

EMERGENCY

City of Cincinnati

KMG *BBM*

An Ordinance No. 451 - 2019

AUTHORIZING the City Manager (a) to execute an *Entertainment Venue Development Agreement* with the Board of County Commissioners of Hamilton County, Ohio and Music and Event Management, Inc., a wholly-owned subsidiary of the Cincinnati Symphony Orchestra, in order for the City to (i) acquire title to an air lot to be created on Lot 23 to construct a base level public park, (ii) acquire and convey to the company an air lot to be created on Lot 27 and (iii) grant and acquire easements for the music venue and related public improvements and (b) to vacate and sell a portion of the public right-of-way known as Race Street, each in Downtown Cincinnati and to facilitate the development of a music venue and related public improvements at the Banks.

WHEREAS, pursuant to Motion No. 201800984 adopted by Council on June 20, 2018, Council approved Music and Event Management, Inc., a wholly-owned subsidiary of the Cincinnati Symphony Orchestra (“MEMI”), as the developer for the music venue and event center at the Banks; and

WHEREAS, the City and the Board of County Commissioners of Hamilton County, Ohio (the “County”) agreed to an *Outline of Terms and Conditions Between the Public Parties Regarding Development of the Banks Phase IIIB Public Infrastructure*, as authorized by Council pursuant to Ordinance No. 119-2019, passed by Council on April 17, 2019 (the “Term Sheet”) in order to facilitate the development of a music venue of approximately 70,000 square feet at Lot 27 of the Banks (the “Venue”) by MEMI; and

WHEREAS, Council authorized the City Manager to execute that certain *First Amendment to Cooperation Agreement* pursuant to Ordinance No. 418-2019, passed by Council on November 14, 2019, which, among other things, memorializes the terms and conditions of the Term Sheet between the City and the County; and

WHEREAS, MEMI desires to develop the Venue on and subject to the terms and conditions set forth the proposed form of *Entertainment Venue Development Agreement* attached as Attachment A (the “Agreement”); and

WHEREAS, MEMI anticipates that the Venue can accommodate approximately 4,500 patrons and has an approximate construction cost of \$24,000,000; and

WHEREAS, the Agreement contemplates the City, through Parks, constructing a base level public park on Lot 23; and

WHEREAS, the City owns a public right-of-way consisting portion of Race Street (the "City ROW"), as depicted on Attachment B and the City and the County are the only abutting property owners; and

WHEREAS, notwithstanding the provisions of Chapter 331 of the Cincinnati Municipal Code, the City intends to convey the City ROW needed for the Venue and related public infrastructure to the County for \$0.00 in accordance with the Agreement, without the benefit of an appraisal, as Council believes that the development of the Venue will help improve downtown, create jobs, and spur new business development; and

WHEREAS, the City may facilitate the County's conveyance of the air lot to be created on Lot 27 to MEMI by accepting title to such air lot and immediately conveying it to MEMI; and

WHEREAS, subject to the approval of the Cincinnati Board of Park Commissioners, the City will acquire Lot 23 in accordance with the terms and conditions of the Agreement and the existing documents governing the Banks between the City and the County in order to construct a base level public park; and

WHEREAS, the City has determined that: (i) the City ROW property is not needed for transportation or other municipal purposes and that the sale of the City ROW will not be detrimental to the general interest and (ii) eliminating competitive bidding in connection with the City's sale of the City ROW because (a) the City is conveying the City ROW to another governmental entity to facilitate the public parties' construction of public infrastructure, and (b) the development of the music venue will help improve downtown, create jobs, and spur new business development; and

WHEREAS, an Ohio licensed attorney has certified (or will certify prior to actual vacation) that the City and the County are the owners of all of the property abutting the City ROW, and the written consent of all necessary abutting property owners will be provided to the City; and

WHEREAS, at its meeting on August 16, 2007, the City Planning Commission approved the City's conveyance of certain real estate at the Banks; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to lend aid or credit for industry, commerce distribution and research; and

WHEREAS, pursuant to Chapter 723 of the Ohio Revised Code, the legislative authority of a municipal corporation has the power to vacate land used for streets if it has determined that there is good cause for it and that the same will not be detrimental to the general interest; and

WHEREAS, the City believes that executing the Venue Agreement will promote further urban redevelopment of the Banks, including the construction of the music venue and adjacent

base level public park, is in the vital and best interests of the City and the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager, contingent upon the approval of the Cincinnati Board of Park Commissioners (the "Park Board"), is hereby authorized to execute (i) an *Entertainment Venue Development Agreement* with the Board of County Commissioners of Hamilton County, Ohio (the "County") and Music and Event Management, Inc., a wholly-owned subsidiary of the Cincinnati Symphony Orchestra ("MEMI"), in substantially the form attached as Attachment A to this ordinance (the "Agreement") and (ii) a quitclaim deed vacating and selling a portion of the public right-of-way known as Race Street to the County, as described on the attached Attachment B (the "City ROW").

Section 2. That, in accordance with the attached Agreement and other existing agreements pertaining to the Banks between the City and the County, notwithstanding the provisions of Chapter 331 of the Cincinnati Municipal Code, the City is hereby authorized to convey the City ROW to the County without the benefit of an appraisal and for less than fair market value, as Council believes that (i) the development of the Banks and (ii) the conveyance of the City ROW necessary to facilitate the development of the music venue will help improve downtown, create jobs, and spur new business development.

Section 3. That the City ROW is not needed for transportation or other municipal purposes, and that the City's vacation and sale of the City ROW (subject to utility easements for existing utilities, if any, as provided for under Section 723.041, Ohio Revised Code) will not be detrimental to the general interest.

Section 4. That eliminating competitive bidding in connection with the City's sale of the City ROW is appropriate because (a) the City is conveying the City ROW to another governmental entity to facilitate the public parties' construction of public infrastructure, and (b) the conveyance will facilitate the development of the music venue, which will help improve downtown, create jobs, and spur new business development.

Section 5. That, pursuant to the Agreement, Council authorizes the City to accept title to an air lot to be created on Lot 27 from the County and to promptly thereafter convey the same to MEMI, in each instance for \$0.00, in order to facilitate the County's conveyance of such property to MEMI.

Section 6. That, subject to Park Board approval and in accordance with the Agreement and the existing agreements pertaining to the Banks between the City and the County, Council authorizes the City to accept title to an air lot to be created on Lot 23 from the County for \$0.00, in order to construct the base level public park.

Section 7. That the City Manager is hereby authorized to administratively approve any property transfers, to or from the City, in accordance with the provisions of this ordinance and the Agreement attached hereto.

Section 8. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of Agreement and this ordinance; including, without limitation, any and all ancillary agreements, including amendments to such agreements, deeds, plats, easements, and other documents to create new encumbrances and release existing encumbrances on any interests the City has in Lots 23, 27 and 28, as deemed necessary or appropriate by the City Manager.

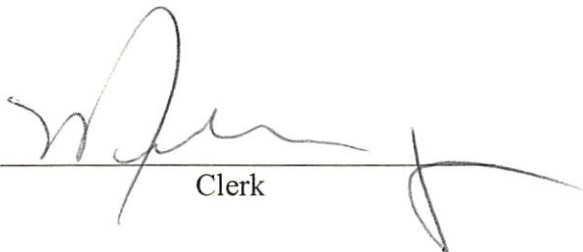
Section 9. That the execution of the Agreement and all actions by the City contemplated therein are hereby determined by this Council to be in the public interest and a proper public purpose.

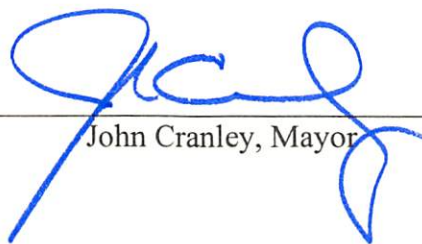
Section 10. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

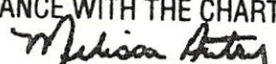
Section 11. That the authorizations contained herein shall in no way constitute (i) a pledge of the full faith and credit of the City, (ii) a pledge of any general taxing power, nor (iii) a waiver of the City's zoning authority under the Cincinnati Municipal Code.

Section 12. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the City and the County to move forward with facilitating the construction of the music venue and adjacent base level public park, and enable future development of the Banks to occur at the earliest possible time, all of which will create jobs, stimulate economic growth and development of other property in the area, and enhance the reputation of the City, all for the benefit of the City.

Passed: November 20, 2019

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO 451-2019
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 12-3-2019

CLERK OF COUNCIL