall comply with all direction provided by the City regarding necessary action to comply with requirements that attach to such public forums.

2. TERM; RENEWAL OPTIONS; SCOPE.

(a) Term. The term ("**Term**") of this Agreement shall commence on the Effective Date and, unless otherwise terminated in accordance with the terms herein, shall expire on the **December 31, 2026** (the "**Expiration Date**"), subject to extension in accordance with Section 2(b) below.

(b) Renewal Options. Effective upon written mutual agreement of the City and Manager, the Term of this Agreement may be extended for two (2) consecutive renewal periods of five (5) years each. For clarity, in order for a renewal option to be effective both parties must mutually agree to such extension in writing for each individual renewal option. As used herein, the "**Term**" of this Agreement means the initial Term plus any applicable renewal periods, and the "**Expiration Date**" shall refer to the date at the end of the initial Term plus any applicable renewal periods.

(c) Operation of Court Street Plaza Following Expiration of this Agreement. In the event that (i) the Expiration Date has occurred and (ii) the City has not identified another acceptable manager for Court Street Plaza and has determined to not manage Court Street Plaza itself, then the City may, in its complete and sole discretion and at any time either before the Expiration Date or after, provide written notice to Manager offering to extend the Term of this Agreement on a rolling month-to-month basis. Upon receipt of such written notice from the City, the Manager shall have fifteen (15) days to respond either accepting the City's offer for extension or denying the City's offer for extension. At any time during any such month-to-month extension of the Term, the City may provide at least 30 days' written notice to the Manager of termination, and the Term shall then end 30 days following the City provided such notice.

(d) Scope. For the avoidance of doubt, and notwithstanding anything in this Agreement to the contrary, the following shall apply to the scope of the Manager's engagement hereunder:

- (i) Parking Facilities. Nothing herein is intended as granting the Manager any interest, rights, duties, or responsibilities in relation to any and all City-owned parking facilities or assets (including public parking meters, kiosks, etc.) located in or around the Court Street Plaza, and the City shall at all times maintain complete discretion and control to operate and utilize any such parking facilities and assets in its absolute and sole discretion.
- (ii) Properties Adjacent to the Court Street Plaza. The City has made a legislative declaration that the City-owned right-of-way that comprises a portion of the Court Street Plaza and that is intended for pedestrian use is considered a public plaza and not a "sidewalk" under CMC Sec. 721-1-S; therefore, property owners of the adjacent properties are not responsible for maintenance of this area pursuant to current applicable law. As such, the scope of this Agreement and Manager's obligations for the Services (as defined below) shall cover the full scope of the right-of-way property that comprises the Court Street Plaza, up to the property lines of adjacent properties.
- (iii) Roadway. The roadway portion of the Court Street Plaza is intended as a festival street that will primarily function as a roadway for vehicular use; however, from time to time, as further described herein, Manager may request that the City close such roadway to vehicles for the purpose of hosting events on the Court Street Plaza. For clarity, the City shall at all times maintain complete discretion and control of the roadway and use of such roadway, and the Manager shall comply with City direction regarding use of such roadway.

3. DUTIES.

(a) Duties. Manager shall perform its obligations under this Agreement with a reasonable standard of care and diligence, using its efforts, skill, and judgment to further the interests of the City and its citizens. Manager shall provide the City with the following management and oversight services for the Court Street Plaza (collectively, the “**Services**”):

- (i) Promotion and Marketing: Manager shall engage in promotion and marketing of Court Street Plaza with an aim to increase public utility and enjoyment of Court Street Plaza and increased economic activity for the surrounding businesses.
- (ii) Programming and Activation: Manager shall provide and manage regular programming and activities on Court Street Plaza, such as concerts and other events, that are open to the public and create a fun, safe, and active public space. Manager's duties shall include provision of tables and chairs for outdoor dining throughout the Court Street Plaza.
- (iii) Event Coordination, Permitting, and Oversight: Manager shall oversee and manage the coordination and permitting of third-party events, vendors, and all other activities requiring permits on Court Street Plaza, all in accordance with applicable law and regulation and rules and regulations promulgated from time to time by the City Manager. The City shall provide any rules and regulations promulgated by the City Manager to Manager. The parties agree to work in collaboration to develop mutually agreeable protocols for (i) Manager-organized events on Court Street Plaza; (ii) City-organized events on Court Street Plaza; (iii) for intake, review, and issuance of permits by Manager to third-parties to host events on Court Street Plaza; (iv) for closure of the roadway portions of Court Street Plaza; (v) for closure of parking spaces as needed to host events on Court Street Plaza; (vi) fees for hosting events on Court Street Plaza; and (vii) vendors use of Court Street Plaza. Such protocols, once developed, shall be incorporated into this Agreement through a mutually executed amendment.

Manager shall manage intake, review, and approval of all third-party permits. Notwithstanding anything herein to the contrary, prior to issuing any denial or revocation of a permit for use of Court Street Plaza, Manager shall (i) inform the City Manager's Office and the City Solicitor's Office of such proposed denial or revocation and (ii) follow any direction provided by the City Manager's Office or the City Solicitor's Office regarding such permit.

- (iv) Security: Manager shall work with the City and other applicable parties (including adjacent property owners and event permittees) to develop reasonable and appropriate protocols and requirements for the provision of security personnel for Court Street Plaza (including for events), such protocols and requirements to ultimately be determined by Manager in its reasonable but sole discretion, and update such protocols and requirements from time to time, as necessary. Manager shall oversee implementation of and compliance with such security protocols and requirements. Notwithstanding the foregoing, permit holders shall be responsible for providing the security required by taking out such permit.
- (v) Landscaping: Manager shall provide landscaping services to keep all landscaping on Court Street Plaza in good, presentable condition, including care and maintenance of any planters installed as part of the Project.
- (vi) Maintenance, Care, and Cleaning: Manager shall provide for day-to-day maintenance, care, and cleaning of Court Street Plaza, including but not limited to the following services: (i) litter, trash, and debris removal; (ii) light bulb replacement; (iii) granite and

other surface cleaning; (iv) leaf, snow, and ice removal (provided however, the City shall still be responsible for plowing snow from the roadway); (v) vector control; (vi) care and maintenance of all public improvements and amenities on Court Street Plaza (including lighting and the water fountain and hose bib); and (vii) all other activities, including minor repairs, necessary to keep Court Street Plaza in a clean, safe, and attractive condition and to prevent degradation of public improvements on Court Street Plaza.

- (vii) Capital Repairs and Improvements. The Manager shall contract for and provide construction oversight and management services for the completion of any capital repairs or improvements agreed to by the parties, in accordance with the process set forth below in Section 6.

4. COMPENSATION FOR SERVICES. The City shall not be required to pay to Manager any fees for provision of the Services under this Agreement or, except as explicitly set forth below in Section 5, reimburse Manager for the costs and expenses of providing the Services; provided however, the parties acknowledge that Manager will seek to offset the costs and expenses of providing the Services through: (i) sponsorship and fundraising, as further explained in Section 8 below; (ii) collection of fees and other revenues arising from operation of Court Street Plaza pursuant to protocols developed under Section 3(a)(iii) above; (iii) operation of informational kiosks and large format signs, as more particularly set forth in certain other agreements between the City and 3CDC or a subsidiary of 3CDC detailing the terms and conditions of the operation of such kiosks and signs; and (iv) such other agreements that may from time to time be entered into between the City and Manager, 3CDC, or other 3CDC subsidiary.

5. EXPENSES; REVENUES.

(a) Manager Expenses. Except as specifically provided below in Section 5(b), Manager shall be responsible for paying for all costs and expenses related to provision of the Services, including but not limited to water usage on the Court Street Plaza and expenses associated with maintaining the water fountain and hose bib, and the City shall have no liability for such expenses unless explicitly stated herein.

(b) City Expenses. Subject to approval of any necessary legislative appropriation, the City agrees to be responsible for the following expenses and in the following amounts:

- (i) Actual electrical utility expenses for Court Street Plaza, excluding explicitly electrical expenses for events held on Court Street Plaza, which shall be separately metered or tracked and an expense of Manager;
- (ii) Any extraordinary costs or expense incurred in connection with Services or otherwise performed by Manager that were approved by the City in writing prior to such performance; and
- (iii) Any costs and expenses in the Annual Operating Budget (as defined below) and explicitly authorized as a City expenditure by the City in writing.

(c) City Payment. For any expenses set forth in Section 5(b), the City and Manager shall enter into a Funding Letter Agreement in substantially the same form as that attached as Exhibit B ("**Funding Letter Agreement**").

(d) Revenues. Manager shall maintain records of all revenue received from the operation of Court Street Plaza (including revenue arising from sponsorship agreements and fundraising and including any funds received by Operator from the City pursuant to Section 5(c)), which shall be included in Manager's Annual Operating Report (as defined below). Manager shall utilize all such revenue derived from Court Street Plaza to offset the costs and expenses of providing the Services. Any excess revenue generated in a

single year shall be utilized for operational or capital expenses in a subsequent year or as otherwise approved by the City Manager in writing for the benefit of Court Street Plaza. At the end of the Term, any excess cash held by the Manager shall be transferred to the City.

6. CAPITAL REPAIRS AND IMPROVEMENTS; EQUIPMENT & FIXTURES; CONTRACTING.

(a) **Capital Repairs and Improvements.** During the Term, capital repairs and improvements to the Court Street Plaza shall be handled and funded as follows:

(i) **Capital Repairs to Public Infrastructure Improvements:** The Manager shall be responsible for undertaking and funding any necessary material capital repairs to the Public Infrastructure Improvements on Court Street Plaza that are required to (i) maintain or restore the improvements on the Court Street Plaza to the condition of those improvements at the completion of the Project or to (ii) remedy any construction defects arising from or caused by construction of the Project. Manager's obligation to make such capital repairs shall only exist during the Term of this Agreement.

(ii) **Additional Capital Improvements in Excess of Public Infrastructure Improvements:**

From time to time the City may request that the Manager undertake, contract for, and oversee certain additional capital improvements to the Court Street Plaza beyond those Public Infrastructure Improvements completed as part of the Project, and the Manager may either accept or reject such request. Notwithstanding the forgoing, the City at all times during the Term of this Agreement retains the ability to perform or undertake any capital improvements that it deems appropriate, in the City's complete and absolute discretion and with or without Manager agreement, but only after giving Manager prior notice and an opportunity to perform such improvements.

Manager may also from time to time recommend to the City certain additional capital improvements to the Court Street Plaza. The City may, in its complete and absolute discretion approve (unless Manager is not requesting funds from the City in which case the City's approval shall not be unreasonably withheld, conditioned, or delayed) such recommended capital improvements by providing written authorization to Manager to undertake, contract for, and oversee such capital project in accordance with the terms herein.

Funding of the costs and expenses of any such capital project described in this subsection (ii) shall be agreed upon by the parties in writing prior to commencement of such project.

(iii) **Prior Written City Authorization for all Material Capital Repairs or Improvements:**

The Manager shall not undertake any material capital repairs or improvements to the Court Street Plaza without prior written authorization from the City.

(b) **Equipment and Fixtures.** Manager shall be solely responsible for all costs and expenses related to any equipment or other personal property now owned or subsequently acquired by Manager and utilized for provision of the Services. If Manager installs any fixtures on the Court Street Plaza during the Term and in accordance with the terms herein, then title to any such fixture shall vest in the City upon installation.

(c) Subcontracting with Third Parties. Manager may subcontract to third parties in order to deliver the Services; however, any such subcontracting shall be completed in compliance with all applicable City requirements and Manager shall still remain as the obligor for providing such Services. All third-party contracts shall, unless otherwise approved by the City, be memorialized in a written agreement, have no more than a 12-month term, include a 30-day at-will and without cause termination provision, and require commercially reasonable insurance. The Manager shall comply with the procurement procedures attached as Exhibit C.

(d) Small Business Program and Equal Employment Opportunity Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises ("SBEs"). Pursuant to Chapter 323 of the CMC, the City's annual goal for SBE participation shall be thirty (30%) percent of the City's total dollars spent for construction, supplies, services, and professional services (as such terms are defined therein). Accordingly, Manager shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty (30%) percent SBE participation. A list of SBEs, and additional information about the City's SBE Program, may be obtained from the City's Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202. Manager may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. Manager shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

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

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

(e) Equal Employment Opportunity Program. This Agreement is subject to and hereby incorporates the provisions of the Equal Employment Opportunity Program set forth in CMC Chapter 325 (including, without limitation, CMC Section 325-9). Details concerning the City's Equal Employment Opportunity Program can be obtained from the City's Department of Economic Inclusion.

(f) Living Wage. This Agreement is subject to and hereby incorporates the provisions of CMC Chapter 317. Such provisions require that, unless specific exemptions apply or a waiver is granted, all covered employers (as such term is defined in CMC Section 317-1-C3) under service contracts shall provide payment of a minimum wage to employees at rates no less than those listed within CMC Section 317-3. Such rates shall be adjusted annually pursuant to the terms of the CMC. Pursuant to the provisions of CMC

Chapter 317, the City shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies in the event of violations of the provisions of CMC Chapter 317.

(g) Prevailing Wage. Before undertaking any new construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a permanent improvement on Court Street Plaza where the total project costs is in excess of \$20,000, the Manager shall provide notice to the City of such intent and shall have received a prevailing wage determination from the City prior to contracting for and commencing such project. Notwithstanding anything herein to the contrary, the Manager shall at all times comply with applicable local, state, and federal prevailing wage laws and requirements during performance of its obligations under this Agreement.

7. REPORTING; AUDIT RIGHTS.

(a) Annual Operating Report. Within 60 days of the end of each calendar year, Manager shall deliver an annual operating report ("**Annual Operating Report**") to the City containing the following information:

- (i) Annual Operating Budget – Detailing expected revenues and expenditures for the upcoming year;
- (ii) Prior Year Financial Report – Detailing revenues and expenditures for the previous year and any reserves or cash-on-hand at the end of the year;
- (iii) Inspection Report – Detailing an internally generated engineering and building system inspection report on the status of the physical conditions of improvements to Court Street Plaza;
- (iv) Attendance Report – Detailing approximate attendance for events on Court Street Plaza in the previous year; and
- (v) Such additional information that the City may reasonably request from time to time.

(b) Financial Statements. By no later than June 30 of each year, Manager shall provide the City with audited financial statements detailing income and expenses for provision of the Services for the previous year, prepared by an independent certified public accountant utilizing generally accepted accounting principles, which statements may be included as a schedule to 3CDC's consolidated financial statements.

(c) Third Party Contracts. Upon request by the City, the Manager shall provide to the City copies of all contracts entered into with third parties that relate or pertain to this Agreement or the Services.

(d) Records; Audit Rights. Manager shall collect, maintain, and furnish to the City from time to time such other accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Manager, Court Street Pla, this Agreement, or the Services, including without limitation bank statements, loan statements, income tax returns, and such other 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 (all reports, records, statements and other information furnished by Manager under this paragraph (d) being referred to herein collectively as "**Records and Reports**"). All Records and Reports compiled by Manager and furnished to the City shall be in such form as the City may from time to time require. During the Term, Manager shall permit the City and its designees and auditors to have access to and to inspect and audit Manager's Records and Reports. If the City's inspection or audit reveals a material discrepancy with information previously provided by Manager, Manager shall reimburse the City for the City's out-of-pocket costs associated with such inspection or audit, and the parties shall work cooperatively to resolve such discrepancy. Manager shall

maintain all Records and Reports throughout the Term and for a period of at minimum three (3) years following the end of the Term.

(e) Public Records. During the Term, Manager shall promptly provide to the City any and all records requested by the City that the City determines are reasonably required in order to comply with the City's obligations under the Ohio Public Records Act.

(f) Reporting of Accidents and Other Significant Occurrences. Manager shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting Court Street Plaza that involve public health or safety issues or that could lead to negative publicity. Manager shall notify the City Manager's Office within 48 hours of assaults, robberies or the like. For all incidents for which a police report is filed, Manager shall promptly obtain a copy of the police report and promptly provide a copy of it to the City Manager's Office.

8. SCOPE OF AUTHORITY; FUNDRAISING; SIGNAGE.

(a) Relationship. The parties agree that the Manager is intended as an independent contractor of the City, and Manager and its contractors and staff shall not be considered employees of the City. Manager shall not have the authority to enter into any contract or agreement in the name of, or to exercise any rights or make any decision on behalf of the City, without the prior written approval of the City.

(b) Sponsorship and Fundraising. The City acknowledges that Manager or 3CDC may solicit sponsorships for its activities on the Court Street Plaza and may otherwise pursue fundraising to help off-set the costs of provision of the Services. Manager or 3CDC may only utilize funds raised pursuant to such solicitations and fundraising for the costs and expenses of providing the Services and improvements to Court Street Plaza and for no other purpose. The City acknowledges and agrees that Manager or 3CDC may enter into all agreements that are necessary and appropriate to secure such sponsorships and fundraising; however, unless otherwise agreed to by the City in writing, any such agreements shall not be binding on the City in the event of termination of the Management Agreement.

(c) Signage and Displays on Court Street Plaza. The City reserves the right to post signage or install other displays on Court Street Plaza to disseminate messages or information of public interest and concern and in furtherance of valid public purposes. The City and Manager agree to work together in good faith on the installation and location for any such signage or displays.

Notwithstanding anything in this Agreement to the contrary, Manager shall not permit signage related to sponsorship to be posted on Court Street Plaza that contains any content that (a) promotes candidates, issues, or causes of an ideological or political nature; (b) is discriminatory in nature; (c) contains obscene or pornographic material; (d) promotes tobacco products; (e) promotes or advertises adult bookstores, adult cinemas or adult live entertainment venues, such as strip clubs or gentlemen's clubs; (f) supports or opposes a religion, denomination, or religious creed, tenet, or belief; or (g) advertises the sale of firearms or firearm ammunition.

Any signage related to sponsorships shall contained text identifying such signage as signage arising from a sponsorship.

9. INSURANCE.

(a) Type of Insurance. Throughout the Term of this Agreement, Manager shall carry and maintain or cause to be carried and maintained the following insurance:

(i) Worker's compensation insurance as required by law;

- (ii) Automobile liability insurance with a per accident limit of not less than \$1,000,000 per accident and covering all owned, non-owned, hired, and permissive use vehicles; and
- (iii) Commercial general liability insurance in the amount of not less than \$5,000,000 per occurrence, combined single limit, \$5,000,000 aggregate.

(b) Policy Requirements. Manager's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. On or about the Effective Date, and annually thereafter with the Annual Operating Report, Manager shall provide the City with certificates of insurance evidencing the insurance required to be maintained by Manager hereunder. Insurance policies maintained by Manager under subparagraphs 9(a)(ii) and (a)(iii) above shall name the City as an additional insured. Manager agrees that in the event that the actual insured amounts for any herein required insurance policies are higher than the amounts required under this Agreement, that the City shall be entitled to the full extent of proceeds available under such policies and shall not be limited by the herein described minimum limits.

(c) Subcontractors. Manager shall require all subcontractors doing work at Court Street Plaza to have commercial general liability insurance coverage, at the subcontractor's expense, in sufficient amounts to protect the interests of Manager and the City. Manager shall obtain and keep on file a certificate of insurance evidencing that each subcontractor is so insured and naming Manager and the City as additional insureds.

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

10. INDEMNIFICATION. The City assumes no responsibility for any acts, errors or omissions of Manager or any employee, agent, representative or any other person acting for or on behalf of Manager. Manager shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation attorneys' fees and other legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Manager, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Manager in connection with the Services or Court Street Plaza, or in connection with any breach by Manager under this Agreement, or in connection with any employment matter arising between Manager and its employees. Manager's indemnification obligations under this section shall survive the expiration or termination of this Agreement.

11. DEFAULT; REMEDIES; TERMINATION FOR CONVENIENCE.

(a) Default. Each of the following shall constitute an event of default by Manager under this Agreement:

- (i) If Manager fails to perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure continues for longer than thirty (30) days after Manager receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have

occurred if Manager commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Manager receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Manager fails to take corrective action immediately upon discovering such dangerous condition or emergency; and

(ii) The commencement of levy, execution or attachment proceedings against Manager, any principal (which shall be defined as any individual or entity having an ownership interest in Manager of more than 25%) or partner of Manager, 3CDC, or any of the assets of Manager, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Manager or any principal or partner of Manager; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Manager or any principal or partner of Manager; or the commencement of a case by or against Manager or any principal or partner of Manager under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(b) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for in Section 11(a) above, the City shall be entitled to (i) immediately terminate this Agreement by giving Manager written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Manager, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Manager 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 Manager under this Agreement or the City's enforcement or termination of this Agreement. Manager shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Agreement shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Agreement in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

(c) Termination for Convenience. At any time during the Term, the City may provide written notice to Manager that the City is exercising its right to terminate this Agreement for convenience pursuant to this Section 11(c); provided however, any such termination for convenience shall not be effective until at minimum two years from the date that the City provides such notice of termination to Manager.

12. ASSIGNMENT. Manager shall not assign its rights under this Agreement nor delegate its obligations hereunder without the prior written consent of the City. Manager acknowledges that the City is entering into this Agreement because of the City's confidence that Manager has the financial backing, business experience and community support that are necessary to properly operate Court Street Plaza in accordance with the provisions of this Agreement throughout the entire Term. Manager acknowledges that the City shall not be expected to consent to a proposed assignment by Manager of its interests under this Agreement to any person or entity in whom the City does not have similar confidence. Any attempt by Manager to assign or otherwise transfer its interests under this Agreement to a third party without the City's

prior written consent shall be null and void and shall, at the option of the City, constitute a default of Manager under this Agreement. The foregoing notwithstanding, if Manager transfers its interests under this Agreement to an Affiliate (as defined below), such transfer shall not constitute a prohibited assignment for purposes of this section. As used in the preceding sentence, an "Affiliate" of Manager means an entity that is 100% owned and controlled by 3CDC, either directly or through another subsidiary entity that is also 100% owned and controlled by 3CDC. Manager shall not assign its interests to an Affiliate under this Agreement without giving the City at least sixty (60) days prior written notice thereof. No assignment or delegation by Manager of its rights or obligations under this Agreement to a third party shall relieve Manager from any liability to the City under this Agreement.

13. **SURRENDER.**

(a) **Surrender.** On or before the last day of the Term of this Agreement, Manager shall remove all of Manager's personal property from Court Street Plaza, and any property not so removed shall be deemed abandoned. Manager shall not remove any signs, trade fixtures, lighting, stage equipment, or ordinary fixtures used in connection with Court Street Plaza unless the City approves of such removal in writing. Manager shall promptly repair any and all damage to Court Street Plaza caused by its removal of any items under this paragraph.

(b) **Documents to be Delivered to City.** At the end of the Term of this Agreement, Manager shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Manager's possession or under Manager's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of Court Street Plaza.

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

<p>To the City:</p> <p>City of Cincinnati 801 Plum Street Cincinnati, OH 45202 Attention: City Manager</p>	<p>To Manager:</p> <p>[_____] 1203 Walnut Street, 4th Floor Cincinnati, OH 45202 Attention: Stephen Leeper</p>
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If Manager sends a notice to the City alleging that the City is in breach of this Agreement, Manager shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

16. **GENERAL PROVISIONS.**

(a) **Entire Agreement.** This Agreement contains the entire agreement between the parties and 3CDC 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.

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

(e) 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 Manager agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(f) 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.

(g) 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.

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

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

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

(k) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by 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 member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(m) Limitation on Liability. Notwithstanding any provision in this Agreement or under applicable law, the City agrees in accepting this Agreement that, except in the case of fraud or intentional misconduct, it shall have no recourse to any members, officers, or employees of 3CDC; any member of any committee of 3CDC; or any member of the Board of Directors of 3CDC (each a "**Constituent Entity**"). For clarity, the term "Constituent Entity" shall solely include individuals and shall not include any legal entities. Each of the parties further agrees that no Constituent Entity shall have any personal liability for any obligation under this Agreement.

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

(o) Compliance. Manager in the performance of the Services shall comply with all applicable statutes, ordinances, regulations, and rules of the federal government, the State of Ohio, the County of Hamilton, and the City of Cincinnati.

(p) No Liens. If any mechanics' lien or other similar lien is filed against Court Street Plaza as a result of labor or material furnished at Manager's request, Manager shall cause the lien to be released or bonded off within thirty (30) days following the filing of such lien.

SIGNATURES ON FOLLOWING PAGE

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

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____

Recommended By:

John S. Brazina, Director
Department of Transportation and Engineering

City Purchasing Approval:

Bobbi Hageman, Chief Procurement Officer
Department of Purchasing

Approved as to Form:

Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Karen Alder, City Finance Director

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Paula Boggs Muething, Interim City Manager of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

[_____]

By _____

Name: Stephen Leeper

Title: President

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Stephen Leeper, the President of the [_____], an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

EXHIBIT A
TO
PROFESSIONAL SERVICES MANAGEMENT AGREEMENT

Description and Depiction of Court Street Plaza

[INSERT DESCRIPTION AND DEPICTION]

Exhibit B
to
PROFESSIONAL SERVICES MANAGEMENT AGREEMENT

**FORM OF
FUNDING LETTER AGREEMENT**

Contract No: _____

[_____]
1203 Walnut Street, 4th Floor
Cincinnati, OH 45202
Attention: Stephen Leeper

Dear Mr. Leeper:

Pursuant to Section 5 of the Professional Services Management Agreement, dated _____ ("Management Agreement"), between [_____] ("Manager") and the City of Cincinnati ("City"), the City agreed to fund certain expenses related to the operation of the Court Street Plaza, subject to appropriation by Cincinnati City Council for such expenses. The purpose of this Funding Letter Agreement ("Letter Agreement") is for the City to certify to Manager that funding for the herein described expenses has been appropriated for the City's [YEAR] fiscal year and to confirm the parties' agreement related to such expenditures.

The City certifies that the below described funds (the "Funds") have been appropriated for the following uses and are available for expenditure, to the extent actually needed for the purposes described below, in accordance with the terms of the Management Agreement and this Letter Agreement:

1. [LIST APPROPRIATION AMOUNTS AND ANY PARTICULAR USES ATTACHED TO SUCH APPROPRIATIONS]

The City agrees to disburse the Funds to Manager upon approval by the City of a written draw request submitted by Manager evidencing the need for such Funds. Such draw request shall be in a form acceptable to the City, and the City shall not be obligated to disburse Funds more than one time per month. Notwithstanding anything herein to the contrary, any portion of the Funds not expended or encumbered on or before [END OF APPLICABLE CITY FISCAL YEAR] shall be subject to recapture and/or re-appropriation in the City's sole discretion. Following the end of the applicable fiscal year, the City shall not be obligated in any way to pay any unexpended or unencumbered portion of the Funds to Manager, and if the Manager is holding any such unexpended or unencumbered Funds at the end of the applicable fiscal year, then the City may require, through a written request, that the Manager return any such Funds to the City. Nothing herein is intended to amend or alter the obligations of Manager under the Management Agreement, and Manager shall maintain records of all expenditures of the Funds in accordance with the terms of the Management Agreement.

[SIGNATURE PAGE ATTACHED]

This Funding Letter Agreement is executed and dated as of _____, 20__.

City of Cincinnati

By: _____
[_____] , City Manager

Approved as to Form:

Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
[_____] , City Finance Director

ACCEPTED AND AGREED:

[_____]

By: _____
Name: _____
Title: _____

Exhibit C
to
PROFESSIONAL SERVICES MANAGEMENT AGREEMENT

Procurement Procedures

A. Purchases of goods and services for which the City has a preferred contractor (“City Contractor”):

1. Manager shall comply with the provisions below but shall request a quote from the City Contractor.

B. Purchases of goods and services not performed by a preferred City Contractor:

1. Purchases up to \$1,000 – No bid
 - a. May be done without securing competitive quotes and bids if the price quote is reasonably considered to be reasonable and the terms and delivery dates are conducive to the requirements.
 - b. If a quote is determined to not be reasonable, Manager will obtain competitive quotes.
2. Purchases \$1,000 to \$5,000 – Informal bid
 - a. Manager shall obtain at least two written quotes that address pricing, delivery, discounts, terms, conditions, and other factors critical to a decision.
 - b. Manager shall select the bid most conducive to what is required considering price, delivery, and other factors critical to the project.
3. Purchases \$5,000 and above – Formal bid
 - a. Manager shall issue a formal RFP and obtain at least three written quotes.
 - b. Manager shall select the bid most conducive to what is required considering price, delivery, and other factors critical to the project.

C. Single Source

1. Manager may single source the following goods or services:
 - a. Landscaping management
 - b. Holiday tree
 - c. Such other items approved in advance by the City Manager

Manager shall not divide or break down costs for a larger project to avoid issuing a formal RFP.

EXHIBIT E
to Public Infrastructure Funding Agreement

PROJECT BUDGET

Project - Overall	
<u>Sources:</u>	
Kroger Contribution	500,000
Developer Equity	2,340,800
TIF Financing	4,000,000
State of Ohio Capital Funds	2,000,000
Total Sources	8,840,800
<u>Uses:</u>	
Private Improvements Streetscape	500,000
Streetscape Improvements	4,000,000
Plaza Improvements	2,000,000
Total Uses	6,500,000

Private Improvements	
<u>Sources:</u>	
Kroger Contribution	500,000
Total Sources	500,000
<u>Uses:</u>	
Basement Enclosures	250,000
Kroger Improvements	100,000
Electric and Communication Infrastructure	100,000
Soft Costs	50,000
Total Uses	500,000

Public Infrastructure Improvements	
<u>Sources:</u>	
Kroger Contribution	500,000
City TIF Funds	4,000,000
State of Ohio Capital Funds	2,000,000
Total Sources	6,500,000
<u>Uses:</u>	
<u>Hard Costs</u>	
Demolition	501,000
Improvements	2,269,700
Utilities	2,400,300
FF&E	250,000
<u>Total Hard Cost</u>	<u>5,421,000</u>
<u>Soft Costs</u>	
Testing, Arch, & Fees	355,000
Insurance	24,000
Developer Admin Fee	200,000
Developer Contingency	500,000
<u>Total Soft Cost</u>	<u>1,079,000</u>
Total Uses	6,500,000

The Budget may be amended administratively at the City's sole discretion by written approval.

EXHIBIT F
to Public Infrastructure Funding Agreement

DISBURSEMENT OF FUNDS

Disbursements of the Funds shall be submitted to and approved by DCED.

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

- (i) The City shall have approved the Final Plans for the Project;
- (ii) The City shall have approved the Final Bids for the Project;
- (iii) The City shall have approved the construction schedule for the Project;
- (iv) 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;
- (v) Developer shall have provided the City with the Due Diligence Materials for 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) The Management Agreement shall have been executed by all relevant parties;
- (x) Construction shall have commenced and be proceeding in accordance with the City-approved Budget, construction schedule, and Final Plans; and
- (xi) Developer shall not then be in default under this Agreement.

(B) Disbursement of Funds During Construction. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall permit the disbursement of Funds to the Developer. The Funds shall be made available to Developer on a reimbursement basis. If the cost of the Project will exceed the aggregate amount of the Funds as shown on the Budget, the City may require that Developer spend non-City funds for the Project prior to requesting Funds (i.e., the City may require that the Funds go into the Project last, rather than first) or, at the City's option, the City may disburse the Funds on a pro-rata basis with non-City funds.

Notwithstanding anything in this Agreement to the contrary, no Funds shall be used for any costs that were incurred prior to adoption of the ordinance authorizing the use of the Funds under this Agreement, except that the City agrees it will reimburse up to \$200,000 for hard construction costs of the Project that were incurred prior to the Effective Date, provided such reimbursed costs otherwise comply with obligations 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, Final Bids, 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.

Disbursements of Funds shall be limited to an amount equal to Developer's actual cost of the work, materials and labor incorporated in the Public Infrastructure Improvements up to the amount of such items as set forth in Developer's request for payment, less the amount of any retainage as hereinafter set forth.

Notwithstanding anything to the contrary in this Agreement, the City shall not be obligated to make or authorize any disbursements of Funds if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to all or any part of the Project are not sufficient to pay for all the costs to complete construction of the Project or any part thereof. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for the cost of the Public Infrastructure Improvements shall be limited to the Funds allocated to it in the Budget. Notwithstanding anything to the contrary in this Agreement, the City's obligation to make the Funds available to pay for the Project, to the extent such Funds have not been disbursed, shall terminate ninety (90) days following final completion of construction of the Project. The City may use any unused portion of the Funds for any other lawful purpose.

(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 conditional waivers of liens and claims for that Application for Payment and unconditional waivers of liens and claims for all previous progress payments (together with copies of paid invoices, contracts, or other supporting data) from the General Contractor and all subcontractors and materialmen covering all work, labor, and materials for the work through the date of the disbursement; (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.

(iii) Retainage. After review and approval of a disbursement request, the City shall disburse ninety percent (90%) of the amount requested, less retainage equal to ten percent (10%) thereof. The retained amount of Funds shall be disbursed when (i) construction of the Public Infrastructure Improvements has been completed, (ii) the City has obtained original prime contractor (including General Contractor's), subcontractor, and supplier unconditional waivers of liens and claims for the total amount of the Public Infrastructure Improvements subcontracts or purchases (as applicable), and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (iii) Developer has provided the City with a complete set of "as built" drawings for the Public Infrastructure Improvements if required by the City, and (iv) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion.

(D) 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) that all work done and materials supplied to date are in accordance with the City-approved Final Plans for the Project and in strict compliance with all legal requirements as of the date of the request, (ii) the Project is being completed in accordance with the City-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 G
to Public Infrastructure Funding Agreement

ADDITIONAL REQUIREMENTS

Developer and Developer's general contractor and subcontractors 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, 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) Business Enterprise Program.

(a) Applicability. In furtherance of the policy goals established by CMC Chapter 323 (Small Business Enterprise and Local Business Enterprise Program), and CMC Chapter 324 (Minority and Women Business Enterprise Program), the requirements set forth in this Section (F) shall apply to this Agreement as an affirmative contractual obligation, notwithstanding the legal applicability or inapplicability of CMC Chapters 323 and 324 to this Agreement. Developer hereby agrees to comply with this Section (F) and, where applicable, to cause its general contractor to comply with this Section (F) in all respects.

(b) Requirement. Developer and its general contractor shall use its best efforts to ensure that certified SBEs, MBEs, and WBEs (in each case as such terms are used within CMC Chapters 323 and 324, collectively, "Certified Firms") are utilized as sources of supplies, equipment, construction, and services, with (a) the goal of meeting 30% Certified Firm participation for construction contracts and 15% participation for supplies, services, and professional services contracts (a list of certified SBEs, MBEs, and WBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.)

(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

[ATTACHED]

REQUEST FOR PROJECT WAGE DETERMINATION

2020-146

DATE RECEIVED: 7/8/2020

ORIGINAL ASSIGNED NUMBER:

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:

(State or Federal)

RATES THAT APPLY:

(Building, Heavy, Highway, Residential)

State heavy highway rates will apply.

DECISION NUMBER: N/A

MODIFICATIONS: N/A

DECISION DATE: N/A

EXPIRATION DATE: N/A

SUPERSEDES DECISION NUMBER: N/A

DETERMINATION BY:

Name: Dionne Cherry

Title: Contract Compliance Specialist

Date: 7/13/2020

APPROVED BY:


Jennifer B. Mackenzie, Interim Director
DEPARTMENT OF ECONOMIC INCLUSION

REQUESTING AGENCY OR DEPT:

Community and Economic Development

CONTACT PERSON AND PHONE

NUMBER:

Giovanni Rocco; 513-352-1960

Requested Date: 07/08/2020

Estimated Advertising Date: 08/08/2020

Estimated Bid Opening Date: 08/08/2020

Estimated Starting Date: 09/08/2020

SOURCE AND FUND NUMBER

CITY X FUND 483

STATE X FUND

COUNTY FUND

FEDERAL FUND

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 4,000,000

TOTAL PROJECT DOLLARS: 8,840,800

NAME OF PROJECT

Court Street Pedestrian Streetscape

COMMENTS:

Project as described exceeds the prevailing wage threshold level for heavy highway reconstruction, alterations, etc. under ORC 4115.03 (B) (4), which is \$27,950.00 as updated by the Ohio Department of Commerce, therefore, State heavy highway rates will apply.

Note: Any changes to the scope of funding of the project, or the failure of the project to start within 90 days of the date of this determination, will require revisions to this wage determination.

TYPE OF WORK

1. Building		2. Heavy
3. Highway	X	4. Residential
5. Demolition		
6. Other		

PROJECT LOCATION

This project will effect the public ROW on both the north and south side of Court Street between Vine and Walnut Street. There will be some streetscape work done east of walnut street surrounding the Streetcar substation. 1 E Court Street - just east of 119 E Court Street (north and south sides).

PROJECT FUNDING SOURCE

The planned sources of funding are as followed: - 3CDC Debt or Equity: \$2,340,800 - Kroger Contribution: \$ 500,000 - TIF Funding: \$4,000,000 - State of Ohio Capital Funds: \$2,000,000 3CDC has applied for the State Capital Funds; however, it is possible that they do not receive these funds. If they do, the funds would come out of the State's Capital Budget and would be State Bond Funding. If they do not receive this funding, 3CDC would either cut their budget or find other private funding sources.

PROJECT SCOPE OF WORK AND BUDGET

On March 6, 2019, City Council passed Ordinance number 80-2019 establishing the Downtown Cincinnati Pedestrian Task Force, a joint effort of the City of Cincinnati and 3CDC. The mission of the task force was to make recommendations to the Mayor and City Council regarding pedestrian and traffic improvements on Court Street, Eighth Street, Ninth Street, and Vine Street. Specifically, the stated purpose of this task force was to recommend improvements for Court Street that will turn the portion between Vine and Walnut streets into a pedestrian-oriented civic space. The improvements can be described as follows: • The road will be removed and re positioned in the middle of the public RoW. • Sidewalk will be widened on both the north and south side of the street to roughly 40'each for outdoor dining, events, and programing • Festival Style Street (street at same height of sidewalk) allows for vehicular closure of street and opening the entire street to pedestrians for organized events • New parking layout with 28 short-term metered parking for businesses in addition to the 36 added at the Central and Walnut lot (reduction in 39 metered spaces) • New Street Lighting, including pedestrian light poles, electrical infrastructure, and lights • New Signage throughout • New signal for the intersection of Walnut Street and Vine Street. • Installation of bollards (permanent and removable) • New pavers, public art, and planters are to be installed

DEI 217 Form
REV: 6/12/2017