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**INFRASTRUCTURE DEVELOPMENT MANAGEMENT AGREEMENT**

**BY**

**THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO,**

**THE CITY OF CINCINNATI, OHIO,**

**AND**

**RIVERBANKS RENAISSANCE, LLC**

**DATED NOVEMBER 23, 2007**

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## INFRASTRUCTURE DEVELOPMENT MANAGEMENT AGREEMENT

**THIS INFRASTRUCTURE DEVELOPMENT MANAGEMENT AGREEMENT** (this “Agreement”) is made as of the 23<sup>rd</sup> day of November, 2007 (the “Effective Date”), by **THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the “County”), **THE CITY OF CINCINNATI, OHIO**, an Ohio municipal corporation (the “City”) (the County and the City being called, collectively, the “Public Parties,” and, individually, a “Public Party”), and **RIVERBANKS RENAISSANCE, LLC**, a Delaware limited liability company (“Development Manager”).

### Recitals

**A.** The Public Parties collectively own the fee simple interest in the following real property situated in the City of Cincinnati, Hamilton County, Ohio (the “Banks Real Estate”):

Lots 1, 2, 4, 5, 6, 8, 10, 11 and 13 of The Banks Phase II, as the same are numbered and delineated on the recorded plat thereof, of record in Plat Book 687, Pages 43-45, Recorder’s Office, Hamilton County, Ohio; and

Lot 7 of The Banks Phase I, as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book 361, Pages 62-63, Recorder’s Office, Hamilton County, Ohio.

The Banks Real Estate is depicted in Exhibit A hereto.

**B.** The Public Parties intend to replat portions of the Banks Real Estate, together with portions of Theodore M. Berry Way and Race Street, as depicted in Exhibit B hereto.

**C.** The Public Parties desire that the County design and construct intermodal parking facilities on and within each Parking Facility Lot (as defined in Section 1.1 and depicted in Exhibit C hereto) and within portions of the rights-of-way between and/or contiguous to the Parking Facility Lots. Such intermodal parking facilities are defined as the Parking Facilities in Section 1.1, as now planned are depicted generally in Exhibit C.1 hereto, and may include additional parking facilities as depicted generally in Exhibit C.2 hereto.

**D.** The Public Parties and Development Manager are entering into a Master Development Agreement dated on or about the Effective Date (the “Master Development Agreement”), pursuant to which the Public Parties are engaging Development Manager to develop a mixed use project (the “Banks Project”) on and within each Banks Project Lot (as defined in Article 1.1).

**E.** Pursuant to the Master Development Agreement, Development Manager will be developing the Banks Project above all or portions of each Parking Facility Lot, other than Lot 20A and Lot 23A. As a result, the Public Parties desire to engage Development Manager to provide the development management services provided for in this Agreement in connection with the design and construction of the Parking Facilities, the Street Grid Improvements, the Park Podiums and the Private Podiums (as defined in Article 1.1) and Development Manager

desires to provide such services, on and subject to the terms and conditions set forth in this Agreement.

**F.** The Project is the design and construction of multiple structured public parking garage facilities and related public infrastructure improvements including, but not limited to, site development, streets and sidewalks, public utility distribution, structural elements, mechanical, electrical and plumbing systems, interior and exterior building and parking systems and fixtures, fire and security systems, interior and exterior pedestrian and vehicular traffic control and access systems, landscaping and related improvements. It is anticipated that the Project will be planned, designed and constructed in multiple phases or parts over a period of several years.

**G.** The Project is also part of the Cincinnati Central Riverfront redevelopment and the construction of the Project is integral to the current uses of the Paul Brown Stadium (“PBS”), the Great American Ball Park (“GABP”), the Cincinnati Reds Hall of Fame (“HOF”), the National Underground Railroad Freedom Center (“NURFC”), the Intermodal Transit Center (the “Transit Center”) and the U.S. Bank Arena (the “Arena”) and the overall redevelopment of the Central Riverfront. The Public Parties and Development Manager intend that the Work on the Project be coordinated and managed to avoid and minimize delays and effectively manage costs. The Public Parties and the Development Manager also intend to coordinate the work on the Project with the design and construction of the Central Riverfront Park and the ongoing operation of existing facilities, including PBS, GABP, HOF, NURFC, the Transit Center and the Arena.

**H.** The County has entered into an agreement entitled “Contract for Architectural and Engineering Services” (the “Design Contract”) with THP Limited, Inc. with respect to architectural and engineering services for the Project. A copy of the Design Contract has been provided to the Development Manager.

**I.** The City has entered into an agreement entitled “Contract for Engineering Services” with Burgess & Niple, Ltd. with respect to the design of the Street Grid Improvements (the “Engineering Services Contract”). A copy of the Engineering Services Contract has been provided to the Development Manager.

**J.** The County has also entered into an agreement entitled “Construction Management Agreement between County and Construction Manager” with Frank Messer and Sons Construction Co. pursuant to which certain construction management services will be provided on behalf of the Public Parties with respect to the Project (the “Construction Management Agreement”). A copy of the Construction Management Agreement has been provided to the Development Manager.

**K.** The location of the Project is as generally set forth in Exhibit A.

**L.** The Public Parties desire to engage Development Manager to render professional project management and development management services with respect to the Project as described herein.

M. Development Manager desires to be retained by the Public Parties to render professional project management and development management services with respect to the Project as described herein.

### **Statement of Agreement**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Public Parties and Development Manager hereby agree as follows:

### **ARTICLE I.** **DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms have the meanings given below:

“**Additional Services**” has the meaning ascribed thereto in Article 3.4.1.

“**Affiliate**” means a corporation, limited liability company, partnership or other entity controlled by, controlling or under common control with Development Manager. For purposes of this definition, “control” means the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of ownership interests in the entity, by contract, or otherwise.

“**Agreement**” means this Infrastructure Development Management Agreement, including all Exhibits hereto.

“**Air Lot**” means each of Lot 1B, Lot 2B, Lot 16B, Lot 24B, Lot 25B and Lot 26B, as depicted on the Proposed Replat; and, if the Public Parties timely exercise an election to subdivide Lot 13 or Lot 27 into a Parking Facility Lot and an Air Lot pursuant to Section 3.6 of the Master Development Agreement, the portion of such Ground Lot established as an Air Lot by such subdivision.

“**Architect**” means THP Limited, Inc., and its permitted successors and assigns, or such other firm of licensed architects and/or engineers as may be designated by the Public Parties from time to time.

“**Banks Improvements**” means the buildings, sidewalks, plazas, driveways and other improvements to be developed or constructed by any private party within any Banks Project Lot as part of the Banks Project, and specifically excluding the Project.

“**Banks Project**” has the meaning given in recital paragraph D.

“**Banks Project Lot**” means each Air Lot, Lot 10, Lot 13, Lot 17, Lot 19 and Lot 27.

“**Banks Real Estate**” has the meaning given in recital paragraph A.

“**Basic Fee**” has the meaning ascribed thereto in Article 3.2.1.

“**Basic Fee Incentive Retention Fund**” has the meaning ascribed thereto in Article 3.5.

“**Central Riverfront Park**”. means the public park to be designed and constructed by the City and/or the U.S. Army Corps of Engineers (a) on Lot 21, (b) on Lot 22, (c) within Lot 20B, (d) within Lot 23B, (e) on Lot 28 and (f) on the land located southerly of Mehring Way as it will be relocated, as depicted on the Proposed Replat.

“**City**” has the meaning given in the introductory paragraph of this Agreement.

“**Construction Cost**” shall be the total cost to the Public Parties of the construction and installation of all of the Project. Construction Cost shall include, without limitation, any and all amounts of any kind paid or payable under the Construction Management Agreement and the Trade Contracts and the cost of equipment installed as part of the Project. Construction Cost shall not include so called “soft costs” incurred directly by the Public Parties, such as the fees and expenses of Architect and Engineer and their respective Consultants, the fees and expenses of Development Manager or its Consultants or other contracted consultants of the Public Parties, other indirect costs of the Public Parties, including, but not limited to, legal services, administrative salaries of the Public Parties, environmental studies and remediation, feasibility and financing costs, audit costs and other similar costs which are the responsibility of the Public Parties.

“**Construction Documents**” means the final working drawings and specifications and addenda thereto for the construction of any Phase of the Project, which set forth in detail the requirements for such Phase of the Project and shall be prepared by Architect and Engineer on the basis of the Schematic Design Documents and the Design Development Documents.

“**Construction Management Agreement**” means the Construction Management Agreement dated October, 2000 by the County and Construction Manager, as amended.

“**Construction Manager**” means Frank Messer & Sons Construction Co. and its permitted successors and assigns, or other such firm as may be designated by the Public Parties from time to time.

“**Contract Documents**” means, collectively, the Construction Management Agreement, the Design Contract, the Engineering Services Contract and any and all other agreements entered into by the County and/or the City, on the one hand, and any Architect, Engineer or Construction Manager, on the other.

“**County**” has the meaning given in the introductory paragraph of this Agreement.

“**Damages**” has the meaning ascribed thereto in Article 8.1.1.

“**Day**” means calendar day, unless otherwise specifically designated.

“**Default Notice**” has the meaning given in Article 7.5.

“**Design Contract**” means the Agreement dated December 6, 2000 by the County and Architect, as amended.

“**Design Development Documents**” means the drawings and other documents that establish and describe the size and character of the Project as to architectural, civil, structural, landscape, mechanical and electrical systems, and graphics and signage, and shall include typical construction details, equipment layouts and specifications that identify major materials and systems.

“**Design Documents**” means, collectively, the Schematic Design Documents, the Design Development Documents and the Construction Documents as developed by the Architect and Engineer.

“**Development Manager**” has the meaning given in the introductory paragraph of this Agreement.

“**Development Manager Default**” has the meaning given in Article 7.1.

“**Direct Personnel Expense**” has the meaning ascribed thereto in Article 3.2.2.1.

“**Effective Date**” has the meaning given in the introductory paragraph of this Agreement.

“**Engineer**” means Burgess & Niple Ltd., and its permitted successors and assigns, or such other firm of licensed architects and/or engineers as may be designated by the Public Parties from time to time.

“**Engineering Services Contract**” has the meaning set forth in Recital I of the Agreement.

“**Excusable Delay**” means, with respect to a Party, a delay which is beyond the reasonable control of such Party, including, but not limited to, a delay caused by another Party, or a delay caused by, or resulting from, acts of God, war, terrorism, fire or other casualty, labor difficulties, shortages of labor, material or equipment, or governmental regulations or orders.

“**Federal Contract Provisions**” means the provisions set forth in Exhibit D hereto to the extent such provisions are applicable to the Project.

“**Hazardous Materials**”, as used in this Agreement, has the meanings defined under applicable federal, state and/or local law.

“**Indemnified Parties**” has the meaning ascribed thereto in Article 8.1.

“**Initiating Party**” has the meaning ascribed thereto in Article 7.8.1.1.

“**Legal Requirements**” means all applicable laws, statutes, ordinances, rules, regulations and requirements of governmental authorities, including, but not limited to, zoning and land use laws and building codes.

“**Lot 1A,**” “**Lot 1B,**” “**Lot 2A,**” “**Lot 2B,**” “**Lot 16A,**” “**Lot 16B,**” “**Lot 17,**” “**Lot 18,**” “**Lot 19,**” “**Lot 20A,**” “**Lot 20B,**” “**Lot 21,**” “**Lot 22,**” “**Lot 23A,**” “**Lot 23B,**” “**Lot 24A,**” “**Lot 24B,**” “**Lot 25A,**” “**Lot 25B,**” “**Lot 26A,**” “**Lot 26B,**” “**Lot 27**” and “**Lot 28**” means each such

lot as depicted in Exhibit B, as the same may be modified as contemplated by the Master Development Agreement.

“**Lot 10**” means Lot 10 of The Banks Phase II, as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book 687, Pages 43-45, Recorder’s Office, Hamilton County, Ohio.

“**Lot 13**” means Lot 13 of The Banks Phase II, as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book 687, Pages 43-45, Recorder’s Office, Hamilton County, Ohio.

“**Master Development Agreement**” has the meaning given in recital paragraph D.

“**Master Project Management Plan**” has the meaning ascribed thereto in Article 2.3.1.1.

“**Park Air Lot**” means each of Lot 20B and Lot 23B.

“**Park Podium**” means the structural deck, located above all structural columns of the Parking Facilities on Lot 20A and, if applicable, Lot 23A and Lot 28, for support of the portions of the Central Riverfront Park to be constructed within the Park Air Lot above such Parking Facilities.

“**Parking Facilities**” means the intermodal parking facilities to be designed and constructed by the County on and within each Parking Facility Lot and within portions of the rights-of-way between and/or contiguous to the Parking Facility Lots, as such Facilities are depicted generally in Exhibit C.1 hereto. The Parking Facilities may also include facilities within Lots 13, 27 and 28 as depicted in Exhibit C.2. In Future Phases, the Parking Facilities will be constructed within the Existing Surface Parking Facilities as depicted in Exhibit C.3. The Parking Facilities include the elements identified as within the scope of the Parking Facilities in Exhibit H hereto.

“**Parking Facility Lot**” means each of Lot 1A, Lot 2A, Lot 16A, Lot 20A, Lot 24A, Lot 25A, Lot 26A and, possibly, Lot 23A, as depicted on the Proposed Replat; and, if the Public Parties timely exercise an election to subdivide Lot 13 or Lot 27 into a Parking Facility Lot and an Air Lot pursuant to Section 3.6 of the Master Development Agreement, the portion of such Ground Lot established as a Parking Facility Lot by such subdivision; Parking Facility Lot shall also include Lot 28, if the County elects to subdivide Lot 28 into a Parking Facility Lot and Air Lot.

“**Parties**” means all of the County, the City and Development Manager, unless the context indicates otherwise.

“**Party**” means each of the County, the City and Development Manager.

“**Phase Construction Budget**” has the meaning ascribed thereto in Article 2.3.3.2.

“**Phase Construction Schedule**” has the meaning ascribed thereto in Article 2.3.3.2.

“**Phase DPE Budget**” has the meaning ascribed thereto in Article 3.2.2.2 and attached hereto to for each Phase as Exhibit F.

“**Phase Design Schedule**” shall mean the schedule of architectural and engineering services for each Phase of the Project prepared by the Architect and Engineer, reviewed by the Construction Manager and the Development Manager and approved by the Public Parties.

“**Phase Development Budget**” means a detailed estimate of all Project Costs as described in Article 2.3.3.1.

“**Phase Development Schedule**” means a schedule for all material activities for the planning, design and construction required for a Phase of the Project and the time periods during which such activities are estimated to be completed as described in Article 2.3.2.1.

“**Phase of the Project**” shall mean each separate phase or portion of the Project designated and undertaken by Public Parties from time to time. The Phases of the Project shall correlate to the “Phases”, or portions thereof, of the development of the Banks Improvements from time to time designated and undertaken by Development Manager as the “Developer” under the Master Development Agreement.

“**Private Podium**” means the plaza or structural deck, located above all structural columns of the Parking Facilities on each Parking Facility Lot other than Lot 20A and Lot 23A, including the elements identified as within the scope of the Private Podium as described in Exhibit H hereto.

“**Prevailing Wage Requirements**” has the meaning ascribed there to in Article 4.1.3.1.

“**Progress Payment Summary**” has the meaning ascribed there to in Article 2.4.1.5.

“**Progress Reports**” has the meaning ascribed thereto in Article 2.3.5.

“**Project**” means the complete design and construction of Parking Facilities, the Street Grid Improvements, the Private Podiums and the Utilities installed within the boundaries of a Lot with respect to which Development Manager provides services under this Agreement and the Park Podium, if applicable, with respect to Lot 23.

“**Project Costs**” shall mean all costs and expenses of any kind or nature whatsoever paid or incurred by or on behalf of the Public Parties for or in connection with the development and design of the Project and the Work.

“**Project Cost Management Plan**” has the meaning ascribed thereto in Article 2.4.3.1.

“**Project Cost Management Report**” has the meaning ascribed thereto in Article 2.4.3.2.

“**Project Management Information Process**” has the meaning ascribed thereto in Article 2.3.5.

“**Project Program**” has the meaning ascribed thereto in Article 2.3.1.3.

“**Project Quality Control Plan**” has the meaning ascribed thereto in Article 2.4.6.

“**Project Site**” is as generally described in Exhibit A.

“**Project Staffing Plan**” has the meaning ascribed thereto in Article 2.3.1.1.

“**Project Team**” means Construction Manager, Public Parties, Development Manager, Architect and Engineer.

“**Public Party**” and “**Public Parties**” have the meanings given in the introductory paragraph of this Agreement.

“**Public Party Default**” has the meaning given in Article 7.3.

“**QM/QA Plan**” has the meaning ascribed thereto in Article 2.4.6.

“**Responding Party**” has the meaning ascribed thereto in Article 7.8.1.1.

“**Schematic Design Documents**” means the drawings illustrating the scale and relationship of the various Project components, which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, as well as major architectural and interior finishes.

“**Standard of Care**” has the meaning ascribed thereto in Article 2.1.

“**Street Grid Improvements**” means the public improvements, identified as within the scope of the Street Grid Improvements in Exhibit H hereto, to be made in connection with the Project within the public rights-of-way as depicted in Exhibit G hereto.

“**Submittals**” has the meaning ascribed thereto in Article 2.4.8.

“**Third Party Contract Budget**” has the meaning set forth in Article 3.2.3.

“**Third Party Contract Expenses**” has the meaning set forth in Article 3.3.3.

“**Third Party Contracts**” has the meaning set forth in Article 3.2.3.

“**Trade Contract**” means each contract by the County and/or the City, on the one hand, and a Trade Contractor, on the other hand, for the performance of construction work, or the furnishing of labor or materials, in connection with the construction of all or any portion of the Project.

“**Trade Contractor**” means a contractor engaged or to be engaged by the Public Parties for the construction of designated Work. Subcontractors or suppliers engaged by Trade Contractors shall not be included within this definition.

“**Transfer**” means, as a noun, sale, assignment, conveyance or other transfer, and, as a verb, sell, assign, convey or transfer.

“**Transit Center**” means the intermodal transit center referenced in recital paragraph G, located below Second Street extending from Broadway Street westwardly to Central Avenue.

“**Utilities**” means the utility facilities, consisting of the elements identified as within the scope of the Utilities in Exhibit H hereto, to be relocated and/or installed in connection with the Project.

“**VA Program**” shall have the meaning ascribed thereto in Article 2.3.1.5.

“**Work**” means all administration, labor, equipment and materials whether on or off the Project Site necessary to produce and fully complete the construction of the Project. If all or part of the Work involves demolition, the term Work shall also mean demolition and all activities related to demolition.

## **ARTICLE II.**

### **DEVELOPMENT MANAGEMENT SERVICES**

**2.1 GENERAL.** Development Manager accepts the relationship of trust and confidence established between Development Manager and the Public Parties by this Agreement. Development Manager acknowledges that the nature, size, complexity and unique character of the Project requires Development Manager to perform its services in a manner that will provide implementation of procedures, controls, communication, reporting, forecasting, oversight and management of the Project, and close coordination among the parties involved in, or associated with, the Project, in order to further the Public Parties’ best interests regarding the Project. Development Manager represents and warrants that its members are experienced in large scale and complex projects of similar nature, size, quality, complexity and detail. Given that status, experience and expertise, Development Manager represents, covenants and agrees to exercise that level of professional skill and judgment in all services to be performed by or on behalf of Development Manager pursuant to this Agreement, in a manner consistent with that standard of professional skill, diligence and quality which prevail among development and project management firms engaged in the planning, management and administration of large scale, and complex projects of similar nature, size, quality complexity and detail (the “Standard of Care”). Development Manager agrees to furnish efficient project administration, oversight and coordination and exercise its professional skill and judgment consistent with the Standard of Care. Development Manager, in consultation with and with the approval of the Public Parties, shall take primary responsibility for coordinating and directing the efforts of Architect and Construction Manager in the best interests of the Public Parties and the Project.

**2.1.1 Nature of Development Manager’s Services.** The Public Parties acknowledge that Development Manager is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the labor or materials required for the design or construction of the Project or any Phase thereof. Accordingly, except as otherwise expressly provided below in this Section 2.1.1, Development Manager shall not have any liability or responsibility for the performance of the Architect, Engineer, the Construction Manager or any Trade Contractor, or for any services, work or materials performed, provided, and/or furnished by the Architect, Engineer, the Construction Manager or any Trade Contractor, including, without limitation: (a) the preparation of the Design Documents, or the

design, architectural or engineering services related thereto; (b) the design, functional or structural quality or integrity of the Project, as constructed in accordance with the Design Documents; (c) the compliance of the Project with any applicable Legal Requirements; (d) the compliance of the construction of the Project with the Design Documents; (e) the quality, integrity or freedom from defects of the workmanship and materials incorporated into the Project; or (f) the professional quality, technical adequacy or technical accuracy of the Design Documents or the Work. The Public Parties further acknowledge and agree that Development Manager shall have no direct liability or responsibility for the payment of any Project Costs, including, without limitation, Project Costs which exceed any budget therefor. Notwithstanding the foregoing provisions of this Section 2.1.1, nothing contained in this Section 2.1.1 shall: (i) relieve Development Manager from its responsibility for the performance of the services required of it under this Agreement in accordance with the Standard of Care or relieve Development Manager from liability for its failure to do so; (ii) impair the ability of the Public Parties to seek and recover damages from Development Manager under this Agreement, or relieve Development Manager of liability under this Agreement, for Development Manager's breach of the Standard of Care which result in damages arising from or relating to the matters set forth in clauses (a) through (f) of this Section 2.1.1 (subject, however, to the limitation set forth in Section 7.2.2 of this Agreement); or (iii) relieve Development Manager from its duties and obligations under the Master Development Agreement.

**2.2 THE PROJECT TEAM.** The Project Team shall consist of the Public Parties, Construction Manager, Architect, Engineer and Development Manager. The Development Manager shall serve as the Project leader on all matters relating to the coordination and management of the design and construction of the Project. In consultation with and on behalf of the Public Parties, Development Manager will manage and coordinate the services to be provided by Construction Manager, Architect and Engineer.

**2.3 PRE-DESIGN AND DESIGN PHASE.** Development Manager shall perform, or arrange for performance of, the services described herein.

**2.3.1 Consultation During Project Development.**

**2.3.1.1 Project Staffing.** Development Manager shall maintain a competent staff at the Project Site as appropriate to coordinate and manage the Project and each Phase of the Project. Development Manager's key staff with respect to each Phase of the Project shall be submitted to the Public Parties for their review and approval. Development Manager's key staff shall not be changed as long as such personnel remain in the employment of Development Manager, without the written consent of the Public Parties, which consent shall not be unreasonably withheld or delayed. Development Manager shall establish an on-site organization and lines of authority in order to carry out the overall plans of the Project Team. Development Manager shall also prepare and submit, for the Public Parties' review and approval, a staffing plan for each Phase of the Project. Development Manager's Staffing Plan shall provide a listing of Development Manager's staff, classification, description of roles and responsibilities and anticipated duration of services based on the applicable Phase Construction Schedule for each Phase of the Project ("Project Staffing Plan"). Development Manager shall employ competent project directors and managers and necessary assistants who shall be in

attendance at the Project Site during the performance of the Work as necessary for Development Manager to perform its services under this Agreement for which they are responsible.

**2.3.1.2 Master Project Management Plan Development Implementation.** Development Manager, in consultation with the Public Parties, Construction Manager, Engineer and Architect, shall take primary responsibility for (a) developing an overall sequencing program that includes planning, design and construction phasing master plans for each Phase of the Project; (b) coordinating and directing the efforts of the Architect, Engineer and Construction Manager in connection with the design and construction of the Project and each Phase of the Project; and (c) coordinating and directing the efforts of the Architect, Engineer and Construction Manager in connection with development and implementation of an overall plan that facilitates the continued operation of PBS, GABP, HOF, NURFC and the Transit Center, including adjacent vehicular and pedestrian access and parking facilities during the construction of all Phases of the Project (the “Master Project Management Plan”). Development Manager will communicate the objectives of the Master Project Management Plan to the Project Team and will manage the implementation of the Master Project Management Plan by the Project Team. Development Manager, in consultation with the Public Parties, Architect, Engineer and Construction Manager, shall review and provide recommendations regarding the scope of work for each Phase of the Project.

**2.3.1.3 Program Evaluation.** Development Manager shall review the program as developed for the overall Project (the “Project Program”) and each proposed Phase of the Project and the Design Documents as such documents are developed, in conjunction with Public Parties, Construction Manager, Architect and Engineer, to ascertain the general requirements of the Project, and each Phase of the Project. It is anticipated that the Project Program for the Phases of the Project may be modified through value analysis discussions between and among the Public Parties, the Development Manager, the Architect, the Engineer and Construction Manager regarding scope, budget and schedule issues. Development Manager shall review Construction Manager’s preliminary evaluation of the Design Documents, the overall Project Program and each proposed Phase of the Project, and provide a recommendation to the Public Parties, including the proposed Phase Construction Schedule and Phase Construction Budget requirements, each in terms of the other. The Project Program, and any amendments thereto, contain the criteria and parameters for each Phase of the Project against which Schematic Design, Design Development, Construction Documents and any subsequent modifications thereto will be evaluated. Development Manager shall analyze the Work to be provided pursuant to the Design Documents. If, during the course of the Project, Development Manager believes it is necessary or in the Public Parties’ best interest to revise the Project Program, or the Program for any Phase of the Project, Development Manager shall: (a) give prompt verbal and written notice to the Public Parties, Architect, Engineer and Construction Manager; (b) consult with the Architect, Engineer, Construction Manager and the Public Parties, and advise the Public Parties’ to take such action as is required to establish compliance with the revised Project Program, and identify other options that may be reasonably available to avoid or minimize any adverse impact on the Project Program or any Phase thereof, the Phase Construction Schedule or Phase Construction Budgets; (c) review with the Public Parties, Construction Manager, Architect and Engineer, Construction Manager’s recommendations as to any proposed revisions to the Project Program or any Phase thereof, and advise and consult with respect thereto; and (d) in conjunction with Architect, Engineer, Construction Manager and

Trade Contractors or others involved with the Project, implement any revision to the Project Program or any Phase thereof, as approved by the Public Parties.

**2.3.1.4 Review of Design Documents.** Development Manager shall attend and fully participate in regular meetings with the Architect, the Engineer, the Public Parties and Construction Manager during the Development of the Design Documents for each Phase of the Project, to advise on Project Site use and improvements, selection and quality of materials, building systems and equipment and methods of Project delivery. Throughout the overall Project, Development Manager shall monitor the progress of the Design Documents for each Phase of the Project from the Schematic Design Phase through approval and issuance of the Construction Documents. Development Manager shall evaluate and provide recommendations to the Public Parties regarding bidability issues, coordination issues, estimated Construction Costs, and consider alternatives to minimize costs, changes and claims. Development Manager shall review the Design Documents as such Documents are developed and issued with respect to the following issues:

2.3.1.4.1 bid quality of the design, considering such issues as scheduling, construction phasing, site access, maintenance of safety, availability of labor or materials, and specified allowable working hours;

2.3.1.4.2 compliance of the Design Documents with all requirements of the Design Contract;

2.3.1.4.3 clear presentation of required coordination within the Design Documents;

2.3.1.4.4 appropriate definition of responsibilities for related parties;

2.3.1.4.5 clear statement of procedures for changes and value analysis recommendations;

2.3.1.4.6 clear statement of adequate information on existing Site conditions and limitations;

2.3.1.4.7 clear definition of conditions and requirements regarding Public Parties furnished items.

Development Manager shall review and make recommendations to the Public Parties pertaining to the Construction Manager's recommendations regarding construction phasing, feasibility of construction methods, availability of materials, analysis of the types and quantities of labor required for the Phase of the Project, the quality of the materials and the availability of appropriate categories of labor required for critical phases of construction of the Phase of the Project. Considering Development Manager's review of the Project and the Design Documents, and the Construction Manager's recommendations, Development Manager shall make recommendations to the Public Parties regarding possible economies, cost, bidability, constructability and schedule, and to evaluate whether the Phase of the Project may be built within the Phase Construction Budget. Development Manager shall also review Construction

Manager's recommendations regarding appropriate actions designed to minimize adverse effects of labor or material shortages. Development Manager shall also review, analyze, comment upon and make recommendations to the Public Parties regarding the Construction Administration Procedures Manual prepared by the Construction Manager.

**2.3.1.5 Value Analysis Program.** Development Manager will review and provide recommendations to the Public Parties regarding the comprehensive value analysis program (the "VA Program") developed by the Construction Manager for the Project, and each Phase thereof. The VA Program shall explore and evaluate phasing and sequencing alternatives for the overall Project, and for each Phase thereof, examine certain specific elements of the Project, and evaluate feasible alternative solutions, systems, construction methods, materials or techniques that may achieve Project or Phase requirements more expeditiously or economically. The VA Program shall encompass all major facility elements and will consist of such sessions as are necessary based on the particular phase of the Design Documents for each Phase of the Project. Development Manager shall review Construction Manager's evaluation of construction phasing and sequencing alternatives presented for the Project and each Phase thereof, the costs and benefits of alternative building systems methods, materials and techniques, and alternative phasing/sequencing alternatives. Development Manager shall cause Construction Manager to prepare a value analysis options report which addresses in detail the Project Team's analysis of the options and alternatives presented for each Phase of the Project and shall provide the Public Parties its written recommendations with respect thereto. The value analysis options approved in writing by the Public Parties will be incorporated, as appropriate, in the Design Documents and the Construction Documents issued by the Architect and the Engineer.

**2.3.1.6 Project Site Review and Assessment.** Development Manager shall assist the Construction Manager, the Architect, the Engineer and the Public Parties with the investigation, assessment and coordination of any remedial measures regarding existing conditions on the Project Site, including but not limited to, Hazardous Materials.

**2.3.1.7 Transportation Planning and Coordination.** Development Manager shall monitor the Construction Manager's overall planning and coordination of traffic maintenance and access in and around the Project. Development Manager shall review and make recommendations to the Public Parties regarding any detour applications to be submitted by the Public Parties to appropriate governmental authorities including, but not limited to, the City of Cincinnati, Ohio Department of Transportation and the Kentucky Transportation Cabinet. Development Manager will review Construction Manager's traffic and construction phasing plan regarding its coordination with the construction of each Phase of the Project and related infrastructure improvements, including the construction of streets, roadways and utilities in the area of the Project Site.

**2.3.1.8 Pedestrian Construction Access Plan; Operations of Adjacent Facilities.** Development Manager shall monitor the Construction Manager's overall planning and coordination of temporary pedestrian routes and interim infrastructure improvements required during construction for each Phase of the Project. Development Manager shall review Construction Manager's plan with respect to temporary traffic/pedestrian controls required during construction of each Phase of the Project to mitigate impact of the construction of the Project on the operation of PBS, GABP, HOF, Transit Center and NURFC. Based on the

location, availability and quantity of public and private parking, Development Manager will review and provide recommendations to the Public Parties regarding specific pedestrian routes around the construction activities in the area of the Project Site. Development Manager shall review proposed mitigation measure(s) such as pedestrian signage and/or traffic signal modifications. Development Manager shall also conduct operations and maintainability reviews with respect to the construction of each Phase of the Project and the continued use of PBS, GABP, HOF, Transit Center and NURFC.

### **2.3.2 Project Scheduling.**

**2.3.2.1 Phase Development Schedule.** Development Manager shall prepare a Phase Development Schedule for review and approval of the Public Parties, that sets forth milestone dates for the commencement and completion of the planning, design and construction activities for each Phase of the Project. Development Manager shall monitor the completion of each Phase of the Project in accordance with the Phase Development Schedule therefor.

**2.3.2.2 Phase Construction Schedules.** Development Manager shall review the proposed Phase Construction Schedule prepared by the Construction Manager (the "Phase Construction Schedule") for each Phase of the Project and provide recommendations, as appropriate, to the Public Parties and Construction Manager within fourteen (14) Days of submission of all required information to the Development Manager. Upon development and approval by the Public Parties, the Phase Construction Schedule for each Phase of the Project shall be deemed part of the Contract Documents. If not accepted by the Public Parties, the Phase Construction Schedule for each Phase of the Project shall be promptly revised by Construction Manager in accordance with the reasonable recommendations of the Public Parties and resubmitted for the Public Parties' review and acceptance. In reviewing and approving the Phase Construction Schedule, Development Manager shall determine if the Construction Manager has:

2.3.2.2.1 been provided with a copy of the Phase Design Schedule and has consulted with the Architect and Engineer as to the schedule for design services and coordinated and integrated the Architect's and the Engineer's services, the Public Parties' requirements and responsibilities, the advertising, bidding and awarding of the various Trade Contract bid packages and the critical milestone dates for the Phase Construction Schedule;

2.3.2.2.2 identified critical and long lead-time items;

2.3.2.2.3 considered weather conditions which reasonably can be anticipated from the National Weather Service ten-year weather events for Cincinnati, Hamilton County, Ohio; and

2.3.2.2.4 considered whether and if such Phase of the Project will be designed, bid and constructed on a fast track basis by multiple Trade Contractors pursuant to individual bid packages awarded in phased sequences.

At reasonable intervals appropriate to the phase of the construction, Development Manager shall analyze the work and services being provided by the Construction Manager, the Architect and

the Engineer and shall keep all parties involved with the Project apprised, verbally and in writing, of the current and future scheduling requirements for purposes of coordinating the services of the Construction Manager, the Architect and the Engineer in order to maintain compliance with the Phase Construction Schedule. The Phase Construction Schedules shall not be revised without the prior written consent of the Public Parties.

#### **2.3.2.3 Phase Design Schedule, Work Plan, Quality Control**

**Program.** Development Manager shall monitor the Architect's and the Engineer's development of the Phase Design Schedule for each Phase of the Project in accordance with the requirements of the Design Contract and Engineering Services Contract. Development Manager shall review the Phase Design Schedule to determine, *inter alia*, if such Phase Design Schedule incorporates reasonable allowances for periods of time required for the Public Parties' review of Design Documents, for performance of the Public Parties' consultants, for approvals of submissions by authorities having jurisdiction over the Project and for preparation of an issuance of Trade Contract bid packages in accordance with the Phase Construction Schedule. Upon completion of its review, Development Manager shall provide recommendations to the Public Parties with respect to the Phase Design Schedule. Development Manager shall transmit the Phase Design Schedules as such Phase Design Schedules are issued to the Project Team for each Phase of the Project. Development Manager shall request confirmation from the Construction Manager, the Architect and the Engineer that the Construction Manager has incorporated the necessary elements of the Phase Design Schedule in the Phase Construction Schedule. Development Manager shall also monitor the Engineer's and the Architect's preparation and delivery of Design Documents in accordance with the Phase Design Schedule for each Phase of the Project. Development Manager shall advise the Public Parties of any corrective action by the Architect and the Engineer which Development Manager believes is necessary to ensure compliance with the Phase Design Schedule. Development Manager shall also review and provide recommendations to the Public Parties with respect to the Work Plan and Quality Control Plan developed by the Architect and the Engineer pursuant to the Design Contract and Engineering Services Contract. Development Manager shall determine if the Architect and the Engineer are in compliance with the requirements of their respective Work Plans and the Quality Control Plans during the Project.

#### **2.3.2.4 Postponement/Suspension Of Work.**

The Public Parties shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work or Phase of the Project that may interfere with the operation of the Public Parties' premises or any tenants or invitees thereof. Development Manager shall, upon the Public Parties' request, manage and coordinate the rescheduling of any portion of the Work or Phase of the Project affecting operation of the premises during hours when the premises are not in operation.

### **2.3.3 Project Budgets.**

#### **2.3.3.1 Phase Development Budget.**

Development Manager will participate with the Public Parties in the preparation of a Phase Development Budget which shall include the following for each Phase of the Project: (i) the Phase Design Budget, (ii) the Phase Construction Budget, and (iii) the soft cost budget.

**2.3.3.2 Phase Construction Budget.** Development Manager will review and provide recommendations to the Public Parties regarding Construction Manager’s Phase Construction budget (the “Phase Construction Budget”) for each Phase of the Project, which shall provide an initial estimate of Construction Cost as prepared by Construction Manager and shall include progressively more detailed estimates of Construction Cost as Architect and Engineer progress with the preparation of the Schematic Design Documents, the Design Development Documents and the Construction Documents for each Phase of the Project. Development Manager shall review the detailed construction cost estimates prepared by the Construction Manager and provide recommendations to the Public Parties. Upon completion of the VA Program following issuance of the Design Development Documents, the Phase Construction Budget shall be reviewed and approved by the Public Parties.

**2.3.3.3 Public Parties Phase Construction Budget Options During Pre-Bidding Phases.** Notwithstanding any other provision herein, in the Schematic Design, Design Development or Construction Documents Phases for each Phase of the Project, if the estimate of Construction Cost prepared by Construction Manager exceeds the Phase Construction Budget, then the Public Parties shall have the following options or combinations of options:

2.3.3.3.1 Request that the Architect, the Engineer, the Development Manager and the Construction Manager review, evaluate and recommend options to bring the estimate of Construction Cost within the Phase Construction Budget, but not limited to:

- a. Evaluation of structural systems;
- b. Evaluation of building systems;
- c. Material and finish options;
- d. Evaluation of M/E/P Systems; and
- e. Other Value Analysis options, including but not limited to:
  - (i) Phasing/sequencing options;
  - (ii) Systems and Material Value Analysis; and
  - (iii) Scope reduction options;

2.3.3.3.2 Require the Architect or Engineer to modify and revise applicable Design Documents; or

2.3.3.3.3 Authorize an increase in the Phase Construction Budget.

**2.3.3.4 Public Parties Options During Bidding Phase.** Notwithstanding any other provision herein, in the Bidding Phase, if the portion of the Phase

Construction Budget, or bid package is exceeded by the lowest and best bid for such bid package, then the Public Parties shall have the following options or combinations of options:

2.3.3.4.1 Request that the Architect, the Engineer, the Development Manager and the Construction Manager review, evaluate and recommend options to bring the applicable bid package or other element comprising the estimate of Construction Cost within the Phase Construction Budget including but not limited to:

- a. Evaluation of structural systems;
- b. Evaluation of building systems;
- c. Material and finish options;
- d. Evaluation of M/E/P Systems; and
- e. Other Value Analysis options, including but not limited to:
  - (i) Phasing/sequencing options;
  - (ii) Systems and Material Value Analysis; and
  - (iii) Scope reduction options.

2.3.3.4.2 Authorize approval of an increase in the applicable portion of the Phase Construction Budget;

2.3.3.4.3 Authorize rebidding the applicable bid package within a reasonable time; or

2.3.3.4.4 Require Architect or Engineer to modify and revise applicable Design Documents.

**2.3.4 Construction Planning.** Development Manager will monitor the performance of Construction Manager relating to the necessary planning for construction of each Phase of the Project, including, but not limited to, the following:

**2.3.4.1 Long Lead Time Procurement.** Development Manager shall review and make recommendations with respect to Construction Manager's schedule for the Public Parties' purchase of materials and equipment requiring long lead time procurement.

**2.3.4.2 Project Phasing.** Development Manager shall review and make recommendations to the Public Parties with respect to Construction Manager's assignment of responsibilities for temporary facilities and equipment, materials and services for common use of facilities and equipment by entities performing activities on the Project. Development Manager shall also review and make recommendations to the Public Parties with respect to Construction Manager's recommendations regarding the phasing and sequencing of each Phase of the Project.

**2.3.4.3 Division of Work.** Development Manager shall review and make recommendations to the Public Parties with respect to the recommendations of Construction Manager regarding the division of work in the Design Documents to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction and taking into consideration such factors as time of performance, cost, availability of labor and material, overlapping trade jurisdictions and provisions for temporary facilities. Development Manager shall review and make recommendations to the Public Parties with respect to the Construction Manager's program for receiving competitive bids on the Work of various Trade Contracts. Development Manager shall monitor the issuance of Trade Contracts to the successful bidders, upon the Public Parties' approval. Development Manager shall also review and provide recommendations regarding bids received, responses to bidders' inquiries and shall make recommendations to the Public Parties relative to the award of Trade Contracts. Development Manager shall assist Construction Manager, the Architect and the Engineer in conducting pre-bid and pre-award meetings.

**2.3.4.4 Government/Agency Compliance Coordination and Approvals.** Development Manager shall advise the Public Parties promptly when it becomes aware of any material non-compliance with Legal Requirements with respect to the Project.

**2.3.5 Project Management Information Process; Communications.** Development Manager shall develop a project management information process ("Project Management Information Process") to establish and coordinate effective communications between and among, as appropriate depending on the nature of the communication, the Project Team, Trade Contractors and other parties involved with the Project. In developing the Development Manager's Project Management Information Process, Development Manager shall meet with the Public Parties' key personnel, the Architect, the Engineer, the Construction Manager and others in order to determine the type of information for reporting, the reporting format and the desired frequency for distribution of the various reports in accordance with the terms of this Agreement. Development Manager shall develop and issue monthly progress reports that identify and describe key events, issues, changes and performance relative to the Phase Development Schedule, Phase Development Budget, Phase Construction Schedules and Budgets, QM/QA Plan compliance and the Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development for the Project (the "Progress Reports"). Development Manager's Progress Reports shall be based on its analysis of reports provided by the Architect, the Engineer, and the consultant engaged by the Public Parties pursuant to the Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development for the Project, the Construction Manager's Monthly Status Reports and any other appropriate information. Development Manager shall coordinate its Project Management Information Process with Construction Manager's management information system.

## **2.4 CONSTRUCTION PHASE.**

### **2.4.1 Contract Administration.**

**2.4.1.1 Trade Contract Documents.** Development Manager shall review and provide recommendations to the Public Parties regarding the Construction Manager's constructability and coordination analysis and/or reports of the Trade Contract bid packages prior to their issuance by Construction Manager for bidding.

**2.4.1.2 Trade Contracts.** Development Manager shall monitor issuance of Trade Contracts to the successful bidders, upon the approval of the Public Parties.

**2.4.1.3 Trade Contractor Change Order Management.** Development Manager shall review and provide recommendations to the Public Parties regarding the Construction Manager's system for the preparation, substantive and procedural review, classification, approval and processing of Trade Contract change orders and construction change directives on the Project. Development Manager shall review and provide recommendations to the Public Parties regarding each Trade Contract change order request that is recommended for approval by the Construction Manager. Development Manager shall assist, as appropriate, in the negotiations of the Change Orders to reduce costs for items not at market value while maintaining Project quality. Development Manager shall review and provide recommendations to the Public Parties regarding Construction Manager's explanation and classification of the requested change and recommendations to the Public Parties regarding whether such changes are appropriate. Development Manager shall also monitor Construction Manager's claims resolution plan and coordinate activities until resolution.

**2.4.1.4 Effect of Trade Contractor Change Order on Project or Construction Schedule and Budget.** Development Manager shall review and provide recommendations to the Public Parties regarding Construction Manager's recommendations to the Public Parties regarding the anticipated impact, if any, of a proposed Trade Contract change order on the Phase Construction Schedule and the Phase Construction Budget. Development Manager will monitor the Phase Construction Schedule so that activities and adjustments of the Phase Construction Schedule, if any, required by approved Trade Contract change orders, have been incorporated, as appropriate, into Phase Construction Schedule.

**2.4.1.5 Payments to Trade Contractors.** Development Manager shall review and provide recommendations to the Public Parties with respect to Construction Manager's procedure for the review, processing and payment of applications for progress and final payments to Trade Contractors. Construction Manager shall prepare and forward to the Public Parties, the Development Manager, the Architect and the Engineer a Progress Application Summary on a monthly basis (the "Progress Payment Summary"). Development Manager shall review and advise the Public Parties, as appropriate, regarding each Progress Payment Summary submitted by the Construction Manager.

**2.4.2 Project Control.** Development Manager shall provide administrative and management related services as necessary to coordinate the Project, including the activities and responsibilities of the Construction Manager, the Public Parties, the Architect and the Engineer.

**2.4.2.1. Project Team Staffing and Consultants.** Development Manager shall evaluate and provide written recommendations to the Public Parties regarding key personnel of the Construction Manager, the Architect and the Engineer who are scheduled to work on each Phase of the Project. Development Manager shall also provide written recommendations to the Public Parties for any substitutions in the key personnel of Construction Manager, the Architect and the Engineer. Development Manager shall monitor the retention of any additional consultants to be retained by Architect and Engineer.

**2.4.2.2 Progress Meetings.** Development Manager and the Construction Manager shall conduct pre-construction conferences with Public Parties, the Architect and the Engineer to review the overall construction management plan and to review reporting procedures and issues set forth in Project Management Information Process. Development Manager will coordinate with the Construction Manager to schedule and conduct, as appropriate, pre-construction, construction and progress meetings at which the Architect, the Engineer, the Construction Manager, the Development Manager and the Public Parties shall attend, and as deemed appropriate from time to time other Consultants and Trade Contractors may attend.

**2.4.2.3 Schedule Compliance Tracking.** Development Manager shall monitor the progress of the Architect and the Engineer in the context of the Phase Design Schedule for each Phase of the Project. Development Manager shall also monitor the progress of Construction Manager in the context of the Phase Construction Schedule for each Phase of the Project. Development Manager shall promptly advise the Public Parties when it becomes aware of any material delays or potential delays in any of the Phase Design Schedules or the Phase Construction Schedule. Development Manager shall provide a monthly update with respect to the Phase Design and Construction Schedules that shall include, but not limited to, the following elements:

2.4.2.3.1 Actual progress compared against the Phase Design Schedule and Phase Construction Schedule for each Phase of the Project. Actual progress compared against the Phase Development Schedule for each Phase of the Project;

2.4.2.3.2 Status of major components for each Phase of the Project;

2.4.2.3.3 Progress made on critical activities on the Phase Construction Schedule;

2.4.2.3.4 Explanation for lack of work on any critical path items and for scheduling changes;

2.4.2.3.5 Listing of all critical activities to be performed in the subsequent thirty (30) to sixty (60) Day period;

2.4.2.3.6 Status of contract procurements and major material and equipment purchases;

2.4.2.3.7 Status of all required approvals; and

2.4.2.3.8 Explanation of any delays during the reporting period.

In the event any monthly status report or any other progress report indicates any delay or delays in completion of such Phase of the Project, Development Manager shall request from the Construction Manager, the Architect and the Engineer, as applicable, an affirmative plan to remedy such delay or delay(s). Development Manager shall review such affirmative plan and make recommendations to the Public Parties regarding such plan. Development Manager shall

consider and make appropriate recommendations to the Public Parties regarding the need to increase resources dedicated to the Project, necessary increases in productivity and improvements in service and product quality, and whether any Extraordinary Measures, as defined in the Construction Management Agreement, should be implemented. In the event an affirmative plan is approved by the Public Parties, Development Manager shall monitor compliance with the affirmative plan, including overtime and/or additional labor, if necessary. Development Manager shall review Construction Manager's estimated Construction Costs or other costs associated with such affirmative plan.

### **2.4.3 Project Cost Management.**

**2.4.3.1 Project Cost Management Plan.** Development Manager shall develop, in conjunction with the Project Team, an overall cost management plan (the "Project Cost Management Plan") in regard to each Phase of the Project. Development Manager shall utilize a cost control software program selected by the Development Manager and reasonably acceptable to the Public Parties, which provides appropriate analysis of all factors which may impact the costs associated with the Project; provided, however, that if Development Manager is required to acquire any software other than that owned by Development Manager on the Effective Date, the cost thereof shall be borne by the Public Parties. Development Manager shall implement the Project Cost Management Plan upon the Public Parties' approval. Development Manager's Project Cost Management Plan will include, but is not limited to, the following elements:

2.4.3.1.1 Review of Cost Estimates. Development Manager will review Construction Manager's cost estimating method designed for estimating costs for each Phase of the Project during the conceptual and planning phases.

2.4.3.1.2 Cost Trending and Control. Development Manager will review actual data regarding Project performance with respect to anticipated costs and cost trending for each Phase of the Project. In the event performance data indicates actual costs exceeding projected costs for any Phase, Development Manager will notify the Public Parties. The origin and cause of costs trend will be identified and corrective alternatives will be recommended to the Public Parties by Development Manager.

2.4.3.1.3 Budget and Cost Reporting. Development Manager will provide cost management reports consistent with Article 2.4.3.2.

All control information shall be contained within a database and available to the Project Team. Development Manager shall endeavor to assure potential problems are detected and resolved through Development Manager's proactive management.

**2.4.3.2 Project Cost Management Reports.** As part of the Progress Report, Development Manager shall provide a Project Cost Management Report (the "Project Cost Management Report") for each Phase of the Project. The Project Cost Management Report which is based, in part, on the cost management reports generated by the Construction Manager shall include the following:

- 2.4.3.2.1 Actual Project and Construction Costs incurred to date compared against the Phase Construction Budget;
- 2.4.3.2.2 Actual contract award prices to date compared against the Phase Construction Budget;
- 2.4.3.2.3 Cash flow statement, in tabular and graphic form, showing actual cash drawdowns compared against projected;
- 2.4.3.2.4 Identification of and explanation for any variances from the Phase Construction Budget;
- 2.4.3.2.5 Recommendations regarding corrective actions necessary to manage Phase Construction Budget costs;
- 2.4.3.2.6 Analysis of the impact of approved and pending Change Orders on the Phase Construction Budget;
- 2.4.3.2.7 Recommendations regarding changes in the Phase Construction Budget; and
- 2.4.3.2.8 Estimates to complete such Phase of the Project.

Based on the information available to it, the Development Manager shall promptly advise the Public Parties, the Construction Manager and the Architect and the Engineer if it believes that the projected costs of the Work at any time may exceed the Phase Construction Budget or Phase Development Budget for each Phase of the Project.

**2.4.4 Records.** Development Manager shall analyze and make recommendations to the Public Parties regarding the Project documentation process established by Construction Manager as to its adequacy for recording, storing and retaining information pertaining to all technical, financial and administrative aspects of the Project. Development Manager shall monitor Construction Manager's record keeping responsibilities regarding compliance with the Project documentation process. Development Manager shall also maintain, or monitor Construction Manager's maintenance of, at the Project Site, on a current basis: all Contract Documents, including a record copy of the Construction Management Agreement, the Design Contract, the Engineering Services Contract, Trade Contracts, drawings, specifications, modifications, Change Orders, requests for information, addenda, Trade Contract change orders, approved shop drawings and submittals. Development Manager shall make all records available to the Public Parties. Upon the completion of the Project, Development Manager shall deliver all such records to the Public Parties.

**2.4.5 Permit Compliance and Coordination Plan.** Development Manager, working with the Construction Manager, the Architect, the Engineer and the Public Parties, shall develop and implement a permitting compliance and coordination plan with respect to obtaining necessary permits and other governmental approvals, consents, authorization, licenses, endorsements which may be required by any governmental department, agency or other governmental authority with jurisdiction over the Project. As part of the implementation of such

permitting compliance and coordination plan, Development Manager shall request confirmation from the Construction Manager that it has assembled all documents, applied for and obtained, on behalf of the Public Parties, all necessary permits and special permits for each Phase of the Project, excluding permits required to be obtained directly by the various Trade Contractors. Development Manager will coordinate efforts with the Architect, the Engineer and the Construction Manager, as appropriate, in obtaining approvals from authorities having jurisdiction over the Project and coordinate required approvals with authorities responsible for adjacent projects.

**2.4.6 Project Quality Management.** Development Manager shall monitor overall Project quality management. Development Manager shall review, analyze and provide recommendations to the Public Parties with respect to the Architect's and the Engineer's quality control plan as required in the Design Contract and the Engineering Services Contract (collectively, the "Project Quality Control Plans"). Development Manager will also monitor Architect's and Engineer's compliance with the Project Quality Control Plan. Development Manager shall also review the quality management and quality assurance plan prepared by the Construction Manager in accordance with the Construction Management Agreement (the "QM/QA Plan") and provide recommendations regarding such Plan to the Public Parties. The Project Quality Control and QM/QA Plans developed with respect to the Project, shall include, as appropriate and applicable, the following:

**2.4.6.1** Allocation of quality control and assurance responsibilities to the various participants in the Project;

**2.4.6.2** An inspection and testing plan for each critical component of the Project;

**2.4.6.3** Field monitoring and inspection reports, documenting the results of inspection;

**2.4.6.4** Audit plan to audit Trade Contractors' quality assurance efforts;

**2.4.6.5** Identification and reporting procedures for non-conforming Work; and

**2.4.6.6** Tracking system to monitor correction of non-conforming Work.

Development Manager shall review all reports of non-conforming Work. Development Manager shall request confirmation from the Construction Manager that appropriate action has been taken by the Construction Manager regarding any defective or non-conforming Work. As appropriate, Development Manager may recommend special inspection, testing or studies, or make recommendations to the Public Parties, the Architect and the Engineer regarding special inspection, testing or studies, of Work identified by Construction Manager as not in accordance with the Trade Contract Documents, whether or not such Work be then fabricated, installed or completed.

**2.4.7 Document Interpretation.** Development Manager in coordination with the Construction Manager, shall refer all questions regarding interpretation of the Design

Documents to the Architect and the Engineer, as applicable. Development Manager shall monitor whether the Architect and Engineer render all such interpretations of the requirements of the Design Documents in a timely manner for the proper execution or progress of the Work so as not to delay the Work.

**2.4.8 Request for Information, Shop Drawings, Samples and Submittals.**

Development Manager shall review and provide recommendations to the Architect, the Engineer and the Construction Manager regarding the establishment, coordination and implementation of written procedures for expediting the processing of all requests for information, (“Requests”), shop drawings, product data, samples and submittals (“Submittals”). Development Manager shall the review the Construction Manager’s, the Architect’s and the Engineer’s proposed system for the timely and prompt processing and control of Requests and Submittals by the Architect, the Engineer and Trade Contractor. Development Manager shall routinely review with the Architect, the Engineer and the Construction Manager the status of each Project Team member’s compliance with such systems. Development Manager shall monitor whether the Architect’s and the Engineer’s review and processing of Requests are completed within the time periods set forth in the Contract Documents and promptly advise the Public Parties of the Architect and/or Engineer’s noncompliance with the Contract Documents with respect to such Request. Development Manager shall review with Construction Manager, the Architect and the Engineer’s recommendations in order to ensure compliance with the system. Development Manager shall keep the Public Parties advised of Project Team compliance with the Request and Submittal system and of any corrective action taken. Development Manager shall also review the Architect’s and the Engineer’s request for additional time for review of Requests and/or Submittals, and advise and recommend to the Public Parties whether such approval should be granted based on all available information. As part of such recommendation, Development Manager shall advise the Public Parties of any impact such additional time will have on the Phase Construction Schedule for each Phase and, if applicable, the Phase Construction Budgets for each Phase.

**2.4.9 Project Bidding and Contracting.** Development Manager shall review and provide recommendations to the Public Parties with respect to Construction Manager’s uniform system for the bidding of all Work on the Project. Development Manager shall assist the Public Parties and Construction Manager throughout the bidding process for each Phase of the Project. Development Manager shall review Construction Manager’s proposal regarding the division of the Trade Contract bid packages for each Phase of the Project.

**2.4.9.1 Determination of Successful Bid.** After analyzing such bids, Development Manager shall review the summary of the recommended bids from the Construction Manager and submit its recommendations to the Public Parties. The Public Parties shall then determine, with the advice of Construction Manager, which bids will be accepted and awarded. The Public Parties shall be responsible for the final determination of the legal sufficiency of bids and for any decision to accept any bid.

**2.4.10 Planning and Coordination of Work on the Project with Other Construction Projects and Public Events.** Development Manager shall plan and coordinate all Project Site-related activities which interrelate with adjacent construction activities and projects, including but not limited to the construction of the Central Riverfront Park, as well as the

ongoing operations of facilities adjacent to the Project, including but not limited to, PBS, GABP, HOF, the Arena, the Transit Center and NURFC. Such coordination of activities provided for in this Article 2.4.10 include, but are not limited to, addressing, in conjunction with the Construction Manager, the Architect and the Engineer: (a) the proper interfacing and /or interconnecting of the Project Site boundaries and elevations with and to the surrounding area and/or improvements in accordance with the Design Documents; (b) planning and coordination with respect to streets, utilities and other infrastructure improvements which are located on and/or are surrounding the Project Site; and (c) ingress and egress, as permitted by the constraints of the Project Site to and from the Project Site.

**2.4.11 Project Site Use and Adjacent Facilities.** Development Manager shall monitor the limitations of operations at the Project Site to areas permitted by the applicable Contract Documents. Development Manager shall review, in coordination with the Construction Manager, and provide recommendations to the Public Parties, regarding the requests for the location of temporary facilities, hoists, cranes and staging on the Project Site.

**2.4.12 Substantial Completion of Trade Contractor's Work.** Development Manager shall review the recommendations of the Construction Manager, the Architect and the Engineer as applicable regarding substantial completion, or a designated portion thereof, of each Trade Contractor's work as defined in the applicable Trade Contract and provide recommendations to the Public Parties regarding the same.

**2.4.13 Project Start-Up.** Development Manager shall review the Construction Manager's Program for Start-Up testing and operations of each Phase of the Project and provide recommendations for the Public Parties regarding such program. Development Manager shall assist Public Parties in developing a commissioning process that allows for acceptance of each Phase of the Project.

**2.4.14 Final Completion.** Following the issuance of a certificate of substantial completion of each Trade Contractor's Work or a designated portion thereof, Development Manager shall assist Construction Manager and the Public Parties in evaluating final completion of each Trade Contractor's Work as such term is defined in the applicable Trade Contract. Development Manager shall review the approvals of Architect, Engineer and Construction Manager regarding final completion of the Project and each Phase of the Project. Development Manager shall provide recommendations to the Public Parties regarding approval of final completion, in accordance with the requirements of the Trade Contract Documents. Development Manager shall administer the close-out of the Construction Management Agreement, the Design Contract and the Engineering Services Agreement and supervise the Construction Manager's administration of the close-out of the Trade Contracts, including the Construction Manager's collection of testing, operation and maintenance manuals, guarantees, warranties and record drawings for delivery to the Public Parties.

**2.4.15 Warranty and Guaranty Services.** Development Manager shall monitor Construction Manager's compliance with its obligations regarding the management, scheduling and coordination of the prompt completion of all warranty and guaranty Work required under and in accordance with the Trade Contract following substantial completion of each Trade Contract. Development Manager shall monitor the delivery to the Public Parties at the time of

final completion of the Project of any and all manufacturer's and Trade Contractor warranties on the Project.

**2.4.16 Notice of Commencement.** Development Manager shall assist the Public Parties in preparing and executing each Notice of Commencement to be posted and maintained on the Project Site in accordance with applicable Legal Requirements.

**2.4.17 Consultants.** If deemed necessary by the Development Manager, Development Manager shall be responsible for contracting directly on a form of contract that is acceptable to the Public Parties, with consultants as may be required by Development Manager to fully perform its duties and obligations hereunder, which consultants must be approved by the Public Parties, which approval shall not be unreasonably withheld or delayed.

**2.4.18 Audits/Review.** Development Manager shall assist the Public Parties and the Public Parties' representative or consultant retained by the Public Parties in any formal audit or review relating to the Project. Development Manager shall also cooperate with the Public Parties and the Public Parties' representative or consultant retained by the Public Parties to audit or review and monitor Development Manager's accounting and financial records relating to the Project.

2.4.18.1 Such audits may require inspection and copying from time to time and at reasonable times and places, of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing or pertain to any matters, rights, duties, or obligations under or covered by this Agreement. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify Direct Personnel Expense and Third Party Contract Expense.

2.4.18.2 The Public Parties or their authorized designee shall be afforded reasonable access to all of Development Manager's records relating to the Project at times and places mutually agreed upon.

2.4.18.3 If an audit, inspection or examination in accordance with this Article discloses overcharges (of any nature) by Development Manager to the Public Parties, Development Manager shall promptly reimburse the Public Parties the amount of such overcharges and, in the event the overcharges with respect to any Phase of the Project are in excess of three percent (3%) of the total compensation paid to Development Manager pursuant to Article 4 for each Phase of the Project, the actual cost of the Public Parties' audit and the amount of overcharges, shall be promptly reimbursed to the Public Parties by Development Manager.

### **ARTICLE III.** **DEVELOPMENT MANAGEMENT COMPENSATION**

**3.1 GENERAL.** In consideration of its services as Project Manager, on behalf of the Public Parties as set forth herein, the Development Manager shall be paid compensation for each Phase of the Project as provided in this Article 3.

**3.2 PROJECT MANAGEMENT COMPENSATION.** Development Manager's compensation shall consist of: (a) subject to the terms, conditions and limitations described in Article 3.4 and 3.5 herein, the Basic Fee as described in Article 3.2.1; (b) Direct Personnel Expense as described in Article 3.2.2, not to exceed the applicable DPE Budget approved by the Public Parties; and (c) Third Party Contract Fees and Expenses for consultants as described in Article 3.2.3, not to exceed the Third Party Contract Budget for each Phase of the Project.

3.2.1 **Basic Fee.** Subject to Article 3.4 and 3.5, the Public Parties shall pay or cause to be paid to Development Manager a Basic Fee in an amount equal to one and nine tenths percent (1.9%) of the actual Construction Cost of each Phase of the Project (the "Basic Fee"). In calculating the Basic Fee as a multiple of the actual Construction Cost of the Project, it is expressly understood and agreed that the Construction Cost as used herein, shall exclude: (a) Private Podium Costs (as such term is defined in the Master Development Agreement); (b) Dedicated Parking Costs (as such term is defined in the Master Development Agreement); and (c) costs associated with any other substantial and material areas or elements of the Project which will be owned and/or operated by Development Manager as an element of the Banks Project upon completion of construction as such areas are reasonably agreed upon by the Parties.

3.2.2 **Development Manager's Direct Personnel Expense.** Subject to the terms, conditions and limitations described in Section 3.2.2.2, the Public Parties shall pay or cause to be paid to Development Manager the Direct Personnel Expense for each Phase of the Project.

3.2.2.1 **Definition of Direct Personnel Expense.** "Direct Personnel Expense" shall mean the sum of: (a) in respect of all personnel of Development Manager or its constituent members, or any affiliate thereof engaged in the Project (including professional, technical, management, administrative and clerical personnel) to the extent of their actual time dedicated to the Project, all wages and salaries and other compensation paid or payable to such personnel and all costs and expenses of worker's compensation insurance, employee benefits, social security taxes, unemployment insurance, and all other taxes and health insurance imposed or paid or payable with respect to such personnel; plus (b) an amount equal to thirty eight percent (38%) of the amount described in the immediately preceding clause (a). In no event shall the expenses under clause (a), above, include Developer Manager's general office or field office overhead expenses.

3.2.2.2 **Direct Personnel Expense Budget.** As set forth in Article 2.4.2.1, Development Manager shall prepare and submit, for the Public Parties' review and approval, a Project Staffing Plan for each Phase of the Project. Such Staffing Plan shall list the individuals, classification and estimated Direct Personnel Expense for such individual based on (unless otherwise expressly stated therein), full-time services (2,080 hours annually) being provided based on the anticipated Phase of the Project and scope and timing of each such Phase. Based on such Staffing Plan and the applicable Phase Construction Schedule for each Phase of the Project, Development Manager shall prepare and submit, for the Public Parties' review and approval a budget for Development Manager's Direct Personnel Expense for each Phase of the Project (the "Phase DPE Budget") as such Phases are developed and approved by the Public Parties. Once such Phase DPE Budget is approved, (which approval will not be unreasonably withheld or delayed), except as otherwise expressly provided herein, it shall be attached hereto as Exhibit F

for each such Phase. Development Manager shall not be entitled to recover from the Public Parties, Direct Personnel Expense in excess of such Phase DPE Budget. The Phase DPE Budget may only be modified upon the Public Parties' prior written approval, which approval will not be unreasonably withheld or delayed. On a quarterly basis, during the construction each Phase of the Project, Development Manager shall review with the Public Parties, the Phase DPE Budget and provide an evaluation to the Public Parties of whether Development Manager's Direct Personnel Expense is projected to be within the Phase DPE Budget upon final completion of such Phase of the Project. Development Manager shall keep and maintain, in accordance with generally accepted accounting principles, detailed and accurate cost data regarding the wages, salaries and benefits actually paid to its employees for labor and services performed on each Phase of the Project. Development Manager shall also implement an accounting system whereby the time which its employees dedicate to each Phase of the Project can be accurately identified and distinguished from time which its employees dedicated to other projects or endeavors, including but not limited, to the Banks Project.

**3.2.3 Third Party Contract Costs And Consultant Fees.** The Public Parties shall reimburse the Development Manager for fees, costs and expenses actually incurred, without any mark-up for overhead and profit, in connection with subcontracts and consulting agreements entered into with third parties for performance of services to be rendered by Development Manager pursuant to the terms and conditions of this Agreement ("Third Party Contracts"). All Third Party Contracts shall be subject to the Public Parties' written approval, which approval shall not be unreasonably withheld or delayed. Development Manager shall prepare and submit a budget for Third Party Contracts for each Phase of the Project, which budget shall be subject to the Public Parties' prior written approval (the "Third Party Contract Budget"), which approval will not be unreasonably withheld or delayed. Development Manager shall meet with the Public Parties on a quarterly basis to evaluate the Third Party Contract Budget and to determine if costs and expenses are projected to be within such Budget upon Final Completion of the subject Phase of the Project.

**3.3 PROGRESS PAYMENTS.** At or about the tenth (10) Day of each month, Development Manager shall submit to the Public Parties a request for payment ("Progress Payment Request") for the preceding month. Such Progress Payment Request shall be in form and with such supporting data as the Public Parties may reasonably require, including, but not limited to, time sheets for all of Development Manager's personnel for which payment is requested prepared in Development Manager's form (which is reasonably acceptable to the Public Parties) for such purposes, and certified by Development Manager. Each Progress Payment Request shall include the following:

**3.3.1 Basic Fee.** Development Manager and the Public Parties acknowledge and agree that the Development Manager shall be entitled to payment of the Basic Fee based on the actual Construction Cost of the Work for each Phase as reconciled upon final completion of each Phase of the Project. However, the amount payable on a monthly basis with respect to the Basic Fee shall be initially calculated based on the Construction Manager's preliminary estimate of Construction Cost submitted following completion of the Schematic Design Documents for each Phase of the Project. Upon final completion of each Phase of the Project, the Development Manager's Basic Fee shall be reconciled based on the difference between actual Construction Cost of such Phase of the Project, subject to Article 3.4 and 3.5, and the Construction Manager's

preliminary estimate of Construction Cost for such Phase. Upon the completion of such reconciliation with respect to each Phase of the Project, in the event of an underpayment of the Basic Fee to the Development Manager, the Public Parties shall pay the difference to the Development Manager. In the event of an overpayment of the Basic Fee to the Development Manager, Development Manager shall pay the difference to the Public Parties. The Basic Fee for each Phase of the Project shall be payable in equal monthly installments over the period of time commencing on the Project Trigger Date (as to the initial Phase of the Project) and on the date of the “Full Air Lot Trigger Notice” or Ground Lot Commitment Notice under the Master Development Agreement (as to all future Phases of the Project), and ending on the anticipated date of the completion of such Phase of the Project. All monthly installments of the Basic Fee accrued as of the determination of the initial estimate thereof as described above shall be payable as part of the first Progress Payment after such determination.

**3.3.2 Direct Personnel Expense.** The amount payable with respect to the Development Manager’s Direct Personnel Expense shall be calculated based on the services dedicated to the Project, and the personnel involved therein, during the preceding calendar month.

**3.3.3 Third Party Contracts.** The amount payable with respect to Third Party Contract Expenses shall be all amounts, not theretofore reimbursed, that has either been paid by Development Manager, or are then due and payable by Development Manager, under all Third Party Contracts for the preceding calendar month.

The Public Parties shall make payments to Development Manager of all sums properly requested and approved under the provisions of this Article 3, less any withheld amount authorized by this Agreement and less any amounts owned by Development Manager to the Public Parties, not more than forty-five (45) days following Public Parties’ receipt of the Progress Payment Request, provided that the Request is in proper order, is supported by all required documentation, and that all conditions precedent to payment have been satisfied; otherwise, the time for payment of such Progress Payment Request shall be extended by the amount of time required to cure such deficiencies.

**3.4 COMPENSATION ADJUSTMENTS.** Adjustments in Development Manager’s Compensation shall be made as provided herein:

**3.4.1 Additional Services.** “Additional Services” shall mean an increase in the services required of the Development Manager due to a change in the scope of the Project or Phase thereof, a change in the nature of the services required of the Development Manager or a change in the time period for which services are required. For Additional Services provided by Development Manager, the Public Parties shall pay Development Manager a stipulated sum to be negotiated to the mutual reasonable satisfaction of Development Manager and the Public Parties. Development Manager agrees that there shall not have occurred a change in the scope of the Project solely due to items or components of the Work that: (a) were included in the Project Program and/or the Design Documents as part Phase of the Project; (b) are eliminated, modified or as part of the VA Program following the issuance of the applicable Design Documents for such Phase; and (c) are subsequently reincluded within such Phase prior to substantial completion thereof.

**3.5 BASIC FEE INCENTIVE RETENTION FUND.** In order to provide additional incentive to Development Manager to administer the design and construction of each Phase of the Project effectively, in accordance with the terms of this Agreement, the Public Parties shall retain a sum equal to twenty-five percent (25%) of the Basic Fee from the monthly Basic Fee payments due and payable pursuant to Article 3.5 (the “Basic Fee Incentive Retention Fund”) for each Phase of the Project. The Basic Fee Incentive Retention Fund shall be allocated and distributed in accordance with Article 3.5.1, 3.5.2 and 3.5.3.

**3.5.1 Management of the Phase Development and Phase Construction Schedule.** A sum equal to forty percent (40%) of the Basic Fee Incentive Retention Fund shall be allocated to Development Manager’s effective administration of the Phase Development and Phase Construction Schedule for such Phase of the Project. Upon completion of such Phase of the Project, a sum equal to forty percent (40%) of the Basic Fee Incentive Retention Fund shall be distributed from the Basic Fee Incentive Retention Fund to the Development Manager provided that Development Manager has effectively administered the work of the Project in substantial compliance with the Phase Development and Phase Construction Schedule. If the Development Manager has not effectively administered the Phase Development and Phase Construction Schedule and, as a result thereof, the Phase of the Project has not been completed in substantial compliance with the Phase Construction Schedule, forty percent (40%) of the amount retained in the Basic Fee Incentive Retention Fund shall be distributed to the Public Parties upon completion of such Phase of the Project.

**3.5.2 Management of Phase Construction Budget.** A sum equal to forty percent (40%) of the Basic Fee Incentive Retention Fund shall be allocated to Development Manager’s effective administration of the Phase Construction Budget for such Phase of the Project. Upon completion of such Phase of the Project, a sum equal to forty percent (40%) of the Basic Fee Incentive Retention Fund shall be distributed to the Development Manager from the Basic Fee Incentive Retention Fund provided Development Manager has effectively administered the construction budgeting and management processes. If the Development Manager has not effectively administered the design and construction budgeting and management processes and as a result thereof, the Work is not completed in substantial compliance with the Phase Construction Budget, a sum equal to forty percent (40%) of the amount retained in the Basic Fee Incentive Retention Fund shall be distributed to the Public Parties upon completion of such Phase of the Project.

**3.5.3 Project Planning, Management of Information and Processes** A sum equal to twenty percent (20%) of the Basic Fee Incentive Retention Fund shall be allocated to Development Manager’s effectiveness in project planning and management of information, communications and processes during such Phase of the Project. Upon completion of such Phase of the Project, a sum equal to twenty percent (20%) of the Basic Fee Incentive Retention Fund shall be distributed to the Development Manager from the Basic Fee Incentive Retention Fund provided that the Development Manager has effectively planned and managed the information, communications and processes during such Phase of the Project. If the Development Manager has not effectively planned and managed the information and processes during the Project Phase, a sum equal to twenty percent (20%) of the Basic Fee Incentive Retention Fund shall be distributed to the Public Parties upon completion of such Project Phase.

**ARTICLE IV.**  
**ADDITIONAL COVENANTS**

**4.1 CERTAIN OBLIGATIONS OF DEVELOPMENT MANAGER.** The obligations of Development Manager shall include, in addition to the other obligations of Development Manager provided for in this Agreement, the following:

4.1.1 **Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development for the Banks Project.** Development Manager and any applicable Affiliates shall monitor the Construction Manager's, the Architect's and the Engineer's compliance with the Joint Small Business Enterprise, Economic Inclusion and Workforce Development policies as set forth in Exhibit E hereto. The Public Parties shall be responsible for the costs associated with the retention of an inclusion outreach consultant to facilitate the implementation and administration of such Policy with respect to the Project.

4.1.2 **Responsible Bidder Requirements.** Development Manager shall monitor the Construction Manager's, the Architect's and the Engineer's compliance with the Responsible Bidder Requirements as set forth in Exhibit I hereto.

4.1.3 **Prevailing Wage.**

4.1.3.1 **Prevailing Wage Requirements.** Development Manager shall monitor Construction Manager's system with respect to the payment of prevailing wages in accordance with (i) Articles 4115.03 through 4115.16, Ohio Revised Code; and (ii) the current applicable Prevailing Wage schedule or schedules (collectively, "Prevailing Wage Requirements"). Development Manager shall review Construction Manager's and the Public Parties' Prevailing Wage Coordinator's periodic wage reports regarding the Project, and any other pertinent information for monitoring compliance with Prevailing Wage Requirements.

4.1.4 **Other Information.** Development Manager shall furnish to each Public Party such documents and information regarding Development Manager as a Public Party may reasonably request from time to time.

**4.2 CERTAIN OBLIGATIONS OF PUBLIC PARTIES.** The obligations of the Public Parties shall include, in addition to the other obligations of the Public Parties provided for in this Agreement, the following:

4.2.1 **Agency Reviews.** The Public Parties shall apply for and cooperate with Development Manager in obtaining timely reviews, approvals and permits as may be required from applicable governmental agencies from time to time for the construction of the Project.

4.2.2 **Contract Documents.** Each Public Party shall duly and punctually pay, perform and observe in all material respects its obligations under any Contract Documents to which it is a party.

4.2.3 **Master Development Agreement.** Each Public Party shall duly and punctually pay, perform and observe in all material respects its obligations under the Master Development Agreement.

4.2.4 **Public Entity Representatives.** During the term of this Agreement, (a) the County shall designate, by written notice to Development Manager and the City from time to time, a representative that shall act as the County's representative for coordination of design and construction matters and shall have authority to render ordinary day-to-day decisions and furnish information contemplated to be made or furnished by the County under this Agreement. During the term of this Agreement, the City shall designate, by written notice to Development Manager and the County from time to time, a representative that shall act as the City's representative for coordination of design and construction matters and shall have authority to render ordinary day-to-day decisions and furnish information contemplated to be made or furnished by the City.

## **ARTICLE V. REPRESENTATIONS**

**5.1 REPRESENTATIONS BY THE COUNTY.** The County represents to Development Manager and the City as follows:

**5.1.1** The County has the power and authority to enter into and perform this Agreement.

**5.1.2** This Agreement has been duly authorized, executed and delivered by the County and constitutes the legal, valid and binding obligation of the County enforceable in accordance with its terms.

**5.1.3** Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, contract or agreement by which the County is bound or any Legal Requirement applicable to the County.

**5.1.4** There is no action, proceeding or investigation pending or, to the County's actual knowledge, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement.

**5.1.5** No representation or warranty of the County in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representation or warranty not misleading in light of the circumstances under which it is made.

**5.2 REPRESENTATIONS BY CITY.** The City represents to Development Manager and the County as follows:

**5.2.1** The City has the power and authority to enter into and perform this Agreement.

**5.2.2** This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

**5.2.3** Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, contract or agreement by which the City is bound or any Legal Requirement applicable to the City.

**5.2.4** There is no action, proceeding or investigation pending or, to the City's actual knowledge, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement.

**5.2.5** No representation or warranty of the City in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representation or warranty not misleading in light of the circumstances under which it is made.

**5.3 REPRESENTATIONS BY DEVELOPMENT MANAGER.** Development Manager represents to each Public Party as follows:

**5.3.1** Development Manager is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to transact business in the State of Ohio, and has the power and authority to enter into and perform this Agreement.

**5.3.2** This Agreement has been duly authorized, executed and delivered by Development Manager and constitutes the legal, valid and binding obligation of Development Manager enforceable in accordance with its terms.

**5.3.3** Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, the organizational documents of Development Manager, any judgment, decree, order, contract or agreement by which Development Manager is bound, or any Legal Requirement applicable to Development Manager.

**5.3.4** There is no action, proceeding or investigation pending or, to Development Manager's actual knowledge, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement or which might result in any material adverse change in the condition (financial or otherwise) or business of Development Manager.

**5.3.5** The financial statements and other documents and information regarding Development Manager furnished or made available to the Public Parties in anticipation of this Agreement were in all material respects true and correct on the dates furnished or made available, and since their dates no material adverse change in the financial condition of Development Manager has occurred.

**5.3.6** There does not exist any Development Manager Default of fact or circumstance which, with the giving of notice, the passage of time or both, could become a Development Manager Default.

**5.3.7** No representation or warranty of Development Manager in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order

to make such representation or warranty not misleading in light of the circumstances under which it is made.

**ARTICLE VI.**  
**TRANSFERS**

**6.1 Transfer of Development Manager's Rights or Obligations Under Agreement.**

Development Manager shall not Transfer any of Development Manager's rights or obligations under this Agreement, except pursuant to Third Party Contracts approved by the Public Entities in accordance with this Agreement. Notwithstanding the foregoing, Development Manager shall have the right to subcontract its rights or obligations under this Agreement to Carter & Associates, L.L.C., a Georgia limited liability company, on such terms and conditions as Development Manager and Carter & Associates, L.L.C. shall determine.

**ARTICLE VII.**  
**DEFAULT AND REMEDIES**

**7.1 Development Manager Default.** Any one or more of the following shall constitute a "Development Manager Default":

**7.1.1** Development Manager materially defaults in the performance of any of the obligations of Development Manager under this Agreement and fails to commence to cure satisfactorily such default within thirty (30) Days after the Public Parties give Development Manager written notice of the default.

**7.1.2** Development Manager, after receipt of notice of same, persistently disregards any Legal Requirement;

**7.1.3** Any representation or warranty made by Development Manager in this Agreement is false or misleading in any material respect as of the time made;

**7.1.4** Any information prepared by Development Manager in any report, certificate or other document furnished by Development Manager to a Public Party pursuant to this Agreement or any other Contract Document is false or misleading in any material respect as of the time furnished;

**7.1.5** The filing by Development Manager of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

**7.1.6** The making by Development Manager of a general assignment for the benefit of creditors;

**7.1.7** The entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with Development Manager as debtor;

**7.1.8** The filing by Development Manager of an insolvency proceeding with respect to Development Manager or any proceeding with respect to Development Manager for

compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors;

**7.1.9** Occurrence of a material adverse change in the business or financial condition of Development Manager;

**7.1.10** Occurrence of a “Developer Default” under the Master Development Agreement.

**7.2** **Remedies for Development Manager Default.** At any time as of which a Development Manager Default exists, the Public Parties, acting together, at their option, may, but shall not be obligated to, exercise any one or more of the following remedies:

**7.2.1** The Public Parties, acting together, may, by written notice to Development Manager, terminate this Agreement, provided that such termination shall not terminate, impair or affect the indemnification obligations of Development Manager under this Agreement with respect to events which have occurred as of termination; and

**7.2.2** The Public Parties may enforce, or avail themselves of, any other remedies available to them at law or in equity, including, but not limited to, the remedies provided for in Article 7.6 and Article 7.7; provided however, that in no event shall Development Manager be liable to the Public Parties under this Agreement for any consequential, special, incidental or punitive damages, all rights to recover any such damages being hereby waived by the Public Parties.

**7.3** **Public Party Default.** Any one or more of the following shall constitute a “Public Party Default”:

**7.3.1** The Public Parties fail to pay to Development Manager amounts properly due and payable to Development Manager in accordance with the terms of this Agreement and fail to cure such default within thirty (30) Days after Development Manager gives the Public Parties a Default Notice with respect thereto;

**7.3.2** Except as provided in Article 7.3.1, the Public Parties materially default in the performance of any of the obligations of the Public Parties under this Agreement and fail to commence to cure satisfactorily such default within thirty (30) Days after Development Manager gives the Public Parties a Default Notice with respect thereto;

**7.3.3** Any report, certificate or other document furnished by a Public Party to Development Manager pursuant to this Agreement or any other Contract Document is false or misleading in any material respect as of the time furnished;

**7.3.4** Occurrence of a “Public Party Default” under the Master Development Agreement.

**7.4** **Remedies for Public Party Default.** At any time as of which a Public Party Default exists, Development Manager, at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

**7.4.1** Development Manager, may, by written notice to the Public Parties, terminate this Agreement, provided that such termination shall not terminate, impair or affect the obligations of the Public Parties under this Agreement with respect to events which have occurred as of termination.

**7.4.2** Development Manager may enforce, or avail itself of, any other remedies available to it at law or in equity, including, but not limited to, the remedies provided for in Article 7.6 and Article 7.7; provided however, that in no event shall the Public Parties be liable to Development Manager under this Agreement for any consequential, special, incidental or punitive damages, all rights to recover any such damages being hereby waived by the Development Manager.

**7.5 Default Notices.** At any time as of which there exists a default by Development Manager in the due and punctual payment, performance or observance of any obligation of Development Manager under this Agreement or any other Contract Document, the County and/or the City may give Development Manager a written notice, indicated as being a “Default Notice” under this Article 7.5, identifying such default and specifying a period of time for the cure of such default. At any time as of which there exists a default by a Public Party in the due and punctual payment, performance or observance of any obligation of such Public Party under this Agreement or any other Contract Document, Development Manager may give the Public Parties a written notice, indicated as being a “Default Notice” under this Article 7.5, identifying such default, identifying the Public Party(ies) committing such default, and specifying a period of time for the cure of such default. Any notice given in accordance with this Article 7.5 is called a “Default Notice.” The period of time for cure to be set forth in any Default Notice shall be not shorter than such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default.

**7.6 Enforcement.** Each Party shall have the right to enforce this Agreement or any other Contract Document to which it is a party in any manner provided by law or equity. As the remedy at law for the breach of any of the terms of this Agreement or other Contract Documents may be inadequate, each enforcing Party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof or thereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. The above provisions of this Article 7.6 shall be subject to the dispute resolution provisions set forth in Article 7.8.

**7.7 Self-Help.** Without limiting the provisions of Article 7.6, (a) should any defaulting Party fail to remedy any default identified in a Default Notice within the cure period specified in such Default Notice, or (b) should any default under this Agreement or any other Contract Document exist which (i) constitutes or creates an immediate threat to health or safety, (ii) constitutes or creates an immediate threat of damage to or destruction of property or (iii) is of the same nature as defaults or violations with respect to which two or more Default Notices have been given within the immediately preceding twelve (12) months, then, in any such event, the non-defaulting Party(ies) shall have the right, but not the obligation, to enter upon the property of the defaulting Party(ies) to take such steps as such non-defaulting Party(ies) may elect to cure, or cause to be cured, such default or violation. If a non-defaulting Party(ies) cures, or causes to be cured, a default as provided above in this Article 7.7, then there shall be due and payable by the

defaulting Party(ies) to the non-defaulting Party(ies) upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party(ies) in pursuing such cure, plus interest thereon from the date of demand at the rate of twelve percent (12%) per annum.

**7.8 Dispute Resolution.** Any dispute under this Agreement shall, as a condition precedent to litigation, first be subject to the dispute resolution procedures as set forth below in this Article 7.8.

7.8.1 **Negotiated Settlement.** The first step in the dispute resolution procedures shall be an attempt to negotiate a settlement of the dispute, as follows:

7.8.1.1 A Party or Parties desiring to initiate settlement negotiations (the “Initiating Party,” whether one or more than one) may do so by giving written notice to the other Party or Parties (the “Responding Party,” whether one or more than one) of the basis for the dispute, provided that the Initiating Party shall use commercially reasonable efforts to furnish the Responding Party, as expeditiously as possible, with notice of any dispute once such dispute is recognized, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such dispute.

7.8.1.2 The Initiating Party shall, within twenty-one (21) Days after giving written notice to the Responding Party of the basis for the dispute, prepare and provide to the Responding Party a written, detailed summary of the basis for the dispute, together with all facts, documents, backup data and other information reasonably available to the Initiating Party that support the Initiating Party’s position in the dispute.

7.8.1.3 The Initiating Party shall designate and make any of its employees or agents having knowledge of the dispute available to the Responding Party to respond to questions of the Responding Party.

7.8.1.4 Within twenty-one (21) Days after the Initiating Party gives notice of a dispute and furnishes the materials required by Article 7.8.1.2, (a) the Responding Party shall prepare and provide to the Initiating Party a written, detailed summary, together with all facts, documents, backup data and other information reasonably available to the Responding Party that support the Responding Party’s position in the dispute, and (b) employees or agents of the Parties who have authority to settle the dispute, along with other parties having knowledge of or an interest in the dispute, shall meet at a mutually acceptable time and place in Cincinnati, Ohio, in an effort to compromise and settle the dispute.

7.8.2 **Mediation.** Unless delay in initiating or prosecuting a claim in litigation would irrevocably prejudice a Party, any dispute which is not resolved by direct discussions and negotiations as provided in Article 7.8.1 shall be submitted to mediation under the Commercial Mediation Procedures of the American Arbitration Association or such other rules as the Parties may agree to use. If the Parties cannot agree on the selection of a mediator within ten (10) Days of the request for mediation, any Party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location in Cincinnati, Ohio that the mediator may designate. Development Manager, on the one hand, and

the Public Parties, on the other hand, shall each be responsible for fifty percent (50%) of the mediation expenses. The Parties shall conclude mediation proceedings under this Article 7.8.2 within sixty (60) Days after the designation of the mediator. In the event that mediation proceedings do not resolve the dispute within such period, a Party may commence litigation with respect to the dispute.

7.8.3 **No Prejudice**. Provided the Initiating Party has complied with the requirements for giving notice of the existence of a dispute, no delay in disposing of such dispute while the Parties pursue the dispute resolution procedures shall prejudice the rights of any Party. At the request of the Initiating Party or the Responding Party, the Parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of a dispute while the Parties pursue the dispute resolution procedures.

7.9 **Termination by Public Parties Without Event of Default**. At any time from the completion of a Phase until ninety (90) days after Master Developer gives a Full Air Lot Trigger Notice or Ground Lot Commitment Notice, each as defined in the Master Development Agreement, with respect to the next Phase, the Public Parties may, upon ninety (90) days written notice to Development Manager, terminate Development Manager's services under this Agreement. If the Public Parties terminate this Agreement other than pursuant to Article 7.2 herein, it shall make payment to Development Manager of all Basic Fee earned, and Direct Personnel Expense and Third Party Contract Fees and Expenses incurred, through the date of termination. For the purposes of this Section 7.9, the Basic Fee earned through the date of termination for any Phase of the Project that is ongoing and not completed as of the effective date of such termination shall be the sum of: (i) all installments thereof through and including the installment for the calendar month preceding the date of termination; and (ii) a pro rata portion of the installment thereof for the month of termination. The Basic Fee earned through the date of termination for any Phase of the Project that is ongoing and not completed as of the effective date of such termination shall be payable without any deduction for the Basic Fee Incentive Retention Fund. Development Manager shall, as a condition of receiving the payments referred to in this Article 7.9, execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as Public Parties may require for the purpose of fully vesting in it the rights and benefits of Development Manager under such obligations or commitments. The payment under this Article 7.9 for termination by the Public Parties without an Event of Default shall constitute full and complete satisfaction of any and all damages and claims of Development Manager regarding Development Manager's performance of services pursuant to this Agreement and the termination of such services by the Public Parties pursuant to this Article 7.9.

## ARTICLE VIII.

### **INSURANCE, WAIVER OF SUBROGATION, SAFETY**

#### **8.1 Development Manager's Indemnification.**

8.1.1 To the fullest extent permitted by and in compliance with applicable law, Development Manager shall defend, indemnify and hold harmless the Public Parties and any of their respective officers, employees, representatives, contractors and agents (collectively the "Indemnified Parties") from and against any and all liability, losses, claims, demands, suits,

actions, administrative proceedings, regulatory proceedings/hearings, expenses, judgments, attorneys' fees, court costs, defense costs or other injury or damage (collectively "Damages"), whether actual, alleged or threatened, to the extent arising out of or resulting from any bodily injury to or death of persons, or damage to property (other than the Project), to the extent arising out of or resulting from the negligent acts, intentional misconduct or omissions of Development Manager, its officers, employees and Consultants, agents, assigns and those designated by Development Manager to perform the Work or services in, about, or attendant to, the Project and services encompassed by this Agreement and/or any related or ancillary agreements.

**8.1.2** Notwithstanding the foregoing provision, Development Manager's total liability to the Indemnified Parties and anyone claiming by, through and under Public Parties for any claim, cost, loss or damages caused in part by the negligence of Development Manager and in part by the negligence of Public Parties shall not exceed the percentage share that Development Manager's negligence bears to the total negligence of Indemnified Parties and Development Manager determined on the basis of comparative negligence principles under applicable Ohio law. This Article 8.1 is intended to be and shall be construed as consistent with, and not in conflict with Section 2305.31 of the Ohio Revised Code.

**8.2 Development Manager's Insurance.** In addition to the insurance provided by the Public Parties, Development Manager shall, during the life of the Project, procure and maintain the following insurance:

**8.2.1** With respect to services or operations performed at or from the Project Site or operations necessary or incidental thereto, Business Automobile Liability Insurance, covering all owned, non-owned, hired and leased vehicles. Such insurance shall provide a combined single limit of not less than \$2,000,000 each occurrence.

**8.2.2** Workers' Compensation Insurance as required by applicable state and federal statutes, including Employers' Liability (or Stop Gap Employer's Liability, where applicable) with limits of not less than \$1,000,000 each bodily injury by accident, bodily injury by disease/policy or bodily injury by disease/employee.

**8.2.3** Commercial General Liability Insurance written on an ISO form GC 00 01 04 equivalent, with limits not less than a combined single limit of \$1,000,000 each occurrence and \$2,000,000 in the aggregate (where applicable), with severability of interest, Development Manager as named insured, and with coverage including:

- .1 Premises/operations;
- .2 Independent contractor;
- .3 Products and completed operations (extended to five years following final completion of the Project);
- .4 Contractual liability;
- .5 Personal injury;

- .6 Explosion, collapse and underground damages;
- .7 Broad form property damage liability; and
- .8 Stop gap employers' liability.

**8.2.4** Umbrella/Excess Liability Insurance with limits of \$10,000,000 each occurrence and in the aggregate (where applicable) above the commercial general and business auto liability policies, which is at least as broad as each and every area of the underlying policies and containing concurrency of the effective dates with primary policies; drop down feature and following form primary.

**8.2.5.** Professional Liability insurance with limits of \$2,000,000 each claim and in the aggregate for errors or omissions caused by the Development Manager.

**8.2.6** Each policy required under this Article 8.2 shall include the following:

8.2.6.1 At least ten (10) Days prior written notice to the Public Parties of cancellation or material change;

8.2.6.2 With the exception of the Worker's Compensation Insurance required by Section 8.2.2 and the Professional Liability Insurance required by Section 8.2.5, a waiver of subrogation in favor of the Public Parties;

8.2.6.3 With the exception of the Workers' Compensation Insurance required by Section 8.2.2 and the Professional Liability Insurance required by Section 8.2.5, naming the Public Parties as additional insured as respects any damage or loss which may arise out of Development Manager's operations or services performed pursuant to or incidental to this Agreement off the Project Site.

**8.2.7** All insurance provided by Development Manager shall be underwritten by company with an A.M. Best Rating of A-, VII or better. Development Manager will provide the Public Parties with certificates of insurance on each policy required in this Article 8.2. Certificates will be sent to: Risk Manager, Hamilton County Ohio, Room 607, 138 East Court Street, Cincinnati, Ohio 45202.

**8.3 Public Parties Insurance.** The insurance coverages and limits of liability to be provided by the Public Parties for the benefit of the Public Parties and Development Manager shall be as follows:

**8.3.1** Builder's Risk Insurance. The Public Parties shall, for its benefit and the benefit of Development Manager, as their respective interests may appear, "all risk" builder's risk insurance, in an amount not less than the total replacement cost of the Project under construction including, if applicable, the coverages available under the so-called "installation floater"; and "all risk" insurance covering any adjacent or related property of the Public Parties, in an amount not less than the total replacement cost thereof.

**8.3.2** Commercial General Liability Insurance written on an ISO form GC 00 01 04 equivalent, with limits not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate (where applicable), with severability of interest, Public Parties as named insured, and with coverage including:

- .1 Premises/operations;
- .2 Independent contractor;
- .3 Products and completed operations (extended to five years following Final Completion as defined in this Agreement);
- .4 Contractual liability;
- .5 Incidental medical malpractice;
- .6 Personal injury;
- .7 Explosion, collapse, and underground damages;
- .8 Broad form property damage liability;
- .9 Stop gap employers' liability.

**8.3.3** Umbrella/Excess Liability Insurance with limits of \$10,000,000 each occurrence and in the aggregate (where applicable) above the commercial general and business auto liability policies, which is at least as broad as each and every area of the underlying policies and containing concurrency of the effective dates with primary policies; drop down feature and following form primary.

**8.3.4** Each policy required under this Article 8.3 shall include the following:

- .1 At least ten (10) Days prior written notice to Development Manager of cancellation or material change;
- .2 A waiver of subrogation in favor of Development Manager, and;
- .3 Name Development Manager as a named insured.

**8.3.5** The Public Parties will provide Development Manager with certificates of insurance on each policy require in this Article 8.3. The Public Parties shall ensure that Development Manager is a named insured under all required policies of insurance with respect to the Construction Manager, Architect, Engineer and Trade Contractors. The Public Parties shall also confirm that Construction Manager, Architect and Engineer maintain the same insurance coverages as are required to be maintained by Development Manager under this Agreement, with limits not less than those required of Development Manager under this Agreement, with Development Manager as a named insured.

**8.4 Waiver of Subrogation.** Each insurance policy maintained by the Public Parties or by Development Manager with respect to the Project shall contain a waiver of subrogation clause, or shall name both the Public Parties and Development Manager as insured parties thereunder, so that no insurer shall have any claim over or against the Public Parties or Development Manager, as the case may be, by way of subrogation or otherwise, with respect to any claims which are insured under any such policy. The Public Parties and Development Manager each hereby waive any and all rights of recovery against the other and their respective agents and employees, to the full extent that indemnification is due under insurance coverage required by this Agreement.

**8.5 No Limit of Liability.** These insurance provisions shall not affect or limit the liability of Development Manager or the Public Parties stated elsewhere in the Agreement or as provided by law.

**8.6 Insurance Obligations.** Neither Development Manager nor the Public Parties shall knowingly violate any conditions of the policies of insurance which have been furnished by the other. Each party shall cooperate with the other, its insurance administrator, and the insurers and their representatives with respect to:

**8.6.1** Compliance with the Project safety rules, procedures and policies and claims procedures;

**8.6.2** Provision of necessary contract, operations and insurance information;

**8.6.3** Notification to the other Party of all contracts that have been or will be entered into by such Party pertaining to the Project;

**8.6.4** Notification to the other Party that any coverages provided by such Party have been cancelled, materially changed or have not been renewed;

**8.7 Deductibles Or Self Insured Retention.**

**8.7.1** Any reimbursement of losses due the insurance carriers providing coverages as described in Article 8.2 as the result of the operation of any deductibles or self insured retention contained in those policies shall be the sole responsibility of Development Manager.

**8.7.2** Any reimbursement of losses due the insurance carriers providing coverages as described in Article 8.3 as the result of the operation of any deductibles or self insured retention contained in those policies shall be the sole responsibility of the Public Parties.

## **ARTICLE IX.** **GENERAL PROVISIONS**

**9.1 Estoppel Certificates.** Each Party (a “Responsive Party”) shall, from time to time, within ten (10) business days after written request by another Party (a “Requesting Party”), execute and deliver to the Requesting Party and/or such third party designated by the Requesting Party, a statement in writing certifying (a) that (except as may be otherwise specified by the

Responsive Party) (i) this Agreement is in full force and effect and unmodified, (ii) the Responsive Party is not in default in the performance or observance of its obligations under this Agreement, and (iii) to the Responsive Party's actual knowledge, the Requesting Party is not in default in the performance or observance of the Requesting Party's obligations under this Agreement, and (b) as to such other factual matters as the Requesting Party may reasonably request about this Agreement, the status of any matter relevant to this Agreement, or the performance or observance of the provisions of this Agreement.

**9.2 Liability Of Public Parties.** Each Public Party shall be responsible to Development Manager for such Public Party's obligations under this Agreement, but shall not be responsible to Development Manager for the obligations of the other Public Party; provided, however that the Public Parties shall be jointly and severally liable for all payment obligations to Development Manager under this Agreement.

**9.3 Administrative Actions.** To the extent permitted by Legal Requirements, all actions taken or to be taken by the Public Parties under or in furtherance of this Agreement may be taken by administrative action of appropriate representatives of each Public Party and shall not require legislative action of a Public Party beyond the legislative actions authorizing this Agreement.

**9.4 Recordings.** This Agreement shall not be recorded.

**9.5 Notices.** Any notice to be given under this Agreement (a) shall be in writing, (b) if given with respect to one or more specific provisions of this Agreement, shall specify such provisions and, if applicable, the time period within which a response is required under the terms of this Agreement, (c) shall be addressed to the Party to be notified at the address set forth below or at such other address as each Party may designate for itself from time to time by notice hereunder, and (d) shall be deemed to have been given upon the earlier of (i) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (ii) receipt of notice given by telecopy or personal delivery (or the next business day after receipt if receipt occurs on a day other than a business day or after 5:00 p.m. Eastern Time on a business day):

**If to the County:**

Hamilton County Administrator  
138 East Court Street, Room 603  
Cincinnati, OH 45202  
Telecopy: (513) 946-4444  
Telephone: (513) 946-4400

with a copy to:

Hamilton County Prosecutor's Office  
230 E. Ninth Street, 8<sup>th</sup> Floor  
Cincinnati, OH 45202  
Attn.: Roger E. Friedmann, Esq.  
Telecopy: 513-946-3018  
Telephone: 513-946-3025

and

Vorys, Sater, Seymour and Pease LLP  
221 East Fourth Street, Suite 2000  
Cincinnati, OH 45202  
Attn: Thomas L. Gabelman, Esq.  
Telecopy: 513-852-7843  
Telephone: 513-723-8580

**If to the City:**

City of Cincinnati, Ohio  
801 Plum Street, Room 152  
Cincinnati, OH 45202  
Attn: City Manager  
Telecopy: 513-352-3334  
Telephone: 513-352-1515

with a copy to:

City of Cincinnati, Ohio  
801 Plum Street, Room 214  
Cincinnati, OH 45202  
Attn: City Solicitor  
Telecopy: 513-352-1515  
Telephone: 513-352-3334

and

Director of Department of Transportation and Engineering  
City of Cincinnati, Ohio  
801 Plum Street, Room 450  
Cincinnati, OH 45202  
Telecopy:  
Telephone:

**If to Development Manager:** Riverbanks Renaissance, LLC  
171 17<sup>th</sup> Street, Suite 1200  
Atlanta, GA 30363  
Attn: A. Trent Germano  
Telecopy: (404) 888-4311  
Telephone: (404) 888-3156t

with a copy to:

Greenberg Traurig  
The Forum, Suite 400  
3290 Northside Parkway  
Atlanta, GA 30327  
Attn: Ernest LaMont Greer, Esq.  
Telecopy: (678) 553-2212  
Telephone: (678) 553-2420

and:

Kilpatrick Stockton LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, GA 30309  
Attn: M. Andrew Kauss, Esq.  
Telecopy: (404) 815-6620  
Telephone: (404) 541-3262

**9.6 No Partnership.** This Agreement shall not be construed to create a partnership or joint venture between or among the Parties.

**9.7 Governing Law.** The internal laws of the State of Ohio shall govern as to the interpretation, validity and effect of this Agreement, without regard to such state's conflict of law principles.

**9.8 Jurisdiction.** The Parties submit to jurisdiction in the State of Ohio and agree that any judicial proceeding brought by or against any of the Parties with respect to this Agreement or any of the Contract Documents shall be brought in any state or federal court located in Hamilton County, Ohio, which shall have exclusive jurisdiction of controversies arising under this Agreement (subject to Article 7.8).

**9.9 Severability.** Except as expressly provided to the contrary in this Agreement, each Article, part, term and provision of this Agreement is severable from each other Article, part, term and provision and if, for any reason, any Article, part, term or provision of this Agreement is determined by a court or agency having valid jurisdiction in a decision which becomes final and unappealed to which the parties are bound, to be invalid and contrary to, or in conflict with, any applicable law or regulation, the determination that the Article, part, term, or

provision is invalid will not impair the operation of, or have any other affect on, the other portions, Articles, parts, terms and provisions of this Agreement as may remain otherwise enforceable, and all of the remaining Articles, parts, terms, and provisions of this Agreement will continue to be given full force and effect and be binding. Any Articles, parts, terms or provisions so determined to be invalid and contrary to, or in conflict with, any applicable law or regulation will be severed from this Agreement without any further action of Development Manager or the Public Parties to amend this Agreement. It is the intention of Development Manager and the Public Parties that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall have the meaning which renders it enforceable.

**9.10 Diligent Performance.** With respect to any duty or obligation imposed on a Party by this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such Party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance.

**9.11 Time Of The Essence.** Time is of the essence of this Agreement (subject to Excusable Delay).

**9.12 Entirety Of Agreement.** This Agreement embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, correspondence, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by any Party which has not been embodied in this Agreement, and no Party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. This Agreement may be amended or modified only by a written instrument signed by the Parties.

**9.13 Successors And Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided that this Article 9.13 shall not authorize any assignment or Transfer not permitted by this Agreement.

**9.14 Captions.** The captions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement or used in construing or interpreting any provision hereof.

**9.15 Exhibits.** All exhibits to this Agreement are incorporated herein by reference and made a part hereof, to the same extent as if set out in full herein.

**9.16 No Waiver.** No waiver of any condition or covenant of this Agreement to be satisfied or performed by a Party shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of a Party, except a written waiver signed by such Party, shall be construed to be a waiver of any condition or covenant to be performed by another Party.

**9.17 Construction.** No provisions of this Agreement shall be construed against a Party by reason of such Party having drafted such provisions.

**9.18 Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

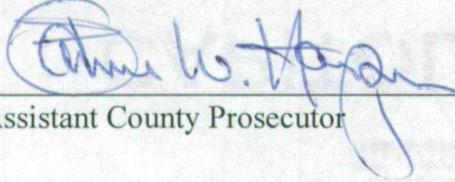
**9.19 Third Party Beneficiaries.** There are no third party beneficiaries, express or implied, of this Agreement.

**9.20 Equal Employment Opportunity.** In connection with the performance of services under this Agreement, Development Manager and its consultants hereby agree not to discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The aforesaid provisions shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Development Manager and its consultants agree to post hereafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. If and to the extent applicable to Development Manager in the performance of its services under this Agreement, Development Manager and its consultants shall comply with: (a) Title VI and VII of the Civil Rights Act of 1964, as amended; Title 49, Code of Federal Regulations; Part 21 through Appendix H and Title 23, CFR 710.405(b); (b) the provisions of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60); and (c) the Immigration Reform and Control Act (IRCA) of 1986 and agrees to permit the Public Parties and its agents access to Development Manager's personnel records to verify its compliance with IRCA requirements.

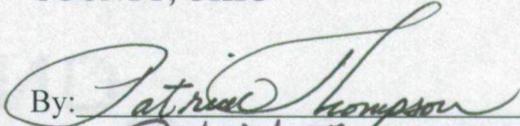
[EXECUTION ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

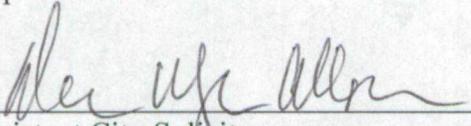
Approved as to Form:

  
Assistant County Prosecutor

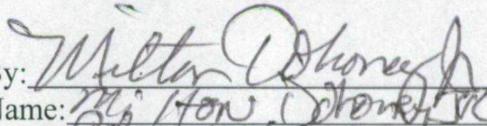
**THE BOARD OF COUNTY  
COMMISSIONERS OF HAMILTON  
COUNTY, OHIO**

By:   
Name: Patrick Thompson  
Title: County Administrator

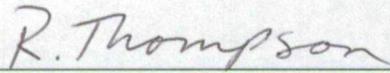
Approved as to Form:

  
Assistant City Solicitor

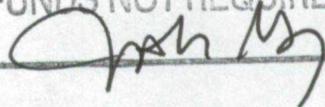
**THE CITY OF CINCINNATI, OHIO**

By:   
Name: Bill Honan  
Title: City Manager

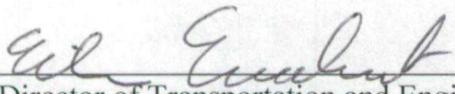
Approved as to Contract Compliance:

  
Contract Compliance Officer

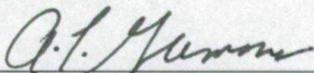
CERTIFICATION OF  
FUNDS NOT REQUIRED



Recommended:

  
Director of Transportation and Engineering

**RIVERBANKS RENAISSANCE, LLC**

By:   
Name: A.T. GERMINO  
Title: VICE CHAIRMAN of  
Carter & Associates Enterprises,  
Inc., manager of Carter &  
Associates Commercial Enterprises,  
L.L.C., its manager

**CERTIFICATION OF AVAILABILITY OF FUNDS**

As fiscal officer for the County of Hamilton, Ohio, in accordance with Section 5705.44 of the Ohio Revised Code, I hereby certify that funds sufficient to meet the obligations of the County in the foregoing agreement for fiscal year 2007 have been lawfully appropriated for the purposes thereof, and are available in the treasury or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. (No funds are required under this agreement for fiscal year 2007. As provided in Section 5705.44, amounts which shall become payable during subsequent fiscal years, as reasonably estimated, are to be included in the annual appropriation measure for each respective fiscal year as a fixed charge.)

By:   
Name: \_\_\_\_\_  
Title: COUNTY AUDITOR

## **LIST OF EXHIBITS**

- Exhibit A: General Site Plan
- Exhibit B: Proposed Replat
- Exhibit C: Parking Facility Lots
- Exhibit C.1 Parking Garage Facilities to be constructed
- Exhibit C.2 Potential Parking Garage Facilities to be constructed
- Exhibit C.3 Existing Surface Parking Facilities depicting surface parking
- Exhibit D: Federal Contract Requirements
- Exhibit E: Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development for the Banks Project
- Exhibit F: Phase DPE Budget (to be attached for each Phase of the Project)
- Exhibit G: Street Grid Site Plan
- Exhibit H: Scope of Parking Facilities, Private Podiums, Street Grid Improvements and Utilities
- Exhibit I: Responsible Bidder Requirements

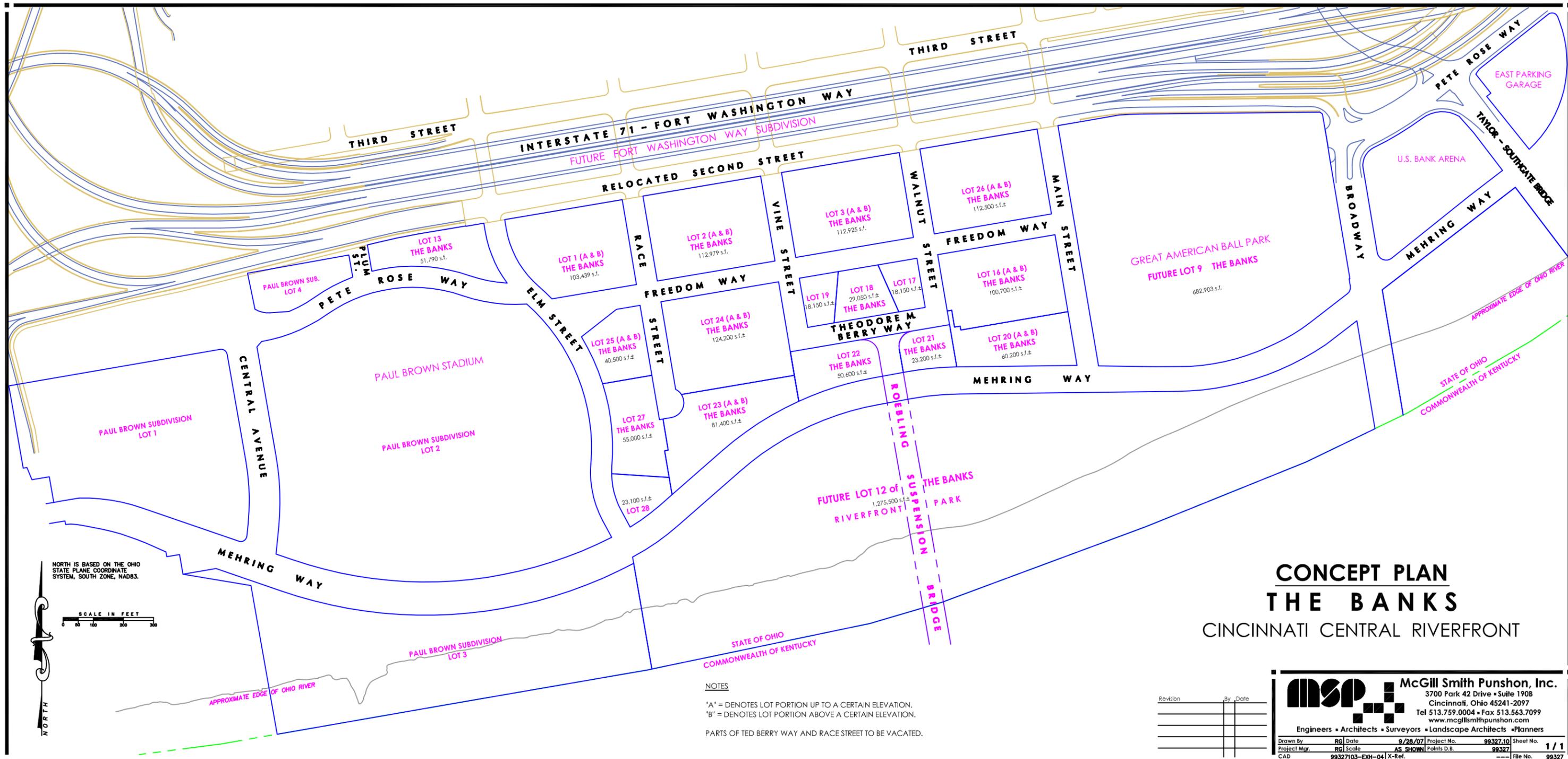
# General Site Plan

IDA – Exhibit A



# Proposed Replat

IDA – Exhibit B



# CONCEPT PLAN THE BANKS CINCINNATI CENTRAL RIVERFRONT

**NOTES**  
 "A" = DENOTES LOT PORTION UP TO A CERTAIN ELEVATION.  
 "B" = DENOTES LOT PORTION ABOVE A CERTAIN ELEVATION.  
 PARTS OF TED BERRY WAY AND RACE STREET TO BE VACATED.

Revision	By	Date

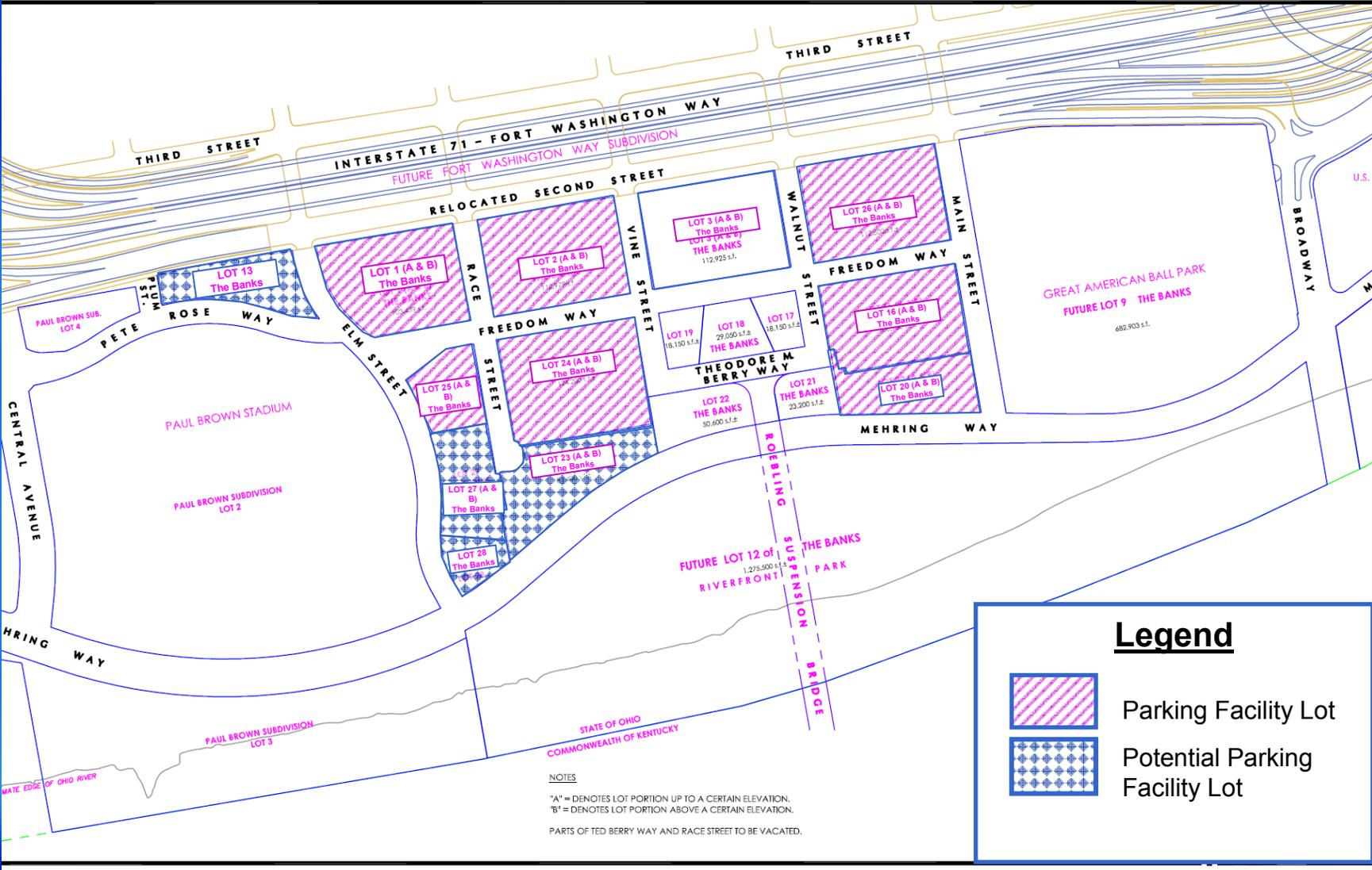
**mSP** McGill Smith Punshon, Inc.  
 3700 Park 42 Drive • Suite 190B  
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Engineers • Architects • Surveyors • Landscape Architects • Planners

Drawn By	RG	Date	9/28/07	Project No.	99327.10	Sheet No.	1 / 1
Project Mgr.	RG	Scale	AS SHOWN	Prints D.E.	99327		
CAD			99327103-EXH-04	X-Ref.			File No. 99327

# Parking Facility Lots

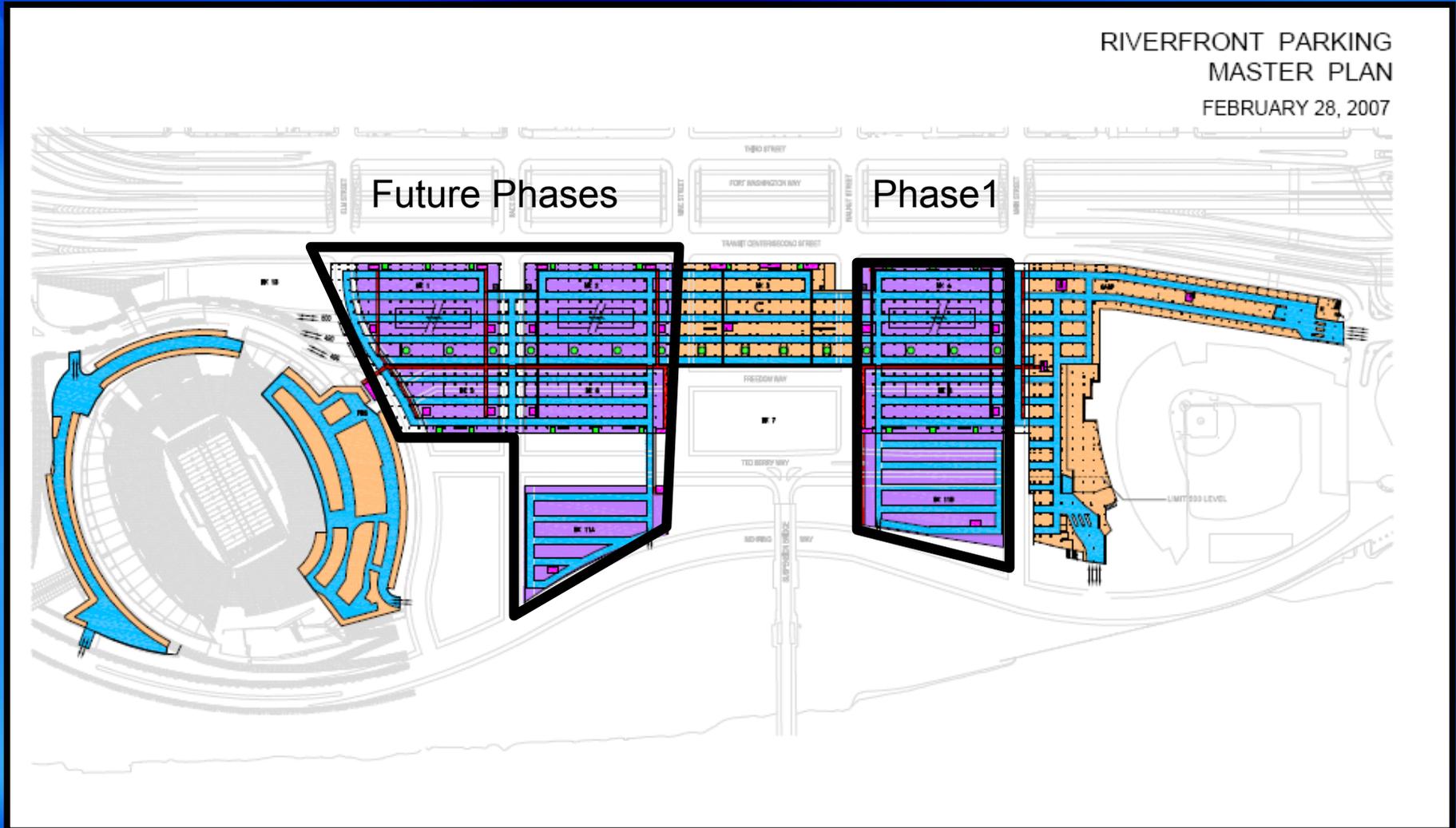
## IDMA – Exhibit C



# Parking Garage Facilities

## IDMA Exhibit C.1

RIVERFRONT PARKING  
MASTER PLAN  
FEBRUARY 28, 2007



# Potential Additional Parking Garage Facilities

## IDMA Exhibit C.2

RIVERFRONT PARKING  
 MASTER PLAN  
 OCTOBER 19, 2007



OVERALL PLAN  
 489 LEVEL

SCALE: 1" = 200'-0"

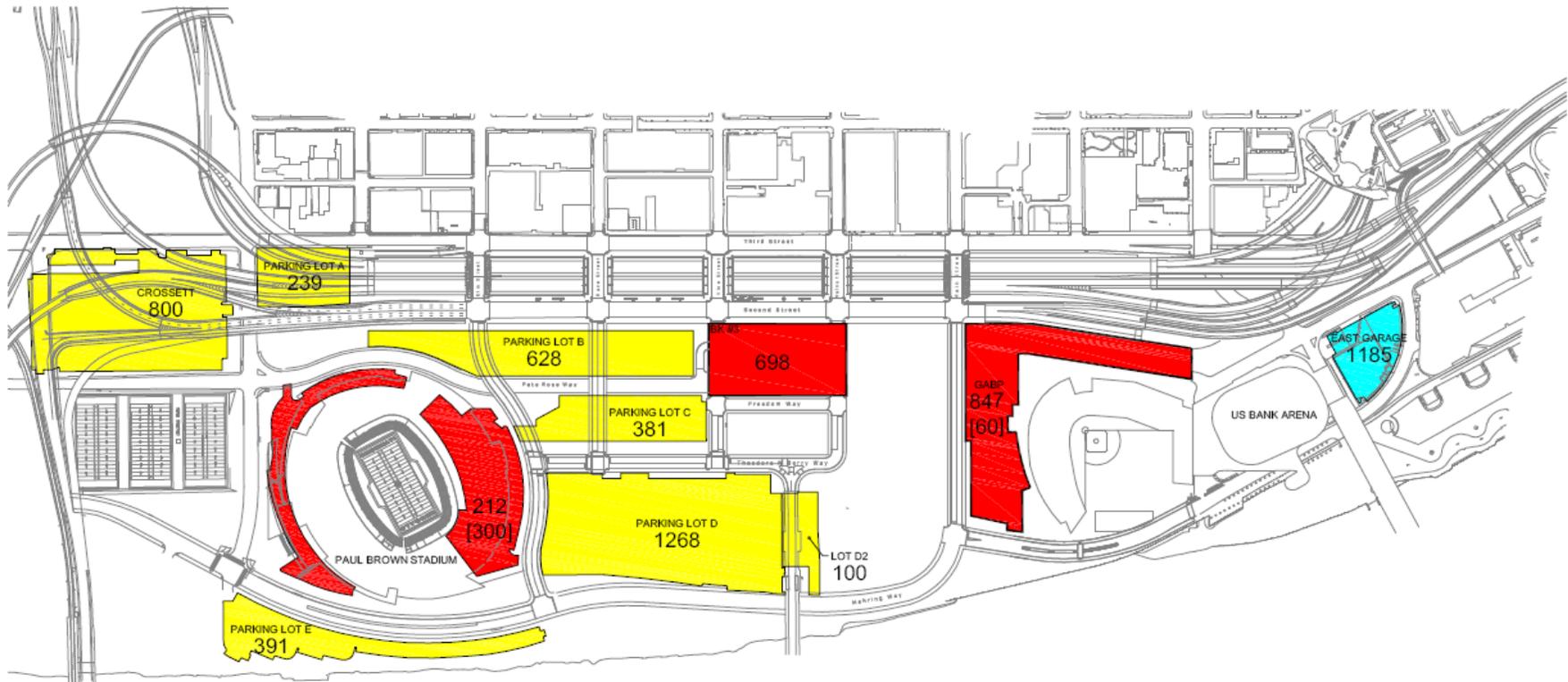


# Existing Parking Facilities

## IDMA Exhibit C.3

### BANKS DEVELOPMENT EXISTING PARKING

RIVERFRONT PARKING  
MASTER PLAN  
OCTOBER 17, 2007



- SURFACE PARKING
  - PARKING BELOW PODIUM LEVEL
  - DEDICATED ABOVE PODIUM PARKING FOR BANKS DEVELOPMENT
  - STAND ALONE PARKING GARAGE
  - (#) STALLS DEDICATED TO BANKS DEVELOPMENT (BELOW PODIUM)
  - [#] STALLS DEDICATED TO NON-PUBLIC SPORTS TEAM USE
- PUBLIC PARKING 6,749

**PRELIMINARY**

SCALE 1" = 400'



# Federal Contracting Requirements IDMA Exhibit D

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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### ATTACHMENTS

- A. Employment Preference for Appalachian Contracts  
(Included in Appalachian contracts only)

#### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

**6 Selection of Labor:** During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

#### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made

or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## 2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification

from the first day on which work is performed in the classification.

## 3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

### a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

**b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

### VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by

engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

#### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

#### **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

##### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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##### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification, and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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##### **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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#### **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR  
APPALACHIAN CONTRACTS**  
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



U.S. Department of  
Transportation

# Important



U. S. DEPARTMENT  
OF LABOR

## Wage Rate Information Federal-Aid Highway Project

Construction work on this project is subject to the minimum wage rate provisions of Section 113, Title 23, United States Code and the overtime wage provisions of the Contract Work Hours and Safety Standards Act.

As an employee of the contractor or a subcontractor, you are entitled to be paid not less than the hourly rate for the particular classification of work performed as set forth in the schedule affixed below.

The schedule affixed below contains no minimum wage rates for the following employees:

1. Apprentices properly registered under approved Federal or State apprenticeship programs. Each approved program contains the applicable rates.
2. Persons employed pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs. Programs thus certified will set forth the rates applicable.

Call any failure to receive the required rates to the attention of the representative of the contracting agency shown below or the nearest representative of the Federal Highway Administration.

(State highway department representative)

Additional information may be obtained from the Federal Highway Administration, Washington, D.C. 20590.

Any communication should list the name, location, and type of project, the name of the contractor and his address, your name and address, and a statement of what you do, what rate you are paid, and what rate you think you should be paid.

(Attach Secretary of Labor minimum wage rate schedule)

# Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development

IDMA Exhibit E

# **JOINT POLICY FOR SMALL BUSINESS ENTERPRISE, ECONOMIC INCLUSION AND WORKFORCE DEVELOPMENT FOR THE BANKS PROJECT**

## **1. Banks Project Economic Inclusion Policy**

**1.1 Purpose.** The Banks project is a joint property development project of Hamilton County, Ohio (the “County”), the City of Cincinnati, Ohio (the “City”) and a master developer, Riverbanks Renaissance, LLC (the “Developer”). The Mayor of the City, Cincinnati City Council (the “Council”) and the Commissioners of Hamilton County, Ohio (the “Commissioners”) have established this Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development (this “Banks Inclusion Policy”) for the Banks development project (the “Banks Project”) for the purpose of promoting equal business opportunity for small and disadvantaged businesses, including minority-owned and women-owned firms, and to ensure that such businesses receive or participate directly or indirectly in contracts and procurements related to the Banks Project awarded by the County and/or the City. Further, this Banks Inclusion Policy has been adopted to support and encourage the participation of small businesses and disadvantaged businesses, including, but not limited to, those owned by minorities and women, in the retail, hospitality and entertainment components of the Banks Project through active recruitment, facilitation of relationships and aggressive information-sharing. This Banks Inclusion Policy also has been established for the purposes of ensuring non-discrimination in the award and administration of such contracts and procurements and to promote the economic inclusion of qualified workers in the local region through employment opportunities related to the Banks Project.

## **2. Non-Discrimination Policy**

**2.1 Contracts and Procurements.** The County and the City each is an equal business opportunity government which provides, and will continue to provide, equal access to contracting and procurement opportunities for all businesses. It is the policy of the County and the City that no contracts should be awarded, and no procurement decisions should be made, by or on behalf of the County and/or the City as the result of unlawful discrimination based upon race, color, religion, sex, sexual orientation, national origin, ancestry, disability, veteran status, age, political belief or place of birth.

**2.2 Employment.** The County and the City each has a long-standing commitment to ensuring non-discrimination and equal opportunity in employment. Under federal and state laws, the County and the City are obligated to avoid unlawful discrimination, to ensure that their respective contractors and suppliers avoid unlawful discrimination, and to ensure that contractors, subcontractors and suppliers for the Banks Project are selected by the County, the City and their respective contractors and suppliers without engaging in unlawful discrimination. Prior to being awarded a contract or procurement with the County or the City, each Contractor shall be required to certify in writing to the County or the City, as the case may be, that (a) the Contractor will comply with all of the requirements of this non-discrimination policy (the “Non-discrimination Policy”) and (b) the Contractor, directly or indirectly, (i) has not engaged, is not

engaged and will not engage in any kind of unlawful discrimination involving race, color, religion, sex, sexual orientation, national origin, ancestry, disability, veteran status, age, political belief or place of birth, whether or not such unlawful discrimination is related to a contract or procurement activity involving the Banks Project, and (ii) will not, for any purpose related to the Contractor's engagement with respect to the Banks Project, employ or contract with any person or business which the Contractor knows or has reason to know has engaged, is engaged, or will engage in such unlawful discrimination, whether or not such unlawful discrimination is related to a contract or procurement activity or involving the Banks Project. As used herein, "**Contractor**" means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

### **3. DBE Policy Statement and Objectives [49 CFR Part 26.23]**

**3.1 Policy and Objectives.** The County and the City have received, or may receive, federal financial assistance from the U. S. Department of Transportation (the "DOT") to finance a portion of the Banks Project and, as a condition to receiving such assistance, must comply with DOT regulations under 49 CFR Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*". In order to comply with DOT requirements and to give effect to this Banks Inclusion Policy, the County and the City have adopted this Disadvantaged Business Enterprise (as defined below) policy ("DBE Policy") and have established a Disadvantaged Business Enterprise program for DOT-assisted contracts related to the Banks Project (the "DBE Program") in accordance with applicable DOT regulations. It is the policy of the County and the City to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts ("DBE Policy"). It also is the policy and objectives of the County and the City:

- (a) To ensure non-discrimination in the award and administration of DOT-assisted contracts;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that only firms that fully meet eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs in the DBE Program;
- (d) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- (f) To assist with the development of firms that can compete successfully in the marketplace outside of the DBE Program.

**3.2 Liaison Officer.** The Director of Hamilton County Small Business Development has been designated as the DBE liaison officer for the DBE Program (the “DBE Liaison Officer”). In that capacity, he/she is responsible for implementing all aspects of the DBE Program and ensuring that the County and the City comply with all provisions of 49 CFR Part 26 in connection with the award and performance of DOT-assisted contracts related to the Banks Project. Implementation of the DBE Program shall be accorded the same priority as compliance with all other legal obligations incurred by the County and the City in their financial assistance agreements with the DOT. The DBE Liaison Officer shall have direct and independent access to the Commissioners, the County Administrator of Hamilton County (the “County Administrator”), the Mayor of Cincinnati (the “Mayor”) and the Council with respect to matters concerning the DBE Program. [49 CFR Part 26.25]

**3.3 Dissemination of Policy.** The County has disseminated or will disseminate this DBE Policy statement to the Commissioners and all departments and divisions of the County. The City has disseminated or will disseminate this DBE Policy statement to the Mayor and all departments and divisions of the City. This DBE Policy statement also shall be distributed to DBEs and non-DBE business communities that currently perform, or have performed, work for the County or the City on DOT-assisted contracts by publishing this statement in general circulation, minority-focused and trade association publications, by electronic or regular mail to local disadvantaged business development organizations and by posting a copy of this DBE Policy statement on the County’s website and the City’s website. [49 CFR Part 26.23]

**3.4 No Quotas or Set-Asides.** Neither the County nor the City will use quotas or will set aside contracts for DBEs on DOT-assisted contracts or in any way in the administration of the DBE Program, except as permitted under DOT regulations to address egregious instances of unlawful discrimination. [49 CFR Part 26.43]

**3.5 Expiration.** The County and the City shall continue to carry out the DBE Program until all funds from DOT financial assistance for the Banks Project have been expended. [49 CFR Part 26.21(c)]

## **4. DBE Program Requirements**

### **4.1 Definitions. [49 CFR Part 26.5]**

4.1.1 “**Disadvantaged Business Enterprise**” or “**DBE**” means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. To be eligible for DBE certification under the DBE Program, (i) a firm (including its affiliates) must be an existing small business, as defined by the U. S. Small Business Administration (“SBA”) standards, and must not have average annual gross receipts as defined by SBA regulations over the firm’s previous three fiscal years in excess of \$20.41 million (subject to adjustment from time to time for inflation); [49 CFR Part 26.65]

4.1.2 “**DOT-Assisted Contract**” means any contract between the County and/or the City and a contractor (at any tier), funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land;

4.1.3 “**Socially and economically disadvantaged individual**” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(a) An individual who the County or the City finds to be a socially and economically disadvantaged individual on a case-by-case basis;

(b) An individual in one or more of the following groups, members of which are *rebuttably presumed* to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women; and

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

An individual whose personal net worth exceeds \$750,000 (excluding the individual’s ownership interest in the firm applying for DBE certification, the individual’s equity in his or her primary residence and any contingent liabilities) is deemed not to be economically disadvantaged. [49 CFR Part 26.67(d)]

All terms used in this DBE Policy statement which otherwise are not defined in this statement shall have the respective meanings assigned to them, if any, in 49 CFR Part 26.

**4.2 Non-Discrimination. [49 CFR Part 26.7]** Neither the County nor the City will exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering the DBE Program, neither the County nor the City will, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex or national origin.

**4.3 DBE Financial Institutions. [49 CFR Part 26.27]** The County and the City will investigate thoroughly the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the County, if any, and shall make reasonable efforts to use these institutions and to encourage prime contractors for DOT-assisted contracts related to the Banks Project to use such institutions. Any information on the availability of such institutions shall be maintained by the DBE Liaison Officer.

**4.4 DBE Directory. [49 CFR Part 26.31]** The County and the City shall maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in the DBE Program. For each firm, the directory will include its address, phone number, and types of work the firm has been certified to perform as a DBE. The directory will be made available on request to interested persons, including bidders, for work related to the Banks Project in connection with their efforts to meet the DBE goals established by the County and the City and made a part of bid specifications. The directory will serve as a primary source for locating potential contractors and suppliers. The directory will be revised at least annually and updated information included in the directory will be made available to contractors and the public on request.

**4.5 Required Contract Clauses.** Both the County and the City will require the following assurance to be included in every DOT-assisted contract between the County or the City, as the case may be, and a contractor, and in each subcontract the contractor signs with a subcontractor:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County and/or the City deems appropriate.” [49 CFR Part 26.13(b)]

The County and the City will include the following clause in each DBE-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from the County and/or the City. If the County and/or the City require retainage from the prime contractor and incremental acceptances of portions, as determined by the County or the City, as the case may be, of the contract work are made by the County and/or the City, then the prime contractor agrees to return all related retainage from subcontractors, if any, within ten (10) days after receiving payment from the County and/or the City for the contract work satisfactorily completed and accepted by the County and/or the City, including such incremental acceptances of portions of such work. Any delay or postponement of payment over ten (10) days may occur only for good cause following written approval of the County and/or the City, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed. This clause applies to both DBE and non-DBE subcontracts. Each subcontractor shall provide in all contracts with lower tier subcontractors or suppliers clauses requiring that the subcontractor shall pay the lower tier subcontractors and suppliers in accordance with the foregoing provisions. Any violation of these provisions by the prime contractor may be considered a breach of contract and may result in the suspension or termination of this contract or such other remedy as deemed appropriate by the County or the City, as the case may be, and DOT. The foregoing requirements shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the prime contractor or any subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance and/or noncompliance by a subcontractor.” [49 CFR Part 26.29]

**4.6 Monitoring and Enforcement Mechanisms. [49 CFR Part 26.37]**The County and the City will monitor DBE contracts, DBE scheduled work and payments to contractors related to the Banks Project in order to ensure compliance with this DBE Program and that work committed to DBEs at contract award is actually performed by DBEs. Non-compliance with this DBE Policy by the offending party may be considered a breach of contract and may result in the suspension or termination of that party’s contract or such other remedy as deemed appropriate by the County or the City, as the case may be, and the DOT. The County and the City will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the DBE Program known to the County or the City, as the case may be, as provided in 49 CFR Part 26.109. [49 CFR Part 26.37] The County and the City also will consider similar action under the County’s or the City’s own legal authorities granted through the contract documents, including responsibility determinations in future contracts.

**4.7 Overall DBE Goals. [49 CFR Part 26.45]**

(a) The County and the City, together with the Ohio Department of Transportation (“ODOT”), are required to and have established an overall goal for DBE participation in DOT-assisted contracts related to the Banks Project in accordance with the provisions of 49 CFR Part 26.45. The overall DBE participation goal must be based on demonstrable evidence of the availability of DBEs in the County which are ready, willing and able to participate in the DOT-assisted contracts relative to all businesses in the County which are ready, willing and able to participate in such contracts. The goal also must reflect the determination of the County, the City and ODOT of the level of DBE participation expected

absent the effects of discrimination. The overall goal for utilization of DBEs in connection with the publicly-funded portion of the Banks Project with respect to DOT-assisted contracts is \_\_\_\_\_% (the “DBE Goal”). **[NOTE: DBE PARTICIPATION GOAL TO BE SET BY ODOT WITH RECOMMENDATION FROM THE COUNTY AND THE CITY.]**

The Developer for the Banks Project fully supports the DBE Policy and the DBE Goal for the publicly-funded portion of the Banks Project.

(b) The County and the City will meet the maximum feasible portion of the DBE Goal by using *race-neutral* means to facilitate DBE participation in the Banks Project. The County and the City will attempt to achieve increased DBE participation in DOT-assisted contracts through *race-neutral* means, including, but not limited to, encouraging prime contractors to subcontract portions of the work on the Banks Project to DBEs, including work that such prime contractors otherwise might perform with their own work forces; ensuring the inclusion of DBEs and other small businesses on the County’s and/or the City’s mailing lists for bidders; and advising prime contractors of the County’s website and the City’s website with DBE information. [49 CFR Part 26.51(a)]

(c) The County and the City will use *contract goals* to meet any portion of the DBE Goal that the County and the City project cannot be met using *race-neutral* means. *Contract goals* shall be established so that, over the period to which the overall goal applies, the *contract goals* cumulatively will result in meeting any portion of the DBE Goal that is not projected to be met through the use of *race-neutral* measures. The County and the City will establish *contract goals* only on those DOT-assisted contracts that have subcontracting possibilities. The County and the City will not be required to establish *contract goals* on every such contract, and the size of *contract goals* will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work, etc.). [49 CFR Parts 26.51(d) and (e)] The County and the City will express *contract goals* as a percentage of the total amount of a DOT-assisted contract.

**4.8 Good Faith Efforts. [49 CFR Part 26.53]** When the County and/or the City has established a DBE *contract goal*, the County and/or the City will award the contract only to a bidder/offeror who makes good faith efforts to meet the goal as required under 49 CFR Part 26.53. Compliance with good faith efforts requirements will be treated as a matter of responsiveness to bid specifications. Each solicitation for which a *contract goal* has been established will require the bidders/offerors to submit the following information with each bid submitted:

- (a) The names and business and e-mail addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE firm will perform;
- (c) The dollar amount of the participation of each DBE firm participating;

(d) Written and signed documentation of commitment to use DBE subcontractors whose participation it submits to meet a *contract goal*;

(e) Written and signed confirmation from each DBE firm that it is participating in the contract as provided in the prime Contractor's commitment; and

(f) If the contract goal is not met, evidence of good faith efforts of the bidder/offeror to meet such goal.

**4.9 Counting DBE Participation. [49 CFR Part 26.55]** The County and the City will count DBE participation towards overall and *contract goals* under the DBE Program as provided in 49 CFR Part 26.55.

**4.10 DBE Certification. [49 CFR Part 26.83]** Only firms certified as eligible DBEs as described in 49 CFR Part 26.83 are eligible to participate in the DBE Program.

## **5. SBE Policy Statement and Objectives**

**5.1 Policy and Objectives.** The County and the City recognize that small businesses contribute financially to the County and the City through the payment of local taxes and the employment of local residents, who themselves support the County and the City through the payment of local taxes. The County and the City also acknowledge that small businesses generally have an economic and competitive disadvantage with respect to County and City contract and procurement opportunities because of their size and economic status. The County and the City believe that the growth and development of these economically-disadvantaged small businesses will increase the number of qualified business competitors in the local community, will improve and strengthen the local tax base which supports the County and the City, and will have a positive impact on the local workforce. It is the policy of the County and the City to support and encourage the participation of economically-disadvantaged small businesses in their procurement and contracting activities, including such activities related to the Banks Project (the "SBE Policy"). Accordingly, as part of the Banks Inclusion Policy, the County and the City have established the Banks Small Business Program (the "SBE Program") to encourage the participation of small businesses, directly and indirectly, in the contracts and procurements awarded by the County and/or the City related to the Banks Project. As part of the SBE Program, the County and the City also will encourage Contractors awarded Banks Project contracts to engage or use small businesses as subcontractors and/or suppliers for work to be performed under such contracts. Further, the County and the City will collect data to measure the participation of small businesses and minority and women-owned businesses in contracting and procurement activities related to the Banks Project. On an annual basis during the completion of the Banks Project, the County and the City will review this SBE Policy and the SBE Program and, if appropriate, will modify the policy and/or the program to more effectively achieve the objective of including small businesses in the contracting and procurement activities of the County and/or the City relating to the Banks Project.

**5.2 Definitions.** For purposes of this SBE Policy and the SBE Program, as used herein, "small business", "small business enterprise" and "SBE" means a "small business enterprise" as defined under Section 323-1-S of the Municipal Code of the City of Cincinnati,

Ohio, except that any requirement for the maintenance of fixed offices within the geographical boundaries of the County or the City (or any other geographic area) contained in such definition will not be applicable for purposes of the SBE Program. As used herein, “**Contractor**” means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

### **5.3. SBE Participation Goals.**

(a) In furtherance of the SBE Policy, it is the goal of the County and the City to award to small businesses, directly or indirectly through contracting, subcontracting and/or procurement activities of Contractors, contracts and procurements which represent at least 30% for Construction, 15% for Commodities and General Services and 10% for Professional Services, respectively, of the aggregate dollars spent annually by the County and/or the City on the Banks Project (the “SBE Goal”). In order to achieve the SBE Goal, the County and the City will encourage Contractors to use small businesses in the performance of contracts awarded to them relating to the Banks Project.

The Developer for the Banks Project fully supports the SBE Policy and the SBE Goals for the publicly-funded portion of the Banks Project and, with respect to the privately-funded portion, it is the goal of the Developer to achieve percentage goals equal to the SBE Goals with respect to the use of small business enterprises.

(b) The following categories are hereby established to identify the contracting and procurement activities covered by this SBE Policy, which categories may be amended from time to time by the County and the City:

(i) **Category A. – Construction:** including, without limitations, any and all contracts relating to new construction and the construction, renovation and/or maintenance of buildings, facilities and other erected structures owned or leased by the County and/or the City and the rehabilitation, remodeling and repairs of roads and bridges.

(ii) **Category B. – Commodities:** including, without limitations, the purchase of all goods, equipment, office and other supplies, art, furniture, and other tangible personal property otherwise not covered by Categories A, C and D herein.

(iii) **Category C. - General Services:** including, without limitations, the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting and any other non-professional services.

(iv) **Category D. – Professional Services:** including, without limitations, the purchase of any and all services for which applicable selection criteria may require a bidder or Contractor to possess a license or other certificate of competency, such as in the areas of accounting and auditing, insurance, laboratory, legal, medical and transportation, or as otherwise described as consultants in the Ohio Revised Code.

(c) Each Contractor for the Banks Project will be required to submit to the County and/or the City, as the case may be, with the Contractor's bid a plan for the engagement of small businesses by the Contractor in connection with the Banks Project. A Contractor's failure to submit a small business utilization plan to the County and/or City with the Contractor's bid may result in a determination that the bid is non-responsive and rejection of the bid.

(d) The County and/or the City may establish goals for the utilization of SBEs for each contract awarded by the County or the City, as the case may be, in connection with the Banks Project, and the goal related to each contract may differ from the goals for other contracts because of the availability of SBEs or other factors.

(e) The County and the City are required to award all contracts for the Banks Project to the "**lowest and best**" bidder. Accordingly, inability of a Contractor to meet the established contract goal or any other goal set forth in this SBE Policy with respect to the utilization of SBEs will not exclude the Contractor from award of a contract if the Contractor's bid otherwise is deemed by the County and/or the City, as the case may be, to be the "**lowest and best**" bid.

(f) For purposes of determining whether the SBE Goal is reached, SBE participation in Banks Project contracts will be counted as follows:

(i) The total dollar value of the contract awarded to an eligible SBE will be counted toward the SBE Goal;

(ii) The County or the City may count toward the SBE Goal a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract of the SBE in the joint venture;

(iii) The County or the City may count toward the SBE Goal only expenditures to SBEs that perform a "**commercially useful function**" in the work of a contract. An SBE is considered to perform a "**commercially useful function**" when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. A business which stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies engages in a

“**commercially useful function**” for purposes of the SBE Program. SBEs that engage in the business of providing brokerage shall not be deemed to perform a “**commercially useful function**” unless the brokerage services are those required or sought by the County or the City, as the case may be. To determine whether an SBE is performing a commercially useful function, the County or the City, as the case may be, will evaluate the amount of work subcontracted, industry practices, and other relevant factors; and

(iv) Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE will be presumed not to be performing a commercially useful function. The SBE may present evidence to rebut this presumption to the County or the City, whichever has awarded the relevant contract.

**5.4 Program Support.** To facilitate the use of small businesses by Contractors, the County and the City, working together with the Consultant (as hereinafter defined), will:

5.4.1 Sponsor and hold pre-bid meetings to inform potential bidders of the SBE Goal and the availability of small businesses to perform work related to or to serve as suppliers for the Banks Project;

5.4.2 Notify small businesses of contracting, subcontracting and procurement opportunities related to the Banks Project directly and by placing notices and specifications related to such opportunities in their respective government bulletins; and, as funding permits, in major local newspapers in general circulation, local trade and trade association publications, small business enterprise media and other periodicals;

5.4.3 Provide copies of bid notices to local trade associations, local small business chambers of commerce, technical assistance agencies and small business contractor associations;

5.4.4 Provide small businesses with information and list of resources relating to insurance, bonding and financing;

5.4.5 Encourage the formation of joint ventures among small businesses and between small businesses and prime Contractors which may provide an opportunity for small businesses to gain experience;

5.4.6 Make copies of specifications and requests for proposals available for review by any prospective bidder;

5.4.7 Conduct outreach events directed to small businesses regarding contracting procedures and specific contracting opportunities related to the Banks Project;

5.4.8 Make available a list of small business resources that may assist with the development and improvement of immediate and long-term business management, recordkeeping and financial and accounting capabilities; and

5.4.9 Develop and distribute to potential Contractors for the Banks Project through print and electronic means a current directory of small businesses which are certified in accordance with this SBE Policy and which are available to serve as subcontractors and suppliers for the Banks Project, categorized by types of firms to facilitate identifying SBEs with capabilities relevant to a particular specification. Each SBE listing will contain the business name, contact person, mailing and e-mail addresses, phone number, legal structure of the business, and details concerning the SBE's specialty(ies). The directory will be continuously updated and maintained electronically as well as in hard copy. In compiling the directory, the County and the City will seek to identify and certify as many SBEs as possible that have the potential of doing business related to the Banks Project.

### **5.5 Monitoring SBE Participation.**

(a) The County and the City will monitor and track the participation of small businesses in the Banks Project to determine if the SBE Goal is being met and whether Contractors are in compliance with the Non-discrimination Policy. In order to assist the County and the City in that effort, each Contractor for the Banks Project will be required to:

(i) submit to the awarding government entity (the County or the City, as appropriate) with each contract bid related to the Banks Project information regarding any and all small businesses proposed to be used by the Contractor in connection with the performance of the contract, including, but not limited to, a list of the name, business and e-mail addresses and telephone number of, and a brief description of the services to be performed or procurements to be filled (including the amount to be paid for such services or procurements) by, each such small business, which list also shall identify specifically each minority and women-owned business to be utilized in performing the contract if awarded to the Contractor; and

(ii) upon award of a contract related to the Banks Project, compile and deliver to the County and the City *monthly* reports regarding the engagement of small businesses in connection with the Banks Project in sufficient detail so as to allow the County and the City to monitor and track the participation of small businesses in contract and procurement activities related to the Banks Project, including, but not limited to, a list of the name, business and e-mail addresses, telephone number and federal tax identification number of, and a brief description of the actual services performed or procurements filled by (including the amount paid or to be paid for such services or procurements), each small business during the period covered by the report in connection with the Banks Project contract or procurement awarded to such Contractor. In addition, for monitoring

purposes, each such report shall identify specifically each minority and women-owned business included in the list.

(b) A Contractor's non-compliance with the foregoing disclosure or reporting requirements may be considered a breach of contract and may result in the suspension or termination of the Contractor's contract related to the Banks Project or such other remedy as may be deemed appropriate by the County and/or the City.

(c) The County and the City at least annually will prepare or cause to be prepared a consolidated report based on a compilation and analysis of the reports submitted by the Developer and other information, if any, provided to the County and the City by Contractors, regarding the use of small businesses for contracts and procurements related to the Banks Project. The report also will discuss the use of minority-owned and women-owned businesses for services and procurements related to the Banks Project to the extent that such information is available to the County and/or the City. The report will be made available promptly to the general public on the County's and the City's websites as well as in hard copy upon request.

**5.6 SBE Certification.** For purposes of the Banks Project, only small businesses which are certified by the City pursuant to Section 323-1-S of the Municipal Code of the City of Cincinnati, Ohio will be eligible to participate in the SBE Program. Notwithstanding the foregoing, no requirement regarding the maintenance of fixed offices within the geographical boundaries of the County or the City (or any other geographic area) will be required for such certification.

**5.7 Limitations.** The provisions of this SBE Policy shall not apply to contracts or procurements valued at \$5,000 or less. In addition, the provisions of this SBE Policy shall not apply to the publicly-funded portion of the Banks Project to the extent that applicable federal and/or state laws, regulations or policies prohibit the application of this SBE Policy to such portion.

**5.8 Application of Other SBE Policies.** This SBE Policy and the SBE Program established pursuant hereto shall be applied to all contracts and procurements of the County and/or the City awarded or to be awarded in connection with the Banks Project in lieu of any other existing small business enterprise policy, program or contracting and procurement requirements of the County and/or the City.

## **6. Workforce Development Policy Statement and Objective [41 CFR Part 60]**

**6.1 Policy and Objectives.** The County and the City are equal opportunity employers. The County and the City believe that the reduction in unemployment among local residents, particularly minorities and women, constitutes a valid local government purpose. The County and the City also recognize their obligation to use contracting and procurement activities to facilitate the creation of jobs for unemployed and underemployed individuals. In addition, a portion of the Banks Project will be financed by the federal government through DOT, which requires compliance with Executive Order No. 11246, as amended (the "Executive Order"), and

regulations promulgated by the U. S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”), under 41 CFR Part 60 (the “DOL Regulations”). The Executive Order prohibits discrimination in employment and requires affirmative action by contractors and subcontractors to ensure equal employment opportunities without regard to race, color, sex, religion and/or national origin in performing non-exempt federally-assisted construction contracts and subcontracts. The Executive Order and the DOL Regulations apply to a construction contractor’s or subcontractor’s employees who are engaged in on-site construction, including those construction employees who work on a non-federally assisted construction site. It is the policy of the County and the City to comply, and to require all Contractors awarded contracts or subcontracts related to the Banks Project to comply, with the Executive Order and the DOL regulations (“Banks Workforce Policy”) to the extent applicable. Therefore, in order to increase the capacity of minorities and women to participate in local construction projects, to promote the employment of minorities and women in connection with the Banks Project and to comply with the Executive Order and the DOL regulations, as part of the Banks Inclusion Policy, the County and the City have established the Banks Workforce Development Program (the “Banks Workforce Program”). Each Contractor working on the publicly-funded portion of the Banks Project shall comply with all applicable provisions of the Executive Order, the DOL Regulations and all other rules, regulations, and relevant orders of the U. S. Secretary of Labor. For purposes of this policy, “**Contractor**” means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

All terms used in this Banks Workforce Policy statement which otherwise are not defined in this statement shall have the respective meanings assigned to them, if any, in the Executive Order and/or the DOL Regulations.

## **6.2 Required Contract Clauses.**

(a) Pursuant to the DOL Regulations, the equal opportunity clause published at 41 CFR Part 60-1.4(b) (the “Equal Opportunity Clause”) is required to be included in, and to be made a part of, all nonexempt federally-assisted construction contracts and subcontracts. Each Contractor working on the publicly-funded portion of the Banks Project shall include the Equal Opportunity Clause in each of its contracts and subcontracts. The Equal Opportunity Clause shall be considered to be part of each contract and subcontract related to the Banks Project required by the Executive Order or the DOL Regulations to include such a clause, whether or not such clause is physically incorporated in such contract. [41 CFR Part 60-4.3(a)]

(b) The Standard Federal Equal Employment Opportunity Construction Contract Specifications published at 41 CFR Part 60-4.3(a) (the “Specifications”) are required to be included in, and to be made a part of, all federal and federally-assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director of OFCCP (the “Director”) pursuant to 41 CFR Part 60-4.6 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction federal contracts and subcontracts covered under the Executive Order. Each Contractor working on the publicly-funded portion of the Banks Project shall include the Specifications in each of its contracts and

subcontracts as may be required under the Executive Order and/or the DOL Regulations. The Specifications shall be considered part of each contract and subcontract required by the DOL Regulations to include such a clause, whether or not such clause is physically incorporated in such contracts. [41 CFR Part 60-4.3(a)]

**6.3 Affirmative Action Program. [41 CFR Part 60-1.40]** Each nonconstruction Contractor awarded a contract by the County or the City related to the publicly-funded portion of the Banks Project, if the Contractor has 50 or more employees and a federally-assisted contract of \$50,000 or more, or has United States bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, shall develop and maintain a written affirmative action program for each of its establishments. Each Contractor awarded a contract or subcontract related to the Banks Project shall require each of its nonconstruction subcontractors, if the nonconstruction subcontractor has 50 or more employees and a federally-assisted contract of \$50,000 or more, or has United States bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, to develop and maintain a written affirmative action program for each of its establishments. An affirmative action program required by this section must comply with applicable DOL Regulations, must be developed within 120 days from the commencement of the awarded Banks Project related contract and must be updated annually. [41 CFR Part 60-1.40(a)] In order to comply with DOL Regulations, an affirmative action program must include the components specified in 41 CFR Parts 60-2.10(b) and 60-2.17, including placement goals for minorities and women. As part of its affirmative action program, a Contractor must conduct a workforce analysis of each job title, determine workforce availability of women and minorities for each job group, and conduct a utilization analysis to determine whether women or minority group persons are "underutilized" in any job group. Based on these analyses, the Contractor shall establish goals to overcome the underutilization of minorities and women and shall make a good faith effort to achieve those goals.

**6.4 The Banks Project Workforce Participation Goals. [41 CFR Parts 60-4.3 and 60-4.6]**

(a) Under the Executive Order and DOL Regulations, construction Contractors are not required to maintain a written affirmative action program, but must make ***good faith efforts*** to meet demographic goals related to geographic specific census data for minorities and a ***nationwide*** goal for women as determined by the Director or his designee. From time to time, the Director issues goals for minorities and women utilization based on appropriate workforce demographic or other relevant data, which covers construction projects or construction contracts performed in specific geographical areas. The goals for minority and women participation in construction projects are expressed in percentage terms for the covered Contractor's aggregate workforce in ***each*** construction trade on ***all*** construction sites. The current percentage goal for the utilization of women established by the Director is 6.9% of work hours and applies to all of a Contractor's construction sites regardless of where the federal or federally-assisted contract is being performed. Minority utilization goals are formulated in terms of work hours performed in a specific Standard Metropolitan Statistical Area ("SMSA") or Economic Area, and the specified goals apply to all of a Contractor's work in the SMSA, both federally-assisted and private construction work. Therefore, the current goals for minorities and women participation in the workforce for the Banks Project as established by the Director are as follows:

	Goal for minority participation in each trade	Goal for women participation in each trade
For Hamilton County:	11.0%	6.9%
For City of Cincinnati:	11.0%	6.9%

It is the aim of the County and the City to achieve the workforce participation goals with respect to the Banks Project as set forth above. In addition, based upon current labor force information, the County and the City have established a combined goal for the participation of minorities and women in the workforce for the Banks Project of 22% (the “Workforce Participation Goals”).

The Developer for the Banks Project fully supports this Banks Project workforce policy (the “Banks Workforce Policy”) and the Workforce Participation Goals for the publicly-funded portion of the Banks Project and, with respect to the privately-funded portion, it is the goal of the Developer to achieve significant participation of minorities and women as measured in labor hours.

(b) In accordance with the Executive Order and the DOL Regulations, the Workforce Participation Goals apply to a covered Banks Project construction Contractor’s total construction workforce in the SMSA, even if some of the Contractor’s employees perform work under non-federal or nonfederally-assisted construction contracts or subcontracts and even though such work may occur in geographical areas where the Contractor does not currently work on federal or federally-assisted construction projects. The goals applicable to other construction work performed by a Contractor outside of the SMSA (which includes the County and the City) are the goals established by the Director for those geographic areas where such other construction work is being performed.

**6.5 Good Faith Efforts. [41 CFR Part 60-4.3]**

(a) In order to achieve the Workforce Participation Goals, construction Contractors working on the publicly-funded portion of the Banks Project are required to use their *good faith efforts* to increase the utilization of minorities and women in the skilled construction trades. Further, pursuant to the Executive Order and DOL Regulations, construction Contractors working on the publicly-funded portion of the Banks Project must take certain action to demonstrate their *good faith efforts* to achieve the Workforce Participation Goals, including, but not limited to:

6.5.1 Maintaining a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor’s employees are assigned to work;

6.5.2 Establishing and maintaining current lists of minority and women recruitment sources; providing written notification to minority and women recruitment sources and to community organizations when the Contractor has employment opportunities available; and maintaining a record of the organizations’ responses;

6.5.3 Maintaining current files containing the names, residence and e-mail addresses and telephone numbers of each minority or woman off-the-street applicant and minority or woman referral from a union, recruitment source or community organization and of what action was taken with respect to each such individual;

6.5.4 Developing on-the-job training opportunities and/or participating in training programs for the area which expressly include minorities and women, and providing notice of these training opportunities and job programs to recruitment sources, state employment offices and other referral sources compiled by the Contractor as required under DOL Regulations;

6.5.5 Disseminating the Contractor's equal employment opportunity policy to unions and training programs, requesting their cooperation and assistance in meeting equal employment opportunity obligations, and disseminating the Contractor's equal employment opportunity policy by including it in the Contractor's policy manual or collective bargaining agreement, by publicizing it in the Contractor's newspaper, annual report , etc. (if any), by specific review of the policy with all management personnel and with all minority and women employees at least once a year, and by posting the Contractor's equal employment opportunity policy on bulletin boards accessible to all employees at each location where the construction work is performed;

6.5.6 Disseminating the Contractor's equal employment opportunity policy in advertising and in the news media of general circulation (including minority and women news media);

6.5.7 Directing recruitment efforts, both oral and written, to minority, women and community organizations, to schools with minority and female students and to minority and women recruitment and training organizations serving the Contractor's recruitment area and employment needs;

6.5.8 Encouraging current minority and women employees to recruit other minorities and women; and

6.5.9 Documenting and maintaining records of all solicitations of offers for subcontracts from minority and women construction contractors and suppliers, including circulating solicitations to minority and women contractor associations and other business associations.

(b) Although Contractors are required to make *good faith efforts* to meet the Workforce Participation Goals, the goals are neither quotas, set-asides nor a device to achieve proportional representation or equal results. The Workforce Participation Goals are not intended to require a Contractor to hire a person who does not have the qualifications needed to perform the assigned job successfully, to hire an unqualified person in preference to another applicant who is qualified, or to hire a less qualified person in preference to a more qualified person. Rather the goals are used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent barriers to equal employment opportunities related to the Banks Project,

and no sanctions will be imposed on a Contractor solely for failure to meet the Workforce Participation Goals.

(c) To promote and facilitate such employment, the County and the City, working together and through the Consultant (as hereinafter defined) and/or the Southwest Ohio Regional Workforce Investment Board (the “SWORWIB”), which is funded jointly by the County and the City, will:

6.5.10 Sponsor and hold pre-bid meetings to inform potential bidders of the Workforce Participation Goals and the availability of qualified minorities and women to work on the Banks Project;

6.5.11 Notify minorities and women of employment opportunities related to the Banks Project by placing notices of such opportunities in their respective government bulletins, on their respective websites and, as funding permits, in major local newspapers of general circulation, local trade and trade association publications, small business enterprise media and other periodicals;

6.5.12 Provide copies of notices of employment opportunities related to the Banks Project to local minority and women trade associations, local minority and women chambers of commerce, technical assistance agencies, employment agencies, community resource organizations and minority and women contractor associations;

6.5.13 Work with various community-based/workforce development programs that provide instruction and training opportunities for minorities and women interested in gaining experience in construction and related fields to establish a job readiness program for, and to increase the pool of minorities and women qualified to work on, the Banks Project;

6.5.14 Coordinate with local union and non-union pre-apprenticeship programs, career, and technical centers, universities, educational associations, and local community organizations who provide workforce development programs to identify minorities and women interested in pursuing careers or jobs in the construction industry; and

6.5.15 Implement pre-apprenticeship programs to develop the skill levels of minorities and women interested in pursuing jobs in the construction industry.

In addition, working together and through the SWORWIB, the County and the City will use their best efforts to develop and distribute to potential Contractors for the Banks Project through print and electronic means a current directory of qualified minority and women construction and other workers available for employment related to the Banks Project, categorized by types of experience and skills to facilitate identifying minorities and women with skills and capabilities relevant to particular job requirements. To the extent permissible by law, each listing will contain the name, residence and e-mail addresses, telephone number, and details concerning the job qualifications of each individual. The directory will be continuously updated and maintained electronically as well as in hard copy.

(d) The Workforce Participation Goals established herein are interim and designed to be reasonably attainable. The County and the City will review the Workforce Participation Goals at least annually and, if legally permissible and appropriate, based upon the relevant facts and circumstances, from time to time, the County and the City may modify or adjust the Workforce Participation Goals.

#### **6.6 Monitoring the Banks Project Workforce Participation.**

(a) The County and the City, working together and through the Consultant, will monitor and track the participation and employment of minorities and women as construction and other workers in connection with the Banks Project to determine if the Workforce Participation Goals are being met. In order to assist the County and the City in that effort, each Contractor awarded a contract for the Banks Project will be required to:

(i) submit to the awarding government entity (the County or the City, as appropriate) promptly after such award information regarding the number of full and part-time employees of the Contractor who will work on the Banks Project, identifying such employees who are minorities and women, including, but not limited to, a list of the name, residence and e-mail addresses, and telephone number of, and a brief general description of the work to be performed by, each such employee, information regarding whether the Contractor expects to hire additional employees to work on the Banks Project and, if so, a brief general description of the skills and capabilities requirements for each such additional employee; and

(ii) compile and deliver to the County and the City *monthly* reports regarding the employment, if any, of additional minorities and women to work on the Banks Project.

(b) A Contractor's non-compliance with the requirements of the Executive Order, the DOL Regulations, this Banks Workforce Policy or the Banks Workforce Program, as such provisions are applicable with respect to the publicly-funded portion of the Project, may be considered a breach of contract and may result in the suspension or termination of the Contractor's contract related to the Banks Project or such other remedy as may be deemed appropriate by the County and/or the City.

**6.7 Limitations.** The provisions of this Banks Workforce Policy and the Banks Workforce Program shall not apply to a Contractor with a federally-assisted construction contract or subcontract valued at \$10,000 or less. [40 CFR 60-4.1]

### **7. Employee Readiness Program**

**7.1 Establishment.** In order to accomplish the Workforce Participation Goals, the County and the City, working together and with the SWORWIB, will cause to be established

an employee readiness program (the “ERP”) to work in conjunction with various community-based workforce development programs to increase the construction skill levels of County and City residents and to help them reach the qualification levels needed to gain entry into union and open shop apprenticeship programs. Additional details regarding the role and make-up of the ERP are set forth in Schedule A attached. To facilitate this effort, the County and the City, working together and through the Consultant, will:

(a) Coordinate with various community-based workforce development programs that provide instruction and training opportunities for those interested in gaining experience in construction industry and related fields;

(b) Coordinate with local union and non-union pre-apprenticeship programs, career, and technical centers, universities, and educational associations and organizations to identify and engage those interested in pursuing careers in the construction industry and related fields; and

(c) Advertise and promote the availability of workforce project opportunities in a broad-based manner.

**7.2 Employee Readiness Committee.** The County and the City endorse the work and efforts of the SWORWIB and will encourage the SWORWIB to establish an employee readiness committee (the “ERC”) to oversee implementation of the ERP. The purpose of the ERC will be to evaluate the effectiveness of the ERP and new and existing apprenticeship programs which are available to residents of the County and/or the City. The membership of the ERC should include an elected official, Contractors, union and non-union officials, a SWORWIB member, and apprenticeship representatives. The ERC should provide input and recommendations to the SWORWIB and, in turn, the SWORWIB should report quarterly to the County, the City and the Consultant about the progress and effectiveness of the ERP.

## **8. Inclusion Outreach Consultant**

**8.1 Engagement of Consultant.** In order to facilitate the implementation and administration of this Banks Inclusion Policy, including the DBE Program, the SBE Program and the Banks Workforce Program, the County, the City and the Developer will hire an inclusion outreach consultant (the “Consultant”) to assist with the Banks Project. The Consultant will be responsible for conducting extensive outreach programs directed at DBEs, including minority and women-owned businesses, SBEs, and qualified minorities and women construction workers, during the preconstruction and construction phases of the Banks Project. The Consultant also will be responsible for tracking, monitoring and preparing monthly participation reports on the utilization of DBEs, including minority and women-owned businesses, SBEs and qualified minorities and women construction workers in connection with the Banks Project.

**8.2 Other Duties of Consultant.** The Consultant will work cooperatively with the Hamilton County Office of Small Business Development (the “Small Business Development Office”), and the City of Cincinnati Office of Contract Compliance (the “COCC”) in connection with the implementation and administration of this Banks Inclusion Policy. In addition, the

Consultant will seek input and advice regarding effective outreach efforts as contemplated by this Banks Inclusion Policy from business leaders, DBEs, small business owners and representatives of trade associations and community organizations, including, but not limited to, the Greater Cincinnati & Northern Kentucky African American Chamber of Commerce, the Cincinnati USA Hispanic Chamber of Commerce, the Cincinnati USA Regional Chamber of Commerce, the Greater Cincinnati Building & Construction Trades Council, Allied Construction Industries (ACI), Ohio Valley Chapter of Associated Builders and Contractors, Inc., South Central Ohio Minority Business Council, Cincinnati Women In Construction, Cincinnati Business Incubator, the Cincinnati Minority Contractors Business Assistance Program, the Cincinnati-Hamilton County Community Action Agency, the Cincinnati Unit of the NAACP, the Hamilton County Department of Job and Family Services and the Cincinnati Workforce Development Center.

## **9. Socio-Economic Impact**

**9.1 Data Collection and Analysis.** The County and the City anticipate that the Banks Project will have a significant and positive social and economic impact on the Greater Cincinnati and Hamilton County region. The County and the City also believe that it is important to measure such impact, particularly in the census tract areas within the SMSA that includes the County and the City (the “Hamilton County SMSA”) which have been deemed to be economically distressed. For that purpose, the County and the City will collect and analyze social and economic data to monitor and measure the regional impact of the Banks Project. To assist the County and the City and to facilitate such efforts, each Contractor for the Banks Project will be required to:

(a) prepare and submit to the awarding government entity (the County or the City, as appropriate) quarterly reports regarding:

(i) the use of first-tier subcontractors, suppliers and vendors in connection with the Banks Project during the period covered by the report, including, but not limited to, (i) the name and principal business address of each subcontractor, supplier and vendor and (ii) the dollar value of each Banks Project related subcontract and procurement awarded by the Contractor to the first-tier subcontractor, supplier or vendor during the covered period; and

(ii) the number of persons employed by the Contractor to work on the Banks Project (or to perform any work directly or indirectly related to the Banks Project) during the covered period who reside in the SMSA which includes Hamilton County, together with the aggregate amount of salaries and gross wages paid to such persons, based upon each zip code included in such geographic area.

Each Banks Project related subcontract between a Contractor and a first-tier subcontractor, supplier or vendor shall require the subcontractor, supplier or vendor to prepare and submit to the government entity that awarded the prime contract or procurement to the Contractor (the County

or the City, as appropriate) quarterly reports containing information as described or otherwise required pursuant to this provision with respect to the subcontractor's first-tier subcontractor supplier or vendor contract, procurement and/or employment activities related to such awarded subcontract or procurement.

**9.2 Limitations.** The provisions of Section 9.01 shall not apply to individual Banks Project related contracts, subcontracts and/or procurements valued at \$10,000 or less, unless or until the aggregate value of a series of such contracts, subcontracts and/or procurements awarded to the same Contractor, subcontractor, supplier or vendor exceeds \$10,000. The information described under Section 9.01(a)(ii) shall not be required for a supplier or vendor that does not have any office, supply warehouse or distribution facility located within [50] miles of the County.

## **10. Rules and Guidelines**

**10.1 Authorization.** The Small Business Development Office and the COCC are authorized to jointly prepare and issue rules and guidelines for the implementation and administration of this Banks Inclusion Policy consistent with the purposes and intent of such policy as set forth herein. Nothing set forth herein or in such rules and guidelines should be interpreted or applied in any manner that would be in violation of existing applicable state or federal law. **[Accordingly, the Banks Project Small Business Enterprise Program Rules and Guidelines dated \_\_\_\_\_, 2007 have been developed by the Small Business Development Office and the COCC and specifically apply to this Banks Inclusion Policy.]**

**SCHEDULE A**

Employee Readiness Program

[TO BE ATTACHED]

# Phase DPE Budget

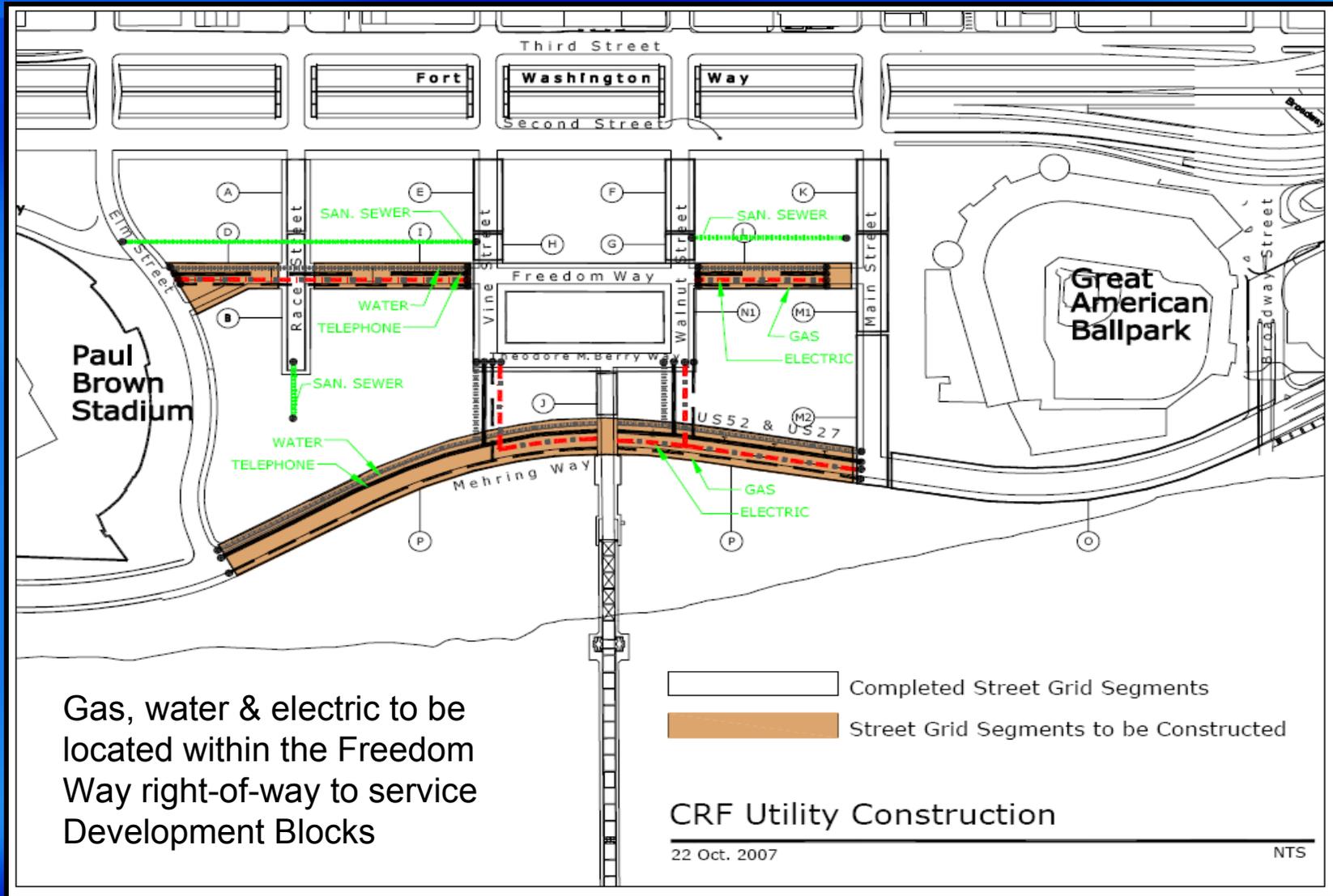
## IDMA Exhibit F

**IDMA EXHIBIT F 12/12/07**

Hours on IDA based on total hours of:			2080																		
Phase I Staffing	Role		Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-07	Jun-07
Trent Germano	Principal	NO Charge	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33	17.33
Steve Berberich	VP		90.13	90.13	90.13	90.13	90.13	90.13	90.13	90.13	83.20	69.33	69.33	69.33	69.33	69.33	69.33	69.33	69.33	69.33	69.33
Claudia Ledwich	Sr. PM		130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00
Mitsu Parker	APM		65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00
TBD	Site Mgmt Rep		0.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00	130.00
TBD	Project Coord		0.00	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67	86.67
Cathy Brice	Accounting Mtg		8.67	13.00	17.33	17.33	26.00	26.00	31.20	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73
Pia Benear	Sr Project Acct		8.67	13.00	17.33	17.33	26.00	26.00	31.20	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73	27.73
Grace Farley	Admin Assistant		34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67	34.67
<b>TOTAL HOURS/MONTH ON IDA</b>			<b>354.47</b>	<b>579.80</b>	<b>588.47</b>	<b>588.47</b>	<b>605.80</b>	<b>605.80</b>	<b>616.20</b>	<b>609.27</b>	<b>602.33</b>	<b>588.47</b>	<b>653.47</b>								
<b>TOTAL EMPLOYEYEE COST/MONTH ON IDA</b>			<b>\$22,897</b>	<b>\$31,985</b>	<b>\$32,311</b>	<b>\$32,311</b>	<b>\$32,962</b>	<b>\$32,962</b>	<b>\$33,353</b>	<b>\$33,093</b>	<b>\$32,365</b>	<b>\$30,911</b>	<b>\$33,216</b>								
<b>DPE X .38</b>			<b>8,701</b>	<b>12,154</b>	<b>12,278</b>	<b>12,278</b>	<b>12,526</b>	<b>12,526</b>	<b>12,674</b>	<b>12,575</b>	<b>12,299</b>	<b>11,746</b>	<b>12,622</b>								
<b>TOTAL EMPLOYEYEE COST/MONTH ON IDA WITH DPE EXPENSE</b>			<b>31,598</b>	<b>44,139</b>	<b>44,589</b>	<b>44,589</b>	<b>45,488</b>	<b>45,488</b>	<b>46,027</b>	<b>45,668</b>	<b>44,664</b>	<b>42,657</b>	<b>45,838</b>								
<b>\$847,450 TOTAL DPE BUDGET PHASE I</b>																					

# Street Grid Site Plan

## IDMA Exhibit G



# Scope of Parking Facilities, Podiums, Street Grid Improvements

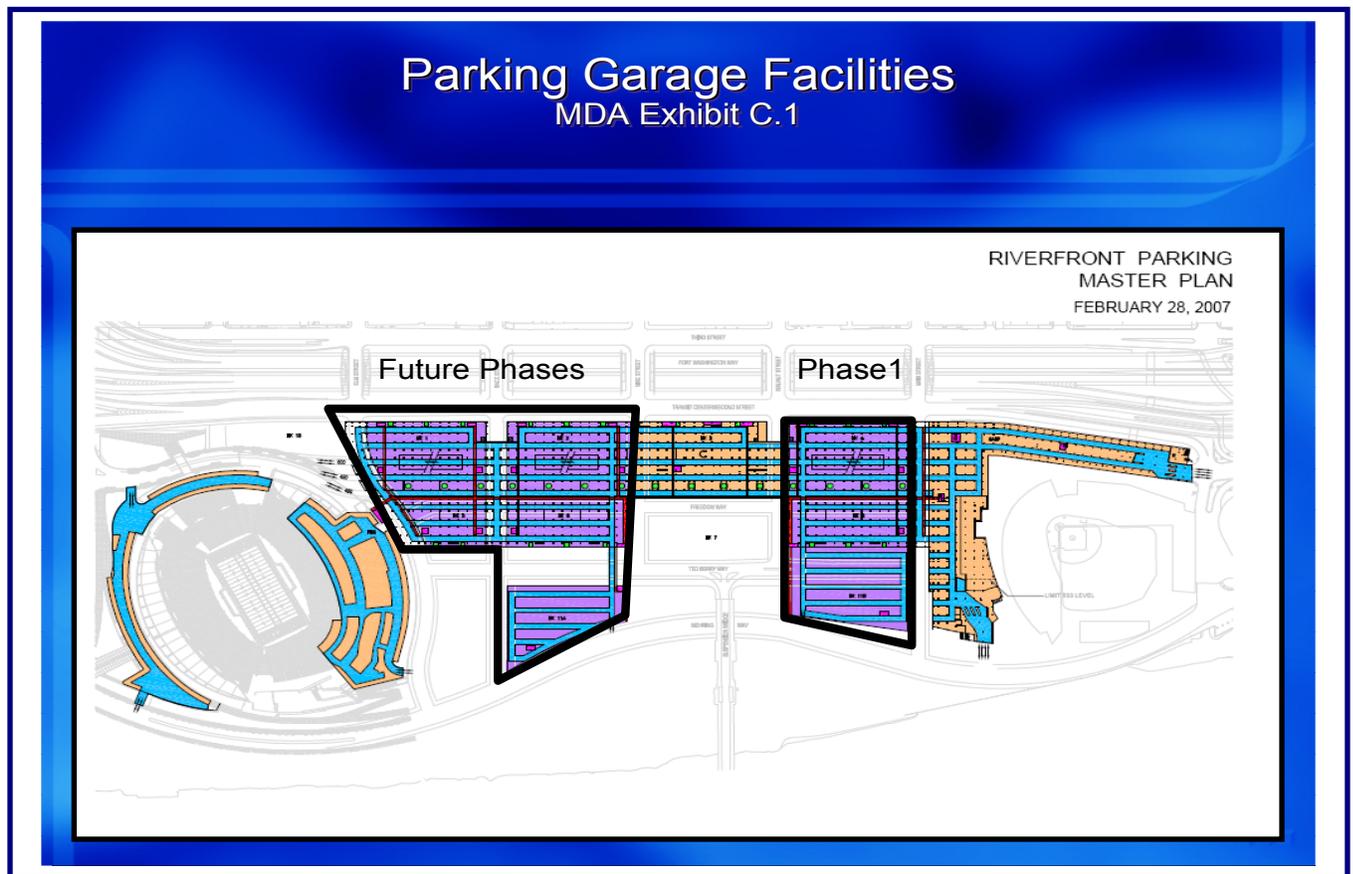
IDMA Exhibit H

# EXHIBIT H

## *Scope of Parking Facilities, Podiums, Street Grid Improvements*

### The Scope of the Parking Facilities is as described below:

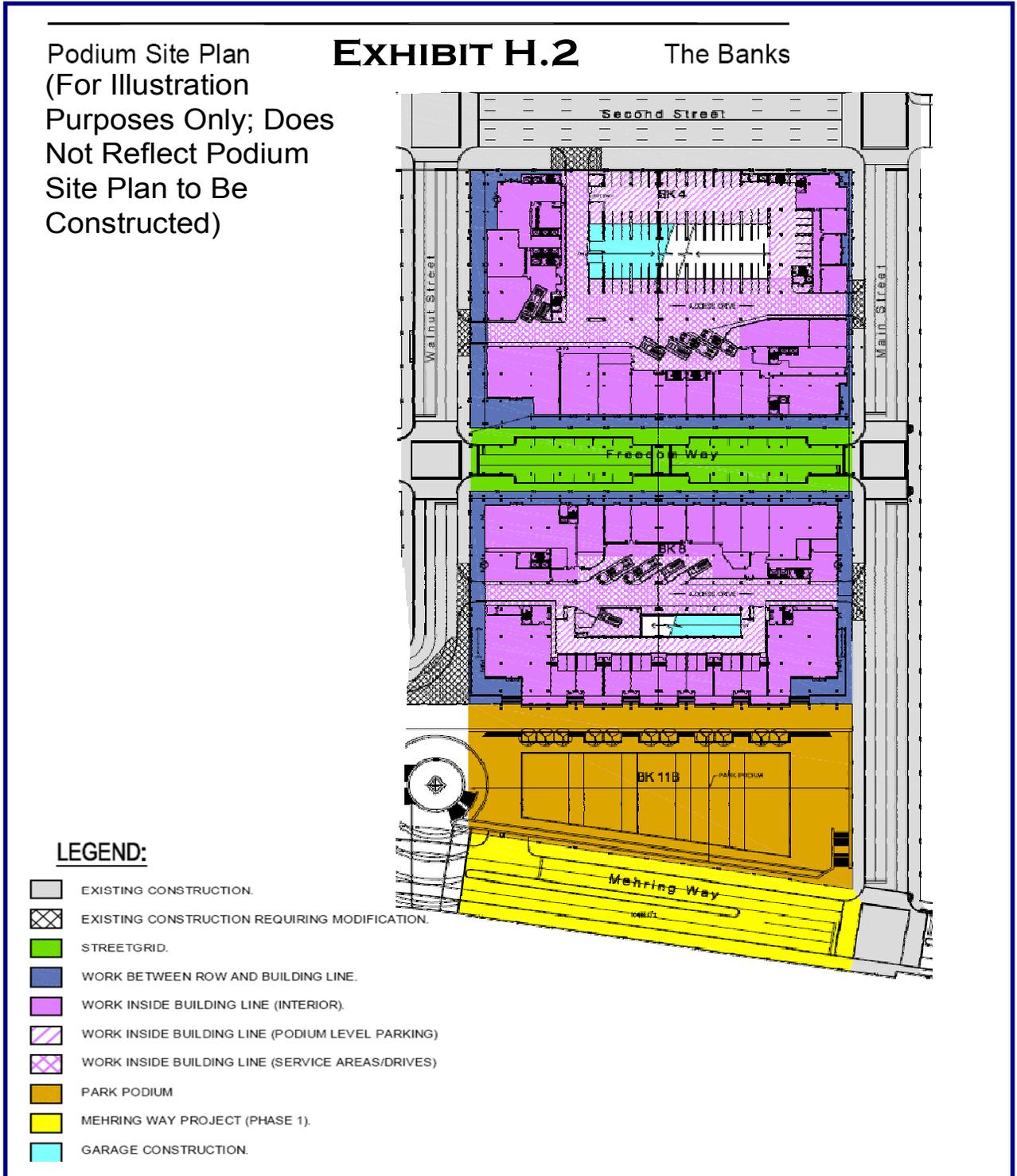
The Parking Facilities means the intermodal parking facilities to be designed and constructed by the County on and within each Parking Facility Lot and within portions of the rights-of-way between and/or contiguous to the Parking Facility Lots, as depicted generally in Exhibits C.1-C.3, H.1 attached to the MDA. The Parking Facilities include the slab on grade, the structural decks, ramps, primarily public access drives (including those from Podiums), columns, striping, signage, access controls, and lighting necessary for complete and operational automobile parking facilities, and flood control systems, security, power, lighting, elevators, escalators (if any), stairwells, headhouses, walkways and mechanical or similar systems and spaces required within the Parking Facility Lots to serve the Parking Facilities, as well as the columns, deep foundations, shear walls and other structural elements that support the Street Grid Improvements, the Podiums, the Park Podiums and the Improvements above the Parking Facilities, but do not include the Podiums (except as otherwise expressly provided in the Master Development Agreement), any transfer beams required specifically for the Podiums or, as specified above, any Improvements above the Parking Facilities, or the Park Podiums.





**The Scope of the Podiums is as described below:**

“Podium” means the structural deck, located above all structural columns of the Parking Facilities on each Parking Facility Lot other than Lot 20A and Lot 23A, including any necessary transfer beams, for support of the Improvements to be constructed within the Air Lot above such Parking Facility Lot, including the related waterproofing systems, drainage systems, expansion joints and ventilation system components, finishes, overhead plenum (with drop ceiling and heated, or with insulation and heat traced plumbing lines, as determined by Developer) private service branch utilities and other elements as generally depicted in generally depicted in H.1 and H.2.



## **The Scope of the Street Grid Improvements is as described below:**

“Street Grid Improvements” means the following public improvements to be made in connection with the Project within the public rights-of-way including: public streets and roadway improvements, public sidewalks and streetscaping, utilities necessary for the streets, including storm water collector and transfer systems, fire hydrants, vehicular and pedestrian traffic lights and related signaling, public utility transmission lines (including utility duct banks, but excluding telecommunications lines) within public rights-of-way and required relocation of utility transmission lines to public rights-of-way, waterproofing systems, drainage systems, expansion joints, garage ventilation system components, way-finding and identification signage, and public seating. Public improvements, and also identified as within the scope of the Street Grid Improvements in Exhibit H hereto, to be made in connection with the Project within the public rights-of-way as depicted in Exhibit K hereto.

Section A	(Sidewalk on Race Between Second & Ted Berry Way)
Section D	(Freedom Way between Elm & Race)
Section I	(Freedom Way between Race & Vine)
Section L	(Freedom Way between Walnut & Main)
Section P	(Mehring Way between Elm & Main) (excluded from Infrastructure Development Management Agreement unless requested to be included by City)

## **The Scope of the Utilities is as described below:**

This summary documents the scope of the Utilities proposed to be constructed and relocated by the Public Parties in coordination with the Banks Development project. A drawing indicating the remaining Street Grid segments to be constructed is attached as Exhibit K; section numbers refer to street segments on Exhibit K.

### **1) Utility Concept**

Existing and proposed utility improvements are documented in the June 2005 Update of the Central Riverfront Development Area Coordinated Utility Master Plan prepared by Parsons Brinckerhoff Ohio Inc. The Master Plan identifies remaining utilities to be constructed and is the basis for this scope of work, but is subject to any contrary provisions of this Exhibit H.

Generally, most utility systems in the Central Riverfront Development Area have already been replaced by new systems. There are a few exceptions, principally deep storm sewer outfalls and sanitary sewer trunk lines that will remain to service the proposed development. Most other service and transmission lines have been rerouted to permit construction of the proposed developments as part of the Fort Washington Way, Paul Brown Stadium, or Great American Ball park projects.

New utility transmission and distribution facilities have been constructed within the on-grade and on-fill street segments in the Central Riverfront Street Grid. These streets and utilities have been designed in such a manner as to create north/south utility “corridors” in the fill portions of Elm and Race Street and east/west “corridors” in Ted Berry Way and Mehring Way. Utilities are also located within Vine, Walnut, and Freedom Way around Block 7 (the Freedom Center Park Block) to create a “utility loop”. The “loop” provides simple redundancy within the system in the event a transmission path is severed and in certain circumstances permits service to be maintained by “back feeding” a location.

### **2) Concept Modifications**

The proposed Development Plan will require relocation of the utilities currently within the utility corridor of Ted Berry Way between Elm and Vine Streets, although these relocations may not be required until Phase II of the Development Plan begins. Utilities currently within Ted Berry Way will be relocated to Mehring Way. New tie-ins to the existing utility loop surrounding Block 7 will be

made south to north from Mehring Way to Ted Berry Way through the extensions of the Vine Street and Walnut Street rights-of-way below the Vine Street and Walnut Street Stairs, two significant features of the future Central Riverfront Park.

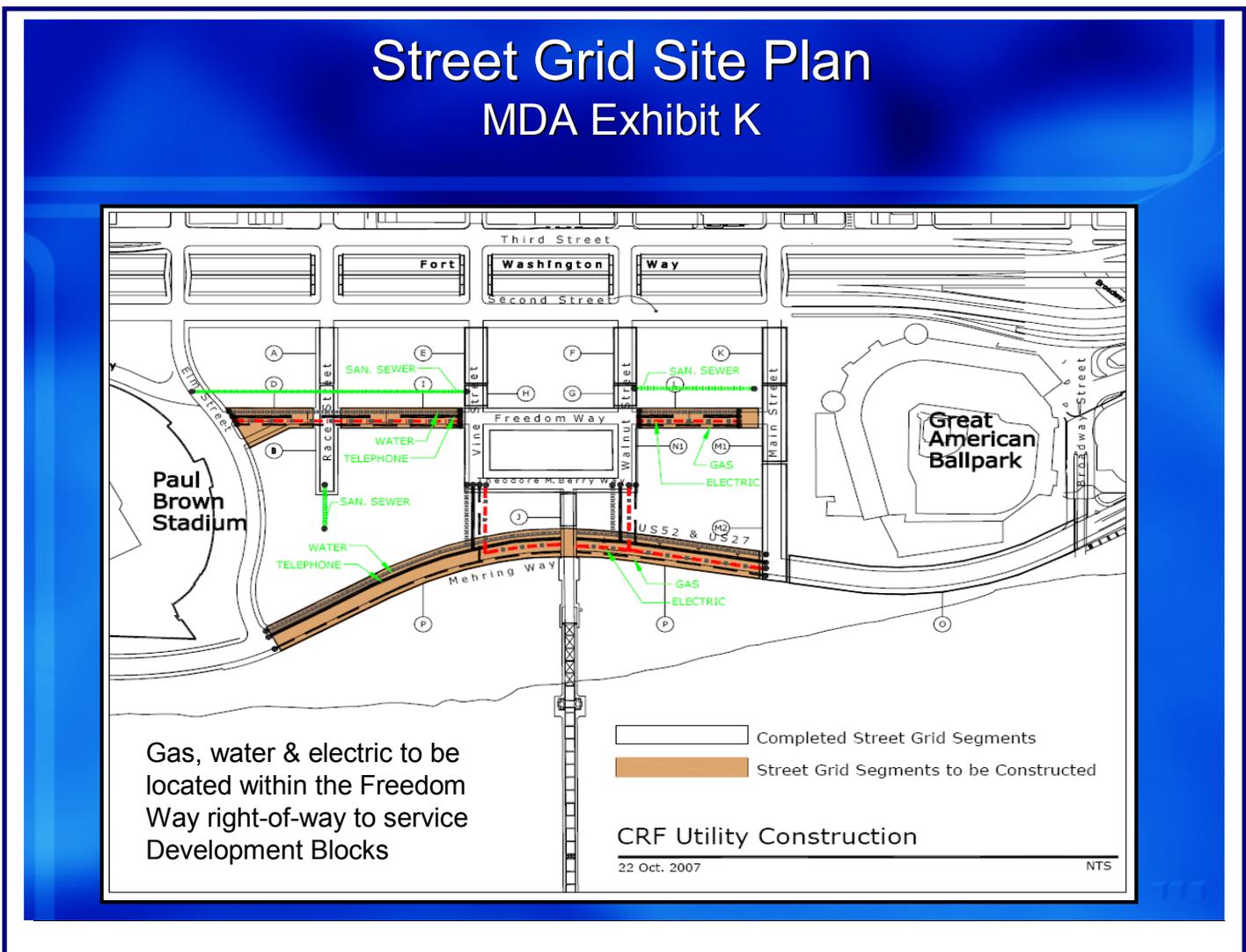
Utilities to be relocated within Mehring Way include Duke Energy Gas, Duke Energy Electric, Cincinnati Bell Telecommunications, and Cincinnati Water Works. Utilities to be extended in from Mehring to Ted Berry Way include Duke Energy Gas, Duke Energy Electric, Cincinnati Bell Telecommunications, and Cincinnati Water Works.

Other utility extensions and relocations include Sanitary Sewer extensions from the existing sewer below Block 3 to the development blocks immediately to the east and west. A short sanitary sewer extension from the end of Race Street to tie into the existing interceptor sewer south of Ted Berry Way is also proposed.

Sufficient storm and sanitary sewer capacity shall be provided to meet the need of the Project.

The Public Parties will also extend Cincinnati Water Works utilities within the Freedom Way right-of-way to service the development blocks.

Utility relocations and extensions do not include private utility services to the Development Blocks. Such services are typically considered “private” rather than “public” utilities; therefore, the scope and costs are not included as an element of the Infrastructure Improvements.

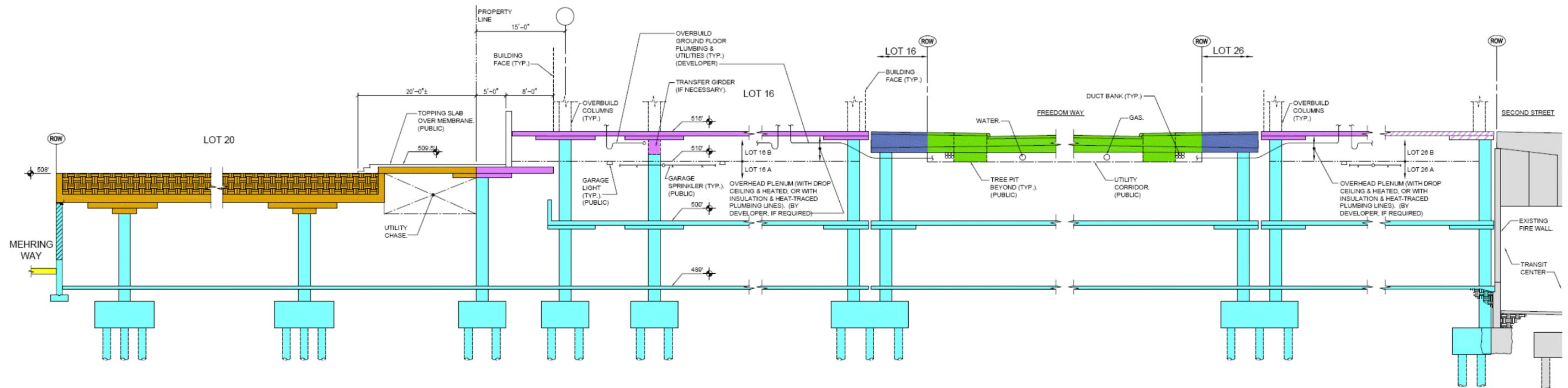


# EXHIBIT H.1

## BANKS DEVELOPMENT PHASE 1

## TYPICAL PODIUM PLAN CROSS-SECTION FOR ILLUSTRATION PURPOSES ONLY

OCTOBER 22, 2007



**LEGEND:**

- EXISTING CONSTRUCTION.
- EXISTING CONSTRUCTION REQUIRING MODIFICATION.
- STREETGRID. (PUBLIC)
- WORK BETWEEN ROW AND BUILDING LINE.
- WORK INSIDE BUILDING LINE (INTERIOR).
- WORK INSIDE BUILDING LINE (PODIUM LEVEL PARKING)
- WORK INSIDE BUILDING LINE (SERVICE AREAS/DRIVES)
- PARK PODIUM. (CITY)
- MEHRING WAY PROJECT (PHASE 1). (PUBLIC)
- GARAGE CONSTRUCTION. (PUBLIC)

## GARAGE SECTION

1/16" = 1'-0"



Responsible Bidder Requirements Applicable  
to Public Contracts  
IDMA Exhibit I

## Responsible Bidder Requirements Applicable to Public Contracts

Contractors shall be required to satisfy all of the following pre-award responsibilities and agree to all of the following provisions which will be incorporated in the contracts for construction projects within the Banks Development. The City of Cincinnati (“City”) and the Board of County Commissioners of Hamilton County, Ohio (the “County”) (hereinafter the City and the County shall be collectively referred to as the “Public Parties”) believe that these requirements are reasonably related to the successful performance of the Banks Development projects. These requirements shall also be set forth and integrated with the Bid Package Conditions.

1. Each bidder shall certify that it will require all contractors who bid or perform any work pursuant to the contract on which the bidder is bidding to satisfy all of these Responsible Bidder Requirements.
2. Each bidder shall certify that it will pay prevailing wages, in amounts determined according to Ohio’s Prevailing Wage Law, R.C. 4115.03 through 4115.16, and O.A.C. 4101:9-4-01 through 4101:9-4-31, on all construction projects that are part of the Banks Development, except as otherwise provided herein. Notwithstanding the foregoing provision, the payment of prevailing wages shall not be required with respect to leasehold and/or tenant improvements and/or the fit out of interior spaces of the office, retail and condominium elements of the Banks Project.
3. As a condition precedent to the award of a contract or subcontract of Two Hundred and Fifty Thousand Dollars (\$250,000) or more, the Public Parties may require the lowest bidder to engage in a review of the constructability and scope of the bid to verify that the contractor included all required work.
4. If the bid of the lowest bidder is more than twenty percent (20%) below the bid of the next lowest bidder, the Public Parties may request that the lowest bidder identify three (3) construction projects that it has successfully completed within the five (5) years before the submission of the bid. This information may be provided in the post-bid scope review to the Public Parties.
5. Each bidder shall certify that it will employ supervisory personnel on the project that (a) are qualified to perform in such supervisory capacity and (b) have any license or licenses required by applicable law to perform in such capacity.
6. Each bidder shall certify that it is not currently debarred from performing state or federal construction contracts (after all appeals), because of a violation of the Fair Labor Standards Act and/or any state or federal

prevailing wage law. Each bidder shall provide a list of every occasion on which it has been debarred from performing local, state or federal construction contracts (after all appeals), because of a violation of the Fair Labor Standards Act and/or any state or federal prevailing wage law, during the last ten years.

7. Each bidder shall certify that it, as well as each subcontractor it will utilize on the Project has implemented an OSHA-compliant Safety Program which includes: a) with respect to all supervisors, completion of OSHA's thirty (30) hour safety course; and b) with respect to all field employees, completion of OSHA's ten (10) hour safety program. Each bidder shall provide evidence of implementation of an OSHA-compliant safety program as set forth herein.
8. Each bidder shall certify that it has implemented a substance-abuse policy and that it is in compliance with Ohio's Drug Free Workplace Requirements; bidders will provide evidence of implementation of such policies upon written request of the Public Parties.
9. Each bidder shall certify that it has all licenses required by applicable state law and regulation to perform work required herein.
10. Each bidder shall list any professional license or licenses that have been revoked by Ohio or revoked by any other state within five (5) years prior to the date of the contractor's bid.
11. Each bidder shall certify that it has no final judgments against it which are not secured by payment bond or other surety at the time of award which are equal to or exceed fifty percent (50%) of the contractor's net worth.
12. Each bidder shall certify that it has complied with applicable unemployment and workers compensation laws for at least two (2) years preceding the date of bid submittal.
13. Each bidder shall certify that with respect to each a prime trade contract (e.g., plumbing, HVAC, electrical and fire safety) it will not subcontract more than seventy-five percent (75%) of the bid amount for that prime trade contract. A bidder may apply for a waiver of the foregoing requirement by the Public Parties, which waiver shall be subject to the review and approval of the Public Parties.
14. Each bidder shall certify that it does not have an Experience Modification Rating of more than 1.3 (a penalty rated employer) with respect to the Ohio Bureau of Workers' Compensation risk assessment rating.
15. Each bidder shall certify that it will have in place a meaningful Health Care Medical Plan, and provide, as part of its responsibility review, evidence of a Health Care Medical Plan list of eligible employees and the

bidder's share of the cost for those employees working on the Banks' Project. Notwithstanding the foregoing, a bidder with gross revenues of two million dollars (\$2.0M) or less in any of the preceding three years shall be exempted from providing a Health Care Medical Plan as set forth herein. However, any such bidder exempted from this requirement shall certify that it will comply with the applicable prevailing wage requirements with respect to medical insurance.

16. Each bidder shall certify that it will have a meaningful pension or retirement program for its employees and provide, as part of its responsibility review, evidence that it contributes, on a regular basis to an employee pension or retirement program for its field employees and the list of employees for the employees with such coverage. Notwithstanding the foregoing, a bidder with gross revenues of two million dollars (\$2.0M) or less in any of the preceding three years shall be exempted from providing a pension or retirement program as set forth herein. However, a bidder exempted from this requirement shall certify that it will comply with the applicable prevailing wage requirements with respect to a pension or retirement program.
17. Each bidder shall certify that it shall employ field employees on this project that will meet at least one of the following criteria:
  - a. Completion of a state or federally approved apprenticeship program in the skilled trade craft such employee is performing as a journeyman; or
  - b. Worked as a skilled trade person for at least three (3) years in the craft; or
  - c. Currently enrolled in a state or federally approved apprenticeship program for the craft; or
  - d. Completed the City/County Banks Employee Readiness Program.

A bidder may request a waiver from the Public Parties of the foregoing requirements with respect to a field employee or a particular position. In requesting such waiver, a bidder shall be required to provide documentation of the skills and experience of such employee or the applicable position which form the basis for such request. Any waiver of the foregoing requirements shall be subject to the review and approval of the Public Parties.

18. Each bidder shall certify that it is not debarred from bidding on the construction project contract in question.
19. A bidder's falsification of any of the certifications herein or failure to comply with the requirements set forth herein, shall be the basis for a default termination of the contract.