



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Councilmember David Mann, Chairperson
Councilmember Chris Seelbach, Vice Chair
Councilmember Jan-Michele Kearney
Councilmember Greg Landsman
Councilmember Jeff Pastor
Councilmember P.G. Sittenfeld
Councilmember Betsy Sundermann
Councilmember Wendell Young

Wednesday, August 12, 2020

1:00 PM

Council Chambers, Room 300

ROLL CALL

PRESENTATIONS

Presentations from Neighborhood Organizations

Jeff Beam of The Community Builders and Dr. Monica Mitchell of Children's Hospital

Banks Update

City Manager Boggs Muething and Kaitlyn Geiger

AGENDA

1. [202001166](#) PRESENTATION, dated 08/11/2020, submitted by Councilmember Kearney, from The Community Builders, regarding a presentation on the Avondale Town Center "Healthy Food/Grocery Initiative".

Sponsors: Kearney

Attachments: [Presentation](#)

2. [202001164](#) MOTION, submitted by Councilmembers Sittenfeld, Kearney, Young and Landsman, WE MOVE that the City of Cincinnati commit \$500,000 to help catalyze the Avondale grocery store project. WE FURTHER MOVE that these dollars come from the City Operating or Capital Budget within the next two Fiscal Year budget cycles. WE FURTHER MOVE that these City dollars be contingent on there being a Community Benefits Agreement between the grocery operator and the neighborhood and its longtime partners who have advocated passionately for this outcome, as represented by the Avondale Community Council, Avondale Community Development Corporation. The Center for Closing the Health Gap and The Urban League in order to ensure that ongoing quality standards for the neighborhood are met; and also be contingent on vetting and due diligence from the City's Department of Community and Economic Development; and finally, be contingent on a financial match against City dollars from other partners. (STATEMENT ATTACHED)

Sponsors: Sittenfeld, Kearney, Young and Landsman

Attachments: [Motion](#)

3. [202001168](#) REQUEST, dated 08/12/2020, submitted by Councilmember Mann from Paula Boggs Muething, Interim City Manager, regarding City Manager's response for information items on the Banks Project.

Sponsors: City Manager

Attachments: [3959 Hilltop Property Swap and Banks Transactions 9-13-19 \(1\)](#)
[3964 Hilltop Property Swap Recommendations 9-20-19 \(1\)](#)
[3991 Ordinance Amending the Cooperation Agreement 11-12-19 \(1\)](#)
[4145 Banks Transaction 7-21-20 \(1\)](#)
[Attachment to June Financing Ordinance \(1\)](#)
[Banks Bonds Ordinance](#)
[Banks June Financing Ordinance \(1\)](#)
[City First Amendment to Cooperation Agreement 7.31 - Banks \(0031835\)](#)
[County First Amendment to Cooperation Agreement 7.30 - Banks \(0031835\)](#)
[Cranley Portune Agreement - Banks \(00318393xC2130\) \(1\)](#)
[Entertainment Venue Development Agreement Ordinance](#)
[June Ordinance First Amendment to Cooperation Agreement - Banks \(1\)](#)
[Markup of City Version Against County Version First Amendment to Coc](#)

ADJOURNMENT



Avondale Town Center Healthy Food/Grocery Initiative

*City of Cincinnati, Budget & Finance Committee
August 2020*

THE **C**OMMUNITY
BUILDERS

Avondale Healthy Food Initiative Timing

- **2008** ALDI Closes
- **2012** City of Cincinnati Food Access Task Force establishes the Cincinnati Fresh Food Retail Financing Fund;
Avondale Officially Designated as a Food Desert
- **Early 2017** ATC predevelopment: Nationals Grocer Abandons Negotiated Lease
- **Late 2017** Avondale Town Center Financing Closes
Construction Commences
- **Late 2019** Construction Complete
- **2020 – 21** Commercial Space Leasing/Buildout/Opening

Avondale Town Center



- 119 Rental Apartments
- 76,000sf Commercial/Retail Space

Avondale Town Center



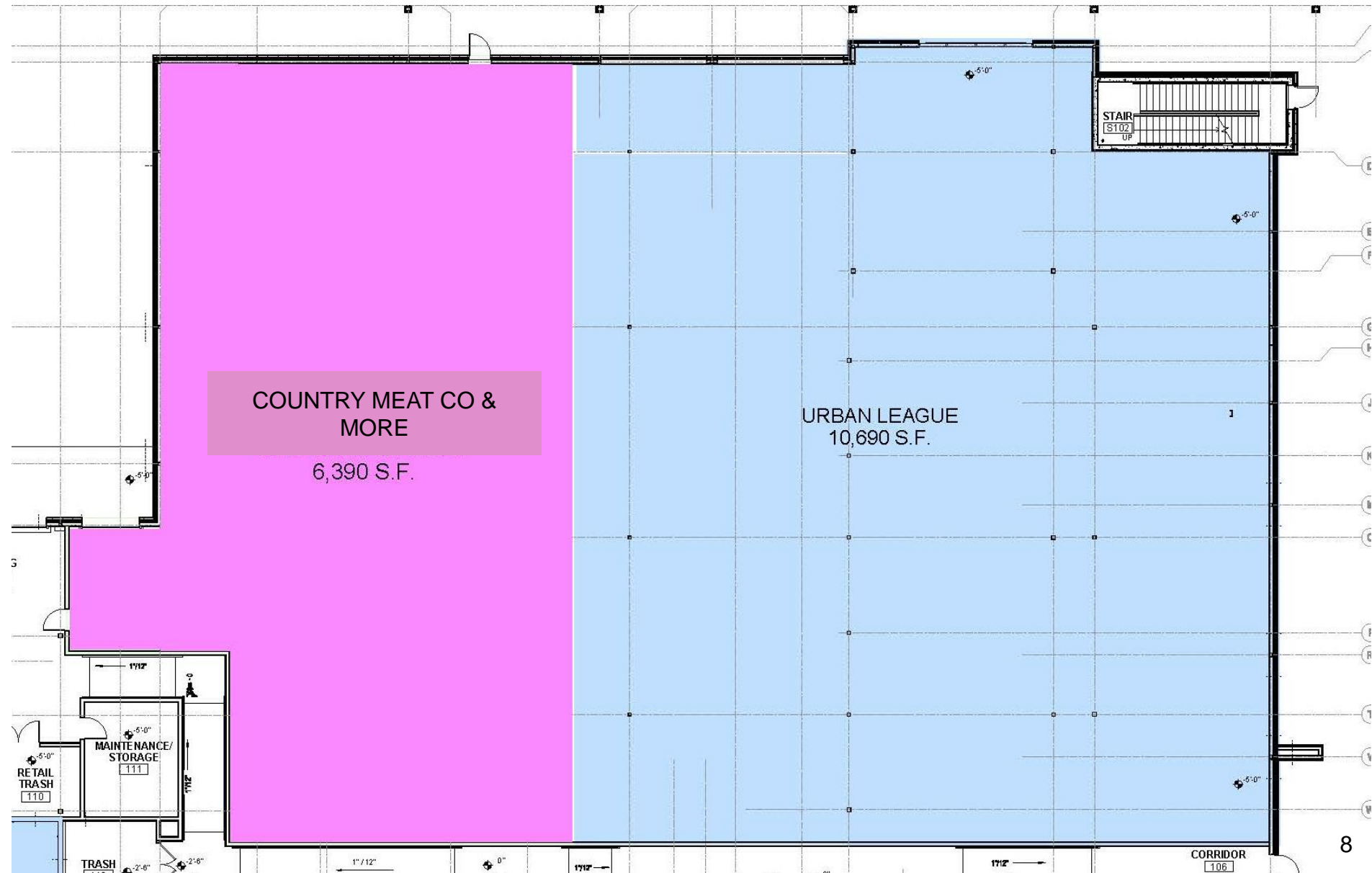
Retail/Commercial Tenants:

- Health Center
- Laundromat
- Barber/Nails/Clothing/Retail
- Childcare
- Chiropractor / Holistic Medicine
- Doggy Spa
- Restaurant

Avondale Town Center



Urban League / Country Meat Co. & More



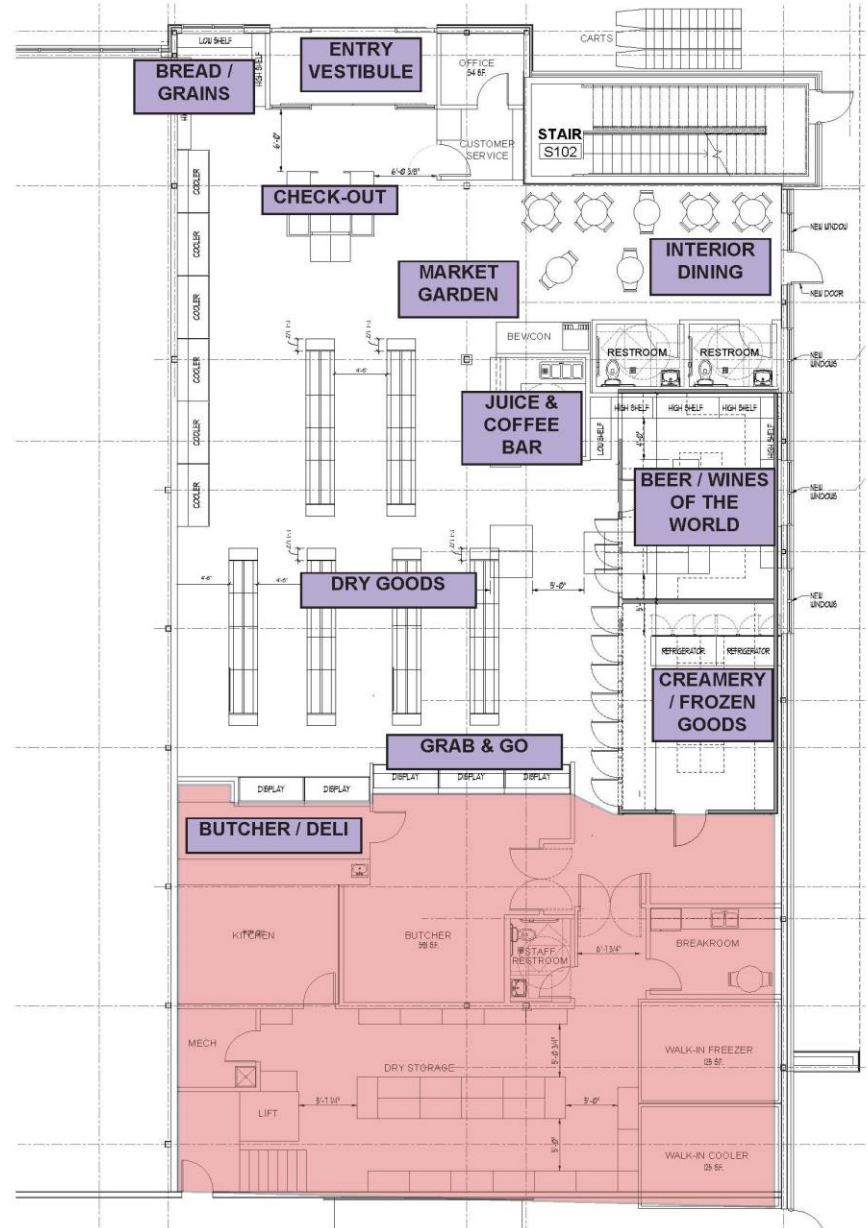
The Country Meat Co & More

Tennel and Chanel Bryant

- Owner/Operator
 - Aunty's Homemade Food
 - Prepared meals, catering and contract food management
 - Country Meat Co.
 - Findlay Market, Cincinnati
 - Logan St Market, Louisville
- Committed to bringing solutions to urban food deserts
 - “Old school” butcher shop
 - Fresh produce, dairy, bakery
 - Shelf-stable dry goods
 - Grab-and-Go prepared foods



Country Meat Co & More



Country Meat Co & More and ULGSO Timeline

- **August 2020** **LOIs Executed**
Firm Commitments for Funding Secured
- September 2020 Lease Executed
Space Design Completed
- October 2020 Permitting Process Starts
- November 2020 Permits Secured
Tenant Improvement Build-Out Commence
- Spring 2021 Tenant Improvement Build-Out Complete
Occupancy and Opening

Avondale Town Center Project Costs

PROJECT COSTS	
TCB Landlord Work	300,000
Tenant Improvement/Build-out	1,700,000
ULGSO Rent Reserve (funded by Community & Institutional Partners, see below)	1,200,000
Brokerage Fees	100,000
Grocery Startup Costs	1,000,000
TOTAL PROJECT COSTS	4,300,000
SOURCES	
TCB / Other Funding	1,800,000
Grocery Operator Start-Up Funds	1,000,000
Community & Institutional Partners (listed below)	1,500,000
<i>Cincinnati Children's Hospital</i>	<i>600,000</i>
<i>City of Cincinnati</i>	<i>500,000</i>
<i>Greater Cincinnati Foundation</i>	<i>150,000</i>
<i>Interact</i>	<i>75,000</i>
<i>Haile Foundation</i>	<i>75,000</i>
<i>Fifth Third</i>	<i>25,000</i>
<i>United Way</i>	<i>pending</i>



Avondale Town Center Healthy Food/Grocery Initiative

*City of Cincinnati, Budget & Finance Committee
August 2020*



202001164

P.G. Sittenfeld
Councilmember

August 4, 2020

MOTION

WE MOVE that the City of Cincinnati commit \$500,000 to help catalyze the Avondale grocery store project.

WE FURTHER MOVE that these dollars come from the City Operating or Capital Budget within the next two Fiscal Year budget cycles.

WE FURTHER MOVE that these City dollars be contingent on there being a Community Benefits Agreement between the grocery operator and the neighborhood and its longtime partners who have advocated passionately for this outcome, as represented by the Avondale Community Council, Avondale Community Development Corporation, The Center for Closing the Health Gap, and The Urban League in order to ensure that ongoing quality standards for the neighborhood are met; and also be contingent on vetting and due diligence from the City's Department of Community and Economic Development; and finally, be contingent on a financial match against City dollars from other partners.

STATEMENT

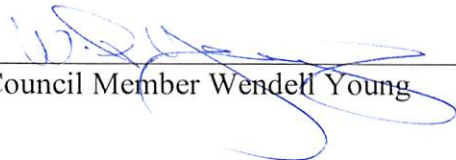
The neighborhood of Avondale has been categorized as a food desert, where residents - who are predominantly black and low-income - do not have reasonable access to a grocery store, particularly one with fresh fruits and vegetables. Recently, an opportunity has emerged to bring a grocery store to Avondale for the first time in many years. In order to seize this opportunity to do the right and equitable thing for the health and wellbeing of the community, the City of Cincinnati should partner in order to help catalyze this project.



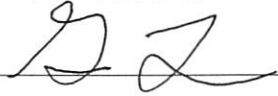
Council Member P.G. Sittenfeld



Council Member Jan-Michele Kearney



Council Member Wendell Young



COMMITTEES

Budget & Finance
Col - Referral
CQ

September 13, 2019

FOR YOUR INFORMATION

To: Mayor and Members of City Council

From: Patrick A. Duhaney, City Manager 

Subject: Hilltop Property Swap and Banks Transactions

The following memorandum summarizes the issues the City and other interested parties must address in order to carry through a proposed property swap between the City and Hilltop Basic Resources, Inc. (“Hilltop”). The proposed property swap is to swap the City-owned parcel on the eastern bank of the Mill Creek south of W. Mehring Way (the “East Mill Creek Parcel”) with the property currently owned by River Container Concepts, LLC located at 1801 W. Sixth Street (the “West Mill Creek Parcel”).

This summary reflects the analysis the Administration would ordinarily undertake when considering the acquisition and/or disposition of property for City of Cincinnati economic development purposes. As such, this document includes information that is needed for that analysis, actions that will need to be taken by the City or other parties, and possible implications, costs, and/or risks to the City of various decisions.

For ease of explanation, the summary is presented through the following categories: (1) the necessary due diligence and open financial questions regarding the proposed Hilltop-City property swap and relocation, (2) the open questions and necessary actions related to the Music Venue, Smale Park extension, and Bengals-County MOU related parking requirements that the Hilltop relocation will facilitate, and (3) the open financial questions regarding the future Price Landing Park.

It is important to note at the outset that most if not all of this analysis has not yet taken place because this proposal is being advanced through City Council legislation rather than through the Administration.

I. Proposed Hilltop-City Property Swap and Hilltop Relocation

In the ordinary course of examining a potential property swap transaction, the Administration would conduct diligence on the property to be conveyed to the City, the property to be conveyed from the City and the project such conveyance will facilitate. Included in this diligence at its core is an assessment of whether the proposed relocation project is both feasible and – from the perspective of the City as a whole and the immediately surrounding neighborhood – desirable. Additionally, and unique to this transaction, (i) the City and its tenant CBT would need to amend their existing lease to allow the transaction, and (ii) the relocation of Hilltop from its current location will leave open the important question of whether and where the asphalt plant on that property will be relocated. Finally, and critically, the Administration will then also assess any financial implications to the City of the entirety of the transaction.

A. Necessary property due diligence

Ordinarily, the Administration requires the following due diligence before negotiating a property swap transaction like this and bringing such transaction to Council for approval: appraisals of the two properties, a coordinated report for the City property, description of any proposed improvements to the property and the budget for those projects, the results of Hilltop’s Phase I (and Phase II if available) environmental report on the West Mill Creek Parcel, information regarding the corporation acquiring the City property (capacity to execute the project, any previous defaults with the City, etc.), a site plan, and confirmation of necessary

access easements to the West Mill Creek Parcel that will be transferred to the City in the event of the swap. These are all items the Administration typically requires when evaluating potential development transactions in the course of negotiating terms.

After signing an agreement, which can only be done with Council approval, the parties would continue collecting the diligence items that both confirm the condition of the property the City is to acquire and to convey and the ability of Hilltop to complete the relocation. This diligence will include items like: title reports, geotechnical reports, traffic studies, feasibility studies, possible environmental reviews, and any other studies related to the properties, any other encumbrances, proof that the purchaser has sufficient financial resources to complete the improvements contemplated in the agreement, conceptual drawings for any improvements built pursuant to the agreement, and then any necessary permits and zoning approvals. The agreement for this transaction will contemplate a diligence period in which the parties can review such diligence and the ability for either party to terminate the transaction in the event that such party determines the transaction is no longer desirable or feasible. This contingency is standard in all City property sale contracts. Further, the City's standard practice is to hold any property closing or formal property transfer until all necessary due diligence items have been satisfactorily completed, submitted to the Administration, and deemed compliant with the terms of the agreement.

Perhaps the biggest – but not only – unknown with this proposed transaction is the environmental condition of the West Mill Creek Parcel, given its current use as a barge offloading facility. Without this information, it is unclear what the cost of remediation will be for this parcel to be used as a public park and which party, if anyone other than the City, will pay the cost of that remediation.

B. Feasibility and desirability of the proposed relocation

In addition to the above diligence items, and with specific respect to this project, the City will need to gather the information necessary to determine that Hilltop can complete the relocation as proposed. This information will include: (i) review of the plans and proposed financing of the project, (ii) identifying the type and timing of zoning and other regulatory approvals that will be required to operate pursuant to the proposed development plan/end use (such as State, Federal – US EPA, OEPA, and Corps of Engineers), and (iii) identifying the type and timing of the permits and any easements necessary for Hilltop to relocate as described.

The City will also need to gather and assess as much information as possible on the impacts of the relocation on the immediate neighborhood. This will include transportation/traffic studies that illustrate any impacts on the area, including the amount and location of heavy truck traffic and any impacts on or adjustments for emergency vehicles or evacuation routes.

(1) Lower Price Hill community group requests

In this instance, the Administration and Council are both aware of several specific requests from a collection of community groups operating in Lower Price Hill that seem contingent for their support. These requests, which in the ordinary course the Administration would assess and, when appropriate, include in a development agreement, include

- Rezoning the West Mill Creek Parcel to RF-R
- City consideration, with planning, of access into Price Landing Park, connection to Ohio River Trail West, and access to Mill Creek Blueway.
- Zoning study results for all parcels in IDC and practical access route to Price Landing Park
- Relocation of Noramco in a timely manner
- Confirmation of relocation of the asphalt plant
- Hilltop operations impacts studied and detailed
- Drawings showing piles of materials and materials handling equipment as seen from 6th Street highway and Lower Price Hill.
-

The many specific questions related to Price Landing Park are discussed in detail in Section III of this memo.

C. Necessary agreement between City and CBT/POC

The City and Port of Cincinnati, LLC (“POC” which is an affiliate of Cincinnati Bulk Terminals, LLC (“CBT”)) are parties to an *Agreement of Lease* executed as of March 28, 2007 (the “POC Lease”), which lease includes the property proposed to be transferred to Hilltop. This lease grants certain rights to POC/CBT. CBT’s, through POC, consent is therefore necessary to any amendment to that lease to remove the East Mill Creek Parcel. The City and CBT have previously made several joint proposals to Hilltop that have not been accepted. To move forward with the proposed transaction, the City and Hilltop would need to re-engage CBT in negotiation.

Additionally, and procedurally, Section 17 of the POC Lease grants CBT/POC a right of first refusal. Under that Section, if the City receives a bona fide offer to purchase all or a portion of the property that the City intends to accept, the City is required to give notice to POC of the purchase price and the proposed terms of such sale. POC has 15 days from receipt of that notice to determine if it wants to accept the offer. If POC refuses that offer, the City has 6 months to sell the portion of the property contained in the notice to the identified purchaser. As of the date of this memo, the City has not given notice in accordance with this Section and needs to do so if it intends on accepting Hilltop’s offer.

The necessity of amending the POC Lease leaves open the question of whether CBT/POC would consider, under any terms, releasing their rights under the POC Lease and, if so, what compensation CBT/POC will require to agree to do so and which party, if anyone other than the City, will pay that compensation.

D. Potential Closure of Valley Asphalt

Asphalt is a major resource utilized by a variety of City of Cincinnati departments for their respective projects, especially road paving and maintenance. The City lacks the necessary facilities to manufacture asphalt. As such, it relies on vendors to provide asphalt on an as-needed basis. The Asphalt Plant #19 on Mehring Way, owned by Valley Asphalt, provides a substantial amount of the asphalt used on City contracts; roughly 25,000 tons every year. Presently this is the only asphalt plant within city limits and the riverfront location provides easy and reliable access to City of Cincinnati departments. It is also the only local asphalt plant open during the winter months.

It is not yet clear what impact the proposed plan for the redevelopment and relocation of Hilltop would have on this facility. The relocation or elimination of the Mehring Way site would have considerable financial, operational and efficiency impacts on various City of Cincinnati departments and projects. There is likely capacity to cover the City’s asphalt needs using plants located outside the city limits. However, the distance of these plants outside of the city would add time and cost to each project. Estimates show this would lead to an increase in trucking costs from \$3 a ton to \$5 or \$6 a ton. If the City’s asphalt needs remain the same, the net increase in \$3 per ton is estimated to cost the City an additional \$75,000 a year. The increased travel time and additional heavy loads will also increase fuel consumption of the City trucks and add additional wear and tear on the vehicles.

In addition to direct costs, there will also be indirect and nonfinancial costs incurred by the City if crews must travel farther distances for asphalt. While it is very difficult to estimate the direct financial impact related to wait time, it stands to reason that construction projects will be delayed at certain times until the necessary materials are received at the site. This will negatively affect productivity and efficiency and may add time onto scheduled work timelines for City crews and contractors.

Additionally, because of the increased time to deliver materials to the site, the amount of trucks and staff to man the trucks needed daily for each project will increase. For example, if a project needed five trucks to haul from the Mehring Way plant, it may now need 10 trucks to haul from a plant located 15 miles outside of the city. Even today there are capacity issues with the amount of trucks available on a daily basis. If trucks are

not available to haul material to the site when needed, then the production of the crews is greatly decreased and thus cost would increase.

Given this reality, the Administration will request under all circumstances that any agreement related to relocation and redevelopment of Hilltop require the Valley Asphalt plant to remain open until a suitable replacement is rebuilt or that the City is made whole financially by some other means for the direct and indirect costs to be incurred by shuttering the Valley Asphalt plant. Both the possible location and the lead time (including permitting) necessary for a new asphalt plant are unknown at this time.

E. Additional possible financial impacts

Separate from the to-be-determined costs associated with remediating the West Mill Creek Parcel, terminating CBT/POC's leasehold rights under the POC Lease, and the uncertainty regarding the future of Valley Asphalt, the City faces possible financial impacts from the loss of that POC lease revenue, the relocation of Noramco from the property Hilltop would be relocating to, and any possible incentive requests from Hilltop.

The annual lease payment for the remaining five years (including renewals) of the POC Lease is \$95,330 and the City can adjust this amount upon renewal by appraisal. These lease revenues are split between the City's Law Department Fund 209 and Community & Economic Development's Fund 317 related to oversight of leases and property holding expenses. The rent under the POC Lease attributable to the East Mill Creek Parcel is approximately \$36,000-\$41,000. Reductions in this revenue source may require appropriation of General Fund resources to continue paying expenses currently funded by this revenue stream.

Noramco currently operates a barge loading and offloading facility on the property Hilltop will acquire to facilitate its relocation (namely, the West Mill Creek Parcel and the Sixth Street Yards). The Administration's understanding is that Noramco will be forced to vacate that property for the Hilltop relocation to take place. Noramco reports that continued barge access is an absolutely critical element of their operation; without access to a barge terminal, the company would no longer be able to provide bulk materials and steel handling in volumes and prices demanded of their current customers. Losing access, even temporarily, would severely disrupt this company's normal operations which impacts its ability to fulfill current and future customer orders for an unidentified period of time. The potential financial implications (hardship) to Noramco requires further examination.

The Administration seeks additional examination of potential losses to be borne by the City in the event Noramco simply shuts down its operations. Initial information suggests the City is at risk of losing dozens of relocated Noramco employees, any related earnings taxes, and possibly real estate taxes associated with Noramco-owned properties associated with their broader supply chain operations.

Discussions recently commenced between the Administration and Noramco to evaluate possibilities that retain Noramco's business in the City. Noramco has identified two riverfront sites that could accommodate their barge terminal needs, yet both present unique and significant challenges for possible relocation. The first is a land site Noramco owns in Saylor Park, but which there has previously been significant community concern regarding the creation of a barge facility. There are also unquantified costs and timeframes associated with preparing this site for such operation. The second site is privately-owned land elsewhere on the river, but among other industrial uses, and for which Noramco will have to buy or lease the land. There is also a risk that Noramco would leave the city altogether. The cost of relocating Noramco to either location is unknown, as is whether Noramco would ask the City, or any other party, to help pay that cost.

Finally, the Administration does not know whether Hilltop itself will seek any City incentives to support its relocation.

The additional potential financial impacts of the County-Bengals MOU, the expansion of Smale Riverfront Park, and the Price Landing Park are addressed in sections II and III below.

II. The Music Venue, Smale Park extension, and Bengals-County MOU-related parking requirements that the Hilltop relocation will allow

The proposed property swap and Hilltop relocation project are being advanced by the County for the purposes of facilitating the construction of a music venue by CSO/MEMI on Lot 27 of The Banks. In addition, the City and County have been in discussion for an extended period of time (see Council approval of Banks Phase IIIB Term Sheet) regarding the construction of parking garage and road infrastructure on Lots 23, 27, and 28, which will also allow an intermediate version of the next phase of the Smale Riverfront Park to be built on Lot 23. In order to obtain the consent of the Bengals to construct the music venue on Lot 27, the County has made various commitments to the Bengals as reflected in a series of MOUs (collectively referred to as the "County-Bengals MOU"). These County commitments, as well as the overall Banks Phase IIIB as currently planned, have a variety of implications for the City that must be considered.

A. Music Venue

City staff has been working with MEMI and the County on finalizing a term sheet with respect to the music venue and related base park at The Banks. Among the important areas of continued negotiation are whether the music venue will pay the Common Area Maintenance (CAM) fees that other private owners on The Banks pay to support the maintenance of Smale Riverfront Park and offset the City's direct maintenance costs. Currently, it is the Administration's understanding that the music venue will seek a property tax exemption under the non-profit status of CSO/MEMI. If the parties are able to come to terms, the next step will be to memorialize those terms in contracts. Additional legislative action, in some instances including approval by Planning Commission and the Park Board, is needed to approve the PD amendment for the music venue, all real estate transactions with respect to the music venue and base park, and the appropriation of funds.

B. Extension of Smale Riverfront Park on Lot 23

The City is responsible for constructing the Smale Riverfront Park extension on Lot 23 as part of Phase IIIB of The Banks project. The Administration, including Parks and the Park Board (each as defined below), has been working with the County and CSO/MEMI for some time to identify the design and costs of this park, with the intent to build a "base park" during the initial Phase IIIB construction that would finished at the level of the remainder of Smale later when funding allowed. The most recent estimate of the cost of developing the base park is approximately \$4,641,029 (exclusive of design costs). As part of the negotiations around the music venue, CSO/MEMI has committed to contributing \$1.45MM. The City, Park Board, and other interested parties will need to identify the remaining \$3,191,029 of funding to complete the base park. It is not presently known where these monies would come from. An additional \$6,774,641 (exclusive of design costs) on top of that figure will then be needed at some point in the future to complete the Lot 23 park at the level of the rest of Smale.

C. Concern regarding Army Corps of Engineers funding for Smale Riverfront Park

The federal government has authorized (but not yet appropriated) funding for the next phases of Smale Riverfront Park. A similar previous appropriation contributed to the current park. This funding comes in the form of a match to the local public spending on the park and related infrastructure (including the parking structures on which the Lot 23 park will sit). In order for the value of the Lot 23 infrastructure to be captured and used as credit toward the \$15 million local match of this \$30 million authorization, the City, County, Parks and the U.S. Army Corps of Engineers must execute an MOU prior to the beginning of construction and the issuance of a notice to proceed. Although the City, County, Parks, and Army Corps have been working to execute the MOU for some time, it has not yet been approved by the Army Corps. The City Administration is working with our Federal representatives to complete this task.

In order to protect the City's eligibility for this \$15 million of federal support, the City expressly asked the County not to execute any construction contracts or in fact begin construction until the MOU is executed. The County agreed in writing to do so. Despite this commitment, there are recent indications that the County has executed construction contracts and independently begun construction on the Lot 23 infrastructure. The possibility of this action raises serious concerns that the City's eligibility for this funding may be jeopardized. Regardless of whether the Hilltop property swap goes forward and what impact that has on the timing of the construction of Phase IIIB of The Banks, the Administration will work diligently to ensure that construction schedule does not prevent City access to that \$15 million of federal matching funds.

D. Effect of County parking commitments in Bengals-County MOU

The County-Bengals MOU commits the County to providing 3,200 surface parking lots beginning with the 2021 NFL season and continuing through the duration of the County-Bengals Lease, which currently runs through June 30, 2026 and includes five two-year extensions which allow the Bengals to extend through June 30, 2036. The County made this commitment to the Bengals without any prior consultation with the City. There are important questions, with significant implications for the City and The Banks project, regarding how the County intends to honor this new commitment to maintaining surface parking on the riverfront.

The County-Bengals MOU references the ultimate creation of 1,750-1,950 surface parking spaces at the current Hilltop site. Public information indicates the capacity of the remaining county-controlled surface parking facilities on or near The Banks as follows: Lot A (under Fort Washington Way – 239 spaces), Lot B (future Banks development lots 1 & 13 – 350 spaces), and Lot E (394 spaces). In addition, an undetermined number of spaces will remain in Lot 25 if Lots 23, 27, and 28 are developed in connection with the music venue (these lots collectively provide 1,276 spaces currently under the name Lot D).

Based on public information, the County will need to provide, somewhere between 1,250 and 1,450 surface spaces, in addition to the new Hilltop surface spaces, beginning in the 2021 NFL season. Lots A and E could provide roughly 633 of those spots, leaving 617 to 817 remaining that would need to be filled by all of Lot B (future development lots 1 and 13) and whatever remained of Lot D in the form of the undeveloped Lot 25.

While the Administration cannot confirm whether this combination of surface spaces would meet the County's new obligations under the County-Bengals MOU, it does appear relatively clear – based on the publicly accessible information – that doing so would require the County to hold Lots 1, 13, and 25 back from development during the remainder of the Bengals lease term.

The County-Bengals MOU indicates quite clearly, however, that the County intends to use the City's Crosset Lot to meet a significant portion of this obligation. Section 5 of the November 2018 MOU states "County agrees with Team that the Central [Crosset] Lot (upper and lower sections) is and should be available and will use its best efforts to assure it will remain available, with revenue to Team, for all Bengals Game Days during Term..." The County's lease with the Bengals runs, with extensions, through June 2036.

E. Effect on Crosset Lot, including city revenues

The City owns the Crosset Lot and expects to regain control of the Bengals game day revenues for that upon completion of the Race Street roundabout, which will occur with the phase currently being considered for development. The Bengals currently receive roughly \$393,750 of annual gross revenues from the team's use of the lot for 10 game days. Currently, the Bengals have access to the lot for up to 15 days per season but on average the team only uses the lot for 10 days per season¹. Assuming for the sake of argument that the City

¹ The Administration's position is that the City is entitled to the Crosset lot revenues now and first advanced this position to the County in 2015. At that time, in the interest of the ongoing partnership with the County on The Banks project, the City agreed to delay assertion of its rights until the completion of the street grid during this next phase of the project. As noted, the County did not consult with the City before making its surface parking lot commitment to the Bengals.

began collecting that same amount of revenue in FY 2022 (beginning with the 2021-22 NFL season), the remaining fifteen years of the Bengals lease (with extensions) would deliver \$5,906,250 of gross game day parking revenue (in today's dollars) to the City. That money will instead go the Bengals if the County is somehow able to use its commitments to the Bengals to keep control of that lot as asserted in the County-Bengals MOU.

The County-Bengals MOU also increases the number of Bengals Team Use Days from fifteen to twenty. Although the Administration cannot predict with certainty the impact of these additional Team Use Days, if one assumes the City would charge the same rate the Bengals currently do on game days and that the team would use all twenty days in the other County-controlled lots under the new terms of the County-Bengals MOU, the City would realize an additional \$393,750 annually and \$5,906,250 cumulatively over the remainder of the Bengals lease, thereby doubling the amount to be received by the City. Similarly, these funds would go to the Bengals if the County is able to achieve the goal it lays out in the County-Bengals MOU.

F. Effect of County commitment to possible new design guidelines

The current County-Bengals Lease, as amended, and the 1998 Agreement between the City and County establish development guidelines to which the Bengals have agreed. The County-Bengals MOU re-visits these guidelines and commits the County and Bengals (and City and JBSC) to an "urban planning review" of all undeveloped parts of The Banks, with the condition that any changes to the existing guidelines must be approved by both the team and the County. One effect of this change is to give a private party – the Bengals – a new decision-making veto over future height and design requirements governing the public Banks project.

G. Effect of approving property swap

The Administration has a significant concern that approving the proposed Hilltop property swap and therefore the Hilltop relocation - without first addressing the impacts of the County surface parking commitments on the City's Crossett lot and whether or not the commitments will preclude future development at The Banks – will function as City consent to the County's commitments and prevent the City from protecting its interests on The Banks. Including, of course, the very premise of The Banks as a contiguous riverfront mixed-use development rather than, in any part, a collection of surface parking lots. As such, the Administration will in all circumstances seek as a condition of the proposed property swap that the County remove the surface parking and potential design requirements of the County-Bengals MOU.

Alternatively, the Administration would expect that if the Council does not approve the proposed property swap (or long-term lease as also proposed), with the result that Hilltop will not be able to relocate, the terms of the County-Bengals MOU will not then actually come to pass.

It should be noted that many of the impacts of the County-Bengals MOU are still unclear and only now coming into the light because, while the County executed the relevant MOUs with the Bengals in November and June, the Administration assumed – wrongly it appears – that the County would not make commitments that implicated the City's interests, in both its property and The Banks project, without first consulting with the City. The Administration wrongly assumed the agreement between the County and the Bengals was merely that – an agreement between those two parties - and would not have such potentially direct material implications for the City.

III. Open Financial Questions regarding the Future Price Landing Park

At the September 3rd Economic Growth & Zoning Committee meeting, held at the Price Hill Recreation Center, representatives of the County and Hilltop presented a variety of images and descriptions of a future Price Landing park that would be facilitated by the proposed City acquisition of the West Mill Creek Parcel. In addition, several Lower Price Hill community groups, in a letter to the Mayor, City Council, and the Administration, requested the City take certain steps to advance the Price Landing park project. In the ordinary

course of considering the proposed property swap, the Administration would also consider these community expectations and address various possible responses that may be sought.

While the City is aware of the community effort to plan and develop a park along the river in Lower Price Hill, the Cincinnati Board of Park Commissioners (the "Park Board") has not been asked to look at, nor discussed what would be necessary to build and maintain a park at this location. Prior to the City's Parks Department ("Parks") even considering to move forward with any plans for the future Price Landing park, (i) Parks will consider whether or not the site is suitable for a park based on community need and input and (ii) Parks needs to review the due diligence items listed in Section I(A) of this memo and determine whether or not a park is even feasible on the site. Additionally, funding sources would need to be identified to develop design plans, construction costs and on-going resources to staff and maintain the park (operations and capital), and do so in a way that current Parks resources are not diminished as a result. Parks would need to identify a funding source for those costs and receive community support and Park Board approval prior to developing the future Price Landing park.

The City does not have any estimates as to the construction of this park, nor has the County shared the basis for the estimates provided in its presentation on September 3. As noted above, there are no funding sources identified for this park and it is unclear whether the County, Bengals or Hilltop will make any contributions to the future Price Landing park project.

IV. Conclusion


The preceding sections present the issues that currently need to be addressed as it relates to the Hilltop property swap and The Banks transactions. In its current form, there still remain significant unknowns and uncertainties surrounding this proposal, as it relates to the property condition, financial feasibility, project impacts, and policy implications. Of particular note are the possible financial costs to the City, including (1) the cost of terminating the CBT/POC lease, (2) the loss of current CBT/POC lease revenue, (3) the cost of remediating the West Mill Creek Parcel, (4) the significant financial and operational impacts of the closure of Valley Asphalt, (4) the possible loss of Noramco-generated tax revenues or costs associated with a Noramco relocation, (5) the \$3.19MM City contribution to the Lot 23 base park, (6) the remaining \$6.7MM needed to complete the Lot 23 park, (7) the possible loss of roughly \$6-12MM of Crosset lot parking revenue over the life of the Bengals lease, and (8) the unknown costs associated with developing Price Landing Park.

This does not strike us as a simple transaction at this time or one that should be rushed. Faced with such a situation, normally, the Administration would still be at the stage of gathering and vetting the necessary information to determine whether it is feasible and prudent to move forward with the project. We do not today seem yet to be in a place where it would be appropriate to move forward with asking the Council for their approval to execute on this proposal. We do look forward to determining the best path forward in consultation and with the direction of the City's policymakers.

FOR YOUR INFORMATION

September 20, 2019

To: Mayor and Members of City Council

From: Patrick A. Duhaney, City Manager 

Subject: Hilltop Property Swap and Banks Transactions Administration Recommendations

On September 13, the City Manager distributed to the Mayor and Members of Council a memorandum summarizing the variety of open and unresolved issues involved in the proposed property swap between the City and Hilltop Resources, Inc. ("Hilltop"), including the effects of the property swap on The Banks project and other related City interests. At the September 16 meeting of the Budget & Finance Committee, Chairman Mann asked the Administration to supplement that memorandum with a summary of issues on which the Council could give direction in order to facilitate the proposed transaction. What follows is a listing of the issues that must be resolved to move the transaction forward, together with the Administration's recommended course of action. This memorandum assumes knowledge of the September 13 memorandum and relies on information and broader descriptions of the various issues contained therein.

I. Issues to be resolved for the property swap

A. Due Diligence

On all property transactions, the Administration has two phases of diligence, a phase prior to even bringing a transaction to Council and a phase after the agreement is executed but before any property is conveyed. With respect to the proposed property swap, the Administration has none of the due diligence items necessary to evaluate the transaction and make a recommendation to Council of proposed terms for that transaction.

Administration Recommendation:

- Require County/Hilltop to produce the necessary due diligence that the Administration requires on all other property conveyances, for the Administration's review and approval.
- Require County/Hilltop to pay any environmental remediation costs necessary for the West Mill Creek parcel to be used as a park.

B. CBT Lease

The City and Cincinnati Bulk Terminals, LLC (including its affiliate Port of Cincinnati, LLC, collectively, "CBT"), presented a term sheet to Hilltop to sublease the parcel to the east of the Mill Creek, South of W. Mehring Way (the "Eastern Mill Creek Parcel") for a period of 40 years (the "Term Sheet"). One of the conditions of that Term Sheet is an upfront payment of \$500,000 from Hilltop to CBT (in addition to annual rent of \$100,000). All payments under the Term Sheet are from Hilltop to CBT and such Term Sheet includes no payments from the City to CBT. CBT has indicated to the Administration that it is unwilling to reduce its footprint on the property leased to it from the City east of the railroad bridge.

Administration Recommendation:

- Require County/Hilltop to negotiate directly to obtain CBT consent to lease termination with respect to the Eastern Mill Creek Parcel, within parameters established by the Administration.
- Require County/Hilltop to pay any costs associated with the lease termination for the Eastern Mill Creek Parcel.

C. Valley Asphalt

Valley Asphalt provides a substantial amount of asphalt to the City. In the event that Valley Asphalt ceases to operate, the City will (i) pay approximately \$75,000 more per year and (ii) incur additional costs because of the wear and tear on City equipment, increased travel time for City crews, and the lack of other suitable alternatives in the city.

Administration Recommendation:

- Require that any proposed transaction does not interrupt the operations of Valley Asphalt until a suitable replacement is rebuilt in the City.
- In the event that the proposed transaction causes Valley Asphalt to cease operating, Hilltop and/or the County must reimburse the City any increased costs borne by the City arising from Valley Asphalt's closure.

D. Noramco

Noramco is currently operating on (i) the western Mill Creek parcel Hilltop is proposing to swap for the Eastern Mill Creek Parcel and (ii) on the Sixth Street Yards that Hilltop also has a purchase option on. This swap, as proposed, may therefore result in the loss of Noramco jobs. The City Administration does not, as a matter of practice, bring projects to City Council for consideration that would result in a net loss of jobs and associated earnings taxes.

Administration Recommendation:

- Require County and/or Hilltop to find a suitable site for Noramco to relocate within the City limits and to cover all costs associated with Noramco's relocation.

E. Additional Financial Impacts to the City

The City currently is collecting rent from the lease with CBT for the Eastern Mill Creek Parcel in the approximate amount of \$36,000-\$41,000 per year. In the event that additional property subject to CBT's leases is transferred, the annual amount foregone by the City increases.

Administration Recommendation:

- Identify what services these foregone revenues are funding and, if necessary, require that the County and/or Hilltop compensate the City for this shortfall.

II. Issues to be resolved for the Music Venue, Lot 23 Park, and Bengals-County MOU matters

A. Music Venue

The Administration remains in collaborative and productive negotiation with the CSO/MEMI, County, and Park Board. Remaining major issue of negotiation is how to fund City's incremental maintenance costs for the new Lot 23 park. A ticket fee will cover a certain portion of this cost. City position is this gap should in part be covered by a Common Area Maintenance ("CAM") charge paid by all other private owners on The Banks. CSO/MEMI proposes the admissions tax generated by the venue be diverted from the City's General Fund to park maintenance.

Administration Recommendation:

- Maintain position that park maintenance costs should be covered by ticket fee and the CAM charge.

B. Extension of Smale Riverfront Park on Lot 23 – Base Park only

The current cost estimate for the "base park" finish of Lot 23 is \$4,641,029. CSO/MEMI has committed to fund \$1,450,000 of this amount. This portion of the project therefore needs an additional \$3,191,029 (in the current negotiations, the City has so far been willing to commit \$1,450,000 of this total gap). The Park Board has expressed concern to the City Administration about where these funds will come from. While the cost to construct the Lot 23 park is an eventual future City obligation under the Banks agreements, the timing of this obligation is being significantly advanced by this project.

Administration Recommendation:

- Because the City's obligation to fund has been advanced by the music venue project, require all the interested parties and beneficiaries of the Park - CSO/MEMI, County, Park Board, Parks Foundation, and City - to share the total cost of moving forward now.

C. Concern regarding Army Corps of Engineers funding for Smale Riverfront Park

The City is eligible for \$15MM in federal matching funds for local funds spent on the infrastructure in Smale Riverfront Park. To remain eligible, City and County must execute a MOU with the Army Corps of Engineers before construction begins on any infrastructure spending for which a match will be sought, as

the Administration has repeatedly conveyed to the County. Recent County actions in independently initiating certain construction at The Banks raise eligibility concerns.

Administration Recommendation

- Administration to confirm continuing eligibility with Army Corps of Engineers (currently in process).
 - If County actions result in any loss of eligibility, require County to replace any lost federal funding.
- D. Effect of 3,200 surface parking space commitment in County-Bengals MOU

The Administration has yet to hear or receive a concrete description of how the County intends to meet this new requirement beginning in 2021. Based on written and verbal statements of County representatives, as well as publicly-available information regarding existing surface parking capacity in County and City-controlled lots in the area around the stadium, it appears to the Administration that County compliance will require some combination of the City's Crosset Lot and the remaining Banks project development lots (Lots 1, 13, and 25). The Administration is opposed to dedicating the City's Crosset Lot to this purpose – and foregoing the revenues that lot would generate – under any circumstances. The administration also opposes dedicating any of these lots to permanent surface parking because that contradicts both the clear, community goals and expectations for The Banks project and the administration's general goal of dense, urban development in the City's core.

Administration recommendation:

- Require the County to either demonstrate in writing – with specificity – a plan to provide the required 3,200 surface parking spaces without use of either the Crosset Lot or Lots 1, 13, and 25, or amend the Bengals-County MOU to either remove the 3,200 surface parking space requirement entirely or limit it to the Hilltop site and other County-controlled, non-Banks project surface lots
- E. County position that Crosset Lot must remain under control of Bengals for duration of Lease

In a showing of good faith partnership, the City has been willing to forego game day control of the Crosset Lot revenues until the completion of the street grid, which will occur when Lots 23, 27, and 28 are constructed. The County is seeking to keep those game day revenues with the Bengals for, it appears, the duration of the Bengals Lease.

Administration Recommendation:

- Continue asserting control over Crosset Lot upon completion of the street grid. While generating game day revenue from the lot, the City will also then be able to assess the development potential of certain portions of the lot.
- F. Concerns regarding possible new Banks design guidelines

The County-Bengals MOU commits the County, Bengals, City, and Joint Banks Steering Committee to a design review process that will require consent of the Bengals to any changes. This process also explicitly references preservation of sight lines from the stadium. The Administration is concerned the ability of the

Bengals to approve any changes could result in height, density, and design standards that are worse – from the City’s perspective of encouraging density – than the status quo.

Administration Recommendation:

- Require County commitment that any design guideline changes do not impose any greater restriction than currently exists.
- Seek County commitment to support expanding height and density limits in any process.

III. Open financial questions regarding the future Price Landing Park

County representatives – at both the September 3 Economic Growth & Zoning hearing and the September 16 Budget & Finance Committee meeting – have described the facilitation of the Price Landing Park as a benefit of the property swap. As previously indicated, neither the City nor Park Board currently have plans or funding in place for such a park project.

Administration Recommendation:

- Require County and Hilltop to finance park planning (including design, plan development, community engagement, etc.), through the Parks Department, the ultimate construction costs included in any future park, and the ongoing maintenance costs that would otherwise be attributable to the Parks Department.


IV. Conclusion

There are many issues that must be resolved before the City Administration can move forward with submitting a recommended proposal to the Mayor and Council for their approval. Outlined above is the City Administration’s recommendation for addressing the variety of open and unresolved issues involved in the proposed property swap and The Banks Music Venue transaction. The Administration will continue down its recommended path unless otherwise authorized legislatively by City Council.

November 12, 2019

FOR YOUR INFORMATION MEMO

TO: Mayor & Members of City Council

FROM: Patrick A. Duhaney, City Manager 

SUBJECT: **Ordinance Amending the Cooperation Agreement between the City of Cincinnati and the Board of County Commissioners of Hamilton County in regards to the Banks Project**

The administration has transmitted an ordinance to Council that will amend the Cooperation Agreement between the City and County in order to facilitate the construction of a music venue on Lot 27 of The Banks, an extension of Smale Riverfront Park on Lot 23, the construction of garage infrastructure on Lot 28, and ultimately the rest of The Banks project. This amendment memorializes two agreements between the City and County that will allow the Banks project to move forward. The first is the “Outline of Terms and Conditions Between the City of Cincinnati and Hamilton County” approved by City Council on April 17, 2019 and by the Board of County Commissioners on April 11, 2019, which set forth a new shared cost structure for public infrastructure improvements. The second is the recent agreement, following a meeting of Commissioner Portune, Mayor Cranley, County Administrator Jeff Aluotto, and myself, captured in the attached “Broad Outlines of City/County agreement to move forward with Banks Development as discussed on 11/2” (Attachment A).

This amendment is necessary to advance the music venue project on Lot 27 in a timely manner, as well as the park on Lot 23, because it establishes the updated legal framework for the spending of public dollars on the public infrastructure that will support both the music venue and the park. In addition to this necessary First Amendment to the Cooperation Agreement, the administration has worked with CSO/MEMI and the County to advance the legislative zoning approvals required for the music venue to proceed. The Planning Department held a staff conference on a Major Amendment to Planned Development 43 and a Final Development Plan for Lots, 23, 27, and 28 on October 30th. These items will be heard by the Planning Commission on November 15th and a special meeting of the Economic Growth & Zoning Committee has been noticed for November 20th to give Council the opportunity to approve these zoning changes later that day in the regular meeting of City Council. Importantly, the Major Amendment to be heard by the Planning Commission will include the residential use on Lot 24, per the “Broad Outlines of City/County agreement to move forward with Banks Development as discussed on 11/2.” The administration will also bring forward, in advance of the November 20th City Council meeting, ordinances approving a Music Venue Development Agreement and an appropriation for the Lot 23 park.

These items, together with this First Amendment to the Cooperation Agreement, will provide all the legislative approvals necessary for the music venue to proceed.

This ordinance asks Council to authorize the administration to execute a First Amendment to the Cooperation Agreement substantially in the form of the agreement attached to the ordinance. This allows the administration to continue to negotiate with the County on refinements and clarifications to the language in the agreement without unnecessarily slowing down the music venue approvals by requiring subsequent legislative action. As indicated, this amendment reflects the above-referenced agreements that have been reached between the City and County. The April “Outline of Terms and Conditions Between the City of Cincinnati and Hamilton County” authorized the County to proceed with financing the approximately \$8.79MM public infrastructure funding gap for Phase IIIB of the Banks project, as well as committing the County to advance the City’s portion of any deficits on existing debt supported by the Banks TIF District up to \$4MM. These changes are reflected in sections 2 and 15 of the First Amendment. The cost-sharing included in that Outline of Terms is also reflected more specifically in regards to the park lots in Sections 11 and 12.

The “Broad Outlines of City/County agreement to move forward with Banks Development as discussed on 11/2” describe the following terms, in brief and with reference to the section of the First Amendment they are addressed in (also found in Attachment A):

- The City will allow the County to utilize the City’s Crosset Lot to meet the County’s surface parking lot commitments to the Bengals through 2026 (Section 8)
- The City abandons its proposal to exclude residential use on Lot 24 (found in the PD-43 Major Amendment)
- The County will give the City independent, exclusive development rights on the City-owned Lots 1 and 13 to guarantee those lots will be exempt from the surface parking requirements in the Bengals MOUs (Section 3)
- The City will give the County independent, exclusive development rights on the County-owned Lots 24 and 25 (Section 3)
- The County agrees that any new height and design guidelines that emerge from the Urban Planning Review referenced in the Bengals MOUs will not be more restrictive than current height and design guidelines (Section 5)
- The City agrees to explore with the County options for the placement and development of decks over Fort Washington Way (Section 6)
- The City and County agree to work together over the next 2-3 months to create a revenue-sharing agreement related to the Skystar lease on Lot 18, with the City portion of any revenue share dedicated to the ongoing maintenance and operations of Smale Riverfront Park (Section 7)
- The City agrees that any TIF revenues from development on Lots 1 and 13 will be allocated in the following priority order (Section 14):
 - o To repay the Phase IIIB financing advanced by the County
 - o To repay any TIF District deficit financing advanced by the County
 - o To fund public infrastructure on Lots 1 and 13
 - o Split 50/50 between the City and County for any eligible use

Certain additional changes are necessitated in the First Amendment in order to integrate the above terms into the existing agreement. First, the City has agreed to allow the County to own and operate any garages that are built on the City-owned Lots 1 and 13 (Section 4), consistent with the existing

Banks Documents. Second, the document creates a mechanism for either the City or County to advance funds to proceed with the construction of public infrastructure on their respective lots (Section 15), which is made necessary by the independent development control each is given on those lots. Finally, in order to allow the City and County to independently develop their lots, the amendment commits the parties to formally terminate the Master Development Agreement that has been rendered inoperative on the remaining lots since the departure of Carter as Master Developer (Section 1). There are also several necessary clarifications regarding the funding of DOTE services (Section 10) and the Banks Project Executive (Section 9).

July 21, 2020

FOR YOUR INFORMATION

To: Mayor and Members of Council

From: Paula Boggs Muething, Interim City Manager *PM*

CC: Andrew Garth, Interim City Solicitor
Kaitlyn Geiger, Supervising Attorney

Subject: **Banks Transaction Update**

I. Executive Summary:

In July 2017 the Banks developer, Carter USA based in Atlanta, signaled to the City and County that it would no longer serve as the Master Developer for the Banks. The notice of withdrawal by Carter meant that the Banks development model no longer made sense and the existing agreements between the City and County were suddenly obsolete. The City and County sought to nevertheless move forward with a music venue, and, in April 2019, the City and the County reached a conceptual agreement on terms related to the music venue, adjacent public park, and supporting public infrastructure.

Unbeknownst to the City, the County was simultaneously negotiating with the Bengals and Hilltop Concrete and entered an agreement with the Bengals that had significant impact on the City's property and development rights. The County committed, without informing the City or obtaining the City's consent, to provide approximately 3,200 surface parking spaces to the Bengals at the Banks. The only way for the County to meet that commitment is to misuse the existing Banks agreements and veto development on the lots owned by the City at the Banks. This unilateral imposition on City property and development rights was the basis for the City rejecting the Hilltop Concrete/Bengals proposal.

The Mayor and late Commissioner Portune met to try to resolve the impasse. On November 2, Mayor Cranley and Commissioner Portune reached an agreement that resolved the most significant issues between the parties. The Cranley-Portune agreement removed any unilateral "veto" rights on property owned by the other party, primarily focused on liberating for development County-owned Lots 24 and 25 and City owned Lots 1 and 13 and revenue sharing on Lot 18, each as depicted on the attached Attachment A. City Council approved the Cranley-Portune agreement and a small group (Manager Patrick A. Duhaney and Luke Blocher for the City, Administrator Jeff Aluotto and Roger Friedmann for the County) was tasked with memorializing the agreement in the form of a First Amendment to Cooperation Agreement. The parties reached agreement on all material terms, as reflected in the draft circulated on December 3.

Following the December 3rd draft agreement, the City did its part to try to advance the music venue and park projects, including making significant concessions regarding the control of construction and procurement of the park. In mid-January, over a month and a half after the parties had agreed to all material terms and produced the December 3rd draft, the County's outside legal counsel, Tom Gabelman, delivered two entirely new documents to the Solicitor's office – upon review, City attorneys realized these were simply versions of the County's draft First Amendment to Cooperation Agreement rejected over two months earlier. The guiding principles agreed to by both the City and the County were not reflected in the documents circulated by the County's outside legal counsel. Rather, they represented an effort to return to the unduly burdensome and functionally obsolete Master Development Agreement. Whether by design or by neglect, this functioned as an unacceptable retreat from agreed upon terms; the County appeared to be reneging on the Cranley-Portune agreement by once again imposing veto rights over development on City-owned property and forcing the City to be bound by the unilateral parking commitments the County made to the Bengals.

On June 24, City Council approved all remaining legislation necessary to advance the music venue and park projects. The City intends to directly contribute up to an additional \$5.525 million of financing to the Lot 23 park. The City and MEMI are the only entities contributing funding for the park. To protect this investment, the City needs the ability to withhold payment, hire its own construction team, offset any costs from the joint Banks funds on hand at the City, and any other actions that may be necessary in the event the City is not satisfied with the work being performed under the County's contracts. All that is left to do is for the County to approve and execute the previously agreed upon First Amendment to Cooperation Agreement.

The Park Board has provided all approvals necessary to move forward with the construction of the park on Lot 23 with its approval of the Entertainment Venue Development Agreement in November 2019, the Lot 23 park construction contract in April 2020, and the First Amendment to Cooperation Agreement and funding related to the Lot 23 park in July 2020; however, they conditioned their approval on the Cranley-Portune agreement.

The County is preventing the park on Lot 23 from being constructed as a result of its delays and its outside legal counsel's failure to follow through on the December 3 agreement. It has been over six months since the Cranley-Portune agreement, in which the late Commissioner Portune and Mayor Cranley set aside entrenched positions and worked together to find common ground. Both the City and the County are now facing an unprecedented public health crisis, leaving limited time and resources to resolve differences at the Banks that were settled in the Cranley-Portune agreement many months ago.

As a result of the County's delay, the music venue and adjacent park projects are facing delays and cost increases that may put the projects in jeopardy. The County alone is in a position to accept the Cranley-Portune agreement already approved by both parties. The continued delays and regrettable resistance by the County to implementing the Cranley-Portune agreement is to the detriment of the City, the County, the Banks stakeholders, and City and County residents.

II. First Amendment to Cooperation Agreement Timeline:

A. *Mayor Cranley and Commissioner Portune Agreement*

One year ago, the City and County reached a conceptual agreement on terms for the development of a music venue, adjacent public park, and supporting public infrastructure, as approved by City Council in Ordinance No. 119-2019 on April 17, 2019.

The County's outside legal counsel transmitted a draft First Amendment to Cooperation Agreement to City staff on August 5, 2019. The document transmitted required substantial modification in order to be consistent with the underlying agreement since the draft provided was simply the previously agreed upon term sheet. Moreover, at that time, both the City and the County were engaged in negotiating a term sheet with MEMI for the music venue project.

However, despite the early conceptual agreement between the parties, negotiations broke down in early September 2019. As part of its agreements with the Bengals, the County committed to (i) 2,940 and 3,000 surface parking spaces at the Banks for the 2019 and 2020 seasons respectively and (ii) 3,200 surface spaces starting in the 2021 season continuing for the duration of the Bengals lease. The amount of existing available surface parking spaces at the Banks is insufficient to meet this threshold without prohibiting the development of the City's Lots 1 and 13.

The County transmitted a revised draft First Amendment to Cooperation Agreement on October 25. On October 29, the City provided substantial comments to that draft in order to protect Lots 1 and 13 from being held indefinitely as surface parking and to make the modifications necessary to align the draft with the existing documents.

Following this transmittal, in order to advance the music venue project, Mayor Cranley and Commissioner Portune agreed to meet in an attempt to resolve the differences between the parties.

On November 2, 2019, Mayor Cranley and Commissioner Portune reached an agreement on the remaining issues between the City and the County with respect to the future of the Banks. The City's primary interest in reaching this agreement was to ensure flexibility in developing the lots the City currently owns at the Banks despite the County's agreement with the Bengals. The series of Memorandums of Understanding entered into by the County and the Bengals otherwise commit those lots to surface parking indefinitely.

Under such agreement, the County agreed that the City could exclusively and independently develop its lots so that the City's lots are exempt from the surface parking requirements. In exchange, the City agreed that the County could do the same for the County's Lots 24 and 25 and allowed the County to use the City's Crosset Lot to meet the County's surface parking commitments to the Bengals for the initial term of the Bengals lease. The agreement also detailed (i) how any TIF revenues from the City's Lots 1 and 13 would be utilized, (ii) any new design guidelines at the Banks would not be more restrictive than the current ones, (iii) the City and County would work together on a revenue sharing agreement with Skystar, (iv) residential is a permitted use of Lot 24, and (v) the City and County will collaborate to explore the feasibility of the Fort Washington Way decks, each as more particularly described in the attached Attachment B.

B. City and County Staff Work Towards a First Amendment to Cooperation Agreement

On November 5, the City Manager sent the County Administrator a revised draft of the First Amendment to Cooperation Agreement memorializing the Mayor's and Commissioner Portune's agreement. The City Manager sent further revised drafts on November 6 and 13 addressing concerns raised by the County Administrator. The City Manager and County Administrator also spoke on November 6, agreeing that the City's draft "substantially and broadly embodies the understanding of our respected policymakers." Despite that mutual understanding, the County Administrator responded with a County draft of the First Amendment to Cooperation Agreement on November 13, which retained the existing control structure as currently exists at the Banks, notwithstanding the agreement reached on November 2 by the Mayor and Commissioner Portune. On November 14, the City Manager rejected the County's draft stating, among other things, that it "is inconsistent with the agreement between Commissioner Portune and Mayor Cranley."

Following that communication, City Council approved the City's draft First Amendment to Cooperation Agreement by Ordinance No. 418-2019 on November 14, 2019.

On November 22, 2019, Luke Blocher, then Deputy City Solicitor, and Roger Friedmann, Assistant County Prosecuting Attorney, met to discuss the City's draft First Amendment to Cooperation Agreement. Following that conversation, the Deputy Solicitor sent a revised version incorporating the requested changes. The Assistant County Prosecutor indicated a few other concerns on behalf of the County Administrator, so on November 29, 2019, the City Manager, County Administrator, Assistant County Prosecuting Attorney and Deputy Solicitor met. The parties came to an agreement in principle with the City satisfying requests made by the County Administrator. The Deputy City Solicitor sent a revised draft on December 3 memorializing the agreement reached on November 29 and representing a final agreement between the parties.

C. Following an Agreement on Terms, County Becomes Unresponsive

Following that transmittal of the agreed upon draft, the frequency and substance of the County's communications changed. On December 5, the County's outside legal counsel sent the City Law Department a communication requesting to be on all emails. The Deputy Solicitor followed up on the status of the draft on December 9 and 16. In response, the Assistant County Prosecuting Attorney indicated on December 9 that "Jeff and I are working to get everyone involved in agreement." The City Manager spoke to the County Administrator on December 16, who promised a draft back that week.

On January 3, the Deputy Solicitor alerted MEMI and the County that the City was still waiting on a revised draft First Amendment to Cooperation Agreement and again on January 8, the City Law Department followed-up on the status of the County's draft First Amendment to Cooperation Agreement. On January 9, the County's legal counsel requested a meeting with the City to discuss the Cooperation Agreement, among other things.

The County's outside legal counsel, Tom Gabelman, Deputy City Solicitor Andrew Garth, and Senior Assistant City Solicitor Kaitlyn Geiger met on January 21. At that meeting, the County's legal counsel delivered two new documents, an Amended and Restated Cooperation

Agreement and an Amended and Restated Master Development Agreement, neither of which were discussed previously with the City. In that meeting, the County's legal counsel represented that these documents were consistent with the draft provided by the City and the deal agreed to by Mayor Cranley and Commissioner Portune.

Upon review, the representations made by the County's legal counsel were false. The drafts represented the same terms proposed by the County on November 13 and rejected by the City on November 14. On January 30, the City Manager sent the County Administrator an email indicating that the drafts are "a radical departure from the terms agreed to by Commissioner Portune and Mayor Cranley" with detailed legal analysis regarding the substantive issues presented by the County's drafts. Despite repeated follow-up by City staff, it took the County's outside legal counsel a month and a half to try to pass off the same rejected November 13th draft.

On February 11, following conversations with the City Manager, the County Administrator sent a letter to the City Manager stating the County team would be responding directly to the City's previously proposed version of the First Amendment to Cooperation Agreement. On March 6, the City Manager followed up on the County's promised revisions and indicated that the City must sign the First Amendment to Cooperation Agreement prior to signing the music venue development agreement or any construction contracts related to the park on Lot 23 since it represents the negotiated obligations of both parties. On March 10, the County Administrator indicated he was reviewing and would get back to the City Manager on timing.

D. Five Months Later, the County Delivers Another Draft Amendment Inconsistent with the Cranley-Portune Agreement

On April 9, over five months after the Cranley-Portune agreement, the County's legal counsel and Assistant Prosecuting Attorney sent members of the City Law Department a revised draft First Amendment to Cooperation Agreement. This draft yet again reverts back to the version proposed on November 13 by the County and rejected by the City on November 14 and again on January 30. It also adds new terms and conditions restraining the City's ability to direct the construction of City-owned and paid for parks.

The County's delayed delivery of this document, only to return to a version proposed five months ago, is a significant setback to the music venue development project and related park.

E. Another Mutual Understanding Reached by City and County Staff Only to Be Again Undone by Outside Counsel

Following that delayed transmittal and in the midst of a global health crisis, on April 24, the City Manager, County Administrator, Assistant County Prosecutor Roger Friedmann and Senior Assistant City Solicitor Kaitlyn Geiger participated in a conference call to discuss the issues in the County's draft First Amendment to Cooperation Agreement. A large part of the conversation consisted of the City detailing what items in the Master Development Agreement should be preserved and what items would directly hinder the City's ability to exclusively and independently develop its own lots. Moreover, the City again expressed the need to directly control the construction of the Lot 23 park. Following that call, the City Manager and the County Administrator discussed the City's concerns with the proposed

language further on May 7, with the City accepting the County Administrator's suggestion to include a process by which the Public Parties could object to the development of a lot and be responsible for a lesser portion of the public infrastructure costs in the event a non-profit or one of the Public Parties ultimately is the developer.

On May 21, the City transmitted its draft First Amendment to Cooperation Agreement, consistent with the conversations over the prior month. This draft includes the protections necessary for the City to invest over \$5.5 million notwithstanding not being party to the contracts with the construction manager or the architect for the City park on Lot 23. These necessary protections include the City's ability to withhold payment, hire its own contractors, offset any amounts paid from joint Banks funds on hand at the City, and any other remedies in the event that the City is not satisfied with the work completed under the County's contracts.

Unbeknownst to the City, the deadline for the acceptance of the combination bid for the park and public infrastructure construction elapsed during that time period. Messer, on behalf of the County, engaged the contractor on an extension until June 10. On June 8, the County Administrator emailed the City Manager requesting that the City execute the trade contract containing the park construction work, notwithstanding that the County still had not provided any feedback on the revised First Amendment to Cooperation Agreement. As the City previously made clear to the County, it would in no circumstances sign such construction contract until the First Amendment to Cooperation Agreement was executed. The County refused to do so, causing the combined bid to expire and the parties to lose hundreds of thousands of dollars in savings from the construction proceeding contemporaneously.

Following those communications, on June 12, the County tendered its comments to the First Amendment to Cooperation Agreement. The substantive issues with that draft are discussed further below. In response to the draft, on June 30, the City sent a letter detailing such issues and on July 2, the County responded with the letter attached hereto as Attachment C.

III. City Actions to Advance the Music Venue and Related Park:

Despite the delays and the County's legal counsel's insistence on terms and conditions rejected by the City in November and January, throughout the above timeline, the City advanced the music venue and park. Pursuant to Ordinance Nos. 220-2020, 221-2020 and 222-2020 passed on June 24, 2020, City Council authorized (i) the execution of the revised First Amendment to Cooperation Agreement, (ii) \$2.75 million of direct City contribution to the park on Lot 23 and (iii) the issuance of up to \$2.775 million of debt to finance the remaining financial gap in the Lot 23 park construction budget, to be repaid from the Parks Foundation and from a potential state grant, which may not come to fruition. The County is not contributing any dollars to the park portion of the project.

The City is also sharing equally with the County the cost of the public infrastructure supporting the music venue and parks, which is anticipated to cost approximately \$32 million per the most recent budget shared with the City by the Joint Banks Project Executive. The County is the sole owner of the parking structures and retains all related parking revenue, subject to its agreements with the Banks developers. The City receives no parking revenues,

despite contributing the same amount as the County to the parking garages owned solely by the County.

The City held a special meeting of the Economic Growth and Zoning Committee on November 20 so that the zoning amendment approving the use of Lot 27 as a music venue could be approved by City Council at the earliest possible time following the City Planning Commission meeting on November 15.

The terms of the Entertainment Venue Development Agreement have been agreed to in principle by all parties since February 7, pending resolution of the First Amendment to Cooperation Agreement and finalization of the exhibits to the Entertainment Venue Development Agreement.

Additionally, the City's Department of Buildings and Inspections issued permits for the music venue prior to MEMI owning the property and all air lots and related easements being created.

At the request of MEMI and the County, the City also consented in February 2020 to the County utilizing the County's construction manager and design team for the City's park on Lot 23 and to the County procuring such construction. In June 2019 with respect to Messer, and April 2019 with respect to THP, the County executed contract amendments for their services for the Lot 23 park. It was not until November of 2019 that the City became aware of this action, notwithstanding that it is a City park the City is solely responsible for funding and constructing. At no point did City staff request the County to undertake such actions. The County's construction manager and architect each refused to enter into an amendment to add the City as a party to its respective contract with the County, thereby limiting the City's recourse on these matters. This accommodation was a significant concession on the part of the City since its primary concern is to control the construction and design of the City-owned and paid for park. The City's normal procurement standards such as minority and women-business enterprise inclusion are also not considered as part of the award. Despite these significant concessions, the County now attempts to limit the City's control even further in its draft First Amendment to Cooperation Agreement delivered most recently on June 12.

Upon receipt of the County's letter on July 2, it became clear that the parties would not be able to reach an agreement by July 10, the most recent deadline for the parties to execute the construction contract for the park. On July 8, City staff directed the Joint Banks Project Executive to engage the contractor with respect to its willingness to extend this deadline. That request was granted, and the deadline is now July 30.

IV. Issues in County's June 12 Draft First Amendment to Cooperation Agreement:

Every version of the County's draft First Amendment to Cooperation Agreement represents a regrettable resistance to accept the Cranley-Portune Agreement on the part of the County's legal counsel. Below is a summary of the items of substantial disagreement; all of the below terms and conditions contained in the prior drafts were rejected in communications from the City on November 14, January 30, in its conversations with the County on April 24 and May 7, and on June 30.

County's Restriction of City Control of City Parks on Lots 23 and 28: As noted above, the City agreed to County procurement of the park on Lot 23 and utilizing its architect and construction manager. In the April 9 and June 12 drafts provided, the County attempts to limit the City's ability to control the work on this City asset, wholly funded by the City, by including provisions that requires the City's decisions and payments on the City-owned and paid for park are not to be "unreasonably withheld or delayed". Additionally, the County's legal counsel further restrains the City's approval by *requiring* the City to consider the County's recommendations and the recommendations of the County's construction manager and architect, in making decisions on this City asset, wholly funded by the City. The County attempts to exploit the City's willingness to concede on the use of the County's construction manager/architect and procurement. Had the City not previously agreed in principle to this procurement and contractual arrangement of the park, the City would be free to make any and all decisions directing the design and construction of the City-owned park, subject to the terms and conditions already agreed to in the Entertainment Venue Development Agreement, which are much less restrictive.

The County's draft also seeks to include a park on Lot 28 in the above described arrangement, which the City has not agreed to or approved. As previously communicated to all parties, when the City is financially ready to build such park, it will procure the design for it directly. As of today, no funds have been identified to build the park on Lot 28, so the City will not agree to any new obligations with respect to a park on Lot 28.

The County draft also requires the City to reimburse the County within 30 days of the County's receipt of an invoice for work related to the parks. Again, this provision restricts the City's control of the parks. Because of the above outlined City concessions to advance the project, the ability to withhold payment is the primary mechanism by which the City can contest the manner and quality of work performed, particularly under contracts to which the City is not party. The most recent version provides that the City may withhold payments to Messer at its sole risk, which is not sufficient since the City lacks all of the contractual protections afforded to the County by virtue of its contract with Messer and the County is seemingly unwilling to provide the City with any recourse in the event that it is dissatisfied with the work performed by THP and Messer on a City park which the City is solely funding.

The County's legal counsel also includes broad indemnity language for the City to indemnify the County for the construction work, duplicative of the protections the County already receives pursuant to the Public Parties' contract with the future trade contractor, and for the payment of the park. As previously indicated to the County's legal counsel by members of the City Law Department, the City is prohibited by law to indemnify another party.

County Control over City Lots: The County's draft preserves the existing contractual arrangement and related development controls between the City and the County, notwithstanding the agreement between Mayor Cranley and Commissioner Portune on November 2 that gives "the City independent exclusive development rights on the city-owned land of Lots 1 and 13." As prior Banks transactions such as the development of GE and music venue illustrate, the terms in the existing Banks documents are not always applicable and in some instances are too cumbersome. For example, the Public Parties waived the

developer's parking contribution for Phase 2 and there is no requirement that MEMI pay PILOTs or a deferred purchase price payment for its lot.

The sole purpose of the agreement between Mayor Cranley and Commissioner Portune is to give the parties flexibility to develop their respective lots. Attracting development at the Banks over the past decade has been difficult and flexibility going forward is the only way to ensure that the lots actually get developed. The County insists in its latest draft that it is to construct the parking facilities on Lots 1 and 13 and needs at least 18 months' notice to do so, providing a direct mechanism for the County to delay the development of these lots in order to satisfy its obligations to the Bengals.

Notwithstanding this agreement and how development at the Banks proceeded previously, the County's legal counsel insists that the County consent to any deviation from terms and conditions in the existing Master Development Agreement, which agreement lacks an active master developer. The "alternative funding framework" proposed in the County's latest draft (i) still applies the terms and conditions of the Master Development Agreement to third-party developers not party to such agreement, (ii) only removes the onerous funding requirements if there is sufficient funding available from the Banks project, state and/or federal grants, and (iii) requires the certification of sufficient tax revenues, something not previously contemplated by the existing documents. In the event that the foregoing is not met, the only solution is for the parties negotiate an alternative funding mechanism, which, as evidenced by this current transaction, could take years. Third-party developers should not be forced to become subject to an agreement negotiated by another party over ten years ago. This existing structure has proven to be unsuccessful in attracting development at the Banks and will effectively stop any future development of the Banks.

Parking on Lot 13: Similar to the above, the County's legal counsel is attempting to force the City to agree to a structured parking facility on Lot 13, notwithstanding language in the existing Banks documents which allows the parties to jointly elect to have parking on such lot. The City needs maximum flexibility in pursuing developers of its lots and should not be forced to agree to structured parking prior to securing a development plan for the lot.

TIF Revenues: The County's legal counsel again adds Lots 24 and 25 to how TIF revenues for Lots 1 and 13 will be used. As indicated in the City Manager's email on November 14, in the City Law Department's analysis on January 30 and the conversations on April 24 and May 7, Mayor Cranley and Commissioner Portune only negotiated a separate prioritization of TIF revenues for Lots 1 and 13. Lots 24 and 25 are to remain subject to the terms in the existing Banks documents.

Skystar: The Mayor and Commissioner Portune agreed on November 2 to collaborate in negotiating a revenue sharing agreement benefitting the City in connection with a lease with Skystar on Lot 18. The City under the existing Banks documents has the right to require the County to convey this lot to the City in the event it decides to incorporate the lot into Smale Riverfront Park. On January 28, 2020, City staff became aware through a conversation with the Joint Banks Project Executive that the County entered a 10-year license agreement with Skystar on August 21, 2019, over two months prior to the agreement reached on November

2. The County executed this agreement without consulting with the City despite the City's right to the property.

Crosset Lot. Notwithstanding the express language agreed to by Commissioner Portune and Mayor Cranley, the County is advocating to provide parking revenues to the Bengals from Crosset Lot for up to an additional ten years. The Bengals are a for profit organization that do not need any additional public subsidy, particularly as the City and the County face budget deficits and a historic public health crisis.

V. Response to July 2 County Transmittal

The letter transmitted by the County Administrator to the City Manager on July 2 attached as Attachment C does not accurately reflect the negotiations between the parties nor the existing Banks documents. As noted in the above Section II(A) and (B), between October 29 and November 13, the City transmitted four separate drafts of the First Amendment to Cooperation Agreement to the County. As detailed in the communications between the City Manager and County Administrator, multiple discussions occurred between the parties on the drafts prior to the approval on November 14 of the First Amendment to Cooperation Agreement by City Council. The changes reflected in those later drafts incorporate feedback received from the County. The summary contained in the County's letter is incorrect.

As detailed above and even acknowledged in the County's July 2 letter, until June 12, the County proposed no changes of substance to the drafts it previously circulated. Instead, the County attempted to force the City to negotiate against itself, while also asking the City to make significant concessions with respect to the oversight of the park construction, as ultimately agreed to by the City. The most recent response from the County still does not address the City's primary concern of Lots 1 and 13 being held as surface parking indefinitely and ultimately functions to cause the Public Parties to become further entangled as to the development of the remaining vacant lots at the Banks.

Moreover, the proposal requires the City to utilize funds solely from the Banks for the development of its lots at the Banks, foreclosing the possibility of the City drawing on other eligible funds for such projects, as the City is doing with the financing of the Lot 23 park. Moving forward with the County's proposed draft could cause the lots to remain surfacing parking indefinitely. While this could help the County solve its own problem created by County agreements with the Bengals, this is contrary to the interests of the City, its residents, or the Banks project.

As previously discussed in the meetings on April 24 and May 7, since the parties are sharing the public infrastructure costs of the future development, the City also has an incentive to ensure that the project is viable.

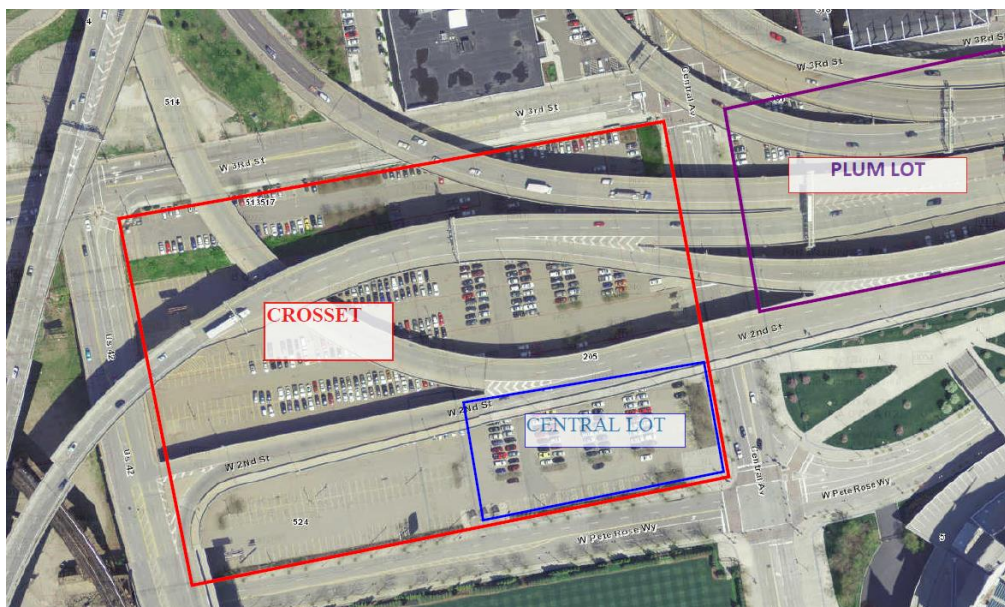
The County's interpretation of the 1998 City-County Redevelopment Agreement is also grossly inaccurate. The applicable language is snipped below. The language in Article IV of that agreement is clear that only parking expressly provided for pursuant to the agreement is to be available for Designated Events.

Any City-owned, leased or controlled parking facility structure, or surface-parking area located within the CRDS, and any other City parking facilities in the Stadium Site outside of the Trench Area that are made available pursuant to this Redevelopment Agreement to provide parking as part of the Stadium Parking Facility shall be subject to the following:

The Crosset Lot was not part of the 1998 County-City Redevelopment Agreement. The City agreed to add Crosset Lot to this arrangement during the limited period of time until street grid was completed pursuant to the First Amendment to Supplemental Memorandum of Understanding effective as of February 9, 2000, as amended and restated by the Amended and Restated Supplemental Memorandum of Understanding between the parties effective as of August 14, 2002. Applicable language from Section 3.5.1 snipped below:

scheduled to commence with respect to the applicable parcel(s). The City shall also make available the Third and Central Property for parking purposes for Designated Events (as defined in the Redevelopment Agreement) during the construction of the Central Riverfront Street Grid Modifications. As used in this Amended and Restated Supplemental Memorandum, Third and Central Property means the real estate generally described as the real estate formerly owned by Crosset and Schilling and parcels immediately adjacent thereto, as depicted on Exhibit T.

Moreover, pursuant to Section 4.2 of the Cooperation Agreement between the City and the County dated November 23, 2007, the City agreed to provide temporary parking during the construction of the Banks parking facilities to the County to satisfy its obligations to the Bengals and Reds and the City is entitled to all revenue generated from such use, directly inconsistent with the 1998 agreement. In the event of a conflict of terms, pursuant to Section 7.4 of the Cooperation Agreement, the Cooperation Agreement controls. Under Section 6.6 of the Cooperation Agreement, the City agreed to continue to provide spaces pursuant to its existing agreements to the Central Lot, as depicted on the Exhibit A-1 attached to the Cooperation Agreement, is only a small portion of the Crosset Lot. See below.



As part of the public infrastructure currently under construction, the street grid will be completed. Notwithstanding that the City is now entitled to all parking revenue pursuant to the existing agreements as summarized above, the Mayor and Commissioner Portune agreed that Crosset Lot would be available to the County to satisfy its obligations to the Bengals through 2026, as memorialized on the attached Attachment B. In accordance with this agreement, Section 8 of the City's draft First Amendment to Cooperation Agreement provides Crosset Lot to the County through June 30, 2026 for up to 20 days per year. Now, the County is refusing to accept the express language of the agreement between Commissioner Portune and Mayor Cranley and is insisting upon providing Crosset Lot revenues to the Bengals through all renewal terms of the lease (up to an additional 10 years), at a time of historic budget deficits and a global health crisis.

The County still refuses to provide any support for its assertion that the most recent Memorandums of Understanding executed with the Bengals enables the development of the surface parking lots at the Banks. As the City has detailed repeatedly in numerous memos, there is simply not enough surface parking available for the County to meet its commitments to the Bengals if the remaining vacant lots are developed. The modifications of the design guidelines agreed to in such agreements with the Bengals do not contain a provision that the design guidelines will not become more restrictive. Without that assurance, it is impossible to assume that the modifications to the Bengals lease allow for the advancement of development at the Banks.

As detailed above, both the music venue and GE transactions deviate from the funding framework referenced by the County in its letter. All the City is asking for is the same flexibility as proven necessary in those transactions. Holding developers to provisions negotiated by a third-party over ten years ago is unreasonable and will disincentivize future development at the Banks. In 2018, the City and the County conducted a request for proposals for the development of the remaining lots at the Banks. Only one response was received, and such response was limited to Lot 24. The economic circumstances facing the region today are much different than 2018 and the parties need to take meaningful action to spur development at the Banks.

The County's provision of land for park use at the Banks referenced in the County's letter was a term of the agreement executed in 1998. As part of that agreement and in exchange for that land, the City also conveyed land to the County, agreed to lease certain identified parking lots (which lots did not at the time include the Crosset Lot) to the County, including for Bengals game day use, and undertook construction obligations. No one is questioning that the 1998 agreement was pivotal to the development of the Banks at that time. However, it was amended over the years, most recently with the engagement of the Public Parties of Carter USA as Master Developer in 2007. Upon Carter's withdrawal, the documents from 2007 are no longer applicable since the lots will be developed individually, and these documents only serve to delay the development of the Banks. In order to capitalize MEMI's historic investment on the riverfront, the Public Parties need to move quickly to develop the remaining lots, for the betterment of the City, the County and its residents. The City's version of the First Amendment to Cooperation Agreement does not terminate the Master

Development Agreement but rather creates an initial framework to allow development to move forward at the Banks while the parties negotiate a mutual termination of the Master Development Agreement, preserving the provisions as between the Public Parties, over the next six months.

To date and exclusive of Lot 23, \$120 million was invested in the development of Smale Riverfront Park with over \$35 million in direct contributions from the City for such development. Smale Riverfront Park and the City's investment therein has played a key role in making the Banks a vibrant destination on the riverfront. Unlike the public infrastructure referenced in the County's letter, the City is solely responsible for paying for the park and the County has no financial stake in its development. Prior to July 2, the County did not communicate execution of the trade contract for the park on Lot 23. Nor has the City been included on conversations with the trade contractor until it specifically requested the extension on July 8. The lack of transparency by the County on a City park is deeply concerning and is exactly why the City is asking for the contractual protections contained in the City's draft First Amendment to Cooperation Agreement.

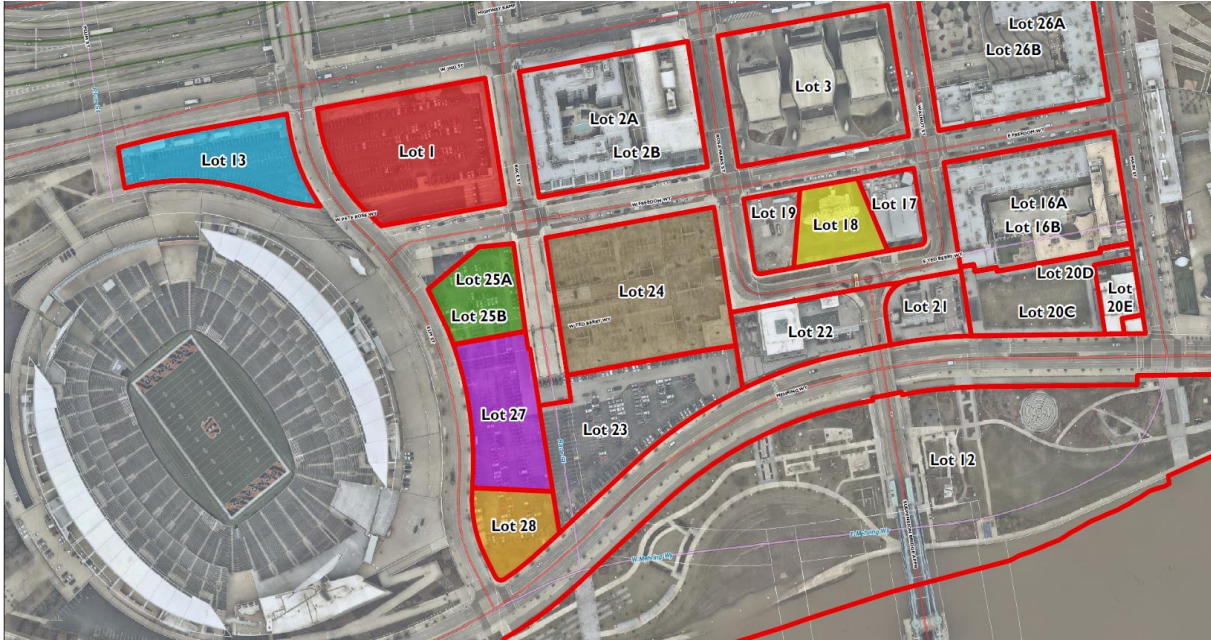
VI. Conclusion:

In short, the County's legal counsel continues to refuse to accept the deal agreed to by Mayor Cranley and Commissioner Portune, as approved by City Council, and instead is insisting that the County maintain control over the development of the City owned lots. The City's draft First Amendment to Cooperation Agreement liberates Lots 1 and 13 from the agreement entered into between the County and the Bengals and allows the City to develop the lots, free from the dated, cumbersome, and obsolete control structure at the Banks. The County's draft agreement, if ratified, will stop any momentum at the Banks generated by the construction of the music venue and cause the lots to remain vacant indefinitely.

Throughout the past six months, the City has taken steps to advance the music venue and adjacent public park, despite the actions by the County's legal counsel. The City is ready and willing to proceed with the music venue and related park project and is in a position to execute all necessary documents to do so, provided that the agreements already reached between the City and the County are honored. At this point, the parties are again at a stalemate, six months after Mayor Cranley and Commissioner Portune reached an agreement on all material terms pertaining to the future of the Banks. The City has executed all required approvals and awaits County agreement.

Attachment A

Map of the Banks Lots



Attachment B

Broad Outlines of City/County agreement to move forward with Banks Development as discussed on 11/2

- The City will agree to not pursue development of the Crossett/Central lot and will make the Crossett/Central lot available through 2026 to allow the County to fulfill its surface lot number requirements committed to by the County in the County-Bengals MOU
- The City will drop its proposal to exclude residential from the zoning uses on Lot 24 and will give independent exclusive development rights to the County for the County-owned Lot 24 and 25.
- The County will give the City independent exclusive development rights on the city-owned land of Lots 1 and 13 (pursuant to the TIF waterfall/priority agreement outlined below), which is the only way to guarantee that Lots 1 & 13 will be exempt from any surface parking lot requirements committed to by the County in the County-Bengals MOU
- During the time period before and during the urban planning review outlined in the County-Bengals MOU, the City retains the right to develop Lots 1 and 13 within the current height restrictions and design guidelines. The County agrees that any revised height restrictions or design guidelines affecting lots at the Banks that come as a result of the urban planning review will be less restrictive or, at minimum, the same as they are today (pre-Bengals-County MOU)
- The City agrees, to the extent it is involved in the urban planning review, to explore with the County options for the placement of and development on the decks over Fort Washington Way
- The City and County agree to work together over the next 2-3 months to create a revenue-sharing agreement related to the Skystar lease on Lot 18 through which the City's portion of the revenue will fund ongoing maintenance and operations of Smale Riverfront Park

TIF Waterfall/Priority Structure for Lots 1 & 13

Any TIF revenues from development on Lots 1 & 13 will be allocated in the following priority order:

- 1) Funds needed for the City to pay back its debt to the county for the building of the garage on lots 27 and 23 in accordance with the already signed city-county construction financing agreement
- 2) Finance the construction of garages necessary to build and develop on Lots 1 and 13
- 3) 50-50 split in revenue between City and County

Attachment C

County Transmittal from July 2



Hamilton County

BOARD OF COMMISSIONERS
Denise Driehaus
Stephanie Summerow Dumas
Victoria Parks

County Administrator

Todd B. Portune Center for County Government
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ADMINISTRATOR
Jeff Alotto
Phone (513) 946-4436

July 2, 2020

Patrick A. Duhaney
City Manager
City of Cincinnati
801 Plum Street, Suite 152
Cincinnati, OH 45202

Re: The Banks Project – City-County Cooperation Agreement

Dear Patrick:

I received your June 30, 2020 letter. It is unfortunate that the City is unwilling to accept any of the County's proposed revisions to the City's latest draft of the First Amendment to the City-County Cooperation Agreement (the "First Amendment"), which were made in order to preserve the financial sustainability of the Banks. In response, I would like to offer the following comments and reactions to the assertions made in your letter.

Negotiations between the City and County

It is important to consider the context in which your prior draft of the First Amendment was presented to the County. On August 3, 2019, the County submitted a draft First Amendment. The County never received a response from the City regarding that proposed draft First Amendment. Subsequently, on November 14, 2019, the City unilaterally approved its version that was not discussed with the County in advance of its submittal to City Council. Since that date, the County has submitted multiple proposed drafts of the First Amendment that are consistent with the financing legislation approved by the City and County, and also addresses those high level discussion points between Mayor Cranley and the late Commissioner Portune. The County also proposed an Amended and Restated Cooperation Agreement and an Amended and Restated Master Development Agreement to advance our negotiations. In each instance, from January 2020 through June 2020, the City ignored every change proposed by the County. This includes the most recent response submitted by the County – one designed to specifically address only those areas where County finances are placed at risk (which has been the County's primary concern). This is not representative of a cooperative negotiation nor is it in the taxpayers' best interests.

As we discussed on multiple occasions, the City's proposed version of the First Amendment puts the finances of the project and the County at risk and undermines the fabric of the Banks Development Framework. That Framework, as you are aware, has been instrumental in enabling development of the Banks in a financially sustainable manner.

July 2, 2020

Re: The Banks Project – City-County Cooperation Agreement

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For that reason, Commissioner Portune was quite clear, as is the current Board of Commissioners, the Banks Development Framework, or a version as modified appropriately in the County's most recent proposal, must remain in place until it can be adequately replaced. It is also essential to ensure the remaining Banks public infrastructure is completed.

In short, the City's proposed First Amendment seeks to eradicate the current Framework. I cannot recommend that the County Commissioners approve an Agreement that results in adverse financial consequences to the County that could range into the hundreds of millions of dollars and compromises the sustainability of The Banks Project.

City's Contractual Obligations regarding Crosset/Central Lot

The City and County entered into an Agreement for the Redevelopment of the Central Riverfront, including the construction of Paul Brown Stadium dated as of January 31, 1998 (the "1998 City-County Redevelopment Agreement"). The 1998 City-County Redevelopment Agreement is the seminal agreement that commenced the redevelopment of Cincinnati's riverfront. That agreement was developed specifically in the context of the May 1997 County-Bengals Lease, and certain City-requested amendments to the Bengals' Lease. In consideration of the City and County making certain commitments to the Bengals, such as the City's commitment to allocate revenue from Bengals patrons from the Crosset Lot, during the term of the Bengals' Lease, including any lease renewals, the Bengals agreed to modifications to the Bengals' Lease as requested by the City.

Pursuant to the express terms of the 1998 City-County Redevelopment Agreement, *the City agreed that as long as the Central Lot was owned by the City or leased by and used for parking, the City would allocate the revenue received from Bengal Patrons on Designated Event Days to the Bengals.* This provision was negotiated as an element of the Bengals' consideration for agreeing to modifications to the County-Bengals Lease. As set forth in the 1998 City-County Redevelopment Agreement:

"Designated Events" are defined as Bengal Football Game Days and other events held on "Team Use Days" and "Other Events" (each as defined in the Amended Bengals Lease) together totaling, in aggregate, up to but no more than a total of 15 days per year during the term of the Amended Bengals Lease, or any renewal thereof.

The City has a contractual obligation pursuant to the 1998 City-County Redevelopment Agreement to fulfill its obligations to the Bengals under such Agreement.

In addition to the foregoing, the 2019 County-Bengals modifications to the Bengals' Lease enables all remaining surface parking areas of The Banks to advance, including, importantly, the Brady ICON Music Venue, the next phase of Smale Park, and the development of Lots 1, 13, 24 and 25. **But for the 2019 Bengals-County modifications, no other existing surface parking areas of The Banks would be developed.**

The City, not the County, made such long-term obligations to the Bengals - to return Game Day revenue from Bengal Patrons to the Bengals. The City made that Agreement and it must stand by its Agreement - as unanimously approved by the City in 1998.

July 2, 2020

Re: The Banks Project – City-County Cooperation Agreement

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Development of the Remaining Banks Lots (1, 13, 24 and 25) within the Banks Development Framework

As set forth above, the County has proposed multiple versions of the First Amendment that enable the City and County to develop the remaining Banks development lots, independently, but within the Master Development Agreement framework. Each of the MDA provisions objected to by the City, such as (i) Developer required reimbursements for garage foundations to support development above, (ii) Developer sharing excess revenues upon sale (Deferred Purchase Price Payments) with the City and County, and (iii) minimum service and PILOT payments with respect to property taxes, were all designed to ensure the funding of the public infrastructure from within the Banks development. This is a self-sustaining funding model that has worked well for the last 13 years through two major recessions. The City's latest version of the First Amendment eliminates these funding and financing sources which will enable the development of future public infrastructure at The Banks. In its latest version, the County has even conceded to an approach for advancing development within an alternative funding framework – so long as the approach does not negatively impact the public parties – in order to help emphasize the independent development discretion of each party. The City appears to have rejected this proposal as well.

As you well know, the County has also aggressively pursued federal and state grants (\$110MM in ten years) to ensure the former surface parking lots that comprised the riverfront as of 2008 could be transformed into over a million square feet of development and thousands of surface parking spaces have been eliminated. The County even agreed to fund and finance the City's obligation for the current Phase 3B and also eliminated 500+ surface spaces so that both projects could move forward.

The County's actions are aligned with all Banks Projects moving forward - not delaying one project after another without any rational basis.

County's Management of Banks Public Infrastructure and Catalyzing Smale Park Development

Since 2000, the County has managed, on behalf of the City, the design and construction of the City's streets, utilities and related public infrastructure on the riverfront. 100% of those projects, managed by the County on the City's behalf, have been completed on time and within budget.

In regard to Smale Park Development, since 2007, the County has conveyed approximately 24 acres of County-owned riverfront property to the City. Those 24 acres, with a market value in excess of \$96MM, was given to the City by the County. But for this act of the County, the nationally recognized Smale Park would not exist.

In regard to the expansion of Smale Park on Lots 23 & 28, the County agreed to fund and finance the City's obligation regarding the public infrastructure to support such development. But for the County's actions, more surface parking lots would remain on the riverfront. Instead, Phase III has moved forward and, but for the City's inaction over the last several months, the new Smale Park extension would be open in December 2020.

The City Park Board requested, in order to save both time and money that the County, through its Phase IIIB infrastructure design and construction management team, manage the construction of the Park on Lots 23 & 28. The County agreed. The County modified its trade contracts to enable the City to share in the management responsibilities; the County has requested that the City act in a "reasonable" and "timely" way. The City has demanded "sole and absolute" discretion over trade contracts in which the County has contractual and financial liability. This is, quite simply, not tenable or reasonable. The City and County have an excellent track record of

July 2, 2020

Re: The Banks Project – City-County Cooperation Agreement

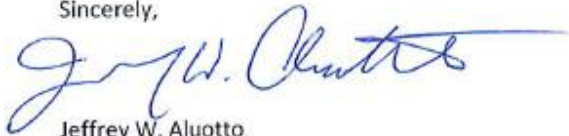
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working together in a reasonable and professional manner to advance the public interests on The Banks. That must continue.

The County has already executed the TC-09 contract on May 26, 2020, so as to not delay the work on Smale Park. The City's unilateral and seemingly arbitrary actions to this point, continue to delay the completion of Smale Park on Lots 23 & 28.

As we discussed previously, the City should execute TC-09 so that completion of Smale Park is not delayed further as we continue to discuss a mutually agreeable approach to the Cooperation Agreement. Such delays will result in additional design and construction management costs that could otherwise be utilized for Park infrastructure purposes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey W. Aluotto". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey W. Aluotto
County Administrator

cc: Board of County Commissioners
Holly Christmann
Roger E. Friedmann
Thomas L. Gabelman

**MEMORANDUM OF UNDERSTANDING
AMONG THE CITY OF CINCINNATI, THE CINCINNATI PARKS FOUNDATION
AND THE CINCINNATI BOARD OF PARK COMMISSIONERS¹**

This Memorandum of Understanding (the “Agreement”) is made as of the Effective Date (as defined below) by and among the Cincinnati Board of Park Commissioners (“Park Board”), the Cincinnati Parks Foundation (“Foundation”), and the City of Cincinnati (“City”) (collectively, the “Parties”).

This Agreement is hereby executed by the duly authorized representatives of the Parties on _____, 2020 (the “Effective Date”).

WHEREAS the Parties are entering into this Agreement to specify their working relationship in regards to the construction of a park, as approved by the Park Board and the City on Lot 23 of the riverfront project commonly known as the Banks (the “Lot 23 Park”);

WHEREAS the City supports the leadership of the Park Board and the fundraising activities of the Foundation, which both serve to promote a viable and sustainable parks system in the City of Cincinnati (“Cincinnati Parks”), including the Lot 23 Park;

WHEREAS as of the Effective Date, the estimated construction cost of the Lot 23 Park is approximately \$6,855,000 and the cost of a storage easement on Lot 28 for Parks Department use is \$120,000;

WHEREAS Music and Event Management, Inc. (“MEMI”) is contributing \$1,450,000 to the construction of the Lot 23 Park that will upon receipt be allocated to the Smale Riverfront Extension project account (the “Lot 23 Project Account”) and prior to the Effective Date, the City allocated \$1,450,000 to the Lot 23 Project Account;

WHEREAS MEMI, the City, and the Park Board have applied for an additional capital grant from the State of Ohio of up to \$2,000,000 (the “State Grant”);

WHEREAS, subject to the terms and conditions of this Agreement, the City commits to contribute an additional (i) \$1,300,000 and (ii) the Banks Park Financing, as defined below;

WHEREAS the Park Board and the Foundation agree to accept such commitment from the City, subject to the terms and conditions contained herein, including repayment to the City from the Foundation of the Banks Park Financing;

WHEREAS the Park Board and the Foundation each consents that repayment of the Banks Park Financing may be used for any lawful purposes, including purposes unrelated to Cincinnati Parks, as determined by the City in its sole and absolute discretion, notwithstanding any language

¹ Note to draft: This draft remains subject to the City’s continuing review and approval. The City is in the process of evaluating the terms, including, without limitation, the Foundation repaying to the City any interest or other costs of issuance related to the Banks Park Financing.

in any prior agreement among the Foundation, Park Board and/or City, as applicable;

WHEREAS the Parties are committed to the financing and construction of the Lot 23 Park and the storage easement on Lot 28 and, toward that end, this Agreement shall serve as the governing document between the Parties for the financing of the Lot 23 Park and Lot 28 storage easement;

WHEREAS the Foundation, a wholly-independent 501(c)(3) non-profit corporation, is committed to building broad-based private/public partnerships supporting the conservation and enhancement of Cincinnati Parks through education, advocacy, and fundraising;

WHEREAS the Park Board controls and manages all Cincinnati Parks as a constituent entity of the City of Cincinnati; and

WHEREAS the Parties agree transparency and accountability regarding park operations and finances are critical to maintaining public trust;

NOW THEREFORE, in consideration of the mutual commitments, forbearances, and other sufficient consideration set forth herein, the Parties agree as follows:

I. Financing of the Lot 23 Park and Lot 28 Storage Easement by the City of Cincinnati.

- A. City Financing. In connection with execution of this Agreement, the City shall allocate, subject to appropriation, an amount equal to \$2,775,000 from bond proceeds or notes (such form issuance to be determined by the City's Finance Department), the repayment of which is supported by the State Grant, fundraising revenue from the Foundation (as further defined in Section II), and/or revenues generated by the District 2-Downtown South/Riverfront District Incentive District, to the Lot 23 Project Account in order fund the construction of the Lot 23 Park and the Lot 28 storage easement (the "Banks Park Financing"). The City will also allocate, subject to appropriation, an additional \$1,300,000 to the Lot 23 Project Account. In the event that the State Grant is awarded by the State of Ohio for the construction of the Lot 23 Park, the Banks Park Financing will be reduced by an amount equal to the amount of the State Grant actually awarded.
- B. Restrictions on Banks Park Financing. The Park Board agrees that the Banks Park Financing is to be used solely for the construction of the Lot 23 Park and the storage easement on Lot 28 and is not to be used for any other Cincinnati Parks purposes. The Park Board further agrees that Park Board approval is not required in order to accept the Banks Park Financing. The Park Board consents that any savings with respect to the construction of the Lot 23 Park that remain in the Lot 23 Project Account can be appropriated by the City and used for any lawful purpose as determined by the City in its sole and absolute discretion, including specifically consenting that these remaining funds can be used for non-park purposes. If such appropriation occurs, the amount of the Banks Park Financing to be repaid by the Foundation will be correspondingly reduced. Notwithstanding any language to the contrary contained herein, in the event that the construction of the Lot 23 Park and the Lot 28 storage easement costs more than \$6,975,000, the City is not obligated to contribute any additional funds to such cost

overruns and the Park Board, in collaboration with the Foundation, is responsible for funding such additional costs.

II. Fundraising and Repayment Responsibilities of the Foundation and the Park Board.

- A. Fundraising. The Park Board and Foundation agree that, in consideration for the Banks Park Financing, the repayment to the City of the Banks Park Financing shall be a fundraising priority of the Foundation. The Park Board agrees to utilize the Foundation as its primary philanthropic partner and agrees not to direct any private donations intended or expected to be used for repayment of the Banks Park Financing away from the Foundation and/or the City, as applicable.
- B. Repayment. Upon the receipt of any gifts, donations, bequests, endowments, or any other Foundation-generated funds intended or expected to reimburse the Banks Park Financing, the Foundation shall timely transfer all of said funds to the Park Board. By executing this Agreement, the Park Board agrees to receive, accept and direct said funds to the account designated by the City at the time of transfer and no further action by the Park Board is necessary to effectuate such transfer of funds. The Park Board and the Foundation acknowledge, agree, and consent that any funds remitted by the Foundation and/or the Park Board to the City as repayment of the Banks Park Financing may be used by the City for any lawful purpose, as determined by the City in its sole and absolute discretion, and such funds are not required to be used for Cincinnati Parks purposes.
- C. Remedies Until Repayment of Banks Park Financing. Until such time as the City is repaid in full for the Banks Park Financing, the Park Board and Foundation acknowledge, agree and consent that (i) no additional improvements to the Lot 23 Park will be constructed or paid for by the Park Board and/or the Foundation and (ii) half of any revenue received by the Park Board from events on Lot 23 and, if applicable, Lot 28, will be remitted upon receipt to repay the City for the Banks Park Financing, subject to any and all agreements with MEMI. No further action by the Park Board is necessary to effectuate any transfer of funds pursuant to this Section. The Parties anticipate the Banks Park Financing will be repaid to the City on or before the date that is five years after the Effective Date.

III. Miscellaneous

- A. Necessary Steps for Implementation. The Parties hereby agree to take all reasonable steps to implement the provisions of this Agreement within their respective agencies.
- B. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.
- C. Construction. This Agreement has been prepared jointly by the Parties hereto after arms-length negotiations and any uncertainty or ambiguity existing herein shall not be interpreted against any party, but according to the application of the rules regarding interpretation of contracts.

- D. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, superseding any and all prior agreements with respect to the subject matter hereof, whether oral or written, including, but not limited to, all oral communications, oral representations, oral understandings, and oral agreements between the Parties, and may not be modified except in writing signed by all Parties hereto subject to Section III.F below.
- E. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the City of Cincinnati and the State of Ohio, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Ohio. Any actions arising out of or in connection with this Agreement shall be brought in the Hamilton County Court of Common Pleas or the United States District Court for the Southern District of Ohio, and the Parties agree that venue in such court is proper.
- F. Amendment. This Agreement may be amended only by a written amendment sign by all of the Parties.
- G. Assignment. Neither the Park Board nor the Foundation may assign its obligations or interests under this Agreement without the prior written consent of the City.
- H. Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.
- I. Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.
- J. Time. Time is of the essence with respect to the performance by the Parties of their respective obligations under this Agreement.
- K. Counterparts and Electronic Signatures. This Agreement may be executed by the Parties in two or more counterparts and each executed counterpart shall be considered an original. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

(signatures on next page)

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

CITY OF CINCINNATI

By: _____
Patrick A. Duhaney, City Manager

APPROVED AS TO FORM:

Paula Boggs Muething, City Solicitor

RECOMMENDED BY:

Kara Kish, Director of Parks

THE CINCINNATI PARKS FOUNDATION

By: _____
Donald L. Mellott, Jr.
President, Board of Directors

CINCINNATI BOARD OF PARK COMMISSIONERS

By: _____
Brad Lindner, President

ATTACHMENT A

ATTACHMENT B

SCHEDULE OF TRANSFER

Section 1. Return to Source: \$4,200,000.00

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM NUMBER: DESCRIPTION	PROJECT OR FUND TO BE TRANSFERRED TO NUMBER: DESCRIPTION	TOTAL BUDGETED COST ALL FUNDS PRIOR	REVISSED	AMOUNT TO BE APPROPRIATED OR TRANSFERRED
Community & Econ Dev. Admin. 161	181643 Villages at Roll Hill Boys and Girls Club	758 Income Tax Permanent Improvement Fund	750,000.00	683,178.00	66,822.00
	181643 Villages at Roll Hill Boys and Girls Club	762 Income Tax Permanent Improvement Fund	683,178.00	0.00	683,178.00
Community & Econ Dev. 164	181646 Mercy Hospital West Site Acquisition	758 Income Tax Permanent Improvement Fund	300,000.00	0.00	300,000.00
	181693 Durner Building Renovation	758 Income Tax Permanent Improvement Fund	300,000.00	25,000.00	275,000.00
Parks Administration & Program Services 203	202008 Smale Riverfront Park Extension	757 Miscellaneous Permanent Improvement Fund	1,450,000.00	0.00	1,450,000.00
Public Services City Facility Management 255	192525 Fire Training Facility	861 Public Building Improvement Bond Fund	10,000,000.00	8,575,000.00	1,425,000.00

Section 2. Appropriate: \$8,275,000.00

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM NUMBER: DESCRIPTION	PROJECT OR FUND TO BE TRANSFERRED TO NUMBER: DESCRIPTION	TOTAL BUDGETED COST ALL FUNDS PRIOR	REVISSED	AMOUNT TO BE APPROPRIATED OR TRANSFERRED
Community & Econ Dev. Admin. 161	757 Miscellaneous Permanent Improvement Fund	181643 Villages at Roll Hill Boys and Girls Club	0.00	750,000.00	750,000.00
Community & Econ Dev. 164	757 Miscellaneous Permanent Improvement Fund	181646 Mercy Hospital West Site Acquisition	0.00	300,000.00	300,000.00
	757 Miscellaneous Permanent Improvement Fund	181693 Durner Building Renovation	25,000.00	300,000.00	275,000.00
Parks Administration & Program Services 203	758 Income Tax Permanent Improvement Fund	202008 Smale Riverfront Park Extension	0.00	641,822.00	641,822.00
	762 Urban Redevelopment Permanent Improvement Fund	202008 Smale Riverfront Park Extension	641,822.00	1,325,000.00	683,178.00
	860 Park and Recreation Improvement Bond Fund	202008 Smale Riverfront Park Extension	1,325,000.00	4,100,000.00	2,775,000.00
	861 Public Building Improvement Bond Fund	202008 Smale Riverfront Park Extension	4,100,000.00	5,525,000.00	1,425,000.00
Public Services City Facility Management 255	757 Miscellaneous Permanent Improvement Fund	192525 Fire Training Facility	8,575,000.00	10,000,000.00	1,425,000.00

EMERGENCY

KMG

BBM

City of Cincinnati

- 2020

An Ordinance No. 221

PROVIDING FOR THE ISSUANCE OF BONDS OR NOTES IN ANTICIPATION OF SUCH BONDS, BY THE CITY OF CINCINNATI, OHIO IN THE PRINCIPAL AMOUNT OF \$2,775,000 FOR THE PURPOSE OF MAKING PARKS AND RECREATION IMPROVEMENTS.

WHEREAS, the Council of the City of Cincinnati (the "Council") has requested that the Finance Director, as fiscal officer of the City, issue a certificate as to the estimated life of the improvements described herein, and the maximum maturity of the bonds referred to herein; and

WHEREAS, the Finance Director has estimated the life of the improvements to be at least five (5) years, and has further certified that the maximum maturity of the bonds is fifteen (15) years, and the maturity of the notes, in anticipation thereof, is five (5) years; now, therefore,

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

Section 1. That it is necessary to issue bonds of the City of Cincinnati, Ohio ("City"), in the principal amount of \$2,775,000, for the purpose of providing funds to acquire real estate or interest in same, for parks, parkways, playgrounds and recreation centers, improving and equipping such real estate and also rehabilitating existing parks, parkways, playgrounds and recreation centers; and paying legal, advertising, printing and all expenses incidental to said improvements. Such principal amount may be increased by the amounts necessary to fund a debt service reserve fund (if needed), capitalized interest (if any), costs of issuance, and other necessary and permitted costs, all as determined by the Fiscal Officer.

Section 2. That bonds of the City be issued on a tax-exempt or taxable basis in the principal amount of \$2,775,000 for the purpose aforesaid. Said bonds shall be dated as determined by the Finance Director, of the denomination of \$5,000 each, or any integral multiple thereof, or such other denomination, numbered sequentially as determined by the Finance Director, and shall bear interest at the rate, or rates, not in excess of six per centum (6.00%) per annum, payable December 1, 2021, and semiannually thereafter on June 1 and December 1 of each year, or such other dates as determined by the Finance Director, until the principal sum is paid. Provided, however, that if said bonds are sold bearing a different rate or rates of interest from that herein before specified, said bonds shall bear such rate, or rates, of interest as may be accepted by the Finance Director. The property tax supported bonds shall be designated 20-1-G1415, or as otherwise designated by the Finance Director. Said bonds shall mature or be subject to mandatory sinking fund redemption on December 1, or such other date of each year as determined by the Finance Director, such maturities and mandatory sinking fund redemption amounts to be determined by the Finance Director. The Finance Director will determine whether the \$2,775,000 parks and recreation improvement bonds are callable (and associated call features) or non-callable at the time of financing.

Notice of the call for redemption of said bonds, specifying the numbers of the bonds to be redeemed, shall be sent by the Bond Registrar and Paying Agent (as defined below) by registered or certified mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon said bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Bond Registrar and Paying Agent, and the City shall direct the Bond Registrar and Paying Agent in writing to make any notice of call for redemption.

Section 3. That said bonds shall express upon their face the purpose for which they are issued and that they are issued pursuant to this ordinance, Chapter 303 of the Cincinnati Municipal Code and Chapter 133 of the Ohio Revised Code. They shall bear the facsimile signature of the Mayor and the facsimile signature of the Finance Director, and shall bear the manual authenticating signature of an authorized representative of U.S. Bank, N. A. (herein the "Bond Registrar and Paying Agent"), Cincinnati, Ohio, which is hereby designated to act as bond registrar, transfer agent and paying agent with respect to the bonds. The bonds shall also bear the corporate seal of the City or a facsimile thereof. The bonds shall be issued in fully registered form. The bonds shall be designated "Parks and Recreation Improvement Bonds." Such bonds shall be payable as to principal, upon the presentment and surrender for cancellation of the bonds, in lawful money of the United States of America at the Bond Registrar and Paying Agent, and payment of the interest thereon shall be made by the Bond Registrar and Paying Agent on each interest payment date to the person whose name appears on the bond registration records as the registered holder thereof, by check or draft mailed to such registered holder at his or her address as it appears on such registration records.

Section 4. That, if the Finance Director, in the exercise of his or her judgment, determines that it is preferable that notes rather than bonds be issued initially, there are hereby authorized notes in the aggregate principal amount of \$2,775,000, which may be issued on a tax-exempt or taxable basis in anticipation of the issuance of a like principal amount of said bonds for the purpose described in Section 1 hereof. Such notes shall be designated "Parks and Recreation Improvement Bond Anticipation Notes," as applicable; shall be issued in such numbers and denominations as may be determined by the Finance Director; shall bear interest at a rate or rates not in excess of six per centum (6.00%) per annum, as shall be approved by the Finance Director, payable on such dates as are determined by the Finance Director; shall be dated as of their date of issuance; shall mature on such date or dates as may be selected by the Finance Director; may be callable in whole or in part at any time prior to maturity as approved by the Finance Director; may be issued in installments as approved by the Finance Director; and shall be payable as to principal at the office of the Bond Registrar and Paying Agent or the office of the Treasurer of the City, and the interest thereon shall be paid by the Bond Registrar and Paying Agent or the office of the Treasurer of the City on each interest payment date to the holders of the notes. Said notes shall bear the facsimile signature of the Mayor and the manual signature of the Finance Director, shall bear the corporate seal of the City, and shall express on their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

Section 5. That, for the purpose of providing the necessary funds to pay the interest on the foregoing issue of bonds or notes promptly when and as the same falls due, and also to

provide for the discharge of said bonds or notes at maturity and for the payment of mandatory sinking fund redemptions, there shall be and is hereby levied on all the taxable property in the City of Cincinnati, in addition to all other taxes, a direct tax annually during the period said bonds are to run, outside of the limitations imposed by Article XII, Section 2, of the Ohio Constitution and Section 5705.02 of the Ohio Revised Code, and by virtue of Section 4 of Article VIII of the Charter of the City of Cincinnati, in an amount sufficient to provide for the payment of said interest, when and as the same shall fall due, and also to discharge the principal of said bonds or notes at maturity and to pay mandatory sinking fund redemptions, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution.

Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from said tax levies hereby required shall be placed in a separate and distinct fund which, together with the interest collected on the same, shall be irrevocably pledged for the payment of principal of and interest on said bonds or notes when and as the same fall due.

In addition to the tax pledge contained above, subject to the *Cooperation Agreement* between the City and the Board of County Commissioners of Hamilton County dated November 23, 2007, as heretofore and hereafter amended and supplemented, the Council of the City of Cincinnati covenants to appropriate annually from lawfully available service payments in lieu of taxes revenues, including (i) all service payments of the applicable tax incentive district namely, the District 2-Downtown South/Riverfront District Incentive District, or (ii) all service payments from applicable tax incentive district projects (collectively, (i) and (ii) above are referred to herein as the "TIF Payments"); and such excess service payments pursuant to other service agreements entered into by the City with other developers as are, in the discretion of the Fiscal Officer, pledged to the repayment of the Parks and Recreation Improvement Bonds or Parks and Recreation Improvement Bond Anticipation Notes. In any year to the extent that the TIF Payments are used to pay principal and interest charges on said bonds or notes and such amount is appropriated by this Council to the payment of such interest and principal, said tax shall not be levied.

Section 6. That said bonds or notes shall be first offered to the City Treasurer as the officer in charge of the Bond Retirement Fund of said City, and if not taken by the Treasurer, may be offered to the Treasury Investment Account for purchase, and, if not offered to or taken by such account, the Finance Director is hereby authorized to award and sell the bonds at public or private sale, in the Finance Director's sound discretion without further action by this Council, at such price (but not less than 97% of par, excluding original issue discount) as is determined by the Finance Director, plus accrued interest on the aggregate principal amount of the bonds from their dates to the date of delivery and payment. The City Manager or Finance Director is hereby authorized to make arrangements for the delivery of the bonds to, and payment therefore by, the purchaser or purchasers thereof at the price determined by the Finance Director; and the City Manager or Finance Director is hereby authorized to execute a purchase agreement (including the certificate of award) for the bonds without further action by this Council. The Finance Director is hereby expressly authorized to execute a purchase agreement for the bonds provided

that the true interest cost for the bonds shall not exceed 6.00% per annum, and that the true interest cost for the notes shall not exceed 6.00% per annum.

The Finance Director, in his or her discretion, is authorized to waive the requirements of Section 303-7 of the Municipal Code and to direct the sale of the bonds or notes in whatever manner he or she deems appropriate.

Section 7. That Council, for and on behalf of the City of Cincinnati, Hamilton County, Ohio, hereby covenants that it will restrict the use of the proceeds of the bonds or notes hereby authorized in such manner and to such extent, if any, and take such other actions as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of the bonds or notes is authorized to give an appropriate certificate on behalf of the City, on the date of delivery of the bonds or notes for inclusion in the transcript of proceedings, setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These bonds or notes are not designated "qualified tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code.

Section 8. That the Finance Director is hereby authorized to certify a copy of this ordinance to the County Auditor of Hamilton County, Ohio, according to law and do all things necessary to comply with Sections 1 through 7 hereof.

Section 9. That, pursuant to the provisions of Section 133.30 of the Ohio Revised Code, these bonds or notes may be consolidated into a single issue with other bond or notes which have been authorized by this Council as determined by the Finance Director.

That these bonds or notes shall be issued on a tax-exempt or taxable basis and in such designations, series, and shall have maturities or principal payments, as are consistent with the aggregate of the series, periodic maturities or principal payments of the separate issues of bonds as set forth in the respective bond ordinances and as provided in the bond purchase agreement to be entered into by and between the City and an underwriter as determined by the Finance Director as provided in a certificate of award executed by the Finance Director.

Section 10. That this Council hereby determines to issue these bonds or notes in Book-Entry-Only form through The Depository Trust Company, New York, New York. The Letter of Representations to The Depository Trust Company from the City, dated March 21, 1995, as supplemented from time to time, is hereby ratified and confirmed.

So long as these bonds or notes are in Book-Entry-Only form, the following covenants and agreements of the City shall be in effect:

(A) Definitions

“Beneficial Owner” means the person in whose name a bond or note is recorded as the beneficial owner of such bond or note by the respective systems of DTC and each of the DTC Participants.

“CEDE & Co” means CEDE & Co, the nominee of DTC, and any successor nominee of DTC with respect to the bonds or notes.

“DTC” means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“DTC Participant” means banks, brokers or dealers who are participants of DTC.

“Letter of Representations” means the Letter of Representations dated March 21, 1995, as supplemented from time to time, from the City and the Paying Agent and Registrar, to DTC with respect to the bonds or notes, which shall be the binding obligation of the City and the Paying Agent and Registrar.

The bonds or notes shall initially be issued in global book entry form registered in the name of CEDE & Co, as nominee for DTC.

While in book entry form, payment of interest for any bond or note registered in the name of CEDE & Co shall be made by wire transfer or such other manner as permitted by the Letter of Representations, to the account of CEDE & Co on the Interest Payment Date or the redemption date at the address indicated for CEDE & Co in the bond register.

(B) Book Entry Bonds

(i) Except as provided herein, the registered owner of all of the bonds or notes shall be DTC and the bonds or notes shall be registered in the name of CEDE & Co, as nominee for DTC. The City and the Paying Agent and Registrar shall supplement (with a description of the bonds) the Letter of Representations with DTC, and the provisions of such Letter of Representations shall be incorporated herein by reference.

(ii) The bonds or notes shall be initially issued in the form of single fully registered global certificates in the amount of each separate stated maturity of the bonds or notes. Upon initial issuance, the ownership of such bonds or notes shall be registered in the City’s bond register in the name of CEDE & Co, as nominee of DTC. The Paying Agent and Registrar and the City may treat DTC (or its nominee) as the sole and exclusive registered owner of the bonds or notes registered in its name for the purposes of payment of the principal, or redemption price of or interest on the bonds or notes, selecting the bonds or notes or portions thereof to be redeemed, giving any notice permitted or required to be given to bondholders under this ordinance, registering the transfer of bonds or notes, obtaining any consent or other action to be taken by bondholders and for all other

purposes whatsoever; and neither the Paying Agent and Registrar nor the City shall be affected by any notice to the contrary. Neither the Paying Agent and Registrar nor the City shall have any responsibility or obligation to any DTC Participant, any person claiming a beneficial ownership interest in the bonds or notes under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Paying Agent and Registrar as being a registered owner, regarding any of the following: the accuracy of any records maintained by DTC or any DTC Participant; the payment of DTC or any DTC Participant of any amount in respect of the principal or redemption price of or interest on the bonds or notes; any notice which is permitted or required to be given to bondholders under this ordinance; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the bonds or notes; or any consent given or other action taken by DTC as bondholder. The Paying Agent and Registrar shall pay from moneys available hereunder all principal of, and premium, if any, and interest on the bonds or notes only to or "upon the order of" DTC (as that term is used in the Uniform Commercial Code as adopted in the State of Ohio), and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of, and premium, if any, and interest on the bonds or notes to the extent of the sum or sums so paid. Except as provided herein, no person other than DTC shall receive an authenticated bond certificate for each separate stated maturity evidencing the obligation of the City to make payments of principal of, and premium, if any, and interest pursuant to this ordinance. Upon delivery by DTC to the Paying Agent and Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & Co, and subject to the provisions of this ordinance with respect to transfers of bonds or notes, the word "CEDE & Co" in this ordinance shall refer to such new nominee of DTC.

(C) Delivery of Bond Certificates

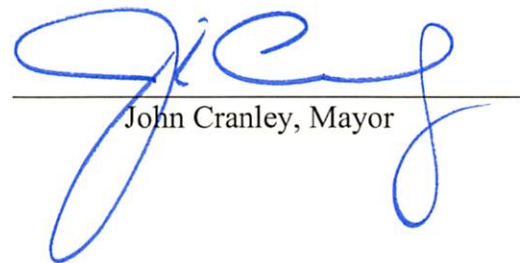
In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain bond certificates, the City may notify DTC and the Paying Agent and Registrar, whereupon DTC will notify the DTC Participants, of the availability through DTC of bond certificates. In such event, the Paying Agent and Registrar shall issue, transfer and exchange, at the City's expense, bond certificates as requested by DTC in appropriate amounts. DTC may determine to discontinue providing its services with respect to the bonds or notes at any time by giving notice to the City and the Paying Agent and Registrar and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City and Paying Agent and Registrar shall be obligated to deliver bond certificates as described in this ordinance, provided that the expense in connection therewith shall be paid by DTC. In the event bond certificates are issued, the provisions of this ordinance shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of, premium, if any, and interest on such certificates. Whenever DTC requests the City and the Paying Agent and Registrar to do so, the Paying Agent and Registrar and the City will cooperate with DTC in taking

appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the bonds or notes to any DTC Participant having bonds or notes credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the bonds or notes.

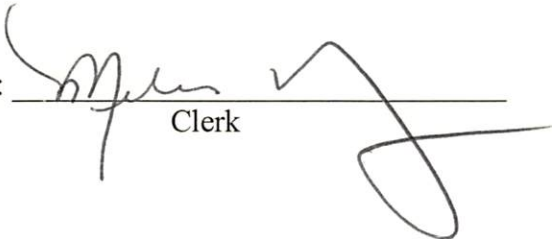
Section 11. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of its committees that resulted in such formal action, were in meetings open to the public, in compliance with legal requirements, including Section 121.22 of the Ohio Revised 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 that the sale of the bonds or notes authorized herein may be required within thirty days of passage of the ordinance in order to take advantage of currently favorable interest rates.

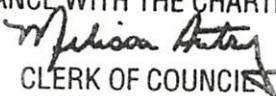
Passed: June 24, 2020



John Cranley, Mayor

Attest: 

Clerk

I HEREBY CERTIFY THAT ORDINANCE NO 221-2020
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 7-7-2020

CLERK OF COUNCIL



EMERGENCY

City of Cincinnati

TJL

TJM

An Ordinance No. 222

- 2020

AUTHORIZING the City Manager to accept and appropriate the sum of \$1,450,000 from Music and Event Management, Inc., or from one or more affiliates controlled by Music and Event Management, Inc., to capital improvement program project account no. 980x203x202008, “Smale Riverfront Park Extension,” for the purpose of providing resources for construction of the Smale Riverfront Park Extension on Lot 23 of the City’s Central Riverfront District, commonly known as “The Banks”; **AUTHORIZING** the transfer of and return to source Funds 757, 758, 762, and 861 the sum of \$4,200,000 from various capital improvement program project accounts to decrease allocations to certain capital improvement program project accounts according to Section 1 of the attached Schedule of Transfer; **AUTHORIZING** the transfer and appropriation of the sum of \$8,275,000 from the unappropriated surplus of Funds 757, 758, 762, 860, and 861 to existing capital improvement program project accounts according to Section 2 of the attached Schedule of Transfer, all for the purpose of providing resources for the Smale Riverfront Park extension and to certain capital improvement programs pursuant to the attached Schedule of Transfer; and further **AUTHORIZING** the City Manager to execute a *Memorandum of Understanding* among the City, the Cincinnati Board of Park Commissioners, and the Cincinnati Parks Foundation.

WHEREAS, by Ordinance No. 119-2019 passed by City Council on April 17, 2019, City Council declared the construction of a base level public park on Lot 23 of the Banks (the “Smale Riverfront Park Extension”) to be a public purpose and authorized all City officials to take all necessary and proper actions to fulfill the terms of the *Outline of Terms and Conditions Between the Public Parties Regarding Development of the Banks Phase IIIB Public Infrastructure* with the Board of County Commissioners of Hamilton County, Ohio; and

WHEREAS, by Ordinance No. 451-2019 passed by City Council on November 20, 2019, in conjunction with Ordinance No. 119-2019 passed by City Council on April 17, 2019, City Council authorized the City Manager to execute the *Entertainment Venue Development Agreement* (the “Agreement”), declared the construction of the Smale Riverfront Park Extension to be a public purpose, and authorized all City officials to take all necessary and proper actions to fulfill the terms of the Agreement; and

WHEREAS, the Parks Department requires the sums of \$6,855,000 for the construction of the Smale Riverfront Park Extension on Lot 23 of the Banks and \$120,000 for the cost of storage on Lot 28 of the Banks; and

WHEREAS, the Smale Riverfront Park Extension capital improvement account will be partially financed with up to \$2,775,000 (the “Park Financing”) in resources to be raised by the issuance of bonds or notes of the City of Cincinnati, which debt is anticipated to be repaid by future revenues generated by TIF District No. 2, resources currently available in Fund 481, “Downtown South/Riverfront Equivalent Fund,” a municipal public improvement tax increment equivalent

fund, grant funding from the State of Ohio described below, and from the Cincinnati Parks Foundation, also as described below; and

WHEREAS, should the City's pursuit of grant funding from the State of Ohio, in the amount of up to \$2,000,000, be successful, this sum would partially offset the Park Financing; and

WHEREAS, the City, the Cincinnati Board of Park Commissioners, and the Cincinnati Parks Foundation intend to enter into a *Memorandum of Understanding*, substantially in the form attached hereto as Attachment A, reflecting the Cincinnati Parks Foundation's commitment to fundraise and repay the City for the Park Financing; and

WHEREAS, the Smale Riverfront Park Extension is in accordance with the "Live" goal to "Build a robust public life," and strategy to "Develop and maintain inviting and engaging public spaces to encourage social interaction between different types of people," as described on pages 147-152 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is hereby authorized to accept and appropriate the sum of \$1,450,000 from Music and Event Management, Inc. or from one or more affiliates controlled by Music and Event Management, Inc., to capital improvement program project account no. 980x203x202008, "Smale Riverfront Park Extension," for the purpose of providing resources for construction of a base level public park on Lot 23 of the Banks.

Section 2. That the sum of \$4,200,000 is hereby transferred and returned to source Funds 757, 758, 762, and 861 from various capital improvement program project accounts to decrease funding allocations to certain capital improvement program project accounts according to Section 1 of the attached Schedule of Transfer.

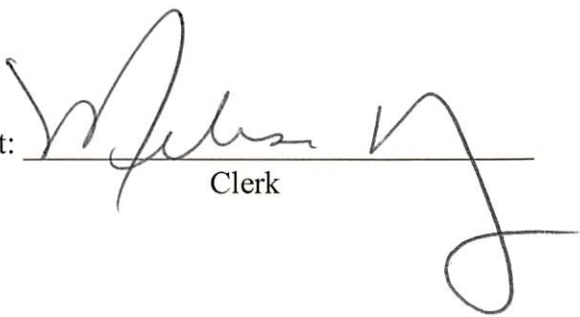
Section 3. That the sum of \$8,275,000 is hereby transferred and appropriated from the unappropriated surplus of Funds 757, 758, 762, 860, and 861 to existing capital improvement program project accounts to provide resources for certain capital improvement program project accounts according to Section 2 of the attached Schedule of Transfer.

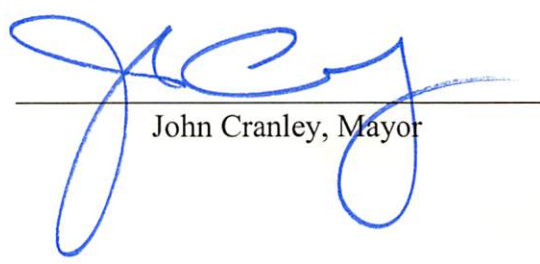
Section 4. That the City Manager is hereby authorized to enter into and execute on behalf of the City the *Memorandum of Understanding* among the City, the Cincinnati Board of Parks Commissioners, and the Cincinnati Parks Foundation, which is substantially in the form of the *Memorandum of Understanding* attached hereto as Attachment A.

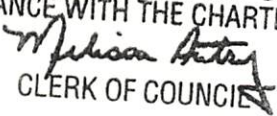
Section 5. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 4 hereof.

Section 6. 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 the immediate need to transfer funds to capital improvement program project accounts in order to avoid project delays.

Passed: June 24, 2020

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO 272-2020
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 7-7-2020

CLERK OF COUNCIL

FIRST AMENDMENT TO COOPERATION AGREEMENT

THIS **FIRST AMENDMENT TO COOPERATION AGREEMENT** (this "Amendment") is made as of the 31st day of July, 2020, by **THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), and **THE CITY OF CINCINNATI, OHIO**, an Ohio municipal corporation (the "City"). **MUSIC AND EVENT MANAGEMENT, INC.**, an Ohio nonprofit corporation and a wholly owned subsidiary of Cincinnati Symphony Orchestra (and any affiliates thereof, collectively, "Music Venue Developer"), is party to this Amendment for the limited purpose of Section 19.

Recitals

A. The County and the City (hereinafter referred to collectively, the "Public Parties" and each individually a "Public Party") have entered into a Cooperation Agreement dated as of November 23, 2007, as supplemented by a Supplement to the Cooperation Agreement dated as of October 12, 2010, and as supplemented by a Second Supplement dated as of July 15, 2015 (as supplemented by each of the foregoing, the "Cooperation Agreement"). Capitalized terms used in the Amendment which are defined in the Cooperation Agreement and not otherwise defined in this Amendment have the meanings set forth in the Cooperation Agreement.

B. The Public Parties desire to enter into this Amendment in furtherance of the Resolution Authorizing County Administrator to Take Such Actions As Necessary to Facilitate the Development of Phase IIIB Public Infrastructure of The Banks Project, Enabling the Development of the Riverview Music Venue and Phase VII of the Smale Riverfront Park Consistent with the Outline of Terms and Conditions Between the City of Cincinnati and Hamilton County passed by Board of County Commissioners of Hamilton County on April 11, 2019 and the City of Cincinnati Ordinance 119-2019 passed by Cincinnati City Council on April 17, 2019.

Statement of Amendment

In consideration of the mutual covenants and agreements set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and County hereby agree as follows:

1. **Withdrawal of Master Developer and Termination of Master Development Agreement.** The Public Parties acknowledge and agree that (i) Developer's and the Ownership Entities' rights, obligations, and interests in the remaining Development Lots pursuant to the Master Development Agreement and Developer's rights, interests, and obligations under the Infrastructure Development Management Agreement will be terminated following the execution of this Amendment, *however* the Public Parties acknowledge and agree that for all intents and purposes Developer has withdrawn as the "Developer" as defined in the Master Development Agreement, (ii) the Master Development Agreement as between the Public

Parties is hereby terminated except as expressly described in Section 3, (iii) the provisions of the Cooperation Agreement pertaining to the Master Development Agreement, the Infrastructure Development Management Agreement, and the future development of the Development Lots (including, without limitation, any Development Closings related thereto), as such provisions relate to Developer and the Ownership Entities are no longer applicable, (iv) the Public Parties will be entering into a separate agreement for the development of Lot 27 with a third-party developer, and (v) the City may, in its sole and absolute discretion enter into agreement(s) with third-party developer(s) for Lots 1 and 13 (as defined below) and the County may, in its sole and absolute discretion, enter into agreement(s) with third-party developer(s) for Lots 24 and 25 (as defined below). Any definitions in the Cooperation Agreement that are defined by the corresponding definition in the Master Development Agreement being preserved hereby shall be deemed to correspond with the applicable definition in the Entertainment Venue Development Agreement (the “Music Venue Agreement”) among the Public Parties and the Music Venue Developer upon execution of all parties of such agreement.

2. **Phase IIIB Public Infrastructure Improvements; Sources and Uses of Public Parties’ Funds.** The Public Parties commit to develop the public infrastructure, including site work, foundations, columns, public parking facilities, podiums, utilities, street grid improvements, to support the development of the Indoor Venue (as defined in the Music Venue Agreement, the “Indoor Venue”) on Lot 27, the development of the Base Park (as defined in the Music Venue Agreement, the “Base Park”) on Lot 23B, and the future development of greenspace on Lot 28 (collectively, the “Phase IIIB Public Infrastructure Improvements”). The sources and uses of the Public Parties’ funds for the Phase IIIB Public Infrastructure Improvements is set forth in **Exhibit K** attached hereto, which is comprised of: a) grant funding awarded by the State of Ohio specifically for the development of public parking facilities in Lots 23, 27 and 28 in the amount of \$12,000,000 (the “2019 ODNR Grant”); b) remaining public funds from savings and payments retained by City and County from Phase I, II and III in the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project (the “Joint Account”), in the approximate amount of \$8,200,000 (the “City/County Banks Fund Balance”); c) a DSA Grant remainder of \$132,580 (the “DSA Grant Remainder”); d) Developer escrow payment to be received by the Public Parties in the approximate amount of \$202,119 (the “Phase 2 Escrow Payment”); and e) County financing of approximately \$8,790,000, all as allocated and set forth in **Exhibit K**. For the avoidance of doubt, the foregoing does not include any funds from accounts held by the City. In the event that the costs of the Phase IIIB Public Infrastructure Improvements financed by the County exceed \$8,790,000, the County must receive the City’s written consent prior to incurring such excess costs, and if those excess costs are part of the Phase IIIB Financing (as defined below), then the City agrees it will not unreasonably withhold or delay its consent (the “County Financing”). The City and the County agree to direct the Joint Banks Project Executive to provide the City and the County with regular written updates of the budget for the Phase IIIB Public Infrastructure Improvements, such updates occurring at least once per month until the reconciliation pursuant to this Section is performed. Upon the completion of the Phase IIIB Public Infrastructure Improvements, the Public Parties shall perform a reconciliation of the Public Party Costs expended, the sources of funds utilized for such Public Party Costs, and shall adjust, as appropriate, the balances as between the Public Parties so that the City and County bear an equal share of the Public Party Costs for the Phase IIIB Public Infrastructure Improvements.

3. **Development of Lots 1, 13, 24 and 25.**

3.1. **Unilateral Development Rights.** Notwithstanding anything to the contrary in this Amendment, the Cooperation Agreement, the Contract Documents, or any other agreement between the Public Parties:

3.1.1. the County retains exclusive development rights of Lots 24A and 24B (as each is defined in the Master Development Agreement as incorporated herein, collectively, "Lot 24"), and Lots 25A and 25B (as each is defined in the Master Development Agreement as incorporated herein, collectively, "Lot 25") *provided that* any such development is in accordance with (a) this Amendment and (b) any development guidelines and height limitations applicable to the County for Lots 24 and 25 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs (as defined below)) or the County receives the prior written consent of the City, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs); and

3.1.2. subject to Section 4 below and the construction of a Parking Facility on Lot 1A and, upon the election of the Public Parties, on Lot 13, the City retains exclusive development rights of Lots 1A and 1B (as each is defined in the Master Development Agreement as incorporated herein, collectively, "Lot 1") and Lot 13 (as it is defined in the Master Development Agreement as incorporated herein, "Lot 13"), *provided that* such development is in accordance with (a) this Amendment and (b) any development guidelines and height limitations applicable to the City for Lots 1 and 13 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs) or the City receives the prior written consent of the County, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs). The Public Parties commit to develop their respective Development Lots in a manner that is economically and financially beneficial to the Total Project, the City of Cincinnati, and Hamilton County. To the extent there are any other Contract Documents, contracts, agreements, leases, or any other documents between the Public Parties pertaining to Lots 1, 13, 24 and 25 that are inconsistent with this Amendment, those Contract Documents, contracts, agreements, leases, and other documents are hereby amended by this Amendment. Each Public Party will cooperate with each other to amend any contracts, agreements, leases or other documents with third-parties that it is party to in order to be consistent with this Section and will not unreasonably withhold or delay its approval to any such amendments.

3.2. **Development Process.**

3.2.1 **Notice of Development.** In the event that a Public Party plans to proceed with the development of a Development Lot as set forth in Section 3.1 (the "Proposing Public Party"), then the Proposing Public Party shall deliver prior written notice to the other Public Party (the "Notice"). As part of the Notice, the Proposing Public Party shall

provide sufficient information and documentation to the other Public Party to ensure that the infrastructure improvements, including the Public Parking Facilities, Utilities and Street Grid Improvements, associated with the proposed development on such Development Lot, will be funded and financed over a period not to exceed thirty (30) years with (a) sources available from and internal to the Total Project pursuant to the existing Contract Documents, (b) any funds committed by a future developer of such Lot to reimburse any Public Party Costs (solely to the extent agreed to by that developer), (c) a combination of State or federal grants that have been secured for such development, and/or (d) other revenue sources that are documented and secured by the Public Party proposing the development (items (a), (b), (c) and (d) shall be referred to, collectively, as the "Banks Lot Revenue Sources"). The Notice shall also include a schedule by which the applicable Parking Facilities, Street Grid Improvements, Utilities, any other public infrastructure related to the proposed development will be developed and a schedule by which the proposed project on the Development Lot will be developed (collectively, the "Proposed Development Schedule"). In the event a Proposing Public Party reasonably documents and demonstrates to the other Public Party that the anticipated Banks Lot Revenue Sources meet or exceed the costs of the Infrastructure Improvements within the proposed Development Lot (the "Minimum Threshold Requirement"), then the Public Parties shall equally split the Public Party Costs and the Proposing Public Party may commence construction of the proposed development at any point after 60 days following the delivery of the Notice.

3.2.2 Payment of Excess Amounts. In the event the Proposing Public Party does not demonstrate and document to the other Public Party that the Minimum Threshold Requirements will be met, the Proposing Public Party may commence construction of the proposed development at any point after 60 days following delivery of the Notice, provided that the Proposing Public Party provides funding for the monetary difference between the Minimum Threshold Requirement and the projected Banks Lot Revenue Sources (the "Excess Amount"). By way of example only, and not limitation, in the event the County, as the Proposing Public Party, proposes to develop Lot 25 and the Public Party Costs associated with the development of such Lot are Ten Million Dollars (\$10,000,000), the City and County share equally (*i.e.*, \$5,000,000 each) in such Public Party Costs associated with such Development Lot, provided the Minimum Threshold Requirement is met (*i.e.*, \$10,000,000). Alternatively, in the event the projected Banks Lot Revenue Sources are Seven Million Dollars (\$7,000,000), the County, as the Proposing Public Party shall fund the additional Three Million Dollars (\$3,000,000), required to meet the Minimum Threshold Requirement; and thereafter, the City and County shall equally fund remaining Public Party Costs equal to Three Million Five Hundred Thousand Dollars (\$3,500,000) each. This latter example would result in the County, as the Proposing Public Party, funding a total of Six Million Five Hundred Thousand Dollars (\$6,500,000) and the City, as the other Public Party, funding Three Million Five Hundred Thousand Dollars (\$3,500,000) of the Public Party Costs. Any increase in Public Party Costs for a proposed development after the delivery of the Notice that are not offset by any additional Banks Lot Revenue Sources shall constitute the Excess Amount paid for solely by the Proposing Public Party. For the avoidance of doubt, any payments by a Public Party of an Excess Amount pursuant to this Amendment do not constitute a Permitted Advance and that Public Party is solely responsible for those costs.

3.2.3 County's Right of First Opportunity to Construct Parking Facility. If the City delivers a Notice with respect to (i) Lot 1 or (ii) Lot 13 and the Public Parties elect to construct a Parking Facility on Lot 13, then the County shall have the right of first opportunity to construct the Parking Facility on such Lot so long as it commences and completes construction in accordance with the Proposed Development Schedule. The Notice will specify the commencement and completion of construction deadlines for the Parking Facility in accordance with the Proposed Development Schedule (collectively, the "Deadlines"). Upon receipt of the Notice, the County has 60 days to deliver written acceptance to the City of the offer to construct the Parking Facility, agreeing to commence and complete the construction on or before the Deadlines. At that time, the County will also provide for the benefit of the City a Completion Guaranty for the construction of such Parking Facility, which shall include, without limitation, a requirement that the County complete the construction of the Parking Facility by the Deadlines, the Parking Facility will be constructed to provide adequate support for the proposed development, and in the event that the County does not commence or complete construction by the Deadlines, then the City has the right, as it elects, to (i) specific performance, (ii) construct the Parking Facility itself, (iii) compel the County to assign any contracts pertaining to the construction of the Parking Facility, and (iv) any and all remedies available under applicable law (the "County's Completion Guaranty"). If the County does not commence construction on or before the applicable Deadline or the County does not deliver written notice of acceptance to construct the Parking Facility on or before the date that is 60 days after the County's receipt of the Notice, then pursuant to this Amendment and the County's Completion Guaranty, the City shall have the right to commence and complete construction of the Parking Facility. The City will convey the applicable Parking Facility Lot upon the completion of construction of the Parking Facility as certified by either the City's or the County's construction manager, as applicable, notwithstanding any language to the contrary in Section 2.4 of the Cooperation Agreement. If the City constructs any Parking Facilities pursuant to this Section, the City shall cause such Parking Facilities to be designed and constructed to be compatible and to integrate with the other Parking Facilities within the Total Project. Failure by the City to do so constitutes an event of default hereunder and the County has the right to avail itself of any and all remedies available pursuant to applicable law.

3.2.4 Demolition of Surface Parking on Lots 1 and 13. Following the City's and a third-party developer's execution of a development agreement for a proposed development on Lots 1 and/or 13 and delivery of the applicable Notice to the County, the City has the right to provide the County with written notice that it intends to demolish, excavate and/or conduct site clearing on the Lot proposed to be developed. The City shall give the County no less than 60 days' written notice of the anticipated date of the demolition, site clearing and/or excavation is to commence and the County shall vacate the parcel(s) no later than 60 days after the County's receipt of such demolition notice.

3.3. [Sections of the MDA to be preserved – from the City's perspective, this should be any definitions necessary to preserve and the RE items. County, please let us know what you think needs to be preserved as you agreed to do on the call yesterday. Note the City could also commit in this Amendment to agree to include a reservation of easements in its deed to third-party developers for any necessary easements related to the parking infrastructure.] To the extent that the terms and conditions of the items specifically listed

in this Section conflict with any other provisions of this Amendment, the provisions in this Amendment shall control.

4. **Parking Facilities on Lots 1 and 13.** Consistent with the existing Contract Documents between the Public Parties and the Cooperation Agreement, as amended by this Amendment, in the event that Parking Facilities are constructed on Lots 1 and 13, as applicable, upon the completion of construction, the County will own, operate and be entitled to all parking revenue attributable to such Parking Facilities.

5. **Bengals MOUs.** Pursuant to the Memorandums of Understanding Between the Board of County Commissioners of Hamilton County and the Cincinnati Bengals, Inc. entered into on or about November 23, 2018, and June 26, 2019 (collectively, the “MOUs”), the County and Cincinnati Bengals, Inc. agreed to undertake an urban planning review of the building height limitations and certain development guidelines (the “Urban Planning Review”). The County acknowledges and agrees that any revised building height restrictions or development guidelines will not be any more restrictive than the current building development restrictions and development guidelines as set forth in the Existing Riverfront Agreements and that the Public Parties will mutually agree to any building height restrictions or development guidelines revisions.

6. **Fort Washington Way Decks.** The City, to the extent it is involved in the Urban Planning Review, will collaborate in good faith with the County to review the feasibility of the placement of and the development on any future decks over Fort Washington Way.

7. **Lot 18.** The County acknowledges and agrees that at such time as the City is prepared to own, operate and maintain Lot 18 and to incorporate it into the Central Riverfront Park, the City has the right under the Cooperation Agreement and the Contract Documents to require the County to convey all of the County’s right, title, and interest in Lot 18 to the City. Until such time, the County will continue to operate and maintain Lot 18 as a public park. Without limiting the City’s rights under the Cooperation Agreement and any of the Contract Documents, the City and the County agree use good faith efforts to negotiate a revenue sharing agreement no later than 90 days after the Effective Date related to the license agreement between the County and Skystar Wheel, LLC or an affiliate thereto regarding Lot 18. The City will only provide its consent to the license agreement, which consent will not be unreasonably withheld or delayed, upon all applicable parties agreeing to the revenue sharing arrangement. The City intends to use its portion of any revenue from such arrangement to fund ongoing maintenance and operation expenses related to the Central Riverfront Park.

8. **Banks Project Executive.** The City consents to the Banks Project Executive working on projects unrelated to the Public Project solely on behalf of the County. The Public Parties acknowledge and agree that the Banks Project Executive will be a shared 50/50 cost with respect to his time on the Public Project and that the County will be solely responsible for all costs attributable to the Banks Project Executive on unrelated projects solely on behalf of the County. The County will cause the Banks Project Executive to provide the City with weekly documentation as to how much time is spent on the Public Project that week and how much time is spent on projects solely on behalf of the County that week. As of the Effective

Date, the Public Parties anticipate that the Banks Project Executive will spend approximately sixty percent (60%) of his time on the Public Project and approximately forty percent (40%) of his time on unrelated projects solely on behalf of the County. No later than the date that is 14 calendar days following the Effective Date, the County will cause the Banks Project Executive to provide the City with a breakdown of time spent on unrelated projects solely on behalf of the County prior to the Effective Date and the County will reimburse the Joint Account the amount used to fund the Banks Project Executive's salary for time on unrelated projects prior to the Effective Date, if any.

9. **DOTE Services.** The Public Parties acknowledge and agree that the City's Department of Transportation and Engineering is providing inspection and construction related services with respect to the Phase IIIB Public Infrastructure Improvements (the "**DOTE Services**"). The City will send monthly invoices to the County for the DOTE Services incurred in the preceding month. The County will pay such invoices from the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project. Half of the costs for such DOTE Services shall be allocated as an obligation of the County. The remaining half of the costs for such DOTE Services shall be allocated as an obligation of the City and the City will repay its portion of the costs for the DOTE Services from the sources of revenue identified in Section 3.7.2 (as amended in Section 14).

10. **Phase 2 Park Podium.** The definition of Phase 2 Park Podium in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"Phase 2 Park Podium" means collectively, (i) the podium designed and constructed as part of the Parking Facilities on Lot 23A above such Parking Facilities, which, for the avoidance of doubt the Public Parties are equally responsible for maintaining, and (ii) the podium designed and constructed as part of the Parking Facilities on Lot 28 above such Parking Facilities, which, for the avoidance of doubt the City is solely responsible for maintaining in accordance with applicable agreements among the City, the County, and Music and Event Management, Inc.

11. **Phase IIIB Podiums Cost.** Pursuant to the Cooperation Agreement, as amended hereby, the City and County shall share equally in the cost of the Phase 2 Park Podium. Notwithstanding the foregoing, the City is solely responsible to maintain the portion of the Phase 2 Park Podium on Lot 28 in accordance with the Music Venue Agreement and the ancillary agreements related thereto. The Music Venue Developer shall be solely responsible for the costs associated with the development podium slab supporting the Indoor Venue and the development costs of the Indoor Venue on Lot 27.

12. **TIF Revenues.** The definition of TIF Revenues in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"TIF Revenues" means any payments in lieu of taxes with respect to parcels in the Total Project area actually received by the City

(including, without limitation, any minimum service payments received by the City pursuant to a Contract Document) as a result of the tax increment financing exemptions pursuant to Ohio Revised Code Section 5709.40(C), as authorized by Ordinance Nos. 412-2002 and 389-2007, passed by City Council on December 18, 2002, and November 1, 2007, respectively, less the portions thereof paid to the Cincinnati Public School District pursuant to the Agreement dated July 2, 1999 between the City and the Cincinnati Public School District, as amended.

13. **[Lots 1, 13, 24 and 25 TIF Revenue Sharing.** (i) The definition of TIF Bonds in Section 1.1 of the Cooperation Agreement and (ii) the use of TIF Bonds in Sections 3.3 and 3.5 of the Cooperation Agreement is hereby amended to exclude any TIF Revenues attributable to improvements on Lots 1, 13, 24, and 25. The TIF Revenues attributable to Lots 1, 13, 24 and 25 shall be used only for the following purposes and in the following priority:

first, to repay the Phase IIIB Financing (as defined below), the City's portion of such repayment is equal to the Phase IIIB Permitted Advance (as defined below) and the County's portion of such repayment is the remaining amount of the Phase IIIB Financing, if any;

second, to repay the TIF Deficit Financing, 50% of such repayment shall be attributable to the City and 50% of such repayment shall be attributable to the County;

third, to reimburse the Public Parties for Public Party Costs related to the infrastructure necessary to develop Lots 1, 13, 24, and 25 (including, without limitation, public parking facilities on such lots); such reimbursement to be paid 50% to each Public Party;

fourth, to (i) reimburse the Public Parties for Public Party Costs related to the construction of new public infrastructure improvements that are part of the Public Project and (ii) fund the future construction of new public infrastructure improvements that are part of the Public Project, each in accordance with the Cooperation Agreement, as amended, as of the Effective Date; such funds to be paid 50% to each Public Party. Such reimbursement to be paid 50% to each Public Party, provided that any Public Party making a Future Permitted Advance hereunder shall be entitled to the other Public Party's 50% share until such time as the Public Party making the Future Permitted Advance as received payment of the Future Permitted Advance on the terms and conditions agreed to by the Public Parties; and

fifth, 50% of any TIF Revenues shall be retained by the City to be used for any eligible purpose under Ohio law and 50% of any TIF Revenues will be transmitted by the City to the County to be used for any eligible purpose under Ohio law.

For the avoidance of doubt; 50% of the TIF Revenues attributable to Lots 1, 13, 24 and 25 shall be allocated to the City and 50% of the TIF Revenues attributable to Lots 1, 13, 24 and 25 shall be allocated to the County. By way of example and not limitation, if there is \$100,000 of TIF Revenue attributable to Lots 1, 13, 24 and 25, then (i) \$50,000 of such TIF Revenue will first be used by the City to repay the County for the Phase IIIB Permitted Advance then, if the Phase IIIB Permitted Advance is no longer outstanding, to repay the County for the City's portion of the TIF Deficit Financing, then if the City's portion of the TIF Deficit Financing is no longer outstanding, to reimburse the City for its Public Party Costs related to the public infrastructure necessary to develop Lots 1, 13, 24 and 25, then if there are no outstanding Public Party Costs to be reimbursed to the City related to the public infrastructure necessary to develop Lots 1, 13, 24, and 25, to reimburse and fund the City's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the City may keep any such excess funds for any eligible purpose, and (ii) \$50,000 of such TIF Revenue will first be used to pay the County's portion of the Phase IIIB Financing (if any), then if the County's portion of the Phase IIIB Financing is no longer outstanding, to repay the County's portion of the TIF Deficit Financing then if the County's portion of the TIF Deficit Financing is no longer outstanding, to reimburse the County for its Public Party Costs related to the public infrastructure necessary to develop Lots 1, 13, 24, and 25, then if there are no outstanding Public Party Costs to be reimbursed to the County related to the public infrastructure necessary to develop Lots 1, 13, 24, and 25, to reimburse and fund the County's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the County may keep any such excess funds for any eligible purpose. For the avoidance of doubt, the City will retain any TIF Revenues it actually receives related to Lots 1, 13, 24, and 25 in a sub account of the separate account established pursuant to Section 3.5 of the Cooperation Agreement and such TIF Revenues are to be dispersed from that account in accordance with this Section.^{1]}

14. **Phase IIIB Advances; TIF District Deficits.** Section 3.7 of the Cooperation Agreement is hereby amended and restated as follows and, to the extent Section 3.6 of the Cooperation Agreement is inconsistent with the following, it is deemed amended hereby:

3.7 Permitted Advances; Phase IIIB Permitted Advance.

3.7.1 Payments; Permitted Advances. Except with respect to (i) any Public Party Costs incurred by either Public Party for the Phase IIIB Public Infrastructure Improvements (as defined in the First Amendment, as defined below), the "Phase IIIB Public Infrastructure Improvements") and (ii) any Public Party Costs incurred by either Public Party after the effective date (the "First Amendment Effective Date") of the First Amendment to Cooperation Agreement between the Public Parties (the

¹ Note to draft: The addition of Lots 24 and 25 to this Section is contingent on all other changes being accepted by the County.

“First Amendment”), all payments due by either the City or the County as contemplated in this Agreement shall be due and payable within 30 days after receipt of an invoice from the Department of Planning and Development of Hamilton County, Ohio as provided in Section 3.6 hereof together with reasonably detailed supporting evidence of the amounts due.

To the extent either Public Party does not make payments that are due and payable as contemplated pursuant to the foregoing sentence, the other Public Party may, but is not obligated to, upon providing at least 10 days prior notice of its election to do so, advance such funds for and on behalf of the other Public Party (the “Permitted Advances”). All Permitted Advances shall be due and payable upon demand of the Public Party making such Permitted Advances and shall bear interest at the New York prime rate as published in the Midwest Edition of the Wall Street Journal from time to time.

3.7.2 Phase IIIB Payments; Phase IIIB Permitted Advances.

With respect to any Public Party Costs for the Phase IIIB Public Infrastructure Improvements, the Public Parties agree that the County shall advance and finance, without the backing of City credit, up to the County Financing (the “Phase IIIB Financing”). The portion of Phase IIIB Financing allocated as an obligation of the City equals half of the total actual costs of the Phase IIIB Public Infrastructure Improvements paid for by the County less the City’s share of the City/County Banks Fund Balance less half of the 2019 ODNR Grant less half of the DSA Grant Remainder less half of the Phase 2 Escrow Payment (each of the foregoing capitalized terms not defined herein shall have the meanings ascribed to them in the First Amendment) (the “Phase IIIB Permitted Advance”) and the remainder of the Phase IIIB Financing actually advanced and financed by the County shall be allocated as an obligation of the County. For the avoidance of doubt, if any additional Primary Sources of Funds become available to pay for the Phase IIIB Public Infrastructure Improvements, in the event that Secondary Sources of Funds paid for the Phase IIIB Public Infrastructure Improvements, such Primary Sources of Funds will be allocated in accordance with Section 3.2. No interest shall accrue on the Phase IIIB Permitted Advance. The repayment of the Phase IIIB Permitted Advance shall solely be from the City’s share of revenues derived exclusively from the Total Project pursuant to any existing and future Contract Documents including, but not limited to: i) the TIF Revenues, and ii) any future developer payments (such as Deferred Purchase Price payments, any repayments of a developer’s reimbursement for private parking costs, any extension fees, property tax abatement repayments, and repayment of economic development funding) received by the Public Parties and excluding any revenues that the City is contractually obligated to utilize for a specific purpose that is inconsistent with the Phase IIIB Permitted Advance, such as the “Assessments” as defined in the General

Declaration (as defined in the Master Development Agreement, as incorporated in the First Amendment).

3.7.3 TIF District Deficits. In the event that the TIF Revenues are insufficient to fund the existing debt service for the Public Party Costs financed prior to July 31, 2020, as set forth in **Exhibit L**, the County will pay any such deficits up to an aggregate cap of \$4,000,000 as between the Public Parties (the “TIF Deficit Financing”). For the avoidance of doubt, (i) **Exhibit L** reflects the potential deficit as of July 31, 2020, and the actual deficit may be greater or less than the attached and (ii) the portion of the TIF Deficit Financing attributable to the City is half of the TIF Deficit Financing actually paid by the County. The County shall be entitled to reimbursement from the City with respect to the TIF Deficit Financing from the same sources of revenue outlined in Section 3.7.2 above; provided, however, that any such reimbursement to the County shall be subject first, to the City’s repayment to the County of the Phase IIIB Permitted Advance, and second, to the City’s repayment to the County of the TIF Deficit Financing actually paid by the County.

3.7.4 Future Permitted Advances. Notwithstanding any language to the Contrary in the Contract Documents, after the First Amendment Effective Date, a Public Party may not advance any Public Party Costs for any proposed development on Lots 1, 13, 24, and 25 without the other Public Party’s express written consent to the terms and conditions of such advance (the “Future Permitted Advances”). Any Future Permitted Advances are due and payable on the terms and conditions agreed to as part of such Future Permitted Advance.

15. **Permitted Advance References.** The references to “Permitted Advance” and “Permitted Advances” in Sections 3.2, 3.5 and 6.2 shall be amended to include references to “Phase IIIB Permitted Advance” and “Phase IIIB Permitted Advances”; and in the event of a Future Permitted Advance, “Future Permitted Advance” and “Future Permitted Advances”. For the avoidance of doubt, the repayment of any Permitted Advances with Primary Sources of Funds must constitute an eligible use of such Primary Sources of Funds.

16. **[2019 Debt Payment.** Prior to the Effective Date, the City paid \$529,016.50 on the TIF Bonds and Urban Redevelopment Loan (the “2019 TIF Deficit Payment”) as a result of a shortfall in the TIF Revenues for calendar year 2019. No later than 14 calendar days following the Effective Date, the County will pay to the City \$264,508.25, such amount equal to fifty percent (50%) of the 2019 TIF Deficit Payment.²]

17. **Lot 23 Park.** Pursuant to the terms and conditions of the Music Venue Agreement and related documents, the City is responsible for the design and the construction of the Base Park. The Base Park and any additional park improvements to Lot 23B will be owned

² Note to draft: The Public Parties splitting the 2019 TIF Deficit Debt Payment equally and it not being part of the TIF Deficit Financing is contingent on all other changes being accepted by the County.

and controlled by the City. The County acknowledges and agrees that, as between the Public Parties, the City is the sole decision-maker with respect to the Base Park and any additional park improvements to Lot 23B.

17.1 THP and Messer; Trade Contract. The City consents to the County retaining the Construction Manager (as defined in the Master Development Agreement, the “Construction Manager”) and THP Limited, Inc. (the “Architect”) pursuant to their existing agreements for the provision of construction management and architectural services for the design and construction of the Base Park and the Smale Level of Finish Elements (as defined in the Music Venue Agreement) that the City is electing to construct as of the Effective Date (together with the Base Park, collectively, the “Lot 23 Park”), *provided that* the County complies with all of the terms and conditions of this Amendment. If the County receives any information, data, recommendations, reports, etc. with respect to the Lot 23 Park pursuant to its agreements with Construction Manager and Architect, the County will, as soon as practicable, remit such items to the City for its review and approval, which may be withheld in the City’s sole and absolute discretion, subject to the Music Venue Agreement, the ancillary agreements related thereto, and the trade contract for the Lot 23 Park. In the event that the County is required to make any decision, including, without limitation, approvals of change orders, schedule changes, acceptance of construction work, progress payments, resolution of claims and disputes, suspension or termination of contractors and final payment, for the Lot 23 Park pursuant to its agreements with the Construction Manager, Architect and Universal Contracting Company (the “Trade Contractor”), prior to making any such decision, the County must obtain the City’s prior written consent. Any failure of the County to obtain such City consent constitutes a Lot 23 Default (as defined below). The County will provide the City with reasonable notice of any and all meetings and communications with the Construction Manager, Architect, and/or Trade Contractor with respect to the Lot 23 Park and the City and its representatives may, at their election, attend such meetings and communications. The County will also copy the identified City representatives on all communications with respect to the Lot 23 Park to Construction Manager, Architect and/or the Trade Contractor. The County acknowledges and agrees that any and all rights of the County pursuant to its contracts with Construction Manager and Architect, solely in respect to the Lot 23 Park, also inure to the benefit of the City and the City is an express third-party beneficiary of such agreements solely in relation to the Lot 23 Park notwithstanding any language to the contrary in such agreements. The County will work diligently and in good faith to obtain the Construction Manager and Architect’s consent to the City being an express third-party beneficiary of its respective agreement for the Lot 23 Park. The City’s consent to the Construction Manager and Architect’s services is limited to the Lot 23 Park and the County is required to obtain the City’s prior written consent, which may be withheld in the City’s sole and absolute discretion, before engaging the Construction Manager and/or the Architect regarding any additional park improvements on Lot 23B and/or any park improvements on Lot 28 and the City is not responsible for any costs related to such services until such time as it provides its written consent. Only the City Manager of the City (or her expressly authorized designee) is authorized to provide any and all consents contemplated pursuant to this Amendment.

17.2 County Procurement. The City, subject to the terms and conditions contemplated herein, consents to the County’s procurement of the Trade Contractor for the Lot 23 Park and approves of the County’s award to the Trade Contractor for the construction of the

Lot 23 Park. The County acknowledges and agrees that (i) the Trade Contractor will comply with the Joint Economic Inclusion Policy and (ii) in the event that any additional trade or design contracts are necessary with respect to the Lot 23 Park, the County will obtain the City's prior written consent before procuring and awarding any such contract. For the avoidance of doubt, the County must also obtain the City's prior written consent before procuring any additional trade or design contracts related to any additional park improvements in Lot 23B and Lot 28.

17.3 Payment Conditions. The Public Parties acknowledge and agree that the City is responsible for paying the Trade Contractor for the Lot 23 Park and the County is responsible for paying the Trade Contractor for the Phase IIIB Public Infrastructure Improvements, each in accordance with the trade contract among the Public Parties and the Trade Contractor. The City agrees to reimburse the County no later than 30 days after the City's receipt of an invoice for Construction Manager's and Architect's services with respect to the Lot 23 Park, *provided that* if (i) the City is not satisfied, in its sole and absolute discretion, with the performance of Construction Manager and/or Architect in relation to the Lot 23 Park and delivers written notice to the County of such issues, or (ii) the County does not comply with one or more of the terms and conditions of this Amendment and the City delivers written notice to the County of such default, then (a) the City is not required to reimburse for the services performed by Construction Manager and/or Architect for the Lot 23 Park until such time as all issues are remedied (the "Unreimbursed Costs"), (b) the Unreimbursed Costs do not constitute a Permitted Advance, a Phase IIIB Permitted Advance or a Future Permitted Advance, and (c) no interest will accrue on the Unreimbursed Costs. The County will not use any of the City Funds (including any future City Funds received and allocated to the City) to reimburse itself for the Unreimbursed Costs.

17.4 Remedies. In addition to the City's right to withhold payment pursuant to the above Section, in the event that the County breaches this Amendment or the City is not satisfied, in its sole and absolute discretion, with the Architect's and/or the Construction Manager's performance (each a "Lot 23 Default"), the City will provide written notice of a Lot 23 Default to the County. Any Lot 23 Defaults have a cure period not to exceed 30 calendar days from the County's receipt of notice of a Lot 23 Default (unless (x) such Lot 23 Default creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, then reasonable actions must be taken immediately to remedy the emergency or (y) such Lot 23 Default relates to a payment owing to the City, then such Lot 23 Default must be remedied no later than five business days following the County's receipt of the Lot 23 Default notice) (the "Cure Period"), *provided, however,* that if the nature of the Lot 23 Default (other than Lot 23 Default with respect to an emergency or a payment owed to the City) is such that it cannot reasonably be cured during the Cure Period, a Lot 23 Default does not exist so long as the County commences or causes the Architect and/or Construction Manager to commence to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of the Lot 23 Default. If the Lot 23 Default still exists following the Cure Period, then the City may, at its option, enforce or avail itself of any and all of the following remedies, subject to the Music Venue Agreement and the ancillary agreements thereto:

(A) withdrawal of the City's consent to the Construction Manager's and/or the Architect's access to Lot 23B and any other property owned by the City that the Construction Manager and/or Architect is occupying;

(B) contracting directly with a construction manager and/or architect for the Lot 23 Park;

(C) commencement of an action for specific performance or other equitable relief against the County, the Construction Manager, and/or the Architect, as applicable;

(D) if the City has paid the County, the Construction Manager or the Architect any sum related to the Lot 23 Park or the Lot 23 Default relates to a payment owing to the City, retain the amount of funds necessary to (1) reimburse the City for any amount previously paid to the County, the Construction Manager or the Architect for the Lot 23 Park and/or (2) offset the Lot 23 Default from funds received by the City pursuant to the Contract Documents, including, without limitation, the TIF Revenues, until such time as such Lot 23 Default is remedied;

(E) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of the Lot 23 Default; and

(F) exercise any and all other rights and remedies under the Cooperation Agreement, this Amendment, or available at law or in equity.

18.5 County Responsible for Increased Costs. In no event is the City responsible for any increased costs or losses of savings that are a result of the County commencing construction of the Phase IIIB Public Infrastructure Improvements prior to the Effective Date. The County is solely responsible for such costs, even if the costs relate to the Lot 23 Park.

19. Music Venue Developer Contribution. The Public Parties and Music Venue Developer are currently in process of finalizing the Music Venue Agreement. To facilitate the construction of the Lot 23 Park in a timely manner, Music Venue Developer agrees to pay to the City \$1,450,000 for the construction of the Lot 23 Park on or before the earlier of (i) the County's conveyance of the air lot to be created on Lot 27 to Music Venue Developer or (ii) the date that is six months after the Effective Date (the "Contribution"). The Public Parties acknowledge and agree that in the event that Music Venue Developer remits the Contribution to the City but the parties do not execute the Music Venue Agreement, then Music Venue Developer shall have all rights and remedies available to it under applicable law against the Public Parties, including, without limitation, requiring the City to repay an amount equal to the Contribution. For the avoidance of doubt, Music Venue Developer's signature to any amendments of the Cooperation Agreement, as amended hereby, is not necessary unless such amendment pertains to this Section.

20. **Platting of Development Lots.** The Public Parties will cooperate with each other in re-platting and subdividing the remaining Development Lots in accordance with Section 2.2 of the Cooperation Agreement and all Legal Requirements.

21. **Conflict of Terms.** The Cooperation Agreement, as amended by this Amendment, will be construed as one agreement. To the extent there is any irreconcilable inconsistency between this Amendment, the Cooperation Agreement, any Contract Document, and the Existing Riverfront Agreements, this Amendment shall control, and the applicable agreement shall be deemed amended hereby. As amended hereby, the Cooperation Agreement is ratified and confirmed and remains in full force and effect.

22. **Captions.** The captions in this Amendment are included for purposes of convenience only and shall not be considered part of this Amendment or used in construing or interpreting any provision hereof.

23. **Entire Agreement.** This Amendment, together with the Cooperation Agreement, sets forth the entire agreement of the parties with respect to the subject matter of this Amendment and supersedes all previous understandings, written or oral (other than the Cooperation Agreement), in respect of this Amendment.

24. **Counterparts; Electronic Signatures.** This Amendment may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Amendment may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[Signature Page to Follow]

The Public Parties have executed this Amendment as of the date first set forth above.

Approved as to Form:

**THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO**

Assistant County Prosecutor

By: _____
Jeff Aluotto, County Administrator

Approved as to Form:

THE CITY OF CINCINNATI, OHIO

Assistant City Solicitor

By: _____
Paula Boggs Muething, Interim City
Manager

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

MUSIC AND EVENT MANAGEMENT, INC.

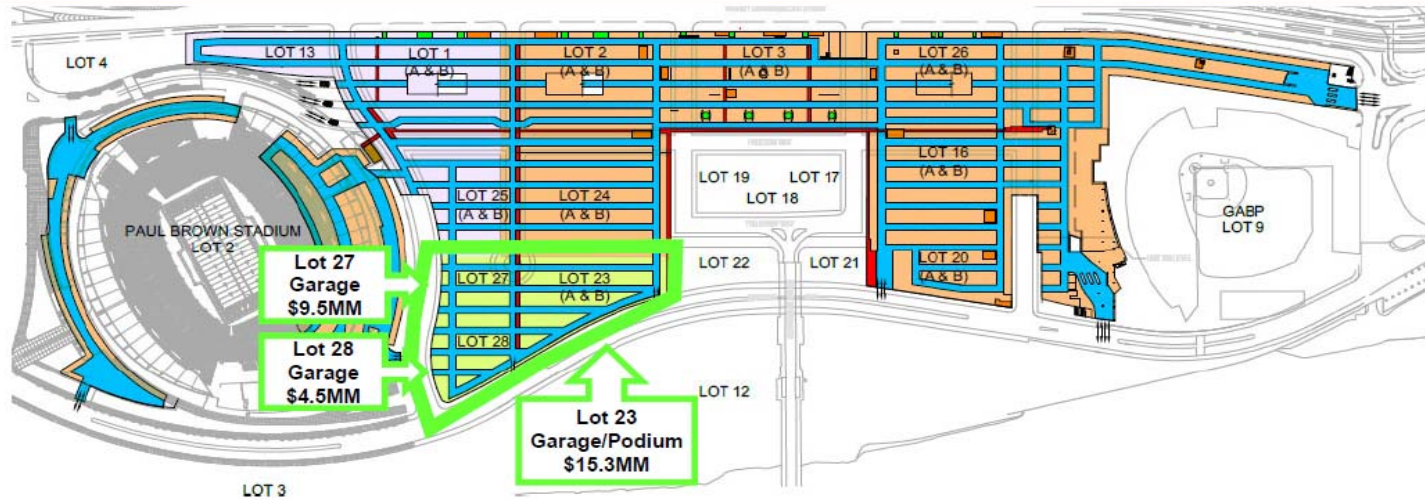
By: _____

Name: _____

Title: _____

EXHIBIT K

Development of Public Infrastructure Improvements
 Lots 23, 27 & 28



Use of Funds

Infrastructure Funding for Lot 27	\$9.5MM
Infrastructure Funding for Lot 23	\$15.3MM
Infrastructure Funding for Lot 28	\$4.5MM

Source of Funds

State of Ohio FY 19 Capital Grant	\$12.0MM
Phase I-II Reconciliation of City/County Funds	\$4.7MM
Phase III Remainder of City/County Funds	\$3.5MM
Ohio DSA 629 Grant Remainder	\$132,580
Developer Phase II Escrow	\$202,119
Phase IIIB Financing	±\$8,787,420

TOTAL: \$29.3MM

\$29.3MM

EXHIBIT L

EXISTING PUBLIC INFRASTRUCTURE FINANCING DEBT

[note to draft: due to the passage of time, the City is in the process of updating this exhibit and will circulate a revised one when available]

FIRST AMENDMENT TO COOPERATION AGREEMENT

THIS **FIRST AMENDMENT TO COOPERATION AGREEMENT** (this "Amendment") is made as of the ____ day of July, 2020, by **THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), and **THE CITY OF CINCINNATI, OHIO**, an Ohio municipal corporation (the "City").

Recitals

A. The County and the City (hereinafter referred to collectively, the "Public Parties" and each individually a "Public Party") have entered into a Cooperation Agreement dated as of November 23, 2007, as supplemented by a Supplement to the Cooperation Agreement dated as of October 12, 2010, and as supplemented by a Second Supplement dated as of July 15, 2015 (as supplemented by each of the foregoing, the "Cooperation Agreement"). Capitalized terms used in the Amendment which are defined in the Cooperation Agreement and not otherwise defined in this Amendment have the meanings set forth in the Cooperation Agreement.

B. The Public Parties desire to enter into this Amendment in furtherance of the Resolution Authorizing County Administrator to Take Such Actions As Necessary to Facilitate the Development of Phase IIIB Public Infrastructure of The Banks Project, Enabling the Development of the Riverview Music Venue and Phase VII of the Smale Riverfront Park Consistent with the Outline of Terms and Conditions Between the City of Cincinnati and Hamilton County passed by Board of County Commissioners of Hamilton County on April 11, 2019 and the City of Cincinnati Ordinance 119-2019 passed by Cincinnati City Council on April 17, 2019.

Statement of Amendment

In consideration of the mutual covenants and agreements set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and County hereby agree as follows:

1. **Withdrawal of Master Developer and Future Amended and Restated Cooperation Agreement.** The Public Parties acknowledge and agree that (i) Developer's and the Ownership Entities' rights, obligations, and interests in the remaining Development Lots pursuant to the Master Development Agreement and Developer's rights, interests, and obligations under the Infrastructure Development Management Agreement will be terminated, (ii) the Master Development Agreement shall remain in effect until such time as it is otherwise amended or terminated by the City and County in accordance with this Section, (iii) upon the termination of the Developer's and Ownership Entities' rights under the Master Development Agreement and the Infrastructure Development Management Agreement, the provisions of the Cooperation Agreement pertaining to such agreements and the future development of the Development Lots (including, without limitation, any Development Closings related thereto),

solely as such provisions relate to Developer and the Ownership Entities, are no longer applicable and thus have no legal force or effect with respect to such Developer and such Ownership Entities, but all such provisions shall remain in full force and effect and binding as to the City and County and to any future developers, including third party developers that are hereinafter retained by the City and/or the County, as such provisions were binding on the Developer with respect to development of the Development Lots, including, without limitation, the development of Lots 1, 13, 24 and 25 except as otherwise agreed to by the City and the County as set forth in Section 3.2 herein, (iv) the Public Parties will be entering into a separate agreement for the development of Lot 27 with a third-party developer, and (v) the City may, in its sole and absolute discretion enter into agreement(s) with third-party developer(s) for Lots 1 and 13 (as defined below) and the County may, in its sole and absolute discretion, enter into agreement(s) with third-party developer(s) for Lots 24 and 25 (as defined below). Any definitions in the Cooperation Agreement that are defined by the corresponding definition in the Master Development Agreement shall be deemed to include the applicable definition in the Entertainment Venue Development Agreement (the "Music Venue Agreement") among the Public Parties and Music and Event Management, Inc. (and any affiliates thereof, collectively, the "Music Venue Developer") upon execution of all parties of such agreement. The Public Parties shall use good faith efforts to negotiate and enter into no later than the date that is 180 days after the Effective Date: (1) any amendments determined to be necessary and appropriate as mutually agreed by the City and County, or a termination of the Master Development Agreement and/or (2) an amendment and restatement of the Cooperation Agreement which addresses modifications, if any, with respect to: (x) terms and conditions of the Master Development Agreement applicable between the Public Parties, and between a Public Party and the future developers, including third party developers, including those that may be of benefit to the other Public Party not a party to such agreements, (y) the terms and conditions contained herein, and (z) any mutually agreeable terms and conditions for the future development of the Total Project.

2. **Phase IIIB Public Infrastructure Improvements; Sources and Uses of Public Parties' Funds.** The Public Parties commit to develop the public infrastructure, including site work, foundations, columns, public parking facilities, podiums, utilities, street grid improvements, to support the development of the Indoor Venue (as defined in the Music Venue Agreement, the "Indoor Venue") on Lot 27, the development of the Base Park (as defined in the Music Venue Agreement, the "Base Park") on Lot 23B, and the future development of greenspace on Lot 28 (collectively, the "Phase IIIB Public Infrastructure Improvements"). The sources and uses of the Public Parties' funds for the Phase IIIB Public Infrastructure Improvements is set forth in **Exhibit K** attached hereto, which is comprised of: a) grant funding awarded by the State of Ohio specifically for the development of public parking facilities in Lots 23, 27 and 28 in the amount of \$12,000,000 (the "2019 ODNR Grant"); b) remaining public funds from savings and payments retained by City and County from Phase I, II and III in the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project (the "Joint Account"), in the approximate amount of \$8,200,000 (the "City/County Banks Fund Balance" in the Joint Account); c) a DSA Grant remainder of \$133,500 (the "DSA Grant Remainder"); d) Developer escrow payment to be received by the Public Parties in the approximate amount of \$202,119 (the "Phase 2 Escrow Payment"); and e) County financing of the approximately \$[8,790,000], all as allocated and set forth in **Exhibit K**. For the avoidance of doubt, the foregoing does not include any funds from accounts held by the City. In the event that

the costs of the Phase IIIB Public Infrastructure Improvements financed by the County approximately \$8,790,000, the County shall seek the City's written consent prior to expending costs in excess of such amount, which consent shall not be unreasonably withheld or delayed. The City/County agree to direct the Joint Banks Project Executive to provide the City and County with regular written updates of the budget for the Phase IIIB Public Infrastructure Improvements, such updates occurring at least once per month until the reconciliation pursuant to this Section is performed. Upon the completion of the Phase IIIB Public Infrastructure Improvements, the Public Parties shall perform a reconciliation of the Public Party Costs expended, the sources of funds utilized for such Public Party Costs, and shall adjust, as appropriate, the balances as between the Public Parties so that the City and County bear an equal share of the Public Party Costs for the Phase IIIB Public Infrastructure Improvements.

3. **Development of Lots 1, 13, 24 and 25.**

3.1. Unilateral Development Rights. Notwithstanding anything to the contrary in this Amendment, the Cooperation Agreement, the Contract Documents, or any other agreement between the Public Parties:

3.1.1 the County retains exclusive development rights pertaining to the Air Lot designated as Lot 24B (as defined in the Master Development Agreement, "Lot 24"), and Lots 25A and 25B (as each is defined in the Master Development Agreement, collectively, "Lot 25") *provided that* any such development is in accordance with: (a) the Master Development Agreement, as such agreement may be amended or otherwise terminated or as amended and restated in the Cooperation Agreement by the Public Parties as provided in Section 1 herein; (b) this Amendment; (c) any development guidelines and height limitations applicable to the County for Lots 24 and 25 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs (as defined below)) or the County receives the prior written consent of the City, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs); and

3.1.2 subject to Section 4 below and the construction of a Parking Facility on Lot 1A and, upon the election of the Public Parties, on Lot 13, the City retains exclusive development rights pertaining to the Air Lot designated as Lot 1B (as defined in the Master Development Agreement, "Lot 1") and the Air Lot designated as Lot 13 (as it is defined in the Master Development Agreement "Lot 13"), *provided that* such development is in accordance with a) the Master Development Agreement as such agreement may be amended or otherwise terminated by the Public Parties as provided in Section 1 herein; b) this Amendment and c) any development guidelines and height limitations applicable to the City for Lots 1 and 13 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs) or the City receives the prior written consent of the County, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs). The Public Parties commit to develop their respective Development Lots in a manner that is economically and financially beneficial to the Total Project, the City of Cincinnati, and Hamilton County.

3.2. Development Process.

3.2.1 In the event that a Public Party plans to proceed with the development of a Development Lot as set forth in Section 3.1 (the "Proposing Public Party"), then such Public Party shall deliver prior written notice to the other Public Party. The Proposing Public Party shall provide sufficient information and documentation to the other Public Party to ensure that the Infrastructure Improvements, including the Public Parking Facilities, Utilities and Street Grid Improvements, associated with the proposed development on such Development Lot, will be funded and financed over a period not to exceed thirty (30) years with (a) sources available from and internal to the Banks Project associated with such development, (b) a combination of State or federal grants that have been secured for such development, and/or (c) other revenue sources that are documented and secured by the Public Party proposing the development (items (a), (b), and (c) shall be referred to, collectively, as the "Banks Lot Revenue Sources"), prior to the issuance of the Notice. Such Banks Lot Revenue Sources may include, but are not limited to, TIF revenues generated from the proposed development of the Development Lot, developer contributions, developer Public Parking Contributions or other sources of revenues associated with such development, as such may be mutually agreed by the City and County. Notwithstanding the requirements set forth in the Master Development Agreement and Cooperation Agreement, as such may be amended and/or restated, in the event a Proposing Public Party reasonably documents and demonstrates to the other Public Party that the anticipated Banks Lot Revenue Sources meet or exceed the costs of the Infrastructure Improvements within the proposed Development Lot (the "Minimum Threshold Requirement"), then other Public Party shall approve the Proposing Public Party's development of the Development Lot.

3.2.2 In the event the Proposing Public Party does not reasonably demonstrate and document to the other Public Party that the Minimum Threshold Requirements will be met, the Proposing Public Party may still proceed with the development of the Development Lot, provided that (a) the Proposing Public Party provides funding for the monetary difference between the Minimum Threshold Requirement and the projected Banks Lot Revenue Sources. By way of example only, and not limitation, in the event the County, as the Proposing Public Party, proposes to develop the Air Lot on Lot 25B and the Public Party Costs associated with the Infrastructure Improvements to develop such Lot are Ten Million Dollars (\$10,000,000), the City and County share equally (*i.e.*, \$5,000,000 each) in such Public Party Costs associated with such Development Lot, provided the Minimum Threshold Requirement is met (*i.e.*, \$10,000,000). Alternatively, in the event the projected Banks Lot Revenue Sources are Seven Million Dollars (\$7,000,000), the County, as the Proposing Public Party shall fund the additional Three Million Dollars (\$3,000,000), required to meet the Minimum Threshold Requirement; and thereafter, the City and County shall equally fund remaining Public Party Costs Three Million Five Hundred Thousand Dollars (\$3,500,000). This latter example would result in the County, as the Proposing Public Party, funding a total of Six Million Five Hundred Thousand Dollars (\$6,500,000) and the City, as the other Public Party, funding Three Million Five Hundred Thousand Dollars (\$3,500,000) of the Public Party Costs.

3.2.3 The Proposing Public Party shall provide (a) detailed development plans, which shall at a minimum include detailed budgets outlining project sources and uses of funding, financing, evidence of equity and financing commitments, project pro formas based on the development of Improvements of the Development Lot, (b) projected economic impacts such as projected property tax revenue available to the Public Parties, temporary and permanent jobs and payroll created or retained by the development, and (c) any other relevant information pertaining to the proposed development as may be requested by a Public Party. The Public Parties shall exercise good faith efforts to negotiate funding and financing with respect to the allocation of Public Party Costs, a Permitted Advance, as described in Section 3.7, and such other funding and financing accommodations as may be agreed upon by the Public Parties.

3.2.4 In the event that a proposed Development Lot proceeds as provided in Section 3.2.1 and Section 3.2.2 herein, the Public Parties further acknowledge and agree that those provisions of the Master Development Agreement (as amended and/or terminated and restated in the Cooperation Agreement as set forth in Section 1) pertaining to certain developer requirements regarding such elements as approval of developers and third party developers, Developer Qualifications, Minimum Per Lot Improvements, Deferred Purchase Payments, dedicated parking spaces and Public Parking contributions shall not be applicable. In the event a proposed Development Lot proceeds as provided in Section 3.2.1 and 3.2.2 herein, the Public Parties acknowledge and agree that provisions of the Master Development Agreement (as amended and/or terminated and restated in the Cooperation Agreement as set forth in Section 1) shall remain in effect relating to the necessary interfaces and requirements between the design, construction and operation of the public Infrastructure Improvements and the developer of the Air Lot in the design, construction and operation of the Private Improvements of the Air Lot, subdivision of the Ground Lots and Air Lots, property conveyances, easements, parking overdesign costs, capital repairs and maintenance, by way of example and not limitation, as are necessary to ensure the appropriate development, construction and operation of the public Infrastructure Improvements and private Improvements on such Development Lot.

3.2.5 Design and Construction of Public Infrastructure and Private Improvements.

3.2.5.1 As set forth in Section 4 herein, the County shall construct the Public Infrastructure on Lots 1, 13 (as applicable), and 25. In the event development proceeds as provided in Section 3.2.1 or 3.2.2 herein, the County shall work with the City in the design and construction of the necessary Public Infrastructure in such a manner to ensure the timely commencement and completion of the Private Improvements for the Air Lots 1 and 13 (as applicable).

3.2.5.2 The City, by and through its developer, shall provide sufficient design information, including but not limited to, development design loads, in order for the County, through its design professionals, to design the Parking Facilities and related Public Infrastructure to provide adequate support for the Private Podium and the Improvements to be constructed above and integral to the Parking Facilities. The City will ensure that its developer, and the County will ensure that its design professionals, shall work together to facilitate the efficient design and construction of the Public Parking Facilities and the Private Improvements. Based on the information and documentation submitted in Section 3.2.3 and

herein, a specific timeline for the development, design, and construction shall be developed (the "Lot Development Schedule"). The County shall agree to issue, for the benefit of the City, a Completion Guaranty, ensuring the timely commencement of the design, construction, and completion of the Parking Facilities and related Public Improvements in order for the private Improvements to be timely commenced and completed in accordance with the Lot Development Schedule. Such Completion Guaranty shall include, without limitation, provisions providing for specific performance as well as the assignment of the construction of the Public Infrastructure to the City in the event the Lot Development Schedule is not met. The County shall also agree to work with the City, to advance the commencement of the Private Improvements contemporaneously with the Public Parking Facilities in order to expeditiously complete both the Public Parking Facilities and the Private Improvements.

3.3. Amendment of Agreements. To the extent there are any other Contract Documents, contracts, agreements, leases, or any other documents between the Public Parties pertaining to Lots 1, 13, 24 and 25 that are inconsistent with this Section, those Contract Documents, contracts, agreements, leases, and other documents are hereby amended by this Section. Each Public Party will cooperate with each other to amend any contracts, agreements, leases or other documents (including third parties) in order to be consistent with this Section and will not unreasonably withhold or delay its approval to any such amendments.

4. Parking Facilities on Lots 1, 13 and 25. Consistent with the Contract Documents between the Public Parties and the Cooperation Agreement, as amended by this Amendment, as the County constructs the Infrastructure Improvements consistent with the terms and conditions of this Agreement and the Master Development Agreement as amended or as amended and restated in the Cooperation Agreement, the County will own, operate and be entitled to all parking revenue attributable to such Parking Facilities.

5. Bengals MOUs. Pursuant to the Memorandums of Understanding Between the Board of County Commissioners of Hamilton County and the Cincinnati Bengals, Inc. entered into on or about November 23, 2018, and June 26, 2019 (collectively, the "MOUs"), the County and Cincinnati Bengals, Inc. agreed to undertake an urban planning review of the building height limitations and certain development guidelines (the "Urban Planning Review"). The County acknowledges and agrees that any revised building height restrictions or development guidelines will not be any more restrictive than the current building development restrictions and development guidelines as set forth in the Existing Riverfront Agreements and that the Public Parties will mutually agree to any building height restrictions or development guidelines revisions.

6. Fort Washington Way Decks. The City, to the extent it is involved in the Urban Planning Review, will collaborate in good faith with the County to review the feasibility of the placement of and the development on any future decks over Fort Washington Way.

7. Lot 18. The County acknowledges and agrees that at such time as the City is prepared to own, operate and maintain Lot 18 and to incorporate it into the Central Riverfront Park, the City has the right under the Cooperation Agreement and the Contract Documents to require the County to convey all of the County's right, title, and interest in Lot 18 to the City.

Until such time, the County will continue to operate and maintain Lot 18. Without limiting the City's rights under the Cooperation Agreement and any of the Contract Documents, the City and the County agree use good faith efforts to negotiate a revenue sharing agreement no later than 90 days after the Effective Date related to the license agreement between the County and Skystar Wheel, LLC or an affiliate thereto regarding Lot 18. The City will only provide its consent, which consent will not be unreasonably withheld or delayed, to the license agreement upon all applicable parties agreeing to the revenue sharing arrangement. The City intends to use its portion of any revenue from such arrangement to fund ongoing maintenance and operation expenses related to the Central Riverfront Park.

8. **Banks Project Executive.** The City consents to the Banks Project Executive working on projects unrelated to the Public Project solely on behalf of the County. The Public Parties acknowledge and agree that the Banks Project Executive will be a shared 50/50 cost with respect to his time on the Public Project and that the County will be solely responsible for all costs attributable to the Banks Project Executive on unrelated projects solely on behalf of the County. The County will cause the Banks Project Executive to provide the City with weekly documentation as to how much time is spent on the Public Project that week and how much time is spent on projects solely on behalf of the County that week. As of the Effective Date, the Public Parties anticipate that the Banks Project Executive will spend approximately sixty percent (60%) of his time on the Public Project and approximately forty percent (40%) of his time on unrelated projects solely on behalf of the County. No later than the date that is 14 calendar days following the Effective Date, the County will cause the Banks Project Executive to provide the City with a breakdown of time spent on unrelated projects solely on behalf of the County prior to the Effective Date and the County will reimburse the Joint Account the amount used to fund the Banks Project Executive's salary for time on unrelated projects prior to the Effective Date, if any.

9. **DOTE Services.** The Public Parties acknowledge and agree that the City's Department of Transportation and Engineering is providing inspection and construction related services with respect to the Phase IIIB Public Infrastructure Improvements (the "DOTE Services"). The City will send monthly invoices to the County for the DOTE Services incurred in the preceding month. The County will pay such invoices from the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project. Half of the costs for such DOTE Services shall be allocated as an obligation of the County. The remaining half of the costs for such DOTE Services shall be allocated as an obligation of the City and the City will repay its portion of the costs for the DOTE Services from the sources of revenue identified in Section 3.7.2 (as amended in Section 14).

10. **Phase 2 Park Podium.** The definition of Phase 2 Park Podium in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"Phase 2 Park Podium" means collectively, (i) the podium designed and constructed as part of the Parking Facilities on Lot 23A above such Parking Facilities, which, for the avoidance of doubt the Public Parties are equally responsible for maintaining, and (ii) the podium designed and constructed as part of the Parking Facilities on Lot 28 above

such Parking Facilities, which, for the avoidance of doubt the City is solely responsible for maintaining in accordance with applicable agreements among the City, the County, and Music and Event Management, Inc.

11. **Phase IIIB Podiums Cost.** Pursuant to the Cooperation Agreement, as amended hereby, the City and County shall share equally in the cost of the Phase 2 Park Podium. Notwithstanding the foregoing, the City is solely responsible to maintain the portion of the Phase 2 Park Podium on Lot 28 in accordance with the Music Venue Agreement and the ancillary agreements related thereto. The Music Venue Developer shall be solely responsible for the costs associated with the development podium slab supporting the Indoor Venue and the development costs of the Indoor Venue on Lot 27.

12. **TIF Revenues.** The definition of TIF Revenues in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"TIF Revenues" means any payments in lieu of taxes and Minimum Service Payments with respect to parcels in the Total Project area actually received by the City (including, without limitation, any minimum service payments received by the City pursuant to a Contract Document) as a result of the tax increment financing exemptions pursuant to Ohio Revised Code Section 5709.40(C), as authorized by Ordinance Nos. 412-2002 and 389-2007, passed by City Council on December 18, 2002, and November 1, 2007, respectively, less the portions thereof paid to the Cincinnati Public School District pursuant to the Agreement dated July 2, 1999 between the City and the Cincinnati Public School District, as amended.

13. **Lots 1, 13, 24 and 25 TIF Revenue Sharing.** (i) The definition of TIF Bonds in Section 1.1 of the Cooperation Agreement and (ii) the use of TIF Bonds in Sections 3.3 and 3.5 of the Cooperation Agreement is hereby amended to exclude any TIF Revenues attributable to improvements on Lots 1, 13, 24, and 25. The TIF Revenues attributable to Lots 1, 13, 24 and 25 shall be used only for the following purposes and in the following priority:

first, 50% of such TIF Revenues shall be allocated to repay the City's obligations with respect to the Phase IIIB Public Infrastructure Financing (as set forth in Section 3.7.2 regarding the County's Phase IIIB Permitted Advance defined below), the City's portion of such repayment is equal to the Phase IIIB Permitted Advance and 50% of such TIF Revenues shall be allocated to the County;

second, to repay the City's obligation regarding the County's TIF District Financing, 50% of such repayment shall be attributable to the City and 50% of such repayment shall be attributable to the County;

third, to reimburse the Public Parties for Public Party Costs related to the infrastructure necessary to develop Lots 1A, 13A, 24A, and 25A (including,

without limitation, Parking Facilities and Utilities on such Lots); such reimbursement to be paid 50% to each Public Party;

fourth, to (i) reimburse the Public Parties for Public Party Costs related to the construction of new public infrastructure improvements that are part of the Public Project and (ii) fund the future construction of new public infrastructure improvements that are part of the Public Project, each in accordance with the Cooperation Agreement, as amended, as of the Effective Date. Such reimbursement to be paid 50% to each Public Party, provided that any Public Party making a Permitted Advance hereunder shall be entitled to the other Public Party's 50% share until such time as the Public Party making the Permitted Advance has received repayment of the entire Permitted Advance, together with all interest thereon pursuant to the terms and conditions set forth in Section 3.7. For the avoidance of doubt, no interest shall be payable in respect to the County's Phase IIIB Permitted Advance; and

fifth, provided, the Public Project with respect to the Remaining Project Lots has been funded and completed, 50% of any TIF Revenues shall be retained by the City to be used for any eligible purpose under Ohio law and 50% of any TIF Revenues will be transmitted by the City to the County to be used for any eligible purpose under Ohio law.

For the avoidance of doubt, 50% of the TIF Revenues attributable to Lots 1B, 13B, 24B and 25B shall be allocated to the City and 50% of the TIF Revenues attributable to Lots 1B, 13B, 24B and 25B shall be allocated to the County. By way of example and not limitation, if there is \$100,000 of TIF Revenue attributable to Lots 1B, 13B, 24B and 25B, then (i) \$50,000 of such TIF Revenue will first be used by the City to repay the County for the County's Phase IIIB Permitted Advance then, if the Phase IIIB Permitted Advance is no longer outstanding, to repay the County for the City's portion of the TIF District Financing as set forth in Section 3.7.4 herein, then if the TIF District Financing is no longer outstanding, to reimburse the City for its Public Party Costs related to the Infrastructure Improvements necessary to develop Lots 1A, 13A, 24A and 25A, and, if there are no outstanding Public Party Costs to be reimbursed by the City related to the Infrastructure Improvements necessary to develop Lots 1A, 13A, 24A and 25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed, then the TIF Revenues to reimburse and fund the City's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the City may retain any such excess funds for any eligible purpose, and (ii) \$50,000 of such TIF Revenue will first be used to pay the County's portion of the Phase IIIB Financing (if any), then, if the County's portion of the Phase IIIB Financing is no longer outstanding, to repay the County's portion of the TIF District Financing as set forth in Section 3.7.4 then, if the TIF District Financing is no longer outstanding, to reimburse the County for its Public Party Costs related to the Infrastructure Improvements necessary to develop Lots 1A, 13A, 24A and 25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed, then and if, there are no outstanding Public Party Costs to

be reimbursed to the County related to the Infrastructure Improvements necessary to develop Lots 1A, 13A, 24A and 25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed, then to reimburse and fund the County's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the County may retain any such excess funds for any eligible purpose. For the avoidance of doubt, in the event at any time there are excess TIF Revenues and the Public Project with respect to the Remaining Development Lots has not been funded or completed, the City and County each shall retain such excess TIF Revenues in a separate Banks TIF Public Project Completion Fund to be applied as set forth in this Section 3.5.

14. **Phase IIIB Advances; TIF District Deficits.** Section 3.7 of the Cooperation Agreement is hereby amended and restated as follows and, to the extent Section 3.6 of the Cooperation Agreement is inconsistent with the following, it is deemed amended hereby:

3.7 Permitted Advances; Phase IIIB Permitted Advance.

3.7.1 Payments; Permitted Advances. Except with respect to (i) any Public Party Costs incurred by either Public Party for the Phase IIIB Public Infrastructure Improvements (as defined in the Section 3.7.2), the "Phase IIIB Public Infrastructure Improvements") and (ii) any Public Party Costs incurred by either Public Party after the effective date (the "First Amendment Effective Date") of the First Amendment to Cooperation Agreement between the Public Parties (the "First Amendment"), all payments due by either the City or the County as contemplated in this Agreement shall be due and payable within 30 days after receipt of an invoice from the Department of Planning and Development of Hamilton County, Ohio as provided in Section 3.6 hereof together with reasonably detailed supporting evidence of the amounts due. To the extent either Public Party does not make payments that are due and payable as contemplated pursuant to the foregoing sentence, the other Public Party may, but is not obligated to, upon providing at least 10 days prior notice of its election to do so, advance such funds for and on behalf of the other Public Party (the "Permitted Advances"). All Permitted Advances shall be due and payable upon demand of the Public Party making such Permitted Advances and shall bear interest at the New York prime rate as published in the Midwest Edition of the Wall Street Journal from time to time.

3.7.2 Phase IIIB Payments; Phase IIIB Permitted Advances. With respect to any Public Party Costs for the Phase IIIB Public Infrastructure Improvements, the Public Parties agree that the County shall advance and finance, without the backing of City credit, the County Financing (the "Phase IIIB Financing"). The portion of Phase IIIB Financing allocated as an obligation of the City equals half of the total actual costs of the Phase IIIB Public Infrastructure Improvements paid for

by the County less the City's share of the City/County Banks Fund Balance less half of the 2019 ODNR Grant less half of the DSA Grant Remainder less half of the Phase 2 Escrow Payment (each of the foregoing capitalized terms not defined herein shall have the meanings ascribed to them in the First Amendment) (the "Phase IIIB Permitted Advance") and the remainder of the Phase IIIB Financing actually advanced and financed by the County shall be allocated as an obligation of the County. For the avoidance of doubt, if any additional Primary Sources of Funds become available to pay for the Phase IIIB Public Infrastructure Improvements, in the event that Secondary Sources of Funds paid for the Phase IIIB Public Infrastructure Improvements, such Primary Sources of Funds will be allocated in accordance with Section 3.2. No interest shall accrue on the Phase IIIB Permitted Advance. The repayment of the Phase IIIB Permitted Advance shall solely be from the City's share of revenues derived from the Banks Development exclusively pursuant to any existing and future Contract Documents including, but not limited to: i) the TIF Revenues, and ii) any future developer payments (such as Deferred Purchase Price payments, any repayments of a developer's reimbursement for private parking costs, any extension fees, property tax abatement repayments and repayment of economic development funding) received by the Public Parties and excluding any revenues that the City is contractually obligated to utilize for a specific purpose that is inconsistent with the Phase IIIB Permitted Advance, such as the "Assessments" as defined in the General Declaration (as defined in the Master Development Agreement).

3.7.3 TIF District Deficits. In the event that the TIF Revenues are insufficient to fund the existing debt service for the Public Party Costs financed prior to July 1, 2020, as set forth in **Exhibit L**, the County will pay any such deficits up to an aggregate cap of \$4,000,000 as between the Public Parties (the "TIF Deficit Financing"). For the avoidance of doubt, (i) **Exhibit L** reflects the potential deficit as of July 1, 2020, and the actual deficit may be greater or less than the attached and (ii) the portion of the TIF Deficit Financing attributable to the City is half of the TIF Deficit Financing actually paid by the County. The County shall be entitled to reimbursement from the City with respect to the TIF Deficit Financing from the same sources of revenue outlined in Section 3.7.2 above; provided, however, that any such reimbursement to the County shall be subject first, to the City's repayment to the County of the Phase IIIB Permitted Advance, and second, to the City's repayment to the County of the TIF Deficit Financing actually paid by the County.

3.7.4 Future Permitted Advances. After the First Amendment Effective Date, prior to incurring any Public Party Costs for Lots 1, 13, 24, and 25 (each as defined in the First Amendment), the Public Party that intends to incur such costs will provide the other Public Party not less than 180 days prior written notice. Upon receipt of such written notice, the

Public Parties will negotiate in good faith payment terms with respect to the proposed Public Party Costs described in the written notice prior to such Public Party Costs actually being incurred. After 180 days from receipt of the written notice contemplated herein, if the Public Parties do not have an agreement with respect to the payment terms pertaining to the proposed Public Party Costs, then the Public Party proposing such Public Party Costs may advance funds on behalf of the other Public Party (the "Future Permitted Advances") and incur the proposed Public Party Costs. All Future Permitted Advances (excluding, specifically, for the avoidance of doubt, the Phase IIIB Permitted Advances) shall be due and payable upon demand of the Public Party making such Future Permitted Advances and shall bear interest as provided in Section 3.7.1, *provided, however*, in no circumstances will the Public Party making the demand for payment be entitled to payment during the current fiscal year at the time of the demand for payment of the other Public Party or during the following fiscal year of the other Public Party (i.e. upon receipt of the demand, the receiving Public Party shall not have to make a payment during the fiscal year the demand was received in or the following fiscal year and is only obligated to pay after such fiscal years have ended).

15. **Permitted Advance References.** The references to "Permitted Advance" and "Permitted Advances" in Sections 3.2, 3.5 and 6.2 shall be amended to include references to "Phase IIIB Permitted Advance" and "Phase IIIB Permitted Advances"; and in the event of a Future Permitted Advance, "Future Permitted Advance" and "Future Permitted Advances". For the avoidance of doubt, the repayment of any Permitted Advances with Primary Sources of Funds must constitute an eligible use of such Primary Sources of Funds.

16. **2019 Debt Payment.** Prior to the Effective Date, the City paid \$529,016.50 on the TIF Bonds and Urban Redevelopment Loan (the "2019 TIF Deficit Payment") as a result of a shortfall in the TIF Revenues for calendar year 2019. No later than 14 calendar days following the Effective Date, the County will pay to the City \$264,508.25, such amount equal to fifty (50%) percent of the 2019 TIF Deficit Payment.

17. **Lot 23 and 28 Park.** Pursuant to the terms and conditions of the Music Venue Agreement and related documents, the City is responsible for the design and the construction of the Base Park. The Base Park and any additional park improvements to Lot 23B will be owned and controlled by the City. The County acknowledges that the City shall be the future Owner of the Lot 23 and 28 Park, and accordingly shall be deferential to the City with respect to its decision making within the parameters set forth herein. The City acknowledges that the County, in an effort to assist the City, has agreed to assist the City with respect to the procurement of the construction of the Lot 23 Park and the design and future development of the Lot 28 Park, and City shall be deferential to the County in its role in administering such efforts. Accordingly, the City and County agree to collaborate with each other in their respective good faith efforts with respect to the development and construction of the Lot 23 Park and the design and future development of the Lot 28 Park as hereinafter set forth.

17.1 THP and Messer; Trade Contract. The City consents to the County retaining the Construction Manager (as defined in the Master Development Agreement, the "Construction Manager") and THP Limited, Inc. (the "Architect") pursuant to their existing agreements for the provision of construction management and architectural services for the design and construction of the Base Park and the Smale Level of Finish Elements (as defined in the Music Venue Agreement) that the City is electing to design and construct as of the Effective Date (together with the Base Park, collectively, the "Lot 23 and 28 Park"), *provided that* the County complies with all of the terms and conditions of this Amendment. If the County receives any information, data, recommendations, reports, etc. with respect to the Lot 23 and 28 Park pursuant to its agreements with Construction Manager and Architect, the County will, as soon as practicable, remit such items to the City for its review and if such item requires the City's approval, subject to the Music Venue Agreement, the ancillary agreements related thereto, and the trade contract for the Lot 23 Park, and as applicable the design and development of the Lot 28 Park. In the event that the County is required to make any decision, including, without limitation, approvals of change orders, schedule changes, acceptance of construction work, progress payments, resolution of claims and disputes, suspension or termination of contractors and final payment, for the Lot 23 Park pursuant to its agreements with the Construction Manager, Architect and Universal Contracting Company (the "Trade Contractor") on Lot 23, and as and if applicable, future trade contractors on Lot 28, prior to making any such decision, the County shall seek the City's prior written consent, subject to the Music Venue Agreement and the ancillary agreements related thereto. The County will provide the City with reasonable notice of any and all meetings and communications with the Construction Manager, Architect, and/or Trade Contractor with respect to the Lot 23 and 28 Park, and the City and its representatives may, at their election, attend such meetings and communications. The County will also copy the identified City representatives on all communications with respect to the Lot 23 and 28 Park to Construction Manager, Architect and/or the Trade Contractor. The County acknowledges and agrees that any and all rights of the County pursuant to its contracts with Construction Manager and Architect, solely in respect to the Lot 23 and 28 Park, as and when applicable, also inure to the benefit of the City and the City is an express third-party beneficiary of such agreements solely in relation to the Lot 23 and 28 Park, notwithstanding any provision to the contrary in such agreements. The County will work diligently and in good faith to obtain the Construction Manager and Architect's considerations to add the City as an express third-party beneficiary of its respective agreement for the Lot 23 and 28 Park. The City's consent to the Construction Manager and Architect's services is limited to the Lot 23 Park, and the design and development of the Lot 28 Park, and the County is required to obtain the City's prior written consent before engaging the Construction Manager and/or the Architect regarding any additional park improvements on Lot 23B and/or any park improvements on Lot 28 and the City is not responsible for any costs related to such services until such time as it provides its written consent. Only the City Manager of the City (or her expressly authorized designee) is authorized to provide any and all consents contemplated pursuant to this Amendment.

17.1.1 The City and County agree that any and all of the approvals or consents required in Section 17, shall not be unreasonably withheld or delayed with respect to the design and construction of Lot 23 and 28 Park, and the City, in its role as the future Owner of the Lot 23 and Lot 28 Park, and the County, in its role, shall consider in good faith, the following factors in such approvals and consents, a) the respective recommendations of the County and the

City; b) the recommendation of the Construction Manager and the architect (as defined in the trade contract); c) the availability of funding for such work; d) the impact, if any, on the completion of the work pertaining to such trade contract in accordance with the Project Construction Schedule set forth in the Venue Development Agreement; e) the impact, if any, on the timely completion of the Phase IIIB Public Infrastructure and the availability of public parking as set forth in the Project Construction Schedule; and f) the impact, if any, on the timely completion of the Riverview Music Venue and the issuance of a Certificate of Occupancy pertaining to such Venue and the Lot 23 Park, in accordance with the Project Construction Schedule; and f) the reasonableness of the documentation provided by the trade contractor, architect and the Construction Manager, with respect to the matters set forth herein.

17.2 County Procurement. The City, subject to the terms and conditions set forth herein, consents to the County's procurement of the Trade Contractor for the Lot 23 Park and approves of the County's award to the Trade Contractor for the construction of the Lot 23 Park. The County acknowledges and agrees that (i) the Trade Contractor will comply with the Joint Economic Inclusion Policy and (ii) in the event that any additional trade or design contracts are necessary with respect to the Lot 23 or the Lot 28 Park, in the event applicable, the County will obtain the City's prior written consent before procuring and awarding any such contract. For the avoidance of doubt, the County shall also obtain the City's prior written consent before procuring any additional trade or design contracts related to any additional park improvements in Lot 23 and Lot 28.

17.3 Payment Conditions. The Public Parties acknowledge and agree that the City is responsible for paying the Trade Contractor for the Lot 23 Park and the County is responsible for paying the Trade Contractor for the Phase IIIB Public Infrastructure Improvements, each in accordance with the trade contract among the Public Parties and the Trade Contractor. The City agrees to reimburse the County no later than 30 days after the City's receipt of an invoice for Construction Manager's and Architect's and Trade Contractor's services with respect to the Lot 23 Park, *provided that* if (i) the City is not satisfied, in its reasonable discretion exercised in good faith, with the performance of Construction Manager and/or Architect in relation to the Lot 23 and 28 Park, as applicable, and delivers written notice to the County of such issues, or (ii) the County does not comply with one or more of the material terms and conditions of this Amendment pertaining to the Lot 23 and 28 Park, as applicable, and the performance of the Architect and Construction Manager's services, and the City delivers written notice to the County of such performance, then (a) the City may elect to not reimburse for the services performed by Construction Manager and/or Architect for the Lot 23 and 28 Park, as applicable, until such time as all issues are remedied, as reasonably determined in good faith by the City with respect to such services.

17.3.1 In consideration of the County procuring the development and construction of Lot 23 and 28 Park, as applicable, on behalf of and for the benefit of the City, the City hereby agrees to reimburse the County within thirty (30) days after receipt of the County's invoice with respect to amount due pursuant to the Lot 23 Park trade contracts and amounts due the Construction Manager with respect to the construction management of Lot 23 and 28 Park, as and where applicable. Notwithstanding the foregoing, the City shall also transfer all funds to the County immediately upon the City's receipt of such funds from MEMI pursuant

to Section 6.3.3 of the Venue Development Agreement. The County shall deposit all funds received from the City in the County's Banks Improvement Account (OCA#680900) to be utilized by the County with respect to amounts due the Construction Manager and the trade contractors with respect to Lot 23 Park and Lot 28 Park, as and when applicable.

17.3.2 In consideration of the County procuring the development and construction of Lot 23 and 28 Park, as and when applicable, on behalf of and for benefit of the City, the City does hereby agree to release and be responsible to the County, with respect to any and all liability, losses, claims, demands, suits, actions, administrative proceedings, regulatory proceedings/hearings, expenses, judgments, attorney's fees, court costs, defense costs or other injury or damage, to the extent arising or resulting from the acts or omissions of the City with respect to sums that become due and payable with respect to Lot 23 and 28 Park, as and when applicable, and the work associated and arising therefrom.

18. **Platting of Development Lots.** The Public Parties will cooperate with each other in re-platting and subdividing the remaining Development Lots in accordance with Section 2.2 of the Cooperation Agreement and all Legal Requirements.

19. **Conflict of Terms.** The Cooperation Agreement, as amended by this Amendment, will be construed as one agreement. To the extent there is any irreconcilable inconsistency between this Amendment, and the Cooperation Agreement, this Amendment shall control, and the applicable agreement shall be deemed amended hereby. As amended hereby, the Cooperation Agreement is ratified and confirmed and remains in full force and effect.

20. **Captions.** The captions in this Amendment are included for purposes of convenience only and shall not be considered part of this Amendment or used in construing or interpreting any provision hereof.

21. **Entire Agreement.** This Amendment, together with the Cooperation Agreement, sets forth the entire agreement of the parties with respect to the subject matter of this Amendment in respect of this Amendment.

22. **Counterparts; Electronic Signatures.** This Amendment may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Amendment may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[Signature Page to Follow]

The Public Parties have executed this Amendment as of the date first set forth above.

Approved as to Form:

Assistant County Prosecutor

**THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO**

By: _____
Jeff Aluotto, County Administrator

Approved as to Form:

Assistant City Solicitor

THE CITY OF CINCINNATI, OHIO

By: _____
Paula Boggs Muething, Interim City
Manager

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT K

[note to draft: due to the passage of time, please provide an updated sources and uses table which reflects the current estimates and account balances]

EXHIBIT L

EXISTING PUBLIC INFRASTRUCTURE FINANCING DEBT

[note to draft: due to the passage of time, the City is in the process of updating this exhibit and will circulate a revised one when available]

4847-9083-3862v3

Broad Outlines of City/County agreement to move forward with Banks Development as discussed on 11/2

- The City will agree to not pursue development of the Crossett/Central lot and will make the Crossett/Central lot available through 2026 to allow the County to fulfill its surface lot number requirements committed to by the County in the County-Bengals MOU
- The City will drop its proposal to exclude residential from the zoning uses on Lot 24 and will give independent exclusive development rights to the County for the County-owned Lot 24 and 25.
- The County will give the City independent exclusive development rights on the city-owned land of Lots 1 and 13 (pursuant to the TIF waterfall/priority agreement outlined below), which is the only way to guarantee that Lots 1 & 13 will be exempt from any surface parking lot requirements committed to by the County in the County-Bengals MOU
- During the time period before and during the urban planning review outlined in the County-Bengals MOU, the City retains the right to develop Lots 1 and 13 within the current height restrictions and design guidelines. The County agrees that any revised height restrictions or design guidelines affecting lots at the Banks that come as a result of the urban planning review will be less restrictive or, at minimum, the same as they are today (pre-Bengals-County MOU)
- The City agrees, to the extent it is involved in the urban planning review, to explore with the County options for the placement of and development on the decks over Fort Washington Way
- The City and County agree to work together over the next 2-3 months to create a revenue-sharing agreement related to the Skystar lease on Lot 18 through which the City's portion of the revenue will fund ongoing maintenance and operations of Smale Riverfront Park

TIF Waterfall/Priority Structure for Lots 1 & 13

Any TIF revenues from development on Lots 1 & 13 will be allocated in the following priority order:

- 1) Funds needed for the City to pay back its debt to the county for the building of the garage on lots 27 and 23 in accordance with the already signed city-county construction financing agreement
- 2) Finance the construction of garages necessary to build and develop on Lots 1 and 13
- 3) 50-50 split in revenue between City and County

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.

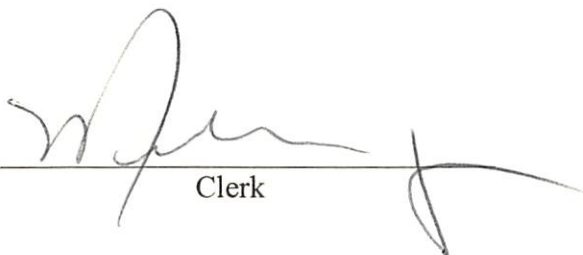
Section 9. That the execution of the Agreement and all actions by the City contemplated therein are hereby determined by this Council to be in the public interest and a proper public purpose.

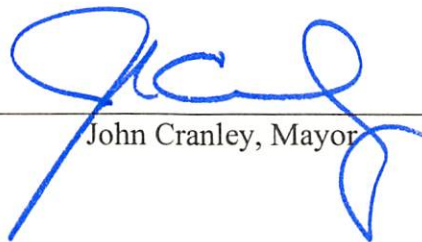
Section 10. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

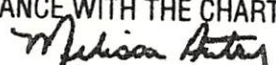
Section 11. That the authorizations contained herein shall in no way constitute (i) a pledge of the full faith and credit of the City, (ii) a pledge of any general taxing power, nor (iii) a waiver of the City's zoning authority under the Cincinnati Municipal Code.

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

EMERGENCY

KMG

28/1

City of Cincinnati

An Ordinance No. 220

- 2020

AUTHORIZING the City Manager to execute a *First Amendment to Cooperation Agreement* with the Board of County Commissioners of Hamilton County, Ohio in order to facilitate the future development of the Banks, including the development of a music venue.

WHEREAS, the City and the Board of County Commissioners of Hamilton County, Ohio (the "County") are party to a *Cooperation Agreement* dated November 23, 2007, as supplemented (the "Cooperation Agreement"), as authorized by Ordinance No. 386-2007, passed by Council on November 1, 2007, which sets forth each public party's commitments with respect to the development of the Central Riverfront; and

WHEREAS, the City and 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"); and

WHEREAS, City Council approved the execution of the *Entertainment Venue Development Agreement* among the City, County, and Music and Event Management, Inc., a wholly owned subsidiary of the Cincinnati Symphony Orchestra (the "Venue Development Agreement") pursuant to Ordinance No. 451-2019, passed by City Council on November 20, 2019; and

WHEREAS, in furtherance of the Term Sheet and the Venue Development Agreement, the City and the County desire to enter into a *First Amendment to Cooperation Agreement* (the "First Amendment to Cooperation Agreement"), which, among other things, (i) is consistent with the terms and conditions of the Term Sheet; (ii) contemplates the City retaining exclusive development rights of Lots 1 and 13, subject to certain specified County rights related to any parking facilities constructed on such lots, and the County retaining exclusive development rights of Lots 24 and 25; (iii) subject to certain conditions, contemplates the City making available all available spaces up to 20 days per year to the County in the surface parking lot commonly known as Crosset Lot until June 30, 2026, on the same payment terms and conditions as currently exist; and (iv) sets forth how the City and the County will share any payments in lieu of taxes received by the City attributable to Lots 1 and 13 pursuant to the tax increment financing exemptions under Ohio Revised Code Section 5709.40(C), as authorized by Ordinance Nos. 412-2002 and 389-2007, passed by Council on December 18, 2002 and November 1, 2007, respectively; and

WHEREAS, City Council approved the execution of a prior draft of the First Amendment to Cooperation Agreement pursuant to Ordinance No. 418-2019, passed on November 14, 2019 (the "Ordinance"); and

WHEREAS, subsequent to the passage of the Ordinance, additional changes to the draft First Amendment to Cooperation Agreement were necessary to (i) memorialize the terms and conditions of the City utilizing the County's construction manager, designer, and procurement for the park on Lot 23 and (ii) provide a procedure by which either the City or the County could object to the other's development of its lot and be responsible for a lesser share of the public costs associated with such development; 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, the City believes that executing the First Amendment to Cooperation Agreement will promote further urban redevelopment of the Banks, including the construction of the music venue, 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 is hereby authorized to execute a *First Amendment to Cooperation Agreement* with the Board of County Commissioners of Hamilton County, Ohio (the "County"), in substantially the form attached as Attachment A to this ordinance (the "First Amendment to Cooperation Agreement").

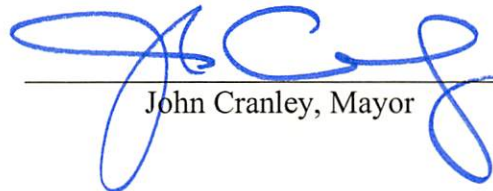
Section 2. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of the First Amendment to Cooperation Agreement and this ordinance, including, without limitation, executing any and all ancillary agreements (including those referenced in the First Amendment to Cooperation Agreement) and other documents.


Section 3. That the execution of the First Amendment to Cooperation 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.

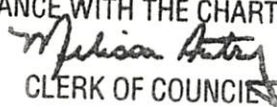
Section 4. That the authorizations contained herein shall in no way constitute (i) a pledge of the full faith and credit of the City, (ii) a pledge of any general taxing power, or (iii) a waiver of the City's zoning authority under the Cincinnati Municipal Code.

Section 5. 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: June 24, 2020


John Cranley, Mayor

Attest: 
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO 220-2020
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 7-7-2020

CLERK OF COUNCIL

FIRST AMENDMENT TO COOPERATION AGREEMENT

THIS FIRST AMENDMENT TO COOPERATION AGREEMENT (this "Amendment") is made as of the 31st day of July, 2020, by THE BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio (the "County"), and THE CITY OF CINCINNATI, OHIO, an Ohio municipal corporation (the "City"). MUSIC AND EVENT MANAGEMENT, INC., an Ohio nonprofit corporation and a wholly owned subsidiary of Cincinnati Symphony Orchestra (and any affiliates thereof, collectively, "Music Venue Developer"), is party to this Amendment for the limited purpose of Section 19.

Recitals

A. The County and the City (hereinafter referred to collectively, the "Public Parties" and each individually a "Public Party") have entered into a Cooperation Agreement dated as of November 23, 2007, as supplemented by a Supplement to the Cooperation Agreement dated as of October 12, 2010, and as supplemented by a Second Supplement dated as of July 15, 2015 (as supplemented by each of the foregoing, the "Cooperation Agreement"). Capitalized terms used in the Amendment which are defined in the Cooperation Agreement and not otherwise defined in this Amendment have the meanings set forth in the Cooperation Agreement.

B. The Public Parties desire to enter into this Amendment in furtherance of the Resolution Authorizing County Administrator to Take Such Actions As Necessary to Facilitate the Development of Phase IIIB Public Infrastructure of The Banks Project, Enabling the Development of the Riverview Music Venue and Phase VII of the Smale Riverfront Park Consistent with the Outline of Terms and Conditions Between the City of Cincinnati and Hamilton County passed by Board of County Commissioners of Hamilton County on April 11, 2019 and the City of Cincinnati Ordinance 119-2019 passed by Cincinnati City Council on April 17, 2019.

Statement of Amendment

In consideration of the mutual covenants and agreements set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and County hereby agree as follows:

1. Withdrawal of Master Developer and Future Amended and Restated Cooperation Termination of Master Development Agreement. The Public Parties acknowledge and agree that (i) Developer's and the Ownership Entities' rights, obligations, and interests in the remaining Development Lots pursuant to the Master Development Agreement and Developer's rights, interests, and obligations under the Infrastructure Development Management Agreement will be terminated following the execution of this Amendment, however the Public Parties acknowledge and agree that for all intents and purposes Developer has withdrawn as the "Developer" as defined in the Master Development Agreement, (ii) the

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Master Development Agreement shall remain in effect until such time as it is between the Public Parties is otherwise amended or hereby terminated by the City and County except as expressly described in accordance with this Section 3, (iii) upon the termination of the Developer's and Ownership Entities' rights under the Master Development Agreement and the Infrastructure Development Management Agreement, the provisions of the Cooperation Agreement pertaining to such agreements the Master Development Agreement, the Infrastructure Development Management Agreement, and the future development of the Development Lots (including, without limitation, any Development Closings related thereto), solely as such provisions relate to Developer and the Ownership Entities, are no longer applicable and thus have no legal force or effect with respect to such Developer and such Ownership Entities, but all such provisions shall remain in full force and effect and binding as to the City and County and to any future developers, including third party developers that are hereinafter retained by the City and/or the County, as such provisions were binding on the Developer with respect to development of the Development Lots, including, without limitation, the development of Lots 1, 13, 24 and 25 except as otherwise agreed to by the City and the County as set forth in Section 3.2 herein as such provisions relate to Developer and the Ownership Entities are no longer applicable, (iv) the Public Parties will be entering into a separate agreement for the development of Lot 27 with a third-party developer, and (v) the City may, in its sole and absolute discretion enter into agreement(s) with third-party developer(s) for Lots 1 and 13 (as defined below) and the County may, in its sole and absolute discretion, enter into agreement(s) with third-party developer(s) for Lots 24 and 25 (as defined below). Any definitions in the Cooperation Agreement that are defined by the corresponding definition in the Master Development Agreement being preserved hereby shall be deemed to include correspond with the applicable definition in the Entertainment Venue Development Agreement (the "Music Venue Agreement") among the Public Parties and Music and Event Management, Inc. (and any affiliates thereof, collectively, the "Music Venue Developer") upon execution of all parties of such agreement. The Public Parties shall use good faith efforts to negotiate and enter into no later than the date that is 180 days after the Effective Date: (1) any amendments determined to be necessary and appropriate as mutually agreed by the City and County, or a termination of the Master Development Agreement and/or (2) an amendment and restatement of the Cooperation Agreement which addresses modifications, if any, with respect to: (x) terms and conditions of the Master Development Agreement applicable between the Public Parties, and between a Public Party and the future developers, including third party developers, including those that may be of benefit to the other Public Party not a party to such agreements, (y) the terms and conditions contained herein, and (z) any mutually agreeable terms and conditions for the future development of the Total Project.

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2. **Phase IIIB Public Infrastructure Improvements; Sources and Uses of Public Parties' Funds.** The Public Parties commit to develop the public infrastructure, including site work, foundations, columns, public parking facilities, podiums, utilities, street grid improvements, to support the development of the Indoor Venue (as defined in the Music Venue Agreement, the "Indoor Venue") on Lot 27, the development of the Base Park (as defined in the Music Venue Agreement, the "Base Park") on Lot 23B, and the future development of greenspace on Lot 28 (collectively, the "Phase IIIB Public Infrastructure Improvements"). The sources and uses of the Public Parties' funds for the Phase IIIB Public Infrastructure Improvements is set forth in **Exhibit K** attached hereto, which is comprised of: a) grant funding awarded by the State of Ohio specifically for the development of public parking facilities in Lots

23, 27 and 28 in the amount of \$12,000,000 (the "~~2019 ODNR Grant~~"); b) remaining public funds from savings and payments retained by City and County from Phase I, II and III in the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project (the "~~Joint Account~~"), in the approximate amount of \$8,200,000 (the "~~City/County Banks Fund Balance in the Joint Account~~"); c) a DSA Grant remainder of ~~\$133,500~~ 132,580 (the "~~DSA Grant Remainder~~"); d) Developer escrow payment to be received by the Public Parties in the approximate amount of \$202,119 (the "~~Phase 2 Escrow Payment~~"); and e) County financing of ~~the~~ approximately ~~\$~~\$8,790,000, all as allocated and set forth in **Exhibit K**. For the avoidance of doubt, the foregoing does not include any funds from accounts held by the City. In the event that the costs of the Phase IIIB Public Infrastructure Improvements financed by the County ~~approximately exceed~~ \$8,790,000, the County ~~shall seek~~ must receive the City's written consent prior to ~~expending costs in incurring such~~ excess costs, and if those excess costs are part of such amount, which consent shall the Phase IIIB Financing (as defined below), then the City agrees it will not ~~be~~ unreasonably withheld or ~~delayed~~ delay its consent (the "County Financing"). The City ~~and the~~ County agree to direct the Joint Banks Project Executive to provide the City and ~~the~~ County with regular written updates of the budget for the Phase IIIB Public Infrastructure Improvements, such updates occurring at least once per month until the reconciliation pursuant to this Section is performed. Upon the completion of the Phase IIIB Public Infrastructure Improvements, the Public Parties shall perform a reconciliation of the Public Party Costs expended, the sources of funds utilized for such Public Party Costs, and shall adjust, as appropriate, the balances as between the Public Parties so that the City and County bear an equal share of the Public Party Costs for the Phase IIIB Public Infrastructure Improvements.

3. **Development of Lots 1, 13, 24 and 25.**

3.1. **Unilateral Development Rights.** Notwithstanding anything to the contrary in this Amendment, the Cooperation Agreement, the Contract Documents, or any other agreement between the Public Parties:

~~3.1.1. 3.1.1~~—the County retains exclusive development rights ~~pertaining to the Air Lot designated as Lot of Lots 24A and 24B (as each is defined in the Master Development Agreement, "as incorporated herein, collectively, "Lot 24")~~, and Lots 25A and 25B (as each is defined in the Master Development Agreement as incorporated herein, collectively, "~~Lot 25~~") *provided that* any such development is in accordance with: (a) ~~the Master Development Agreement, as such agreement may be amended or otherwise terminated or as amended and restated in the Cooperation Agreement by the Public Parties as provided in Section 1 herein;~~ (b) ~~this Amendment;~~ (c) and (b) any development guidelines and height limitations applicable to the County for Lots 24 and 25 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs (as defined below)) or the County receives the prior written consent of the City, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs); and

~~3.1.2~~

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3.1.2. subject to Section 4 below and the construction of a Parking Facility on Lot 1A and, upon the election of the Public Parties, on Lot 13, the City retains exclusive development rights ~~pertaining to the Air Lot designated as Lot of Lots 1A and 1B (as each is defined in the Master Development Agreement, "as incorporated herein, collectively, "Lot 1") and the Air Lot designated as Lot 13 (as it is defined in the Master Development Agreement "as incorporated herein, "Lot 13");~~ provided that such development is in accordance with (a) ~~the Master Development Agreement as such agreement may be amended or otherwise terminated by the Public Parties as provided in Section 1 herein;~~ b) this Amendment and e(b) any development guidelines and height limitations applicable to the City for Lots 1 and 13 in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs) or the City receives the prior written consent of the County, which consent shall not be unreasonably withheld, to deviate from any such applicable development guidelines and height limitations in the Existing Riverfront Agreements (as may be amended pursuant to this Amendment and the MOUs). ~~The Public Parties commit to develop their respective Development Lots in a manner that is economically and financially beneficial to the Total Project, the City of Cincinnati, and Hamilton County. To the extent there are any other Contract Documents, contracts, agreements, leases, or any other documents between the Public Parties pertaining to Lots 1, 13, 24 and 25 that are inconsistent with this Amendment, those Contract Documents, contracts, agreements, leases, and other documents are hereby amended by this Amendment. Each Public Party will cooperate with each other to amend any contracts, agreements, leases or other documents with third-parties that it is party to in order to be consistent with this Section and will not unreasonably withhold or delay its approval to any such amendments.~~

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3.2. Development Process.

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3.2.1 Notice of Development. In the event that a Public Party plans to proceed with the development of a Development Lot as set forth in Section 3.1 (the "Proposing Public Party"), then ~~such~~ the Proposing Public Party shall deliver prior written notice to the other Public Party. ~~The (the "Notice"). As part of the Notice, the~~ Proposing Public Party shall provide sufficient information and documentation to the other Public Party to ensure that the ~~Infrastructure Improvements~~ infrastructure improvements, including the Public Parking Facilities, Utilities and Street Grid Improvements, associated with the proposed development on such Development Lot, will be funded and financed over a period not to exceed thirty (30) years with (a) sources available from and internal to the ~~Banks Total~~ Project associated with pursuant to the existing Contract Documents, (b) any funds committed by a future developer of such development, ~~(b) Lot to reimburse any Public Party Costs (solely to the extent agreed to by that developer),~~ (c) a combination of State or federal grants that have been secured for such development, and/or (ed) other revenue sources that are documented and secured by the Public Party proposing the development (items (a), (b), (c) and (ed) shall be referred to, collectively, as the "Banks Lot Revenue Sources"; ~~prior to the issuance of the"). The Notice. Such Banks Lot Revenue Sources may shall also include, but are not limited to, TIF revenues generated from a schedule by which the applicable Parking Facilities, Street Grid Improvements, Utilities, any other public infrastructure related to the proposed development will be developed and a schedule by which the proposed development of project on the Development Lot, developer contributions, developer Public Parking Contributions or other sources of revenues associated with such~~

~~development, as such may be mutually agreed by~~ will be developed (collectively, the City and County. ~~Notwithstanding the requirements set forth in the Master "Proposed Development Agreement and Cooperation Agreement, as such may be amended and/or restated, in Schedule"~~). In the event a Proposing Public Party reasonably documents and demonstrates to the other Public Party that the anticipated Banks Lot Revenue Sources meet or exceed the costs of the Infrastructure Improvements within the proposed Development Lot (the "Minimum Threshold Requirement"), then ~~other the Public Parties shall equally split the Public Party shall approve~~ Costs and the Proposing Public Party's Party may commence construction of the proposed development of the Development Lot. at any point after 60 days following the delivery of the Notice.

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3.2.2 Payment of Excess Amounts. In the event the Proposing Public Party does not ~~reasonably~~ demonstrate and document to the other Public Party that the Minimum Threshold Requirements will be met, the Proposing Public Party may ~~still proceed with the~~ commence construction of the proposed development of the Development Lot at any point after 60 days following delivery of the Notice, provided that ~~(a)~~ the Proposing Public Party provides funding for the monetary difference between the Minimum Threshold Requirement and the projected Banks Lot Revenue Sources. ~~(the "Excess Amount").~~ By way of example only, and not limitation, in the event the County, as the Proposing Public Party, proposes to develop ~~the Air Lot on Lot 25B25~~ and the Public Party Costs associated with the ~~Infrastructure Improvements to develop~~ development of such Lot are Ten Million Dollars (\$10,000,000), the City and County share equally (*i.e.*, \$5,000,000 each) in such Public Party Costs associated with such Development Lot, provided the Minimum Threshold Requirement is met (*i.e.*, \$10,000,000). Alternatively, in the event the projected Banks Lot Revenue Sources are Seven Million Dollars (\$7,000,000), the County, as the Proposing Public Party shall fund the additional Three Million Dollars (\$3,000,000), required to meet the Minimum Threshold Requirement; and thereafter, the City and County shall equally fund remaining Public Party Costs equal to Three Million Five Hundred Thousand Dollars (\$3,500,000) ~~each~~. This latter example would result in the County, as the Proposing Public Party, funding a total of Six Million Five Hundred Thousand Dollars (\$6,500,000) and the City, as the other Public Party, funding Three Million Five Hundred Thousand Dollars (\$3,500,000) of the Public Party Costs. Any increase in Public Party Costs for a proposed development after the delivery of the Notice that are not offset by any additional Banks Lot Revenue Sources shall constitute the Excess Amount paid for solely by the Proposing Public Party. For the avoidance of doubt, any payments by a Public Party of an Excess Amount pursuant to this Amendment do not constitute a Permitted Advance and that Public Party is solely responsible for those costs.

~~3.2.3 The Proposing Public Party shall provide (a) detailed development plans, which shall at a minimum include detailed budgets outlining project sources and uses of funding, financing, evidence of equity and financing commitments, project pro formas based on the development of Improvements of the Development Lot, (b) projected economic impacts such as projected property tax revenue available to the Public Parties, temporary and permanent jobs and payroll created or retained by the development, and (c) any other relevant information pertaining to the proposed development as may be requested by a Public Party. The Public Parties shall exercise good faith efforts to negotiate funding and financing with respect to the allocation of Public Party Costs, a Permitted Advance, as described~~

in Section 3.7, and such other funding and financing accommodations as may be agreed upon by the Public Parties.

~~3.2.4 In the event that a proposed Development Lot proceeds as provided in Section 3.2.1 and Section 3.2.2 herein, the Public Parties further acknowledge and agree that those provisions of the Master Development Agreement (as amended and/or terminated and restated in the Cooperation Agreement as set forth in Section 1) pertaining to certain developer requirements regarding such elements as approval of developers and third party developers, Developer Qualifications, Minimum Per Lot Improvements, Deferred Purchase Payments, dedicated parking spaces and Public Parking contributions shall not be applicable. In the event a proposed Development Lot proceeds as provided in Section 3.2.1 and 3.2.2 herein, the Public Parties acknowledge and agree that provisions of the Master Development Agreement (as amended and/or terminated and restated in the Cooperation Agreement as set forth in Section 1) shall remain in effect relating to the necessary interfaces and requirements between the design, construction and operation of the public Infrastructure Improvements and the developer of the Air Lot in the design, construction and operation of the Private Improvements of the Air Lot, subdivision of the Ground Lots and Air Lots, property conveyances, easements, parking overdesign costs, capital repairs and maintenance, by way of example and not limitation, as are necessary to ensure the appropriate development, construction and operation of the public Infrastructure Improvements and private Improvements on such Development Lot.~~

~~3.2.5 Design and Construction of Public Infrastructure and Private Improvements.~~

~~3.2.5.1 As set forth in Section 4 herein, the County shall construct the Public Infrastructure on Lots 1, 13 (as applicable), and 25. In the event development proceeds as provided in Section 3.2.1 or 3.2.2 herein, the County shall work with the City in the design and construction of the necessary Public Infrastructure in such a manner to ensure the timely commencement and completion of the Private Improvements for the Air Lots 1 and 13 (as applicable).~~

~~3.2.5.2 The City, by and through its developer, shall provide sufficient design information, including but not limited to, development design loads, in order for the County, through its design professionals, to design the Parking Facilities and related Public Infrastructure to provide adequate support for the Private Podium and the Improvements to be constructed above and integral to the Parking Facilities. The City will ensure that its developer, and the County will ensure that its design professionals, shall work together to facilitate the efficient design and construction of the Public Parking Facilities and the Private Improvements. Based on the information and documentation submitted in Section 3.2.3 and herein, a specific timeline for the development, design, and construction shall be developed (the "Lot Development Schedule"). The County shall agree to issue, for the benefit of the City, a Completion Guaranty, ensuring the timely commencement of the design, construction, and completion of the Parking Facilities and related Public Improvements in order for the private Improvements to be timely commenced and completed in accordance with the Lot Development Schedule. Such Completion Guaranty shall include, without limitation, provisions providing for specific performance as well as the assignment of the construction of the Public Infrastructure to the City in the event the Lot Development Schedule is not met. The County shall also agree to work with the City, to advance the commencement of the Private Improvements~~

contemporaneously with the Public Parking Facilities in order to expeditiously complete both the Public Parking Facilities and the Private Improvements.

~~3.3. Amendment of Agreements. To the extent there are any other Contract Documents, contracts, agreements, leases, or any other documents between the Public Parties pertaining to Lots 1, 13, 24 and 25 that are inconsistent with this Section, those Contract Documents, contracts, agreements, leases, and other documents are hereby amended by this Section. Each Public Party will cooperate with each other to amend any contracts, agreements, leases or other documents (including third parties) in order to be consistent with this Section and will not unreasonably withhold or delay its approval to any such amendments.~~

~~3.2.3 Parking Facilities on Lots 1, 13 and 25. Consistent with the Contract Documents between the Public Parties and the Cooperation Agreement, as amended by this Amendment, as the County constructs the Infrastructure Improvements consistent with the terms and conditions of this Agreement and the Master Development Agreement as amended or as amended and restated in the Cooperation Agreement County's Right of First Opportunity to Construct Parking Facility. If the City delivers a Notice with respect to (i) Lot 1 or (ii) Lot 13 and the Public Parties elect to construct a Parking Facility on Lot 13, then the County shall have the right of first opportunity to construct the Parking Facility on such Lot so long as it commences and completes construction in accordance with the Proposed Development Schedule. The Notice will specify the commencement and completion of construction deadlines for the Parking Facility in accordance with the Proposed Development Schedule (collectively, the "Deadlines"). Upon receipt of the Notice, the County has 60 days to deliver written acceptance to the City of the offer to construct the Parking Facility, agreeing to commence and complete the construction on or before the Deadlines. At that time, the County will also provide for the benefit of the City a Completion Guaranty for the construction of such Parking Facility, which shall include, without limitation, a requirement that the County complete the construction of the Parking Facility by the Deadlines, the Parking Facility will be constructed to provide adequate support for the proposed development, and in the event that the County does not commence or complete construction by the Deadlines, then the City has the right, as it elects, to (i) specific performance, (ii) construct the Parking Facility itself, (iii) compel the County to assign any contracts pertaining to the construction of the Parking Facility, and (iv) any and all remedies available under applicable law (the "County's Completion Guaranty"). If the County does not commence construction on or before the applicable Deadline or the County does not deliver written notice of acceptance to construct the Parking Facility on or before the date that is 60 days after the County's receipt of the Notice, then pursuant to this Amendment and the County's Completion Guaranty, the City shall have the right to commence and complete construction of the Parking Facility. The City will convey the applicable Parking Facility Lot upon the completion of construction of the Parking Facility as certified by either the City's or the County's construction manager, as applicable, notwithstanding any language to the contrary in Section 2.4 of the Cooperation Agreement. If the City constructs any Parking Facilities pursuant to this Section, the City shall cause such Parking Facilities to be designed and constructed to be compatible and to integrate with the other Parking Facilities within the Total Project. Failure by the City to do so constitutes an event of default hereunder and the County has the right to avail itself of any and all remedies available pursuant to applicable law.~~

3.2.4 Demolition of Surface Parking on Lots 1 and 13. Following the City's and a third-party developer's execution of a development agreement for a proposed development on Lots 1 and/or 13 and delivery of the applicable Notice to the County, the City has the right to provide the County with written notice that it intends to demolish, excavate and/or conduct site clearing on the Lot proposed to be developed. The City shall give the County no less than 60 days' written notice of the anticipated date of the demolition, site clearing and/or excavation is to commence and the County shall vacate the parcel(s) no later than 60 days after the County's receipt of such demolition notice.

3.3. [Sections of the MDA to be preserved – from the City's perspective, this should be any definitions necessary to preserve and the RE items. County, please let us know what you think needs to be preserved as you agreed to do on the call yesterday. Note the City could also commit in this Amendment to agree to include a reservation of easements in its deed to third-party developers for any necessary easements related to the parking infrastructure.] To the extent that the terms and conditions of the items specifically listed in this Section conflict with any other provisions of this Amendment, the provisions in this Amendment shall control.

4. **Parking Facilities on Lots 1 and 13.** Consistent with the existing Contract Documents between the Public Parties and the Cooperation Agreement, as amended by this Amendment, in the event that Parking Facilities are constructed on Lots 1 and 13, as applicable, upon the completion of construction, the County will own, operate and be entitled to all parking revenue attributable to such Parking Facilities.

5. **Bengals MOUs.** Pursuant to the Memorandums of Understanding Between the Board of County Commissioners of Hamilton County and the Cincinnati Bengals, Inc. entered into on or about November 23, 2018, and June 26, 2019 (collectively, the "MOUs";), the County and Cincinnati Bengals, Inc. agreed to undertake an urban planning review of the building height limitations and certain development guidelines (the "Urban Planning Review";). The County acknowledges and agrees that any revised building height restrictions or development guidelines will not be any more restrictive than the current building development restrictions and development guidelines as set forth in the Existing Riverfront Agreements and that the Public Parties will mutually agree to any building height restrictions or development guidelines revisions.

6. **Fort Washington Way Decks.** The City, to the extent it is involved in the Urban Planning Review, will collaborate in good faith with the County to review the feasibility of the placement of and the development on any future decks over Fort Washington Way.

7. **Lot 18.** The County acknowledges and agrees that at such time as the City is prepared to own, operate and maintain Lot 18 and to incorporate it into the Central Riverfront Park, the City has the right under the Cooperation Agreement and the Contract Documents to require the County to convey all of the County's right, title, and interest in Lot 18 to the City. Until such time, the County will continue to operate and maintain Lot 18 as a public park. Without limiting the City's rights under the Cooperation Agreement and any of the Contract Documents, the City and the County agree use good faith efforts to negotiate a revenue sharing

agreement no later than 90 days after the Effective Date related to the license agreement between the County and Skystar Wheel, LLC or an affiliate thereto regarding Lot 18. The City will only provide its consent [to the license agreement](#), which consent will not be unreasonably withheld or delayed, ~~to the license agreement~~ upon all applicable parties agreeing to the revenue sharing arrangement. The City intends to use its portion of any revenue from such arrangement to fund ongoing maintenance and operation expenses related to the Central Riverfront Park.

8. **Banks Project Executive**. The City consents to the Banks Project Executive working on projects unrelated to the Public Project solely on behalf of the County. The Public Parties acknowledge and agree that the Banks Project Executive will be a shared 50/50 cost with respect to his time on the Public Project and that the County will be solely responsible for all costs attributable to the Banks Project Executive on unrelated projects solely on behalf of the County. The County will cause the Banks Project Executive to provide the City with weekly documentation as to how much time is spent on the Public Project that week and how much time is spent on projects solely on behalf of the County that week. As of the Effective Date, the Public Parties anticipate that the Banks Project Executive will spend approximately sixty percent (60%) of his time on the Public Project and approximately forty percent (40%) of his time on unrelated projects solely on behalf of the County. No later than the date that is 14 calendar days following the Effective Date, the County will cause the Banks Project Executive to provide the City with a breakdown of time spent on unrelated projects solely on behalf of the County prior to the Effective Date and the County will reimburse the Joint Account the amount used to fund the Banks Project Executive's salary for time on unrelated projects prior to the Effective Date, if any.

9. **DOTE Services**. The Public Parties acknowledge and agree that the City's Department of Transportation and Engineering is providing inspection and construction related services with respect to the Phase IIIB Public Infrastructure Improvements (the ~~"DOTE Services"~~). The City will send monthly invoices to the County for the DOTE Services incurred in the preceding month. The County will pay such invoices from the designated project fund maintained by the Auditor/Treasurer of Hamilton County, Ohio for the Banks Project. Half of the costs for such DOTE Services shall be allocated as an obligation of the County. The remaining half of the costs for such DOTE Services shall be allocated as an obligation of the City and the City will repay its portion of the costs for the DOTE Services from the sources of revenue identified in Section 3.7.2 (as amended in Section 14).

10. **Phase 2 Park Podium**. The definition of Phase 2 Park Podium in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"Phase 2 Park Podium" means collectively, (i) the podium designed and constructed as part of the Parking Facilities on Lot 23A above such Parking Facilities, which, for the avoidance of doubt the Public Parties are equally responsible for maintaining, and (ii) the podium designed and constructed as part of the Parking Facilities on Lot 28 above such Parking Facilities, which, for the avoidance of doubt the City is solely responsible for maintaining in accordance with applicable

agreements among the City, the County, and Music and Event Management, Inc.

11. **Phase IIIB Podiums Cost.** Pursuant to the Cooperation Agreement, as amended hereby, the City and County shall share equally in the cost of the Phase 2 Park Podium. Notwithstanding the foregoing, the City is solely responsible to maintain the portion of the Phase 2 Park Podium on Lot 28 in accordance with the Music Venue Agreement and the ancillary agreements related thereto. The Music Venue Developer shall be solely responsible for the costs associated with the development podium slab supporting the Indoor Venue and the development costs of the Indoor Venue on Lot 27.

12. **TIF Revenues.** The definition of TIF Revenues in Section 1.1 of the Cooperation Agreement is hereby amended and restated as follows:

"TIF Revenues" means any payments in lieu of taxes ~~and Minimum Service Payments~~ with respect to parcels in the Total Project area actually received by the City (including, without limitation, any minimum service payments received by the City pursuant to a Contract Document) as a result of the tax increment financing exemptions pursuant to Ohio Revised Code Section 5709.40(C), as authorized by Ordinance Nos. 412-2002 and 389-2007, passed by City Council on December 18, 2002, and November 1, 2007, respectively, less the portions thereof paid to the Cincinnati Public School District pursuant to the Agreement dated July 2, 1999 between the City and the Cincinnati Public School District, as amended.

13. **Lots 1, 13, 24 and 25 TIF Revenue Sharing.** (i) The definition of TIF Bonds in Section 1.1 of the Cooperation Agreement and (ii) the use of TIF Bonds in Sections 3.3 and 3.5 of the Cooperation Agreement is hereby amended to exclude any TIF Revenues attributable to improvements on Lots 1, 13, 24, and 25. The TIF Revenues attributable to Lots 1, 13, 24 and 25 shall be used only for the following purposes and in the following priority:

~~first, 50% of such TIF Revenues shall be allocated to repay the City's obligations with respect to the Phase IIIB Public Infrastructure Financing (as set forth in Section 3.7.2 regarding the County's Phase IIIB Permitted Advance~~ defined below), the City's portion of such repayment is equal to the Phase IIIB Permitted Advance ~~and 50% (as defined below) and the County's portion of such repayment is the remaining amount of such TIF Revenues shall be allocated to the County the Phase IIIB Financing, if any;~~

~~second, to repay the City's obligation regarding the County's TIF District~~ **TIF Deficit** Financing, 50% of such repayment shall be attributable to the City and 50% of such repayment shall be attributable to the County;

~~third, to reimburse the Public Parties for Public Party Costs related to the infrastructure necessary to develop Lots 1A, 13A, 24A~~ **1, 13, 24, and 25**

(including, without limitation, ~~Parking Facilities and Utilities~~public parking facilities on such ~~Lots~~lots); such reimbursement to be paid 50% to each Public Party;

~~fourth~~, to (i) reimburse the Public Parties for Public Party Costs related to the construction of new public infrastructure improvements that are part of the Public Project and (ii) fund the future construction of new public infrastructure improvements that are part of the Public Project, each in accordance with the Cooperation Agreement, as amended, as of the Effective Date~~;~~ such funds to be paid 50% to each Public Party. Such reimbursement to be paid 50% to each Public Party, provided that any Public Party making a Future Permitted Advance hereunder shall be entitled to the other Public Party's 50% share until such time as the Public Party making the Future Permitted Advance ~~has~~has received ~~repayment~~payment of the ~~entire~~Future Permitted Advance, ~~together with all interest thereon pursuant to~~ on the terms and conditions ~~set forth in Section 3.7. For~~agreed to by the ~~avoidance of doubt, no interest shall be payable in respect to the County's Phase IIIB Permitted Advance~~Public Parties; and

~~fifth~~, ~~provided, the Public Project with respect to the Remaining Project Lots has been funded and completed~~fifth, 50% of any TIF Revenues shall be retained by the City to be used for any eligible purpose under Ohio law and 50% of any TIF Revenues will be transmitted by the City to the County to be used for any eligible purpose under Ohio law.

For the avoidance of doubt~~;~~ 50% of the TIF Revenues attributable to Lots ~~4B, 13B, 24B1, 13, 24~~ and ~~25B25~~ shall be allocated to the City and 50% of the TIF Revenues attributable to Lots ~~4B, 13B, 24B1, 13, 24~~ and ~~25B25~~ shall be allocated to the County. By way of example and not limitation, if there is \$100,000 of TIF Revenue attributable to Lots ~~4B, 13B, 24B1, 13, 24~~ and ~~25B25~~, then (i) \$50,000 of such TIF Revenue will first be used by the City to repay the County for the ~~County's~~ Phase IIIB Permitted Advance then, if the Phase IIIB Permitted Advance is no longer outstanding, to repay the County for the City's portion of the TIF ~~District~~Deficit Financing ~~as set forth in Section 3.7.4 herein~~, then if the City's portion of the TIF ~~District~~Deficit Financing is no longer outstanding, to reimburse the City for its Public Party Costs related to the ~~Infrastructure Improvements~~public infrastructure necessary to develop Lots ~~4A, 13A, 24A1, 13, 24~~ and ~~25A, and 25~~, then if there are no outstanding Public Party Costs to be reimbursed ~~by~~to the City related to the ~~Infrastructure Improvements~~public infrastructure necessary to develop Lots ~~4A, 13A, 24A~~ and ~~25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed, then the TIF Revenues 1, 13, 24, and 25~~, to reimburse and fund the City's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the City may ~~retain~~keep any such excess funds for any eligible purpose, and (ii) \$50,000 of such TIF Revenue will first be used to pay the County's portion of the Phase IIIB Financing (if any), then, if the County's portion of the Phase IIIB Financing is no longer outstanding, to repay the County's portion of the TIF ~~District~~Deficit Financing ~~as set forth in Section 3.7.4~~ then, if the

~~County's portion of the TIF District Deficit Financing is no longer outstanding, to reimburse the County for its Public Party Costs related to the Infrastructure Improvements public infrastructure necessary to develop Lots 1A, 13A, 24A, 1, 13, 24, and 25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed 25, then and if; there are no outstanding Public Party Costs to be reimbursed to the County related to the Infrastructure Improvements public infrastructure necessary to develop Lots 1A, 13A, 24A and 25A, and provided the Public Project with respect to the Remaining Development Lots has been funded and completed, then 1, 13, 24, and 25, to reimburse and fund the County's portion of the construction of new public infrastructure improvements that are part of the Public Project, in accordance with the Cooperation Agreement, as amended, as of the Effective Date, and finally after the completion of construction of new public infrastructure improvements that are part of the Public Project, then the County may retain/keep any such excess funds for any eligible purpose. For the avoidance of doubt, in the event at City will retain any time there are excess TIF Revenues it actually receives related to Lots 1, 13, 24, and 25 in a sub account of the Public Project with respect to separate account established pursuant to Section 3.5 of the Remaining Development Lots has not been funded or completed, the City Cooperation Agreement and County each shall retain such excess TIF Revenues in a separate Banks TIF Public Project Completion Fund to be applied as set forth in are to be dispersed from that account in accordance with this Section 3.5.1]~~

14. **Phase IIIB Advances; TIF District Deficits.** Section 3.7 of the Cooperation Agreement is hereby amended and restated as follows and, to the extent Section 3.6 of the Cooperation Agreement is inconsistent with the following, it is deemed amended hereby:

3.7 Permitted Advances; Phase IIIB Permitted Advance.

3.7.1 Payments; Permitted Advances. Except with respect to (i) any Public Party Costs incurred by either Public Party for the Phase IIIB Public Infrastructure Improvements (as defined in the Section 3.7.2 First Amendment, as defined below), the "Phase IIIB Public Infrastructure Improvements") and (ii) any Public Party Costs incurred by either Public Party after the effective date (the "First Amendment Effective Date") of the First Amendment to Cooperation Agreement between the Public Parties (the "First Amendment"), all payments due by either the City or the County as contemplated in this Agreement shall be due and payable within 30 days after receipt of an invoice from the Department of Planning and Development of Hamilton County, Ohio as provided in Section 3.6 hereof together with reasonably detailed supporting evidence of the amounts due. To the extent either Public Party does not make payments that are due and payable as contemplated pursuant to the foregoing sentence, the other Public Party may, but is not obligated to, upon providing at least 10 days prior notice of its election to do so, advance such funds for and on behalf of the other Public Party (the "Permitted

¹ Note to draft: The addition of Lots 24 and 25 to this Section is contingent on all other changes being accepted by the County.

Advances”);. All Permitted Advances shall be due and payable upon demand of the Public Party making such Permitted Advances and shall bear interest at the New York prime rate as published in the Midwest Edition of the Wall Street Journal from time to time.

3.7.2 Phase IIIB Payments; Phase IIIB Permitted Advances.

With respect to any Public Party Costs for the Phase IIIB Public Infrastructure Improvements, the Public Parties agree that the County shall advance and finance, without the backing of City credit, up to the County Financing (the “Phase IIIB Financing”). The portion of Phase IIIB Financing allocated as an obligation of the City equals half of the total actual costs of the Phase IIIB Public Infrastructure Improvements paid for by the County less the City’s share of the City/County Banks Fund Balance less half of the 2019 ODNR Grant less half of the DSA Grant Remainder less half of the Phase 2 Escrow Payment (each of the foregoing capitalized terms not defined herein shall have the meanings ascribed to them in the First Amendment) (the “Phase IIIB Permitted Advance”) and the remainder of the Phase IIIB Financing actually advanced and financed by the County shall be allocated as an obligation of the County. For the avoidance of doubt, if any additional Primary Sources of Funds become available to pay for the Phase IIIB Public Infrastructure Improvements, in the event that Secondary Sources of Funds paid for the Phase IIIB Public Infrastructure Improvements, such Primary Sources of Funds will be allocated in accordance with Section 3.2. No interest shall accrue on the Phase IIIB Permitted Advance. The repayment of the Phase IIIB Permitted Advance shall solely be from the City’s share of revenues derived from the Banks Development exclusively from the Total Project pursuant to any existing and future Contract Documents including, but not limited to: i) the TIF Revenues, and ii) any future developer payments (such as Deferred Purchase Price payments, any repayments of a developer’s reimbursement for private parking costs, any extension fees, property tax abatement repayments, and repayment of economic development funding) received by the Public Parties and excluding any revenues that the City is contractually obligated to utilize for a specific purpose that is inconsistent with the Phase IIIB Permitted Advance, such as the “Assessments” as defined in the General Declaration (as defined in the Master Development Agreement, as incorporated in the First Amendment).

3.7.3 TIF District Deficits. In the event that the TIF Revenues are insufficient to fund the existing debt service for the Public Party Costs financed prior to July 431, 2020, as set forth in Exhibit L, the County will pay any such deficits up to an aggregate cap of \$4,000,000 as between the Public Parties (the “TIF Deficit Financing”). For the avoidance of doubt, (i) Exhibit L reflects the potential deficit as of July 431, 2020, and the actual deficit may be greater or less than the attached and (ii) the

portion of the TIF Deficit Financing attributable to the City is half of the TIF Deficit Financing actually paid by the County. The County shall be entitled to reimbursement from the City with respect to the TIF Deficit Financing from the same sources of revenue outlined in Section 3.7.2 above; provided, however, that any such reimbursement to the County shall be subject first, to the City's repayment to the County of the Phase IIIB Permitted Advance, and second, to the City's repayment to the County of the TIF Deficit Financing actually paid by the County.

3.7.4 Future Permitted Advances. ~~After the First Amendment Effective Date, prior to incurring any Public Party Costs for Lots 1, 13, 24, and 25 (each as defined in the First Amendment), the Public Party that intends to incur such costs will provide the other Public Party not less than 180 days prior written notice. Upon receipt of such written notice, the Public Parties will negotiate in good faith payment terms with respect to the proposed Public Party Costs described in the written notice prior to such Public Party Costs actually being incurred. After 180 days from receipt of the written notice contemplated herein, if the Public Parties do not have an agreement with respect to the payment terms pertaining to the proposed Public Party Costs, then the Public Party proposing such Public Party Costs may advance funds on behalf of the other Public Party (the "Future Permitted Advances") and incur the proposed Public Party Costs. All Future Permitted Advances (excluding, specifically, for the avoidance of doubt, the Phase IIIB Permitted Advances) shall be due and payable upon demand of the Public Party making such Future Permitted Advances and shall bear interest as provided in Section 3.7.1, provided, however, in no circumstances will the Public Party making the demand for payment be entitled to payment during the current fiscal year at the time of the demand for payment of the other Public Party or during the following fiscal year of the other Public Party (i.e. upon receipt of the demand, the receiving Public Party shall not have to make a payment during the fiscal year the demand was received in or the following fiscal year and is only obligated to pay after such fiscal years have ended). Notwithstanding any language to the contrary in the Contract Documents, after the First Amendment Effective Date, a Public Party may not advance any Public Party Costs for any proposed development on Lots 1, 13, 24, and 25 without the other Public Party's express written consent to the terms and conditions of such advance (the "Future Permitted Advances"). Any Future Permitted Advances are due and payable on the terms and conditions agreed to as part of such Future Permitted Advance.~~

15. **Permitted Advance References.** The references to "Permitted Advance" and "Permitted Advances" in Sections 3.2, 3.5 and 6.2 shall be amended to include references to "Phase IIIB Permitted Advance" and "Phase IIIB Permitted Advances"; and in the event of a Future Permitted Advance, "Future Permitted Advance" and "Future Permitted

Advances². For the avoidance of doubt, the repayment of any Permitted Advances with Primary Sources of Funds must constitute an eligible use of such Primary Sources of Funds.

16. **2019 Debt Payment.** Prior to the Effective Date, the City paid \$529,016.50 on the TIF Bonds and Urban Redevelopment Loan (the "~~2019 TIF Deficit Payment~~") as a result of a shortfall in the TIF Revenues for calendar year 2019. No later than 14 calendar days following the Effective Date, the County will pay to the City \$264,508.25, such amount equal to fifty (~~50%~~) percent (50%) of the 2019 TIF Deficit Payment.²

17. **Lot 23 and 28 Park.** Pursuant to the terms and conditions of the Music Venue Agreement and related documents, the City is responsible for the design and the construction of the Base Park. The Base Park and any additional park improvements to Lot 23B will be owned and controlled by the City. ~~The County acknowledges that the City shall be the future Owner of the Lot 23 and 28 Park, and accordingly shall be deferential to the City with respect to its decision making within the parameters set forth herein. The City acknowledges that the County, in an effort to assist the City, has agreed to assist the City with respect to the procurement of the construction of the Lot 23 Park and the design and future development of the Lot 28 Park, and City shall be deferential to the County in its role in administering such efforts. Accordingly, the City and County agree to collaborate with each other in their respective good faith efforts with respect to the development and construction of the Lot 23 Park and the design and future development of the Lot 28 Park as hereinafter set forth.~~ The County acknowledges and agrees that, as between the Public Parties, the City is the sole decision-maker with respect to the Base Park and any additional park improvements to Lot 23B.

17.1 **THP and Messer; Trade Contract.** The City consents to the County retaining the Construction Manager (as defined in the Master Development Agreement, the "~~Construction Manager~~") and THP Limited, Inc. (the "~~Architect~~") pursuant to their existing agreements for the provision of construction management and architectural services for the design and construction of the Base Park and the Smale Level of Finish Elements (as defined in the Music Venue Agreement) that the City is electing to ~~design and~~ construct as of the Effective Date (together with the Base Park, collectively, the "~~Lot 23 and 28 Park~~"), *provided that* the County complies with all of the terms and conditions of this Amendment. If the County receives any information, data, recommendations, reports, etc. with respect to the Lot 23 ~~and 28~~ Park pursuant to its agreements with Construction Manager and Architect, the County will, as soon as practicable, remit such items to the City for its review and ~~if such item requires the City's approval~~ approval, which may be withheld in the City's sole and absolute discretion, subject to the Music Venue Agreement, the ancillary agreements related thereto, and the trade contract for the Lot 23 Park, ~~and as applicable the design and development of the Lot 28 Park.~~ In the event that the County is required to make any decision, including, without limitation, approvals of change orders, schedule changes, acceptance of construction work, progress payments, resolution of claims and disputes, suspension or termination of contractors and final payment, for the Lot 23 Park pursuant to its agreements with the Construction Manager, Architect and Universal Contracting Company (the "~~Trade Contractor~~") ~~on Lot 23, and as and if applicable, future trade~~

² Note to draft: The Public Parties splitting the 2019 TIF Deficit Debt Payment equally and it not being part of the TIF Deficit Financing is contingent on all other changes being accepted by the County.

contractors on Lot 28.”), prior to making any such decision, the County ~~shall seek~~must obtain the City’s prior written consent, ~~subject. Any failure of the County to the Music Venue Agreement and the ancillary agreements related thereto obtain such City consent constitutes a Lot 23 Default (as defined below).~~ The County will provide the City with reasonable notice of any and all meetings and communications with the Construction Manager, Architect, and/or Trade Contractor with respect to the Lot 23 ~~and 28 Park;~~ and the City and its representatives may, at their election, attend such meetings and communications. The County will also copy the identified City representatives on all communications with respect to the Lot 23 ~~and 28 Park~~ to Construction Manager, Architect and/or the Trade Contractor. The County acknowledges and agrees that any and all rights of the County pursuant to its contracts with Construction Manager and Architect, solely in respect to the Lot 23 ~~and 28 Park, as and when applicable~~Park, also inure to the benefit of the City and the City is an express third-party beneficiary of such agreements solely in relation to the Lot 23 ~~and 28 Park;~~ notwithstanding any ~~provision~~language to the contrary in such agreements. The County will work diligently and in good faith to obtain the Construction Manager and Architect’s ~~considerations~~consent to ~~add~~ the City ~~as being~~ an express third-party beneficiary of its respective agreement for the Lot 23 ~~and 28 Park~~. The City’s consent to the Construction Manager and Architect’s services is limited to the Lot 23 Park, ~~and the design and development of the Lot 28 Park,~~ and the County is required to obtain the City’s prior written consent, which may be withheld in the City’s sole and absolute discretion, before engaging the Construction Manager and/or the Architect regarding any additional park improvements on Lot 23B and/or any park improvements on Lot 28 and the City is not responsible for any costs related to such services until such time as it provides its written consent. Only the City Manager of the City (or her expressly authorized designee) is authorized to provide any and all consents contemplated pursuant to this Amendment.

~~17.1.1 The City and County agree that any and all of the approvals or consents required in Section 17, shall not be unreasonably withheld or delayed with respect to the design and construction of Lot 23 and 28 Park, and the City, in its role as the future Owner of the Lot 23 and Lot 28 Park, and the County, in its role, shall consider in good faith, the following factors in such approvals and consents, a) the respective recommendations of the County and the City; b) the recommendation of the Construction Manager and the architect (as defined in the trade contract); c) the availability of funding for such work; d) the impact, if any, on the completion of the work pertaining to such trade contract in accordance with the Project Construction Schedule set forth in the Venue Development Agreement; e) the impact, if any, on the timely completion of the Phase IIIB Public Infrastructure and the availability of public parking as set forth in the Project Construction Schedule; and f) the impact, if any, on the timely completion of the Riverview Music Venue and the issuance of a Certificate of Occupancy pertaining to such Venue and the Lot 23 Park, in accordance with the Project Construction Schedule; and f) the reasonableness of the documentation provided by the trade contractor, architect and the Construction Manager, with respect to the matters set forth herein.~~

17.2 County Procurement. The City, subject to the terms and conditions ~~set forth~~contemplated herein, consents to the County’s procurement of the Trade Contractor for the Lot 23 Park and approves of the County’s award to the Trade Contractor for the construction of the Lot 23 Park. The County acknowledges and agrees that (i) the Trade Contractor will comply with the Joint Economic Inclusion Policy and (ii) in the event that any additional trade or

design contracts are necessary with respect to the Lot 23 ~~or the Lot 28 Park, in the event applicable~~ Park, the County will obtain the City's prior written consent before procuring and awarding any such contract. For the avoidance of doubt, the County ~~shall~~ must also obtain the City's prior written consent before procuring any additional trade or design contracts related to any additional park improvements in Lot ~~23~~ 23B and Lot 28.

17.3 Payment Conditions. The Public Parties acknowledge and agree that the City is responsible for paying the Trade Contractor for the Lot 23 Park and the County is responsible for paying the Trade Contractor for the Phase IIIB Public Infrastructure Improvements, each in accordance with the trade contract among the Public Parties and the Trade Contractor. The City agrees to reimburse the County no later than 30 days after the City's receipt of an invoice for Construction Manager's and Architect's ~~and Trade Contractor's~~ services with respect to the Lot 23 Park, *provided that* if (i) the City is not satisfied, in its ~~reasonable~~ sole and absolute discretion ~~exercised in good faith~~, with the performance of Construction Manager and/or Architect in relation to the Lot 23 ~~and 28~~ Park, ~~as applicable~~, and delivers written notice to the County of such issues, or (ii) the County does not comply with one or more of the ~~material~~ terms and conditions of this Amendment ~~pertaining to the Lot 23 and 28 Park, as applicable, and the performance of the Architect and Construction Manager's services~~, and the City delivers written notice to the County of such ~~performance~~ default, then (a) the City ~~may elect to~~ is not required to reimburse for the services performed by Construction Manager and/or Architect for the Lot 23 ~~and 28~~ Park, ~~as applicable~~, until such time as all issues are remedied, ~~as reasonably determined in good faith by~~ (the "Unreimbursed Costs"), (b) ~~the Unreimbursed Costs do not constitute a Permitted Advance, a Phase IIIB Permitted Advance or a Future Permitted Advance, and~~ (c) ~~no interest will accrue on the Unreimbursed Costs. The County will not use any of the City with respect to~~ Funds (including any future City Funds received and allocated to the City) to such services reimburse itself for the Unreimbursed Costs.

~~17.3.1 In consideration of the County procuring the development and construction of Lot 23 and 28 Park, as applicable, on behalf of and for the benefit of the City, the City hereby agrees to reimburse the County within thirty (30) days after receipt of the County's invoice with respect to amount due pursuant to the Lot 23 Park trade contracts and amounts due the Construction Manager with respect to the construction management of Lot 23 and 28 Park, as and where applicable. Notwithstanding the foregoing, the City shall also transfer all funds to the County immediately upon the City's receipt of such funds from MEMI pursuant to Section 6.3.3 of the Venue Development Agreement. The County shall deposit all funds received from the City in the County's Banks Improvement Account (OCA#680900) to be utilized by the County with respect to amounts due the Construction Manager and the trade contractors with respect to Lot 23 Park and Lot 28 Park, as and when applicable.~~

~~17.3.2 In consideration of the County procuring the development and construction of Lot 23 and 28 Park, as and when applicable, on behalf of and for benefit of the City, the City does hereby agree to release and be responsible to the County, with respect to any and all liability, losses, claims, demands, suits, actions, administrative proceedings, regulatory proceedings/hearings, expenses, judgments, attorney's fees, court costs, defense costs or other injury or damage, to the extent arising or resulting from the acts or omissions of the City~~

~~with respect to sums that become due and payable with respect to Lot 23 and 28 Park, as and when applicable, and the work associated and arising therefrom.~~

18 17.4 Remedies. In addition to the City's right to withhold payment pursuant to the above Section, in the event that the County breaches this Amendment or the City is not satisfied, in its sole and absolute discretion, with the Architect's and/or the Construction Manager's performance (each a "Lot 23 Default"), the City will provide written notice of a Lot 23 Default to the County. Any Lot 23 Defaults have a cure period not to exceed 30 calendar days from the County's receipt of notice of a Lot 23 Default (unless (x) such Lot 23 Default creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, then reasonable actions must be taken immediately to remedy the emergency or (y) such Lot 23 Default relates to a payment owing to the City, then such Lot 23 Default must be remedied no later than five business days following the County's receipt of the Lot 23 Default notice) (the "Cure Period"), provided, however, that if the nature of the Lot 23 Default (other than Lot 23 Default with respect to an emergency or a payment owed to the City) is such that it cannot reasonably be cured during the Cure Period, a Lot 23 Default does not exist so long as the County commences or causes the Architect and/or Construction Manager to commence to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of the Lot 23 Default. If the Lot 23 Default still exists following the Cure Period, then the City may, at its option, enforce or avail itself of any and all of the following remedies, subject to the Music Venue Agreement and the ancillary agreements thereto:

(A) withdrawal of the City's consent to the Construction Manager's and/or the Architect's access to Lot 23B and any other property owned by the City that the Construction Manager and/or Architect is occupying;

(B) contracting directly with a construction manager and/or architect for the Lot 23 Park;

(C) commencement of an action for specific performance or other equitable relief against the County, the Construction Manager, and/or the Architect, as applicable;

(D) if the City has paid the County, the Construction Manager or the Architect any sum related to the Lot 23 Park or the Lot 23 Default relates to a payment owing to the City, retain the amount of funds necessary to (1) reimburse the City for any amount previously paid to the County, the Construction Manager or the Architect for the Lot 23 Park and/or (2) offset the Lot 23 Default from funds received by the City pursuant to the Contract Documents, including, without limitation, the TIF Revenues, until such time as such Lot 23 Default is remedied;

(E) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of the Lot 23 Default; and

(F) exercise any and all other rights and remedies under the Cooperation Agreement, this Amendment, or available at law or in equity.

18.5 County Responsible for Increased Costs. In no event is the City responsible for any increased costs or losses of savings that are a result of the County commencing construction of the Phase IIIB Public Infrastructure Improvements prior to the Effective Date. The County is solely responsible for such costs, even if the costs relate to the Lot 23 Park.

19. **Music Venue Developer Contribution.** The Public Parties and Music Venue Developer are currently in process of finalizing the Music Venue Agreement. To facilitate the construction of the Lot 23 Park in a timely manner, Music Venue Developer agrees to pay to the City \$1,450,000 for the construction of the Lot 23 Park on or before the earlier of (i) the County's conveyance of the air lot to be created on Lot 27 to Music Venue Developer or (ii) the date that is six months after the Effective Date (the "Contribution"). The Public Parties acknowledge and agree that in the event that Music Venue Developer remits the Contribution to the City but the parties do not execute the Music Venue Agreement, then Music Venue Developer shall have all rights and remedies available to it under applicable law against the Public Parties, including, without limitation, requiring the City to repay an amount equal to the Contribution. For the avoidance of doubt, Music Venue Developer's signature to any amendments of the Cooperation Agreement, as amended hereby, is not necessary unless such amendment pertains to this Section.

20. **Platting of Development Lots.** The Public Parties will cooperate with each other in re-platting and subdividing the remaining Development Lots in accordance with Section 2.2 of the Cooperation Agreement and all Legal Requirements.

21. **Conflict of Terms.** The Cooperation Agreement, as amended by this Amendment, will be construed as one agreement. To the extent there is any irreconcilable inconsistency between this Amendment, ~~and~~ the Cooperation Agreement, any Contract Document, and the Existing Riverfront Agreements, this Amendment shall control, and the applicable agreement shall be deemed amended hereby. As amended hereby, the Cooperation Agreement is ratified and confirmed and remains in full force and effect.

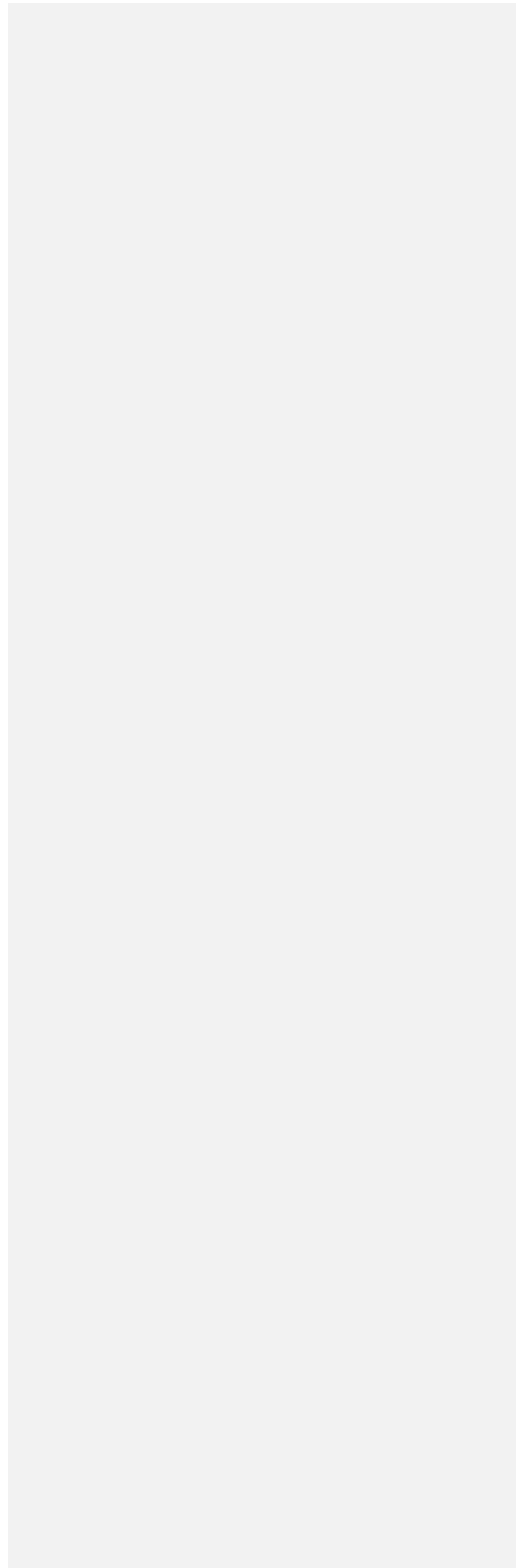
22. **Captions.** The captions in this Amendment are included for purposes of convenience only and shall not be considered part of this Amendment or used in construing or interpreting any provision hereof.

23. **Entire Agreement.** This Amendment, together with the Cooperation Agreement, sets forth the entire agreement of the parties with respect to the subject matter of this Amendment and supersedes all previous understandings, written or oral (other than the Cooperation Agreement), in respect of this Amendment.

24. **Counterparts; Electronic Signatures.** This Amendment may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument.

This Amendment may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

[Signature Page to Follow]



The Public Parties have executed this Amendment as of the date first set forth above.

Approved as to Form:

**THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO**

Assistant County Prosecutor

By: _____
Jeff Aluotto, County Administrator

Approved as to Form:

THE CITY OF CINCINNATI, OHIO

Assistant City Solicitor

By: _____
Paula Boggs Muething, Interim City
Manager

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

MUSIC AND EVENT MANAGEMENT, INC.

By: _____

Name: _____

Title: _____

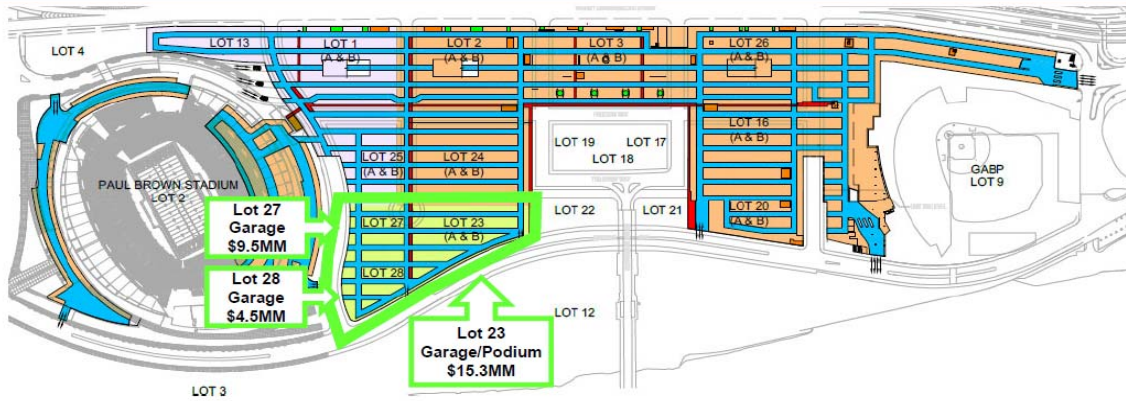
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EXHIBIT K

[note to draft: due to the passage of time, please provide an updated sources and uses table which reflects the current estimates and account balances]

{[00317725-100299350-11](#)}

Development of Public Infrastructure Improvements Lots 23, 27 & 28



Use of Funds		Source of Funds	
Infrastructure Funding for Lot 27	\$9.5MM	State of Ohio FY 19 Capital Grant	\$12.0MM
Infrastructure Funding for Lot 23	\$15.3MM	Phase I-II Reconciliation of City/County Funds	\$4.7MM
Infrastructure Funding for Lot 28	\$4.5MM	Phase III Remainder of City/County Funds	\$3.5MM
		Ohio DSA 629 Grant Remainder	\$132,580
		Developer Phase II Escrow	\$202,119
		Phase IIIB Financing	±\$8,787,420
TOTAL:	\$29.3MM		\$29.3MM

EXHIBIT L

EXISTING PUBLIC INFRASTRUCTURE FINANCING DEBT

[note to draft: due to the passage of time, the City is in the process of updating this exhibit and will circulate a revised one when available]

[4847-9083-3862v3](#)

[{00317725-100299350-11}](#)

