

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 renegeing 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.

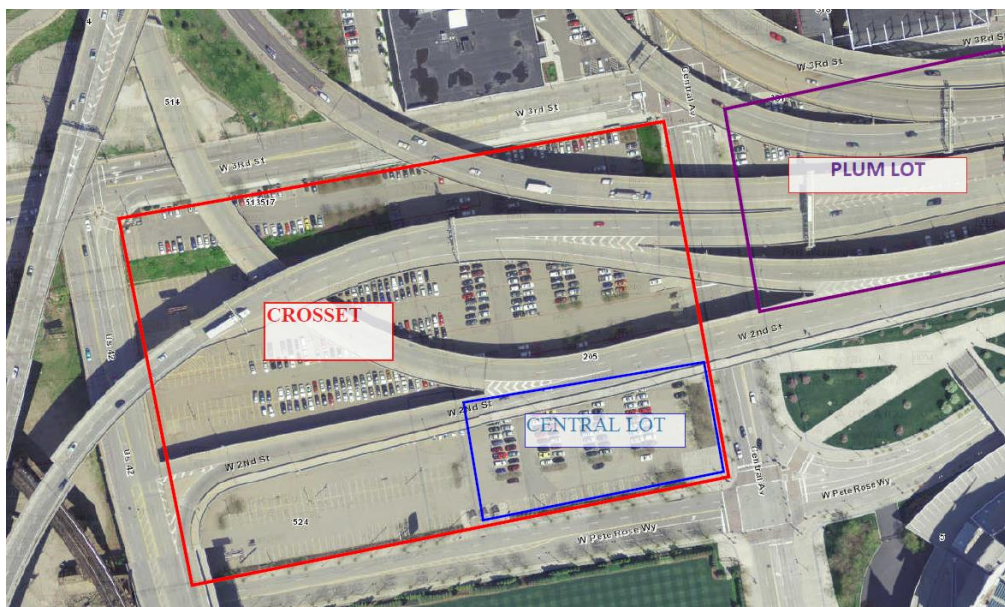
The County's interpretation of the 1998 City-County Redevelopment Agreement is also grossly inaccurate. The applicable language is snipped below. The language in Article IV of that agreement is clear that only parking expressly provided for pursuant to the agreement is to be available for Designated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

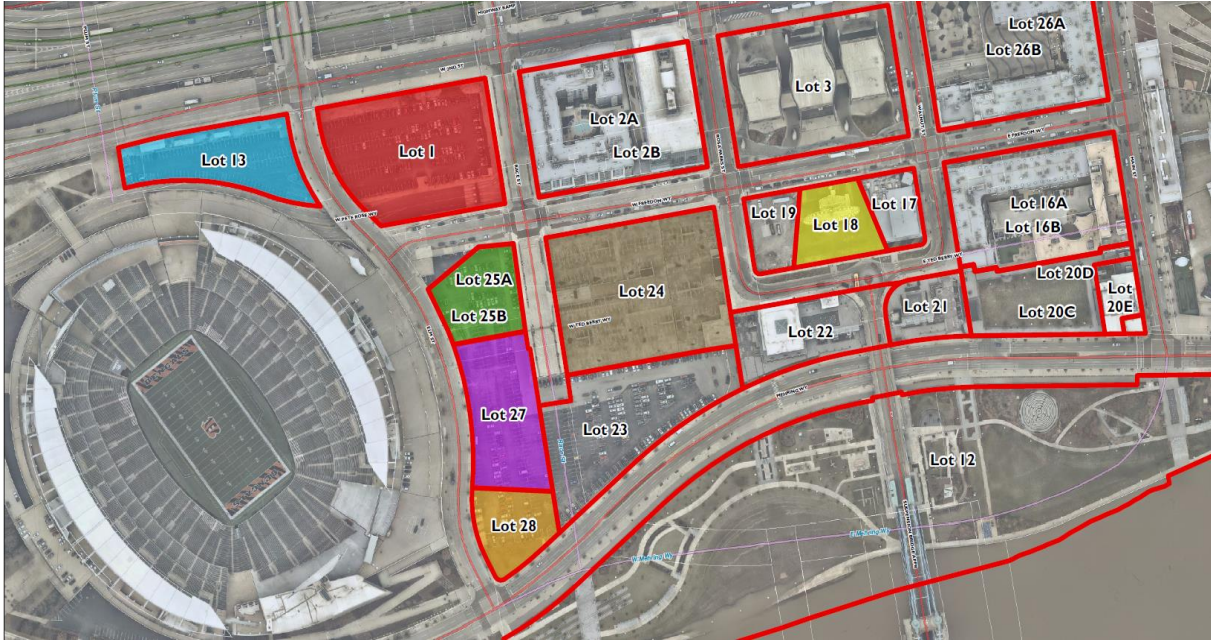
VI. Conclusion:

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

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Stephanie Summerow Dumas
Victoria Parks

County Administrator

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ADMINISTRATOR

Jeff Alnotta
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.

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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

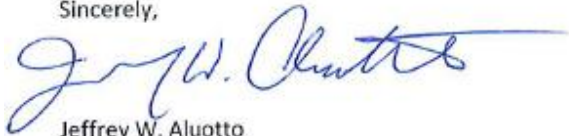
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working together in a reasonable and professional manner to advance the public interests on The Banks. That must continue.

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