

FIRST AMENDMENT TO COOPERATION AGREEMENT

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

Recitals

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

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

Statement of Amendment

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

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

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

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

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

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

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

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

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

3.2. Development Process.

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

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

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

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

3.2.5 Design and Construction of Public Infrastructure and Private Improvements.

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

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

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

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

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

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

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

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

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

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

9. **DOT E 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 "DOT E Services"). The City will send monthly invoices to the County for the DOT E 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 DOT E Services shall be allocated as an obligation of the County. The remaining half of the costs for such DOT E Services shall be allocated as an obligation of the City and the City will repay its portion of the costs for the DOT E Services from the sources of revenue identified in Section 3.7.2 (as amended in Section 14).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.7 Permitted Advances; Phase IIIB Permitted Advance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page to Follow]

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

Approved as to Form:

Assistant County Prosecutor

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

By: _____
Jeff Aluotto, County Administrator

Approved as to Form:

Assistant City Solicitor

THE CITY OF CINCINNATI, OHIO

By: _____
Paula Boggs Muething, Interim City
Manager

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT K

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

EXHIBIT L

EXISTING PUBLIC INFRASTRUCTURE FINANCING DEBT

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

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