



**COMMISSIONERS' ORDINANCE NO. 0-16-19**

AN ORDINANCE OF THE CITY OF COVINGTON, KENTUCKY (THE "CITY") AMENDING COMMISSIONERS' ORDINANCE NO. O-58-12, WHICH ESTABLISHED A DEVELOPMENT AREA FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN THE CITY, IN ORDER TO REVISE THE DEFINITIONS FOR REDEVELOPMENT ASSISTANCE AND PROJECT COSTS AND MAKE OTHER CLEANUP LANGUAGE UPDATES; TO APPROVE AN AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT BETWEEN CITY, THE COUNTY OF KENTON, KENTUCKY, SPECIAL TAXING DISTRICTS, AND THE COVINGTON ECONOMIC DEVELOPMENT AUTHORITY, INC., INCLUDING AN AMENDED DEVELOPMENT PLAN, AND TO AUTHORIZE THE MAYOR AND OTHER OFFICIALS TO TAKE SUCH OTHER APPROPRIATE ACTIONS AS ARE NECESSARY OR REQUIRED IN CONNECTION WITH THE ESTABLISHMENT OF THE DEVELOPMENT AREA.

WHEREAS, the City of Covington, Kentucky ("the City"), by virtue of the laws of the Commonwealth of Kentucky (the "State"), Kentucky Revised Statutes, specifically Sections 65.7041 to 65.7083, as may be amended (the "Act"), is authorized to, among other things, (1) establish a development area to encourage reinvestment in and development and reuse of areas of the City, (2) enter into agreements in connection with the establishment and development of a development area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a development area, and (4) designate an agency to oversee, administer and implement projects within a development area; and

WHEREAS, pursuant to Commissioner's Ordinance No. O-58-12, the City established a "development area" as defined in the Act to encourage reinvestment and development within such development area and to pledge a portion of the "incremental revenues" as defined in the Act generated from the development of such development area to provide redevelopment assistance and provide for the payment of Project Costs, Redevelopment Assistance and/or Approved Public Infrastructure Costs (as defined herein) within such development area; and

WHEREAS, the City therein identified a contiguous tract of previously developed land consisting of not more than three (3) square miles within the City, specifically described in Exhibit A to this Ordinance, that is in need of being redeveloped and which is not reasonably expected to be developed without public assistance; and

WHEREAS, there has been a substantial loss of residential, industrial or commercial activity within the Development Area, there is a high percentage of low income residents within the Development Area, more than half of the structures within the Development Area are deteriorated or deteriorating, there is a need for new public infrastructure to support new development within the Development Area, there is the presence of environmentally contaminated land within the Development Area and the conditions within the Development Area have negatively impacted the growth and development of the Development Area ; and

WHEREAS, the City determined to establish the Development Area as a development area pursuant to the Act to encourage reinvestment and development within the Development Area; and

WHEREAS, the City agreed to support and encourage development within the Development Area by pledging certain Incremental Revenues (defined below) to the payment of Bonds, or to otherwise provide Redevelopment Assistance or pay for Project Costs if bonds are not issued, under a Local Participation Agreement (defined below); and

WHEREAS, the City prepared and presented a “Development Plan”, as defined in the Act, for the consideration and adoption of the City proposing the redevelopment of the Development Area; and

WHEREAS, the City, as required by the Act, held a public hearing on November 20, 2012, after giving proper notice concerning the City’s intention to consider the adoption of the Development Plan; and

WHEREAS, the City determined that the adoption of the Development Plan and the establishment of the Development Area, and the amendments thereto, were for a public purpose and that the establishment and creation of the Development Area within the City is for the benefit and welfare of the City’s citizens; and

WHEREAS, since the establishment of the Development Area in 2012, changes in the way Incremental Revenues are utilized have been recommended, and amendments are necessary to the Development Area ordinance and the associated Local Participation Agreement and Development Plan; and

WHEREAS, the amendments apply to the entire City Center Covington Development Area established by O-58-12; and

WHEREAS, a narrative description of the proposed changes in accordance with KRS 65.7077 is provided as follows: the changes include redirecting Incremental Revenues to preferentially be utilized for public infrastructure costs for the Project, which is effectuated by changing the definition of “Redevelopment Assistance” and “Project Costs” in the Development Area establishing ordinance, and the accompanying Local Participation Agreement. Additional changes include changes to the Development Plan, which has been updated to remove projects which are no longer contemplated, provide additional clarity to those which have been further explored, and to add new projects which are now part of the anticipated pipeline of development; and

WHEREAS, the proposed changes will impact the original development plan by proposing new economic development projects, and by clarifying the preferred use of Incremental Revenues; and

WHEREAS, a description of the redevelopment assistance proposed to be employed, including the manner and location of such assistance, are contained in the

Development Plan, which is provided as an attachment to the Amended and Restated Local Participation Agreement; and

WHEREAS, the amendment does not change the boundaries of the Development Area, or require any zoning ordinance, comprehensive plan, master plan, map, buildings code or other ordinance amendments; and

WHEREAS, no new or different state or local tax revenues are pledged by any taxing district to support the provision of redevelopment assistance or projects identified in the amendment; and

WHEREAS, the City finds that the amendment does not increase the aggregate value of taxable real property included in all the redevelopment areas and the local development areas within the jurisdiction of the city or county to more than twenty percent (20%) of the total value of taxable real property within its jurisdiction; and

WHEREAS, the City held a public hearing on the proposed changes on April 2, 2019, after giving proper notice concerning the City's intention to consider the adoption of the Development Plan at a regular legislative meeting.

WHEREAS, the City deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

**NOW, THEREFORE,  
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY  
OF COVINGTON, KENTON COUNTY, KENTUCKY:**

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used in this Ordinance shall have the following meanings.

“Act” [~~means~~] ***shall mean*** Kentucky Revised Statutes, Sections 65.7041 to 65.7083, KRS 154.30-010 to KRS 154.30-090 and KRS 139.515.

“Agency” [~~means~~] ***shall mean*** the Covington Economic Development Authority, Inc, a Kentucky non-profit corporation.

“Approved Public Infrastructure Costs” shall have the meaning as provided in the Act.

“Bonds” [~~means~~] ***shall mean*** bonds or notes issued pursuant to the Act to pay for Project Costs, Redevelopment Assistance and/or Approved Public Infrastructure Costs, the payment of which Bonds shall be supported solely by Incremental Revenues pledged by the City, County, Special Districts and/or the State.

“Development Area” [~~means~~] ***shall mean*** a contiguous geographic area of previously developed land, located within the geographical boundaries of the City, which

is created for economic development purposes by this Ordinance in which a Project is proposed to be located and consisting of less than three square miles in area, with the actual size being approximately 475.75 acres, as more specifically described in Exhibit A attached to this Ordinance, to be known as the “City Center Covington Development Area”.

“Development Plan” [means] ***shall mean*** the Tax Increment Financing Development Plan for the Center City Covington Development Area attached to this Ordinance as Exhibit [D] ***C, as amended in accordance with the Act from time to time.***

“Establishment Date” [means] ***shall mean*** the date that the Development Area is established pursuant to the Act, ***O-58-12,*** and this Ordinance.

“Financing Costs” shall mean principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for Approved Public Infrastructure Costs. Project Costs or Redevelopment Assistance within the Development Area.

“Incremental Revenues” [means] ***shall mean*** the amount of revenues received by the City, County, Special Districts, with respect to the Development Area and the State with respect to a Footprint (as defined in the Act for projects within the Development Area that may be approved by the State) by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year.

“KEDFA” [means] ***shall mean*** the Kentucky Economic Development Finance Authority.

“Local Participation Agreement” shall mean the Local Participation Agreement between City, County, Special Districts and the Agency, attached to this Ordinance as ***Exhibit B, as amended in accordance with the Act from time to time.***

“Pledged Revenues” [means] ***shall mean*** that portion of the Incremental Revenues which are pledged by the City, County, Special Districts or State, pursuant to the Local Participation Agreement or a Tax Incentive Agreement, to the pay for Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs (as defined in the Act) for the Development Area

“Project” [means] ***shall mean*** the proposed comprehensive redevelopment project within the Development Area more specifically described in the Development Plan, being undertaken by various developers or public agencies.

“Project Costs” [means ~~any capital investment [(as defined in the Act)] expended to construct the Project.~~] ***shall mean, to the extent permitted as capital investments as defined in the Act, the following costs expended to construct the Project:***

- (a) Actual costs of acquisitions, construction, and reconstruction of public works and public improvements (e.g., streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, water and sewer facilities, flood and drainage facilities, and educational facilities), and new public buildings, structures, and fixtures;
- (b) Actual costs of acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures if said facilities are to be dedicated to the City as a public building, structure, or fixture;
- (a) Actual costs of acquisition of land and equipment, if to be dedicated to the City as public land or equipment;
- (b) Actual costs of clearing and grading of land;
- (c) Actual governmental predevelopment fees, (e.g. Sanitation District 1 connection fees, City and Planning and Development Services permitting fees, etc.), which shall not include any professional and technical fees; and
- (d) A developer or agency's direct professional service costs for public improvements, including architectural, planning, engineering, legal advice and services, and environmental impact or other studies.

“Redevelopment Assistance” [shall have the meaning as provided in the Act.] shall mean:

- (a) Loans to encourage the construction or rehabilitation of mixed-used, commercial and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions, to the extent such and loans help accomplish a stated City development goal in the City's current Tax Increment Financing Guidelines and Criteria, as may be amended from time to time;
- (b) Public plans or feasibility studies that will benefit and promote development within the Development Area, including but not limited to: economic development strategic plans, development site masterplans, parking feasibility studies, design standards, etc.;

- (c) Direct development, as defined in the Act, by a city, county, or agency of real property acquired by the city, county, or agency; and
- (d) To the extent permitted as redevelopment assistance as defined in the Act, assistance provided to a developer or agency for approved Project Costs within the Development Area.

“Special Districts” shall mean any special taxing district in the County (if any), except for the Covington Independent School District, that has agreed to pledge their Incremental Tax revenues from the Development Area from real property taxes and be a party to the Local Participation Agreement.

“State” shall have the meaning given such term in the recitals.

“Tax Incentive Agreement” shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 and KRS 139.515 of the Act between the Kentucky Economic Development Finance Authority and the Agency relating to projects eligible for a pledge of State Incremental Revenues under the Act within the Development Area.

1.2 All capitalized terms used in this Ordinance and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the City hereby makes the following findings and determinations with respect to the Development Area:

- (a) The Development Area consists of a contiguous tract of land that is not more than three (3) square miles. The actual size of the Development Area is 475.75 acres.
- (b) The Development Area constitutes previously developed land as required by KRS 65.7043.
- (c) The establishment of the Development Area **and the amendments thereto** will not cause the assessed value of taxable real property within the Development Area and within all “development areas” and “local development areas” (as those terms are defined in the Act) established by the City to exceed twenty percent (20%) of the assessed value of all taxable real property within the City. The assessed value of taxable real property within the Development Area for calendar year 2012 is \$233,337,300. The total assessed value of taxable real property within the City for the calendar year 2011 is approximately \$1,764,109,200. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within the City.

(d) There has been a substantial loss of residential, commercial or industrial activity within the Development Area. At one point in the past the Covington was the 2<sup>nd</sup> largest city in Kentucky, and its downtown area was the center for banking, retail and office development. Since 1930 the City's population has declined from 65,252 to 40,640, with much of this population loss being from the Development Area. The retail uses that previously occupied blocks within the City's downtown are virtually gone having moved to regional shopping centers in suburban locations. In the past Covington was the center for banking for the Northern Kentucky region with number local banks and saving and loan associations being headquartered within Covington's downtown area. Today as a result of bank consolidations the number of financial institutions has been significantly reduced and the downtown banks have transitioned from headquarter locations to branch offices. As a result of the loss of retail, banking and professional office, the number of employees working within the Development Area, and specifically within the downtown, has declined significantly. This combined with the additional employment losses caused by the recent depression have negatively impacted business activity within the Development Area. In addition, business tax collection from business license taxes and payroll taxes within the Development Area has declined recently. Estimates from the City's Finance Department show that as a result of the recent recession gross payroll within the City has declined over \$40M, which roughly equates to an overall loss of employment of 1,100 jobs, with much of this loss being from the Development Area.

(e) Forty percent (40%) ~~in~~ **or** more of the households are low-income households as defined by the Act. The Development Area covers several census tracts. Based on information from the 2005-09 American Community Surveys the percentage of low to moderate income levels within the four census tracts are tract 603 – 78.69%, tract 607 – 78.55%, tract 670 – 58.85% and tract 671 – 77.07%.

(f) More than fifty percent (50%) of the residential, commercial, or industrial structures are deteriorating or deteriorated. Based on the City's Property Maintenance Code, which sets forth minimum standards for the maintenance of existing properties, over 38% of the structures within the Development Area, are in need of minor to major assistance. In addition, the Development Area consists mostly of structures that are 75 years of age or older. Therefore, even those structures within the Development Area that are reasonably well maintain exhibit signs of age and deterioration. Furthermore, many of the buildings that meet code are in need of upgrades to meet what is expected for today's use, including upgraded electric and wiring needed for high speed computer use. Attached, as Exhibit "B" to the Development Plan, are pictures of properties within the Development Area showing some of the deteriorated conditions.

(g) There is a substantial presence of environmentally contaminated land within the Development Area. Brownfields have a number of serious environmental and health impacts to residents of Covington. The Kentucky Brownfield Programs estimates 8,000 brownfield sites in the Bluegrass State, and an inventory conducted by ~~[the Northern Kentucky Area Planning Commission]~~ **Planning and Development Services of Kenton County** identified approximately 250 of those brownfields in Covington and many are within the Development Area. Sites range from very small, 0.1

acres, to very large, in excess of over 25 acres, with the vast majority located in Covington's downtown area and along the riverfront, two major areas for redevelopment within the Development Area. These brownfield sites are remnants of the massive loss of population and manufacturing the City experienced between 1960 and 1990, and are usually passed over by developers due to their contamination and the perception that, as such, there is little in the way of economic viability. Previous uses for these empty industrial and commercial sites include auto and service stations, gas stations, dry cleaners, manufacturing facilities and warehouses. Covington's aging housing stock (the City ranks second in the state, behind only Louisville, with 21 historic districts) also presents a major concern, since these residences are at a significant risk for lead and asbestos contamination. Previous environmental assessments conducted using brownfield grant funds awarded to the City in 2008 have identified PAHs, PCBs, lead, and asbestos as common contaminants.

(h) There are inadequate improvements or substantial deterioration of public infrastructure to support the proposed new development within the Development Area. The City's 5-Year Capital Improvement Program estimates needed improvements to the City's public infrastructure of approximately \$25 million with available resources of \$5.3 million leaving an unfunded need balance of approximately \$20 million. This amount does not take into account the infrastructure required within the Development Area to support and encourage the development of the Project. Besides the normal infrastructure improvements that will be needed – street improvements, storm water provisions, utilities, etc. – the development of the Project as proposed will require significant new infrastructure. Additional structured parking will be needed to provide for the significant new investment anticipated from the projects identified in item 3.0 - The Development Program section of this Development Plan. In addition, the Action Plan recognizes the critical importance of new streetscape and other amenities to encourage the redevelopment of the Development Area.

(i) There is a combination of factors that substantially impairs the growth and economic development of the City and impedes the development of commercial or industrial property due to the Development Area's present condition and use. The challenges of encouraging the redevelopment of an older city's downtown, including the increased costs associated with redeveloping sites, building within the constraints of an established area, the infrastructure needed to support new development in a downtown setting, as well as the uncertainties from a construction and environmental standpoint, represent unique circumstances that impedes the development or redevelopment of the Development Area and arrests the development of the City.

(j) That the Development Area is not reasonably expected to be developed without public assistance. The extreme cost of the infrastructure that will be required to support the Project, the challenges to building within a downtown area, as well as other costs that will be required to encourage new development, especially in light of the challenges of obtaining financing for commercial projects today, make the need for incentives and public subsidy critical to the development of the Development Area. As a

practical matter no major development in the City's downtown in the recent past has taken place without some type of public assistance.

(k) That the public benefits of redeveloping the Development Area justify the public costs proposed. It is estimated that providing incentives through the establishment of the Development Area combined with other incentives available has the potential of increasing new investment within the Development Area by over \$500M and involve 450,000 square feet of new office, 500 new hotel rooms, 150,000 square feet of new retail and 1,000 new residential units. The work program of current or proposed projects within the Development Area set forth in Section 3 of this Development Plan includes projects with a combined capital investment of \$554M. The resulting increases in new City, County, Special District and other taxes from these developments will more than offset the incentives recommended through the establishment of the Development Area. While the Development Plan recommends the City commit 80% of the incremental increase in real property taxes and occupational taxes to pay for redevelopment assistance and projects costs within the Development Area, there will be still be a net benefit in new revenues to the City. First of all, the establishment of the Development Area will not impact the amount of any existing City tax revenues generated within the Development Area. Secondly, the City will retain 20% of the incremental increase in revenues from real property taxes and occupational taxes. Finally, the Project will generate other taxes to the City and other taxing districts, including personal property taxes, insurance premium taxes, etc, which will not be impacted by any pledge of incremental revenues through the establishment by the City of the Development Area.

(l) That the area immediately surrounding the Development Area has not been subject to growth and development through investment by private enterprise. The area immediately surrounding the Development Area has been subject to some investment by private enterprise, but only within a significant investment from the public through local, state and federal incentives.

SECTION 3. Establishment, Name, Boundaries. All that area described in Exhibit A to this Ordinance is located within the City and is hereby established and designated as the "City Center Covington Development Area". At the time of the enactment of [~~this Ordinance~~] **O-58-12**, the Development Area is less than three (3) miles.

SECTION 4. Establishment Date, Commencement Date, Termination Date. The Establishment Date is the **original** effective date of [~~this~~] Ordinance **O-58-12**. The Commencement Date of the Development Area is the date of execution of the **original** Local Participation Agreement, **attached to O-58-12**, and the Termination Date shall be exactly twenty (20) years subsequent to such date; provided, that if the Tax Incentive Agreement for a project within the Development Area, or the Local Participation Agreement has a Termination Date that is later than the Termination Date established in this Ordinance, the Termination Date for the Development Area shall be extended to the Termination Date of the Tax Incentive Agreement, or the Local Participation Agreement which ever is later. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The City hereby adopts the **amended** Development Plan attached to this Agreement as Exhibit C. The City's Board of Commissioners hereby finds and determines that public hearings **were [was]** duly held on November 20, 2012 **and April 2, 2019**, to solicit public comment on the Development Plan **and the amended Development Plan respectively**, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with City Clerk, and with the Fiscal Court Clerk of the County prior to the notices of the public hearings being advertised.

SECTION 6. Local Participation Agreement. The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver on behalf of the City the **Amended and Restated** Local Participation Agreement which authorizes the pledge of a portion of the Incremental Revenues of the City from the Development Area to the payment of Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs and Financing Costs, the form of **Amended and Restated** Local Participation Agreement to be signed by the Mayor on behalf of City, the County, Special Districts and by the Agency, shall be in substantially the form attached to this Ordinance, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the City. The approval of such changes by said officers, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of, as applicable, such **Amended and Restated** Local Participation Agreement by such officials.

SECTION 7. Special Fund. There is hereby established a Special Fund of the City to be known as the City Center Covington Development Area Tax Increment Fund, which will be maintained by the [Agency] **City**, into which the City covenants to deposit, and into which City officials are hereby authorized and directed to deposit all Pledged Revenues. The [Agency] **City** shall maintain the Special Fund unencumbered except for the purposes set forth in Section 8 of this Ordinance. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, this Ordinance, the Local Participation Agreement, and any applicable Tax Incentive Agreement, the Development Plan and related documents to pay for Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs and Financing Costs within the Development Area.

SECTION 8. Use of Pledged Revenues. Pledged Revenues shall be deposited by the City into the Special Fund created under Section 7 of this Ordinance and shall be used solely to: (a) pay directly for Redevelopment Assistance, Project Costs and Approved Public Infrastructure Costs (as defined in the Act) as determined from time to time by the City and Agency in accordance with the Local Participation Agreement and the Development Plan; (b) pay debt service and costs of issuance on the Bonds, including Financing Costs, which may be issued by the City or Agency (at the direction of the City issued to finance Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs; and (c) for such other purposes as may be determined by the City and Agency and that are appropriate and in compliance with the purposes set forth in this Ordinance, the Local Participation Agreement, any applicable Tax Incentive

Agreement, the Development Plan and the Act, as the same may be amended from time to time.

SECTION 9. Periodic Accounting / Analysis. Any entity, other than the City that receives financial assistance pursuant to the provisions of this Ordinance, whether in the form of a grant or loan or loan guarantee shall make a periodic accounting to the governing body of the City in accordance with the Act and the documents controlling such grant, loan or loan guarantee. The governing body of the City shall be required to review and analyze the progress of the development activity in the Development Area on an annual basis. Such reports shall, at a minimum, include a review of the progress in meeting the stated goals of the Development Area. The City Manager and other officials of the City and the Agency shall report to the governing body of the City during such reviews and shall when necessary invite developers to participate in the review process to report on the progress of their developments within the Development Area. The review and documentation supporting the review shall be forwarded to KEDFA in accordance with the Act for any projects that have been provided assistance by KEDFA.

SECTION 10. Designation of Oversight Agency. Pursuant to the Act, the City hereby designates the Agency as the “agency” of the City for purposes of oversight, administration and review responsibility of this Ordinance, the Local Participation Agreement and the Development Area established by this Ordinance, ***as such documents may be amended in accordance with the Act from time to time.*** The Agency shall act on behalf of the City in administering the Development Area, entering into Development Area agreements, and other related agreements, with respect to the development of the Development Area and the financing of Redevelopment Assistance, Project Costs and/or Approved Public Infrastructure Costs within the Development Area, including making application(s) to KEDFA or other related State agencies for projects within the Development Area that may qualify for a pledge of State incremental revenues under the Act or other State assistance.

SECTION 11. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 12. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

  
MAYOR

ATTEST:

Margaret M. Ryan  
CITY CLERK

Passed: 6-11-19 (Second Reading)

3-26-19 (First Reading)

Exhibit A  
to Ordinance No. \_\_\_\_\_ - \_\_\_\_\_

(Development Area Map)

Exhibit B  
to Ordinance No. \_\_\_\_\_ - \_\_\_\_\_

(Amended and Restated Local Participation Agreement)

Exhibit C  
to Ordinance No. \_\_\_\_\_ - \_\_\_\_\_

(Development Plan)

Meeting Date:					
ORD.: 1ST5-28-19 2ND 6-11-19					
OR:					
	Bowman 2	Downing 1	Smith	Williams	Meyer
Yeas	✓	✓	✓	✓	✓
Nays					
Present, not Voting					



 Preliminary TIF Boundary



Exhibit B  
to Ordinance No. 0-16 - 19

(Amended and Restated Local Participation Agreement)

**FIRST AMENDED AND RESTATED  
LOCAL PARTICIPATION AGREEMENT  
FOR  
CITY CENTER COVINGTON DEVELOPMENT AREA  
BY AND AMONG  
CITY OF COVINGTON, KENTUCKY  
AND  
COUNTY OF KENTON, KENTUCKY  
AND  
PLANNING AND DEVELOPMENT SERVICES OF KENTON  
COUNTY  
AND  
COVINGTON ECONOMIC DEVELOPMENT AUTHORITY, INC  
First Effective December 1, 2012  
Amended and Restated Effective June 11, 2019**

**Schedule 1 - Map of the Development Area  
Schedule 2 - Listing of Parcels Within Development Area**

**FIRST AMENDED AND RESTATED  
LOCAL PARTICIPATION AGREEMENT  
City Center Covington Development Area**

THIS FIRST AMENDED LOCAL PARTICIPATION AGREEMENT (this "Agreement") is made as of the June 11, 2019 (the "Effective Date") by and among the CITY OF COVINGTON, KENTUCKY, a Kentucky municipal corporation of home rule class organized under the laws of the Commonwealth of Kentucky (the "City"), the COUNTY OF KENTON KENTUCKY, a county government organized under the laws of the Commonwealth of Kentucky (the "County"), the PLANNING AND DEVELOPMENT SERVICES OF KENTON COUNTY, a local taxing district organized pursuant to the provisions of KRS Chapter 147 ("PDS"), and the COVINGTON ECONOMIC DEVELOPMENT AUTHORITY, INC., a Kentucky non-profit corporation organized pursuant to the provisions of KRS Chapter 58 and Chapter 273 (the "Agency"); collectively (the "Parties");

RECITALS

WHEREAS, pursuant to the Act as hereinafter defined, the City on the 20th day of December, 2012, adopted Ordinance Number O-58-12, (the "Development Area Ordinance"), whereby it established the City Center Covington Development Area (the "Development Area") for the purpose of promoting a mixed use development within the City; and

WHEREAS, since 2012, changes in the way TIF Funds are utilized have been recommended, and amendments are necessary to the Development Area Ordinance and the associated Local Participation agreement and Development Plan; and

WHEREAS, the changes include redirecting TIF Funds to preferentially be utilized for public infrastructure costs for the Project; and

WHEREAS, the Parties recognize and determine that construction of the Project, as hereinafter defined as contemplated by this Agreement will contribute to the public welfare of the citizens of the City and County and will thereby materially enhance the area and be in furtherance of the general health and welfare of the citizens of the City and County; and

WHEREAS, the Parties recognize that the development of the Development Area, will not occur without a public-private partnership and financial assistance provided to the Project by the City, the County, PDS, and the State; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues in support of the development of the Project within the Development Area; and

WHEREAS, pursuant to the amendment to the Development Area Ordinance authorized by Commissioners' Ordinance No. O-16-19, the Board of Commissioners of the City has authorized the Mayor to execute and enter into this Agreement with the County, PDS and the Agency, and the City desires to enter into this Agreement; and

WHEREAS, pursuant to Ordinance Number 971.15, adopted May 14, 2019, the Fiscal Court of the County has authorized the County Judge/Executive to execute and enter into this Agreement with the City, PDS and the Agency, and the County desires to enter into this Agreement; and

WHEREAS, pursuant to Resolution \_\_\_\_\_, adopted by the Board of PDS on May 16, 2019, PDS has authorized its Chairman to execute and enter into this Agreement with the City, the County, and the Agency, and PDS desires to enter into this Agreement; and

WHEREAS, the pursuant to a resolution adopted by the Board of Directors of the Agency, the Agency has authorized its President to execute and enter into this Agreement with the City, the County, and PDS, and the Agency desires to enter into this Agreement; and

WHEREAS, pursuant to the Act, the City, the County, PDS and the Agency desire to set forth their mutual agreements, understandings and obligations in this Agreement, in order to facilitate development of the Project within the Development Area.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

**SECTION I**  
Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

**SECTION II**  
Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. "Act" or "the Act". Shall mean KRS 65.7041 to KRS 65.7083.
2. "Activation". Shall be the first day of the calendar year for the computation of Incremental Revenues, which as provided in Section XII of this Agreement is January 1, 2013.
3. "Agency". Shall mean the Covington Economic Development Authority, Inc.
4. "Agreement". Shall mean this Local Participation Agreement, including all Schedules attached hereto.
5. "Bonds". Shall mean the Increment Bonds or notes issued by the City or the Agency to finance Project Costs or Redevelopment Assistance within the Development Area, in accordance with the Financing Plan.
6. "Bond Documents". Shall mean all of the documents constituting the bond transcript of proceedings in connection with the Bonds.
7. "City". Shall mean the City of Covington, Kentucky.
8. "County". Shall mean the County of Kenton, Kentucky.
9. "Development Area". Shall have the meaning given in the Recitals to this Agreement, and more specifically described on Schedule 1 attached hereto.
10. "Development Area Ordinance." Shall mean the ordinance, as amended, referred to in the Recitals section of this Agreement.
11. "Development Plan". Shall mean the development plan prepared as required by the Act as part of the establishment of the Development Area which is attached as Exhibit C to the Development Area Ordinance.
12. "Effective Date". Shall have the meaning given in the introductory paragraph of this Agreement.
13. "Excess Incremental Revenues". Means Incremental Revenues in excess of the amounts required to support the payment of Increment Bonds and to meet any coverage tests set

forth in the Bond Documents.

14. "Financing Costs". Shall have the meaning as provided in the Act.

15. "Financing Plan". Shall mean the plan for financing the Project as described in SECTION XI of this Agreement, as it may be amended with the approval of the City and the Agency.

16. "Increment Bonds". Shall mean the bonds or notes issued by the City or Agency pursuant to the Act to pay for Project Costs or Redevelopment Assistance within the Development Area as approved by the issuer of the Increment Bonds, the payment of which shall be supported by Incremental Revenues pledged by the City, the County, Special District and other revenues.

17. "Incremental Revenues". Shall mean the amount of revenues received by the City, County and PDS with respect to the Development Area by subtracting Old Revenues (as defined in the Act) from New Revenues (as defined in the Act) in a calendar year.

18. "KEDFA". Shall mean the Kentucky Economic Development Finance Authority, a State agency assigned for administrative purposes to the Kentucky Economic Development Cabinet.

19. "New Revenues". Shall mean for the City and County the total tax revenues to the City and County from real property ad valorem taxes and occupational taxes (business occupational taxes and payroll taxes) with respect to the Development Area in any calendar year beginning with the year in which Activation has occurred; and for PDS the total tax revenues to PDS from real property ad valorem taxes with respect to the Development Area in any calendar year beginning with the year in which Activation has occurred.

20. "PDS". Shall mean the Planning and Development Services of Kenton County, a local taxing district organized pursuant to the provisions of KRS Chapter 147.

21. "Old Revenues." Shall mean for the City and County the total tax revenues to the City and County from real property ad valorem taxes and occupational taxes (business occupational taxes and payroll taxes) with respect to the Development Area for calendar year 2011; and for PDS the total tax revenues to PDS from real property ad valorem taxes with

respect to the Development Area in calendar year 2011.

22. "Project". Shall mean the comprehensive development within the Development Area described in SECTION X of this Agreement.

23. "Project Costs". Shall mean, to the extent permitted as capital investments as defined in the Act, the following costs expended to construct the Project:

- (a) Actual costs of acquisitions, construction, and reconstruction of public works and public improvements (e.g., streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, water and sewer facilities, flood and drainage facilities, and educational facilities), and new public buildings, structures, and fixtures;
- (b) Actual costs of acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures if said facilities are to be dedicated to the City as a public building, structure, or fixture;
- (c) Actual costs of acquisition of land and equipment, if to be dedicated to the City as public land or equipment;
- (d) Actual costs of clearing and grading of land;
- (e) Actual governmental predevelopment fees, (e.g. Sanitation District 1 connection fees, City and PDS permitting fees, etc.), which shall not include any professional and technical fees;
- (f) A developer or agency's direct professional service costs for public improvements, including architectural, planning, engineering, legal advice and services, and environmental impact or other studies.

24. "Redevelopment Assistance". Shall mean:

- (a) Loans to encourage the construction or rehabilitation of mixed-used, commercial and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions, to the extent such grants and loans help accomplish a stated City development goal in the City's current Tax Increment Financing Guidelines and Criteria, as may be amended from time to time;
- (b) Public plans or feasibility studies that will benefit and promote development within the District, including but not limited to: economic development strategic plans, development site masterplans, parking feasibility studies, design standards, etc.
- (c) Direct development, as defined in the Act, by a city, county, or agency of real property acquired by the city, county, or agency.

- (d) To the extent permitted as redevelopment assistance as defined in the Act, assistance provided to a developer or agency for approved Project Costs within the Development Area.

25. "Special Fund". Shall mean the City Center Covington Development Area Special Fund ("TIF Fund") established and maintained by the City for the purpose of holding and disbursing City, County, and PDS Special District Incremental Revenues pledged herein, and State Incremental Revenues (for projects within the Development Area that receive a pledge State Increment Revenues pursuant to a Tax Incentive Agreement approved by KEDFA) in connection with the development of the Project.

26. "State". Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.

27. "Tax Incentive Agreement". Shall mean an agreement between the City and KEDFA relating to a pledge of State Incremental Revenues for projects within the Development Area eligible for a pledge of State Incremental Revenues under the Act.

28. "Unavoidable Delays". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

**SECTION III**  
Parties

The parties to this Agreement shall be the City, the County, PDS, and the Agency.

**SECTION IV**  
Duties and Responsibilities of City

The City shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Provide for the establishment of the TIF Fund to be maintained by the City for the collection of Incremental Revenues pledged herein from City, County and real property ad

valorem taxes and occupational taxes within the Development Area, and Incremental Revenues from PDS from real property ad valorem taxes within the Development Area.

2. Pledge eighty percent (80%) of the City's Incremental Revenues from City real property ad valorem taxes and occupational taxes (business occupational taxes and payroll taxes) generated within the Development Area for a thirty (30) year period to pay for Project Costs and Redevelopment Assistance within the Development Area, which pledge is made in SECTION VIII herein.

3. Act as the issuer or direct the Agency to act as Issuer of the Increment Bonds in the event that Bonds are issued to pay for Project Costs or Redevelopment Assistance within the Development Area.

4. Designate the Agency as having oversight responsibility of the Development Area Ordinance.

5. Meet as may be required with the Agency for the purpose of reviewing the progress of the development of the Development Area and preparing an analysis of such progress for distribution to the respective legislative bodies of the City, County, and PDS.

#### **SECTION V**

##### Duties and Responsibilities of the County

The County shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Pledge sixty percent (60%) of the County's Incremental Revenues from County real ad valorem taxes and occupational taxes generated within the Development Area, and remit such Incremental Revenues to the Agency as required by this Agreement, for a thirty (30) year period to pay for Project Costs and Redevelopment Assistance within the Development Area, which pledge is made in SECTION VIII herein.

2. Provide assistance to the Agency as needed with the annual report required of the Agency as provided in SECTION VII of this Agreement, and in computing the Incremental Revenues that are generated from the Development Area.

#### **SECTION VI**

##### Duties and Obligations of PDS

PDS shall have the following duties and responsibilities in connection with the

development of the Development Area:

1. Pledge fifty percent (50%) of the PDS's Incremental Revenues from PDS real property taxes generated within the Development Area, and remit such Incremental Revenues to the City as required by this Agreement, for a thirty (30) year period to pay for Project Costs and Redevelopment Assistance within the Development Area, which pledge is made in SECTION VIII herein.

2. Provide assistance to the City as needed with the annual report required of the City as provided in SECTION VII of this Agreement, and in computing the Incremental Revenues that are generated from the Development Area.

**SECTION VII**  
Duties and Obligations of the Agency

The Agency shall have the oversight responsibility of the Development Area Ordinance in accordance with this Agreement, the Act, and any applicable Tax Incentive Agreement.

1. The Agency shall advise the City and any applicable developer in the required application to KEDFA seeking a pledge of State Incremental Revenues for eligible projects pursuant to the Act within the Development Area. In the event KEDFA approves a pledge of State Incremental Revenues the Agency shall comply with any duties and responsibilities set forth within the terms of any applicable Tax Incentive Agreement.

2. The City, shall expend Incremental Revenues on Project Costs and Redevelopment Assistance to promote the redevelopment of the Development, and shall have the authority to execute agreements with developers and other entities undertaking development projects within the Development Area, including agreeing to pay Project Costs or provide Redevelopment Assistance to one or more developers for specific projects to support the redevelopment of the Development Area.

3. The City shall prepare by no later than June 30 of each year during the term of this Agreement an annual report and provide same to the respective legislative bodies of the City, County and PDS that shall include, but not be limited to: (a) the total real property ad valorem taxes, and payroll taxes collected within the Development Area during the previous

calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Increment Bonds during the previous calendar year; (d) the amount, if any, of Increment Bonds issued during the previous calendar year, and (e) if no Increment Bonds are issued, the amount, if any, of Incremental Revenues spent from the TIF Fund on Project Costs.

## **SECTION VIII**

### Identification and Pledge of Incremental Revenues

1. The City hereby pledges eighty percent (80%) of the City's Incremental Revenues, from City real property ad valorem taxes and occupational taxes generated within the Development Area, to pay for Project Costs and Redevelopment Assistance within the Development Area for a thirty (30) year period starting from the 1st day of the calendar year following Activation. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2011.

2. A listing of the parcels within the Development Area for the calculation of Old Revenues collected by the City, County and PDS from within the Development Area is attached hereto on Schedule 2. On or before October 1, 2013 the City's Finance Director in cooperation with the County Treasurer and the Executive Director of PDS, shall certify to the Agency the Old Revenues within the Development Area from real property ad valorem taxes and occupational taxes from the City, County and PDS. Once certified and accepted by the City, County, PDS and Agency, the certified Old Revenues shall become a part of this Agreement.

3. The County hereby pledges sixty percent (60%) of the County's Incremental Revenues, from County real property ad valorem taxes and occupational taxes generated within the Development Area, to pay for Project Costs and Redevelopment Assistance within the Development Area for a thirty (30) year period starting from the 1st day of the calendar year following Activation. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2011.

4. PDS hereby pledges fifty percent (50%) of PDS's Incremental Revenues, from PDS real property ad valorem taxes generated within the Development Area, to pay for Project Costs and Redevelopment Assistance within the Development Area for a thirty (30) year period starting from the 1st day of the calendar year following Activation. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2011.

5. Incremental Revenues pledged by the City and County and PDS in this SECTION VIII shall be deposited annually, no later than each June 30 after the first calendar year of Activation (which as provided in Section XII of this Agreement Activation shall be January 1, 2013) , to the TIF Fund and used solely for the payment of Project Costs and Redevelopment Assistance within the Development Area, except that the City may annually use five percent (5%) of the Incremental Revenues it receives as an Administrative Fee from the City, County and PDS (the "Administrative Fee") to cover its costs in performing its duties set forth in SECTION VII of this Agreement. Such TIF Fund shall be continued and maintained until the Termination Date as provided in Section XII of this Agreement. Except for the Administrative Fee, amounts in the TIF Fund, together with interest accruing thereon, are hereby irrevocably pledged for the payment of Project Costs and Redevelopment Assistance, including principal, interest and premium, if any, on Bonds issued to pay for Project Costs and Redevelopment Assistance in the event that Bonds are issued to pay for Project Costs and Redevelopment Assistance.

6. If Bonds are issued, this Agreement may be pledged and assigned by the City to a Trustee under a certain Trust Indenture for the Increment Bonds, by and between the City, Agency and the Trustee, as it may be amended or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

7. If Bonds are not issued, or if Bonds are issued but there are Excess Incremental

Revenues, Incremental Revenues may be utilized by the Agency to pay for Project Cost or Redevelopment Assistance and/or reimburse Project Costs that may be paid by a developer or developers undertaking specific projects within the Development Area pursuant to an agreement or agreements approved by the City.

8. At the Termination Date, as defined in the Act and as provided in Section XI of this Agreement, all amounts not needed to pay the Increment Bonds or to pay Project Costs or Redevelopment Assistance shall be transferred to the General Fund of the City, County or PDS proportion to the respective contributions to the Special Fund by the City, County and PDS.

#### SECTION IX

##### Anticipated Benefits to the City and County and PDS

The City, County and PDS anticipate receiving substantial benefits as a result of the pledge of their Incremental Revenues to support development of the Development Area as set forth herein. Based upon Schedule 2 of this Agreement, the taxable assessment for calendar year 2011 within Development Area is \$233,337,300, and that generated for calendar year 2011 approximately \$698,845 in City, \$345,339 in County, and \$74,668 in PDS real property taxes. The construction of the Project and related development will conservatively increase the taxable assessments within the Development Area by over \$500,000,000, which will generate significant new tax revenues to the City, County and PDS, even with deducting the Incremental Revenues pledged within this Agreement to pay for Project Costs and Redevelopment Assistance. Based upon the applicable 2012 real property ad valorem tax rates for City, County, and NKPAC, \$500,000,000 in increased taxable assessment will generate new real estate taxes annually to the City in the amount of \$1,495,000, to the County in the amount of \$740,000, and to PDS in the amount of \$150,000. In addition, the Project will generate significant new occupational taxes from the growth in employment and new businesses within the Development Area as a result of the Project. The new tax impact will increase over time as assessments and new payroll increase and as additional elements of the Project are constructed. In addition, the new tax impact to the City, County and PDS will also increase from tax revenues not subject to

the pledge of Incremental Revenues provided by this Agreement, including the tangible taxes, insurance premium taxes, etc.

The maximum amount of Incremental Revenues to be paid by the City shall be eighty percent (80%) of the Incremental Revenues from real property ad valorem taxes and occupational taxes generated from the Development Area; the maximum amount of Incremental Revenues to be paid by the County shall be sixty percent (60%) of the Incremental Revenues from real property ad valorem taxes and occupational taxes generated from the Development Area, and the maximum amount of Incremental Revenues to be paid by PDS shall be fifty percent (50%) of the Incremental Revenues from real property ad valorem taxes generated from the Development Area. The maximum number of years the payment of Incremental Revenues to support the payment of Project Costs and Redevelopment Assistance within the development of the Development Area is thirty (30) years.

A detailed description of the Development Area is set forth in Schedule 1 hereto.

#### SECTION X Description of Project: Costs

The Project shall be the comprehensive development of the Development Area as described in the Development Plan approved by and attached to the Development Area Ordinance.

#### SECTION XI Financing Plan

It is anticipated by the Parties that the construction of the Project will take place over time and require a combination of funding from the Incremental Revenues pledge herein, private financing, and private equity, direct public funding, grants, and other incentives and financing. In the event that Increment Bonds are issued to pay for Project Costs, any Incremental Revenues pledged by the City, County, and PDS under this Agreement shall first be used to pay any required debt service on the Increment Bonds as provided in the Bond Documents; and any Excess Incremental Revenues, may be expended to pay Project Costs or Redevelopment Assistance as determined by the City. It is understood that the Financing Plan for the Project may be modified as development of the Project progresses and that more specific details of the

nature of each aspect of financing the Project shall be more particularly contained in the Bond Documents and other documents at the time that each aspect of the financing needed for the Project is obtained, subject to approval by the City.

**IT IS UNDERSTOOD THAT UNLESS OTHERWISE SPECIFICALLY AGREED BY THE ISSUER, THE NOTES OR BONDS THAT MAY BE ISSUED BY THE CITY AND/OR AGENCY PURSUANT TO THIS AGREEMENT AND SECURED SOLELY BY INCREMENTAL REVENUES SHALL NOT CONSTITUTE A DEBT OF THE CITY, THE COUNTY, PDS OR THE AGENCY OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY , THE COUNTY OR PDS, AND THE CITY, THE COUNTY OR PDS SHALL HAVE NO OBLIGATION TOWARD THE PAYMENT OF SUCH BONDS BEYOND THE PLEDGE OF INCREMENTAL REVENUES AS PROVIDED IN THIS AGREEMENT.**

#### SECTION XII

##### Commencement Date: Activation Date: Termination Date

This Local Participation Agreement shall commence and be effective on December 1, 2012. The Activation for the pledge of Incremental Revenues as set forth in SECTION VIII hereof shall be January 1, 2013. This Agreement shall terminate thirty (30) years after the Activation as set forth above. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

#### SECTION XIII

##### Default

If the City, County or PDS (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein or in the Bond Documents, the City (unless it is the Defaulting Party) and/or the indenture trustee or trustees for outstanding Bonds secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement or the Bond Documents against the Defaulting Party. If the City, County or PDS materially breaches or defaults on any of its obligations under this Agreement, any other party and/or the

indenture trustee or trustees for the outstanding Bonds may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however that if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

However, notwithstanding any other provision of this Agreement in the event of a default no remedy shall permit the withholding by the City, County or PDS of the payment of any Incremental Revenues pledged in this Agreement if Increment Bonds are outstanding that are secured by a pledge of those Incremental Revenues.

SECTION XIV  
Governing Law

The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.

SECTION XV  
Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

SECTION XVI  
Force Majeure

The City, County, or PDS shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non performance of

such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other parties, keep the other parties fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

**SECTION XVII**  
**Notices**

Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

**If to the City:**

City of Covington, City Manager, 20 W. Pike Street, Covington, Kentucky 41011

**With a Copy to:**

City of Covington, City Solicitor, 20 W. Pike Street, Covington, Kentucky 41011

**If to the County:**

Kenton County, 303 Court Street, Covington, Kentucky 41011

**If to PDS:**

PDS, 2332 Royal Drive, Fort Mitchell, Kentucky 41017-2008

**If to the Agency:**

City of Covington, City Solicitor, 20 W. Pike Street, Covington Kentucky 41011

## SECTION XVIII

### Approvals

Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within thirty (30) business days and shall not be unreasonably withheld or delayed by the party from whom such approval or consent is required.

## SECTION XIX

### Entirety of Agreement

As used herein, the term "Agreement" shall mean this Local Participation Agreement and the Schedules attached hereto. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any part.

## SECTION XX

### Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

## SECTION XXI

### Headings and Index

The headings in this Agreement and the Index are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision

hereof.

SECTION XXII  
Exhibits/Schedules

All exhibits/schedules to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

SECTION XXIII  
No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the City, County, PDS or Agency shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of any party, except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

SECTION XXIV  
Construction

No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

SECTION XXV  
Multiple Counterparts

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

SECTION XXVI  
Relationship of the Parties

Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the Parties and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

SECTION X VIII  
Diligent Performance

With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

**IN WITNESS WHEREOF**, the Parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

  
CITY OF COVINGTON, KENTUCKY

  
Approval as to Form:  
City of Covington

  
COUNTY OF KENTON, KENTUCKY

*Paul W Mein*

**Planning and Development Services of Kenton  
County**

*Charles R Seligson*

**COVINGTON ECONOMIC DEVELOPMENT  
AUTHORITY, INC.**