

COMMUNITY BENEFITS AGREEMENT (CBA)

This Community Benefits Agreement (CBA) is entered into as of this 1ST day of November 2024 by and between the City of Cleveland, through its Director of The Mayor's Office of Equal Opportunity ("City"), under the authority of Section 190A.02, Codified Ordinances of Cleveland, Ohio, 1976, ("C.O.") and TDG Franklin Realty, LLC and TDG Franklin North, LLC, ("Co-Developers"), with principal office 6055 Rockside Woods Blvd, Suite #100, Independence, Ohio, 44131, through its authorized officer.

WHEREAS, the City of Cleveland recognizes that it has a unique role and responsibility regarding development projects undertaken within the City with City support, public funds, and financial assistance to ensure that those projects directly benefit the communities in which they are built, that the projects benefit the entire community and that historically underrepresented minorities and women participate in the Cleveland economy by way of the building and construction trades and crafts and professional services; and

WHEREAS, to assure that the City's financial assistance and expenditures on Development Projects provide community benefits and economic impact equitably throughout the City and result in a "win-win" for both Cleveland residents and developers, the City enacted new Chapter 190A of its Codified Ordinances, Community Benefits Agreements; and

WHEREAS, under Section 190A.02, proposed Development Projects with an expected total Project cost under \$20,000,000 and City financial assistance equal to or greater than \$250,000 must enter into a Community Benefits Agreement with the City; and

WHEREAS, the project for which this CBA is entered into (the "Project") is estimated to have a total cost of approximately **\$19,104,203**, for which the following City financial assistance is anticipated:

• CRA Tax Abatement - (CD)	\$5,072,963.12
• Tax Incremental Financing (TIF) – (ED)	<u>\$1,966,331.97</u>
<u>Total:</u>	<u>\$7,039,295.09</u>

Now, therefore, in consideration of the foregoing and the mutual covenants contained in this CBA, the receipt and sufficiency of which are hereby acknowledged, the parties to this CBA agree as follows:

1. **OEO-Certified Subcontractor Utilization Plan:** The Co-Developer shall develop and submit for the City's review and approval a written subcontractor utilization plan for the Project, which shall include at least the following:
 - A. A specific plan of action to utilize certified MBE, FBE, and CSB subcontractors on the Project in the dollar amounts listed in **Section 1 of the attached Schedule A.**
 - B. A specific plan of action to employ or cause its subcontractors to employ Cleveland residents for twenty percent (20%) of the total *Construction Worker Hours* in constructing the project. **Section 2 of the attached Schedule A.**
 - C. A specific plan of action to employ or cause its contractors to employ Cleveland residents who are certified as low-income residents for four percent (4%) of the total *Resident Construction Worker Hours* in constructing the project. **Section 2 of the attached Schedule A.**
2. **OEO-Certified Subcontractor Utilization Performance:** During the execution of the Project, the Co-Developers shall:
 - A. Utilize subcontractors to meet or exceed the MBE, FBE, and CSB participation commitments listed in section 1(a) above in its Certified Subcontractor Utilization Plan.

If, after the start of the Project, the Co-Developers substantiate their inability to meet the certified subcontractor commitments of its Subcontractor Utilization Plan, the Co-Developers may request a change to their subcontracting commitments. Any change request must be submitted to the Office of Equal Opportunity ("OEO") in writing. The OEO will approve a change request only when the Co-Developers have demonstrated, by documentation satisfactory to the OEO, its good-faith efforts to meet its commitments, which efforts were unsuccessful due to circumstances beyond the Co-Developers' control.

When evaluating subcontractor commitment change requests, the OEO may consider:

 - i. Co-Developers' good-faith efforts to meet its subcontracting commitments;
 - ii. Co-Developers' good faith efforts to mitigate the loss of certified subcontractor participation;
 - iii. Co-Developers' good-faith efforts to improve its certified subcontractor participation in other components of the development project;
 - iv. The availability of certified subcontractors; and
 - v. Any other factor(s) that may be appropriate for subcontractor commitment change request consideration.
 - B. Co-Developers shall employ and/or cause its contractors/subcontractors to employ Cleveland residents for twenty percent (20%) of the total *Construction Worker Hours*.
 - C. Co-Developers shall employ and/or cause its contractors to employ City of Cleveland Residents who are certified as low-income residents for four percent (4%) of the total *Resident Construction Worker Hours*.

3. **Mentor-Protégé Program Participation:** The parties acknowledge that one barrier to entry from many MBE/FBEs is the lack of proven success on commercial construction projects.

To mitigate this barrier to entry, the Co-Developers shall:

- A. Participate in the OEO Mentor/Protégé program, or a separate Mentor/Protégé program that is approved by OEO, engaging certified MBEs and/or FBEs, with an expected duration of no less than twelve (12) months or as otherwise defined in **Section 3 of Schedule A.**

Any Mentor/Protégé program above shall:

- i. Establish relationships between primes and diverse firms that have no or limited experience providing services to projects with City financial assistance.
- ii. Include continuing technical and nontechnical support for diverse firms that have no or limited experience providing services to projects with City financial assistance.
- iii. Increase the quantity and the dollar value of prime and subcontractor awards to a Protégé firm that has no or limited experience providing services to projects with City financial assistance.
- iv. Expand the quality of the technical capabilities of the Protégé firm.
- v. Increase the pool of diverse firms that will be qualified to work on projects with City financial assistance.
- vi. Create a pipeline enabling the Protégé and diverse firm(s) to eventually bid on projects as prime contractors.

The Co-Developers (and/or its General Contractor) shall identify an OEO-certified MBE or FBE firm in good standing as its Protégé firm. The Protégé firm must perform a commercially useful function under its contract with the Co-Developers.

Co-Developers (and/or its General Contractor), as Mentor, shall:

- i. Assess the Protégé firm's needs;
- ii. Provide a description of specific assistance the Mentor will provide to address the Protégé's needs;
- iii. Provide its experience with meeting Protégé's needs; and
- iv. Enter into a Mentor/Protégé Agreement that includes the following:
 - a. A description of the Protégé's areas of assistance.
 - b. A description of mentoring activities and the associated level of effort, including the estimated number of hours of mentoring activity and Protégé activity.
 - c. Deliverables associated with mentoring activities.
 - d. Duties and responsibilities of Mentor and Protégé, including a list of key personnel of each.
 - e. Benchmarks to measure mentoring progress.
 - f. Process for evaluating mentor/protégé relationship.
 - g. Termination provisions.

Protégé shall be and remain a separate and distinct independent business entity from the Mentor. The Mentor may not exercise management control over the Protégé or have any direct or indirect ownership interest in the Protégé.

- B.** Should the Co-Developers choose to participate in a separate Mentor/Protégé program outside of OEO and fail to identify any MBE, FBE, or CSB subcontractors to meet the Mentor/Protégé requirements and to submit the documentation and information to OEO via the B2GNow application within sixty (60) days of signing this agreement, the Co-Developers must immediately notify the City representative in OEO. Thereafter, OEO will provide assistance to the Co-Developers to help identify and source subcontractors to meet this requirement.
- i.** Once the Co-Developers have identified an OEO-approved Protégé firm, the Co-Developers have sixty (60) days to conduct the first Mentor/Protégé meeting and submit documentation to OEO via B2GNow.
 - ii.** Thereafter, the Co-Developers shall submit quarterly reports to OEO in the normal course utilizing the OEO's B2GNow until the conclusion of the Mentor/Protégé relationship outlined in the Mentor/Protégé agreement.
- 4. Workforce Development:** An important goal of the City is to assist local businesses in successfully addressing their workforce needs. The Co-Developers and the Co-Developers' General Contractor agree to request referrals from Greater Cleveland Works and give first consideration to hiring job candidates referred by Greater Cleveland Works, provided that the Co-Developers determine that they meet the qualifications specified for the relevant position. The Co-Developers and the Co-Developers' General Contractor shall also encourage their subcontractors to give first consideration to hiring job candidates referred by Greater Cleveland Works.
- 5. Apprenticeship Participation:** The Co-Developers or members of the Project team shall either a) participate in a registered apprenticeship program; or b) engage construction contractors participating in a registered program; or c) satisfy the City's interest in promoting the use of apprentice works in projects receiving City financial assistance. The nature of this effort, including the minimum number of apprentices engaged on the project, shall be described in **Section 4 of Schedule A.**
- 6. Internship Participation:** The Co-Developers or members of the Co-Developers' team shall provide internship opportunities for:
- A.** City of Cleveland High School students with work permits;
 - B.** Adult Cleveland residents; and/or
 - C.** City of Cleveland residents who are community college students.

The requirements associated with this effort, including the minimum number of interns employed by the Co-Developers and/or associated Contractors, the minimum wage of the interns, the minimum number of hours required, and the deadline for placement shall be described in **Section 4 of Schedule A.**

7. **Community Engagement:** The Co-Developers shall meet with community stakeholders throughout the Development Project as described in **Section 5 of Schedule A.**

Meetings will occur in a forum and in cooperation with the City Council representative for the appropriate City Ward(s) and the local Community Development Corporation (CDC), if any, to gain community input on the Development Project.

8. **Reporting:** The Co-Developers shall provide regular subcontractor utilization reports to the OEO in the normal course utilizing the OEO's B2GNow and LCPtracker applications. The Co-Developers shall also provide other community benefit reports regarding CBA compliance in summary form, including, but not limited to, the status of each community benefit, actions the Co-Developers have taken to meet each community benefit, and the additional actions needed to satisfy community benefit, on the timelines described in **Section 6 of Schedule A.**

9. **Additional Community Benefits:** Additional community benefits agreed upon by the Co-Developers and the City shall be described in **Sections 7 through 10 of Schedule A.** These additional community benefits shall have the same value and importance as any community benefits listed in this agreement. They shall be enforced with the penalty terms described in **Sections 7 through 10 of Schedule A.**

10. **Default/Penalty:** In the event that the City determines that the Co-Developers have failed to fulfill the requirements of this Agreement, the City shall have been damaged. If the Co-Developers do not cure such failure to the reasonable satisfaction of the City within 30 days of receiving such notice, the City may assess a penalty against the Co-Developers, including denial or termination of all City financial assistance.

The City may also assess penalties as described in the appropriate sections of **Schedule A.**

- A. **MBE/FBE/CSB Utilization:** If Co-Developers fail to meet the MBE, FBE, or CSB subcontractor utilization goals and do not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may:

- i. A prorated penalty may be assessed based on the amount of the MBE/FBE/CSB shortfall of the total City Financial Assistance, as described in **Section 1 of Schedule A.** City investment shall be defined as the total amount of "City Financial Assistance" as defined in C.O. Section 190A.01(a) and section 11 of this CBA but does not include the forgone value of a residential or commercial multi-family tax abatement.
- ii. Where the Co-Developers have received tax increment financing (TIF) and have failed to meet the MBE/FBE/CSB goals, the city may access a prorated penalty based upon the amount of the MBE/FBE/CSB shortfall of a portion of the estimated present value of the tax increment in relation to the MBE/FBE/CSB shortfall in dollars, as described in **Section 1 of Schedule A.**

- B. **City of Cleveland Resident Participation:** If the Co-Developers fail to meet the *Resident Construction Worker Hours* goal of this Agreement and do not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may assess a penalty against the Co-Developers in an amount not to exceed one-eighth of one percent (0.125%) of the total amount of the City investment for each percentage by which it fails to meet each such requirement. The potential maximum penalty for this noncompliance shall be included in **Section 2 of Schedule A.**

- C. If Co-Developers does not meet the Low-Income Residents goal of this Agreement and the OEO reasonably determines that Co-Developers did not use “significant efforts” as described in Chapter 188 of Cleveland’s Codified Ordinances, the Director of the OEO shall determine if a penalty is appropriate and assess the foregoing penalty in his/her reasonable discretion. The potential maximum penalty for this noncompliance shall be included in **Section 2 of Schedule A**.

City investment shall be defined as the total amount of “City Financial Assistance” as defined in Section 190A.01(a) and Section 11 of this CBA but does not include the forgone value of a residential or commercial multi-family tax abatement.

- D. **Mentor/Protégé Program**: If the Co-Developers fail to meet the Mentor/ Protégé requirement of this CBA and the Co-Developers do not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may assess a penalty as described in **Section 3 of Schedule A**.
- E. **Apprenticeships/Pre-apprenticeships**: If the Co-Developers fail to meet the Apprenticeship/Pre-apprenticeship commitments of this CBA and the Co-Developers do not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may assess a penalty as described in **Section 4 of Schedule A**.
- F. **Internships**: If Co-Developers fails to meet the internship requirements of this CBA and Co-Developers does not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may assess a penalty as described in **Section 4 of Schedule A**.
- G. **Community Engagement**: If the Co-Developers fail to meet the community engagement requirement of this CBA and the Co-Developers do not cure such failure to the reasonable satisfaction of the City within 30 days after receiving written notice of default from the City, the City may assess a penalty as described in **Section 5 of Schedule A**.
- H. **Reporting**: If the Co-Developers fail to meet the reporting requirement of this CBA and the Co-Developers do not cure such failure to the reasonable satisfaction of the City within 10 days after receiving written notice of default from the City, the City may assess a penalty of up to \$100 per day, or other penalty as described in **Section 6 of Schedule A**.
- I. **Egregious Defaults/Acts**: If the City determines that the Co-Developers’ defaults are egregious defaults, the City may disqualify the Co-Developers from future financial assistance for a period of up to two years. “Egregious defaults” include but are not limited to:
- i. Providing false information regarding MBE, FBE, or CSB status;
 - ii. Failure to cooperate in the City’s monitoring of compliance with the performance of this agreement by refusing to provide information or documents required to monitor compliance;
 - iii. Failure to respond adequately to issues or claims by City representatives regarding the Co-Developers’ performance or other issues;
 - iv. Accumulation of like documented complaints regarding the Co-Developers’ performance of a contract;
 - v. Failure to pay any financial obligation to the City or any of its departments, divisions, boards, or commissions;

- vi. Failure to pay prevailing wage when required by state or federal law or to comply with similar laws;
- vii. Debarment by any federal, state, or local government agency;
- viii. Failure to fulfill three (3) or more of the required community benefits elements enumerated in Sections 1 through 10 of Schedule A; or
- ix. Commission of wage theft or payroll fraud as defined in Chapter 190 of Cleveland's Codified Ordinances.

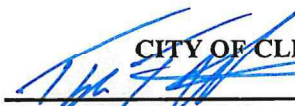
11. Definitions:

In this CBA:


- A. "City Financial Assistance" means any City-funded grant, loan, tax increment financing, residential multi-family tax abatement in compliance with Ordinance No. 482-2022, passed March 25, 2022, Section 3, below market-value land transfer, and/or City-funded capital infrastructure improvements associated with a development project;
- B. "Community Benefits Agreement" or "CBA" means a legally enforceable agreement between the City of Cleveland and the Co-Developers that provides community benefits;
- C. "Community Benefits" means the amenities, benefits, or commitments described in C.O. Sections [190A.02](#) and [190A.03](#);
- D. "Co-Developers" means any person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, or other entity that proposes a Development Project, excluding public improvement projects, in the City of Cleveland;
- E. "Development Project" means new construction of and alterations to buildings and structures located in the City; and;
- F. "Construction Worker Hours" means the total hours worked on a Construction Contract by Skilled and Unskilled Construction Trade Workers, whether those workers are employed by the Contractor or any Subcontractor. In determining the total Construction Worker Hours to be furnished at the construction site, there shall be included the number of hours devoted to all tasks customarily performed on a construction site, whether or not such tasks are, in fact, performed on the construction site. Construction Worker Hours exclude the number of hours of work performed by non-Ohio residents; and
- G. "Low-Income Resident" means a City Of Cleveland Resident who, when first employed by a contractor, is a member of a family having a total income equal to or less than the "Section 8" Low-Income limit established by the United States Department of Housing and Urban Development. Low-Income family is defined as a family whose annual income does not exceed eighty percent (80%) of the median family income for the area in which they reside, as determined by HUD. Income limits are adjusted for family size. A Resident who is not a member of a family shall be considered as a one (1) person family for this purpose. A Resident shall retain "Low-Income Person" status for a continuous five (5) year period starting upon the OEO's written acknowledgment that the Resident's family income does not exceed the above-stated limit, provided the Resident remains a Resident during the five (5) year period.

12. **Intent to Comply:** Parties agree that this CBA is lawful, enforceable, and binding on all Parties: agree to waive any challenges to the enforceability of this Agreement; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or proceeding.
13. **Severability:** Each section and each part of each section of this Community Benefits Agreement is declared to be an independent section or part of a section, and it is declared to be the intent of the parties that if any section or part of a section or any provision thereof, or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provisions, other than those as to which it is held invalid, shall not be affected thereby.
14. **Successors and Assigns.** This agreement shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.
15. **Schedule A:** The attached Schedule A, Community Benefits Agreement Terms, is incorporated into this agreement.
16. **Amendments to Schedule A:** Any changes or amendments to Schedule A that alter either (a) a material community benefit identified in Schedule A or (b) the penalty associated with failure to comply with a material community benefit as described in Schedule A, must be agreed upon by both parties. Upon such agreement, the amended Schedule A shall be incorporated into this agreement.

The parties have caused this instrument to be executed as of the day and year first above written.

 CITY OF CLEVELAND 12/19/24

TYSON MITCHELL DATE
DIRECTOR
MAYOR'S OFFICE OF EQUAL
OPPORTUNITY


 TDG FRANKLIN REALTY, LLC 12/17/24

SIGNATORY DATE
NEIL VINNY

PRINTED NAME
Managers

TITLE
85-4194225

TAXPAYER IDENTIFICATION NO.

 TDG FRANKLIN NORTH, LLC 12/17/24

SIGNATORY DATE
NEIL VINNY

PRINTED NAME
Managers

TITLE
88-3132753

TAXPAYER IDENTIFICATION NO.

SCHEDULE A - COMMUNITY BENEFITS (CBA) TERM SHEET (STANDARD)

FRANKLIN YARDS

Last Revised: October 30, 2024
(Ordinance No. 297-2023)

City of Cleveland
Office of Equal Opportunity (OEO)
601 Lakeside Avenue, Room 335
Cleveland, Ohio 44114

PROJECT INFORMATION

PROJECT NAME:	<i>Franklin Yard</i>	PROJECT DESCRIPTION:	EXPECTED PROJECT COSTS:	CITY FINANCIAL ASSISTANCE:
CO-DEVELOPERS NAME:	TDG Franklin Realty, LLC & TDG Franklin North, LLC	The project consists of (1) the historic redevelopment of three buildings on the south side of Franklin Boulevard: a former WYCA on W 31st, a historic mansion on W32nd, and a small, 2,000 SF one-story building immediately south of the mansion, and (2) ground up multifamily construction on the north side of Franklin Boulevard. The YWCA will contain 31 residential units, the mansion 7 units, and the new construction 29 units. The Co-Developer is working with and anticipates putting a breakfast/lunch restaurant in the small commercial building. The buildings all surround a courtyard space, which will be highly landscaped and include common area amenities. Other building amenities include a fitness center, community living room, and work/study living room.	EXPECTED PROJECT COSTS: <u>\$19,104,203</u>	\$5,072,963.12 CRA Tax Abatement (CD)
PROJECT ADDRESS:	Fr Blvd between W31st St and W 32nd St Cleveland, Ohio, 44113		EXPECTED HARD CONSTRUCTION COST: <u>\$15,552,478</u>	\$1,966,331.97 TIF (ED)
PRIME CONTRACTOR:	White Label Construction			<u>\$7,039,295.09</u> TOTAL

SECTION LINE	COMMUNITY BENEFIT AGREEMENT REQUIRED ELEMENTS	KEY CBA CONTRACT TERMS FOR THIS PROJECT	MAXIMUM NON-COMPLIANCE PENALTY	KEY REPORTING DATES POST-SIGNED AGREEMENT
1	1 CH. 190A.02 (a)(1): CSB Participation Goal (8%)	\$1,528,336.24	\$469,286.34	B2Gnow: Monthly
	2 CH. 190A.02 (a)(2): FBE Participation Goal (7%)	\$1,337,294.21	\$410,625.55	
	3 CH. 190A.02 (a)(3): MBE Participation Goal (15%)	\$2,865,630.45	\$879,911.89	
	Total Diverse Subcontractor Utilization Amount (30%)	\$5,731,260.90	\$1,759,823.77	
2	4 CH. 190A.02 (b)(1): Cleve. Resident Construction Worker Hours	20% Requirement	\$175,982.38	LCPtracker: Monthly
	5 CH. 190A.02 (b)(2): Low-Income Cleve Res. Construction Worker Hours	4% of the 20% Requirement	\$35,196.48	
3	6 CH. 190A.02 (c): Mentor/Protégé Program	Total of THREE (3) Mentor/Protégé Relationship	\$50,000 per M/P	Identify Protégé: 60 Days Held First M/P Meeting: 120 Days Ongoing reporting: Quarterly

4	7	CH. 190A.02 (d)(1):	Apprenticeships	THREE (3) Cleveland Resident Apprentices	<u>\$10,000 per Apprentice</u>	Hired Intern: 120 Days Ongoing reporting: Quarterly
	8	CH. 190A.02 (d)(2):	Internships	TWO (2) Cleveland Resident Interns at the Rate of <u>\$20 PER HOUR</u> for a Minimum of <u>FIFTY (50) WORKED HOURS PER INTERN</u>	<u>\$5,000 per Intern</u>	
5	9	CH. 190A.02 (e):	Community Engagement	THREE (3) Community Stakeholders' meetings	<u>\$5,000 per Meeting</u>	Pre-Construction During Construction Post Construction
6	10	CH. 190A.02 (f):	Reporting	Starting <u>THIRTY (30) DAYS</u> after signed CBA; Thereafter, the Co-Developer shall provide <u>QUARTERLY</u> Community Benefits Reports to OEO	<u>Up to \$100 per day</u>	

SECTION	LINE	ADDITIONAL COMMUNITY BENEFIT AGREEMENT ELEMENTS		KEY CBA CONTRACT TERMS FOR THIS PROJECT	
7	11	CH. 190A.03 (d):	Hosting job fairs and contractor information and networking	The Co-Developer will host at least <u>TWO (2)</u> Job Fairs/Outreach Events for City of Cleveland Residents and businesses interested in working on this project.	
8	12	CH. 190A.03 (h):	Incorporating LEED principles and additional sustainable business practices into the design and construction of the Development Project	The project must be will meet the Cleveland Green Building Standard – Enterprise Green Communities	
9	13	CH. 190A.03 (i):	Provide neighborhood infrastructure and safety improvements, including but not limited to curbs, street paving, sidewalks, multi-purpose and bicycle paths, pedestrian traffic-calming measures, parks and green space, landscaping, lighting, security cameras, bicycle racks, signage, public art, and blight removal to the extent not provided by the City or other public entity.	<ul style="list-style-type: none"> Project will replace vacant and blighted buildings with vibrant residential activity Project will preserve and restore historic properties Project will include a large central landscaped and hardscaped courtyard. Ownership has previously provided courtyard space at other projects (Worthington Yards and Tinnerman Lofts), at no charge, for benefits and events for approximately twenty arts and cultural organizations in Cleveland, and ownership anticipates doing the same at Franklin Yard. Project will include extensive artwork purchased and/or commissioned from Cleveland artists. Project will enhance the surrounding neighborhood's security and curb appeal by activating the project area and including perimeter landscaping and area lighting. 	
10	14	CH. 190A.03 (l):	Use of Cleveland Public Power as the preferred electricity provider for the Project	The project will entail the use of Cleveland Public Power as a utility resource.	