

FOR YOUR INFORMATION

September 20, 2019

To: Mayor and Members of City Council

From: Patrick A. Duhaney, City Manager 

Subject: Hilltop Property Swap and Banks Transactions Administration Recommendations

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

I. Issues to be resolved for the property swap

A. Due Diligence

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

Administration Recommendation:

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

B. CBT Lease

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

Administration Recommendation:

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

C. Valley Asphalt

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

Administration Recommendation:

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

D. Noramco

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

Administration Recommendation:

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

E. Additional Financial Impacts to the City

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

Administration Recommendation:

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

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

A. Music Venue

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

Administration Recommendation:

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

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

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

Administration Recommendation:

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

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

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

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

Administration Recommendation

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

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

Administration recommendation:

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

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

Administration Recommendation:

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

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

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

Administration Recommendation:

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

III. Open financial questions regarding the future Price Landing Park

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

Administration Recommendation:

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

IV. Conclusion

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