



THE BUCKEYE INSTITUTE

May 28, 2026

Mayor's Office of Equal Opportunity
Tyson Mitchell, Director
601 Lakeside Ave., Room 335
Cleveland, OH 44114

Cleveland City Council
Jennifer Heinert O'Leary, Special Counsel
601 Lakeside Ave., Room 220
Cleveland, OH 44114

City of Cleveland
Mark D. Griffin, Law Director
601 Lakeside Ave, Room 227
Cleveland, Ohio 44114

Cleveland City Council
Patricia Britt, Clerk of Council
601 Lakeside Ave., Room 220
Cleveland, Ohio 44114

Re: Cleveland Community Benefit Agreements

Dear Cleveland City Council and Cleveland Mayor's Office:

The Buckeye Institute provides pro bono assistance and representation to those harmed by unlawful government action. The Buckeye Institute has been made aware that the City of Cleveland (the "City") awards public contracts based on race, and requires contractors to meet subcontractor quotas that are based on race. *See* CLEVELAND, OHIO, ORDINANCE § 187.01 *et seq*; 190A.01 *et seq*. The City's race based preferences harm those denied the benefits of that preferential treatment. This unequal treatment is unethical and illegal.

The City's Minority Business Enterprise ("MBE") programs require certified MBEs to be "owned, operated and controlled by one (1) or more Minority Persons who have at least fifty-one percent (51%) ownership." CLEVELAND, OHIO, ORDINANCE § 187.01(aa) (2026). To be a "Minority Person," one must be "a member of a racial or ethnic group, such as African American, Hispanic American, Asian American, or Native American." *Id.* at § 187.01(z). The City's Office of Equal Opportunity (the "OEO") determines whether the applicant satisfies MBE and minority person requirements. *Id.* at § 187.02. (It is unclear who sufficiently "African American, Hispanic American, Asian American, or Native American" to qualify as a member of one of those groups.)

The City applies a 5% race-based bid discount to MBEs when evaluating contract bids. *Id.* at § 187.05(d). And it appears that the City's standard practice is to apply such race-based preferences. *See, e.g.*, (1) Public Improvement bid File #23-23, Hudson Ave. Extension from E. 101st St. to E. 105th St awarded to Cook Paving and Construction Company, Inc. (MBE/LPE), for \$1,440,925.50 rather than the lowest bid by Terrace Construction Company, Inc, for \$1,429,778.87, and (2) Mohican Park Playground renovation, File #61-23, dated June 2, 2023, awarded to Cook Paving and Construction Company for \$647,510 rather than to The R.J. Platten Contracting Company for \$622,426 (Exhibit A).

Further, the City mandates that “each Contracting Department *shall use its best efforts* to utilize certified MBEs . . . as Contractors or subcontractors for all contracts more than fifty thousand dollars.” *Id.* at § 187.06(a) (emphasis added). While the Cleveland Codified Ordinances asserts that goals are not quotas, it nonetheless provides a valuable benefit to certain contractors based on race. *Id.* at § 187.06(b). And the law requires the City to push contractors to obtain those “goals.” *Id.* at § 187.20.

A selected contractor is required to establish and implement an “affirmative action plan,” *Id.* at § 187.16, “to establish placement goals for minorities,” *Id.* at § 187.15(c)(2)(B). These are goals in name only. Compliance with the established affirmative action “goals” may only be waived by the Mayor when, “in the Mayor’s *sole judgment*, the action is *necessary* in the best interests of the City and its citizens.” *Id.* at § 187.16(d) (emphasis added). Further, failure to comply with the affirmative action plan can result in a cancellation of an existing contract, breach of contract, damages, and other civil and criminal action. *Id.* at § 187.20.

Additionally, the City’s Community Benefits Agreement (CBA) program, in which the City provides financial assistance to development projects within the city, imposes the above and additional obligations for contractors. *See* CLEVELAND, OHIO, ORDINANCE ch. 190A. To participate in the CBA program, applicants must enter into an agreement to expend a certain percentage, often 15%, of project costs on MBE subcontracts. *See* CLEVELAND, OHIO, ORDINANCE § 190A.02(a). Cleveland enforces these provisions by requiring quarterly reports. *See* CLEVELAND, OHIO, ORDINANCE § 190A.02(f). Moreover, failure to comply can result in significant penalties and termination of all financial assistance.

The CBA dated February 27, 2026, with Twenty-One Six Development, LLC (Exhibit B) to renovate 2202 and 2230 Superior Ave., Cleveland, for mixed-use space (the “Heller-Keller-Kohn Project”), illustrates this. One of the Heller-Keller-Kohn Project’s CBA’s “REQUIRED ELEMENTS” is an “MBE Participation Goal” of \$4,007,907, with a “NON-COMPLIANCE PENALTY” of up to \$120,487. Exhibit B at Schedule A. The CBA also requires the developer to “unbundle construction work into smaller packages of sizes suitable for competition by MBE” firms, regardless of the increased price of the work, with a “NON-COMPLIANCE PENALTY” of up to \$10,000. *Id.* The developer “shall” submit to the City for approval a written plan to utilize MBE subcontractors in the specified amount. Exhibit B at § 1. The Office of Equal Opportunity (“OEO”) may allow a change to the above requirements, but “only when the Developer has demonstrated, by documentation satisfactory to the OEO, its good-faith efforts to meet its commitments, which efforts were unsuccessful due to circumstances beyond the Developer’s control.” Exhibit B at §2.

If the developer fails to meet the CBA’s requirements, the City “shall be entitled to damages,” and “assess a penalty,” including “termination of all City financial assistance.” *Id.* This scheme more resembles a mandate or quota, subject to waiver in the OEO’s and Mayor’s sole discretion, *see* Cleveland Codified Ordinance 187.16(d), than a “goal.” *See also* Community Benefits Agreement ED 307-45 Erieview – The Bell Project, OEO Schedule A (imposing penalties of up to \$200 per day) (Exhibit C).

The United States Supreme Court has long disapproved of MBE programs and has applied strict scrutiny to strike down such programs. *See, e.g., City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). Similarly, the United States Court of Appeals for the Sixth Circuit has affirmed that Ohio’s Minority Business Enterprise Act violated the Equal Protection Clause. *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 737 (6th Cir. 2000). And the Sixth Circuit has struck down a federal program that prioritized minorities and women applicants. *Vitolo v. Guzman*, 999 F.3d 353, 362 (6th Cir. 2021).

Recently, the Supreme Court of the United States reaffirmed that the Equal Protection Clause applies equally to all races, colors, and nationalities. If individuals of different races “are not accorded the same protection, then [a program] is not equal.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (quoting *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 290 (1978)). Indeed, a “benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.” *Id.* at 218–19. And the Court declared that “[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 208 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). No matter how well-intentioned a government program may be, any program that separates individuals based on race must satisfy the strict scrutiny standard. *Id.* at 213.

The “strict scrutiny” standard requires race-based programs to be narrowly tailored to satisfy a compelling governmental interest. *Drabik*, 214 F.3d at 734. The government has the burden of “demonstrating a ‘strong basis in evidence for its conclusion that remedial action was necessary’ by proving either that the state itself discriminated in the past or was a passive participant in private industry’s discriminatory practices.” *Id.* at 735 (quoting *J.A. Croson Co.*, 488 U.S. at 486–92). Governments have attempted to demonstrate past discrimination by citing studies of historical discrimination.¹ However, the data in such studies cannot be too remote in time. *Drabik* holds that twelve-year-old data are “too remote to support a finding of [a] compelling government interest to justify [an] affirmative action plan.” *Id.* (citing *Brunet v. City of Columbus*, 1 F.3d 390, 409 (6th Cir. 1993)). *See also Louisiana v. Callais*, Nos. 24–109 and 24–110, 2026 WL 1153054, at *16 (U.S. Apr. 29, 2026), judgment entered, No. 24–109, 2026 WL 1209010 (U.S. May 4, 2026) (“Discrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing ‘effects of societal discrimination,’ are entitled to much less weight.” (citations omitted)).

The City has attempted to support its ongoing use of MBE set-asides based on a December 24, 2012 study titled “The State of Minority- and Women- Owned Business Enterprise: Evidence from Cleveland” (the “Study”). The Study used data from 2006–2010, well beyond *Drabik*’s parameters to support remedial action.

Cleveland has no legally justifiable rationale for its ongoing racial discrimination. Indeed, even Director Mitchell recognized the need to fix the City’s discriminatory actions when he “told

¹ Cleveland has recognized this obligation. *See* CLEVELAND, OHIO, ORDINANCE § 187.28.

Cleveland City Council during a January [2025] meeting that Cleveland will have to make its goals more gender and race neutral” Sean McDonnell, *Cleveland’s Office of Equal Opportunity to overhaul programs amid DEI pushback, Supreme Court ruling*, Cleveland.com (Mar. 12, 2025), <https://tinyurl.com/4cyzjkd3>.

It has now been over a year since Cleveland recognized these programs were unlawful, yet it has not yet abandoned them. *See* McDonnell, *supra* (“Mitchell said Cleveland is also reacting to a U.S. Supreme Court decision against Harvard University and the University of North Carolina in 2023.”) Accordingly, The Buckeye Institute requests that Cleveland immediately abandon these programs and fully comply with the colorblind principles required by the Fourteenth Amendment. To avoid litigation, The Buckeye Institute calls on you to take the following actions by June 18, 2026:

1. That the Office of Equal Opportunity
 - a. Cancel all contract solicitations currently open for bidding or under evaluation that contain MBE set-asides or otherwise discriminate based on race;
 - b. Inform all developers and others subject to MBE goals or requirements pursuant to a CBA that the City will not enforce such goals or requirements because such provisions are illegal.
2. That the Cleveland City Council repeal Cleveland Codified Ordinances that require the City to discriminate based on race;

The Buckeye Institute further requests that, by June 11, you confirm that you will or have taken the above actions and that the City will no longer offer the MBE-related set-aside or related requirements.

The Buckeye Institute stands ready to assist any individuals or businesses denied access to any contracting opportunities based on the City’s MBE programs.

Thank you in advance for your cooperation.

Respectfully,
 David C. Tryon
 Director of Litigation
 The Buckeye Institute
 [REDACTED]

Exhibit A

Date	Name of Project	Awarded Contractor	Award Amount	Lowest Bidder	Lowest Bidder Amount	Form "B" Remarks
12-Apr-23	Hudson Ave Ext. from E 101st St to E 105th St	Cook Paving & Construction Company (CSB, MBE, FBE, LPE)	\$1,440,925.50	Terrace Construction Company, Inc	\$1,429,778.87	Cook Paving and Construction Company, Inc was the lowest bidder after applying the bid discount.
2-Jun-23	2022 Mohican Park Playground Renovation	Cook Paving & Construction Company (CSB, MBE, FBE, LPE)	\$647,510.85	The R.J. Platten Contracting Comp.	\$622,426.35	After the bid discount is applied, The Cook Paving and Construction Company, Inc is the lowest and best bidder for evaluation purposes.
13-Sep-23	Capital Maintenance and Repair of City Facilities- Electrical	North Electric, Inc (MBE)	\$449,290.00	Zenith Systems, LLC	\$650,000.00	This bid is subject to the Bid Discount Policy. After the bid discount is applied, North Electric, Inc is still the lowest and best bidder for this project.
13-Mar-24	Zelma George Recreation Center Locker Room Improvements	SONA Construction, LLC (CSB, LPE, MBE)	\$666,270.00	Northeast Ohio Trenching Service, Inc	\$765,270.00	This bid is subject to the Bid Discount Policy. After the bid discount is applied, SONA Construction, LLC remains the lowest responsible bidder.
11-Sep-24	Windows Repair and Replacement, Re-Bid	SONA Construction, LLC (CSB, LPE, MBE)	\$869,940.50	Weatherproofing Technologies	\$1,108,808.88	This bid is subject to the Bid Discount Policy. After the bid discount is applied, SONA Construction, LLC is the lowest responsible bidder.

Form "B"
PUBLIC IMPROVEMENT

C of C 84-100B

Recommendation No. 27-23 File # 23-23 Date April 6, 2023

Directors' Signature _____ Director of Mayor's Office of Capital Projects

Board of Control Resolution No. _____ Date: _____

TO: The Honorable Mayor and Board of Control:

Under the authority of Ordinance No. 652-2018 passed June 4, 2018, sealed bids were opened and read by the Division of Purchases & Supplies on March 2, 2023 for the public improvement of Hudson Avenue Extension from East 101st Street to East 105th Street, All Items, for the Division of Engineering and Construction.

We recommend that a public improvement be awarded upon a unit price basis to: Cook Paving and Construction Company, Inc., (MBE/LPE), located at 4545 Spring Road, Brooklyn Heights, Ohio 44131, as the lowest responsible bidder,

in the aggregate amount of: \$1,440,925.50.

Commissioner of Purchases & Supplies

8 prospective bidders received plans and specifications. 3 prospective bidders attended the optional pre-bid conference. 4 bids were received.

Second Bid:	<u>Terrace Construction Company, Inc.</u>	<u>\$1,429,778.87</u>
Third Bid:	<u>Perk Company, Inc.</u>	<u>\$1,595,620.35</u>
Fourth Bid:	<u>Precision Engineering and Contracting, Inc.</u>	<u>\$1,612,133.16</u>

Office of Equal Opportunity Report:

The OEO goal set is 30% CSB participation. The recommended contractor has demonstrated subcontracting commitments sufficient to meet the goals for this project. Contractor documented efforts to contract with certified subcontractors.

Subcontractors:

RAR Contracting Co, Inc.	(CSB)	\$105,000.00	
RAR Contracting Co., Inc.	(CSB)	\$123,900.00	(60% Supplier)
Trafftech, Inc.	(CSB)	\$20,000.00	
Cuyahoga Supply & Tool, Inc.	(CSB)	\$16,800.00	(60% Supplier)
RA Strauss Electric Supply Co.	(CSB)	\$45,000.00	(60% Supplier)
D.E. Williams Electric, Inc.	(CSB)	\$72,000.00	
Royal Landscaping Gardening, Inc.	(CSB)	\$54,000.00	
Newcomer Concrete Services	(N/A)	\$26,000.00	

Remarks: Cook Paving and Construction Company, Inc. was the lowest bidder after applying the bid discount.

Form "B"
PUBLIC IMPROVEMENT

C of C 84-100B

Recommendation No. 83-23 File # 61-23 Date June 2, 2023

Directors' Signature _____ Director of Mayor's Office of Capital Projects

Board of Control Resolution No. _____ Date: _____

TO: The Honorable Mayor and Board of Control:

Under the authority of Ordinance No. 532-2022 passed June 6, 2022, sealed bids were opened and read by the Division of Purchases & Supplies on April 27, 2023 for the public improvement of the 2022 Mohican Park Playground Renovation, Base Bid Items 1-28 and Contingency, for the Division of Architecture and Site Development.

We recommend that a public improvement be awarded upon a unit price basis to: The Cook Paving and Construction Company (MBE/LPE), located at 4545 Spring Road, Brooklyn Heights, Ohio 44131, as the lowest responsible bidder

in the aggregate amount of: \$647,510.85.

Commissioner of Purchases & Supplies

7 prospective bidders received plans and specifications. 3 prospective bidders attended the optional pre-bid conference. 4 bids were received.

Second Bid:	<u>The R.J. Platten Contracting Co.</u>	<u>\$622,426.35</u>
Third Bid:	<u>F. Buddie Contracting, Ltd.</u>	<u>\$808,315.20</u>
Fourth Bid:	<u>Perk Company, Inc.</u>	<u>\$808,334.63</u>

Office of Equal Opportunity Report:

This is a Horizontal Construction project. The OEO goal set is 30% CSB participation. The recommended contractor has demonstrated a good-faith effort in meeting the subcontractor goal for this contract and provided sufficient explanation for failing to meet the goals based upon the availability of certified subcontractors.

Subcontractors:

The Lakewood Supply Company	(CSB/LPE)	\$3,600.00 (60% Supplier)	0.5%
D.E. Williams Electric, Inc.	(LPE)	\$6,500.00	0.0%
Down to Earth Landscaping	(CSB/FBE)	\$19,000.00	2.9%
RAR Contracting Co, Inc.	(CSB/MBE)	\$34,710.00 (60% Supplier)	5.3%
Snider Recreation, Inc.	(N/A)	\$180,000.00	0.0%
DWA Recreation, Inc.	(N/A)	\$95,700.00	0.0%
SOF Surfaces, Inc.	(N/A)	\$115,000.00	0.0%
Service Supply, Ltd., Inc.	(N/A)	\$6,000.00	0.0%

Remarks:

After the bid discount is applied, The Cook Paving and Construction Company, Inc. is the lowest and best bidder for evaluation purposes.

Form "A"
PURCHASE OF SUPPLIES OR COMMODITIES

C of C 84-100a

Recommendation No. 135-23 File No. 96-23 Date September 13, 2023

Director's Signature _____ Department of Public Works

Board of Control Resolution No. _____, adopted _____

TO: The Honorable Mayor and Board of Control:

Under the authority of **Section 131.67** of the Codified Ordinances of Cleveland, Ohio, 1976; sealed bids were opened and read by the Division of Purchases & Supplies on **July 27, 2023** for **Capital Maintenance and Repairs of City Facilities – Electrical**, for the **Division of Property Management**.

We recommend award by requirement contract to: **North Electric, Inc. (MBE/LPE)**, located at 12117 Bennington Avenue, Suite N, Cleveland, Ohio 44135, as the lowest and best bidder,

for all items.

for a period of one year beginning with the date of execution of a contract, with a one year option to renew.

in the approximate sum of \$449,920.00.



Commissioner of Purchases & Supplies

4 invitations were mailed to prospective bidders. 1 prospective bidder attended the non- mandatory Pre-bid conference and 2 bids were received.

Second Bid: Zenith Systems, LLC \$650,000.00

The Office of Equal Opportunity Report:

The OEO goal for this project is 20% CSB. Contractor made a good faith effort to meet the subcontracting goals for this project and documented efforts to contract with certified subcontractors.

Subcontractors:

Mars Electric Company	(CSB/FBE/LPE)	\$170,000.00	37.78%
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Remarks:

This bid is subject to the Bid Discount Policy. After the bid discount is applied, North Electric, Inc. is the lowest and best bidder for evaluation purposes.

Form "B"
PURCHASE OF PUBLIC IMPROVEMENT

C of C 84-100a

Recommendation No. 43-24 File No. 187-23 Date March 13, 2024

Director's Signature _____ Department of Mayor's Office of Capital Projects

Board of Control Resolution No. _____, adopted _____

TO: The Honorable Mayor and Board of Control:

Under authority of Ordinance No. 661-2023 passed on July 12, 2023, sealed bids were opened and read by the Division of Purchases & Supplies on January 11, 2024 for the public improvement of Zelma George Recreation Center Locker Room Improvements, Base Bid Items A-D and Contingency Allowances 1-4, for the Division of Architecture and Site Development.

We recommend that a public improvement be awarded upon a gross price basis to: SONA Construction, LLC (CSB/MBE/LPE), located at 7122 Harvard Avenue, Cleveland, Ohio 44104, as the lowest responsible bidder,

in the aggregate amount of: \$666,270.00.



Commissioner of Purchases & Supplies

3 prospective bidders received plans and specifications. 0 prospective bidders attended the optional pre-bid conference. 3 bids were received.

<u>Second Bid:</u>	Northeast Ohio Trenching Service, Inc. (RCSB/LPE)	\$765,270.00
<u>Third Bid:</u>	Feghali Brothers, LLC	\$776,270.00

Office of Equal Opportunity Report:

This is a Vertical Construction Project. The OEO goal is 15% MBE, 7% FBE and 8% CSB. Contractor demonstrated a good faith effort to meet the subcontracting goals for this project.

Subcontractors:

Integrity Environmental Development, LLC	(MBE/CSB/LPE)	\$ 79,200.00 (60%)	13.1%
McPhillips Plumbing, Heating & Air Conditioning Company	(N/A)	\$110,000.00	0.0%
Miles Mechanical, Inc.	(CSB/MBE/LPE)	\$ 42,500.00	7.0%
The Midland Hardware Company	(N/A)	\$ 42,000.00	0.0%
Gratton Building Specialties, Inc.	(N/A)	\$ 56,724.00	0.0%
Patella Carpet & Tile	(N/A)	\$188,000.00	0.0%
The Fowler Company	(N/A)	\$ 37,000.00	0.0%

Remarks:

This project is subject to the bid discount policy. After the bid discount is applied, SONA Construction, LLC remains the lowest responsible bidder.

Form "B"
PURCHASE OF PUBLIC IMPROVEMENT

C of C 84-100a

Recommendation No. 134-24 File No. 78-24 Date September 11, 2024

Director's Signature _____ Department of Public Utilities

Board of Control Resolution No. _____, adopted _____

TO: The Honorable Mayor and Board of Control:

Under authority of Ordinance No. 274-2022 passed on April 11, 2022, sealed bids were opened and read by the Division of Purchases & Supplies on August 15, 2024 for the public improvement of Windows Repair and Replacement, Re-Bid, for the Division of Water.

We recommend that a public improvement be awarded upon a unit price to: SONA Construction, LLC (MBE/LPE), located at 7122 Harvard Avenue, Cleveland, Ohio 44104, as the lowest responsible bidder,

in the aggregate amount of: \$869,940.50.



Commissioner of Purchases & Supplies

6 prospective bidders received plans and specifications. 1 prospective bidder attended the optional pre-bid conference. 2 bids were received.

Second Bid: Weatherproofing Technologies, Inc. \$1,108,808.88

Office of Equal Opportunity Report:

This is a Vertical Construction Project. The reduced OEO goal is 15% MBE. Contractor's bid documents demonstrate subcontracting commitments sufficient to meet the established goals for this project.

Subcontractors:

Integrity Environmental Development, LLC	(MBE/CSB)	\$134,000.00	15.40%
East-West Construction Co., Inc.	(MBE/CSB)	\$100,000.00	11.50%
Mike's Painting, LLC	(N/A)	\$350,000.00	0.00%

Remarks:

This project is subject to the bid discount policy. After the bid discount is applied, SONA Construction, LLC is the lowest responsible bidder.

Exhibit B

COMMUNITY BENEFITS AGREEMENT (CBA)

This Community Benefits Agreement (“CBA”) is entered into as of this 27th day of February 2026 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 **Twenty-One Six Development, LLC, an Ohio limited liability company a/k/a TurnDev** and/or its designee’s (“Developer”), with its principal office located at 3900 Park East Dr. #200, Beachwood, Ohio, 44122, 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 over \$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 **\$45,267,441**, for which the following City financial assistance is anticipated:

• TIF (ED)	<u>\$3,745,518</u>
<u>Total:</u>	<u>\$3,745,518</u>

CITY OF CLEVELAND

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 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 certified low-income Cleveland 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 Developer 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 Developer substantiates its inability to meet the certified subcontractor commitments of its Subcontractor Utilization Plan, the Developer may request a change to its 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 Developer has demonstrated, by documentation satisfactory to the OEO, its good-faith efforts to meet its commitments, which efforts were unsuccessful due to circumstances beyond the Developer's control.

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

- i. Developer's good-faith efforts to meet its subcontracting commitments;
 - ii. Developer's good faith efforts to mitigate the loss of certified subcontractor participation;
 - iii. Developer's good-faith efforts to improve its certified subcontractor participation in other components of the development project;
 - iv. The feasibility and availability of certified subcontractors; and
 - v. Any other factor(s) that may be appropriate for subcontractor commitment change request consideration.
- B. Developer shall employ and/or cause its contractors/subcontractors to employ Cleveland residents for twenty percent (20%) of the total *Construction Worker Hours*.
 - C. Developer 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 for many MBE/FBEs is the lack of proven success on commercial construction projects.

To mitigate this barrier to entry, the Developer 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 but shall not end before the project completion date in the event the date of the project completion extends beyond 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 Developer (and/or its General Contractor) shall work with the City and the OEO to 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 Developer.

Developer (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 Developer and/or its General Contractor choose to participate in a separate Mentor/Protégé program outside of OEO and fail to identify any MBE or FBE subcontractors to meet the Mentor/Protégé requirements, the Developer and/or General Contractor shall promptly notify the City representative in OEO and submit documentation showing good faith efforts that such requirement has not been met due to circumstances outside the Developer and/or General Contractors control. Thereafter, OEO will assist the Developer and/or its General Contractor in identifying certified subcontractors to meet this requirement.

- i. Once the Developer has identified an OEO-approved Protégé firm, the Developer has sixty (60) days to conduct the first Mentor/Protégé meeting and submit documentation to OEO.
- ii. Thereafter, the Developer shall submit quarterly reports to OEO in the normal course under the direction provided by the OEO until the conclusion of the Mentor/Protégé relationship outlined in the Mentor/Protégé agreement.

4. **Workforce Development:** A key objective of the City is to support local businesses in effectively addressing their workforce needs. The Developer and the Developer's 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 Developer, in its sole discretion, determines that they meet the qualifications specified for the relevant position. The Developer and the Developer's General Contractor shall also encourage their subcontractors to give first consideration to hiring job candidates referred by *Greater Cleveland Works*.

5. **Apprenticeship Participation:** The Developer 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 Developer or members of the Developer's team shall work with the City and OEO to 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 enrolled in a community college.

The requirements associated with this effort, including the minimum number of interns employed by the Developer 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 Developer shall meet with community stakeholders throughout the Development Project, as described in **Section 5 of Schedule A.**

Meetings will be held in a forum, in cooperation with the City Council representative and/or the Community Engagement Specialist assigned by OEO, for the relevant City Ward(s) and the local Community Development Corporation (CDC), if applicable, to gather community input on the

Development Project.

8. **Reporting:** The Developer shall provide bi-monthly subcontractor utilization reports to the OEO in the normal course, utilizing the OEO's B2GNow and LCPtracker applications. The Developer 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 Developer has 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 Developer and the City shall be described in **Sections 7 through 12 of Schedule A.** These additional community benefits shall have the same value and significance as any community benefits listed in this agreement and shall be enforced in accordance with the penalty terms described in **Sections 7 through 12 of Schedule A.**
10. **Default/Penalty:** In the event that the City determines that the Developer has failed to fulfill the requirements of this Agreement, the City shall be entitled to damages. If the Developer does not cure such failure to the reasonable satisfaction of the City within 30 days of receiving such written notice, the City may assess a penalty against the Developer, 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 the Developer fails to meet the MBE, FBE, or CSB subcontractor utilization goals and 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:
 - 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 Developer has received tax increment financing (TIF) and has failed to meet the MBE/FBE/CSB goals, the city may assess 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 Developer fails to meet the *Resident Construction Worker Hours* goal of this Agreement and 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 against the Developer 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 Developer does not meet the Low-Income Residents goal of this Agreement and the OEO reasonably determines that Developer 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, excluding the forgone value of a residential or commercial multi-family tax abatement.

D. **Mentor/Protégé Program**: If the Developer fails to meet the Mentor/ Protégé requirement of this CBA and the Developer 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 3 of Schedule A**.

E. **Apprenticeships/Pre-apprenticeships**: If the Developer fails to meet the Apprenticeship/Pre-apprenticeship commitments of this CBA and the Developer 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**.

F. **Internships**: If the Developer fails to meet the internship requirements of this CBA and 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 Developer fails to meet the community engagement requirement of this CBA and the Developer 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 5 of Schedule A**.

H. **Reporting**: If the Developer fails to meet the quarterly reporting requirement of this CBA and the Developer does not cure such failure to the reasonable satisfaction of the City within 10 business 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. **Additional Community Benefits**: If the Developer fails to meet any of the additional community benefits requirements of this CBA and the Developer 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 per benefit in **Section 7 through 13 of Schedule A**.

J. **Egregious Defaults/Acts**: If the City determines that the Developer’s defaults are egregious, the City may disqualify the Developer 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 Developer’s performance or other matters;

- iv. Accumulation of like documented complaints regarding the Developer's 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 1 through 13 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 Developer that provides community benefits;
- C. "Community Benefits" means the amenities, benefits, or commitments described in C.O. Sections 190A.02 and 190A.03;
- D. "Developer" 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" refers to the total hours worked on a Construction Contract by both Skilled and Unskilled Construction Trade Workers, regardless of 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 with 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 where 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 a one-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:** The Parties acknowledge that they are entering into this CBA voluntarily and with full reservation of all rights and remedies available to them under this CBA and applicable law. Nothing in this provision shall be interpreted as a waiver of any Party's ability to assert claims, defenses, or challenges relating to the validity, enforceability, or performance of this CBA in the event of a dispute, alleged breach, or change in circumstances. Each Party expressly preserves all rights to seek judicial relief as permitted by law
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 (i) a material community benefit identified in Schedule A or (ii) the penalty associated with failure to comply with a material community benefit as described in Schedule A must be agreed upon in writing and executed by both parties. Upon such agreement, the amended Schedule A shall be incorporated into this agreement.

[Signature pages to follow]

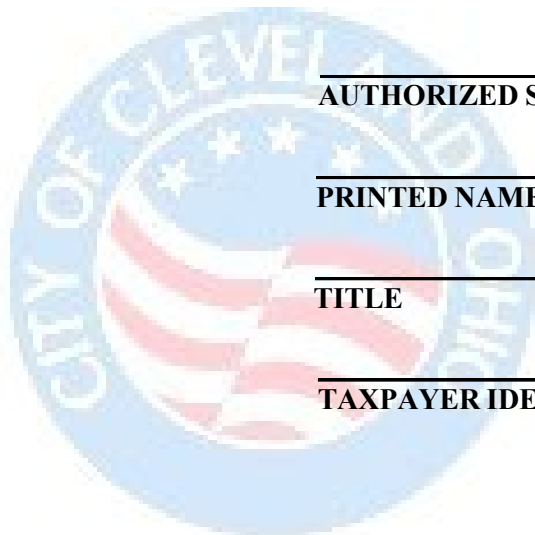
CITY OF CLEVELAND

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

CITY OF CLEVELAND

TYSON MITCHELL **DATE**
DIRECTOR
**MAYOR'S OFFICE OF EQUAL
OPPORTUNITY**

**TWENTY-ONE SIX DEVELOPMENT LLC,
A/K/A TURNDEV**



AUTHORIZED SIGNOR **DATE**

PRINTED NAME

TITLE

TAXPAYER IDENTIFICATION NO.

CITY OF CLEVELAND

HELLER – KELLER – KOHN

Last Revised: October 2025

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

PROJECT INFORMATION

PROJECT NAME:	<i>Heller-Keller-Kohn</i>	The project entails renovation of the 3- and 4-story buildings comprising 99,946 square feet at the Project Site, into 100 residential apartments with resident amenities and approximately 2,261 square feet of renovated office and retail space on the lower levels. The development will also include 108 parking spaces.	EXPECTED PROJECT COSTS:	ESTIMATED CITY FINANCIAL ASSISTANCE:
DEVELOPER NAME:	Twenty-One Six Development, LLC aka TurnDev		<u>\$45,267,441</u>	
PROJECT ADDRESS:	2202 Superior Avenue and 2230 Superior Avenue Cleveland, Ohio, 44114		EXPECTED HARD CONSTRUCTION COST:	
PRIME CONTRACTOR:	Independence Construction		<u>\$26,719,379</u>	

SECTION	COMMUNITY BENEFIT AGREEMENT REQUIRED ELEMENTS		KEY CBA CONTRACT TERMS FOR THIS PROJECT	MAXIMUM NON-COMPLIANCE PENALTY	KEY REPORTING DATES POST-SIGNED AGREEMENT
	1	CH. 190A.02 (a)(1):	CSB Participation Goal (8%)	<u>\$2,137,550</u>	<u>\$64,260</u>
2	CH. 190A.02 (a)(2):	FBE Participation Goal (1%)	<u>\$1,870,557</u>	<u>\$56,447</u>	
3	CH. 190A.02 (a)(3):	MBE Participation Goal (15%)	<u>\$4,007,907</u>	<u>\$120,487</u>	
Total Diverse Subcontractor Utilization Amount (30%)		<u>\$8,015,814</u>	<u>\$240,973</u>		
4	CH. 190A.02 (b)(1):	Cleve. Resident Construction Worker Hours	20% Requirement	<u>\$30,122</u>	LCPtracker: Bi-Monthly
5	CH. 190A.02 (b)(2):	Low-Income Cleve Res. Construction Worker Hrs.	4% of the 20% Requirement	<u>\$6,024</u>	
3	CH. 190A.02 (c):	Mentor/Protégé Program	Total of TWO (2) Mentor/Protégé Relationships	<u>\$20,000 per M/P</u>	Ongoing reporting: Quarterly
7	CH. 190A.02 (d)(1):	Apprenticeships	FOUR (4) Registered Apprentices/Pre-Apprentices	<u>\$5,000 per Apprentice</u>	Ongoing Reporting: Quarterly
8	CH. 190A.02 (d)(2):	Internships	TWO (2) Cleveland Resident Interns at the Rate of \$20 PER HOUR for a minimum of FIFTY (50) WORKED HOURS PER INTERN	<u>\$5,000 per Intern</u>	Hired Intern: 120 Days Ongoing reporting: Quarterly
5	CH. 190A.02 (e):	Community Engagement	THREE (3) Community Stakeholders' meetings,	<u>\$1,500 per Meeting</u>	Pre-Construction During Construction Post Construction

6 10	CH. 190A.02 (f): Reporting	The Developer shall provide <u>QUARTERLY</u> Community Benefits Reports to OEO	<u>Up to \$100 per</u> <u>day</u>		Dec. 1 st March 1 st	June 1 st Sept 1 st
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Developer Initial(s) _____ City of Cleveland, Director of OEO Initial _____

ADDITIONAL COMMUNITY BENEFIT AGREEMENT ELEMENTS

KEY CBA CONTRACT TERMS
FOR THIS PROJECTMAXIMUM
NON-COMPLIANCE PENALTY

7	1 1	CH. 109A.03 (c) Promote, support, and participate in workforce collaborations, similar to those supported in the manufacturing, information technology, and healthcare sectors, that expand job opportunities for communities of color and women.	The Developer and/or by way of its General Contractor agrees to work with the Built Environment Collaborative at Greater Cleveland Works to expand job opportunities for communities of color and women.	<u>\$10,000</u>
8	1 2	CH. 190A.03 (d) Host job fairs, contractor information, and networking sessions about upcoming contracting opportunities.	The Developer and/or its General Contractor will attend TWO (2) Community Benefits Resource Expos (CBRE)	<u>\$5,000 per CBRE</u>
9	1 3	CH. 190A.03 (e) Unbundle construction work into smaller bid packages of sizes suitable for competition by MBE, FBE, and CSB firms.	To the extent feasible, the Developer and/or its General Contractor will unbundle construction work into smaller bid packages for the Project will expand opportunities for MBEs, FBEs, and CSBs. The project will promote equitable participation and strengthen the local economy by simplifying the bidding process, offering technical assistance, and fostering partnerships.	<u>\$10,000</u>
10	1 4	CH. 190A.03 (h): Incorporating LEED principles and additional sustainable business practices into the design and construction of the Development Project	The Project will achieve Historic Preservation Enterprise Green certification	<u>\$5,000</u>
11	1 5	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.	The project will be tied into the Superior-Midway plan, incorporating pedestrian-scale lighting, benches, tree plantings, and new sidewalks.	<u>\$10,000</u>
12	1 6	Ch. 190A.03 (l) Use of Cleveland Public Power as the preferred electricity provider for the Project, to the extent feasible.	If feasible, the Project will integrate Cleveland Public Power (CPP) as the primary electricity provider, leveraging its reliable service, competitive rates, and commitment to supporting local communities and sustainable energy initiatives	<u>\$5,000</u>

The City of Cleveland and Developer agree to the above **Schedule A**. The parties have caused this instrument to be executed as of the day and year first above written:

CITY OF CLEVELAND – DIRECTOR OF OEO

BY: _____
NAME: TYSON T. MITCHELL, JD/LL.M,
TITLE: *DIRECTOR, OEO*
DATE:

**DEVELOPER – TWENTY-
ONE SIX DEVELOPMENT,
LLC A/K/A TURNDEV**

AUTHORIZED SIGNER: _____
NAME: JON PINNEY
TITLE: MANAGER
DATE:

Exhibit C



OEO "Schedule A"

ED 307- 45 Erieview - The Bell Project - Twain SLB III – 2 Phases

Handout 1A

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

PROJECT INFORMATION			
<p>OEO PROJECT NAME: ED 307 – 45 Erieview – The Bell Project – Twain SLB III DEVELOPER NAME: TWAIN SLB III, LLC PROJECT ADDRESS: 45 Erieview Plaza, Cleveland, OH 44113 GENERAL CONTRACTOR: Phase 1: Leopardo Construction Phase 2: n/a PROJECT MGR: Bobby Bruno DATE: 07-02-25</p> <p>Original CBA: 10-11-24 \$2,000,000 of financial assistance according to CBA</p>	<p style="text-align: center;"><u>PROJECT DESCRIPTION:</u></p> <p>Develop the former AT& T office building into 367 apartments, retail and office space located at 45 Erieview Plaza, Cleveland, OH 44113</p>	<p style="text-align: center;"><u>EXPECTED PROJECT COSTS</u></p> <p>EXPANDED CBA According to RB 7.2.25 Exhibit C's: Phase 1: \$129,732,500 Phase 2: \$5,000,000 Grand Total: \$134,732,500</p>	<p style="text-align: center;"><u>TOTAL CITY FINANCIAL ASSISTANCE:</u></p> <p>According to RB 7.2.25 Exhibit C's: \$954,995 TIF + ??? Abatement TBD</p>

ORD. SECTION	LINE	COMMUNITY BENEFIT AGREEMENT REQUIRED ELEMENTS	KEY CBA CONTRACT TERMS FOR THIS PROJECT		MAXIMUM NON-COMPLIANCE PENALTY	KEY DATES
			Goal	Achieved as of 2/14/25		
					In the CBA	
Phase 1	1	01.Ch. 190A.02 (a)(1): CSB Participation Goal	\$ 6,667,651.68	\$15,720,799.67	\$271,744.96 within 90 days of execution of the CBA. Penalty Payments, up to \$200 per day, Capped at \$20,000.	B2Gnow: Monthly
	2	01.Ch. 190A.02 (a)(2): FBE Participation Goal	\$ 5,834,195.22	\$15,192,312.51		
	3	01.Ch. 190A.02 (a)(3): MBE Participation Goal	\$ 12,501,846.90	\$335,369.52		
	4	Total Diverse Subcontractor Utilization Minimum Anticipated Spend	\$ 25,003,693.80	\$31,248,481.70		
Phase 1	5	02.Ch. 190A.02 (b)(1): Cleve Resident Construction Worker Requirement	20% Requirement			LCPtracker: Monthly
	6	02.Ch. 190A.02 (b)(2): Low-Income Cleve Res. Construction Worker Goal	4% of 20% Requirement			
Phase 2 Section 1	7	01.Ch. 190A.02 (a)(1): CSB Participation Goal	\$ 400,000.00 (8%)		Up to \$ 20,000.00	B2Gnow: Monthly
	8	01.Ch. 190A.02 (a)(2): FBE Participation Goal	\$ 350,000.00 (7%)			
	9	01.Ch. 190A.02 (a)(3): MBE Participation Goal	\$ 750,000.00 (15%)			
	10	Total Diverse Subcontractor Utilization Minimum Anticipated Spend	\$ 1,500,000.00 (30%)			
Phase 2 Section 2	11	02.Ch. 190A.02 (b)(1): Cleve Resident Construction Worker Requirement	20% Requirement			LCPtracker: Monthly
	12	02.Ch. 190A.02 (b)(2): Low-Income Cleve Res. Construction Worker Goal	4% of 20% Requirement			
4	13	04.Ch. 190A.02 (d)(2): Internships	4. An important goal of the City is to assist with the career planning and development of City residents who are High School students, disadvantaged Adults, and/or Community College students. As such, Developer/Owner shall contribute \$4,000 for the benefit of such internship/development program into the City of Cleveland Community Equity fund within 90 days of execution of this CBA. (See section 4 on page 4 of CBA)		\$4,000.00 within 90 days of execution of the CBA. Up to \$100 per day, Capped at \$10,000.	

Developer's Initials & Date



7/22/25

and OEO Director's Initials & Date

ORD. SECTION	LINE	COMMUNITY BENEFIT AGREEMENT REQUIRED ELEMENTS	KEY CBA CONTRACT TERMS FOR THIS PROJECT	MAXIMUM NON-COMPLIANCE PENALTY	KEY DATES
5	14	05.Ch. 190A.02 (e): Community Engagement	10. Developer/Owner agrees to sponsor 2 outreach events within the City of Cleveland to educate emerging developers on relevant topics (e.g. New Market Tax Credit, historic tax credits, PACE financing, and/or strong balance sheets) within 2 years of this CBA. (See Section 10 on page 6 of CBA for details)	the City may assess a one-time penalty of up to \$20,000.	
6	15	06.Ch. 190A.02 (f): Reporting	11. Reporting. Commencing on June 1 st (updated), Developer/Owner shall provide semiannual community benefit reports to the Office of Equal Opportunity regarding CBA compliance in summary form including, but not limited to, the status of each community benefit, actions Developer has taken to meet each community benefit, and the additional actions needed to satisfy community benefit. (See Section 11 on page 6 of CBA for details)	Up to \$100 per day until such failure is cured by Developer, Capped at \$20,000.	CBA Reports: Semi-annual Sept 1st, March 1st 1st CBA Report is due on Sept 1 st Date Changed from April to Sept 1st to be consistent with all our CBAs.
9	16	09.Ch. 190A.03 (c): Workforce collaborations	5. An important goal of the City is to assist local businesses in successfully addressing their workforce needs. Developer agrees to request referrals from Greater Cleveland Works™ / OhioMeansJobs / Cleveland-Cuyahoga County and give first consideration to hiring job candidates referred by Greater Cleveland Works™ / OhioMeansJobs/Cleveland-Cuyahoga County and provided that Developer and/or its tenant determines that such job candidates meet the qualifications specified for the relevant position. (See Section 5 on page 4 of CBA for details)		
16	17	16.Ch. 190A.03 (j): Affordable housing units.	6. The City of Cleveland is committed to ensuring that affordable housing exists throughout the City and Developer/Owner is committed to providing workforce housing to residents . As such, Developer agrees that a minimum of 5% of the total residential units within this Project shall be set aside and restricted for households earning at or below approximately 120% of the Area Median Income for the Cleveland MSA . Reasonable efforts shall be made to disperse rental units throughout the building. Workforce housing units will be built to the same standards as market rate units. Rental affordability shall be maintained at least for the duration of seven years . (See Section 6 on page 4 of CBA for details)	The City may assess a penalty of up to \$20,000 per unit.	
18	18	18.Ch. 190A.03 (l): Cleveland Public Power	9. Developer agrees to utilize Cleveland Public Power (CPP) as its sole electricity provider for a period of at least 5 years . After one year of service, if the cost of electricity exceeds 110%, Developer/Owner may contact CPP and provide 90 days notice of intent to change suppliers and provide CPP an opportunity to price match. (See Section 9 on page 5 of CBA for details)	The City may assess a one-time penalty of up to \$100,000.	

Developer's Initials & Date



7/22/25

and OEO Director's Initials & Date

ORD. SECTION	LINE	COMMUNITY BENEFIT AGREEMENT REQUIRED ELEMENTS	KEY CBA CONTRACT TERMS FOR THIS PROJECT	MAXIMUM NON-COMPLIANCE PENALTY	KEY DATES
21	25	21.Ch. 190A.03 (o): Meet other community needs	<p>7. Developer/Owner supports nonprofits and recognizes the challenges nonprofits face in today's economy. To further that support, Developer/Owner will provide the following:</p> <p>(a) Access to pool level conference room at no charge for a period of at least 5 years with a maximum number of 12 events per year and</p> <p>(b) Access to second floor meeting space at least 4 times per year at a reduced rate for a period not to exceed 5 years. In the alternative, if access to second floor becomes unavailable or at Developer's discretion, Developer/Owner will make a community benefit equity fund contribution in the amount of \$7,000 payable within 120 days of execution unavailability.</p> <p>(See section 7 on page 5 of CBA)</p>	<p>Nonprofit Space: the City may assess a one-time penalty of up to \$20,000.</p> <p>If Developer/Owner fails to make the second floor available for public access or does not make the Community Benefits Equity Fund contribution in 7(b), the City may assess an additional penalty of up to \$200 per day until such failure is cured by Developer/Owner, Capped at \$10,000.</p>	
23	27	23.Ch. 190A. 03 (q): Other negotiated community benefits	<p>8. Developer/Owner supports entrepreneurs/business and desires to support local initiatives, particularly for racial and socio disadvantaged groups that have been historically underrepresented in the business community. To further that support, Developer/Owner will</p> <p>(a) allocate one (1) retail space or micro-unit retail for artisans and/or small business at a reduced rate of 50% of the market rate for a period of at least 5 years.</p> <p>(See section 8 on page 5 of CBA)</p>	<p>Retail Space. If Developer/Owner fails to meet the requirements in section 8 of this CBA, the City may assess a one-time penalty of up to \$30,000.</p>	

The City of Cleveland and Developer agree to the above Schedule A. The parties have caused this instrument to be executed as of the day and year first above written:

CITY OF CLEVELAND – OEO

By: _____
 Name: Tyson T. Mitchell, JD/LL.M
 Title: Director, OEO
 Date: _____

DEVELOPER

By: _____
 Name: Quade Wood
 Title: Twain SLB III, LLC
 Date: 7/22/25

Developer's Initials & Date: _____ and OEO Director's Initials & Date: _____ Page 3 of 3



ACKNOWLEDGEMENT of OEO CONTRACT COMPLIANCE REQUIREMENTS

City of Cleveland
Office of Equal Opportunity
Contract Compliance
601 Lakeside Avenue, Room 335
Cleveland, Ohio 44114

Phone: 216.664.4151 • Fax: 216.664.3870 • Email: [REDACTED] • Hours: 9 am to 6 pm Weekdays

PROJECT INFORMATION		RECIPENT OF FINANCIAL ASSISTANCE:																													
ED 347 - The Bell - Phase 2 - Erievue (CBA LW FL TIF) Related to ED 307 (Twain SLB III LLC)		Twain SLB III LLC or Related Affiliate or Designee																													
APPLICATION / PRE-CONSTRUCTION / OEO COMPLIANCE REVIEW MEETING																															
<p>Section 1: Calculations below are based on the "Preliminary Schedule or Exhibit C – Sources and Uses of Funds" for ED projects and/or Schedule "B" for CD projects issued prior to and/or discussed at the Application Meeting. Note that the ultimate goals in terms of dollars are based on the Total "Hard Construction" Costs as listed in Exhibit C in the Executed Contract. The percentages listed below are set unless a Subcontracting Goal Change Request has been approved for the project. The estimates below are for discussion / demonstration purposes only.</p>																															
<p>Total Value of City of Cleveland Financial Assistance 1, ED: 30-year 100% Non-School TIF: \$ 954,994</p>																															
<p>This is only for the commercial portion of the work. Potential Non-compliance Penalty below is based on the executed CBA agreement.</p>																															
<p>Section 2: The City of Cleveland Mayor's Office of Equal Opportunity (OEO) is committed to ensuring that certified Minority-owned Business Enterprises (MBEs), Female-owned Business Enterprises (FBEs) and Cleveland Area Small Businesses (CSBs) are given an opportunity to perform on City of Cleveland contracts in a fair and equitable manner. One of the ways that OEO opens opportunities for certified MBE, FBE and CSB firms is through the use of subcontractor participation goals on City of Cleveland contracts or on projects which receive City of Cleveland Financial Assistance.</p>																															
<p>Section 3: Cleveland Area Business Code (Chapter 187): Local Certified Subcontracting Participation Goals are based upon "Hard Construction Costs" and these goals apply when \$50,000 or more of City Benefits / Financial Assistance are extended. To search for certified firms, go to: https://cleveland.diversitycompliance.com/</p>																															
<p>Applies * A) Local Certified Subcontracting Participation Goals – Public Improvement Contract: Vertical Construction (Threshold is \$50k+)</p>																															
<table border="1"> <thead> <tr> <th>A</th> <th>B</th> <th>E</th> <th></th> </tr> </thead> <tbody> <tr> <td>Local Certified Subcontracting Goals</td> <td>Goal %</td> <td>Grand Total</td> <td>Each Goal is evaluated independently.</td> </tr> <tr> <td>If your Total Project Costs including "Hard Construction" + "Contingency" Costs =</td> <td>100%</td> <td>5,000,000</td> <td>Penalty % = Maximum Penalty \$</td> </tr> <tr> <td>Certified Cleveland Small Business (CSB) Goal =</td> <td>8%</td> <td>400,000</td> <td>= \$4,761.90</td> </tr> <tr> <td>Certified Female Business Enterprise (FBE) Goal =</td> <td>7%</td> <td>350,000</td> <td>= \$4,166.67</td> </tr> <tr> <td>Certified Minority Business Enterprise (MBE) Goal =</td> <td>15%</td> <td>750,000</td> <td>= \$8,928.57</td> </tr> <tr> <td>Overall Total Local Firms Certified by the City of Cleveland Subcontracting Goal =</td> <td>30%</td> <td>1,500,000</td> <td>100.00% = \$17,857.14</td> </tr> </tbody> </table>		A	B	E		Local Certified Subcontracting Goals	Goal %	Grand Total	Each Goal is evaluated independently.	If your Total Project Costs including "Hard Construction" + "Contingency" Costs =	100%	5,000,000	Penalty % = Maximum Penalty \$	Certified Cleveland Small Business (CSB) Goal =	8%	400,000	= \$4,761.90	Certified Female Business Enterprise (FBE) Goal =	7%	350,000	= \$4,166.67	Certified Minority Business Enterprise (MBE) Goal =	15%	750,000	= \$8,928.57	Overall Total Local Firms Certified by the City of Cleveland Subcontracting Goal =	30%	1,500,000	100.00% = \$17,857.14	<p>Chapter 187 Non-Compliance Penalty may be as high as 25% of the Total City Financial Assistance:</p> <p>Grand Total = \$17,857.14</p>	
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<p>Section 4: Fannie M. Lewis Cleveland Resident Employment Code (Chapter 188): Cleveland Resident Employment and Certified Low Income Resident Employment applies when \$100,000 or more of City Benefits / Financial Assistance are extended (whether loans, grants, TIFs or Tax Abatements)</p>																															
<p>Applies * (B) Cleveland Resident Requirement and Goal (Threshold is \$100k)</p>																															
<p>1. Cleveland Resident Requirement = 20% of the Total Construction Project Hours For example, if "Total Construction Projects Hours" = 1000 hours then 200 hours must go to Cleveland Resident Construction Worker(s). *** To avoid full penalty assessment, all subcontractors working on site must report hours in LCPTracker. ***</p>		<p>Maximum Chapter 188 Non-Compliance Penalty \$1,785.71</p>																													
<p>2. Cleveland Low Income Resident Goal = 4% of the 20% Cleveland Resident Requirement For example, if "Total Construction Projects Hours" = 1000 hours then 8 hours must go to Cleveland Low Income Resident Construction Worker(s).</p>		<p>+ \$357.14</p>																													
<p>Chapter 188 Non-Compliance Penalty may be as high as</p>		<p>Grand Total = \$2,142.86</p>																													
<p>Non-compliance Penalty Formula = (1/8) x (1 %) x (City's Total Financial Assistance) x (# of percentage short fall)</p>																															
<p>Section 5: Community Benefits Agreement (CBA) (Chapter 297 and Chapter 191A): Contractually requires developers to provide and document Community Benefits in exchange for City of Cleveland Financial Assistance.</p>																															
<p>Applies * (C) Community Benefits Agreement (Threshold is \$250k) – See Handout #1A and the actual CBA for details.</p>																															
<p>Chapter 190A.07 Non-Compliance Penalty may be as high as Full amount of the Total City Financial Assistance:</p>		<p>Grand Total = \$ 954,994 based on the latest CBA</p>																													
RECIPENT OF FINANCIAL ASSISTANCE OFFICIAL REPRESENTATIVE'S ACKNOWLEDGEMENT																															
<p>Section 6: By signing below, you are stating that you met with a Representative of the Mayor's Office of Equal Opportunity (OEO) and received handouts and understand the OEO goals established for this project. In addition, you are stating that you have been advised of the potential penalties and understand the reporting (online via B2Gnow and/or LCPTracker) and documentation requirements needed by OEO to determine compliance with City of Cleveland OEO Code.</p>																															
<p>Overall Ch. 187, Ch. 188 & Ch. 190 Non-Compliance Penalties</p>		<table border="1"> <thead> <tr> <th>Ch. 187</th> <th>+ Ch. 188</th> <th>= Subtotal</th> <th>+ Ch. 190</th> <th>= Grand Total</th> </tr> </thead> <tbody> <tr> <td>= \$17,857.14</td> <td>+ \$2,142.86</td> <td>= \$20,000.00</td> <td>+ Rest of the Financial Assistance</td> <td>= \$ 954,994</td> </tr> </tbody> </table>		Ch. 187	+ Ch. 188	= Subtotal	+ Ch. 190	= Grand Total	= \$17,857.14	+ \$2,142.86	= \$20,000.00	+ Rest of the Financial Assistance	= \$ 954,994																		
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<p>Ch. 190A.07: Failure by a Developer to comply with any provisions of a CBA as determined by the City in its sole discretion may result in any one or more of the following, as provided in the CBA, subject to applicable notice and cure provisions:</p> <ol style="list-style-type: none"> denial or termination of City Financial Assistance. proportional recovery of previously provided financial assistance. and/or stipulated damages to be deposited into a community equity fund designated by the Director of Finance. 																															
<p>x <u>Quade Wood</u> Full Name (Print)</p>		<p><u>Authorized Signer</u> Title (Print)</p>																													
		<p><u>[Signature]</u> Signature</p>																													
		<p><u>7/22/25</u> Date</p>																													
<p>OEO WEBEX PRE-CONSTRUCTION PRESENTER:</p>		<p>Wednesday, July 09, 2025 @ 2 PM by Barbara Esperon</p>																													

SUBCONTRACTOR PARTICIPATION GOAL CHANGE OPTIONS

If **prior to any construction beginning**, if the Developer and/or General Contractor (Recipient) believes they are **unable to achieve** the Cleveland Area Business Goals of **15% MBE, 7% FBE, and 8% CSB** for the Project; the Recipient must perform one of the following:

- Section 7: Schedules 1 – 4:** The Recipient must complete and submit Schedules 1 – 4 found in **Handout #9** and include a letter explaining the **good faith effort** they employed to hire City of Cleveland Certified firms to their **Economic Development Project Manager**. OEO will **evaluate the schedules** to determine if the Recipient has made a good faith effort to subcontract with MBE, FBE and/or CSB firms. If OEO determines that the Recipient has made a good faith effort, the MBE/FBE/CSB subcontractor participation indicated in the schedules will become the new goals for the contract. OEO will provide a response within 10 business days.



- Section 8: Goal Change Request:** If, in cooperation with the Department of Economic Development, the Recipient can demonstrate that achieving the goals for MBE, FBE, and/or CSB subcontractor participation is **not possible or practical** given the nature of the contract prior to construction being performed, the Department of Economic Development may submit a **Goal Change Form** for the project on behalf of the Recipient.

This change will be accepted **only if the nature of the work** performed on the contract inherently limits subcontracting opportunities, such as the purchase of **specialized products or services**. The Recipient must provide a **written explanation** including anticipated cost(s) or subcontractor agreement or purchase order on (1) how the **nature of the work** to be performed on the contract inherently limits subcontracting opportunities and/or provide (2) description of the **specialized products or services** and/or provide (3) **good faith narrative and documentation as found in Handout #5** to be included in or with the Goal Change Form. OEO and/or ED will provide a response within 10 business days.

Please email goal change request and supporting good faith effort documentation to Barbara Esperon at [redacted]

Goal Change / Waiver for the Establishment of New Goals

Project: ED 999 - Sample Project
Goal Change: #1: Mass Timber and #2: Elevator

	A	B	C	D1	D2	E	F	G
	Type in Original Award	Original Goals Award Percent	Type in negative value Goal Change #1	Type in negative value Goal Change #2	Updated Goals	New Award Percent	=E/F	=Orig. Contract * F
GC Contract	\$1,000,000	100%	(\$100,000)	(\$205,000)				
CSB Goal	\$80,000	8.00%	(\$8,000)	(\$16,400)	\$55,600	5.56%		\$55,600
FBE Goal	\$70,000	7.00%	(\$7,000)	(\$14,350)	\$48,650	4.87%		\$48,650
MBE Goal	\$150,000	15.00%	(\$15,000)	(\$30,750)	\$104,250	10.43%		\$104,250
Total	\$100,000	30.00%	(\$30,000)	(\$61,500)	\$208,500	20.85%		\$208,500

OEO EXAMINES PRIMARILY THE FOLLOWING TO DETERMINE "GOOD FAITH EFFORTS":

Section 9: Chapter 187 - Cleveland Area Business Code Good Faith Efforts Evaluation Protocol -

- Opportunities** - Opportunities for Subcontracting. Any opportunities a project presents for subcontracting part of the work is determined; from the nature of project, scope of services, and what other bidders propose to subcontract. In some cases, you may need to unbundle portions of the project to increase subcontracting opportunities.
- Availability** - Availability of CSB / MBE / FBE Potential Subcontractors. OEO takes into consideration the number of CSB / MBE / FBE firms within the Cleveland Contracting Market, as applicable, that are listed on the **CSB / MBE / FBE Registry** (www.cleveland.diversitycompliance.com) for each potential area of subcontracting.
- Commitment** - Developer and/or General Contractor's Commitment to CSB / MBE / FBE Subcontractors. OEO reviews the Project's B2Gnow Audits to assess the **total dollar amount paid to certified CSB / MBE / FBEs** subcontractors and compares it to original goal dollar amounts.
- Solicitation & Documentation** - Developer and/or General Contractor's Efforts to Subcontract to CSB / MBE / FBE Subcontractors. The Developer and/or General Contractor must demonstrate on either the (1) **OEO Schedule 4** (as shown in **Handout #09**), the **impracticality** or unavailability to utilize certified CSB / MBE / FBE subcontractors or (2) in the **Good Faith Efforts narrative and supporting documentation** (as shown in **Handout #05**). The Developer and/or General Contractor must document a sufficient number of contacts made to CSB / MBE / FBEs, explaining the unavailability and/or impracticality.

Section 10: Chapter 188 - Fannie M. Lewis Cleveland Resident Employment Code Significant Efforts Protocol for Evaluating Low Income Cleveland Resident Goal Attainment Good Faith Efforts - Pass / Fail Outcome (3 out of 5 must be present and a score of 3 is needed to pass).

- Were any actions taken by the Developer and/or General Contractor to attempt compliance? Was "Ohio Means Jobs" contacted? Apprenticeship programs? Did they achieve any portion of the low income goal?
- Was contact made with OEO to discuss possible shortfalls before or during the project & not at the end and/or after completion? Did the Developer and/or General Contractor follow the advice and direction of the OEO monitor?
- Were there any special circumstances surrounding the project? (i.e. Mayor's Emergency)
- Was the Resident Hour requirement attained? (20% or greater)
- Were the Developer, General Contractor, and/or Parties involved routinely in compliance with Chapter 188? (Cleveland Resident Requirement, Low Income Cleveland Resident Goal, Chapter 188 Reporting in LCPracker)