



COUNCIL UPDATE

January 10, 2020

MEETINGS & REMINDERS

Monday, January 13	-	6:30 p.m.	-	Committee of the Whole
Thursday, January 16	-	6:00 p.m.	-	Meet Your Police
Friday, January 17	-	9:30 a.m.	-	Commission on Aging
Monday, January 20	-	City Hall and the Community Center are closed in observance of Dr. Martin Luther King, Jr. Day		
Tuesday, January 21	-	6:30 p.m.	-	Committee of the Whole
	-	7:30 p.m.	-	City Council
	-	7:30 p.m.	-	Citizens Advisory Committee
Wednesday, January 22	-	7:00 p.m.	-	MLK Ceremony at the Community Center
Thursday, January 23	-	6:00 p.m.	-	Meet Your Police

LEGISLATION

- **GPD Selwyn Rehab Project.** A Resolution authorizing the City Manager to enter into an agreement with GPD Group for construction administration and resident inspection services for the Selwyn Rehabilitation and Waterline Replacement Project; providing compensation therefor
- **GPD Shannon Road Rehab Project.** A Resolution authorizing the City Manager to enter into an agreement with GPD Group for engineering services for the Shannon Road Rehabilitation Project; providing compensation therefor
- **Updating Committee References.** An Ordinance updating the references to standing Council Committees in the Codified Ordinances

- **Fire Pumper Truck Lease.** An ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring a fire pumper truck including related equipment and appurtenances

UPDATES

- **Top of the Hill**
We are now approaching the final financing steps before construction can begin. Preliminary action on the conduit bonds and the City's debt issuance was approved in December 2019. The final set of actions for the issuance are scheduled for first reading at the next regular City Council meeting. As we prepare to issue the conduit bonds for the Top of the Hill project we want to review the proposed terms of the financing with Council. The enclosed term sheet will be presented and explained by staff and our outside bond counsel, Jeff Bomberger of Squires, Patton Boggs, at Monday's meeting.

On Monday, January 27th a Planning & Development Committee meeting will be held to address any remaining questions regarding the Top of the Hill financing. City staff along with our outside legal and economic development consultants will be on hand along with representatives from Flaherty & Collins. A more detailed summary of the project to date is enclosed in a memo from Economic Development Director Tim Boland.

The following is a summary of the schedule of Council discussion/action regarding TOH financing:

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| 1/13/20 | Committee of the Whole discusses draft Term Sheet |
| 1/21/20 | Council Meeting - 1st Reading of Legislation for TIF Bond Conduit Financing & City \$1.85 Million Debt Issuance; 2nd Reading of TIF Ordinance & action |
| 1/27/20 | Planning & Development Committee Meeting devoted to Top of the Hill |
| 2/3/20 | Council Meeting – 2nd Reading of & action on Legislation for TIF Bond Conduit Financing & City \$1.85 Million Debt Issuance |



CLEVELAND HEIGHTS

Committee of the Whole

January 13, 2020

Agenda

1. Legislation
Goal: Review upcoming legislation

2. Top of the Hill
Goal: Staff will review the proposed term sheet for the conduit bond financing for the Top of the Hill project

3. Update on Housing Department
Goal: City Manager will present an update on the assessment of the Housing Department



Top of the Hill Project

Developing the Top of the Hill site has been a long-time goal of the City; The City has owned the Top of the Hill site since 1968, when it was developed into the municipal surface parking lot that exists today; the City has attempted to redevelop the site on four (4) separate occasions since, without success.

The proposed \$80,000,000 mixed-use redevelopment of the site by Flaherty & Collins is consistent with the City's Master Plan and zoning requirements; Flaherty & Collins was selected as the City's development partner in May of 2017 after a robust vetting process; Since that time, the City has held 43 separate community engagement meetings which have resulted in the plans currently under review for final construction approval.

To make the redevelopment of the site feasible, the City incentivized the proposed project by providing the Developer land, Tax Increment Financing (TIF) and cash; the Developer is providing debt and equity to the project. Nearly every mixed-use development like this in Ohio has required some public-private partnership with public subsidies of various types in order to be a viable project. This is true in Cleveland Heights, but it is also true in Shaker Heights, Beachwood, Strongsville, Avon Lake, Westlake and all other Cleveland-area suburbs that are seriously working to spur economic development.

If a project cannot be done with at least a reasonable expectation of profitability, developers will, unfortunately, find other projects to focus their attention and capital on, and as we have experienced, parcels like Top of the Hill can remain undeveloped for decades. Rents in our part of the country are often not high enough to allow a developer of this type of mixed-use project to pay debt service on the project financing and still have some ability to recoup a profit on the investment of time and money the developer will be required to put into the project. The Top of the Hill project cannot be developed into the vibrant mixed-use project the City envisions without the City providing a reasonable level of assistance.

The City will lease the project site to the Developer, but will retain ownership of the property per the Development Agreement approved in 2018; Also, in that year, the City and the CHUH School District approved the creation of a TIF District. A TIF is an economic development tool provided in the Ohio Revised Code to local governments to assist in financing new development.

A TIF has two basic components: the property tax generated before the site is developed (existing base value); and the property tax generated after the improvements are made (increased value). A TIF allows the

future revenues from the increased value of the site as a result of the proposed improvements to be used upfront to help finance the project. The projected stream of future revenue from the increased value is borrowed against by issuing bonds and the tax payments that would have been made as a result of the improvements are instead directed towards payment of the debt service for the bonds.

For this project these payments are made by the developer in an amount equal to the real property tax liability that otherwise would have been due had the property not been exempted. The payments will then be directed towards a separate fund to be used to pay the debt service for project improvements and to make annual compensation payments to the school district as part of an agreement between the City and CHUH.

Currently, the project site yields approximately \$21,000 in annual revenue from taxes on the project parcels to the school district. The proposed TIF has been structured in such a way as to yield an estimated \$421,000 annually to the school district consisting of \$28,000 from the existing parcel values and \$393,000 in future service payments from the TIF. The Schools will receive the full value of the taxes after the TIF expires.

As previously mentioned, TIF's are monetized by issuing bonds. The Ohio Revised Code authorizes political subdivisions, including municipalities like the City, to issue conduit bonds, much like the Port Authority can do, to support redevelopment projects like the Top of the Hill. This commonly used economic development finance tool enables the City to be a "conduit" issuer. This means that the City has no obligation for repayment of the bonds. The City will loan the bond proceeds to the developer who will be obligated to pay the debt service on the bonds. The bonds will be secured only from the TIF revenues from the Top of the Hill project and are the obligation of the developer, not the City. As the conduit issuer the City's only financial responsibility would be to use any dollars it receives from the developer (likely as loan payments) to pay debt service on the bonds. If the developer does not pay, the City has no obligation to make debt service payments. As is typically the case with this type of financing, the City intends to charge a fee to the developer as part of issuing the bond along with other requirements such as the payment of all of the costs of issuance.

In 2018, a shortfall of \$7,000,000 was identified in the funding of the project. In response, the Developer reduced their rate of return from 8.0% to 7.5% and pledged an additional \$2,150,000 towards the project. In the 1st amendment of the Development Agreement, City Council authorized the City to commit \$1,850,000 to the project shortfall. While the City explored and continues to explore other sources of funds to reimburse the City, it was always the intent to consider issuing debt to cover its \$1,850,000 commitment. The City's debt will be repaid with proceeds from the project such as permit fees and the fees we will receive for being the conduit issuer for the TIF Bonds.

This project is anticipated to have approximately 261 market-rate luxury apartments, over 11,000 sq. ft. of new first floor commercial space, close to 25,000 sq. ft. of green space, and a structured parking garage, resulting in approximately 550 parking spaces. The project is expected to create 65 permanent jobs and 569 construction jobs when being built. Recurring tax revenues are projected to exceed \$350,000 annually, with an additional one-time influx of revenue from construction payroll of \$688,500. The project represents a catalytic & transformative mixed-use gateway redevelopment bringing new residents, businesses, vibrancy, economic activity and tax revenue to our City.

City of Cleveland Heights, Ohio
Taxable Special Obligation Tax Increment Financing
Economic Development Revenue Bonds, Series 2020
(Top of the Hill Development Project)
(“Bonds” or “TIF Bonds”)

Preliminary Financing Term Sheet – [January 10, 2020]

Set forth below is a brief summary of certain terms relating to the TIF Bonds identified above and proposed to be issued by the City of Cleveland Heights, Ohio (“City”). The TIF Bonds are being issued to provide the “TIF Financing” contemplated by Section 8 of the Development Agreement dated February 21, 2018 between the City and F & C Development, Inc., an Indiana corporation qualified to transact business in Ohio (“Developer”), as amended and supplemented by a First Amendment to Development Agreement dated as of December 7, 2018 and a Second Amendment to Development Agreement approved December 2, 2019 (collectively, as further amended and supplemented, “Development Agreement”).

The City has previously acquired title to approximately four (4) acres of land commonly referred to as “Top of the Hill” and comprised of contiguous Parcel Numbers 685-18-008, 685-18-009, 685-18-010, 685-18-011, 685-18-012, 685-18-013, 685-18-016, 685-18-018 and 685-18-019 (each a “Parcel” and, collectively, “Parcels”), and has agreed to consolidate the Parcels with a portion of Edwards Road vacated or to be vacated, subject to reserved easements, pursuant to Ordinance No. 81-2019 enacted September 16, 2019, and then lease the consolidated site (“Project Site”) to Developer (or a designated affiliate) for a term of 99 years at nominal rent under a Ground Lease, the form and principal terms of which have been established under the Development Agreement and the First Amendment thereto (as completed, executed and delivered, “Ground Lease”). All Parcels other than Parcel 685-18-011 (“Greenhouse Parcel”) have been owned by the City for an extended period of time. The Greenhouse Parcel was acquired by Developer for transfer to the City and was so transferred on or about November 13, 2019 in accordance with the Development Agreement for a deferred payment of \$369,632.48 (“Greenhouse Purchase Price”).

Pursuant to the Development Agreement and Ground Lease, Developer (or a designated affiliate) is to provide for the acquisition, construction, equipping, installation, furnishing and other improvement of a project comprised of the following improvements: approximately 261 market-rate apartments, approximately 11,400 square feet of first floor restaurant, retail and commercial space, a public parking garage resulting in approximately 550 parking spaces, public gathering and green spaces, and all sidewalks, driveways, access ways and utility connections necessary for the foregoing improvements (“Project Improvements” and together with the Project Site, “Project”). The City has determined that the Project constitutes a “project” within the meaning of Ohio Revised Code (“ORC”) Chapter 165, as enacted and amended from time to time pursuant to Article VIII, Section 13, of the Ohio Constitution (collectively, with applicable provisions of ORC Chapter 1724, the “Bond Act”), and has determined that it may, subject to certain conditions, issue the TIF Bonds under the Bond Act and make proceeds of the sale thereof (“TIF Bond Proceeds”), together with a “City Contribution” (defined below), available to Developer to finance a portion of the costs of the Project in the manner contemplated herein. The City has authorized preparation of this preliminary financing term sheet (“Term Sheet”) in anticipation of the issuance and sale of the TIF Bonds.

In addition to providing the Ground Lease and making the TIF Bond Proceeds available for costs of the Project, the City has agreed in the Development Agreement to make a contribution of up to \$1.85 million (as finally determined, “City Contribution”) available to Developer to provide funding for a portion of the costs of the Project (including payment of the Greenhouse Purchase Price and provision for a portion of the costs of the Project Improvements), as reflected in an agreed budget for costs of the Project prepared by Developer and approved by the City (“Approved Project Budget”). All other costs of the Project are to be borne by the Developer/affiliates except to the extent if any provided in the Development Agreement.

The Developer has requested that the City now take the steps necessary to issue the TIF Bonds consistent with this Term Sheet and a legal structure that includes the following elements (among others): (i) the City will lease the Project Site under the Ground Lease to Cleveland Heights FC II, LLC, an Ohio limited liability company (“Ground Lessee”); (ii) the City will pay the Greenhouse Purchase Price to Developer and will provide the balance of the City Contribution (“City Project Proceeds”) to Ground Lessee, solely for use as a tenant improvement contribution to pay costs of Project Improvements; (iii) Ground Lessee will sublease the Project Site, under a sub-ground lease co-terminous with, and incorporating all material terms of, the Ground Lease (“Sub-Ground Lease”), to Cleveland Heights FC III, LLC, an Ohio limited liability company (“Leasehold Owner”), and will transfer the City Project Proceeds to Leasehold Owner, solely for use as a tenant improvement contribution to pay costs of Project Improvements; (iv) rent under the Sub-Ground Lease will be at market, as determined by Developer, reflecting the reasonable value of the Sub-Ground Lease and of the tenant improvement contribution of the City Project Proceeds; (v) the City will loan the TIF Bond Proceeds to Leasehold Owner to pay a portion of the costs of the Project Improvements consistent with the Approved Project Budget; and (vi) Leasehold Owner will obtain a first-mortgage construction loan (“Construction Loan”) from Goldman Sachs Bank USA (“Construction Lender”) which, together with (x)

City Project Proceeds plus (y) net TIF Bond Proceeds (net of all transactional and financing costs) plus (z) member-funded equity contributions to Leasehold Owner (“Member Equity”), is sufficient to pay all costs of the Project Improvements consistent with the Approved Project Budget.

Developer has represented to the City that: (i) Ground Lessee will be owned and controlled entirely by principals of Developer and its affiliates through Cleveland Heights FCS, Inc., an Ohio s-corporation, (ii) Leasehold Owner will be owned entirely by Cleveland Heights FC Owners, LLC, an Ohio limited liability company (“Leasehold Owner Parent”), and (iii) Leasehold Owner and Leasehold Owner Parent will be managed and controlled by principals of Developer and its affiliates. Developer, Ground Lessee, Leasehold Owner, Leasehold Owner Parent and David M. Flaherty (an individual and Indiana resident, and herein the “Guarantor”) are referred to herein, collectively, as the “Developer Parties”.

This Term Sheet is provided by Ross, Sinclair & Associates, LLC (“RSA” or “Placement Agent”) and the City to the Developer Parties in anticipation of entering into agreements pertaining to the structuring and marketing of the TIF Bonds and is preliminary and subject to change. It is intended to serve as the basis for such structuring and marketing, but is not definitive or complete; all terms, costs and other items included herein are preliminary and will be finalized in the documentation providing for the issuance, sale and delivery of the Bonds, including the Placement Agreement, Loan/Service Agreement, Bond Indenture, TIF Declaration/Mortgage and Guaranties, all referred to below.

Description of the Project:

Project: The Project is generally described in the Introduction to this Term Sheet and is comprised of the Project Site and Project Improvements authorized or to be authorized under each of the following: (1) the Bond Act, (2) the Development Agreement, (3) ORC §5709.41 and related statutory provisions (collectively, “TIF Act” and, together with the Bond Act, “Authorizing Acts”), (4) Ordinance No. 116-2019 passed by City Council and effective on or after January 1, 2020 (“TIF Ordinance”), and (5) an ordinance authorizing the TIF Bonds (“Bond Ordinance”).

Project Costs: Project Costs payable from TIF Bond Proceeds will include costs of acquisition, construction, equipping, installation, furnishing and other improvement of the Project Site and Project Improvements and related costs permitted under the Authorizing Acts, including costs of issuing the TIF Bonds and funding required capitalized interest and reserves. Aggregate Project Costs are estimated at approximately \$74,887,107, as shown under “Preliminary Sources and Uses” below. Aggregate TIF Bond Proceeds are currently projected at up to approximately \$23.5 million, with approximately \$18.5 million available, together with investment earnings on unspent construction-period TIF Bond proceeds (currently estimated at \$175,000) (collectively “Net TIF Bond Proceeds”), for construction and related costs of the Project Improvements, all as further described below under *Preliminary Sources and Uses*. Project Costs that cannot be funded from TIF Bond Proceeds must be funded, or available without material conditions, at or prior to the closing of the initial TIF Bond issuance (“TIF Bond Closing”), including all Construction Loan proceeds, City Project Proceeds, and member equity contributions to Leasehold Owner.

TIF Bond Proceeds: The TIF Bonds are expected to be issued in such amount as can be supported by payments in lieu of exempted taxes required under the TIF Act and TIF Ordinance (“Statutory Service Payments”) derived from improvements to the Project Site Parcels, as projected by MuniCap, Inc. (“TIF Consultant”) consistent with (i) such information as may be available regarding the prospective completed and stabilized tax valuation (and related timing) of the Project, and (ii) requirements under the Development Agreement and a Compensation Agreement dated March 20, 2018 between the City and the Cleveland Heights-University Heights City School District (“School District”), as supplemented by an Addendum to Compensation Agreement previously approved and to be executed prior to sale of the TIF Bonds between the City and School District (as supplemented, “School Compensation Agreement”). The net proceeds of the TIF Bonds will be made available for and applied towards the payment of the Project Costs in accordance with (x) a Loan and Service Agreement between

the City and Leasehold Owner, joined as to all Service Agreement covenants by Ground Lessee (“Loan/Service Agreement”) and (y) a Trust Indenture (“Bond Indenture”) between the City and a qualified corporate bond trustee (“Trustee”). Bond issuance costs and other specified Project Costs to be paid or reimbursed at or promptly after the TIF Bond Closing will be disbursed in accordance with direction given in the Bond Indenture. Funded interest and administrative expenses (for the period prior to anticipated receipt of Statutory Service Payments) will be disbursed in accordance with a schedule and direction included in the Bond Indenture. Amounts available for remaining costs of the Project Improvements will be disbursed on request of Developer, with approval of the City, in accordance with the Loan/Service Agreement and Bond Indenture.

Issuance and Sale of TIF Bonds:

Subject to approval of the Bond Ordinance by City Council, and to satisfaction of the conditions established in the Development Agreement, School Compensation Agreement, Bond Ordinance, Bond Indenture and Loan/Service Agreement, and based on satisfactory documentation and legal opinion of Squire Patton Boggs (US) LLP, bond counsel to the City (“Bond Counsel”), the City expects to issue (and the Placement Agent expects to place) the TIF Bonds to finance a portion of the costs of the Project Improvements. The TIF Bonds will be sold by the City, and placed by the Placement Agent, pursuant to a bond placement agreement (“Placement Agreement”) among the Placement Agent, the City, such Developer Parties as are acceptable to the Placement Agent and City, and, if applicable, the purchaser or purchasers of the TIF Bonds (collectively, “Purchaser”). To the extent required by the Purchaser for purposes of locking an interest rate or otherwise, parties to this Term Sheet agree to review and, if necessary sign a supplemental or separate term sheet further establishing agreed material terms of the TIF Bonds.

General Terms of the TIF Bonds

Principal Amount; Term; Serial Bonds. The principal amount of TIF Bonds issued for the Project is currently not expected to exceed approximately Twenty Five Million Dollars (\$25,000,000) and could vary significantly based on the projected tax valuation of the Project. That principal amount (and the related Net TIF Bond Proceeds) will depend on the amount of Statutory Service Payments projected by the TIF Consultant to be generated by the “*improvement*” (as defined in the TIF Act and herein “TIF Improvement”) to Project Site Parcels resulting from construction of the Project Improvements, the sale prices of and interest rates on the TIF Bonds, and other factors. The projected Statutory Service Payments (“TIF Projections”) will depend on the estimated valuation of the Project, as projected by the TIF Consultant consistent with County Fiscal Office assessor valuation protocols, projected “effective tax rates” of levies exempted by the TIF Ordinance, and the limits established by the School District compensation regime under the School Compensation Agreement. The actual Statutory Service Payments will differ from the TIF Projections and the variance could be significant. Consistent with the Bond Act, City Charter and Bond Ordinance, the TIF Bonds will mature serially within 30 years from their respective dates of issuance, with a final maturity of January 1, 2052 (“Final Maturity”). TIF Bonds are expected to mature serially in semiannual installments established under the Bond Indenture on January 1 and July 1 of each year from July 1, 2023 through Final Maturity (“Maturity Dates”). The term of the TIF Bonds may be reduced based upon market conditions and will be established in the Placement Agreement.

Interest Rates; Stepped-Coupon. Interest will be payable semiannually on January 1 and July 1 of each year, commencing July 1, 2020 (“Interest Payment Dates”). It is anticipated that all outstanding TIF Bonds will bear interest at the same fixed annual interest rate at any given time, but that the Bonds will have “stepped-coupon” interest rates established in the Bond Indenture and estimated and summarized as follows: (i) from the TIF Bond Closing date through June 30, 2028, outstanding TIF Bonds will bear interest at approximately 5.00% per year

(“Initial Rate”); (ii) from July 1, 2040 until maturity and final payment, outstanding TIF Bonds will bear interest at approximately 6.00% per year (“Final Rate”); and (iii) from July 1, 2028 through June 30, 2040, outstanding TIF Bonds will bear interest at an agreed rate between the Initial Rate and the Final Rate (“Second Rate”). Interest will be calculated for all periods, including the initial period, for a 360-day year comprised of twelve 30-day months. The interest rate or rates on the TIF Bonds are subject to market conditions at the time of pricing, and will be established in the Placement Agreement and may include a floor and ceiling (based on an agreed index and margin) for the Second Rate and Final Rate; provided, that debt service coverage requirements will, in that event, be determined based on the “ceiling” rates for the Second Rate and Final Rate periods.

Sale and Delivery; Deferred Deliveries. All of the TIF Bonds will be sold under the Placement Agreement for delivery as follows: (1) Bonds maturing on or before January 1, 2050 will be authenticated and delivered to the Purchaser at TIF Bond Closing, (2) Bonds maturing on July 1, 2050 will be authenticated and delivered to the Purchaser on July 1, 2020 (“First Deferred Delivery Date”), (3) Bonds maturing on January 1, 2051 will be authenticated and delivered to the Purchaser on January 4, 2021 (“Second Deferred Delivery Date”), (4) Bonds maturing on July 1, 2051 will be authenticated and delivered to the Purchaser on July 1, 2021 (“Third Deferred Delivery Date”), and (5) Bonds maturing on January 1, 2052 will be authenticated and delivered to the Purchaser on January 3, 2022 (“Final Deferred Delivery Date”). The process for delivery of and payment for Bonds to be delivered on each “Deferred Delivery Date” will be established in the Bond Indenture and Placement Agreement.

Optional Redemption. Subject to market conditions, it is expected that the TIF Bonds will be subject to optional redemption at par approximately five (5) years after the TIF Bond Closing date.

Denominations; Form; Global Bond. TIF Bonds may be issued in “authorized denominations” of \$100,000 and any integral multiple of \$5,000 in excess thereof. The TIF Bonds will be issued in certificated fully-registered form and may be issued as one or more Bonds maturing in serial installments; provided, that no Bond shall bear interest at more than one rate at any particular time.

Revenue Bonds; Non-Recourse to City. The Bonds will be issued as tax increment financing revenue bonds secured only by (i) the revenues and security pledged and provided under the Bond Indenture, including Statutory Service Payments and “Minimum Service Payments” or related “Supplemental Payments” (collectively “TIF Payments”) and any other loan payments made under the Loan/Service Agreement, all of which will be assigned by the City to the Trustee under the Bond Indenture, (ii) the TIF Declaration/Mortgage described below, and the (iii) “Guaranties” described below; and will not be secured by any other revenues, including any tax revenues, of the City. As such, the TIF Bonds will be special or limited non-recourse obligations of the City and will not be considered a debt of the City.

Rating; Credit Enhancement. The TIF Bonds will not be rated by any rating agency and will be issued without bond insurance or any other similar credit enhancement.

Additional Bonds. Additional Bonds are not expected to be issuable under the Bond Indenture.

Taxable Bonds. Interest on the TIF Bonds will not be excluded from gross income for federal income tax purposes. With certain exceptions, interest on, and any

profit made on the sale, exchange or other disposition of the TIF Bonds, will be exempt from Ohio state and local taxation.

Preliminary Sources and Uses:

Project Costs. The current preliminary estimated sources and uses of funds for the Project, based on current estimates, projections, market conditions and assumptions and a draft of the Approved Project Budget, are as follows:

<u>Sources:*</u>	
Construction Loan	\$51,000,000
TIF Bond Project Fund Deposits	\$18,500,000
Construction Period Earnings (Bond Deposits)	\$ 175,000
City Greenhouse Purchase Price	\$ 369,632
City Project Proceeds (maximum)	\$ 1,480,368
Member Equity	\$ <u>3,362,107</u>
Aggregate Project Sources	\$74,887,107
 <u>Uses:*</u>	
Greenhouse Purchase Price	\$ 369,632
Site Preparation	\$ 3,100,000
Architecture, Engineering and Design	\$ 3,454,675
Permitting, Etc.	\$ 250,000
Project Improvements Construction	\$56,985,000
FF&E, TI and Soft Costs	\$ 7,723,550
Contingency	\$ <u>3,004,250</u>
Aggregate Project Uses	\$74,887,107

Member equity, and the Project sources and uses, do not include any allocation for Developer Parties' overhead related to the Project (estimated at \$3,725,000).

TIF Bonds. The current preliminary estimated sources and uses of funds for the TIF Bonds, based on current information, estimates, projections, market conditions and assumptions, are as follows:

<u>Sources:*</u>	
Initial Bond Closing	\$20,000,000
Deferred Deliveries	\$ <u>3,500,000</u>
Aggregate TIF Bond Proceeds	\$22,424,000
 <u>Uses:*</u>	
Project Fund Deposits	\$18,500,000
Bond Reserve Fund	\$ 800,000
Capitalized Interest	\$ 3,175,000
Costs of Issuance	\$ 800,000
Other Costs (during CAPI Period)	\$ <u>225,000</u>
Aggregate TIF Bond Uses	\$23,500,000

*All amounts are estimated or assumed. All amounts will be adjusted and finalized (and may be adjusted significantly) as of the Initial Bond Closing date to reflect market conditions and pricing, known or revised estimated interest rates, costs, principal amounts, expectations and the TIF Projections.

Security for the Bonds:

Capitalized Interest and Other Payments: Subject to legal requirements, interest on the TIF Bonds is expected to be funded and paid from TIF Bond proceeds through completion of construction of the Project Improvements and until annual Statutory Service Payments are expected to be received in sufficient amounts to pay the scheduled principal and interest on the TIF Bonds ("Bond Service Charges") and associated "Administrative Expenses" (together with the Bond Service Charges, "Bond Payments"), including the annual or semiannual fees of

the City, the Trustee and a qualified tax increment financing and/or special district administrator appointed by the City under the Bond Indenture (“TIF Administrator”), as well as anticipated additional costs of administering the trust estate under the Bond Indenture. Capitalized Bond Payments are not expected to extend beyond January 1, 2023 unless funded from Developer Party contributions (which will be required if the TIF Projections do not project a full year’s collection of Statutory Service Payments in TY22 (collection year 2023)).

Reserve Fund or Funds. From and after the TIF Bond Closing, a “Bond Reserve” shall be funded in an amount equal to average semi-annual debt service on the TIF Bonds from the TIF Bond Closing through Final Maturity (on the assumption that all Bonds to be delivered on Deferred Delivery Dates are, in fact, delivered on the applicable Deferred Delivery Date). So long as no default has occurred, the Bond Reserve requirement may be reduced in equal amounts (1/4 of original Bond Reserve requirement) on each Maturity Date beginning on July 1, 2050 – with released amounts applied to debt service due on such date[s]. In addition to the Bond Reserve, depending on the TIF Projections and marketing requirements, there may be a supplemental reserve fund requirement in place for the period through completion, valuation and first full-year Statutory Service Payment collection.

Loan and Service Agreement Covenants; TIF Declaration and Mortgage. The Loan/Service Agreement will provide for the terms of the loan of the TIF Bond Proceeds to the Leasehold Owner (“TIF Loan”). The obligation to make loan financing payments (including amounts sufficient to make all Bond Payments) will be evidenced by a promissory note delivered by the Leasehold Owner to the Bond Trustee (“TIF Loan Note”). The Loan/Service Agreement will also provide for the “service agreement” covenants of the Leasehold Owner and the joinder of the Ground Lessee therein, and such service agreement covenants shall be binding on all transferees and subsequent owners of the interests of the Developer Parties in all or any portion of the Project Site (the Ground Lessee, Leasehold Owner and all such transferees and subsequent owners, “Owners”), but subject to apportionment of payment obligations in the event the Ground Lease is subdivided in accordance with its terms. Such covenants, including (without limitation) covenants relating to development of the Project Site consistent with the Development Agreement and the Approved Project Budget, the application for the tax exemption granted under the TIF Ordinance, the statutory liens resulting from that tax exemption and the payment of all TIF Payments, in amounts sufficient to provide for all Bond Payments, will run with the land and be binding on the leasehold interests of the Ground Lessee and Leasehold Owner (and other interests derived therefrom exclusive of individual unit and store leases), and will be evidenced and secured by a declaration and open-end mortgage instrument recorded in the County real estate records, with foreclosure procedures benefiting the City and Bond Trustee, in form and substance satisfactory to the City and Placement Agent (“TIF Declaration/Mortgage”).

TIF Payments; Credits Against Loan Payments. It is anticipated that the County will collect and remit Statutory Service Payments to the City and that the City will transmit all such amounts, within twenty-one (21) days of final settlement with the County Fiscal Officer as to any amounts received, to the Bond Trustee, as assignee. Minimum Service Payments are expected to be invoiced by the Bond Trustee pursuant to direction of the TIF Administrator approximately thirty (30) days before, and will be due and payable at least three (3) business days before, the next-succeeding semiannual Interest Payment Date. The Bonds will be secured, in part, by a senior pledge of and lien on all TIF Payments. It is expected TIF Payments will always be sufficient to pay all Bond Payments when and as due and, if and to the extent that TIF Payments are timely made and available to make Bond Payments, such TIF Payments will be credited against the obligation

of the Leasehold Owner to make payments to the Bond Trustee on the TIF Loan and TIF Loan Note.

School Compensation Payments. School Compensation Payments will be secured by a subordinate pledge of and lien on all Statutory Service Payments, and shall be paid annually within thirty (30) days after the end of each “Bond Year” (generally the period ending on a January 1 Principal Maturity date), in accordance with an acceptable report of the TIF Administrator calculating the annual School Compensation Payments due and payable for the applicable tax collection year. Any amounts remaining after the payment of all required School Compensation Payments for any year shall be applied in accordance with the 76:24 split required by the First Amendment to Development Agreement.

Owners: All Owners will be responsible for compliance with the covenants running with the land and evidenced by the TIF Declaration/Mortgage, including the Minimum Service Payment obligations. The Ground Lessee and Leasehold Owner will be the initial Owners and will be responsible for imposing all such covenants and related liens on their interests in the Project Site Parcel or Parcels, including obligations on each Owner to expressly transfer all such obligations to all succeeding Owners succeeding to such interests in any Project Site Parcel. Appropriate language consistent with the TIF Declaration/Mortgage must be included in any instrument transferring any portion of or interest in any of the Project Site Parcels to a subsequent Owner. Any such instruments shall be in form approved by the City and will require the signature of the transferee with respect to its acknowledgment and acceptance of all such covenants.

County Treasurer Agreement. To provide comfort that tax lien certificates relating to Project Site Parcels will not be sold at less than par, the County Treasurer, pursuant to an agreement with the City and/or Bond Trustee, will agree not to sell any tax lien certificate related to any Project Site Parcel for an amount less than 100% of the applicable tax lien without consent of the City and Bond Trustee.

Guaranties. The Developer Parties will jointly and severally guarantee timely completion of the Project Improvements in accordance with Development Agreement requirements under one or more completion guaranties in form and substance acceptable to the City and Placement Agent (“Completion Guaranty”). The Guarantor will guarantee the payment of all TIF Payments under a payment guaranty in form and substance acceptable to the City and Placement Agent (“Payment Guaranty”; together with the Completion Guaranty, “Guaranties”); provided, that such Payment Guaranty will be released at such time as the Statutory Service Payments have, for two consecutive tax collection years, met or exceeded 125% of the Bond Payments payable for the respective “Bond Year” ending on the January 1 immediately following the end of the applicable tax collection year.

City Requirements:

Development Agreement Generally. The Development Agreement will survive delivery of the TIF Bonds, Ground Lease and City Contribution, and completion of the Project Improvements, and the Developer Parties will confirm and perform their obligations thereunder except to the extent, if any, waived in writing by the City. The Loan/Service Agreement will include mutual agreement as to those Development Agreement requirements satisfied and outstanding.

Loan Commitment and Annual Fees. For issuing the Bonds and making the TIF Loan, the City will charge the Leasehold Owner a loan commitment fee equal to 0.4% of the principal amount of the TIF Bonds payable, in full (as to all TIF Bonds, regardless of the Delayed Delivery Dates of certain maturities), on the Initial Bond Closing date. In addition, the Leasehold Owner shall pay the City an annual loan maintenance fee of 0.2% of the outstanding principal amount of the TIF Bonds, payable semiannually in advance beginning on the Initial Bond

Closing Date (pro-rated for the period prior to the first Interest Payment Date) and thereafter on each Interest Payment Date (based on outstanding principal amount at the beginning of the interest period ending on the applicable Interest Payment Date). In addition, the Leasehold Owner will be responsible for all Bond Trustee and TIF Administrator fees and charges. All such amounts due on the Initial Bond Closing date and during the period when interest is capitalized, are expected to be paid or provided for from TIF Bond Proceeds. Thereafter, all such fees and charges, and any other Administrative Expenses are expected to be paid from the Statutory Service Payments as part of the Bond Payments and will, to the extent established in the Bond Indenture, have priority over Bond Service Charges.

Indemnification. The Developer Parties hereby accept responsibility for and will defend and indemnify the City and Bond Trustee against all costs, expenses and liabilities relating to the issuance, administration, security and enforcement of the TIF Bonds, the construction of the Project Improvements (except to the extent payable from TIF Bond proceeds or City Contribution), and the operation and use of the Project including, without limitation, any and all claims for damages or injury to persons or property in, on or about the Project Site or the Project Improvements. The Ground Lessee, the Leasehold Owner and any other Owner will be required to name the City and Bond Trustee as additional insureds under applicable liability policies and as loss payees on casualty policies, including builders' risk policies, insuring to the Project.

Inclusion and Prevailing Wages. Developer Parties shall use commercially reasonable efforts, and will require that the general contractor (“GC”) use commercially reasonable efforts (including requiring subcontractors to use commercially reasonable efforts), to achieve minority and female business enterprise (“MBE/FBE”) participation goals acceptable to the City in connection with the construction of the Project Improvements, including utilization of certified MBE/FBE businesses in the construction of the Project Improvements at an aggregate level of 20% or greater. In addition, Developer Parties shall use commercially reasonable efforts, and will require that the general contractor (“GC”) use commercially reasonable efforts (including requiring subcontractors to use commercially reasonable efforts), to ensure that laborers and mechanics employed on the Project are paid at the prevailing rates of wages of laborers and mechanics for the class of work called for with respect to that work (determined in accordance with ORC Chapter 4115 requirements for such determinations) to the extent reasonably practicable consistent with the Approved Project Budget and, in any event, at an aggregate level of not less than 30% of related Project Costs (of laborers and mechanics employed on the Project). Representatives of Developer Parties and of GC will provide a semiannual status report to the City through completion (with the first such report due by August 1, 2020 (for the period ending June 30, 2020), with respect to then-current and cumulative MBE/FBE participation and prevailing wage payments, in the construction of the Project Improvements, and an affidavit as to cumulative MBE/FBE participation and prevailing wage payments upon completion.

Other Participants:

Placement Agent. The City designated RSA as the Placement Agent to market the TIF Bonds after discussion with the Developer. The TIF Bonds are expected to be privately placed by RSA with the Purchaser (expected to be one or two financial institutions, funds or other permitted investors, as established in the Bond Placement Agreement). Purchaser will provide and confirm, on delivery, representations acceptable to the City and Placement Agent regarding its investigation, investment intent, and non-distribution. Fees and expenses of RSA in structuring and placing the Bonds will be established in the Bond Placement Agreement with approval of the Developer and the City.

Bond Counsel. The City retained Squire Patton Boggs (US) LLP as Bond Counsel after discussion with the Developer. Except to the extent paid previously, or paid

or reimbursed from TIF Bond proceeds, the Developer Parties accepted and hereby confirm their responsibility for the reasonable fees and expenses of Bond Counsel, whether incurred prior to or after the signing of this Term Sheet or any separate engagement agreement and whether or not any TIF Bonds are ever issued. Any fees previously paid may be reimbursed from TIF Bond proceeds.

Other Counsel. For purposes of the transactions contemplated herein, the Developer Parties have designated Thompson Hine LLP as their counsel, the City has designated Tucker Ellis LLP as its development counsel, and the Placement Agent has retained _____ as its counsel. Associated fees and expenses relating to issuance of the Bonds are expected to be payable from proceeds of the TIF Bonds.

TIF Consultant. RSA will retain MuniCap, Inc. or other qualified consultant acceptable to the City, at the Developer's cost, for an acceptable and independent estimate of the projected Statutory Service Payments expected to be realized from the Project Site Parcels and pledged to the Bond Payments. These TIF Projections will be disclosed to the Purchasers and must show that, while taking into account all terms of the School Compensation Agreement (including no increases in valuation after valuation upon stabilization and 100% payment to the School District of Statutory Service Payments relating to any School District millage approved as new after March 20, 2018), the projected Statutory Service Payments from the Project Site Parcels (at the time of marketing the TIF Bonds) are, in each year of collection, expected to equal at least (i) 125% of the estimated Bond Payments to be paid therefrom, and (ii) 100% of the sum of the estimated Bond Payments and estimated School Compensation Payments to be paid therefrom. All related costs will be paid or reimbursed from Bond proceeds.

TIF Administrator. MuniCap, Inc., or other qualified company appointed by the City under the Bond Indenture and a separate Administration Agreement. Will be responsible for Annual and Semiannual reports relating to administration of the TIF Bonds, application of available revenues, the need for and invoicing of any Supplemental Payments and any reporting required by the Purchaser.

Trustee. [The Huntington National Bank, Cincinnati corporate trust office]

Timetable:

A preliminary critical path timeline has been issued and updated prior to the execution of this Term Sheet and will be further updated from time to time.

Modification:

This Term Sheet may be modified with the approval of all affected parties, but it is specifically understood and agreed that all final terms and conditions of the TIF Bonds will be established in the Financing Documents and in connection with the placement of the Bonds, and such terms and conditions may be different than those contained in this Term Sheet.

[Balance of Page Intentionally Left Blank; Signature Page Next]

Subject to execution on behalf of the Developer Parties of this Term Sheet, and to payment of any outstanding Bond Counsel invoices, the City will authorize Bond Counsel to commence drafting the Bond Ordinance, Financing Documents and other related documents for the issuance, sale and delivery of the TIF Bonds.

ROSS, SINCLAIRE & ASSOCIATES, LLC

CITY OF CLEVELAND HEIGHTS, OHIO

Daniel R. Blank, Managing Director

Tanisha Briley, City Manager

Approved as to form and correctness:

William Hanna, Law Director

Acknowledged, Approved, Accepted and Agreed, as authorized by and on behalf of all Developer Parties:

F & C DEVELOPMENT, INC., DEVELOPER

David Flaherty, Chief Executive Officer

DRAFT

Proposed: 01/21/2020

RESOLUTION NO. (MS)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with GPD Group for construction administration and resident inspection services for the Selwyn Rehabilitation and Waterline Replacement Project; providing compensation therefor; and declaring an emergency.

WHEREAS, the City requires professional construction administration and resident inspection services for the Selwyn Rehabilitation and Waterline Replacement Project; and

WHEREAS, the City Manager has recommended that the services offered by GPD Group best meets the City's needs; and

WHEREAS, such services are professional services for which no bidding is necessary.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to enter into an agreement with GPD Group for construction administration and resident inspection services for the Selwyn Rehabilitation and Waterline Replacement Project. The contract shall be in accordance with the terms and conditions set forth in the proposed agreement for professional services submitted by GPD Group, a copy of which is on file with the Clerk of Council. Compensation for the services detailed therein shall not exceed Seventy Two Thousand Seven Hundred and Fifty Eight Dollars (\$72,758.00). All agreements hereunder shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the above-described improvements at the earliest possible time to protect the safety and welfare of those persons using the roads and streets of the City. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. (MS)

JASON S. STEIN, Mayor
President of Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

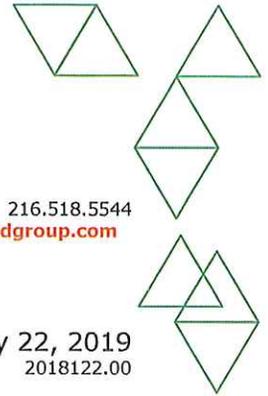
PASSED:



5595 Transportation Boulevard, Suite 100
Cleveland, Ohio 44125

Phone 216.518.5544
www.gpdgroup.com

May 22, 2019
2018122.00



Mr. Joe Kickel
Capital Project Manager
City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio

**RE: Construction Management Services
Selwyn Rehabilitation and Waterline Replacement**

Dear Mr. Kickel

GPD Group is pleased to submit this proposal for professional services on the above referenced project. Attached please find a Work Description, Project Approach/Scope of Services and Fee Proposal for your consideration. Also included is an itemized task breakdown complete with man-hour and fee estimates.

Project Understanding:

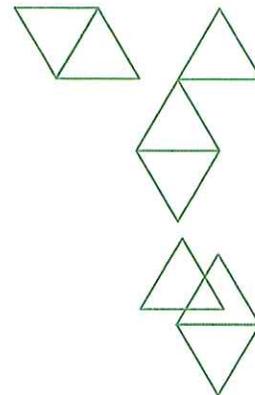
GPD Group will provide construction administration services and resident inspection services as described herein in the Scope of Services. This project is governed by local ordinances. The project is currently out to bid, with an anticipated start in the early summer of 2019 and concluding the same year (assumed 12 week construction duration). Our services will involve providing construction management and inspection services during and post construction of the Selwyn Rehabilitation and Waterline Replacement Project. Our efforts will involve being an interpreter of the plans and specifications and protecting the City against deficiencies in the contractor's work. We will also serve as the City's liaison with the contractor and report directly to the Capital Projects Manager. GPD Group is prepared to begin work immediately upon written notice to proceed.

SCOPE OF SERVICES

I. Project Task Summary

- a. Provide Construction Management and Inspection Services with the expressed goal of having the project finished on time and on budget.
- b. Attend a Public Meeting with the local residents.
- c. Perform wage compliance work
- d. Perform pay applications to conform local requirements
- e. Provide Post-Construction Services

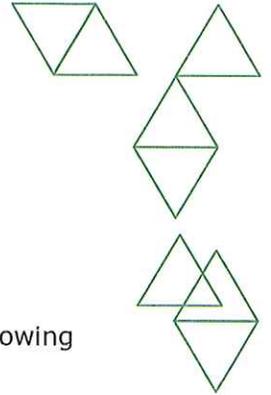




II. Specific Tasks

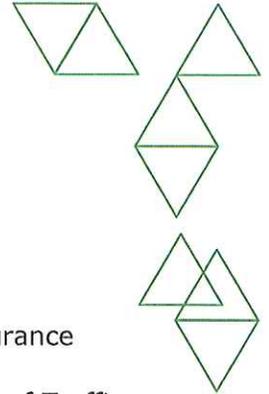
a. Construction Administration and Inspection

- i. Project Directory – Prepare a project directory of all personnel involved and their contact information and distribute. An e-mail user group will also be developed to promptly distribute project information. Maintain Detailed Estimate for the Project.
- ii. Kick-off Meeting – Schedule, coordinate and administer a Kick-off Meeting with GPD, City Officials and Test Lab to introduce all parties and establish contact information/protocol.
- iii. Pre-construction Meeting – Schedule, coordinate and administer a pre-construction meeting with the City Officials, Contractor, and the pertinent Utilities Companies. Prepare and make available the meeting minutes to all attendees and other interested parties.
- iv. Implement Document Control System
 1. Document Management System – Maintain a document management system for tracking all related project correspondence and records including: transmittals, test specimens, samples, schedules, change orders, shop drawings, request for information, letters, punch lists, photographs, etc. Monitor Contractor's Construction Schedule. Request updates as required.
- v. Progress Meetings (6 Meetings) – Schedule, and administer regular progress meetings with the City Officials and the contractor. Subcontractors and utility companies will be invited to attend as necessary. Prepare and make available the meeting minutes to all attendees and other interested parties.
- vi. Provide Resident Construction Administrator – GPD Group will provide a licensed Professional Engineer with extensive knowledge of contract compliance and construction contract administration to manage the inspection team.
- vii. Provide Full-Time Construction Inspection – GPD will inspect and record the contractor's daily progress. The anticipated project schedule is estimated at 12 weeks of construction. For the purposes of pricing, we have anticipated the use of full-time inspection for the 12 week contract duration. We also anticipate the Contractor will work some long days and therefor inspector overtime is anticipated. Daily inspection

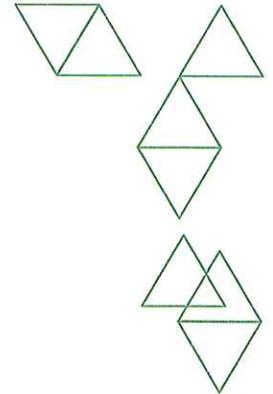


records will be developed and will include the following documentation:

1. Project Name, Report Number and Date
 2. Weather conditions
 3. Names of the contractors, subcontractors, or other entities performing the work, including the hours worked
 4. Listing of all equipment used, including the hours used or idle
 5. Listing of materials delivered to the site, including delivery tickets
 6. Names, titles, affiliations of all visitors to the site
 7. Monitor Maintenance of Traffic Zones for safety and compliance with plans; identify problems
 8. Monitor contractor SWPPP measures for compliance with EPA rules and regulations
 9. Location of work (stations and offsets)
 10. Pay items of work performed. Note: A daily log of all pay items installed will be kept in a separate binder.
 11. Observations in general
 12. Specific observations in more detail of work performed
 13. Observations of testing of materials performed and results
 14. Instructions received from Resident Project Engineer or City Officials
 15. Instructions given to the contractor
 16. Request for information received from contractor
 17. Damages to property
 18. Incidents of changed conditions that may affect the work
 19. Actual and potential claims, changes in the work, delays, or other factors that may result in modifications to the work and/or contract
 20. Calculations and sketches used in determining payment quantities or other conditions or the work.
- viii. Hold Special Site Meetings as needed. Invite City Officials as needed.
- ix. Perform Shop Drawing and Submittal Reviews – Review and provide a disposition of comments concerning all shop drawings of products and materials to be incorporated into the work, unless otherwise specified in the Contract Documents. Maintain a log that accounts for the receipt and disposition of all shop drawing and project related submittals.
- x. Monitor Contractor Safety Program



- xi. Monitor Contractors Compliance with Bond / Insurance requirements
- xii. Review and Monitor the Contractors Maintenance of Traffic (MOT). Inform City Safety Chiefs on any revisions required
- xiii. Monitor contractor Performed Continuously Updated As-Builts
- xiv. Maintain Set of Continuously Updated As-Builts – Maintain a field set of drawings (“red-line set”) indicating the as-built conditions to be utilized in preparation of record drawings that will be turned over to City at the conclusion of the project work.
- xv. Work performed by the Contractor upon which partial payments to the contractor shall be based. Recommend work known to be in conformance to the Contract Documents be accepted and paid for by City.
- xvi. Change Order Requests – GPD Group will review all Change Order requests by the contractor and make recommendations to the City. The review of all claims submitted by the contractor throughout the duration of the project will be processed through GPD internal claims process. GPD will evaluate the validity of any disputes and prepare recommendations for the City of Cleveland Heights. Also, GPD will review all cost and quantities submitted and take part in all negotiations.
- xvii. Field Quality Control Testing – The contractor will perform material testing, GPD will oversee their efforts. We will review the testing reports and results, prepared by the testing firm, and identify problems or concerns. We will then determine the corrective actions required by the contractor to address any problems. Copies of the reports with our review notes will be forwarded to the City for their records.
- xviii. Provide Advice, Recommendations to the City on Construction Issues
- xix. Prepare Correspondence for City’s Signature on Construction Issues
- xx. Coordinate the Interaction of All Parties to the Contract
- xxi. Maintain Photo Log
- xxii. Provide Claims Avoidance, Mitigation and Dispute Resolution – Identify non-conforming work and verify the contractor’s compliance with the technical requirements of the project. The contractor will be notified on the non-conforming work when identified so the proper corrective actions can be taken. Bring to the immediate attention of the City instances where the contractor fails to be in compliance with the terms of the Contract Documents and when the Contractor acts in a manner, which is not in the best interest of the City.



III. Wage Compliance

- a. Review Certified Payroll

IV. Close-Out Services

- a. Coordinate and Organize final walk thru of the project. Prepare a punch list of items to be resolved prior to final acceptance. Verify punch list items have been resolved. Recommend final project to the City as accepted and in compliance with the plans and specifications.

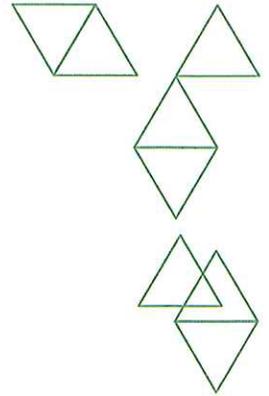
V. Post Construction Services

- a. Close-Out Documents – Assist in the execution of the contract close-out documents (i.e., final pay application, final change order to adjust contract price, affidavit of prevailing wages, consent of Surety Company for final payment and affidavit of final acceptance date and correction period). At the conclusion of the project, the project documents will be delivered to the City for the records. A statement of quality assurance will be included with this submittal.
- b. Resolution of Miscellaneous Claims and Complaints.
- c. Attend Post Construction walk through with City Officials and contractor.

VI. Authority of the Consultant

- a. The authority of the Consultant shall have the following limitations, except as duly authorized in writing by the Service Director and agreed upon by the Consultant:
 - i. Deviation from the Contractor Documents and any changes in materials or equipment shall not be authorized.
 - ii. The Consultant will not perform any function that is the responsibility of the contractor, contractor's suppliers or subcontractors.
 - iii. The Consultant shall not be liable for defective work, acts of omission or operating procedures of the contractor.





VII. Estimated Fee

GPD Group proposes to perform the above described scope of services for an **hourly** fee of **\$72,758**. We have estimate the expenditure of approximately **1,045** manhours, based on a 12 week duration, to complete these services.

The fees are based upon the construction schedule and include the work reasonably necessary under the scopes of work presented herein. It is understood that if the schedule or tasks increase materially from the described, GPD Group will be entitled to a reasonable upward adjustment of our fee commensurate with the increase in work.

We thank you for the opportunity to present our proposal to assist the City of Cleveland Heights with this high profile project. We are available to answer any questions that you may have and to begin our services immediately upon authorization. Please do not hesitate to call me at 330.572.2796 office or 216.408.3080 cell or contact me via e-mail at dneumeyer@gpdgroup.com. Thank you for your consideration of GPD Group.

Sincerely,
GPD Group

David Neumeyer, PE
Project Manager

TERMS AND CONDITIONS

Glaus, Pyle, Schomer, Burns and Dehaven, Inc. dba GPD Group ("GPD") shall perform the services outlined in the proposal attached to this agreement, or any other performance rendered by GPD, (collectively referred to as the "Work") in accordance with the following Terms and Conditions for the party identified as Client ("Client") in the corresponding proposal:

Information and Access. When applicable, Client shall make available any and all plans, drawings, or other documentation, which relate to the Work in addition to any other information which one should consider as it relates to the Work. Client shall provide additional information upon GPD request. In the event that new, modified or changed information becomes available Client shall inform GPD of such immediately. Client shall insure access to the property or site(s) is available to GPD at agreed upon times, and Client shall make available representatives who will be the most knowledgeable concerning the Work which GPD shall perform. Client acknowledges that GPD shall regard all Client information as reliable and accurate, and hereby warrants such. Client agrees that GPD may assume that all plans, designs, structures and specifications related to the Work have been properly designed in accordance with the highest standard of care and are adequate for all purposes other than specifically addressed by the Work. GPD shall not be responsible for existing, hidden or unknown conditions and shall have no responsibility for the discovery, presence, handling, removal, disposal of hazardous materials of any form.

Billing and Payment. GPD, at its option, will submit invoices for services and reimbursable expenses on a monthly basis, unless otherwise agreed upon. Client shall pay invoices in full within 30 days after the invoice date. Any invoice or part thereof which has not been paid within 60 days shall accrue interest at 1.5% per month (equivalent to 18% per annum) until paid in full. GPD shall have the right to suspend the Work, terminate the agreement and retain and/or retrieve all work product until such invoices have been paid in full. ~~The Client agrees to pay all costs of collection for unpaid fees, including but not limited to attorney costs.~~

_____ Initial T.B.

_____ Initial J.E.

Timeliness of Performance. GPD will endeavor to perform the Work with reasonable diligence and expediency consistent with the applicable standard of care. GPD shall not be responsible for, and will not be held liable for, damages arising directly or indirectly from any delays for causes outside of GPD control, including the actions or inactions of Client, other subcontractors or consultants, and third parties. If delays resulting from any such causes increase the cost and/or time required by GPD to perform the Work, GPD shall be entitled to an equitable adjustment in schedule and/or compensation.

Standard of Care. GPD's services shall be performed in a manner consistent with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time in the same location.

Indemnification. GPD agrees to indemnify and hold the Client (which collectively includes officers, directors and employees) harmless from any and all damages, liabilities, claims, expenses or costs (including reasonable attorney's fees, expert-witness fees and defense costs) to the extent caused by its own negligent acts, professional errors, or omissions arising out of the Work or the performance of this

agreement. GPD is not obligated to indemnify and hold the Client harmless in any manner whatsoever for the Client's negligence.

Termination of Services. Either party may terminate this agreement upon 10 days written notice should the other fail to perform its obligations hereunder. In the event of such termination, Client shall pay GPD for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.

Ownership of Work Product. All Work, instruments of service, reports, drawings, specifications, electronic files, field data, notes and all other preparations by GPD shall remain the property of GPD, hereafter referred to as "Work Product". GPD shall retain all common law, statutory, and other reserved rights, including the copyright thereto in the Work Product Client shall have a nonexclusive license in the Work Product that may not be used for any other purpose or project other than for which it was created without the written consent of GPD. Client reuse in violation of this section, or any changes or modifications to the Work Product not performed by GPD shall be considered an "Unauthorized Use." Client shall waive any and all claims related to Unauthorized Use and agrees to indemnify, defend, and hold GPD harmless from any and all claims, demands, expenses, including attorney's costs which may arise from such Unauthorized Use.

----- Initial T.B.
----- Initial J.E.

Client shall maintain ownership over drawings or plans that are commissioned, for the purposes of Client to promulgate standard drawings.

Confidentiality. Unless required by law or court order including, but not limited to, the Ohio Public Records Act, GPD and Client shall not disclose the terms of this agreement or substance of the Work and shall treat such as confidential. This section shall not apply to any information after it is generally available to the public other than as a result of disclosure by GPD or Client, which is generally available to the public on the date of this agreement or which was lawfully received from a third party without a restriction on disclosure. GPD understands and acknowledges that in acting on behalf the Client it is subject to the Ohio Public Records Act. GPD further understands and acknowledges that this agreement is a public record under the Ohio Public Records Act.

Dispute Resolution. Any claim or dispute between GPD and Client shall be submitted to non-binding mediation prior to the institution of arbitration proceedings, and shall be brought in a proper venue in Cuyahoga County, Ohio. This agreement and the Work shall be governed by the laws of the State of Ohio.

Entire Agreement. These terms and conditions and the attached GPD proposal describe the entire agreement between GPD and Client. Both parties mutually agree that all other terms and conditions are hereby rejected. No amendments to these terms and conditions shall be effective unless acknowledged by written signature. Client's acceptance to these terms and conditions, whether acknowledged by signature or not, is a condition precedent to GPD's commencement of the Work.

No Third Party Beneficiary. This agreement is made for the benefit of GPD and Client and is not intended to benefit any third party or be enforceable by any third party. The rights of the GPD and Client to

terminate, rescind, or agree to any amendment, waiver, variation or settlement shall not be subject to the consent of a third party.

Contract Term and Amount. This agreement shall be in effect for a period of one (1) year from the signed date below in accordance with all other terms and conditions. The total amount of services provided under this agreement shall not exceed a total of Seventy Two Thousand Seven Hundred Fifty Eight Dollars (\$72,758).

Assignment. Neither party may assign this agreement without the consent of the other.

Severability. If any term, covenant, condition or provisions of this agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ACCEPTANCE AND AUTHORIZATION TO PROCEED

Signature represents authorization and acceptance of the terms and conditions.

SIGNATURE	
<u>Tanisha R. Briley</u> Name	_____ Signature
<u>City Manager</u> Title	_____ Date

Approved As To Form:

William Hanna
Director of Law

Date

**Selwyn Rehabilitation and Waterline Replacement
Construction Administration and Inspection Services
Cleveland Heights, Ohio
22-May-19**



Item/Task	Weeks	Project Manager	Resident Engineer	Construction Coordinator	Construction Inspector	CAD Drafter	Total Hours
Project Administration							
Daily Project Inspection (1 Full Time, 50 Hrs)	12				600		600
Progress Meetings (6 Meetings)	12	48		48			96
Pay Applications			30	30			60
Quantities					60		60
Change Orders		5	15	20			40
Review Shop Drawings		5	20	8			33
Respond to RFI's		5	20	8			33
Review Material Testing Reports		1	12	8			21
Project Finalization							
Final Inspection and Acceptance		2		4	8		14
Resolution and Punch List Items		2		8	16		26
Final Quantities and Payment				18	16		34
Preparation of Project Closeout Documents		2		18	8		28
Totals		70	97	170	708	0	1045
Avg Bill Rate		\$115.00	\$104.00	\$73.00	\$57.50	\$70.00	\$68.19
Fee		\$8,050	\$10,088	\$12,410	\$40,710	\$0	\$71,258
Direct Expenses (Travel, Misc Reproduction)							
							\$1,500
Total Cost							\$72,758

Proposed: 01/21/2020

RESOLUTION NO. (MS)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with GPD Group for engineering services for the Shannon Road Rehabilitation Project; providing compensation therefor; and declaring an emergency.

WHEREAS, the City requires professional services of an engineering consultant concerning the Shannon Road Rehabilitation Project; and

WHEREAS, the City Manager has recommended that the services offered by GPD Group best meets the City's needs; and

WHEREAS, such services are professional services for which no bidding is necessary.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to enter into an agreement with GPD Group for engineering services for the Shannon Road Rehabilitation Project. The contract shall be in accordance with the terms and conditions set forth in the proposed agreement for professional services submitted by GPD Group, a copy of which is on file with the Clerk of Council. Compensation for the services detailed therein shall not exceed Eighty Two Thousand Five Hundred and Three Dollars (\$82,503.00). All agreements hereunder shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the above-described improvements at the earliest possible time to protect the safety and welfare of those persons using the roads and streets of the City. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. (MS)

JASON S. STEIN, Mayor
President of Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:



5595 Transportation Boulevard, Suite 100
Cleveland, Ohio 44125

Phone 216.518.5544
www.gpdgroup.com



October 22, 2019

Ms. Collette Clinkscale
Director of Public Works
City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118

Shannon Road Rehabilitation Cleveland Heights Ohio

Dear Ms. Clinkscale:

GPD Group is pleased to provide this proposal for engineering services associated with improvements on Shannon Road in the City of Cleveland Heights. The enclosed proposal is based on the Cleveland Water Department application prepared by GPD Group.

Project Understanding

The City of Cleveland Heights is seeking to replace water lines on Shannon Road from South Taylor Road to Andrews Road with separated quantities for Cleveland Water Department reimbursement.

1. Design of approximately 4,140 feet of new water line.
2. GPD Group will perform a preliminary location of the new water line for concurrence by the City prior to performing detailed design.
3. GPD will prepare by-pass plans, if necessary.
4. GPD will obtain Cleveland Water Department approval.
5. Resurfacing plans for Shannon Road.

Scope of Services

1. Surveying and mapping
 - a. Project Control
 - i. Project shall be referenced horizontally to Ohio State Plane Coordinate System, North Zone NAD83(2011) datum and vertically to the NAVD88 datum based on GPS observations using ODOT VRS Network.



- ii. Primary project control shall be 5/8 inch by 30 inch rebar with red plastic caps stamped "GPD Control Point". Benchmarks will be established throughout the project area at approximately 500 foot spacing.
 - b. Boundary, C/L, and R/W Resolution
 - i. No boundary resolution will be completed as part of this project. GIS property lines and R/W's will be shown along with addresses.
 - c. Topographic Survey
 - i. Topographic survey will be completed from back of walk to back of walk and 50 feet up each intersection.
 - ii. Utilities will be shown by visible evidence combined with records received from calls to Ohio811.
 - d. Drawings and Plats
 - i. Basemapping of survey will be completed in AutoCAD 2016. Survey information will be combined with County GIS data as needed.
- 2. Water Line Design
 - a. GPD will utilize the latest City of Cleveland, Division of Water details and standard notes.
 - b. GPD will coordinate with the City of Cleveland, Division of Water for plan approval and charge letter.
 - c. The design package will include:
 - i. Schematic
 - ii. Plan and Profile, at 20 scale
 - iii. Water notes and details
 - iv. Construction notes and details
 - v. Pavement Repair Details
 - vi. Plan quantities for all associated items.
- 3. Roadway Design
 - a. GPD will incorporate the design of the resurfacing of Shannon Road into the project.
- 4. Maintenance of Traffic
 - a. No detailed Maintenance of Traffic plans is anticipated.
 - b. Maintenance of Traffic will be achieved through notes, details and standard drawings.

5. Signing and Pavement Marking
 - a. No signing and pavement marking plans are anticipated
6. Drainage and Storm Water Management
 - a. No drainage improvements or storm water management is anticipated.
7. GPD Group has included a fee for geotechnical investigation.

Assumptions

1. GPD assumes that the design process will require two (2) project coordination meetings with the City.
2. The City of Cleveland Heights will require two (2) submittals; one at 30% and again at 90%.
3. The City will acquire any necessary Right-of-Entry permissions.
4. Andrews Road grading (separate proposal) will be utilized in the road program bid documents.
5. GPD will not attend any planning or council meetings.

Exclusions

1. Any environmental studies are not anticipated.
 2. GPD will not perform title reports or appraisals.
 3. GPD will not be responsible for any R/W acquisition.
 4. Grant or funding applications.
 5. Preparation of bid documents for Andrews Road.
 6. GPD will not be required to attend public involvement meetings or prepare exhibits.
- 

Client Responsibilities

1. The City will pay any necessary fee to regulatory agencies to obtain permits such as the Ohio EPA and Cuyahoga County SWCD.
2. The City will provide GPD any available records of existing infrastructure.
3. The City will obtain any necessary right-of-entry agreements.

GPD Group will perform the above described Scope of Services for Shannon Road for a LUMP SUM fee of **\$82,503** with an expenditure of **836** manhours.

These fees are utilizing the 2019 City of Cleveland Heights rates. The expected **duration is 5-6 months** after authorization. The intent is for a spring bid for construction in 2020.

If you have any questions or need any additional information, please do not hesitate to call me at 216-927-8659 or email jgorman@gpdgroup.com.

Respectfully,
GPD Group



Jacque Gorman, PE,
Project Manager



David Neumeyer, PE
Project Principal

Cc: David Neumeyer, PE, Consulting City Engineer, Project Principal – GPD Group

TERMS AND CONDITIONS

Glaus, Pyle, Schomer, Burns and Dehaven, Inc. dba GPD Group ("GPD") shall perform the services outlined in the proposal attached to this agreement, or any other performance rendered by GPD, (collectively referred to as the "Work") in accordance with the following Terms and Conditions for the party identified as Client ("Client") in the corresponding proposal:

Information and Access. When applicable, Client shall make available any and all plans, drawings, or other documentation, which relate to the Work in addition to any other information which one should consider as it relates to the Work. Client shall provide additional information upon GPD request. In the event that new, modified or changed information becomes available Client shall inform GPD of such immediately. Client shall insure access to the property or site(s) is available to GPD at agreed upon times, and Client shall make available representatives who will be the most knowledgeable concerning the Work which GPD shall perform. Client acknowledges that GPD shall regard all Client information as reliable and accurate, and hereby warrants such. Client agrees that GPD may assume that all plans, designs, structures and specifications related to the Work have been properly designed in accordance with the highest standard of care and are adequate for all purposes other than specifically addressed by the Work. GPD shall not be responsible for existing, hidden or unknown conditions and shall have no responsibility for the discovery, presence, handling, removal, disposal of hazardous materials of any form.

Billing and Payment. GPD, at its option, will submit invoices for services and reimbursable expenses on a monthly basis, unless otherwise agreed upon. Client shall pay invoices in full within 30 days after the invoice date. Any invoice or part thereof which has not been paid within 60 days shall accrue interest at 1.5% per month (equivalent to 18% per annum) until paid in full. GPD shall have the right to suspend the Work, terminate the agreement and retain and/or retrieve all work product until such invoices have been paid in full. ~~The Client agrees to pay all costs of collection for unpaid fees, including but not limited to attorney costs.~~

_____ Initial T.B.

_____ Initial J.E.

Timeliness of Performance. GPD will endeavor to perform the Work with reasonable diligence and expediency consistent with the applicable standard of care. GPD shall not be responsible for, and will not be held liable for, damages arising directly or indirectly from any delays for causes outside of GPD control, including the actions or inactions of Client, other subcontractors or consultants, and third parties. If delays resulting from any such causes increase the cost and/or time required by GPD to perform the Work, GPD shall be entitled to an equitable adjustment in schedule and/or compensation.

Standard of Care. GPD's services shall be performed in a manner consistent with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time in the same location.

Indemnification. GPD agrees to indemnify and hold the Client (which collectively includes officers, directors and employees) harmless from any and all damages, liabilities, claims, expenses or costs (including reasonable attorney's fees, expert-witness fees and defense costs) to the extent caused by its own negligent acts, professional errors, or omissions arising out of the Work or the performance of this

agreement. GPD is not obligated to indemnify and hold the Client harmless in any manner whatsoever for the Client's negligence.

Termination of Services. Either party may terminate this agreement upon 10 days written notice should the other fail to perform its obligations hereunder. In the event of such termination, Client shall pay GPD for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.

Ownership of Work Product. All Work, instruments of service, reports, drawings, specifications, electronic files, field data, notes and all other preparations by GPD shall remain the property of GPD, hereafter referred to as "Work Product". GPD shall retain all common law, statutory, and other reserved rights, including the copyright thereto in the Work Product Client shall have a nonexclusive license in the Work Product that may not be used for any other purpose or project other than for which it was created without the written consent of GPD. Client reuse in violation of this section, or any changes or modifications to the Work Product not performed by GPD shall be considered an "Unauthorized Use." Client shall waive any and all claims related to Unauthorized Use and agrees to indemnify, defend, and hold GPD harmless from any and all claims, demands, expenses, including attorney's costs which may arise from such Unauthorized Use.

Client shall maintain ownership over drawings or plans that are commissioned, for the purposes of Client to promulgate standard drawings.

Confidentiality. Unless required by law or court order including, but not limited to, the Ohio Public Records Act, GPD and Client shall not disclose the terms of this agreement or substance of the Work and shall treat such as confidential. This section shall not apply to any information after it is generally available to the public other than as a result of disclosure by GPD or Client, which is generally available to the public on the date of this agreement or which was lawfully received from a third party without a restriction on disclosure. GPD understands and acknowledges that in acting on behalf the Client it is subject to the Ohio Public Records Act. GPD further understands and acknowledges that this agreement is a public record under the Ohio Public Records Act.

Dispute Resolution. Any claim or dispute between GPD and Client shall be submitted to non-binding mediation prior to the institution of arbitration proceedings, and shall be brought in a proper venue in Cuyahoga County, Ohio. This agreement and the Work shall be governed by the laws of the State of Ohio.

Entire Agreement. These terms and conditions and the attached GPD proposal describe the entire agreement between GPD and Client. Both parties mutually agree that all other terms and conditions are hereby rejected. No amendments to these terms and conditions shall be effective unless acknowledged by written signature. Client's acceptance to these terms and conditions, whether acknowledged by signature or not, is a condition precedent to GPD's commencement of the Work.

No Third Party Beneficiary. This agreement is made for the benefit of GPD and Client and is not intended to benefit any third party or be enforceable by any third party. The rights of the GPD and Client to

Initial T.B.

Initial J.E.

terminate, rescind, or agree to any amendment, waiver, variation or settlement shall not be subject to the consent of a third party.

Contract Term and Amount. This agreement shall be in effect for a period of one (1) year from the signed date below in accordance with all other terms and conditions. The total amount of services provided under this agreement shall not exceed a total of Eight-Two Thousand Five Hundred and Three Dollars (\$82,503).

Assignment. Neither party may assign this agreement without the consent of the other.

Severability. If any term, covenant, condition or provisions of this agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ACCEPTANCE AND AUTHORIZATION TO PROCEED

Signature represents authorization and acceptance of the terms and conditions.

SIGNATURE	
<u>Tanisha R. Briley</u> Name	_____ Signature
<u>City Manager</u> Title	_____ Date

Approved As To Form:

William Hanna
Director of Law

Date

Water Line Design
 Shannon Road
 S. Taylor Road to Andrews Road - 3,800 feet
 Cleveland Heights, Ohio
 10/22/2019



Item/Task	Sheets	Project Principal	Project Manager	Senior Engineer	Design Engineer	Clerical/ CAD Tech	Prof. Surveyor	1-Man Survey Crew	2-Man Survey Crew	Total Hours
Shannon Road- Water Main and Resurfacing										
Field Survey					4		2		105	111
Basemapping					14	84			12	110
Title Sheet	1		1	1		4				6
Schematic	1		2	8			8			18
Typical Sections	1		1	2	4	4				11
General Notes	4		2	10		24				36
MOT Notes and Details	2			6	12					18
General Summary	1		2	4	12	12				30
Waterline Layout/Design			12	36	48	80				176
Water bypass plan	10		4		44	16				64
Water main plan/profile	10		24	40	60	80				204
Water Details	8		2			16				18
Misc. Details	2		2			32				34
QA/QC and Revisions			8	16	24					
Cost Estimates/Quantities			4	24	8					
Specifications			2	8	16					
Totals	40	0	66	155	246	352	10	0	117	836
Avg Bill Rate		\$143.00	\$115.00	\$104.00	\$94.00	\$50.50	\$97.00	\$93.25	\$119.00	\$95.10
Shannon Fee		\$0	\$7,590	\$16,120	\$23,124	\$17,776	\$970	\$0	\$13,923	\$79,503
Subconsultants (Geotech)										\$2,500
Direct Expenses										\$500
Total Cost										\$82,503

Proposed: 01/21/2020

ORDINANCE NO. (AS)

By Council Member

An Ordinance updating the references to standing Council Committees in the Codified Ordinances; and declaring an emergency.

WHEREAS, this Council established standing committees of Council by passage of Resolution No. 001-2020; and

WHEREAS, certain sections of the Cleveland Heights Codified Ordinance require updating to reference the revised Council committees as set forth herein.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 145.01, "Composition, Term and Vacancy," of Chapter 145, *Commission on Aging*, of the Administrative Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

145.01 COMPOSITION, TERM AND VACANCY.

(a) The Commission on Aging shall consist of thirteen members. Permanent nonvoting members shall be the City Manager or his/her designated representative, and the Chairperson of the Council ~~Recreation, Community & External Relations~~ Community Relations and Recreation Committee or a designated member of that Committee. All other members of the Commission shall be voting members and shall be appointed by Council. Nine members shall be City residents, at least seven of whom shall be sixty years of age or older. The remaining two members need not be City residents; however, at least one of the nonresident members shall have an expertise in some aspect of gerontology. Except in the case of mid-term vacancies, or unless otherwise provided by ordinance or resolution, all appointments to the Commission shall be for two year terms. No voting member shall be appointed to serve for more than eight consecutive years.

(b) Upon passage of this section, Council shall appoint two new members to the Commission. Both members shall be City residents age sixty or older. One member shall be appointed for a term ending June 30, 1994, and the other shall be appointed for a term ending June 30, 1995. Subsequent appointments shall be for two year terms as provided in subsection (a) hereof.

SECTION 2. Section 553.02, "Nuisance Abatement Board of Review," of Chapter 553, *Abatement of Nuisance*, of the General Offenses Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

553.02 NUISANCE ABATEMENT BOARD OF REVIEW.

There is hereby created a Nuisance Abatement Board of Review ("Board"), consisting of the Chairperson of the ~~Housing & Transportation~~Council Public Safety and Health Committee ~~of Council or~~ other member of City Council appointed by the Mayor, and the City Manager or designee, and a member of the City's Community Relations Division appointed by the City Manager. The Board shall have jurisdiction to hear appeals from notices and orders issued pursuant to this Chapter. The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.

SECTION 3. Section 701.07, "Appeals Board and Procedure," of Chapter 701, *General Provisions*, of the Business Regulation Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

701.07 APPEALS BOARD AND PROCEDURE.

Any person whose application for a license or permit has been denied by any City official so authorized, or whose license or permit has been revoked or suspended by the City Manager may appeal such denial, revocation or suspension to a Board of Appeals consisting of the Director of Law and the Director of Finance or their designated representatives and the Chairperson of the Council ~~Housing and Transportation~~Public Safety and Health Committee or a member of that Committee. The appeal shall be filed with the Board within ten (10) days of notice of the action being appealed. The Board shall act within ten (10) days of the filing of the notice of appeal and the Board's action in any appeal shall be final.

SECTION 4. Section 761.07, "License Revocation; Appeals," of Chapter 761, *Secondhand Dealers*, of the Business Regulation Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

761.07 LICENSE REVOCATION; APPEALS.

(a) The City Manager may at any time revoke or suspend any license granted under the authority of this chapter for failure to comply with the terms of this chapter or any law or ordinance applicable to the business so licensed.

(b) The City Manager shall revoke any license granted under the authority of this chapter if the licensee has been convicted of receiving stolen property.

(c) In case of the refusal to issue or renew a license by the Chief of Police or the revocation or suspension of a license by the City Manager, the applicant or licensee may appeal to a Board consisting of the Chairperson of the Council ~~Safety & Municipal Services~~Public Safety and Health Committee or his/her designee, the Finance Director or his/her designee and the Director of Law or his/her designee. Notice of such appeal shall be in writing, and shall be filed with the Law Director within ten (10) days from the date of the City Manager's action. Within ten (10) days

ORDINANCE NO. (AS)

after the filing of such notice, the Board shall proceed to hear such appeal, at which hearing all parties interested shall be afforded an opportunity to be heard. No notice of the hearing is required to be provided to adjoining property owners. The Board shall render a decision within ten (10) days of the conclusion of the hearing. The Board may sustain, disapprove or modify the action of the City Manager or Chief of Police.

(d) In the absence of conditions posing an imminent threat to health, safety or property, as determined by the Director of Law, or unless a license has been revoked by the City Manager because the licensee has been convicted of receiving stolen property as provided in subsection (b) of this section, a licensee who is lawfully operating but whose license is subject to revocation or suspension, or which the City Manager has refused to renew, may continue operating during the pendency of an appeal under this section.

SECTION 5. Section 1501.15, "Appeals," of Chapter 1501, *Adoption of Fire Code*, of the Fire Prevention Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

1501.15 APPEALS.

(a) Whenever the Fire Warden disapproves an application and/or refuses to grant a permit applied for, or when it is claimed that the provisions of this adopted Fire Code do not apply, or that the true intent or meaning of such Code has been misconstrued or wrongly interpreted, or when any person refuses to comply with any order issued to enforce this Code, such person may appeal from the decision of the Fire Warden within ten days from the date the person is notified of such Fire Warden's order or decision. An appeal shall be filed with the Fire Chief and referred to the Fire Appeals Board. Notice of such appeal shall be in writing and shall set forth the ruling or decision from which appeal is taken.

(b) The Fire Appeals Board shall consist of the City Manager and Director of Law, or their designated representatives, and the Chairperson of the Council ~~Safety & Municipal Services~~ Public Safety and Health Committee, or a member of that Committee. Such Board serving in any Fire Code appeal capacity shall hear all interested parties to such appeal and the Board may by majority vote of those present sustain, reverse or modify any decision or order of the Fire Warden.

(c) A quorum to hear any appeal shall consist of not less than two members of the Board.

SECTION 6. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 7. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the immediate need to assign Council Committee

ORDINANCE NO. (AS)

members to these positions. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

Proposed: 01/21/2020

ORDINANCE NO. (F)

By Council Member

An ordinance authorizing the execution of a Property Schedule to a Master Tax-Exempt Lease/Purchase Agreement between U.S. Bancorp Government Leasing and Finance, Inc., as lessor, and the City, as lessee, for the purpose of acquiring a fire pumper truck including related equipment and appurtenances, and declaring an emergency.

WHEREAS, this Council has determined that it is in the best interest of the City to acquire a fire pumper truck including related equipment and appurtenances (the Equipment) pursuant to a Master Tax-Exempt Lease/Purchase Agreement (the Lease-Purchase Agreement) and an Addendum to Tax-Exempt Lease/Purchase Agreement (the Addendum), each dated November 3, 2014, between U.S. Bancorp Government Leasing and Finance, Inc., as lessor (the Lessor), and the City, as lessee, by entering into an additional property schedule (the Schedule, and, together with the Lease-Purchase Agreement and the Addendum, the Lease) pursuant to the Lease-Purchase Agreement and the Addendum, a copy of which Lease has been presented to this Council; and

WHEREAS, the obligations of the City under the Lease will be subject to annual appropriations by this Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, Ohio, that:

SECTION 1. Declaration of Necessity of Lease. It is hereby declared necessary and advantageous to the City for the City to enter into the Lease with the Lessor for the purpose of acquiring a fire pumper truck including related equipment and appurtenances.

SECTION 2. Authorization of Schedule; Authorized Aggregate Principal Component; Interest Rate; Term. The City Manager and the Director of Finance are authorized and directed to sign, acknowledge and deliver, in the name and on behalf of the City, the Schedule in substantially the form on file with the Clerk of Council, provided that the aggregate principal components of the rental payments due under the Lease shall not exceed **\$550,000**, the interest component of those rental payments shall accrue at an annual rate not in excess of **5%**, and the final renewal term of the Lease shall end not later than **10 years** from the commencement date of the Lease. The form of the Schedule is approved with changes therein not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by law and shall be approved by the City Manager and the Director of Finance, as signing the same on behalf of the City, provided that the approval of those changes by the City Manager and the Director of Finance, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the signing of the Lease.

SECTION 3. Approval and Execution of Related Documents. The Mayor, the City Manager, the Director of Finance (including any Interim Director of Finance), the Director of Law and the Clerk of Council, as appropriate, are further authorized and directed to sign any certifications, financing statements, documents (including an escrow agreement, if applicable, in substantially the form now on file with the Clerk of Council), addendums and instruments and to take such actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this Ordinance and the Lease.

SECTION 4. Application of Lease Proceeds. The proceeds of the Lease shall be credited to the proper fund or funds as provided in the Lease, and those proceeds are appropriated and shall be used for the purpose for which the Lease is authorized and are hereby appropriated for that purpose.

SECTION 5. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Lease so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as obligations the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest components of the Lease payments (Interest) will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants that (a) the City will take or cause to be taken such actions which may be required of it for the Interest to be and to remain excluded from gross income for federal income tax purposes, (b) the City will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) the City, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the Lease proceeds to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with the Lease proceeds, (iii) make timely and adequate payments to the federal government if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with those proceeds, all in such manner and to the extent necessary to assure such exclusion of the Interest under the Code.

The Director of Finance, as the fiscal officer, or the City Manager is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Lease as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or Interest or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of Interest from gross income and the intended tax status of the Lease, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Lease, setting forth the reasonable

expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the Interest and the tax status of the Lease. Either of those officers is specifically authorized to designate or otherwise determine the obligations of the City under the Lease to be “qualified tax-exempt obligations” for purposes of Section 265 of the Code if such designation or determination is applicable and desirable, and to make any related necessary representations and covenants.

SECTION 6. Appropriation of Funds. The funds necessary to make the Lease Payments due under the Lease during the current fiscal year, if any, have been appropriated and shall be used for that purpose.

SECTION 7. Prior Acts Ratified and Confirmed. Any actions previously taken by City officials or agents of the City in furtherance of the matters set forth in this Ordinance are hereby approved, ratified and confirmed.

SECTION 8. Retention of Counsel. The legal services of Squire Patton Boggs (US) LLP, as counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the execution and delivery of the Lease and the rendering of the necessary legal opinion upon the delivery of the Lease. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

SECTION 9. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 10. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 11. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the City to enter into the Lease at the earliest possible date, which is necessary to

ORDINANCE NO. _____-2020

enable the City to enter into and timely perform under contracts for the acquisition of the fire pumper truck and related equipment and appurtenances needed to enhance the fire protection services provided by the City and thereby better protect the health and safety of the citizens of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

JASON S. STEIN, Mayor
President of Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED: _____, 2020