

LEGISLATIVE SUMMARY
Mayor's Office of Capital Projects
Division of Real Estate

Accept Gift of Restroom Facility Being Constructed by NEORSD and Amend Lease with Cleveland Area Soap Box Derby Association, Inc.

Ordinance No: 1121-2021

Legislative Purpose: To authorize the Department of Public Utilities to accept the gift of a restroom facility being constructed by the Northeast Ohio Regional Sewer District (NEORSD) as part of its Westerly Tunnel Dewatering Pump Station project on City property that Department of Public Utilities leases to the Cleveland Area Soap Box Derby Association, Inc. and to amend said lease to require Soap Box Derby to clean, lock, and supply the restrooms once constructed and perform general maintenance, with the exception of winterization, which shall be done by Department of Public Works annually.

Project Summary: Pursuant to Ord. No. 2155-2000, the Department of Public Utilities entered into a lease with the Cleveland Area Soap Box Derby Association, Inc. in 2001 with a term of twenty years with two five year options to renew.

NEORSD needs to gain access to its Westerly Tunnel Dewatering Pump Station (WTDPS) through a portion the Soap Box Derby's leased premises. NEORSD agreed to build a restroom facility as part of their negotiations with the Cleveland Area Soap Box Derby.

The restroom facility will be constructed within City owned property west of the Garrett A. Morgan Water Treatment Plant as part of its WTDPS project at no cost to the City. The style of the restroom is very similar to the public restroom located at the Towpath Trail trailhead at Clark Field.

Once constructed, NEORSD will transfer ownership and maintenance responsibility of the restroom facility to the City.

The City will amend the lease with the Cleveland Area Soap Box Derby to maintain the restrooms, including cleaning, locking, and supplying the restrooms once constructed. City Department of Public Works will have keys to the restrooms and will be responsible for annual winterization so that the pipes do not freeze.

Permanent Parcel No: 003-01-006
Price: No cost to the City
Ward: 15, Councilmember Jenny Spencer
Attachments: Location Maps

57302

#19821

ORIGINAL

LEASE AGREEMENT

Between

THE CITY OF CLEVELAND

And

CLEVELAND AREA SOAP BOX DERBY ASSOCIATION

This Lease Agreement ("Lease") is made this 9th day of February, 2001, (the "Execution Date") between the City of Cleveland ("City"), a municipal corporation of the State of Ohio, through its Director of Public Utilities ("Director"), pursuant to and in accordance with the authority of Ordinance No. 2155-2000, passed by the Council of the City of Cleveland on December 18, 2000 and Cleveland Area Soap Box Derby Association ("Lessee"), a non-profit organization, having its principal place of business at 3926 Valley Road, Cleveland, Ohio 44109.

RECITALS:

1. The City is the owner and operator of the Garrett A. Morgan Water Treatment Plant ("Garrett-Morgan") situated in the City of Cleveland, Cuyahoga County, State of Ohio.
2. Lessee desires to lease certain land ("Premises") at Garrett-Morgan for the recreational purposes of constructing, installing, removing, replacing, modifying, maintaining and operating, a soap box derby track and using such Premises for general recreational purposes related to operation of a soap box derby.
3. The City has determined that the Premises are not needed for public use for the term of the Lease and is willing to lease said real property to Lessee.

In consideration of the foregoing, the rentals and the agreements and conditions herein set forth, the City and Lessee agree as follows:

ARTICLE I. DEFINITIONS

Wherever the following terms are used in this Lease, they shall be defined as follows:

- A. "Director" means the Director of the Department of Public Utilities of the City of Cleveland, or such other officer, agency or agencies of the City or other

governing body as may now or hereafter have jurisdiction over Garrett-Morgan, and shall include the Director's authorized and designated representatives.

B. "Fixtures" or "Fixed Improvements" means those general improvements or items of property which at the time of installation are affixed to the Premises so as to become part and parcel of it.

C. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance" or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

D. "Improvement" or "Improvements" means and includes all Fixed Improvements, as well as all construction, Premises modifications and additional utilities installation, extension or modification, repair or renovation of the Premises, in the interest of the concession. It shall not include Operating Facilities.

E. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, interior signs, exterior signs installed by Lessee, appliances, trade fixtures and any equipment not defined as Fixed Improvements furnished and installed or used by the Lessee in its operations on the Premises. Those items generally known as expendables shall not be considered Operating Facilities.

F. "Premises" or "Leased Premises" means the collective areas granted or made available to Lessee under this Lease.

ARTICLE II. USE OF PREMISES

A. The City hereby grants to Lessee and Lessee hereby accepts from the City, subject to all the terms, conditions and limitations of this Lease, the right to construct, install, remove, replace, modify, maintain and operate, for use only by Lessee and authorized sublessees and assigns, a soap box derby track.

B. Lessee may use the Premises for the following purposes only:

1. The construction, installation, removal, replacement, modification, maintenance and operation, for use only by Lessee, of a soap box derby track;

2. Lessee shall use only those parking facilities that it constructs. Said parking facilities may be used by: the general public to utilize the facility and to

conduct business with Lessee, Lessee's delivery vehicles, Lessee's ground service equipment;

3. Maintenance of all landscaping within the leased area;

4. Such other lawful purposes as are incidental, necessary to or customary in the use and improvement of the Premises for soap box derby track;

5. The conduct of all other activities which Lessee may be obligated or entitled to perform pursuant to this Lease; and,

6. The grant of the Premises shall be subject to any and all existing easements and permits, recorded and unrecorded, for public or private roads and highways, public utilities, sewer mains and lines and pipelines. The City reserves to itself and others the right of ingress to, from and over such easements on the Premises for the use, repair, maintenance and preservation of such roads, highways, utilities and sewer lines.

ARTICLE III. PREMISES

A. The City hereby grants, demises and leases to Lessee for use in the construction, installation, removal, replacement, modification, maintenance and operation of a soap box derby track, as set forth in Article II above, and Lessee accepts and takes from the City as the Premises hereunder, as fully set forth and described in Exhibit "A" incorporated herein by reference, consisting of approximately 4.5 acres of unimproved land ("Leased Premises"), at Garrett-Morgan.

B. Lessee acknowledges that it has examined the Premises described in Paragraph A, above, and that it is aware that the Premises will be made available in an "as is" condition; and Lessee accepts said Premises in such condition, and further acknowledges that it is aware that the City will make no further improvements or repairs thereto. Lessee acknowledges that the City does not warrant or guarantee the suitability of the site for operation of a soap box derby.

ARTICLE IV. TERM

A. The term of this Lease for as of the date first written above ("Effective Date") and, unless sooner canceled or terminated, shall expire twenty (20) years thereafter ("Initial Term"), provided that Lessee may request to extend the term for two (2) additional periods of five (5) years ("Extended Terms"). Lessee shall request to enter into the Extended Term by notifying the Director in writing of such request at least ninety (90) days prior to the expiration of the Initial Term. Approval of such request shall not be unreasonably withheld.

B. The City reserves the right to recapture the Premises, wholly or partially, any time during the Initial Term, or the Extended Term, upon six (6) months' written notice, in the event that the Board of Control, by resolution, determines that such recapture of the Leased Premises or any portion thereof is required by the City in order to comply with the federal, state or local laws or regulations, or for emergency Division of Water purposes. Upon the date of termination set forth in the notice given Lessee, this Lease shall automatically expire as if the date set forth in said notice were the original expiration date of the term. In the event of such recapture as described in this paragraph, the City shall work cooperatively with Lessee to find a suitable location at which Lessee may operate the soap box derby, under such terms and conditions as may be mutually agreed to by the City and Lessee. The City shall pay the costs associated with such relocation and reconstruction.

ARTICLE V. RENT

A. Lessee shall pay the City as annual rent for the Premises leased at a rate of \$1.00 per year ("Rent"). The first rent payment shall be paid on the Execution Date, and shall be paid on that date each year thereafter during the term of this Lease. For purposes of this paragraph, one year means 12 consecutive calendar months.

B. Unless otherwise changed by the City in writing, rent payments shall be made by good draft or check payable to the order of the "City of Cleveland Division of Water" and forwarded to Jim Higgins, Department of Public Utilities, 1201 Lakeside Avenue, Cleveland, Ohio 44114.

C. Lessee shall pay the City interest on any delinquent amounts for rent (i.e. rent not paid within ten (10) days of its due date) at the prime rate as established by KeyBank, NA, Cleveland, Ohio, its successors or assigns, or such other national commercial bank as the City may reasonably designate from time to time, and in effect on the first day of the month preceding such delinquency, compounded on a monthly basis, from the date such item was due and owing until Lessee has made payment in full, including interest. In addition, Lessee shall pay the City at the time such delinquency first occurs, a one time penalty of ten percent (10%) on each delinquent balance.

ARTICLE VI. TERMINATION DUE TO BANKRUPTCY

Notwithstanding the remedies provided in Paragraph B of Article XIX hereof, Lessee covenants and agrees that in the event Lessee files a voluntary petition in bankruptcy, this Lease shall automatically terminate, and Lessee's possessory rights shall immediately revert to the City, and Lessee shall yield and deliver peaceably to the City possession of the Premises and facilities leased hereunder, promptly and in good condition, excepting reasonable wear and damage resulting from casualty described in Article IX.

ARTICLE VII. OPERATIONAL REQUIREMENTS

Lessee hereby acknowledges and understands that the City's primary purpose in granting this Lease is to allow Lessee to construct and operate a soap box derby track. In carrying out this purpose, Lessee shall use the Premises in compliance with all of the requirements of this Lease. In particular, it shall be responsible for the following:

A. Operations. In operating said soap box derby, Lessee may not engage in or allow from any persons any conduct which might interfere with or compromise in any way the operations or safety to persons or property at Garrett-Morgan.

B. Manager. A fully qualified, experienced and competent manager to manage and supervise the Premises and coordinate all activities with the Division of Water. Such manager shall have complete responsibility for the day to day management of the Premises and the authority to respond quickly and finally in all matters affecting such operations.

C. Personnel. Fully trained and qualified personnel as are necessary to provide the highest standards of operation and to conduct the operation in safe manner at all times. All personnel shall wear badges displaying the company and employee names and shall be clean, neatly dressed and appropriately uniformed, except that management personnel need not be uniformed. Lessee shall control the conduct, demeanor and appearance of its employees, and upon objection by the Director concerning same, Lessee shall take all steps necessary to remove the cause of objection.

D. Maintenance.

1. Lessee shall maintain, in good condition, the Leased Premises and any other improvements installed by Lessee.

2. Lessee shall be responsible for maintaining all landscaping within the Leased Premises.

3. Maintenance sufficient to keep the Premises in good repair, safe condition and first-class appearance. In fulfilling this obligation, Lessee shall provide for all service necessary to maintain the Premises in a high standard of cleanliness, neatness and orderliness, and free from any refuse at all times. Lessee, at its expense, shall properly containerize and remove from the Premises all rubbish, debris and waste of whatever nature arising from the operation of the Premises. If it is determined, in the Director's sole judgment, that the required standards of maintenance are not being satisfactorily met, the Director may notify Lessee in writing to correct the noted deficiencies. If such corrective maintenance is not substantially accomplished to the reasonable satisfaction of the Director within fifteen (15) days after receipt of such written notice, the City shall have the right, without further notice, to perform or cause performance of such maintenance as may be necessary, and Lessee shall, on the date of the next rental

payment due following written invoice from the City, reimburse the City or its agent for the cost thereof plus twenty percent (20%) for administrative overhead.

E. Signs. Lessee may not install, erect, maintain or display at or upon the Premises or the Premises any signs, placards or other similar devices visible to the general public, for the purpose of information or advertising, without the prior written approval of the Director. No sign will be approved which does not conform to general and uniformly applicable standards established by the City as to size, number, location and general appearance of signs or placards of number, location and general appearance of signs or placards of like nature at the Premises, or which fails to conform to the Garrett-Morgan architectural scheme. Any placard, sign or other similar device which is erected, maintained or displayed without the Director's approval may be removed by the City at Lessee's expense.

F. Payment for Materials, Labor, Taxes, etc. Lessee shall, at its expense, at all times during the term of this Agreement and during any occupancy thereafter, pay for all labor and materials furnished to the Premises at the instance of Lessee or anyone claiming under it, and all taxes, assessments and any other charges levied, assessed or which in any other manner may become a lien or charge against the Premises or any personal property situated in the Premises, and Lessee shall promptly cause all liens, encumbrances or charges arising therefrom to be promptly paid, canceled and discharged of record, and Lessee shall not do or permit to be done any other thing which may impair the operations of the Division of Water or the right title or interest of the City in the Premises. Lessee may contest the amount or validity of any claim without being in default of this Lease upon furnishing security satisfactory to the Director of Law guaranteeing that such claim will be properly discharged forthwith if such contest is finally determined against the City or Lessee.

G. In connection with the exercise of its rights under this Agreement, Lessee:

1. Shall not cause or create nor permit to be caused or created within the Premises, any noxious odors or smokes, or noxious gases or vapors;
2. Shall not do or permit to be done anything at or about the Premises which may interfere with the effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises;
3. Shall not do or permit to be done any act or thing upon the Premises which will invalidate or conflict with any fire or other casualty insurance policies covering the City

or any part thereof.

ARTICLE VIII. IMPROVEMENTS

A. Lessee shall provide, construct and install at the Premises, at its sole cost and expense, all Improvements and Operating Facilities necessary and appropriate to operate the soap box derby. The quality, design and appearance of such Improvements shall be subject to the approval of the Director and the City's City Planning Commission, if required, and shall be consistent with a first class facility. The approval by the Director of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the Premises. Such plans are not approved for architectural or engineering design or compliance with applicable laws or codes and, with its approval, the City does not assume liability or responsibility therefor or for any defect in any structure or improvement constructed according to such plans and specifications.

B. The City reserves the right to reasonably reject any proposed plans for Improvements and to require Lessee to resubmit proposals until they meet the Director's approval. No construction shall commence until said plans are approved in writing by the Director. All Improvements installed by Lessee, and all work done at the Premises, shall be in accordance in all material respects with the approved plan.

C. All Improvements and Operating Facilities installed on the Premises shall be of first class quality. Title to building and other Improvements shall pass to the City upon completion thereof.

D. Within sixty (60) days of completion of construction or installation of all necessary Improvements in or upon the Premises, Lessee shall, at its expense, furnish the Director with "as built" drawings of the facility as actually and finally improved.

E. Upon expiration or any earlier termination pursuant to this Lease, Lessee shall forthwith, and at its own expense, remove all its personal property, equipment, furniture, furnishings, trade fixtures, devices and appurtenances thereto and any other portions of the facility or its structural components owned by the Lessee which are readily removable without damaging the Premises; provided, however, that no installed or extended utility lines or facilities or any other structure or appurtenances permanently affixed or not removable without damaging the Premises shall be removed therefrom unless Lessee is directed to do so by the Director. Any damage incurred to the Premises on account of removal by Lessee of any item or portion of the facility or appurtenances thereto shall be promptly repaired by Lessee at its own expense and the Premises shall be restored to the condition to which it was improved hereunder.

F. The drive to be constructed off of West 45th Street shall be locked and/or secured when the Premises is not in use.

ARTICLE IX. CASUALTY TO PREMISES

A. Lessee acknowledges and agrees that the City will not carry any insurance on Lessee's fixtures, equipment property or interest in the Premises, nor be liable for any loss, damage or expense to any of the same or any claim arising for injury or damage to any persons on account of Lessee's activities thereat.

B. In the event of damage, destruction or loss of the Premises by an insured risk, which damage, destruction or loss is not capable of being repaired within ninety (90) days, Lessee shall have the option, exercisable by written notice given to the City within sixty (60) days after the occurrence of such event, to terminate this Lease forthwith.

C. Nothing in this Lease nor any action taken by the City pursuant thereto shall relieve or release Lessee from any liability that Lessee may have either to the City or its insurers on account of any casualty to the Premises.

ARTICLE X. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

A. Lessee, its officers, agents, employees and any other persons over which Lessee has control shall comply with all present and future laws and ordinances of the city, federal, state and other local governmental bodies, all rules and regulations promulgated thereunder, and all rules and directives of the Director, applicable to or affecting directly or indirectly the Lessee or its construction or its operations and activities on or in connection with the Premises or the City. This Lease is expressly made subject to all such laws, ordinances, rules and regulations.

B. Lessee, its officers, agents and employees, and any other persons over whom Lessee has control shall comply with all rules, regulations and directives of the Director as may be issued from time to time in the interests of protecting health, safety, sanitation and good order on or about the Premises.

C. Lessee shall procure from all government authorities, including the City, having jurisdiction over the operations of Lessee, all licenses, certificates, permits or other authorizations which may be necessary to conduct its operations or any activity authorized by the terms hereof.

D. Lessee shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of or be imposed because of Lessee's failure to comply with Paragraphs A, B and C of this Article X, and in any event agrees to indemnify the City against all costs, penalties, fines and liability with reference to the same. The City and Lessee each agree to promptly give notice to the other of any notice of violation received by either party.

ARTICLE XI. WORKERS' COMPENSATION;
 SOCIAL SECURITY ACT REQUIREMENTS

A. Lessee shall at all times during the term of this Lease subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums if, and to the extent required thereunder and save the City harmless from any and all liability arising from or under said act. Lessee shall also furnish at such times as may be requested a copy of the official certificate or receipt showing the payments referred to above.

B. Lessee shall be and remain an independent contractor with respect to all installations, construction and services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance or old age retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Lessee on work performed under the terms of this Lease and further agrees to obey all rules and regulations which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized state or federal officials; and said Lessee also agrees to indemnify and save harmless the City of Cleveland from any such contributions or taxes or liability therefor.

ARTICLE XII. PAYMENT OF TAXES

A. In addition to rent, Lessee shall pay all taxes, assessments and charges of a like nature, if any, which at any time during the term hereof may be levied or become a lien by virtue of levy, assessment or charge by the Federal Government, the State of Ohio, Cuyahoga County, any municipal corporation, any governmental successor in authority to the foregoing or any other tax or assessment levying bodies, in whole or in part, upon or in respect to the Premises and facilities leased or made available for use by Lessee hereunder, or which are attributable to or arise out of, directly or indirectly, the letting, use or occupancy of said Premises and facilities or which arise out of, directly or indirectly, Lessee's activities on the Premises.

B. Lessee shall be responsible for obtaining bills for all of said taxes, assessments and charges and promptly providing the City with evidence of payment therefor. Payment of such additional charges for any and all such taxes, assessments and charges, when and if levied or assessed, shall be made by Lessee directly to the taxing or assessing authority charged with collection thereof unless Lessee is otherwise directed in writing by the City. If any tax, assessment or like levy in the nature of a real estate tax chargeable to the Premises is not separately stated and billed by the taxing authority, but included in a larger area billing or assessment, City shall bill Lessee for its appropriate share of said larger area tax billing; Lessee's share to be determined by multiplying the amount of said larger area tax billing by a fraction the numerator of which is the tax

valuation of the Premises and the denominator of which is the tax valuation of all property comprising said tax billing.

C. Should Lessee desire to contest the amount or validity of any tax or assessment payable by it hereunder against any tax or assessment levying body, it may do so, at its expense, after providing such security as the Director of Law deems adequate to cover any delinquency, penalty and interest charges that may arise from such contest. Lessee shall indemnify the City from all taxes, penalties, cost, expense and attorneys' fees incurred by the City resulting directly or indirectly from any and all such tax contests.

ARTICLE XIII. ADDITIONAL RENT

If the City has paid any sum or sums or has incurred any obligations or expense which Lessee has agreed to pay or reimburse the City for, and which the Lessee has failed to pay or reimburse (beyond all applicable notice and cure periods), or if the City is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements of this Lease or as a result of an act or omission of Lessee contrary to said conditions, covenants and agreements or on account of any negligent act or omission of Lessee, or its officers, agents or employees; then Lessee agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages, attorneys' fees and penalties, and the same may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become due as additional rent, recoverable by the City in the same manner and with like remedies as if it were originally a part of rent due hereunder.

ARTICLE XIV. COVENANTS AGAINST TRANSFER

A. Lessee expressly covenants that it will not sublease, assign, transfer, convey, sell, mortgage, pledge or encumber this Lease or the Premises hereunder, except as otherwise provided in this Lease, without in each instance first obtaining authorization of the City through resolution of its Board of Control and then acting only upon such terms and conditions as may be agreed to by such Board. Consent by the City to any type of transfer as set forth above shall not in any way be construed to relieve Lessee from obtaining further authorization from the Board of Control for any subsequent transfer of any nature whatsoever. This paragraph shall not apply to transfers or assignments to any corporation with which Lessee may merge or consolidate or which may succeed to all or substantially all of the business of Lessee. Lessee shall, however, provide written notice promptly to the Director of such transfer or assignment, which notice shall include the terms of the merger or consolidation as it affects the Premises.

B. If and when the Board of Control by its resolution authorizes any transfer as described in Paragraph A of this Article XIV, the instrument or document authorizing the same, together with the instrument or document of transfer, which document shall

include the terms of the business arrangement entered into between Lessee and authorized transferee as it affects the Premises, shall be filed with the Director for attachment to this Lease. Said instruments and documents shall not be effective without the prior approval of the Director of Law. No transfer by Lessee of any nature or authorization therefor by the Board of Control shall relieve Lessee of primary liability for payment of rentals hereunder or for the performance of all terms, covenants or conditions thereof.

C. If this Lease is assigned or if the Premises are sublet, as authorized and approved according to Paragraphs A-D of this Article XIV, and Lessee charges the assignee or sublessee as rent an amount over and above that which Lessee owes as Land Rental under this Lease, then the City shall receive from Lessee that amount charged by Lessee which exceeds 110% of the Base Rent.

D. The acceptance of rent by City from an unauthorized assignee, sublessee or transferee shall not constitute a release or waiver of any of Lessee's obligations under this Lease, including payment of Land Rental.

ARTICLE XV. SURRENDER OF PREMISES

A. Lessee covenants and agrees to yield and deliver peaceably to the City possession of the Premises and facilities leased hereunder, on the date of cessation of this Lease, whether such cessation be by termination, expiration or otherwise, promptly and in good condition, reasonable wear and damage resulting from casualty described in Article IX excepted.

B. In the event Lessee shall hold over and remain in possession of the Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall create a tenancy from month to month, which may be terminated by either party at any time upon thirty (30) days written notice. All provisions of this Agreement, except those pertaining to the term, shall apply during the month to month tenancy.

ARTICLE XVI. INDEMNIFICATION

Lessee shall assume, defend, indemnify and hold harmless the City, its officers, agents, employees, its successors and assigns, for and from any and all claims, loss, cost, damage, expense and liability from loss of life or damage or injury to persons or property of any person, including but not limited to the agents, employees, invitees and licensees of either of the parties hereto and to the property of any of them arising out of or connected with or incidental to, either directly or indirectly, either the leasing, use, occupancy or condition of the Premises, the exercise of Lessee's rights hereunder, or the covenants and obligations of the Lessee under this Lease, except to the extent caused by the negligent acts or omissions of the City, its employees or agents. Lessee shall pay all costs, expenses, claims, fines, penalties, damages and attorneys' fees that may in any manner arise out of or be imposed because of Lessee's failure to comply with this

paragraph or the provisions of Paragraph A of Article X, whether or not assessed by any governmental body against the City. The provisions of this paragraph and the provisions of all other indemnity provisions contained in this Lease shall survive the expiration or earlier termination of this Lease.

ARTICLE XVII. INSURANCE

Lessee shall, at its expense, maintain:

A. General public liability insurance including, but not limited to, independent contractors and personal injury coverages, as well as, for motorized equipment, vehicle and automobile liability coverage for owned, non-owned and hired vehicles, insuring Lessee and the City against liability from loss of life or damage or injury to persons or property at the Premises or arising from Lessee's operations. Said policy or policies shall have limits for each occurrence of not less than a combined single limit of \$2,000,000.00.

B. Lessee shall insure the Premises and all subsequent improvements to the extent of not less than one hundred percent (100%) of its full insurable value against damage or loss by fire and other risks which are or shall be customarily covered under standard policies of fire insurance with Standard Extended Coverage Endorsement issued in Ohio.

C. The policy or policies required shall contain the following special provision: "The Company agrees that thirty (30) days prior to cancellation or reduction of the insurance afforded by this policy, with respect to the contract involved, written notice will be sent by certified mail to the Director of Public Utilities, City of Cleveland." Upon execution of a contract, Lessee shall provide the Director of Public Utilities with a certificate of insurance which shall include a copy of the additional insured endorsement naming the City of Cleveland as an additional insured to the extent of the Lessee's indemnification obligations hereunder, and copies of the certificates of insurance and the declaration sheet for every insurance policy required hereunder. Such documents shall as to form, coverage and carrier and limits be satisfactory to and approved by the Director of Law. If at any time the coverage, carrier or limits on any policy or the insurance requirements contained herein shall become unsatisfactory to either the Director of Law, or the Director of Public Utilities, Lessee shall, forthwith, provide a new policy meeting the requirements of said Directors. The additional insured coverage provided City under Lessee's insurance policy shall be primary with respect to Lessee's general liability, notwithstanding other insurance covering the City. The Director's authority under this Paragraph C shall be exercised in a reasonable manner.

D. The limits of insurance specified above shall in no way constitute the upper limits of liability for which Lessee is responsible under Article XVI above.

ARTICLE XVIII. CONDITIONS OF LIMITATION; REMEDIES

A. If:

1. Lessee becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization of the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consents to the appointment of a receiver, trustee or liquidator of all of its property;
2. By order or decree of a court, Lessee is adjudged bankrupt or an order is made approving a petition filed by any of the creditors or, if Lessee is a corporation by any of the stockholders of Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any law or statute of the United States or of any state thereof;
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Lessee and is not dismissed within sixty (60) days after the filing thereof;
4. The interest of Lessee under this Lease is transferred to, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation contrary to the provisions of Article XIV hereof;
5. Lessee, if a corporation, becomes a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution contrary to the provisions of Article XIV hereof;
6. Lessee is a partnership, or Lessees collectively are doing business as or constitute a partnership, and said partnership is dissolved as the result of any act or omission of its partners or any of them, or by operation of law or the order or decree of the court

having jurisdiction, or for any other reason whatsoever;

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of Lessee, and such possession or control continues in effect for a period of fifteen (15) days;
8. Any lien is filed against the Premises because of any act or omission of Lessee and is not removed within thirty (30) days, unless being contested in good faith by Lessee pursuant to and in accordance with Paragraph E of Article VII and Paragraph C of Article XII hereof;
9. Lessee voluntarily abandons, deserts, vacates or discontinues its operations at the Premises; (this paragraph shall not apply to unavoidable labor strikes by Lessee's personnel, as related to Lessee's operations on the Premises, as long as the Director is given at least contemporaneous written notice of such unavoidable labor strike);
10. Lessee fails duly and punctually to pay Land Rental or to make any other payment required hereunder to the City within ten (10) business days after receipt of written notice;
11. Lessee fails to keep, perform and observe every other promise, covenant and agreement set forth herein on its part to be kept, performed or observed within ten (10) business days after receipt of notice of default hereunder from the City except where fulfillment of its obligation requires activity over a period of time, and Lessee has commenced to perform to the satisfaction of the City whatever may be required for fulfillment within ten (10) business days after receipt of notice and continues such performance without interruption.

B. Then, upon any occurrence of any of the aforementioned events or at any time thereafter during the continuance thereof, the City may, at its option, exercise concurrently or successively any one or more of the following rights and remedies;

1. Upon written notice terminate this Lease and the rights of Lessee hereunder;
2. Without waiving any default, pay any sum required to be paid by Lessee to others than the City and which Lessee has failed to pay, and perform any obligation required to be performed by Lessee hereunder, and any amounts so paid or expended by the City in fulfilling the obligations of Lessee hereunder with interest thereon at the prime rate as established by KeyBank, NA from the date of such payment or expenditure, shall be repaid by Lessee to the City on demand;
3. To sue for the collection of fees or other amounts for which Lessee may be in default, for the performance of any other covenant, promise or agreement devolving upon Lessee, or for damages for Lessee's failure to perform, all without terminating this Agreement or re-entering and gaining possession of the Premises;
4. To re-enter and repossess the Premises, either with or without the institution of summary or any other legal proceedings or otherwise and without diminishing, excusing or altering in any way the obligations of Lessee hereunder;
5. Exercise any and all additional rights and remedies which the City may have at law or in equity.

C. All rights and remedies provided in this Lease, shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to the City at law or in equity.

D. No waiver by either party hereto at any time of any of the terms, conditions, covenants or agreements of this Lease shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein or of the strict and prompt performance thereof. No delay, failure or omission of the City to re-enter the Premises or to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of rent then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquishment thereof, or acquiescence therein and no notice by the City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the City of default in one or more instances. No waiver shall be valid against either party hereto unless reduced to writing and signed by

an officer of such party duly empowered to execute same.

ARTICLE XIX. CITY'S RIGHT OF ENTRY

The City, through its officers, employees, agents, representatives and contractors, shall have the right to enter the Premises for all reasonable purposes including, but not limited to, observing the performance of Lessee of its obligations hereunder; and for doing any act or thing which the City may be obligated or have the right to do under this Lease by virtue of its ownership of the Premises subject hereto, or otherwise.

ARTICLE XX. UTILITIES

A. Lessee shall, at its own expense, extend or install and maintain and pay for all necessary sewer, water, gas, electric and such other utility lines and services as it may require to utilize the Premises, and shall obtain all permits and pay all installation charges required in conjunction therewith.

B. Lessee shall, at its own expense, make repairs and/or improvements ("repairs") to utility services and equipment on the premises at the City's request.

C. The City shall have the right to charge Lessee a proportionate share of the costs that the City may incur in improving or enlarging utility systems (including sewer lines) used by Lessee when such action is necessary in order to serve adequately the needs of Lessee.

ARTICLE XXI. FORCE MAJEURE

Except as otherwise provided herein, neither City nor Lessee shall be deemed in default or breach of this Lease by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control. The provisions herein shall not apply to failures by Lessee to pay rents, additional rents, charges or other money payments required by this Lease, said obligations to continue in effect during any of the aforementioned events.

ARTICLE XXII. ENVIRONMENTAL

A. Lessee shall be proactive with regard to all environmental issues and shall incorporate best industry standards and practices in its operations at all times.

B. Lessee agrees to comply with all applicable present and future environmental and safety rules, regulations, restrictions, ordinances and/or other laws of

federal, state or local governmental entities relating to Hazardous Materials.

C. Lessee shall immediately notify the Department of Public Utilities pursuant upon becoming aware of a violation or alleged violation of any Environmental Law or environmental provision of this Lease related to the Premises or Lessee's occupation or use of the Premises and/or: (i) any leak, spill, release, emission or disposal of a Hazardous Material on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (ii) any notice or communication from a governmental agency or any other person directed to Lessee relating to such Hazardous Material on, under or adjacent to the Premises or any violation or alleged violation of any Environmental Laws with respect to the Premises, and/or (iii) any Release of or contamination by a Hazardous Material or violation of Environmental Law discovered by or Environment Condition caused by Lessee.

D. The provisions of Articles XVI and XVII notwithstanding, Lessee shall be responsible for and the Lessee shall indemnify the City against any costs, claims, or damages associates with environmental contamination, except when such contamination constitutes a pre-existing condition. A pre-existing condition shall mean the existence of any Hazardous Materials on the Premises immediately prior to the Execution Date. This provisions shall survive the termination of this Agreement. The Lessee shall pay for costs of any deductible amounts, insurance exclusions, disclaimers or uncovered liabilities or other damages resulting from the negligence of the Lessee.

E. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director; an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Lessee shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Lessee is liable hereunder.

ARTICLE XXIII. NOTICES

All notices which may be proper or necessary to be served hereunder and all requests for the City's approval or consent shall be in writing and shall be served by certified mail, postage prepaid, with return receipt requested to the following addresses, or by facsimile to the following numbers, or such other address or fax number as either party shall by written notice to the other hereafter designate for such purposes. To the City: c/o Director of Public Utilities, 1201 Lakeside Avenue, Cleveland, Ohio 44114, telephone number (216) 664-2444, facsimile number (216) 664-3454. To Lessee: c/o Angelo Martin, President, Cleveland Area Soap Box Derby Association, 3926 Valley Road, Cleveland, Ohio 44109, telephone number (216) 741-6144, facsimile number (216) 741-6149.

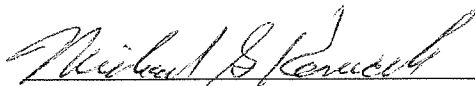
ARTICLE XXVII. ATTACHMENTS

The following documents attached hereto are hereby incorporated into and made a part of this Lease:

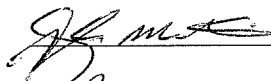
1. Exhibit "A" - Plan of Premises/Legal Description
2. Exhibit "B" - Equal Opportunity Clause
3. Ordinance No. 2155-2000

IN WITNESS WHEREOF, the City of Cleveland has caused its name to be affixed hereto by its Director of Public Utilities and Cleveland Area Soap Box Derby Association has caused its name to be affixed hereto by its authorized representatives.

CITY OF CLEVELAND

By: 
Michael G. Konicek
Director of Public Utilities


CLEVELAND AREA SOAP BOX
DERBY ASSOCIATION

By: 
Title: President of the Board
Date: 02-09-01

Federal I.D. # 341-197-352

The Legal Form And Correctness
Of The Within Instrument Are Hereby
Approved.

CORNELL P. CARTER
DIRECTOR OF LAW

By: 
Katie K. Novak
Assistant Director of Law

Date: 2/9/01
17629

File No. 2155-2000-A

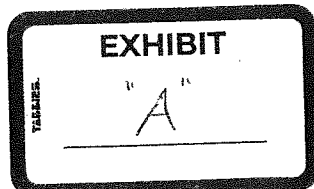
*Legal description
appd. J. Wait
12.18.00*

Being a parcel of land bounded on the North by Crescent Avenue NW (66 feet wide), on the South by the Cleveland Memorial Shoreway (formerly known as Buckley Blvd.) (width varies) on the West by West 54th Street (66 feet wide) and on the East by West 45th Street (66 feet wide).

Excepting therefrom a construction staging area bounded on the North by Crescent Avenue (66 feet wide) on the South by a line parallel with and distant 110 feet from the Northerly line of the Cleveland Memorial Shoreway (width varies), on the West by the Southerly prolongation of the Westerly line of West 53rd Street (50 feet wide) and on the East by the centerline of West 49th Street, now vacated.

Also

Excepting therefrom a Cleveland Public Power substation bounded on the North by Crescent Avenue (66 feet wide), on the South by a line parallel with the Southerly line of Crescent Avenue as aforesaid and distant 165 feet Southerly, on the East by the Westerly line of West 45th Street (66 feet wide), and on the East by a line parallel with and distant 570 feet Easterly from the Westerly line of West 45th Street (66 feet wide).



EQUAL OPPORTUNITY CLAUSE

City of Cleveland Codified Ordinances Section 187.11(B)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used herein, "treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of the contractor setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.

(3) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) It is the policy of the City that business concerns owned and operated by minority persons and/or women shall have every practicable opportunity to participate in the performance of contracts awarded by the City.

(5) The contractor shall permit access by the Director or his designated representative to any relevant and pertinent reports and documents to verify compliance with the Business Enterprise Code, and with the regulations of the Office of Equal Opportunity. All such materials provided to the Director or his designated representative by the contractor shall be considered confidential.

(6) The contractor will not obstruct or hinder the Director or his designated representative in the fulfillment of the duties and responsibilities imposed by the Business Enterprise Code.

(7) The contractor agrees that each subcontract will include this Equal Opportunity Clause, and the contractor will notify each subcontractor, materialman and supplier that the subcontractor must agree to comply with and be subject to all applicable provisions of the Business Enterprise Code. The contractor shall take any appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Code.

Effective 3-23-94

4325

EXHIBIT "B"

Ord. No. 2120-2000.

By Councilmen Rybka, Melena, Cimperman and Patmon (by departmental request).

An emergency ordinance authorizing the Director of Economic Development to enter into a contract with The Feckanin Group LLC to provide economic development assistance to partially finance the acquisition of real property located at 5618 Hamlet Avenue, Cleveland, Ohio, 44127.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Economic Development is hereby authorized to enter into a contract with The Feckanin Group LLC to provide economic development assistance to partially finance the acquisition of real property, located at 5618 Hamlet Avenue, Cleveland, Ohio 44127.

Section 2. That the term of said loan shall be in accordance with the terms as set forth in the Executive Summary contained in File No. 2120-2000-A.

Section 3. That the costs of said contract shall not exceed Thirty Thousand Dollars (\$30,000.00), and shall be paid from Fund No. 17 SF 008, Request No. 26633.

Section 4. That the Director of Economic Development is hereby authorized to accept the collateral as set forth in the Executive Summary contained in the file referenced above in order to secure repayment of said loan. Any security instrument shall be prepared and approved by the Director of Law.

Section 5. That the Director of Economic Development is hereby authorized to accept monies in repayment of the loan and to deposit said monies in Fund No. 17 SF 006.

Section 6. That the Director of Economic Development is hereby authorized to charge and accept fees in an amount not to exceed the maximum allowable fees under federal regulations and expend such fees to cover costs incurred in the preparation of the loan application, closing and servicing of the loan. Such fees shall be deposited to and expended from Fund No. 17 SF 305, Loan Fees Fund.

Section 7. That the Director of Law is hereby authorized to prepare said contract and such other documents as may be appropriate to complete the transaction.

Section 8. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed December 18, 2000.

Effective December 27, 2000.

Ord. No. 2154-2000.

By Councilmen Gordon and Patmon (by departmental request).

An emergency ordinance authorizing the Director of Public Health to consent to assignment of Contract Nos. 56573 and 56577 from the AIDS Housing Council of Greater Cleveland, Inc. to the AIDS Taskforce of Greater Cleveland.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Public Health is hereby authorized to consent to the request of the AIDS Housing Council of Greater Cleveland, Inc. ("AHC") and the AIDS Taskforce of Greater Cleveland ("ATGC") to assign the delivery obligations of AHC under Contract Nos. 56573 and 56577 to ATGC for the provision of AIDS-related services.

Section 2. That the Director of Public Health is hereby authorized to execute all documents and do all things necessary and appropriate to effect such consent to the assignments. A copy of each assignment shall be filed in the office of the Commissioner of Accounts.

Section 3. That these assignments shall be prepared and approved by the Director of Law and shall contain such provisions as he deems necessary to protect and benefit the public interest.

Section 4. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed December 18, 2000.

Effective December 27, 2000.

Ord. No. 2155-2000.

By Councilman O'Malley.

An emergency ordinance authorizing the Director of Parks, Recreation and Properties to enter into an agreement with Deaconess Hospital, LLC to maintain, improve and adopt certain real estate belonging to the City; and authorizing the Director of Public Utilities to lease certain City-owned property to the Cleveland Area Soap Box Derby Association, for a term not to exceed twenty years, with two five-year options to renew both for general recreation purposes.

Whereas, the City of Cleveland owns certain property which is suitable for Deaconess Hospital, LLC to maintain, improve and adopt such property for general recreation purposes; and

Whereas, the City of Cleveland owns certain property which is suitable for lease and operation by the Cleveland Area Soap Box Derby Association for general recreation purposes; and

Whereas, this ordinance constitutes an emergency measure provid-

ing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. Notwithstanding and as an exception to Section 133.24 of the Codified Ordinances of Cleveland, Ohio, 1976, the Director of Parks, Recreation and Properties is authorized to enter into an agreement with Deaconess Hospital, LLC to maintain, improve and adopt the following real estate for general recreation purposes belonging to the City of Cleveland:

P. P. No. 014-15-010

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as Sublot No. 71 in the Charles & John Henritze's allotment of part of Original Brooklyn Township Lots Nos. 58 and 63, as shown by the recorded plat in Volume 19 of Maps, Page 14 of Cuyahoga County Records, and being 40 feet front on the Northerly side of Henritze Avenue and extending back of equal width 122 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

P. P. No. 014-15-011

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as Sublot No. 72 in the Charles & John Henritze's allotment of part of Original Brooklyn Township Lots Nos. 58 and 63, as shown by the recorded plat in Volume 19 of Maps, Page 14 of Cuyahoga County Records, and being 40 feet front on the Northerly side of Henritze Avenue and extending back of equal width 122 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Such property adoption as authorized herein shall not be construed as the conveyance of any right, title or interest in public property but merely as the grant of a privilege, revocable at will.

Section 2. That notwithstanding and as an exception to the provisions of Chapters 181 and 183 of the Codified Ordinances of Cleveland, Ohio, 1976, the Director of Public Utilities is authorized to lease to the Cleveland Area Soap Box Derby Association, certain property which is determined to be not needed for public use for the term of the lease and which is suitable for operation by the Lessee for the recreational purpose of constructing and maintaining a soap box derby track. Such property is described in File No. 2155-2000-A.

Section 3. That the term of the lease authorized by this ordinance shall not exceed twenty years, with two (2) options exercisable by the Director of Public Utilities, to renew for additional five-year terms, and cancellable upon thirty days, written notice by said Director.

Section 4. That the property shall be leased at a rental of \$1.00 per year.

Section 5. That the lease may authorize the Lessee to make improvements to the leased premises subject to the approval of appropriate City agencies and officials.

Section 6. That the lease shall be prepared by the Director of Law and shall contain such authorized terms and conditions as are required to protect the interests of the City.

Section 7. That the Director of Public Utilities and the Director of Law, and other appropriate City officials, are authorized to execute such other documents and certificates, and take such other actions as may be necessary or appropriate to effect the lease authorized by this ordinance.

Section 8. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed December 18, 2000.

Effective December 27, 2000.

Ord. No. 2156-2000.

By Councilmen Rybka and Patmon (by departmental request).

An emergency ordinance authorizing the Director of Parks, Recreation and Properties to apply for and accept a grant from the Ohio Department of Education for the 2001 Summer Food Program; authorizing the purchase by requirement contract of breakfasts, lunches and snacks for said Program and for food, food products, beverages, condiments and paper products needed for a food service operation to be served at Camp George L. Forbes as part of said Program, and for the Division of Recreation, Department of Parks, Recreation and Properties; and authorizing said Director to contract with various non-profit organizations for the implementation of said Program.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Parks, Recreation and Properties is hereby authorized to apply for and accept a grant in the approximate amount of \$250,000.00, from the Ohio Department of Education, to conduct the 2001 Summer Food Program for the purposes set forth in the program description and according thereto; that the Director of Parks, Recreation and Properties is hereby authorized to file all papers and execute all documents necessary to receive the funds under said grant, and that said funds be and they hereby are appropriated for the purposes set forth in the program description for said grant.

Section 2. That the program description for said grant, File No. 2156-2000-A, made a part hereof as if fully rewritten herein is hereby approved in all respects.

Section 3. That the Director of Parks, Recreation and Properties is hereby authorized to make a written requirement contract in accordance with the Charter and the

Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for the period of three months (June, July and August, 2001) for the breakfast, lunch and snack program to be served at nineteen City recreation centers and various non-profit agencies and such other agencies or recreation facilities as determined by the Director, to be purchased by the Commissioner of Purchases and Supplies upon a unit basis for the Division of Recreation, Department of Parks, Recreation and Properties. Bids shall be taken in such manner as to permit an award to be made for all items as a single contract, or by separate contract for each or any combination of said items as the Board of Control shall determine.

Section 4. The cost of said contract shall be charged against the proper appropriation account, and the Director of Finance shall certify thereon the amount of the initial purchase thereunder, which purchase, together with all subsequent purchases, shall be made on order of the Commissioner of Purchases and Supplies pursuant to a requisition against such contract duly certified by the Director of Finance. (RL 32601)

Section 5. That provided the agencies meet the eligibility requirements of the Ohio Department of Education, the Director of Parks, Recreation and Properties is hereby authorized to make written contracts with the following agencies and such additional agencies as determined by said Director for implementation of the 2001 Summer Food Program:

Broken Pieces Fellowship Church
Emile deSauze
El Centro Hispano deJouenes
New Bethlehem Baptist Church
St. Paul AME
2nd Calvary Baptist Church

Section 6. That the cost of said contract hereby authorized shall be paid from the funds or funds to which are credited the proceeds of the grant accepted pursuant to Section 1 of this ordinance, Request No. 32601.

Section 7. That the Director of Parks, Recreation and Properties is hereby authorized to make a written requirement contract in accordance with the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, for the requirements for the period of one year for the necessary items of various natural foods, food products, beverages, condiments and paper products as set forth in detail on file in the Office of the Division of Purchases and Supplies and attached to Request No. 32601, to be served as part of the meal program at Camp George L. Forbes, to be purchased by the Commissioner of Purchases and Supplies upon a unit basis for the Division of Recreation, Department of Parks, Recreation and Properties. Bids shall be taken in such manner as to permit an award to be made for all items as a single contract, or by separate contract for each or any combination of said items as the Board of Control shall determine.

Section 8. The cost of said contract shall be charged against the proper appropriation account and the Director of Finance shall certify thereon the amount of the initial purchase thereunder, which purchase, together with all subsequent purchases, shall be made on order of the Commissioner of Purchases and Supplies pursuant to a requisition against such contract duly certified by the Director of Finance. (RL 32601)

Section 9. That, notwithstanding the provisions of Section 181.24 of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, bidders for the contracts authorized by this ordinance shall be required to submit a bid bond in the amount of five percent of the amount of the bid, as required by United States Treasury Circular 570.

Section 10. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed December 18, 2000.

Effective December 27, 2000.

Ord. No. 2157-2000.

By Councilmen Cimperman, Melena and Patmon (by departmental request).

An emergency ordinance authorizing the Director of Economic Development to enter into Enterprise Zone Agreements with Pubco Corporation, Kelley Avenue Partnership and Smith Corona Corporation to provide for ten year abatements for certain tangible personal property and real estate taxes as an incentive to acquire machinery and equipment, to transfer and acquire inventory, and to make improvements to real property at 3830 Kelley Avenue located in the Cleveland Area Enterprise Zone.

Whereas, pursuant to Ordinance No. 948-95, passed June 19, 1995, this Council designated an area which is in the City of Cleveland and described in File No. 948-95-A, as the Cleveland Area Enterprise Zone (the "Zone") pursuant to Chapter 5709 of the Ohio Revised Code; and

Whereas, in August, 1995, the Director of Development of the State of Ohio determined that the Zone contains the characteristics set forth in Section 5709.61(A) of the Revised Code and certified said area as an "Urban Jobs and Enterprise Zone" pursuant to Chapter 5709 of the Revised Code; and

Whereas, Pubco Corporation, Kelley Avenue Partnership and Smith Corona Corporation (the "Enterprises") have proposed to acquire machinery and equipment, to transfer and acquire inventory, and to make improvements to real property at 3830 Kelley Avenue; and

Whereas, the Enterprises have certified to the City that, but for abatement of personal property and real estate taxes the Enterprises would be at competitive disadvan-

**NEORS
Pump Station**

**Proposed Restroom
Location**

The Great Lakes
Towing Company

Garrett A. Morgan
Waterworks Facility

Cleveland Area
Soap Box Derby

Cleveland Memorial Shoreway

Division Ave

Division Ave

Division Ave

Division Ave

Division Ave

W 53rd

W 45th St

Crescent Ave

Crescent Ave

Crescent Ave

Crescent Ave

W 45th St

6

2

2

Cass Ave

Lakefront Bikeway

W 54th St

Lakefront Bikeway

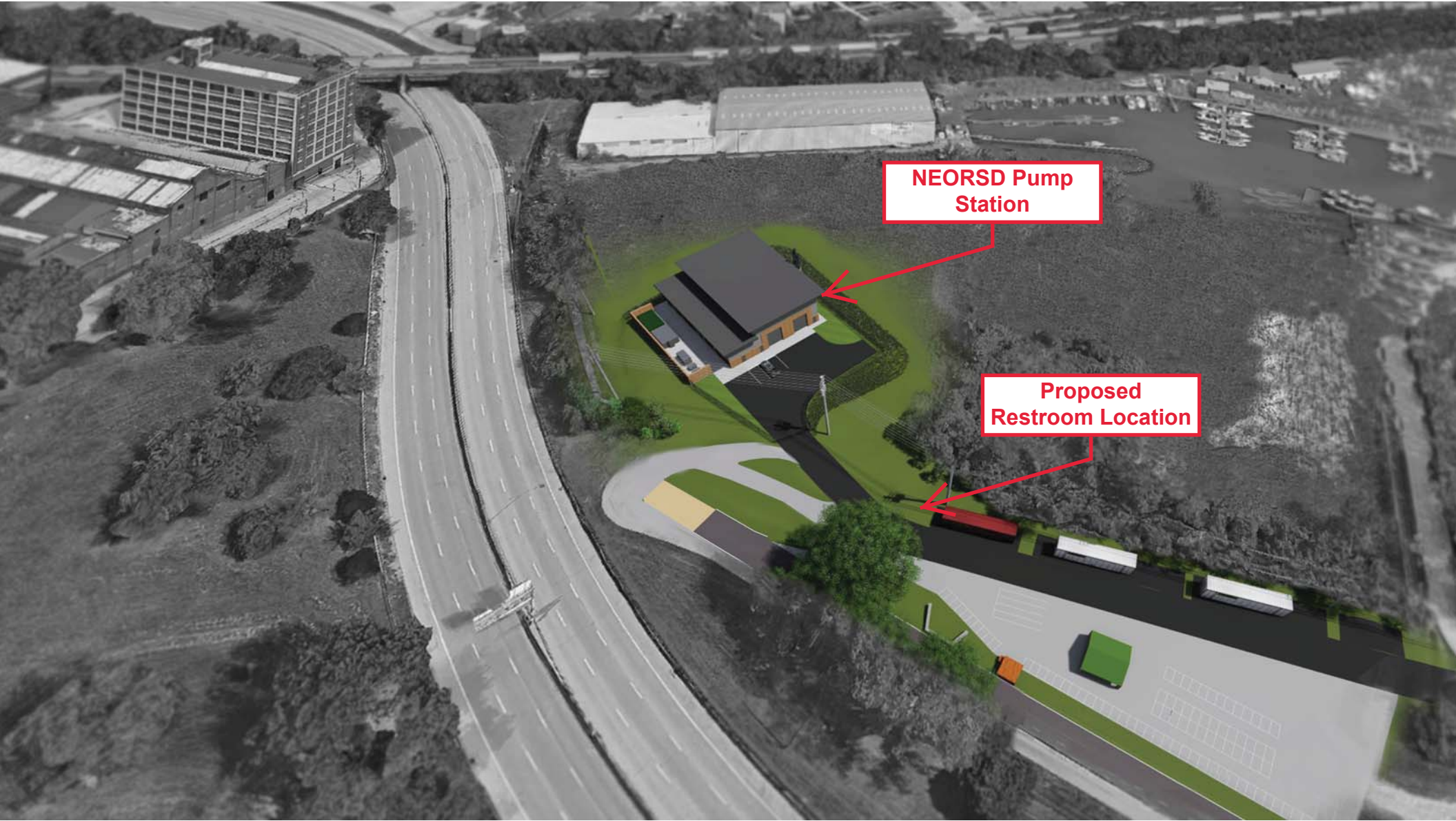
Lakefront Bikeway

W 45th St

Lakefront

M Direct Market
communications

ay



**NEORSD Pump
Station**

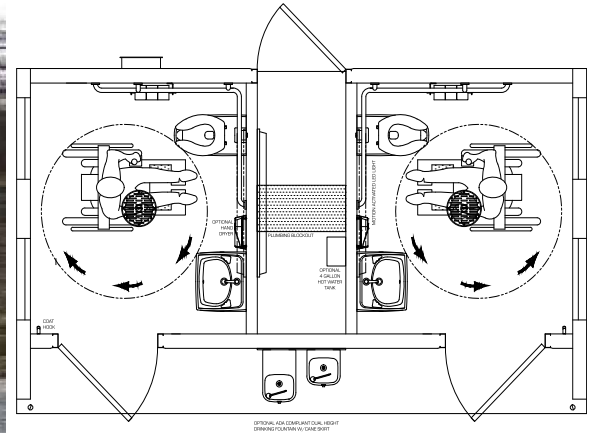
**Proposed
Restroom Location**

Denali

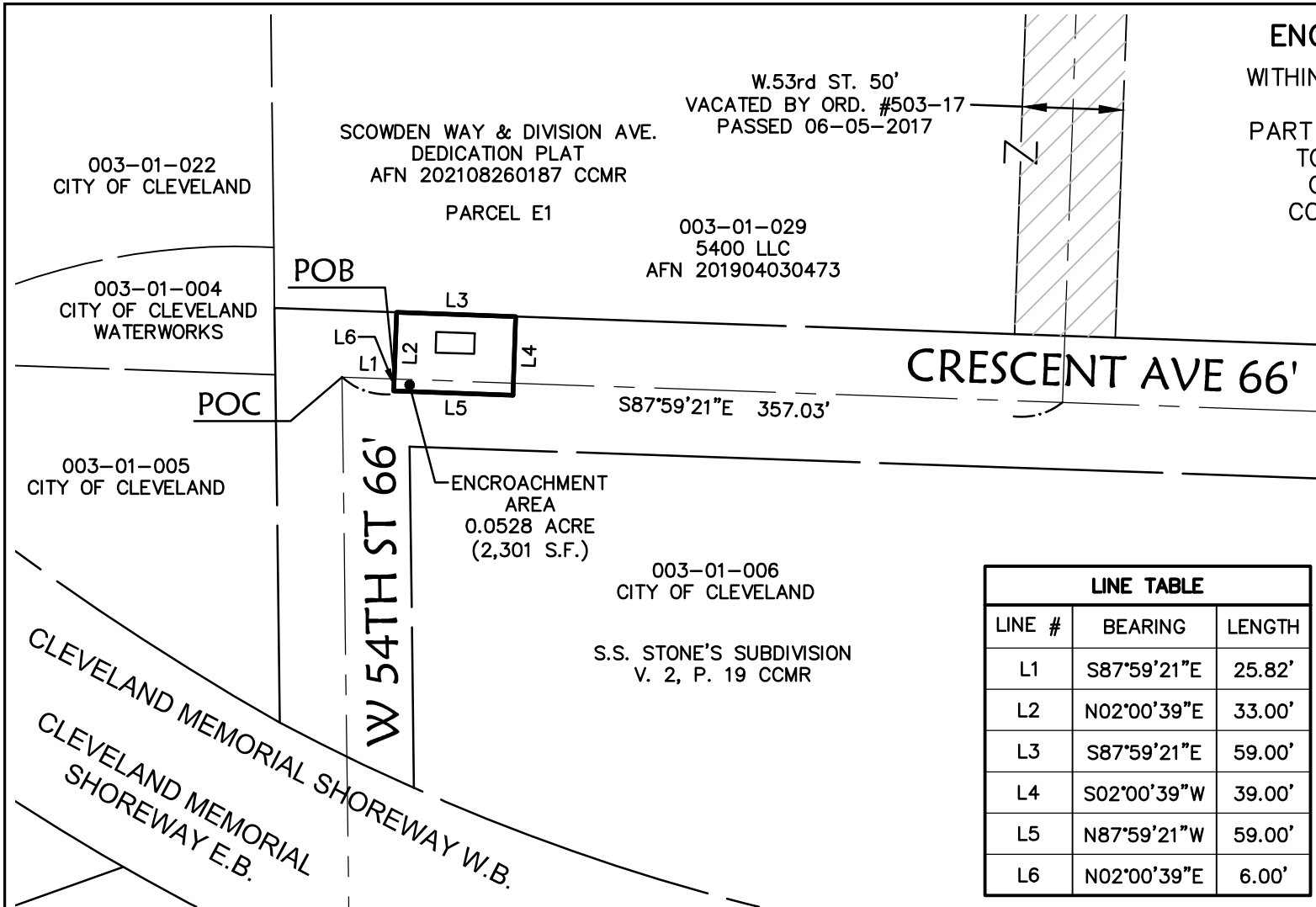
2 single user restrooms
2 ADA toilets | 2 sinks

Shown:

- » Toasted Almond Board & Batt upper walls
- » Mountain Blend Field Stone rock lower walls
- » Hunter Green Cedar Shake roof
- » Optional drinking fountain



ENCROACHMENT AREA
 WITHIN THE RIGHT OF WAY OF
 CRESCENT AVENUE
 PART OF ORIGINAL BROOKLYN
 TOWNSHIP LOT NO. 50
 CITY OF CLEVELAND,
 COUNTY OF CUYAHOGA,
 STATE OF OHIO



LINE TABLE		
LINE #	BEARING	LENGTH
L1	S87°59'21"E	25.82'
L2	N02°00'39"E	33.00'
L3	S87°59'21"E	59.00'
L4	S02°00'39"W	39.00'
L5	N87°59'21"W	59.00'
L6	N02°00'39"E	6.00'



SCALE: 1"=80'
 MARCH 22, 2022

ABBREVIATIONS

AFN AUTOMATIC FILE NUMBER
 CCMR CUYAHOGA COUNTY MAP RECORDS
 P PAGE
 POB POINT OF BEGINNING
 POC POINT OF COMMENCEMENT
 V VOLUME

T. A. Bixler 3-22-22

TREVOR A. BIXLER
 PROFESSIONAL SURVEYOR, OHIO NO. 7730



KS KS Associates, Inc.
 260 Burns Road, Suite 100
 Elyria, OH 44035
 P 440 365 4730
 F 440 365 4790
KS ASSOCIATES www.ksassociates.com

Encroachment Area

0.0528 Acre

Page 1 of 1

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and known as being part of Original Brooklyn Township Lot No. 50, being more definitely described as follows;

Commencing at the intersection of the centerline of Crescent Avenue (66 feet wide) and the centerline of West 54th Street (66 feet wide);

Thence, along the centerline of Crescent Avenue, South 87° 59' 21" East, 25.82 feet to the **True Point of Beginning** for the encroachment herein described;

Thence, leaving said centerline, North 02° 00' 39" East, 33.00 feet to the northerly right of way of Crescent Avenue;

Thence, along the northerly right of way of Crescent Avenue, South 87° 59' 21" East, 59.00 feet;

Thence, leaving said northerly right of way of Crescent Avenue, South 02° 00' 39" West, 39.00 feet;

Thence, North 87° 59' 21" West, 59.00 feet;

Thence, North 02° 00' 39" East, 6.00 feet to the point of beginning.

Containing within said bounds of land 0.0528 acre of land (2,301 square feet) as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor No. 7730 in January, 2016.

Bearings are based on Ohio State Plane, North Zone NAD83(2011) Grid North.

T. A. Bixler 3-22-22

Trevor A. Bixler, P.S.
Professional Surveyor, Ohio No. 7730

KS ASSOCIATES
Civil Engineers + Surveyors

260 Burns Road, Suite 100
Elyria, OH 44035
440 365 4730

R:\15000\15120\Legal Descriptions\WST-Encr.doc



THERE IS NO LEGAL OBJECTION TO THIS LEGISLATION IF AMENDED AS FOLLOWS:

1. In the title, line 10, after "Inc.;" , insert "authorizing the Director of Capital Projects to issue a permit to the NEORSD to encroach into the public right-of-way of Crescent Avenue by constructing and installing the public restroom facility;".

2. In Section 1, line 2, strike "the Northeast Ohio Regional Sewer District" and insert "with the Northeast Ohio Regional Sewer District ("NEORSD"), 3900 Euclid Avenue, Cleveland, Ohio, 44115,"; in line 3, after "accept", insert ", as a gift to the City,"; and in line 6, after "Derby")" strike ", as a gift to the City".

3. Insert new Sections 2, 3, 4, and 5 to read as follows:

"Section 2. That the Director of Capital Projects is authorized to issue a permit, revocable at the will of Council or the Director of Capital Projects, to the NEORSD as "Permittee" to encroach into the public right-of-way of Crescent Avenue by constructing and installing the public restroom facility referred to above in this ordinance, at the location more fully described as follows:

Encroachment Area

0.0528 Acre

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio and known as being part of Original Brooklyn Township Lot No. 50, being more definitely described as follows;

Commencing at the intersection of the centerline of Crescent Avenue (66 feet wide) and the centerline of West 54th Street (66 feet wide);

Thence, along the centerline of Crescent Avenue, South 87° 59' 21" East, 25.82 feet to the True Point of Beginning for the encroachment herein described;

Thence, leaving said centerline, North 02° 00' 39" East, 33.00 feet to the northerly right of way of Crescent Avenue;

Thence, along the northerly right of way of Crescent Avenue, South 87° 59' 21" East, 59.00 feet;

Thence, leaving said northerly right of way of Crescent Avenue, South 02° 00' 39" West, 39.00 feet;

Thence, North 87° 59' 21" West, 59.00 feet;

Thence, North 02° 00' 39" East, 6.00 feet to the point of beginning.

Containing within said bounds of land 0.0528 acre of land (2,301 square feet) as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor No. 7730 in January, 2016.

Bearings are based on Ohio State Plane, North Zone NAD83(2011) Grid North.

The permit shall terminate without further action and the restroom facility become property of the City of Cleveland upon completion of the construction and installation.

Section 3. That the Director of Law shall prepare the permit authorized by this ordinance and shall incorporate such additional provisions as the Director of Law determines necessary to protect and benefit the public interest. The permit shall be

issued only when, in the opinion of the Director of Law, the prospective Permittee has properly indemnified the City against any loss that may result from the encroachment permitted.

Section 4. That Permittee may assign the permit only with the prior written consent of the Director of Capital Projects. That the encroaching structure permitted by this ordinance shall conform to plans and specifications first approved by the Manager of the City's Division of Engineering and Construction. That Permittee shall obtain all other required permits, including but not limited to Building Permits, before installing the encroachment.

Section 5. That the permit shall reserve to the City reasonable right of entry to the encroachment location."

4. Renumber existing Sections 2, 3, and 4 to new "Section 6", "Section 7", and "Section 8".

Date: _____ (Signed): _____

Jeffrey B. Marks
Assistant Director of Law

Ord. No. 1121-2021