

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:

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

MUSIC AND EVENT MANAGEMENT, INC.

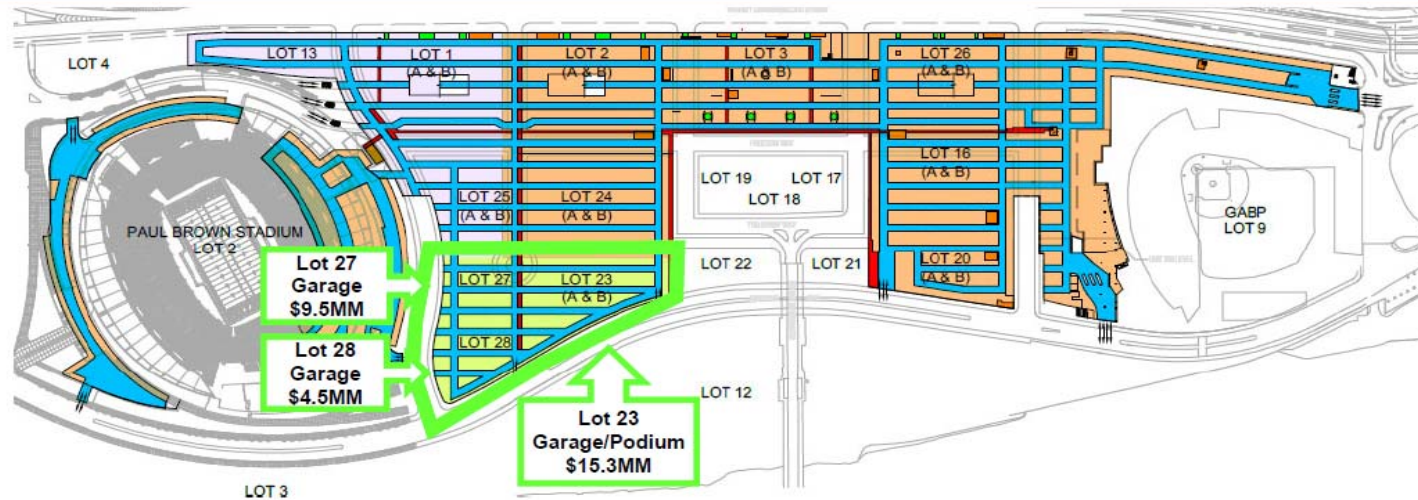
By: _____

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

TOTAL: \$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]