

COOPERATION AGREEMENT

FOR

THE BANKS

BY

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

AND

THE CITY OF CINCINNATI, OHIO

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	2
1.1 Definitions.....	2
ARTICLE 2 REAL ESTATE MATTERS	7
2.1 Freedom Center.....	7
2.2 Platting.....	7
2.3 Central Riverfront Park.....	7
2.3.1 Phase 1 Park.....	7
2.3.2 Phase 2 Park.....	7
2.3.3 Lower Park.....	7
2.3.4 Conditions Precedent to Conveyances.....	8
2.3.5 Temporary Parking Use of Central Riverfront Park.....	8
2.4 Conveyance of Parking Facility Lots.....	9
2.5 Conveyance of Development Lots.....	9
2.6 Right of Re-Entry as to Development Lots.....	9
2.7 Title to Development Lots.....	10
2.8 Utility Matters.....	10
2.9 Lot 3.....	10
2.10 Lot 18.....	11
ARTICLE 3 FUNDING, FINANCING AND PAYMENT OF PUBLIC PARTY COSTS ..	11
3.1 Primary Sources of Funds and Financing.....	11
3.1.1 Developer's Public Parking Contribution.....	11
3.1.2 CMAQ Grant.....	11
3.1.3 FTA Earmark.....	11
3.1.4 STP Grant.....	11
3.1.5 EDA Grant.....	11
3.1.6 DOD Grant.....	11
3.1.7 TIF Bonds.....	11
3.1.8 Future Grants.....	12
3.1.9 Urban Redevelopment Loan.....	12
3.2 Secondary Sources of Funds.....	12
3.3 TIF Bonds.....	13
3.4 Grants.....	13
3.5 Segregation and Application of TIF Revenues.....	13
3.6 Funding Administration.....	14
3.7 Payments; Permitted Advances.....	15
3.8 Audit Rights.....	15
3.9 Parking Revenues.....	15
3.10 State Infrastructure Bank Loan.....	15
3.11 Additional Loans.....	15
ARTICLE 4 DESIGN AND CONSTRUCTION OF PARKING FACILITIES, STREET GRID IMPROVEMENTS AND UTILITIES	16
4.1 Cooperation.....	16
4.1.1 Construction of Portions of Central Riverfront Park above Parking Facilities	16
4.2 Temporary Parking.....	17

4.3	Project Labor Agreement	17
ARTICLE 5 CENTRAL RIVERFRONT PARK		17
5.1	Financing of Development Costs	17
5.2	Cooperation by County	17
ARTICLE 6 MISCELLANEOUS PROVISIONS		18
6.1	Administration of Total Project	18
6.2	Deferred Purchase Price	18
6.3	Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development	18
6.4	Responsible Bidder Requirements	19
6.5	Joint City-County Permitting Task Force	19
6.6	Use of Central Lot	19
6.7	Community Entertainment District	19
6.8	General Cooperation	20
6.9	Joint Actions	20
6.10	Extension Fees	20
6.11	Inclusion Outreach Consultant	20
ARTICLE 7 GENERAL PROVISIONS		20
7.1	Notices	20
7.2	Administrative Actions	21
7.3	Relationship to Contract Documents	22
7.4	Relationship to Existing Riverfront Agreements	22
7.5	No Partnership	22
7.6	Governing Law	22
7.7	Jurisdiction	22
7.8	Severability	22
7.9	Diligent Performance	23
7.10	Entirety of Agreement	23
7.11	Successors and Assigns	23
7.12	Captions	23
7.13	Exhibits	23
7.14	No Waiver	23
7.15	Construction	23
7.16	Multiple Counterparts	23
7.17	Third Party Beneficiaries	23

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this "Agreement") is made as of the 23rd day of November, 2007 (the "Effective Date"), 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") (the County and the City being called, collectively, the "Public Parties," and, individually, a "Public Party").

Recitals

A. The Public Parties and Riverbanks Renaissance, LLC, a Delaware limited liability company ("Developer"), are entering into a Master Development Agreement dated as of the Effective Date (the "Master Development Agreement"), pursuant to which the Public Parties are designating Developer to develop the Private Project (as defined in Section 1.1.) on and within the Project Lots (as defined in Section 1.1.).

B. In connection with the Master Development Agreement, the Public Parties and Developer are entering into an Infrastructure Development Management Agreement dated as of the Effective Date (the "Infrastructure Development Management Agreement"), pursuant to which the Public Parties are engaging Developer to administer the design and construction of the Parking Facilities, the Street Grid Improvements and the Utilities (as such terms are defined in Section 1.1) and other related improvements.

C. The County presently owns the fee simple interest in portions of the real estate on which the Central Riverfront Park (as defined in Section 1.1) is to be developed. The Public Parties acknowledge that it is their mutual desire to have the Central Riverfront Park commenced and completed in an expeditious and economical manner and timeframe. The areas which will comprise the Central Riverfront Park presently contain parking spaces which provide daily public parking as well as parking for sporting and special events at Paul Brown Stadium, Great American Ball Park and Cincinnati Reds Hall of Fame, the U.S. Bank Arena, and the National Underground Railroad Freedom Center. In order for the Central Riverfront Park to be developed in a phased manner over a period of years, it will be necessary to (a) consider and mitigate, to the extent feasible and practicable, the potential adverse impact of the loss of parking spaces and parking revenue during such development; and (b) maintain compliance with the requirements of the Third Party Agreements (as defined in Section 1.1) with respect to parking.

D. The Public Parties desire to enter into this Agreement to set forth various agreements between them related to the subject matter of the Master Development Agreement, the Infrastructure Development Management Agreement and other related agreements.

Statement of Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Public Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings given below:

“**Bengals Lease**” has the meaning set forth in Section 1.1 of the Master Development Agreement.

“**Central Lot**” means the real estate depicted on Exhibit A-1 hereto.

“**Central Riverfront Area**” means the area bounded by the Ohio River to the South, Second Street to the North, Mehring Way to the East and Smith Street to the West.

“**Central Riverfront Park**” has the meaning given in Section 1.1 of the Master Development Agreement. The area of the Central Riverfront Park is depicted in Exhibit J hereto.

“**City**” has the meaning given in the introductory paragraph of this Agreement.

“**Community Entertainment District**” has the meaning given in Section 1.1 of the Master Development Agreement.

“**Contract Documents**” means the Infrastructure Development Management Agreement and the “Contract Documents” as defined in Section 1.1 of the Master Development Agreement.

“**County**” has the meaning given in the introductory paragraph of this Agreement.

“**County Tranche**” has the meaning given in Section 3.2.

“**Deferred Purchase Price**” has the meaning given in Section 1.1 of the Master Development Agreement.

“**Developer**” has the meaning given in recital paragraph A.

“**Developer’s Public Parking Contribution**” has the meaning given in Section 1.1 of the Master Development Agreement.

“**Development Closing**” has the meaning given in Section 1.1 of the Master Development Agreement.

“Development Lot” has the meaning given in Section 1.1 of the Master Development Agreement.

“Economic Development Grant” has the meaning given in Section 1.1 of the Master Development Agreement.

“Effective Date” has the meaning given in the introductory paragraph of this Agreement.

“First Shared Tranche” has the meaning given in Section 3.2.

“Freedom Center” means National Underground Railroad Freedom Center, Inc., an Ohio non-profit corporation.

“Future Lot 12” means the proposed Future Lot 12 of the Banks as depicted on Exhibit A to the Master Development Agreement.

“Future Phase Improvements” has the meaning given in Section 1.1 of the Master Development Agreement.

“Future Phase Trigger Notice” has the meaning given in Section 1.1 of the Master Development Agreement.

“Grants” means the grants referenced in Sections 3.1.2, 3.1.3, 3.1.4, 3.1.5 and 3.1.6.

“Improvements” has the meaning given in Section 1.1 of the Master Development Agreement.

“Infrastructure Development Management Agreement” has the meaning given in recital paragraph B.

“Joint Economic Inclusion Policy” has the meaning given in Section 6.3.

“Lot 13,” “Lot 18,” “Lot 20A,” “Lot 20B,” “Lot 21,” “Lot 22,” “Lot 23A,” “Lot 23B,” “Lot 27” and “Lot 28” have the meanings given in Section 1.1 of the Master Development Agreement.

“Master Development Agreement” has the meaning given in recital paragraph A.

“Ownership Entity” has the meaning given in Section 1.1 of the Master Development Agreement.

“Parking Agreement” means the Master Parking Facilities Operating and Easement Agreement dated as of the Effective Date by the County and Developer.

“Parking Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Parking Facilities” has the meaning given in Section 1.1 of the Master Development Agreement.

“Parking Facility Lot” has the meaning given in Section 1.1 of the Master Development Agreement.

“Permitted Advances” has the meaning given in Section 3.7.

“Permitted Exceptions” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 1 Park” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 1 Parking Facilities” has the meaning set forth in Section 1.1 of the Master Development Agreement.

“Phase 1 Public Parking Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 1A Improvements” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 1B Improvements” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 2 Park” has the meaning given in Section 1.1 of the Master Development Agreement.

“Phase 2 Park Podium” means, if Parking Facilities are constructed on Lot 23A, the podium designed and constructed as part of the Parking Facilities above such Parking Facilities.

“PILOTs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Primary Sources of Funds” has the meaning given in Section 3.1.

“Private Podium” has the meaning given in Section 1.1 of the Master Development Agreement.

“Private Podium Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Private Project” means the mixed use project, consisting of the Improvements and the Private Podiums, to be developed on and within the Project Lots pursuant to the Contract Documents.

“Project Lot” has the meaning given in Section 1.1 of the Master Development Agreement.

“Project Trigger Date” has the meaning given in Section 1.1 of the Master Development Agreement.

“Property” has the meaning given in Section 1.1 of the Master Development Agreement.

“Public Parking Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Public Party” and **“Public Parties”** have the meanings given in the introductory paragraph of this Agreement.

“Public Party Costs” means, collectively, the Public Parking Costs, the Street Grid Costs, the Utilities Costs, the Private Podium Costs which are not paid by Developer pursuant to the Master Development Agreement, the Reimbursable Private Parking Costs, the Economic Development Grant, and, if applicable, the costs of designing and constructing the Phase 2 Park Podium (or supporting embankment and fill, if applicable), and any interest, costs and fees for any loans referred to in Section 3.1.9.

“Public Project” means the Parking Facilities, the Street Grid Improvements, the Utilities, the Phase 1 Park and the Phase 2 Park to be designed and constructed by the Public Parties in accordance with the terms and conditions of the Contract Documents.

“Reds Lease” means the Amended and Restated Lease Agreement dated July 9, 2003 between the County and the Cincinnati Reds, LLC, a Delaware limited liability company.

“Reimbursable Private Parking Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Second Shared Tranche” has the meaning given in Section 3.2.

“Secondary Sources of Funds” has the meaning given in Section 3.2.

“Street Grid Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Street Grid Improvements” has the meaning given in Section 1.1 of the Master Development Agreement.

“Temporary Easement” has the meaning given in Section 2.3.5.

“Temporary Easement Expiration Date” has the meaning given in Section 2.3.5.

“Third Party Agreements” means the following agreements by the County affecting the use of portions of the Parking Facilities: (a) the Bengals Lease; (b) the Reds Lease; and (c) the Parking Cooperation Agreement dated May 1, 2005 by the County and Arena Management Holdings, LLC, as they exist as of the date of this Agreement and as they may be amended, except to the extent such amendments (if not approved in writing by the City) increase the parking requirements under such agreements or alter parking requirements in a manner that materially and adversely impacts the ability of the City to develop any portion of the Central Riverfront Park.

“TIF Bonds” means bonds issued by the City or the County, as agreed upon between the Public Parties, to fund portions of the Public Party Costs, supported by TIF Revenues or other revenues as agreed by the Public Parties.

“TIF Revenues” means all PILOTs and “Minimum Service Payments,” as defined in Section 1.1 of the Master Development Agreement, 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.

“Total Project” means, collectively, the Public Project and the Private Project.

“Transit Center” has the meaning given in Section 1.1 of the Master Development Agreement.

“Urban Redevelopment Loan” has the meaning given in Section 3.1.9.

“Utilities” has the meaning given in Section 1.1 of the Master Development Agreement.

“Utilities Costs” has the meaning given in Section 1.1 of the Master Development Agreement.

“Vine Street Lot” means the real estate depicted on Exhibit A-2 hereto.

ARTICLE 2
REAL ESTATE MATTERS

2.1 Freedom Center. The Public Parties shall cooperate with each other in negotiating and entering into an agreement with the Freedom Center as contemplated by Section 3.1.1(a) of the Master Development Agreement.

2.2 Platting. The Public Parties shall cooperate with each other in platting various of the Parking Facility Lots and Project Lots as contemplated by Section 3.3 of the Master Development Agreement and in re-platting or otherwise modifying, as appropriate, any of the Project Lots and/or Parking Facility Lots owned by the Public Parties.

2.3 Central Riverfront Park.

2.3.1 Phase 1 Park. Subject to the applicable conditions precedent set forth in Section 2.3.4, at the request of the City at such time as the City is prepared to commence and complete development of the portion of the Phase 1 Park on Lot 21 in accordance with the terms of the Master Development Agreement, the County shall convey to the City all of the County's right, title and interest in Lot 21, pursuant to a deed in the form of Exhibit B hereto. Subject to the applicable conditions precedent in Section 2.3.4, at the request of the City at such time as the City is prepared to commence and complete development of the portion of the Phase 1 Park within Lot 20B in accordance with the terms and conditions of the Master Development Agreement, the County shall convey to the City all of the County's right, title and interest in Lot 20B, pursuant to a deed in the form of Exhibit B hereto.

2.3.2 Phase 2 Park. Subject to the applicable conditions precedent set forth in Section 2.3.4, at the request of the City at such time as the City is prepared to commence and complete development of the portion of the Phase 2 Park on Lot 22 in accordance with the terms of the Master Development Agreement, the County shall convey to the City all of the County's right, title and interest in Lot 22, pursuant to a deed in the form of Exhibit B hereto (with appropriate insertions in such deed for conformance to Section 2.3.5). Subject to the applicable conditions precedent set forth in Section 2.3.4, at the request of the City at such time as the City is prepared to commence and complete development of the portion of the Phase 2 Park within Lot 23B in accordance with the terms and conditions of the Master Development Agreement, the County shall convey to the City all of the County's right, title and interest in Lot 23B, pursuant to a deed in the form of Exhibit B hereto (with appropriate insertions in such deed for conformance to Section 2.3.5). Subject to the applicable conditions precedent set forth in Section 2.3.4, at the request of the City at such time the City is prepared to commence and complete development of the portion of the Phase 2 Park on Lot 28 in accordance with the terms of the Master Development Agreement, the County shall convey to the City all of the County's right, title and interest in Lot 28 (or the air lot portion thereof, if the Public Parties elect to construct Parking Facilities on the surface lot portion of Lot 28), pursuant to a deed in the form of Exhibit B hereto (with appropriate insertions in such deed for conformance to Section 2.3.5).

2.3.3 Lower Park. Subject to the applicable conditions precedent set forth in Section 2.3.4, at the request of the City at such time the City is prepared to commence and

complete development of certain defined portions of the Central Riverfront Park within certain defined portions of Future Lot 12, consistent with the bounds of the Central Riverfront Park shown on the Riverfront Park Plan attached hereto as Exhibit J, the County shall convey to the City all of the County's right, title and interest in those certain defined portions of Future Lot 12, pursuant to a deed in the form of Exhibit B hereto (with appropriate insertions in such deed for conformance to Section 2.3.5).

2.3.4 Conditions Precedent to Conveyances. Notwithstanding any other provision herein, the County's conveyance of real estate to the City pursuant to Sections 2.3.1, 2.3.2 and 2.3.3, as applicable, shall be subject to the following conditions precedent:

2.3.4.1 With respect to any conveyance pursuant to Section 2.3.1, the City shall have provided not less than 90 days' prior written notice of its intent to construct the applicable portion of the Phase 1 Park as provided herein. With respect to any conveyances pursuant to Sections 2.3.2 or 2.3.3, the City shall have provided not less than 240 days' prior written notice of its intent to construct the applicable portion of the Central Riverfront Park.

2.3.4.2 Together with or prior to the notice provided for in Section 2.3.4.1, the City shall have provided reasonably detailed documentation to the County of the sources and uses of funds evidencing funding commitments sufficient to commence and complete construction of the applicable portion of the Central Riverfront Park in accordance with the terms and conditions stated herein.

2.3.4.3 With respect to any conveyance pursuant to Section 2.3.2, the contingency relative to the Phase 2 Park in Section 6.2.1 of the Master Development Agreement shall have been satisfied. The County shall provide reasonably detailed documentation of the parking issues in the event this condition precedent is not satisfied, and the County and the City shall work together in good faith to resolve such issues.

2.3.5 Temporary Parking Use of Central Riverfront Park. In each deed conveying to the City a portion of the Central Riverfront Park site other than the Phase 1 Park used by the County for parking, the County shall reserve a temporary easement (each, a "Temporary Easement") to use such portion of the Central Riverfront Park for parking purposes until that date which is the later of (A) 14 days prior to the anticipated date of issuance of a notice to proceed for park construction on such portion of the Central Riverfront Park, as stated in a written notice from the City to the County, and (B) 45 days following receipt by the County of written notice from the City stating (x) the anticipated date of issuance of a notice to proceed and (y) the corresponding easement expiration date (each such later date being, a "Temporary Easement Expiration Date"). The County shall be entitled to the revenues from such parking. The terms of each Temporary Easement shall be mutually acceptable to the Public Parties, shall require that upon the applicable Temporary Easement Expiration Date, the applicable Temporary Easement shall automatically terminate without any further act of any party, and may include a County obligation, upon expiration of the applicable Temporary Easement, to execute a recordable instrument to confirm such expiration.

2.4 Conveyance of Parking Facility Lots. At the request of the County at such time as the County is obligated under the Master Development Agreement to commence and complete development of the Phase 1 Parking Facilities, the City shall convey to the County all of the City's right, title and interest in and to those of the Parking Facility Lots on which the Phase 1 Parking Facilities are to be constructed, together with the right to construct Parking Facilities within portions of the rights-of-way between and/or contiguous to such Parking Facility Lots (other than portions of the right-of-way for Second Street within which the Transit Center is located), pursuant to a deed in the form of Exhibit C hereto. If Developer gives a Future Phase Trigger Notice, then at such time after such Future Phase Trigger Notice as the County is obligated to construct Parking Facilities with respect to the Development Lot described in such Future Phase Trigger Notice (but in no event prior to the expiration of the Developer's right to withdraw such notice), the City shall convey to the County at the County's request all of the City's right, title and interest in and to those of the Parking Facility Lots (or subdivided portions of Parking Facility Lots) on which any of the Parking Facilities are to be constructed to support the Future Phase Improvements that are the subject of the Future Phase Trigger Notice, together with the right to construct Parking Facilities within portions of the rights-of-way between and/or contiguous to such Parking Facility Lots (or subdivided portions of Parking Facility Lots) (other than portions of the right-of-way for Second Street within which the Transit Center is located), pursuant to a deed in the form of Exhibit C hereto.

2.5 Conveyance of Development Lots. Section 3.5.1 of the Master Development Agreement provides that, upon each Development Closing, among other things, the Public Parties are to cause to be conveyed to the Ownership Entity the fee simple interest in the applicable Development Lot. Upon each Development Closing, the conveyance to the Ownership Entity of the fee simple interest in the applicable Development Lot will be accomplished as follows: (a) if the County owns any interest in all or any portion of the Development Lot, the County shall convey to the City all of the County's right, title and interest in and to the Development Lot pursuant to a deed in the form of Exhibit D hereto; and (b) the City shall convey to the Ownership Entity the fee simple interest in the Development Lot pursuant to a deed in the form of Exhibit E hereto. Each Public Party agrees that each transfer of all or any portion of the Development Lots contemplated herein will be for a public purpose and is in the best interests of each Public Party.

2.6 Right of Re-Entry as to Development Lots. Pursuant to Section 3.5.1 of the Master Development Agreement, each deed by which the City conveys the fee simple interest in a Development Lot to the Ownership Entity pursuant to Section 2.5 of this Agreement shall be subject to a right of re-entry. At any time that the right of re-entry is exercisable under the terms of the applicable deed, the City may exercise the right of re-entry, whereupon the Development Lot shall be conveyed by the Ownership Entity to the City and the City shall hold title to the Development Lot for the benefit of the Public Parties in accordance with their respective interests in the Development Lot as of the Effective Date, subject to the terms and conditions of the Master Development Agreement to the extent applicable; provided that at the option of the County and to the extent legally permissible, the City shall convey to the County any interest in all or any portion of any Development Lot reconveyed by the Ownership Entity to the City which is owned by the County as of the Effective Date, to be held by the County subject to the terms of the Master Development Agreement to the extent applicable.

2.7 Title to Development Lots. If, in the process of determining the Permitted Exceptions in accordance with Section 3.2.3 of the Master Development Agreement, Developer objects to any title exception or survey matter as contemplated by Section 3.2.3 of the Master Development Agreement, the Public Parties shall cooperate with each other in determining whether and how to cure such title exception or survey matter, and the cost of such cure shall be borne by the Public Party which caused such title exception or survey matter or, if neither Public Party caused such title exception or survey matter, shared equally by the Public Parties. After determination of the Permitted Exceptions in accordance with Section 3.2.3 of the Master Development Agreement, if the County causes or permits the interest of the County in any Development Lot to be encumbered by a matter which is not a Permitted Exception, the County shall take all necessary and appropriate actions to remove or resolve such matter to the reasonable satisfaction of Developer. After determination of the Permitted Exceptions in accordance with Section 3.2.3 of the Master Development Agreement, if the City causes or permits the interest of the City in any Development Lot to be encumbered by a matter which is not a Permitted Exception, the City shall take all necessary and appropriate actions to remove or resolve such matter to the reasonable satisfaction of Developer. Notwithstanding anything herein to the contrary, if the cost of curing any title exception or survey matter objected to by Developer pursuant to the Master Development Agreement is to be shared by the Public Parties hereunder and the Public Parties have the right under the Master Development Agreement to elect whether or not to cure such exception or matter, both the City and County must agree in writing to cure such objection before they will be deemed to have elected to cure such objection under the Master Development Agreement.

2.8 Utility Matters. The City and the County shall each grant the other any and all access, entry rights and rights to construct and maintain utility lines across such party's property within the Public Project as reasonably appropriate, provided such rights shall be granted in a manner so as not to materially interfere with the grantor's rights to use its property.

2.9 Lot 3. The City presently leases to the County Lot 3 of the Banks – Phase One, as numbered and delineated on the recorded plat thereof, of record in Plat Book 361, Pages 62-63, Recorder's Office, Hamilton County, Ohio, up to an elevation of 510 feet according to the National Geodetic Vertical Datum of 1929 ("Ground Lot 3"), together with portions of the adjacent rights-of-way up to such elevation (the "Lot 3 Adjacent ROWs"), pursuant to a Lease (the "Lot 3 Lease") dated May 11, 2001 by the City and the County. The Lot 3 Lease is for a term of 99 years, and the County has constructed and operates a portion of the Existing Parking Facilities (as defined in the Parking Agreement) on and within Ground Lot 3 and the Lot 3 Adjacent ROWs, which provides physical support for the museum operated by the Freedom Center above Ground Lot 3. At the request of the County on or after the Project Trigger Date, the City shall convey to the County all of the City's right, title and interest in and to Ground Lot 3, together with the right to maintain, operate, repair and reconstruct the Existing Parking Facilities within the Lot 3 Adjacent ROWs, pursuant to a deed in the form of Exhibit C hereto; provided that (a) such conveyance shall not be subject to a right of re-entry in favor of the City, (b) such conveyance shall be subject to the Reserved Easements (as defined in the Lot 3 Lease), and (c) such conveyance shall be together with the Granted Easements (as defined in the Lot 3 Lease).

2.10 Lot 18. The County agrees to (i) retain title to Lot 18, (ii) permit Lot 18 to be used only for park purposes, and (iii) enforce the Developer's obligations under the Master Development Agreement to develop and maintain Lot 18 as a park. At the request of the City, the County shall convey to the City all the County's right, title and interest in and to Lot 18 to the City pursuant to a deed in the form of Exhibit B attached hereto.

ARTICLE 3
FUNDING, FINANCING AND PAYMENT OF PUBLIC PARTY COSTS

3.1 Primary Sources of Funds and Financing. The primary sources of funds and financing for payment of the Public Party Costs (the "Primary Sources of Funds"), to be used to the extent available prior to the use of Secondary Sources of Funds, shall be as follows:

3.1.1 Developer's Public Parking Contribution. Developer's Public Parking Contribution in the amount of \$10,000,000 shall be a source of funds for payment of Public Parking Costs, allocated to various portions of the Parking Facilities as provided in Section 5.2.1(a)-(c) of the Master Development Agreement. The Public Parties acknowledge that the availability of Developer's Public Parking Contribution for the payment of Public Parking Costs shall be subject to the terms and conditions of the Master Development Agreement.

3.1.2 CMAQ Grant. A Congestion Mitigation and Air Quality (CMAQ) grant by the Federal Highway Administration in the anticipated amount of \$11,000,000 shall be a source of funds for the payment of Phase 1 Public Parking Costs.

3.1.3 FTA Earmark. A Federal Transit Authority grant under 49 U.S.C. §5309 in the anticipated amount of \$2,198,058 shall be a source of funds for the payment of Phase 1 Public Parking Costs.

3.1.4 STP Grant. A Surface Transportation Program grant through the Ohio-Kentucky-Indiana Regional Council of Governments in the anticipated amount of \$10,400,000 shall be a source of funds for the payment of Street Grid Costs.

3.1.5 EDA Grant. An Economic Development Administration grant through the U.S. Department of Commerce in the anticipated amount of \$2,000,000 shall be a source of funds for the payment of Street Grid Costs.

3.1.6 DOD Grant. A State of Ohio Department of Development Roadwork Development (629) Account Grant in the anticipated amount of \$970,000 shall be a source of funds for the payment of Street Grid Costs.

3.1.7 TIF Bonds. The net proceeds of the TIF Bonds shall be a source of funds, to the extent permissible by law, for the payment of Public Party Costs; provided that the net proceeds of the TIF Bonds may be used to repay the Urban Redevelopment Loan.

3.1.8 Future Grants. The Public Parties may attempt to identify and pursue additional federal and state grants, other than the Grants, that may be available from time to time as sources of funds for the payment of Public Party Costs. If the Public Parties succeed in obtaining any such future grants, such grants shall be a Primary Source of Funds.

3.1.9 Urban Redevelopment Loan. The Public Parties acknowledge that the County has applied for an Urban Redevelopment Loan from the Ohio Department of Development in the amount of \$5,470,000 (the "Urban Redevelopment Loan") with respect to the Parking Facilities. The proceeds from the Urban Redevelopment Loan shall be a source of financing to be shared equally by the Public Parties for the payment of Phase 1 Public Parking Costs.

3.2 Secondary Sources of Funds. The secondary sources of funds for payment of Public Party Costs (the "Secondary Sources of Funds"), to be used to the extent required given the availability and timing of receipt of Primary Sources of Funds, shall be funds provided by the County and the City, other than from Primary Sources of Funds, as provided in this Section 3.2. As Secondary Sources of Funds are required to pay Public Party Costs which are due and payable, (a) each Public Party shall pay 50% of such Public Party Costs from funds other than Primary Sources of Funds, until the Public Parties have paid \$15,000,000 of Secondary Sources of Funds (\$7,500,000 paid dollar for dollar by each Public Party) (the "First Shared Tranche"), (b) after the Public Parties have paid the First Shared Tranche, the County shall pay 100% of such Public Party Costs from funds other than Primary Sources of Funds, until the County has paid \$5,000,000 of Public Party Costs (in addition to the County's share of the First Shared Tranche) from funds other than Primary Sources of Funds (the "County Tranche"), and (c) after the Public Parties have paid the First Shared Tranche and the County has paid the County Tranche, each Public Party shall pay 50% of such Public Party Costs from funds other than Primary Sources of Funds (the "Second Shared Tranche"). If Secondary Sources of Funds are provided to pay Public Party Costs because of the unavailability or shortfall of Primary Sources of Funds when such Public Party Costs are due and payable, and Primary Sources of Funds for the payment of such Public Party Costs thereafter become available, then such Primary Sources of Funds shall be applied, first, to reimburse the Public Parties for the Second Shared Tranche of Secondary Sources of Funds provided to pay Public Party Costs (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 of such Primary Sources of Funds until such time as the Public Party making the Permitted Advance has received repayment of the entire Permitted Advance, together with interest thereon as provided in Section 3.7), second, to the City to the extent that \$5,000,000 of the Deferred Purchase Price has not been paid to the City, third, to reimburse the County for the County Tranche of Secondary Sources of Funds provided to pay Public Party Costs, and, fourth, to reimburse the Public Parties for the First Shared Tranche of Secondary Sources of Funds provided to pay Public Party Costs (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 of such Primary Sources of Funds until such time as the Public Party making the Permitted Advance has received repayment of the entire Permitted Advance, together with interest thereon as provided in Section 3.7). From and after any such reimbursement for Secondary Sources of Funds previously provided, the obligations of the Public Parties to provide

Secondary Sources of Funds shall be the same as if the Public Parties had not provided the reimbursed Secondary Sources of Funds.

3.3 TIF Bonds. The Public Parties will in good faith jointly determine in a timely manner (i) which Public Party or other entity will issue the TIF Bonds or other bonds, (ii) the amount of each issuance of TIF Bonds or other bonds, (iii) the time of the issuance of TIF Bonds or other bonds, and (iv) other relevant issues with respect to the TIF Bonds or other bonds. Notwithstanding the foregoing, neither Public Party will be obligated to issue TIF Bonds which are not fiscally prudent or which are not (or will not) be supported by project revenues. The Public Parties shall each severally guarantee, or be responsible in the aggregate for, repayment of 50% of TIF Bonds or any other bonds, as jointly determined, issued to pay Public Party Costs, but not for bonds issued to finance any one Public Party's obligations under Section 3.2 hereunder or the Contract Documents. The City and the County shall cooperate with each other in good faith in connection with the resolution of all matters relating to the TIF Bonds or other bonds and TIF Revenues not specifically addressed herein, including without limitation the issuance and administration thereof. The Public Parties acknowledge that TIF Revenues may be pledged to support payment of debt service for any TIF Bonds, but agree to mutually consider implementation of such pledges of TIF Revenues so as to accommodate further pledges of TIF Revenues in support of supplemental issuances of TIF Bonds (if fiscally prudent and if the TIF Bonds will be adequately supported by project revenue).

3.4 Grants. As of the Effective Date, the Public Parties are joint applicants for each of the Grants, and the County is the lead agent for each of the Grants other than the Grants referenced in Sections 3.1.5 and 3.1.6. The Public Parties shall act in full cooperation and collaboration with each other and shall use commercially reasonable efforts to pursue the Grants in order that the Grant funds will be available to pay for Parking Costs, Street Grid Costs or Utilities Costs, as applicable, when due. However, neither Public Party shall be responsible to the other Public Party for the unavailability or shortfall of any Grant funds. The Public Parties shall comply with the requirements of the Grants in connection with the development of the Parking Facilities, the Street Grid Improvements and the Utilities, to the extent applicable.

3.5 Segregation and Application of TIF Revenues. By adoption of Ordinance No. 423-2002, the City established its Fund 481, Downtown South/Riverfront Equivalent Fund, for deposit of all PILOTs made by owners of parcels within the District 2-Downtown South/Riverfront District Incentive District ("District 2") established by the City. The City agrees to establish a separate account into which shall be deposited all TIF Revenues generated from real property within the Total Project area that is within District 2. By adoption of Ordinance No. 390-2007, the City created the Banks Development District Incentive District (the "Banks Development District") applicable to Lot 13, and established the City of Cincinnati, Banks Development District municipal public improvement tax increment equivalent fund into which shall be deposited all TIF Revenues from the Banks Development District. The TIF Revenues shall be used only for the following purposes and applied in the following priority:

first, to service the TIF Bonds and repay the Urban Redevelopment Loan;

second, to reimburse the Public Parties for the Second Shared Tranche of Secondary Sources of Funds provided to pay Public Party Costs, 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 as provided in Section 3.7;

third, to the City to the extent that \$5,000,000 of the Deferred Purchase Price has not been paid to the City;

fourth, to reimburse the County for the County Tranche of Secondary Sources of Funds provided to pay Public Party Costs;

fifth, to reimburse the Public Parties for the First Shared Tranche of Secondary Sources of Funds provided to pay Public Party Costs, 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 as provided in Section 3.7;

sixth, to reimburse a Public Party to the extent any of their shares of a Second Shared Tranche of Secondary Sources of Funds or First Shared Tranche of Secondary Sources of Funds has been allocated under second and fifth above to pay for Permitted Advances by the other Public Party; and

seventh, as agreed by the Public Parties.

3.6 Funding Administration. To the extent permitted by applicable law, the Public Parties shall implement the provisions of this Section 3.6. The Public Parties shall agree upon a third party trustee to receive Primary Sources of Funds and Secondary Sources of Funds, and account for and make payments for the Public Party Costs. The Public Parties shall enter into a trust agreement with such third party to administer all such funds required to pay the Public Party Costs. To the extent reasonably practical, the Primary Sources of Funds shall be obtained and deposited with such trustee to pay for the Public Party Costs prior to the use of Secondary Sources of Funds. To the extent that the Primary Sources of Funds are not available or are insufficient to pay Public Party Costs as they become due, the Secondary Sources of Funds shall be contributed to the trustee in the manner contemplated in Section 3.2 hereof, promptly upon the trustee's notice that it does not have adequate funds to pay for Public Party Costs when due. In the event that Primary Sources of Funds are obtained and deposited with the trustee subsequent to the use of Secondary Sources of Funds for costs to which such Primary Sources of Funds are applicable, the Public Parties shall mutually determine whether the trustee should hold the Primary Sources of Funds for subsequent Public Party Costs or reimburse the Public Parties for payment of such costs with Secondary Sources of Funds. The Public Parties shall enter into a trust agreement with the trustee consistent with the foregoing provisions of this Section 3.6 and

containing such other commercially reasonable terms to be negotiated by the Public Parties and the trustee in good faith.

3.7 Payments; Permitted Advances. 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 trustee appointed pursuant to Section 3.6 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 in this Agreement, 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 by the Public Party making such 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.

3.8 Audit Rights. The City and the County shall keep accurate, complete and detailed records of all Public Party Costs paid or incurred by them. The City and the County will keep such books and records for a period of five (5) years after incurring such costs. Either party shall have the right to audit the other party’s books and records related to the Public Party Costs so paid or incurred. In the event that any such audit establishes that any party has misstated Public Party Costs, such Public Party Costs shall be corrected on the basis of such audit and, if applicable, a reconciling payment shall be made by one party to the other. The cost of any audit hereunder shall be borne by the party requesting the audit, unless the audit establishes an intentional misstatement by the other party, in which event the party that made the misstatement shall reimburse the other party for the reasonable costs of such audit.

3.9 Parking Revenues. In the event parking revenues generated by the Phase 1 Parking Facilities are subject to certain use restrictions in accordance with Title 23 U.S.C. §137, pursuant to any of the Grants, such parking revenues shall, to the extent required, be applied to the Parking Facilities in compliance with Title 23 U.S.C. §137.

3.10 State Infrastructure Bank Loan. The Public Parties acknowledge that the County has applied for a State Infrastructure Bank Loan from the Ohio Department of Transportation in the amount of up to \$10,000,000, to be repaid and guaranteed solely by the County. The proceeds from any such State Infrastructure Bank Loan shall be a source of funds for the County to apply to its obligations hereunder, and shall not constitute a Primary Source of Funds.

3.11 Additional Loans. In the event either Public Party intends to obtain a loan with respect to any of the Public Party Costs, the repayment of which will be a shared responsibility of the Public Parties or will be made from funds that accrue to the benefit of both Public Parties, the terms of such loan and the application of the funds therefrom shall be subject to the approval of both Public Parties, and the proceeds thereof shall be a Primary Source of Funds. Other loans obtained by a Public Party (the repayment of which will not be a shared responsibility of the Public Parties and will not be made from funds that accrue to the benefit of both Public Parties) shall not be subject to review or approval of the other Public Party. Each Public Party shall inform the other Public Party of any application it makes to any governmental entity for any

loans referred to in this Section 3.11 in connection with funding or financing for Public Party Costs.

ARTICLE 4
DESIGN AND CONSTRUCTION OF PARKING FACILITIES,
STREET GRID IMPROVEMENTS AND UTILITIES

4.1 Cooperation. The Public Parties shall cooperate with each other in the planning process for the design and construction of the Parking Facilities (including the designation of any Dedicated Parking Spaces, as defined in the Master Development Agreement), the Street Grid Improvements and the Utilities in an expeditious and coordinated manner as contemplated by the Infrastructure Development Management Agreement, with appropriate interfaces between the Parking Facilities, on the one hand, and the Street Grid Improvements, Utilities, existing street grid, Central Riverfront Park and Transit Center, on the other hand. The design and construction of the Parking Facilities, the Street Grid Improvements and the Utilities shall also proceed in a manner with consideration of the potential adverse impact of the loss of parking spaces and parking revenues during the construction of the Project.

4.1.1 Construction of Portions of Central Riverfront Park above Parking Facilities. Portions of the Central Riverfront Park are to be constructed above Parking Facilities in Lot 20B and, possibly, in Lot 23B and/or in an air lot portion of Lot 28 (above a corresponding surface lot portion of Lot 28). In such instances, the following additional coordination obligations apply:

4.1.1.1 At all times when the construction of air lot portions of the Central Riverfront Park and the underlying Parking Facilities are ongoing at the same time, the County and the City shall cooperate, and shall cause their respective contractors, subcontractors and material suppliers to cooperate, to minimize interference with the construction activities of the other to the extent practical. During the construction, each Public Party shall notify the other Public Party of, and allow representatives of the other Public Party to attend, construction coordination meetings.

4.1.1.2 The City shall cause the construction of the air lot portions of the Central Riverfront Park to be performed in such a manner as not to damage the underlying Parking Facilities or the waterproofing membrane between the two.

4.1.1.3 The City understands that the County may open such underlying Parking Facilities for business to the public while construction of the air lot portion of the Central Riverfront Park is ongoing. In such instances, the City and the County shall cooperate and coordinate efforts so that the ongoing construction and the use and operation of the underlying Parking Facilities as a parking garage open for business to the public do not materially interfere with the other.

4.1.1.4 The obligations of the Public Parties in this Section 4.1.1, each to the other, shall not be construed to be, and is not, for the benefit of their respective contractors,

subcontractors, or material suppliers, nor shall it be the basis for claims by those contractors, subcontractors, or material suppliers against the Public Parties, or either of them.

4.2 Temporary Parking. The City shall cooperate with the County in good faith to mitigate any adverse impacts resulting from loss of parking during the construction of the Parking Facilities with respect to the County's obligations under the Third Party Agreements. As set forth in this Section 4.2, the City shall make available to the County certain City-owned parking facilities within the following areas:

4.2.1 the area and portions of the area comprising the Vine Street Lot for construction staging until such time as the City requires such area or portions of such areas for construction of the Central Riverfront Park;

4.2.2 such other areas as the Public Parties shall mutually agree may be used for parking (as to parking lots under the City's control, the City shall be entitled to all revenue generated during such use).

In the event the construction of the Public Project and/or the Central Riverfront Park may result in parking deficits under the Third Party Agreements and the City and County mutually agree that it is in the best interest of the Public Project that such construction proceed, the City and the County shall share equally in mutually agreed costs associated with providing temporary or transitional parking.

4.3 Project Labor Agreement. In the event the City and the County each determine that a form of project labor agreement is permissible under applicable state and federal law with respect to the Parking Facilities, the Street Grid Improvements or the Utilities developed in conjunction with Future Phase Improvements, the City and County would be willing to enter into a project labor agreement regarding such Parking Facilities, Street Grid Improvements or Utilities not under construction at the time of the foregoing determination, provided that the terms and conditions of such project labor agreements are acceptable to the City and County. In the event the City and the County each make the foregoing determination, the Public Parties shall thereafter negotiate such a project labor agreement in good faith.

ARTICLE 5 **CENTRAL RIVERFRONT PARK**

5.1 Financing of Development Costs. Except as otherwise expressly provided herein, the City shall pay, or secure funding, for the costs of designing and constructing the Phase 1 Park and the Phase 2 Park. As an element of its initial commitment to the Phase 1 Park, the City shall pay the sum of \$10,000,000 from its capital budget to fund the design and construction of the Phase 1 Park.

5.2 Cooperation by County. The County shall cooperate in facilitating the development of the Central Riverfront Park. The cooperation of the County shall include the performance of the County's obligations under Section 2.3 and undertaking good faith efforts to attempt to secure funding for the Central Riverfront Park from the Hamilton County Park

District. In addition, the County shall provide approximately 6,000 square feet of space within the Phase 1 Parking Facilities for storage of park maintenance and other equipment by the Cincinnati Park Board (the “Park Storage Space”). The Park Storage Space shall be located in portions of the Phase 1 Parking Facilities reasonably convenient for use with respect to the Central Riverfront Park and conforming with the County’s program requirements for the Parking Facilities, as agreed upon by the Public Parties. The City shall reimburse the County within 30 days of invoicing for the design and construction costs in providing the Park Storage Space in an amount equal to \$180,000. If Developer gives a Future Phase Trigger Notice, then the County shall work cooperatively with the City to determine a mutually agreeable and convenient location (or locations) for Park Storage Space totaling 10,000 square feet (inclusive of any existing Park Storage Space that is to remain in place). To the extent the 10,000 square feet contains square footage in Parking Facilities not within the original 6,000 square foot Park Storage Space, the City shall reimburse the County within 30 days after invoice for the design and construction costs for such additional space in an amount equal to \$30 per square foot.

ARTICLE 6 **MISCELLANEOUS PROVISIONS**

6.1 Administration of Total Project. The Public Parties shall coordinate their activities with respect to the Total Project and facilitate the implementation of the Contract Documents in accordance with the Banks Project Joint City-County Program Administration Guidelines set forth in Exhibit F hereto.

6.2 Deferred Purchase Price. Pursuant to Article 9 of the Master Development Agreement, Developer is obligated to pay the Deferred Purchase Price, if any, to the Public Parties with respect to each Property. The Deferred Purchase Price shall be allocated as between the Public Parties as follows: first, until the City has received \$5,000,000 of Deferred Purchase Price, the Deferred Purchase Price with respect to the Phase 1A Improvements and the Phase 1B Improvements shall be allocated 100% to the City, and the Deferred Purchase Price with respect to Future Phase Improvements shall be allocated 75% to the City and 25% to the County; and finally, after the City has received \$5,000,000 of Deferred Purchase Price, in excess of those amounts received by the County under this Section 6.2 (without regard to any portions of the Deferred Purchase Price allocated with respect to Permitted Advances), the Deferred Purchase Price, whether with respect to the Phase 1A Improvements, the Phase 1B Improvements or Future Phase Improvements, shall be allocated 50% to the County and 50% to the City. Notwithstanding the forgoing to the contrary, in the event that any Public Party has made a Permitted Advance hereunder, such Public Party shall be entitled to the other Public Party’s share of the Deferred Purchase Price until such time as the Public Party making the Permitted Advance has received repayment of the entire Permitted Advance, together with all interest thereon as provided in Section 3.7.

6.3 Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development. The Public Parties hereby agree to adopt as the Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development as set forth in Exhibit G hereto (the “Joint Economic Inclusion Policy”). The Public Parties and Developer

shall be responsible for compliance with the Joint Economic Inclusion Policy as provided in the Master Development Agreement and the Infrastructure Development Management Agreement.

6.4 Responsible Bidder Requirements. The Public Parties hereby agree to adopt the Responsible Bidder Requirements attached hereto and incorporated herein by reference as Exhibit H hereto.

6.5 Joint City-County Permitting Task Force. For purposes of expediency, the Public Parties shall establish a special review and permitting task force, comprised of City and County personnel, dedicated to the Public Project and the Private Project for the following purposes:

(a) reviewing and commenting on, and recommending to the appropriate governmental or quasi-governmental authority approval of, applications for building permits and other permits required for the construction of the Parking Facilities, the Street Grid Improvements, the Utilities and the Improvements;

(b) reviewing and commenting on, and recommending to the appropriate governmental authority approval of or issuance of, zoning certificates, permits, comfort letters and other similar matters relating to the City's Zoning Code;

(c) coordinating and expediting the necessary fire and life safety reviews and inspections of the Parking Facilities, the Street Grid Improvements, the Utilities and the Improvements; and

(d) recommending to the appropriate governmental authority the issuance of temporary and permanent certificates of occupancy and other similar certificates for the Improvements.

6.6 Use of Central Lot. In addition to the temporary replacement parking provided pursuant to Section 4.2, the City shall make available to the County the Central Lot as required by existing written agreements between the City and the County. In addition, subject to existing long-term leases or long-term agreements with respect to the Central Lot, the City shall make available to the County parking spaces within the Central Lot for not more than ten (10) days per year on weekdays during which the Reds have a daytime home game for the purpose of ensuring the County's compliance with the requirements of the Parking Agreement. The City shall be entitled to retain all revenue generated from the Central Lot on such Reds game days. The County agrees, on such Reds game days that the Central Lot is made available, to maintain its current policy and practice of excluding monthly parkers from access using monthly passes at County-owned parking lots or structures within the Central Riverfront Area.

6.7 Community Entertainment District. Within 30 days after the Effective Date, the County shall file applications with the City pursuant to Section 834-01 of the Cincinnati Municipal Code, seeking to have each of the two areas depicted in Exhibit I hereto designated as a Community Entertainment District. The handling and processing fee for such application shall be paid by the County and reimbursed by Developer as provided in the Master Development

Agreement. The Public Parties shall jointly pursue such applications to establish such Community Entertainment Districts within the period contemplated by Section 3.1.1(b) of the Master Development Agreement.

6.8 General Cooperation. In addition to any other provisions of this Agreement which require the cooperation of the Public Parties as to the matters specified therein, the Public Parties shall cooperate generally with each other in pursuing the development of the Total Project as contemplated by the Contract Documents in an expeditious, cost effective, high quality and coordinated manner.

6.9 Joint Actions. The Contract Documents Agreement contemplate that various decisions, consents, approvals and other actions are to be made, given or taken jointly by the Public Parties (each such decision, consent, approval or action being called a “Joint Action”). When either Public Party receives a request to take a Joint Action under any Contract Document, unless it is clear that the request has been made to both Public Parties, the Public Party receiving the request shall give notice of the request to the other Public Party. Promptly after receiving any request for a Joint Action, the Public Parties, through the City Manager, County Administrator and other appropriate staff members, shall work together in good faith and in a cooperative manner to attempt to agree on a response to the request. However, subject to such obligation to act in good faith and in a cooperative manner, the Public Parties shall not be obligated to each other to agree on a response to any request for Joint Action.

6.10 Extension Fees. Any extension fees paid by Developer pursuant to Section 4.5.2 of the Master Development Agreement shall be split 50/50 between the City and the County.

6.11 Inclusion Outreach Consultant. The Public Parties shall jointly engage an inclusion outreach consultant as contemplated by Section 4.1.1 of the Infrastructure Development Management Agreement. Each Public Party shall be responsible for 50% of the fees and costs charged by such inclusion outreach consultant.

6.12 Design Review. The County shall have design review rights with respect to the Street Grid Improvements and Utilities as specified in the form of Specific Declaration which is Exhibit J to the Master Development Agreement. The City shall have design review rights with respect to the Parking Facilities and the Private Podiums as specified in the form of Specific Declaration which is Exhibit J to the Master Development Agreement.

ARTICLE 7 **GENERAL PROVISIONS**

7.1 Notices. Any notice to be given under this Agreement shall be in writing, shall be addressed to the Public Party to be notified at the address set forth below or at such other address as each Public Party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery:

If to the County: Hamilton County Administrator
138 East Court Street, Room 603
Cincinnati, OH 45202
Telecopy: 513-946-4444
Telephone: 513-946-4400

with a copy to:

Hamilton County Prosecutor's Office
230 E. Ninth Street, 8th Floor
Cincinnati, Ohio 45202
Attn.: Roger E. Friedmann, Esq.
Telecopy: 513-946-3018
Telephone: 513-946-3025

and

Vorys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, Ohio 45202
Attn.: Thomas L. Gabelman, Esq.
Telecopy: 513-852-7843
Telephone: 513-723-8580

If to the City: City of Cincinnati, Ohio
801 Plum Street, Room 152
Cincinnati, Ohio 45202
Attn: City Manager
Telecopy: 513-352-3241
Telephone: 513-352-6284

with a copy to:

City Solicitor
City of Cincinnati, Ohio
801 Plum Street, Room 214
Cincinnati, Ohio 45202
Telecopy: 513-352-3334
Telephone: 513-352-1515

7.2 Administrative Actions. To the extent permitted by applicable laws, all actions taken or to be taken by the Public Parties under or in furtherance of this Agreement may be taken by administrative action of appropriate representatives of the Public Parties and shall not require legislative action of the Public Parties beyond the legislative actions authorizing this Agreement.

7.3 Relationship to Contract Documents. This Agreement is not intended to be inconsistent with the any Contract Document, and is not intended to affect the collective rights or obligations of the Public Parties relative to Developer under any Contract Document, but is intended to address various issues that might arise between the Public Parties in connection with the Contract Documents. This Agreement, on the one hand, and the Contract Documents, on the other hand, shall, to the extent practical, be interpreted to be consistent with each other. However, in the event of any irreconcilable inconsistency between this Agreement, on the one hand, and the Contract Documents, on the other hand, the provisions of this Agreement shall be controlling as between the Public Parties so long as the rights of Developer under the Contract Documents are not affected thereby.

7.4 Relationship to Existing Riverfront Agreements. The Public Parties are parties to various existing agreements relative to the use and development of the Cincinnati Central Riverfront area (collectively, the “Existing Riverfront Agreements”), including without limitation (a) an Amended and Restated Supplemental Memorandum of Understanding dated August 14, 2002, as amended by a First Amendment to Amended and Restated Supplemental Memorandum of Understanding dated September 22, 2003, and (b) an Agreement for the Redevelopment of the Central Riverfront Including the Construction of Paul Brown Stadium dated as of January 31, 1998. To the extent of any inconsistency between this Agreement and any of the Existing Riverfront Agreements, this Agreement shall control and the Existing Riverfront Agreements shall be deemed to be amended by this Agreement. The Existing Riverfront Agreements, to the extent not inconsistent with this Agreement, shall remain in force and effect. The Public Parties shall, for purposes of clarification, use good faith efforts to negotiate and enter into a document specifying those provisions of the Existing Riverfront Agreements that survive this Agreement within 120 days after the Effective Date, provided that such document shall be consistent with the above provisions of this Section 7.4.

7.5 No Partnership. This Agreement shall not be construed to, and shall not, create a partnership or joint venture between the Public Parties.

7.6 Governing Law. The laws of the State of Ohio shall govern as to the interpretation, validity and effect of this Agreement.

7.7 Jurisdiction. The Public Parties submit to jurisdiction in the State of Ohio and agree that any judicial proceeding brought by or against a Public Party with respect to this Agreement shall be brought in any state or federal court located in Hamilton County, Ohio, which shall have exclusive jurisdiction of controversies arising under this Agreement.

7.8 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is invalid, illegal, or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the Public Parties’ essential objectives as expressed herein.

7.9 Diligent Performance. With respect to any duty or obligation imposed on a Public Party by this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such Public Party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance.

7.10 Entirety of Agreement. Subject to Section 7.4, this Agreement and the Contract Documents embody the entire agreement and understanding of the Public Parties with respect to the subject matter hereof, and supersede all prior agreements, correspondence, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by a Public Party which has not been embodied in this Agreement or such documents, and no Public Party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. This Agreement may be amended or modified only by a written instrument signed by the Public Parties.

7.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Public Parties and their respective successors and assigns.

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

7.13 Exhibits. All exhibits to this Agreement are incorporated herein by reference and made a part hereof, to the same extent as if set out in full herein.

7.14 No Waiver. No waiver of any condition or covenant of this Agreement to be satisfied or performed by a Public Party shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of a Public Party, except a written waiver signed by such Public Party, shall be construed to be a waiver of any condition or covenant to be performed by the other Public Party.

7.15 Construction. No provisions of this Agreement shall be construed against a Public Party by reason of such Public Party having drafted such provisions.

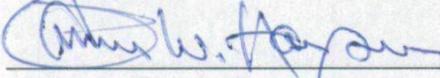
7.16 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

7.17 Third Party Beneficiaries. There are no third party beneficiaries, express or implied, of this Agreement.

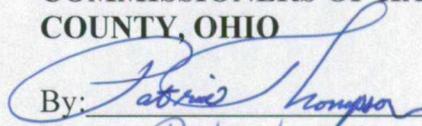
[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Public Parties have executed this Agreement as of the Effective Date.

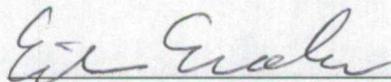
Approved as to Form:


Assistant County Prosecutor

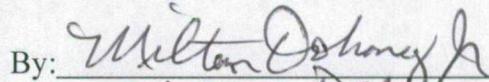
**THE BOARD OF COUNTY
COMMISSIONERS OF HAMILTON
COUNTY, OHIO**

By: 
Name: Patrick Thompson
Title: County Administrator

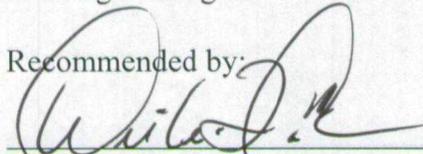
Recommended by:


Director, Dept. of Transportation
and Engineering

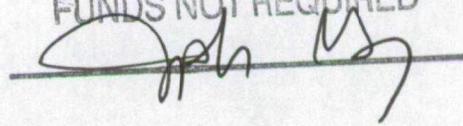
THE CITY OF CINCINNATI, OHIO

By: 
Name: Milton Dohoney Jr
Title: City Manager

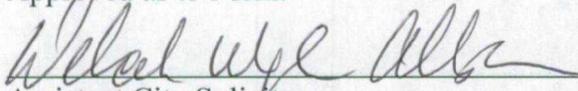
Recommended by:


Willie F. Carden, Jr., Director, Cincinnati Parks

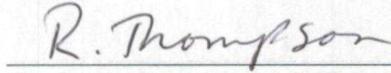
**CERTIFICATION OF
FUNDS NOT REQUIRED**



Approved as to Form:


Assistant City Solicitor

Approved as to Contract Compliance:


Contract Compliance Officer

CERTIFICATION OF AVAILABILITY OF FUNDS (COUNTY)

As fiscal officer for the County of Hamilton, Ohio, in accordance with Section 5705.44 of the Ohio Revised Code, I hereby certify that funds sufficient to meet the obligations of the County in the foregoing agreement for fiscal year 2007 have been lawfully appropriated for the purposes thereof, and are available in the treasury or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. (As provided in Section 5705.44, amounts which shall become payable during subsequent fiscal years, as reasonably estimated, are to be included in the annual appropriation measure for each respective fiscal year as a fixed charge.)

By: _____
Name: _____
Title: _____

CERTIFICATION OF AVAILABILITY OF FUNDS (COUNTY)

As fiscal officer for the County of Hamilton, Ohio, in accordance with Section 5705.44 of the Ohio Revised Code, I hereby certify that funds sufficient to meet the obligations of the County in the foregoing agreement for fiscal year 2007 have been lawfully appropriated for the purposes thereof, and are available in the treasury or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. (No funds are required under this agreement for fiscal year 2007. As provided in Section 5705.44, amounts which shall become payable during subsequent fiscal years, as reasonably estimated, are to be included in the annual appropriation measure for each respective fiscal year as a fixed charge.)

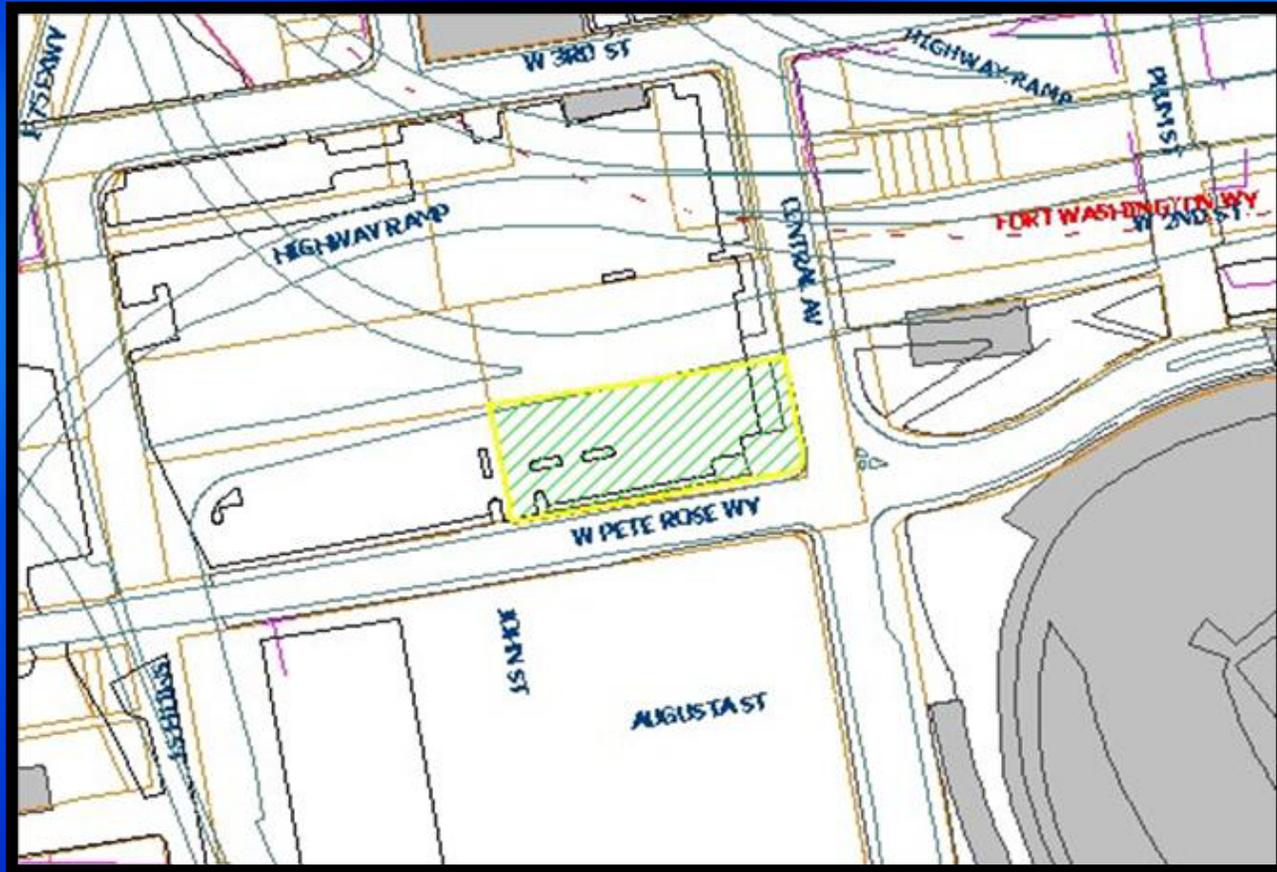
By: 
Name: _____
Title: COUNTY AUDITOR

LIST OF EXHIBITS

- EXHIBIT A-1 Central Lot
- EXHIBIT A-2 Vine Street Lot
- EXHIBIT B Form of Deed from County to City (Central Riverfront Park)
- EXHIBIT C Form of Deed from City to County (Parking Facility Lots and right to construct Parking Facilities within rights-of-way)
- EXHIBIT D Form of Deed from County to City
- EXHIBIT E Form of Deed from City to Developer
- EXHIBIT F Joint City-County Banks Project Program Administration Guidelines
- EXHIBIT G Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development
- EXHIBIT H Responsible Bidder Requirements
- EXHIBIT I Community Entertainment Districts
- EXHIBIT J Riverfront Park Plan

Central Lot

Coop – Exhibit A-1



Form of Deed from County to City (Central Riverfront Park) Coop Exhibit B

EXHIBIT B TO COOPERATION AGREEMENT

auditor's parcel ##

QUIT CLAIM DEED

Section 5302.11 ORC

The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio (the "County"), a political subdivision of the State of Ohio, grants to the City of Cincinnati (the "City"), an Ohio municipal corporation, whose tax mailing address is 801 Plum Street, Cincinnati, Ohio 45202, the following real property (the "Property"):

SEE EXHIBIT A ATTACHED HERETO

Prior instrument reference: _____.

SUBJECT TO THE RESTRICTIONS THAT: (a) the City shall commence development of the Property as a public park within one year after the date of this deed and thereafter diligently and continuously pursue such development to completion, subject to interruptions and delays beyond the reasonable control of the City; (b) the Property shall be used only as a park or parkway under the control and management of the City of Cincinnati Board of Park Commissioners as constituted and empowered under Article VII, Section 1 of the Charter of the City of Cincinnati, as it may be amended from time to time; and (c) at any time that there is a continuing violation of clause (a) or (b) above, the County shall have the right to re-enter and take possession of the Property and to re-vest itself with and be seized of the Property, whereupon the City shall execute and deliver to the County a statutory form quitclaim deed for the Property.

[FOR EACH PARCEL OTHER THAN THE PHASE 1 PARK, ADD RESERVATION OF TEMPORARY EASEMENT PER SECTION 2.3.5 OF COOPERATION AGREEMENT]

Executed _____.

BOARD OF COUNTY COMMISSIONERS OF
HAMILTON COUNTY, OHIO

BY: _____
printed name: _____
County Commissioner

BY: _____
printed name: _____
County Commissioner

BY: _____
printed name: _____
County Commissioner

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, _____, and
_____, being all of the members of the Board of County Commissioners of
Hamilton County, Ohio on behalf of Hamilton County, Ohio.

Notary Public, State of Ohio

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Assistant Prosecuting Attorney

Assistant City Solicitor

This deed was prepared by the City of Cincinnati Department of Law.

EXHIBIT A
to the deed from Hamilton County to the City of Cincinnati

Form of Deed from City to County (Parking Facility Lots) Coop Exhibit C

EXHIBIT C TO COOPERATION AGREEMENT

auditor's parcel ##

QUIT CLAIM DEED
Section 5302.11 ORC

City of Cincinnati, an Ohio municipal corporation (the "City"), grants to The Board of County Commissioners of Hamilton County, Ohio (the "County"), whose tax mailing address is 138 East Court Street, Cincinnati, Ohio 45202, the following real property (collectively, the "Property"):

Situated in the City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

Lot ___ of The Banks Phase ___ ("Lot ___"), as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book ___, Page ___, Recorder's Office, Hamilton County, Ohio.

Together with an exclusive, perpetual easement in the rights-of-way for [ADJACENT RIGHTS-OF-WAY] adjacent to Lot ___ up to the same elevation as the upper limit of Lot ___, for the purposes of constructing, operating, using, maintaining, repairing, replacing, altering and reconstructing parking facilities.

Prior instrument reference: _____.

SUBJECT TO THE RESTRICTIONS THAT: (a) the County shall commence development of parking facilities on the Property within one year after the date of this deed and thereafter diligently and continuously pursue such development to completion, subject to interruptions and delays beyond the reasonable control of the County; and (b) at any time that there is a continuing violation of clause (a) above, the City shall have the right to re-enter and take possession of the Property and to re-vest itself with and be seized of the Property, whereupon the County shall execute and deliver to the City a statutory form quitclaim deed for the Property.

Executed _____.

CITY OF CINCINNATI

BY: _____
printed name: _____
City Manager

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation.

Notary Public, State of Ohio

APPROVED AS TO FORM:

Assistant Prosecuting Attorney

APPROVED AS TO FORM:

Assistant City Solicitor

This deed was prepared by the City of Cincinnati Department of Law.

Form of Deed from County to City

Coop Exhibit D

EXHIBIT D TO COOPERATION AGREEMENT

auditor's parcel ##

QUIT CLAIM DEED
Section 5302.11 ORC

The Board of County Commissioners of Hamilton County, Ohio, acting for and on behalf of Hamilton County, Ohio (the "County"), a political subdivision of the State of Ohio, grants to the City of Cincinnati (the "City"), an Ohio municipal corporation, whose tax mailing address is 801 Plum Street, Cincinnati, Ohio 45202, the following real property (the "Property"):

SEE EXHIBIT A ATTACHED HERETO

Prior instrument reference: _____.

The County is conveying the Property to the City pursuant to this deed in anticipation that the City will convey the Property to [NAME OF OWNERSHIP ENTITY], subject to a right of re-entry enforceable by the City under certain specified circumstances. This conveyance is subject to the restriction that if, after conveyance of the Property by the City to [NAME OF OWNERSHIP ENTITY], title to the Property reverts in the City pursuant to its right of re-entry, the City shall, at the request of the County, execute and deliver to the County a statutory form quitclaim deed for the Property.

Executed _____.

BOARD OF COUNTY COMMISSIONERS OF
HAMILTON COUNTY, OHIO

BY: _____
printed name: _____
County Commissioner

BY: _____
printed name: _____
County Commissioner

BY: _____
printed name: _____
County Commissioner

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by _____, _____, and
_____, being all of the members of the Board of County Commissioners of
Hamilton County, Ohio on behalf of Hamilton County, Ohio.

Notary Public, State of Ohio

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Assistant Prosecuting Attorney

Assistant City Solicitor

This deed was prepared by the City of Cincinnati Department of Law.

EXHIBIT A

to the deed from the Hamilton County to the City of Cincinnati

Form of Deed from City to Developer Coop Exhibit E

EXHIBIT E TO COOPERATION AGREEMENT

auditor's parcel ##

**LIMITED WARRANTY DEED
Statutory Form ORC 5302.08**

City of Cincinnati (the "City"), an Ohio municipal corporation, for valuable consideration paid, grants, with limited warranty covenants, to [NAME OF OWNERSHIP ENTITY] ("Grantee"), a _____, whose tax mailing address is _____, the following real property (the "Property"):

Situated in the City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

Lot ___ of The Banks Phase ___ ("Lot ___"), as the same is numbered and delineated on the recorded plat thereof, of record in Plat Book ____, Page ____, Recorder's Office, Hamilton County, Ohio.

Prior instrument reference: _____.

Subject to real estate taxes and installments of assessments not due and payable, the General Declaration of Covenants, Conditions and Restrictions dated _____, 200 __, 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, recorded in Official Record Book ____, Page ____, Recorder's Office, Hamilton County, Ohio, the Specific Declaration of Easements, Covenants, Conditions and Restrictions (the "Specific Declaration") of even date herewith by Grantee, the County and the City with respect to the Property, to be recorded in the Recorder's Office, Hamilton County, Ohio, the Service Agreement of even date herewith by the City and Grantee with respect to the Property, to be recorded in the Recorder's Office, Hamilton County, Ohio, the right of re-entry in favor of the City provided for below, and all other easements, covenants, conditions and restrictions of record.

At any time that a "Commencement Default" (as defined in Section 2.8.5(b) of the Specific Declaration) exists, the City shall have the right, subject to the limitations set forth in Section 2.8.5(b)(vi) of the Specific Declaration, to re-enter and take possession of the Property and to re-vest itself with and be seized of the Property, whereupon Grantee shall execute and deliver to the City a statutory form quitclaim deed for the Property. At the request of Grantee made at any time that, by reason of the commencement of construction of improvements to the Property, a

Commencement Default cannot exist, the City shall execute and deliver to Grantee written confirmation, in recordable form, that the City's right of re-entry provided for herein has terminated.

The City of Cincinnati, by _____, City Manager, duly authorized by Ordinance No. _____-2007, has executed this deed on the ____ day of _____, _____.

CITY OF CINCINNATI

By: _____
Name: _____
Its: _____

STATE OF OHIO, COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation.

Notary Public, State of Ohio

APPROVED AS TO FORM:

Assistant City Solicitor

This deed was prepared by the City of Cincinnati Department of Law.

Joint City-County Banks Project
Administration Guidelines
Coop Exhibit F

EXHIBIT F

Banks Project Joint City-County Program Administration Guidelines

Pursuant to Section 6.1, the Public Parties shall coordinate their financial, programmatic, design, construction, commissioning and closeout activities required of them under the Cooperation Agreement, the Master Development Agreement and the Infrastructure Development Management Agreement (the “IDMA”) and related documents in accordance with these Guidelines:

I. Implementation of Banks Project

A. Joint City-County Banks Working Group Transition.

1. The County and the City agreed to redevelop the Cincinnati Central Riverfront to make it an integral part of a redeveloped downtown Cincinnati. The County and the City have also agreed to develop the Central Riverfront Park and Parking Garage Facilities/Infrastructure Improvements that will provide support for a mixed-use development (collectively referred to as the “Banks Project”).
2. The City and the County unanimously recommended the formation of a Joint City-County Banks Working Group (the “BWG”) to move forward with the development of the Banks Project.
3. The BWG will issue recommendations for the selection of the Master Developer for the Banks Project. The BWG will issue recommendations regarding the Contract Documents to the City and the County for review and approval.
4. The BWG has also recommended a Joint Policy For Small Business Enterprise, Economic Inclusion And Workforce Development for the Banks Project.
5. The BWG shall continue to serve pursuant to the Resolutions adopted by the City on May 6, 2006, and the County on May 10, 2006, (as amended) during a transition period as necessary and appropriate following the adoption by the City and the County of the Contract Documents and shall transition their work to the City, the County and JBSC to be formed by the City and the County.

B. Joint City-County Banks Steering Committee.

1. The City and the County by and through their respective actions and resolutions, shall jointly form a City-County Joint Banks Steering Committee (the “JBSC”) to implement policies relating to the Public Project.

2. The JBSC shall be established by agreement of the City and County.
3. The JBSC shall facilitate the implementation of the Contract Documents.
4. The City and County staff dedicated to the Public Project will work together with each other and the JBSC and will provide full access to information to all members of the JBSC.
5. The relationship of the various parties in the Project is generally illustrated in the attached organizational chart attached as Exhibit F.1. This chart is subject to modification by the City and County and is not intended by either to establish an employment reporting structure in contravention of City or County legal or policy requirements.

II. Project Administration

- A. The Project Executive with respect to the Banks Project will be selected by the JBSC with the advice and consent of the City Manager and the County Administrator.
- B. Upon selection by the JBSC, the County and the City will engage the Banks Project Executive (with 50/50 shared cost) and shall have the authority to terminate such employment.
- C. The Banks Project Executive will serve as the representative of the Public Parties for services performed by the Development Manager under the IDMA.
- D. The Banks Project Executive shall meet with the County Administrator and the City Manager on a regular basis as needed to keep each apprised of the Banks Project Status, budget, construction, scheduling, economic inclusion and any other matters of interest to the Public Parties pertaining to the Public Project.
- E. The Banks Project Executive shall also meet with the JBSC on an as-needed, but not less than quarterly basis regarding project status, budget, construction, scheduling, the Joint Economic Inclusion Policy, the Responsible Bidder Requirements and any other matters pertaining to the Public Project.
- F. All Public Project records with respect to design, construction, budget, schedule, quality of work, inclusion, commissioning and closeout maintained by or on behalf of the Banks Project Executive of the Public Project shall be open to inspection, review and copying by the respective City and County staffs and the JBSC.

III. Project Finances and Budgets

- A. Given multiple funding sources, the dependency of the Public Project contractors and lenders for cash flow from those sources, and the necessity for the Public Parties to

properly account for Public Party Costs, the Public Parties require a sound financial management system.

- B. Accordingly, finance and other appropriate staff of each of the Public Parties shall work together to develop a transparent and efficient overall financial administration tool for tracking and reporting Public Project finances in a format consistent with the requirements of the Cooperation Agreement, the IDMA, funding agencies for the Primary and Secondary Sources, bond issuers and bond holders, the trustee under Section 3.6 (Funding Administration) of the Cooperation Agreement, and the Public Parties.
- C. Upon recommendation of the JBSC, the City and the County shall jointly review and approve the Phase Development and Phase Construction Budgets with respect to the Public Project.
- D. The Banks Project Executive shall have authority to manage and direct the Banks Development Manager on behalf of the City and the County pursuant to the terms and conditions of the IDMA. The Banks Project Executive shall have authority to approve change orders within the Phase Development Budget and the Phase Construction Budget with respect to each Phase of the Public Project. Any change orders that would cause the respective Budgets or line items to be exceeded shall require the approval of the County and the City. The administrative protocol with respect to the execution of change orders on behalf of the City and the County will be jointly determined by the City Manager and the County Administrator.

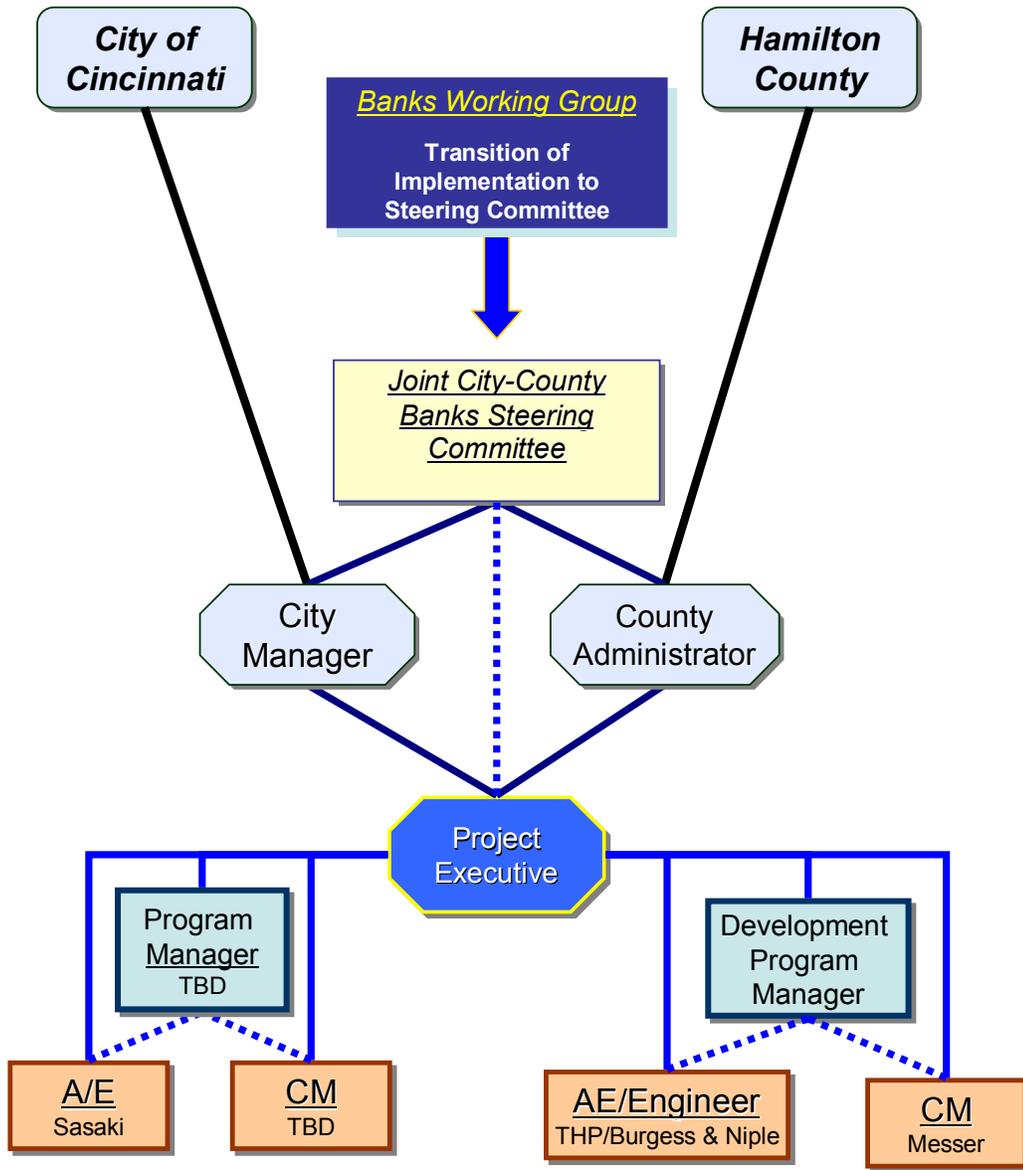
IV. Project Construction Schedules

- A. The City Manager and the County Administrator shall have the authority to review and approve the respective Phase Development Schedule and the Phase Construction Schedule for each Phase of the Public Project.

EXHIBIT F.1

The Banks Project

Joint City-County Program Administration



- Direct Line
- - - - - Coordination



Joint Policy for Small Business Enterprise,
Economic Inclusion and Workforce
Development

Coop Exhibit G

JOINT POLICY FOR SMALL BUSINESS ENTERPRISE, ECONOMIC INCLUSION AND WORKFORCE DEVELOPMENT FOR THE BANKS PROJECT

1. Banks Project Economic Inclusion Policy

1.1 Purpose. The Banks project is a joint property development project of Hamilton County, Ohio (the “County”), the City of Cincinnati, Ohio (the “City”) and a master developer, Riverbanks Renaissance, LLC (the “Developer”). The Mayor of the City, Cincinnati City Council (the “Council”) and the Commissioners of Hamilton County, Ohio (the “Commissioners”) have established this Joint Policy for Small Business Enterprise, Economic Inclusion and Workforce Development (this “Banks Inclusion Policy”) for the Banks development project (the “Banks Project”) for the purpose of promoting equal business opportunity for small and disadvantaged businesses, including minority-owned and women-owned firms, and to ensure that such businesses receive or participate directly or indirectly in contracts and procurements related to the Banks Project awarded by the County and/or the City. Further, this Banks Inclusion Policy has been adopted to support and encourage the participation of small businesses and disadvantaged businesses, including, but not limited to, those owned by minorities and women, in the retail, hospitality and entertainment components of the Banks Project through active recruitment, facilitation of relationships and aggressive information-sharing. This Banks Inclusion Policy also has been established for the purposes of ensuring non-discrimination in the award and administration of such contracts and procurements and to promote the economic inclusion of qualified workers in the local region through employment opportunities related to the Banks Project.

2. Non-Discrimination Policy

2.1 Contracts and Procurements. The County and the City each is an equal business opportunity government which provides, and will continue to provide, equal access to contracting and procurement opportunities for all businesses. It is the policy of the County and the City that no contracts should be awarded, and no procurement decisions should be made, by or on behalf of the County and/or the City as the result of unlawful discrimination based upon race, color, religion, sex, sexual orientation, national origin, ancestry, disability, veteran status, age, political belief or place of birth.

2.2 Employment. The County and the City each has a long-standing commitment to ensuring non-discrimination and equal opportunity in employment. Under federal and state laws, the County and the City are obligated to avoid unlawful discrimination, to ensure that their respective contractors and suppliers avoid unlawful discrimination, and to ensure that contractors, subcontractors and suppliers for the Banks Project are selected by the County, the City and their respective contractors and suppliers without engaging in unlawful discrimination. Prior to being awarded a contract or procurement with the County or the City, each Contractor shall be required to certify in writing to the County or the City, as the case may be, that (a) the Contractor will comply with all of the requirements of this non-discrimination policy (the “Non-discrimination Policy”) and (b) the Contractor, directly or indirectly, (i) has not engaged, is not

engaged and will not engage in any kind of unlawful discrimination involving race, color, religion, sex, sexual orientation, national origin, ancestry, disability, veteran status, age, political belief or place of birth, whether or not such unlawful discrimination is related to a contract or procurement activity involving the Banks Project, and (ii) will not, for any purpose related to the Contractor's engagement with respect to the Banks Project, employ or contract with any person or business which the Contractor knows or has reason to know has engaged, is engaged, or will engage in such unlawful discrimination, whether or not such unlawful discrimination is related to a contract or procurement activity or involving the Banks Project. As used herein, "**Contractor**" means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

3. DBE Policy Statement and Objectives [49 CFR Part 26.23]

3.1 Policy and Objectives. The County and the City have received, or may receive, federal financial assistance from the U. S. Department of Transportation (the "DOT") to finance a portion of the Banks Project and, as a condition to receiving such assistance, must comply with DOT regulations under 49 CFR Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*". In order to comply with DOT requirements and to give effect to this Banks Inclusion Policy, the County and the City have adopted this Disadvantaged Business Enterprise (as defined below) policy ("DBE Policy") and have established a Disadvantaged Business Enterprise program for DOT-assisted contracts related to the Banks Project (the "DBE Program") in accordance with applicable DOT regulations. It is the policy of the County and the City to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts ("DBE Policy"). It also is the policy and objectives of the County and the City:

- (a) To ensure non-discrimination in the award and administration of DOT-assisted contracts;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that only firms that fully meet eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs in the DBE Program;
- (d) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- (f) To assist with the development of firms that can compete successfully in the marketplace outside of the DBE Program.

3.2 Liaison Officer. The Director of Hamilton County Small Business Development has been designated as the DBE liaison officer for the DBE Program (the “DBE Liaison Officer”). In that capacity, he/she is responsible for implementing all aspects of the DBE Program and ensuring that the County and the City comply with all provisions of 49 CFR Part 26 in connection with the award and performance of DOT-assisted contracts related to the Banks Project. Implementation of the DBE Program shall be accorded the same priority as compliance with all other legal obligations incurred by the County and the City in their financial assistance agreements with the DOT. The DBE Liaison Officer shall have direct and independent access to the Commissioners, the County Administrator of Hamilton County (the “County Administrator”), the Mayor of Cincinnati (the “Mayor”) and the Council with respect to matters concerning the DBE Program. [49 CFR Part 26.25]

3.3 Dissemination of Policy. The County has disseminated or will disseminate this DBE Policy statement to the Commissioners and all departments and divisions of the County. The City has disseminated or will disseminate this DBE Policy statement to the Mayor and all departments and divisions of the City. This DBE Policy statement also shall be distributed to DBEs and non-DBE business communities that currently perform, or have performed, work for the County or the City on DOT-assisted contracts by publishing this statement in general circulation, minority-focused and trade association publications, by electronic or regular mail to local disadvantaged business development organizations and by posting a copy of this DBE Policy statement on the County’s website and the City’s website. [49 CFR Part 26.23]

3.4 No Quotas or Set-Asides. Neither the County nor the City will use quotas or will set aside contracts for DBEs on DOT-assisted contracts or in any way in the administration of the DBE Program, except as permitted under DOT regulations to address egregious instances of unlawful discrimination. [49 CFR Part 26.43]

3.5 Expiration. The County and the City shall continue to carry out the DBE Program until all funds from DOT financial assistance for the Banks Project have been expended. [49 CFR Part 26.21(c)]

4. DBE Program Requirements

4.1 Definitions. [49 CFR Part 26.5]

4.1.1 “**Disadvantaged Business Enterprise**” or “**DBE**” means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. To be eligible for DBE certification under the DBE Program, (i) a firm (including its affiliates) must be an existing small business, as defined by the U. S. Small Business Administration (“SBA”) standards, and must not have average annual gross receipts as defined by SBA regulations over the firm’s previous three fiscal years in excess of \$20.41 million (subject to adjustment from time to time for inflation); [49 CFR Part 26.65]

4.1.2 “**DOT-Assisted Contract**” means any contract between the County and/or the City and a contractor (at any tier), funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land;

4.1.3 “**Socially and economically disadvantaged individual**” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(a) An individual who the County or the City finds to be a socially and economically disadvantaged individual on a case-by-case basis;

(b) An individual in one or more of the following groups, members of which are *rebuttably presumed* to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women; and

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

An individual whose personal net worth exceeds \$750,000 (excluding the individual’s ownership interest in the firm applying for DBE certification, the individual’s equity in his or her primary residence and any contingent liabilities) is deemed not to be economically disadvantaged. [49 CFR Part 26.67(d)]

All terms used in this DBE Policy statement which otherwise are not defined in this statement shall have the respective meanings assigned to them, if any, in 49 CFR Part 26.

4.2 Non-Discrimination. [49 CFR Part 26.7] Neither the County nor the City will exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering the DBE Program, neither the County nor the City will, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex or national origin.

4.3 DBE Financial Institutions. [49 CFR Part 26.27] The County and the City will investigate thoroughly the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the County, if any, and shall make reasonable efforts to use these institutions and to encourage prime contractors for DOT-assisted contracts related to the Banks Project to use such institutions. Any information on the availability of such institutions shall be maintained by the DBE Liaison Officer.

4.4 DBE Directory. [49 CFR Part 26.31] The County and the City shall maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in the DBE Program. For each firm, the directory will include its address, phone number, and types of work the firm has been certified to perform as a DBE. The directory will be made available on request to interested persons, including bidders, for work related to the Banks Project in connection with their efforts to meet the DBE goals established by the County and the City and made a part of bid specifications. The directory will serve as a primary source for locating potential contractors and suppliers. The directory will be revised at least annually and updated information included in the directory will be made available to contractors and the public on request.

4.5 Required Contract Clauses. Both the County and the City will require the following assurance to be included in every DOT-assisted contract between the County or the City, as the case may be, and a contractor, and in each subcontract the contractor signs with a subcontractor:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County and/or the City deems appropriate.” [49 CFR Part 26.13(b)]

The County and the City will include the following clause in each DBE-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from the County and/or the City. If the County and/or the City require retainage from the prime contractor and incremental acceptances of portions, as determined by the County or the City, as the case may be, of the contract work are made by the County and/or the City, then the prime contractor agrees to return all related retainage from subcontractors, if any, within ten (10) days after receiving payment from the County and/or the City for the contract work satisfactorily completed and accepted by the County and/or the City, including such incremental acceptances of portions of such work. Any delay or postponement of payment over ten (10) days may occur only for good cause following written approval of the County and/or the City, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed. This clause applies to both DBE and non-DBE subcontracts. Each subcontractor shall provide in all contracts with lower tier subcontractors or suppliers clauses requiring that the subcontractor shall pay the lower tier subcontractors and suppliers in accordance with the foregoing provisions. Any violation of these provisions by the prime contractor may be considered a breach of contract and may result in the suspension or termination of this contract or such other remedy as deemed appropriate by the County or the City, as the case may be, and DOT. The foregoing requirements shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the prime contractor or any subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance and/or noncompliance by a subcontractor.” [49 CFR Part 26.29]

4.6 Monitoring and Enforcement Mechanisms. [49 CFR Part 26.37]The County and the City will monitor DBE contracts, DBE scheduled work and payments to contractors related to the Banks Project in order to ensure compliance with this DBE Program and that work committed to DBEs at contract award is actually performed by DBEs. Non-compliance with this DBE Policy by the offending party may be considered a breach of contract and may result in the suspension or termination of that party’s contract or such other remedy as deemed appropriate by the County or the City, as the case may be, and the DOT. The County and the City will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the DBE Program known to the County or the City, as the case may be, as provided in 49 CFR Part 26.109. [49 CFR Part 26.37] The County and the City also will consider similar action under the County’s or the City’s own legal authorities granted through the contract documents, including responsibility determinations in future contracts.

4.7 Overall DBE Goals. [49 CFR Part 26.45]

(a) The County and the City, together with the Ohio Department of Transportation (“ODOT”), are required to and have established an overall goal for DBE participation in DOT-assisted contracts related to the Banks Project in accordance with the provisions of 49 CFR Part 26.45. The overall DBE participation goal must be based on demonstrable evidence of the availability of DBEs in the County which are ready, willing and able to participate in the DOT-assisted contracts relative to all businesses in the County which are ready, willing and able to participate in such contracts. The goal also must reflect the determination of the County, the City and ODOT of the level of DBE participation expected

absent the effects of discrimination. The overall goal for utilization of DBEs in connection with the publicly-funded portion of the Banks Project with respect to DOT-assisted contracts is _____% (the “DBE Goal”). **[NOTE: DBE PARTICIPATION GOAL TO BE SET BY ODOT WITH RECOMMENDATION FROM THE COUNTY AND THE CITY.]**

The Developer for the Banks Project fully supports the DBE Policy and the DBE Goal for the publicly-funded portion of the Banks Project.

(b) The County and the City will meet the maximum feasible portion of the DBE Goal by using *race-neutral* means to facilitate DBE participation in the Banks Project. The County and the City will attempt to achieve increased DBE participation in DOT-assisted contracts through *race-neutral* means, including, but not limited to, encouraging prime contractors to subcontract portions of the work on the Banks Project to DBEs, including work that such prime contractors otherwise might perform with their own work forces; ensuring the inclusion of DBEs and other small businesses on the County’s and/or the City’s mailing lists for bidders; and advising prime contractors of the County’s website and the City’s website with DBE information. [49 CFR Part 26.51(a)]

(c) The County and the City will use *contract goals* to meet any portion of the DBE Goal that the County and the City project cannot be met using *race-neutral* means. *Contract goals* shall be established so that, over the period to which the overall goal applies, the *contract goals* cumulatively will result in meeting any portion of the DBE Goal that is not projected to be met through the use of *race-neutral* measures. The County and the City will establish *contract goals* only on those DOT-assisted contracts that have subcontracting possibilities. The County and the City will not be required to establish *contract goals* on every such contract, and the size of *contract goals* will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work, etc.). [49 CFR Parts 26.51(d) and (e)] The County and the City will express *contract goals* as a percentage of the total amount of a DOT-assisted contract.

4.8 Good Faith Efforts. [49 CFR Part 26.53] When the County and/or the City has established a DBE *contract goal*, the County and/or the City will award the contract only to a bidder/offeror who makes good faith efforts to meet the goal as required under 49 CFR Part 26.53. Compliance with good faith efforts requirements will be treated as a matter of responsiveness to bid specifications. Each solicitation for which a *contract goal* has been established will require the bidders/offerors to submit the following information with each bid submitted:

- (a) The names and business and e-mail addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE firm will perform;
- (c) The dollar amount of the participation of each DBE firm participating;

(d) Written and signed documentation of commitment to use DBE subcontractors whose participation it submits to meet a *contract goal*;

(e) Written and signed confirmation from each DBE firm that it is participating in the contract as provided in the prime Contractor's commitment; and

(f) If the contract goal is not met, evidence of good faith efforts of the bidder/offeror to meet such goal.

4.9 Counting DBE Participation. [49 CFR Part 26.55] The County and the City will count DBE participation towards overall and *contract goals* under the DBE Program as provided in 49 CFR Part 26.55.

4.10 DBE Certification. [49 CFR Part 26.83] Only firms certified as eligible DBEs as described in 49 CFR Part 26.83 are eligible to participate in the DBE Program.

5. SBE Policy Statement and Objectives

5.1 Policy and Objectives. The County and the City recognize that small businesses contribute financially to the County and the City through the payment of local taxes and the employment of local residents, who themselves support the County and the City through the payment of local taxes. The County and the City also acknowledge that small businesses generally have an economic and competitive disadvantage with respect to County and City contract and procurement opportunities because of their size and economic status. The County and the City believe that the growth and development of these economically-disadvantaged small businesses will increase the number of qualified business competitors in the local community, will improve and strengthen the local tax base which supports the County and the City, and will have a positive impact on the local workforce. It is the policy of the County and the City to support and encourage the participation of economically-disadvantaged small businesses in their procurement and contracting activities, including such activities related to the Banks Project (the "SBE Policy"). Accordingly, as part of the Banks Inclusion Policy, the County and the City have established the Banks Small Business Program (the "SBE Program") to encourage the participation of small businesses, directly and indirectly, in the contracts and procurements awarded by the County and/or the City related to the Banks Project. As part of the SBE Program, the County and the City also will encourage Contractors awarded Banks Project contracts to engage or use small businesses as subcontractors and/or suppliers for work to be performed under such contracts. Further, the County and the City will collect data to measure the participation of small businesses and minority and women-owned businesses in contracting and procurement activities related to the Banks Project. On an annual basis during the completion of the Banks Project, the County and the City will review this SBE Policy and the SBE Program and, if appropriate, will modify the policy and/or the program to more effectively achieve the objective of including small businesses in the contracting and procurement activities of the County and/or the City relating to the Banks Project.

5.2 Definitions. For purposes of this SBE Policy and the SBE Program, as used herein, "small business", "small business enterprise" and "SBE" means a "small business enterprise" as defined under Section 323-1-S of the Municipal Code of the City of Cincinnati,

Ohio, except that any requirement for the maintenance of fixed offices within the geographical boundaries of the County or the City (or any other geographic area) contained in such definition will not be applicable for purposes of the SBE Program. As used herein, “**Contractor**” means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

5.3. SBE Participation Goals.

(a) In furtherance of the SBE Policy, it is the goal of the County and the City to award to small businesses, directly or indirectly through contracting, subcontracting and/or procurement activities of Contractors, contracts and procurements which represent at least 30% for Construction, 15% for Commodities and General Services and 10% for Professional Services, respectively, of the aggregate dollars spent annually by the County and/or the City on the Banks Project (the “SBE Goal”). In order to achieve the SBE Goal, the County and the City will encourage Contractors to use small businesses in the performance of contracts awarded to them relating to the Banks Project.

The Developer for the Banks Project fully supports the SBE Policy and the SBE Goals for the publicly-funded portion of the Banks Project and, with respect to the privately-funded portion, it is the goal of the Developer to achieve percentage goals equal to the SBE Goals with respect to the use of small business enterprises.

(b) The following categories are hereby established to identify the contracting and procurement activities covered by this SBE Policy, which categories may be amended from time to time by the County and the City:

(i) **Category A. – Construction:** including, without limitations, any and all contracts relating to new construction and the construction, renovation and/or maintenance of buildings, facilities and other erected structures owned or leased by the County and/or the City and the rehabilitation, remodeling and repairs of roads and bridges.

(ii) **Category B. – Commodities:** including, without limitations, the purchase of all goods, equipment, office and other supplies, art, furniture, and other tangible personal property otherwise not covered by Categories A, C and D herein.

(iii) **Category C. - General Services:** including, without limitations, the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting and any other non-professional services.

(iv) **Category D. – Professional Services:** including, without limitations, the purchase of any and all services for which applicable selection criteria may require a bidder or Contractor to possess a license or other certificate of competency, such as in the areas of accounting and auditing, insurance, laboratory, legal, medical and transportation, or as otherwise described as consultants in the Ohio Revised Code.

(c) Each Contractor for the Banks Project will be required to submit to the County and/or the City, as the case may be, with the Contractor's bid a plan for the engagement of small businesses by the Contractor in connection with the Banks Project. A Contractor's failure to submit a small business utilization plan to the County and/or City with the Contractor's bid may result in a determination that the bid is non-responsive and rejection of the bid.

(d) The County and/or the City may establish goals for the utilization of SBEs for each contract awarded by the County or the City, as the case may be, in connection with the Banks Project, and the goal related to each contract may differ from the goals for other contracts because of the availability of SBEs or other factors.

(e) The County and the City are required to award all contracts for the Banks Project to the "**lowest and best**" bidder. Accordingly, inability of a Contractor to meet the established contract goal or any other goal set forth in this SBE Policy with respect to the utilization of SBEs will not exclude the Contractor from award of a contract if the Contractor's bid otherwise is deemed by the County and/or the City, as the case may be, to be the "**lowest and best**" bid.

(f) For purposes of determining whether the SBE Goal is reached, SBE participation in Banks Project contracts will be counted as follows:

(i) The total dollar value of the contract awarded to an eligible SBE will be counted toward the SBE Goal;

(ii) The County or the City may count toward the SBE Goal a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract of the SBE in the joint venture;

(iii) The County or the City may count toward the SBE Goal only expenditures to SBEs that perform a "**commercially useful function**" in the work of a contract. An SBE is considered to perform a "**commercially useful function**" when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. A business which stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies engages in a

“**commercially useful function**” for purposes of the SBE Program. SBEs that engage in the business of providing brokerage shall not be deemed to perform a “**commercially useful function**” unless the brokerage services are those required or sought by the County or the City, as the case may be. To determine whether an SBE is performing a commercially useful function, the County or the City, as the case may be, will evaluate the amount of work subcontracted, industry practices, and other relevant factors; and

(iv) Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE will be presumed not to be performing a commercially useful function. The SBE may present evidence to rebut this presumption to the County or the City, whichever has awarded the relevant contract.

5.4 Program Support. To facilitate the use of small businesses by Contractors, the County and the City, working together with the Consultant (as hereinafter defined), will:

5.4.1 Sponsor and hold pre-bid meetings to inform potential bidders of the SBE Goal and the availability of small businesses to perform work related to or to serve as suppliers for the Banks Project;

5.4.2 Notify small businesses of contracting, subcontracting and procurement opportunities related to the Banks Project directly and by placing notices and specifications related to such opportunities in their respective government bulletins; and, as funding permits, in major local newspapers in general circulation, local trade and trade association publications, small business enterprise media and other periodicals;

5.4.3 Provide copies of bid notices to local trade associations, local small business chambers of commerce, technical assistance agencies and small business contractor associations;

5.4.4 Provide small businesses with information and list of resources relating to insurance, bonding and financing;

5.4.5 Encourage the formation of joint ventures among small businesses and between small businesses and prime Contractors which may provide an opportunity for small businesses to gain experience;

5.4.6 Make copies of specifications and requests for proposals available for review by any prospective bidder;

5.4.7 Conduct outreach events directed to small businesses regarding contracting procedures and specific contracting opportunities related to the Banks Project;

5.4.8 Make available a list of small business resources that may assist with the development and improvement of immediate and long-term business management, recordkeeping and financial and accounting capabilities; and

5.4.9 Develop and distribute to potential Contractors for the Banks Project through print and electronic means a current directory of small businesses which are certified in accordance with this SBE Policy and which are available to serve as subcontractors and suppliers for the Banks Project, categorized by types of firms to facilitate identifying SBEs with capabilities relevant to a particular specification. Each SBE listing will contain the business name, contact person, mailing and e-mail addresses, phone number, legal structure of the business, and details concerning the SBE's specialty(ies). The directory will be continuously updated and maintained electronically as well as in hard copy. In compiling the directory, the County and the City will seek to identify and certify as many SBEs as possible that have the potential of doing business related to the Banks Project.

5.5 Monitoring SBE Participation.

(a) The County and the City will monitor and track the participation of small businesses in the Banks Project to determine if the SBE Goal is being met and whether Contractors are in compliance with the Non-discrimination Policy. In order to assist the County and the City in that effort, each Contractor for the Banks Project will be required to:

(i) submit to the awarding government entity (the County or the City, as appropriate) with each contract bid related to the Banks Project information regarding any and all small businesses proposed to be used by the Contractor in connection with the performance of the contract, including, but not limited to, a list of the name, business and e-mail addresses and telephone number of, and a brief description of the services to be performed or procurements to be filled (including the amount to be paid for such services or procurements) by, each such small business, which list also shall identify specifically each minority and women-owned business to be utilized in performing the contract if awarded to the Contractor; and

(ii) upon award of a contract related to the Banks Project, compile and deliver to the County and the City *monthly* reports regarding the engagement of small businesses in connection with the Banks Project in sufficient detail so as to allow the County and the City to monitor and track the participation of small businesses in contract and procurement activities related to the Banks Project, including, but not limited to, a list of the name, business and e-mail addresses, telephone number and federal tax identification number of, and a brief description of the actual services performed or procurements filled by (including the amount paid or to be paid for such services or procurements), each small business during the period covered by the report in connection with the Banks Project contract or procurement awarded to such Contractor. In addition, for monitoring

purposes, each such report shall identify specifically each minority and women-owned business included in the list.

(b) A Contractor's non-compliance with the foregoing disclosure or reporting requirements may be considered a breach of contract and may result in the suspension or termination of the Contractor's contract related to the Banks Project or such other remedy as may be deemed appropriate by the County and/or the City.

(c) The County and the City at least annually will prepare or cause to be prepared a consolidated report based on a compilation and analysis of the reports submitted by the Developer and other information, if any, provided to the County and the City by Contractors, regarding the use of small businesses for contracts and procurements related to the Banks Project. The report also will discuss the use of minority-owned and women-owned businesses for services and procurements related to the Banks Project to the extent that such information is available to the County and/or the City. The report will be made available promptly to the general public on the County's and the City's websites as well as in hard copy upon request.

5.6 SBE Certification. For purposes of the Banks Project, only small businesses which are certified by the City pursuant to Section 323-1-S of the Municipal Code of the City of Cincinnati, Ohio will be eligible to participate in the SBE Program. Notwithstanding the foregoing, no requirement regarding the maintenance of fixed offices within the geographical boundaries of the County or the City (or any other geographic area) will be required for such certification.

5.7 Limitations. The provisions of this SBE Policy shall not apply to contracts or procurements valued at \$5,000 or less. In addition, the provisions of this SBE Policy shall not apply to the publicly-funded portion of the Banks Project to the extent that applicable federal and/or state laws, regulations or policies prohibit the application of this SBE Policy to such portion.

5.8 Application of Other SBE Policies. This SBE Policy and the SBE Program established pursuant hereto shall be applied to all contracts and procurements of the County and/or the City awarded or to be awarded in connection with the Banks Project in lieu of any other existing small business enterprise policy, program or contracting and procurement requirements of the County and/or the City.

6. Workforce Development Policy Statement and Objective [41 CFR Part 60]

6.1 Policy and Objectives. The County and the City are equal opportunity employers. The County and the City believe that the reduction in unemployment among local residents, particularly minorities and women, constitutes a valid local government purpose. The County and the City also recognize their obligation to use contracting and procurement activities to facilitate the creation of jobs for unemployed and underemployed individuals. In addition, a portion of the Banks Project will be financed by the federal government through DOT, which requires compliance with Executive Order No. 11246, as amended (the "Executive Order"), and

regulations promulgated by the U. S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”), under 41 CFR Part 60 (the “DOL Regulations”). The Executive Order prohibits discrimination in employment and requires affirmative action by contractors and subcontractors to ensure equal employment opportunities without regard to race, color, sex, religion and/or national origin in performing non-exempt federally-assisted construction contracts and subcontracts. The Executive Order and the DOL Regulations apply to a construction contractor’s or subcontractor’s employees who are engaged in on-site construction, including those construction employees who work on a non-federally assisted construction site. It is the policy of the County and the City to comply, and to require all Contractors awarded contracts or subcontracts related to the Banks Project to comply, with the Executive Order and the DOL regulations (“Banks Workforce Policy”) to the extent applicable. Therefore, in order to increase the capacity of minorities and women to participate in local construction projects, to promote the employment of minorities and women in connection with the Banks Project and to comply with the Executive Order and the DOL regulations, as part of the Banks Inclusion Policy, the County and the City have established the Banks Workforce Development Program (the “Banks Workforce Program”). Each Contractor working on the publicly-funded portion of the Banks Project shall comply with all applicable provisions of the Executive Order, the DOL Regulations and all other rules, regulations, and relevant orders of the U. S. Secretary of Labor. For purposes of this policy, “**Contractor**” means any bidder, contractor, subcontractor, professional service provider, supplier, vendor or other person doing business with or soliciting business from the County and/or the City relating to the Banks Project, unless the context otherwise requires.

All terms used in this Banks Workforce Policy statement which otherwise are not defined in this statement shall have the respective meanings assigned to them, if any, in the Executive Order and/or the DOL Regulations.

6.2 Required Contract Clauses.

(a) Pursuant to the DOL Regulations, the equal opportunity clause published at 41 CFR Part 60-1.4(b) (the “Equal Opportunity Clause”) is required to be included in, and to be made a part of, all nonexempt federally-assisted construction contracts and subcontracts. Each Contractor working on the publicly-funded portion of the Banks Project shall include the Equal Opportunity Clause in each of its contracts and subcontracts. The Equal Opportunity Clause shall be considered to be part of each contract and subcontract related to the Banks Project required by the Executive Order or the DOL Regulations to include such a clause, whether or not such clause is physically incorporated in such contract. [41 CFR Part 60-4.3(a)]

(b) The Standard Federal Equal Employment Opportunity Construction Contract Specifications published at 41 CFR Part 60-4.3(a) (the “Specifications”) are required to be included in, and to be made a part of, all federal and federally-assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director of OFCCP (the “Director”) pursuant to 41 CFR Part 60-4.6 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction federal contracts and subcontracts covered under the Executive Order. Each Contractor working on the publicly-funded portion of the Banks Project shall include the Specifications in each of its contracts and

subcontracts as may be required under the Executive Order and/or the DOL Regulations. The Specifications shall be considered part of each contract and subcontract required by the DOL Regulations to include such a clause, whether or not such clause is physically incorporated in such contracts. [41 CFR Part 60-4.3(a)]

6.3 Affirmative Action Program. [41 CFR Part 60-1.40] Each nonconstruction Contractor awarded a contract by the County or the City related to the publicly-funded portion of the Banks Project, if the Contractor has 50 or more employees and a federally-assisted contract of \$50,000 or more, or has United States bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, shall develop and maintain a written affirmative action program for each of its establishments. Each Contractor awarded a contract or subcontract related to the Banks Project shall require each of its nonconstruction subcontractors, if the nonconstruction subcontractor has 50 or more employees and a federally-assisted contract of \$50,000 or more, or has United States bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, to develop and maintain a written affirmative action program for each of its establishments. An affirmative action program required by this section must comply with applicable DOL Regulations, must be developed within 120 days from the commencement of the awarded Banks Project related contract and must be updated annually. [41 CFR Part 60-1.40(a)] In order to comply with DOL Regulations, an affirmative action program must include the components specified in 41 CFR Parts 60-2.10(b) and 60-2.17, including placement goals for minorities and women. As part of its affirmative action program, a Contractor must conduct a workforce analysis of each job title, determine workforce availability of women and minorities for each job group, and conduct a utilization analysis to determine whether women or minority group persons are "underutilized" in any job group. Based on these analyses, the Contractor shall establish goals to overcome the underutilization of minorities and women and shall make a good faith effort to achieve those goals.

6.4 The Banks Project Workforce Participation Goals. [41 CFR Parts 60-4.3 and 60-4.6]

(a) Under the Executive Order and DOL Regulations, construction Contractors are not required to maintain a written affirmative action program, but must make ***good faith efforts*** to meet demographic goals related to geographic specific census data for minorities and a ***nationwide*** goal for women as determined by the Director or his designee. From time to time, the Director issues goals for minorities and women utilization based on appropriate workforce demographic or other relevant data, which covers construction projects or construction contracts performed in specific geographical areas. The goals for minority and women participation in construction projects are expressed in percentage terms for the covered Contractor's aggregate workforce in ***each*** construction trade on ***all*** construction sites. The current percentage goal for the utilization of women established by the Director is 6.9% of work hours and applies to all of a Contractor's construction sites regardless of where the federal or federally-assisted contract is being performed. Minority utilization goals are formulated in terms of work hours performed in a specific Standard Metropolitan Statistical Area ("SMSA") or Economic Area, and the specified goals apply to all of a Contractor's work in the SMSA, both federally-assisted and private construction work. Therefore, the current goals for minorities and women participation in the workforce for the Banks Project as established by the Director are as follows:

	Goal for minority participation in each trade	Goal for women participation in each trade
For Hamilton County:	11.0%	6.9%
For City of Cincinnati:	11.0%	6.9%

It is the aim of the County and the City to achieve the workforce participation goals with respect to the Banks Project as set forth above. In addition, based upon current labor force information, the County and the City have established a combined goal for the participation of minorities and women in the workforce for the Banks Project of 22% (the “Workforce Participation Goals”).

The Developer for the Banks Project fully supports this Banks Project workforce policy (the “Banks Workforce Policy”) and the Workforce Participation Goals for the publicly-funded portion of the Banks Project and, with respect to the privately-funded portion, it is the goal of the Developer to achieve significant participation of minorities and women as measured in labor hours.

(b) In accordance with the Executive Order and the DOL Regulations, the Workforce Participation Goals apply to a covered Banks Project construction Contractor’s total construction workforce in the SMSA, even if some of the Contractor’s employees perform work under non-federal or nonfederally-assisted construction contracts or subcontracts and even though such work may occur in geographical areas where the Contractor does not currently work on federal or federally-assisted construction projects. The goals applicable to other construction work performed by a Contractor outside of the SMSA (which includes the County and the City) are the goals established by the Director for those geographic areas where such other construction work is being performed.

6.5 Good Faith Efforts. [41 CFR Part 60-4.3]

(a) In order to achieve the Workforce Participation Goals, construction Contractors working on the publicly-funded portion of the Banks Project are required to use their *good faith efforts* to increase the utilization of minorities and women in the skilled construction trades. Further, pursuant to the Executive Order and DOL Regulations, construction Contractors working on the publicly-funded portion of the Banks Project must take certain action to demonstrate their *good faith efforts* to achieve the Workforce Participation Goals, including, but not limited to:

6.5.1 Maintaining a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor’s employees are assigned to work;

6.5.2 Establishing and maintaining current lists of minority and women recruitment sources; providing written notification to minority and women recruitment sources and to community organizations when the Contractor has employment opportunities available; and maintaining a record of the organizations’ responses;

6.5.3 Maintaining current files containing the names, residence and e-mail addresses and telephone numbers of each minority or woman off-the-street applicant and minority or woman referral from a union, recruitment source or community organization and of what action was taken with respect to each such individual;

6.5.4 Developing on-the-job training opportunities and/or participating in training programs for the area which expressly include minorities and women, and providing notice of these training opportunities and job programs to recruitment sources, state employment offices and other referral sources compiled by the Contractor as required under DOL Regulations;

6.5.5 Disseminating the Contractor's equal employment opportunity policy to unions and training programs, requesting their cooperation and assistance in meeting equal employment opportunity obligations, and disseminating the Contractor's equal employment opportunity policy by including it in the Contractor's policy manual or collective bargaining agreement, by publicizing it in the Contractor's newspaper, annual report , etc. (if any), by specific review of the policy with all management personnel and with all minority and women employees at least once a year, and by posting the Contractor's equal employment opportunity policy on bulletin boards accessible to all employees at each location where the construction work is performed;

6.5.6 Disseminating the Contractor's equal employment opportunity policy in advertising and in the news media of general circulation (including minority and women news media);

6.5.7 Directing recruitment efforts, both oral and written, to minority, women and community organizations, to schools with minority and female students and to minority and women recruitment and training organizations serving the Contractor's recruitment area and employment needs;

6.5.8 Encouraging current minority and women employees to recruit other minorities and women; and

6.5.9 Documenting and maintaining records of all solicitations of offers for subcontracts from minority and women construction contractors and suppliers, including circulating solicitations to minority and women contractor associations and other business associations.

(b) Although Contractors are required to make *good faith efforts* to meet the Workforce Participation Goals, the goals are neither quotas, set-asides nor a device to achieve proportional representation or equal results. The Workforce Participation Goals are not intended to require a Contractor to hire a person who does not have the qualifications needed to perform the assigned job successfully, to hire an unqualified person in preference to another applicant who is qualified, or to hire a less qualified person in preference to a more qualified person. Rather the goals are used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent barriers to equal employment opportunities related to the Banks Project,

and no sanctions will be imposed on a Contractor solely for failure to meet the Workforce Participation Goals.

(c) To promote and facilitate such employment, the County and the City, working together and through the Consultant (as hereinafter defined) and/or the Southwest Ohio Regional Workforce Investment Board (the “SWORWIB”), which is funded jointly by the County and the City, will:

6.5.10 Sponsor and hold pre-bid meetings to inform potential bidders of the Workforce Participation Goals and the availability of qualified minorities and women to work on the Banks Project;

6.5.11 Notify minorities and women of employment opportunities related to the Banks Project by placing notices of such opportunities in their respective government bulletins, on their respective websites and, as funding permits, in major local newspapers of general circulation, local trade and trade association publications, small business enterprise media and other periodicals;

6.5.12 Provide copies of notices of employment opportunities related to the Banks Project to local minority and women trade associations, local minority and women chambers of commerce, technical assistance agencies, employment agencies, community resource organizations and minority and women contractor associations;

6.5.13 Work with various community-based/workforce development programs that provide instruction and training opportunities for minorities and women interested in gaining experience in construction and related fields to establish a job readiness program for, and to increase the pool of minorities and women qualified to work on, the Banks Project;

6.5.14 Coordinate with local union and non-union pre-apprenticeship programs, career, and technical centers, universities, educational associations, and local community organizations who provide workforce development programs to identify minorities and women interested in pursuing careers or jobs in the construction industry; and

6.5.15 Implement pre-apprenticeship programs to develop the skill levels of minorities and women interested in pursuing jobs in the construction industry.

In addition, working together and through the SWORWIB, the County and the City will use their best efforts to develop and distribute to potential Contractors for the Banks Project through print and electronic means a current directory of qualified minority and women construction and other workers available for employment related to the Banks Project, categorized by types of experience and skills to facilitate identifying minorities and women with skills and capabilities relevant to particular job requirements. To the extent permissible by law, each listing will contain the name, residence and e-mail addresses, telephone number, and details concerning the job qualifications of each individual. The directory will be continuously updated and maintained electronically as well as in hard copy.

(d) The Workforce Participation Goals established herein are interim and designed to be reasonably attainable. The County and the City will review the Workforce Participation Goals at least annually and, if legally permissible and appropriate, based upon the relevant facts and circumstances, from time to time, the County and the City may modify or adjust the Workforce Participation Goals.

6.6 Monitoring the Banks Project Workforce Participation.

(a) The County and the City, working together and through the Consultant, will monitor and track the participation and employment of minorities and women as construction and other workers in connection with the Banks Project to determine if the Workforce Participation Goals are being met. In order to assist the County and the City in that effort, each Contractor awarded a contract for the Banks Project will be required to:

(i) submit to the awarding government entity (the County or the City, as appropriate) promptly after such award information regarding the number of full and part-time employees of the Contractor who will work on the Banks Project, identifying such employees who are minorities and women, including, but not limited to, a list of the name, residence and e-mail addresses, and telephone number of, and a brief general description of the work to be performed by, each such employee, information regarding whether the Contractor expects to hire additional employees to work on the Banks Project and, if so, a brief general description of the skills and capabilities requirements for each such additional employee; and

(ii) compile and deliver to the County and the City *monthly* reports regarding the employment, if any, of additional minorities and women to work on the Banks Project.

(b) A Contractor's non-compliance with the requirements of the Executive Order, the DOL Regulations, this Banks Workforce Policy or the Banks Workforce Program, as such provisions are applicable with respect to the publicly-funded portion of the Project, may be considered a breach of contract and may result in the suspension or termination of the Contractor's contract related to the Banks Project or such other remedy as may be deemed appropriate by the County and/or the City.

6.7 Limitations. The provisions of this Banks Workforce Policy and the Banks Workforce Program shall not apply to a Contractor with a federally-assisted construction contract or subcontract valued at \$10,000 or less. [40 CFR 60-4.1]

7. Employee Readiness Program

7.1 Establishment. In order to accomplish the Workforce Participation Goals, the County and the City, working together and with the SWORWIB, will cause to be established

an employee readiness program (the “ERP”) to work in conjunction with various community-based workforce development programs to increase the construction skill levels of County and City residents and to help them reach the qualification levels needed to gain entry into union and open shop apprenticeship programs. Additional details regarding the role and make-up of the ERP are set forth in Schedule A attached. To facilitate this effort, the County and the City, working together and through the Consultant, will:

(a) Coordinate with various community-based workforce development programs that provide instruction and training opportunities for those interested in gaining experience in construction industry and related fields;

(b) Coordinate with local union and non-union pre-apprenticeship programs, career, and technical centers, universities, and educational associations and organizations to identify and engage those interested in pursuing careers in the construction industry and related fields; and

(c) Advertise and promote the availability of workforce project opportunities in a broad-based manner.

7.2 Employee Readiness Committee. The County and the City endorse the work and efforts of the SWORWIB and will encourage the SWORWIB to establish an employee readiness committee (the “ERC”) to oversee implementation of the ERP. The purpose of the ERC will be to evaluate the effectiveness of the ERP and new and existing apprenticeship programs which are available to residents of the County and/or the City. The membership of the ERC should include an elected official, Contractors, union and non-union officials, a SWORWIB member, and apprenticeship representatives. The ERC should provide input and recommendations to the SWORWIB and, in turn, the SWORWIB should report quarterly to the County, the City and the Consultant about the progress and effectiveness of the ERP.

8. Inclusion Outreach Consultant

8.1 Engagement of Consultant. In order to facilitate the implementation and administration of this Banks Inclusion Policy, including the DBE Program, the SBE Program and the Banks Workforce Program, the County, the City and the Developer will hire an inclusion outreach consultant (the “Consultant”) to assist with the Banks Project. The Consultant will be responsible for conducting extensive outreach programs directed at DBEs, including minority and women-owned businesses, SBEs, and qualified minorities and women construction workers, during the preconstruction and construction phases of the Banks Project. The Consultant also will be responsible for tracking, monitoring and preparing monthly participation reports on the utilization of DBEs, including minority and women-owned businesses, SBEs and qualified minorities and women construction workers in connection with the Banks Project.

8.2 Other Duties of Consultant. The Consultant will work cooperatively with the Hamilton County Office of Small Business Development (the “Small Business Development Office”), and the City of Cincinnati Office of Contract Compliance (the “COCC”) in connection with the implementation and administration of this Banks Inclusion Policy. In addition, the

Consultant will seek input and advice regarding effective outreach efforts as contemplated by this Banks Inclusion Policy from business leaders, DBEs, small business owners and representatives of trade associations and community organizations, including, but not limited to, the Greater Cincinnati & Northern Kentucky African American Chamber of Commerce, the Cincinnati USA Hispanic Chamber of Commerce, the Cincinnati USA Regional Chamber of Commerce, the Greater Cincinnati Building & Construction Trades Council, Allied Construction Industries (ACI), Ohio Valley Chapter of Associated Builders and Contractors, Inc., South Central Ohio Minority Business Council, Cincinnati Women In Construction, Cincinnati Business Incubator, the Cincinnati Minority Contractors Business Assistance Program, the Cincinnati-Hamilton County Community Action Agency, the Cincinnati Unit of the NAACP, the Hamilton County Department of Job and Family Services and the Cincinnati Workforce Development Center.

9. Socio-Economic Impact

9.1 Data Collection and Analysis. The County and the City anticipate that the Banks Project will have a significant and positive social and economic impact on the Greater Cincinnati and Hamilton County region. The County and the City also believe that it is important to measure such impact, particularly in the census tract areas within the SMSA that includes the County and the City (the “Hamilton County SMSA”) which have been deemed to be economically distressed. For that purpose, the County and the City will collect and analyze social and economic data to monitor and measure the regional impact of the Banks Project. To assist the County and the City and to facilitate such efforts, each Contractor for the Banks Project will be required to:

(a) prepare and submit to the awarding government entity (the County or the City, as appropriate) quarterly reports regarding:

(i) the use of first-tier subcontractors, suppliers and vendors in connection with the Banks Project during the period covered by the report, including, but not limited to, (i) the name and principal business address of each subcontractor, supplier and vendor and (ii) the dollar value of each Banks Project related subcontract and procurement awarded by the Contractor to the first-tier subcontractor, supplier or vendor during the covered period; and

(ii) the number of persons employed by the Contractor to work on the Banks Project (or to perform any work directly or indirectly related to the Banks Project) during the covered period who reside in the SMSA which includes Hamilton County, together with the aggregate amount of salaries and gross wages paid to such persons, based upon each zip code included in such geographic area.

Each Banks Project related subcontract between a Contractor and a first-tier subcontractor, supplier or vendor shall require the subcontractor, supplier or vendor to prepare and submit to the government entity that awarded the prime contract or procurement to the Contractor (the County

or the City, as appropriate) quarterly reports containing information as described or otherwise required pursuant to this provision with respect to the subcontractor's first-tier subcontractor supplier or vendor contract, procurement and/or employment activities related to such awarded subcontract or procurement.

9.2 Limitations. The provisions of Section 9.01 shall not apply to individual Banks Project related contracts, subcontracts and/or procurements valued at \$10,000 or less, unless or until the aggregate value of a series of such contracts, subcontracts and/or procurements awarded to the same Contractor, subcontractor, supplier or vendor exceeds \$10,000. The information described under Section 9.01(a)(ii) shall not be required for a supplier or vendor that does not have any office, supply warehouse or distribution facility located within [50] miles of the County.

10. Rules and Guidelines

10.1 Authorization. The Small Business Development Office and the COCC are authorized to jointly prepare and issue rules and guidelines for the implementation and administration of this Banks Inclusion Policy consistent with the purposes and intent of such policy as set forth herein. Nothing set forth herein or in such rules and guidelines should be interpreted or applied in any manner that would be in violation of existing applicable state or federal law. **[Accordingly, the Banks Project Small Business Enterprise Program Rules and Guidelines dated _____, 2007 have been developed by the Small Business Development Office and the COCC and specifically apply to this Banks Inclusion Policy.]**

SCHEDULE A

Employee Readiness Program

[TO BE ATTACHED]

Responsible Bidder Requirements Coop Exhibit H

Responsible Bidder Requirements Applicable to Public Contracts

Contractors shall be required to satisfy all of the following pre-award responsibilities and agree to all of the following provisions which will be incorporated in the contracts for construction projects within the Banks Development. The City of Cincinnati (“City”) and the Board of County Commissioners of Hamilton County, Ohio (the “County”) (hereinafter the City and the County shall be collectively referred to as the “Public Parties”) believe that these requirements are reasonably related to the successful performance of the Banks Development projects. These requirements shall also be set forth and integrated with the Bid Package Conditions.

1. Each bidder shall certify that it will require all contractors who bid or perform any work pursuant to the contract on which the bidder is bidding to satisfy all of these Responsible Bidder Requirements.
2. Each bidder shall certify that it will pay prevailing wages, in amounts determined according to Ohio’s Prevailing Wage Law, R.C. 4115.03 through 4115.16, and O.A.C. 4101:9-4-01 through 4101:9-4-31, on all construction projects that are part of the Banks Development, except as otherwise provided herein. Notwithstanding the foregoing provision, the payment of prevailing wages shall not be required with respect to leasehold and/or tenant improvements and/or the fit out of interior spaces of the office, retail and condominium elements of the Banks Project.
3. As a condition precedent to the award of a contract or subcontract of Two Hundred and Fifty Thousand Dollars (\$250,000) or more, the Public Parties may require the lowest bidder to engage in a review of the constructability and scope of the bid to verify that the contractor included all required work.
4. If the bid of the lowest bidder is more than twenty percent (20%) below the bid of the next lowest bidder, the Public Parties may request that the lowest bidder identify three (3) construction projects that it has successfully completed within the five (5) years before the submission of the bid. This information may be provided in the post-bid scope review to the Public Parties.
5. Each bidder shall certify that it will employ supervisory personnel on the project that (a) are qualified to perform in such supervisory capacity and (b) have any license or licenses required by applicable law to perform in such capacity.
6. Each bidder shall certify that it is not currently debarred from performing state or federal construction contracts (after all appeals), because of a violation of the Fair Labor Standards Act and/or any state or federal

prevailing wage law. Each bidder shall provide a list of every occasion on which it has been debarred from performing local, state or federal construction contracts (after all appeals), because of a violation of the Fair Labor Standards Act and/or any state or federal prevailing wage law, during the last ten years.

7. Each bidder shall certify that it, as well as each subcontractor it will utilize on the Project has implemented an OSHA-compliant Safety Program which includes: a) with respect to all supervisors, completion of OSHA's thirty (30) hour safety course; and b) with respect to all field employees, completion of OSHA's ten (10) hour safety program. Each bidder shall provide evidence of implementation of an OSHA-compliant safety program as set forth herein.
8. Each bidder shall certify that it has implemented a substance-abuse policy and that it is in compliance with Ohio's Drug Free Workplace Requirements; bidders will provide evidence of implementation of such policies upon written request of the Public Parties.
9. Each bidder shall certify that it has all licenses required by applicable state law and regulation to perform work required herein.
10. Each bidder shall list any professional license or licenses that have been revoked by Ohio or revoked by any other state within five (5) years prior to the date of the contractor's bid.
11. Each bidder shall certify that it has no final judgments against it which are not secured by payment bond or other surety at the time of award which are equal to or exceed fifty percent (50%) of the contractor's net worth.
12. Each bidder shall certify that it has complied with applicable unemployment and workers compensation laws for at least two (2) years preceding the date of bid submittal.
13. Each bidder shall certify that with respect to each a prime trade contract (e.g., plumbing, HVAC, electrical and fire safety) it will not subcontract more than seventy-five percent (75%) of the bid amount for that prime trade contract. A bidder may apply for a waiver of the foregoing requirement by the Public Parties, which waiver shall be subject to the review and approval of the Public Parties.
14. Each bidder shall certify that it does not have an Experience Modification Rating of more than 1.3 (a penalty rated employer) with respect to the Ohio Bureau of Workers' Compensation risk assessment rating.
15. Each bidder shall certify that it will have in place a meaningful Health Care Medical Plan, and provide, as part of its responsibility review, evidence of a Health Care Medical Plan list of eligible employees and the

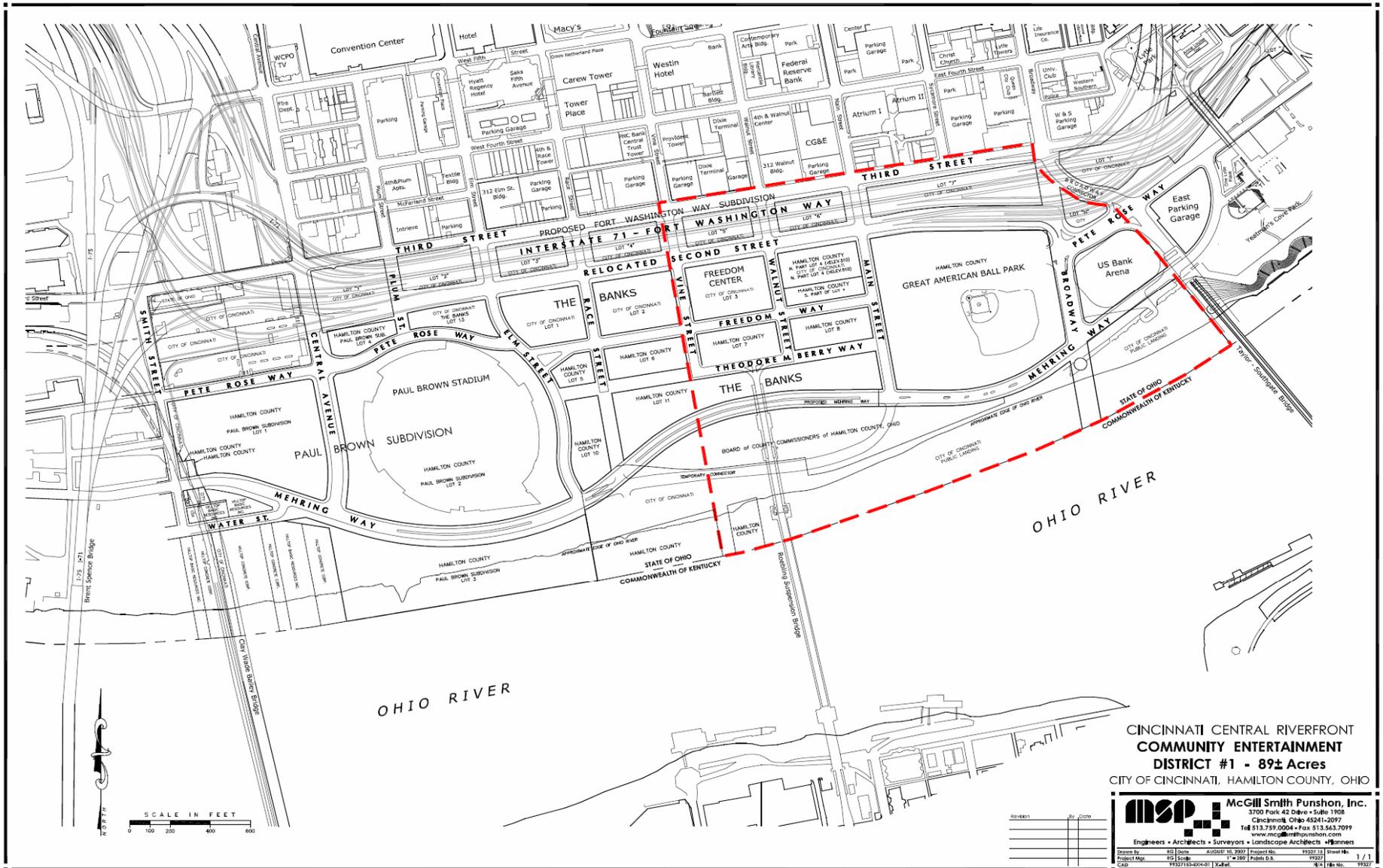
bidder's share of the cost for those employees working on the Banks' Project. Notwithstanding the foregoing, a bidder with gross revenues of two million dollars (\$2.0M) or less in any of the preceding three years shall be exempted from providing a Health Care Medical Plan as set forth herein. However, any such bidder exempted from this requirement shall certify that it will comply with the applicable prevailing wage requirements with respect to medical insurance.

16. Each bidder shall certify that it will have a meaningful pension or retirement program for its employees and provide, as part of its responsibility review, evidence that it contributes, on a regular basis to an employee pension or retirement program for its field employees and the list of employees for the employees with such coverage. Notwithstanding the foregoing, a bidder with gross revenues of two million dollars (\$2.0M) or less in any of the preceding three years shall be exempted from providing a pension or retirement program as set forth herein. However, a bidder exempted from this requirement shall certify that it will comply with the applicable prevailing wage requirements with respect to a pension or retirement program.
17. Each bidder shall certify that it shall employ field employees on this project that will meet at least one of the following criteria:
 - a. Completion of a state or federally approved apprenticeship program in the skilled trade craft such employee is performing as a journeyman; or
 - b. Worked as a skilled trade person for at least three (3) years in the craft; or
 - c. Currently enrolled in a state or federally approved apprenticeship program for the craft; or
 - d. Completed the City/County Banks Employee Readiness Program.

A bidder may request a waiver from the Public Parties of the foregoing requirements with respect to a field employee or a particular position. In requesting such waiver, a bidder shall be required to provide documentation of the skills and experience of such employee or the applicable position which form the basis for such request. Any waiver of the foregoing requirements shall be subject to the review and approval of the Public Parties.

18. Each bidder shall certify that it is not debarred from bidding on the construction project contract in question.
19. A bidder's falsification of any of the certifications herein or failure to comply with the requirements set forth herein, shall be the basis for a default termination of the contract.

Community Entertainment Districts (District 1) Coop – Exhibit I



CINCINNATI CENTRAL RIVERFRONT
COMMUNITY ENTERTAINMENT
DISTRICT #1 - 89± Acres
CITY OF CINCINNATI, HAMILTON COUNTY, OHIO

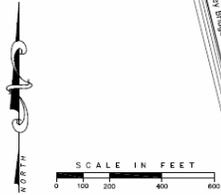
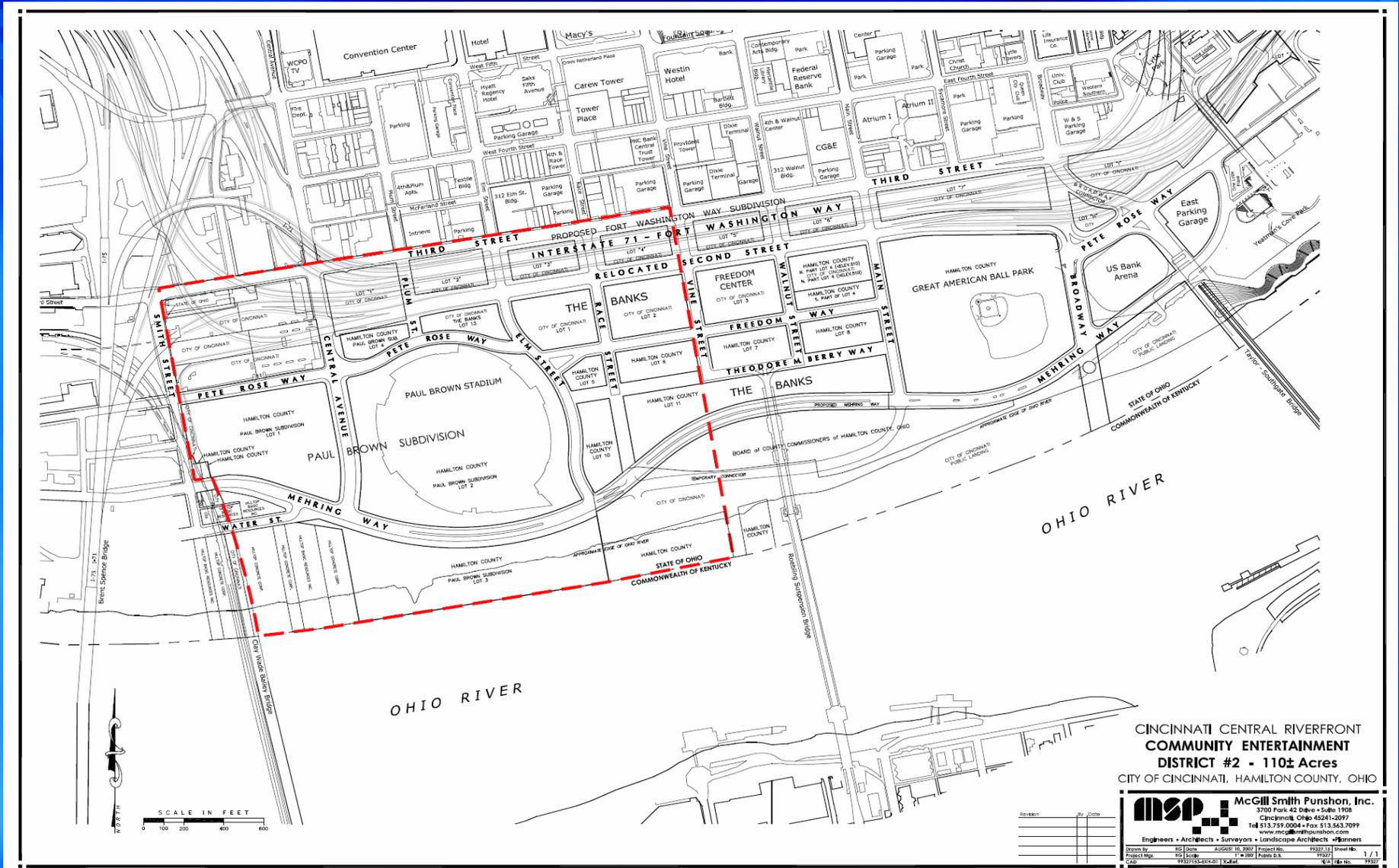
MSP McGill Smith Punshon, Inc.
3700 Park 42 Drive • Suite 1908
Cincinnati, Ohio 45241-2097
Tel 513.759.0004 • Fax 513.563.7099
www.mcgillsmithpunshon.com

Engineers • Architects • Surveyors • Landscape Architects • Planners

Revision	By	Date

Station No. 865 Date: AUGUST 18, 2007 Project No. 99337.03 Sheet No. 1 / 1
 Product Title: 89± Acres 1" = 200' Plan No. 99337
 CAD: 9933713-204-01 TJK/ef

Community Entertainment Districts (District 2) Coop – Exhibit I



CINCINNATI CENTRAL RIVERFRONT
**COMMUNITY ENTERTAINMENT
DISTRICT #2 - 110± Acres**
CITY OF CINCINNATI, HAMILTON COUNTY, OHIO

msp McGill Smith Punshon, Inc.
3700 Park 42 Drive • Suite 1108
Cincinnati, Ohio 45241-2097
Tel 513.759.0004 • Fax 513.563.7099
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Engineers • Architects • Surveyors • Landscape Architects • Planners

Drawn By: []
Project Mgr: []
CAD: []

August 18, 2007 Project No: 19227.13
1/2007 Points D.S. 19227
8/1/2007 Rev. No. 19227

Riverfront Park Plan

Coop Exhibit J

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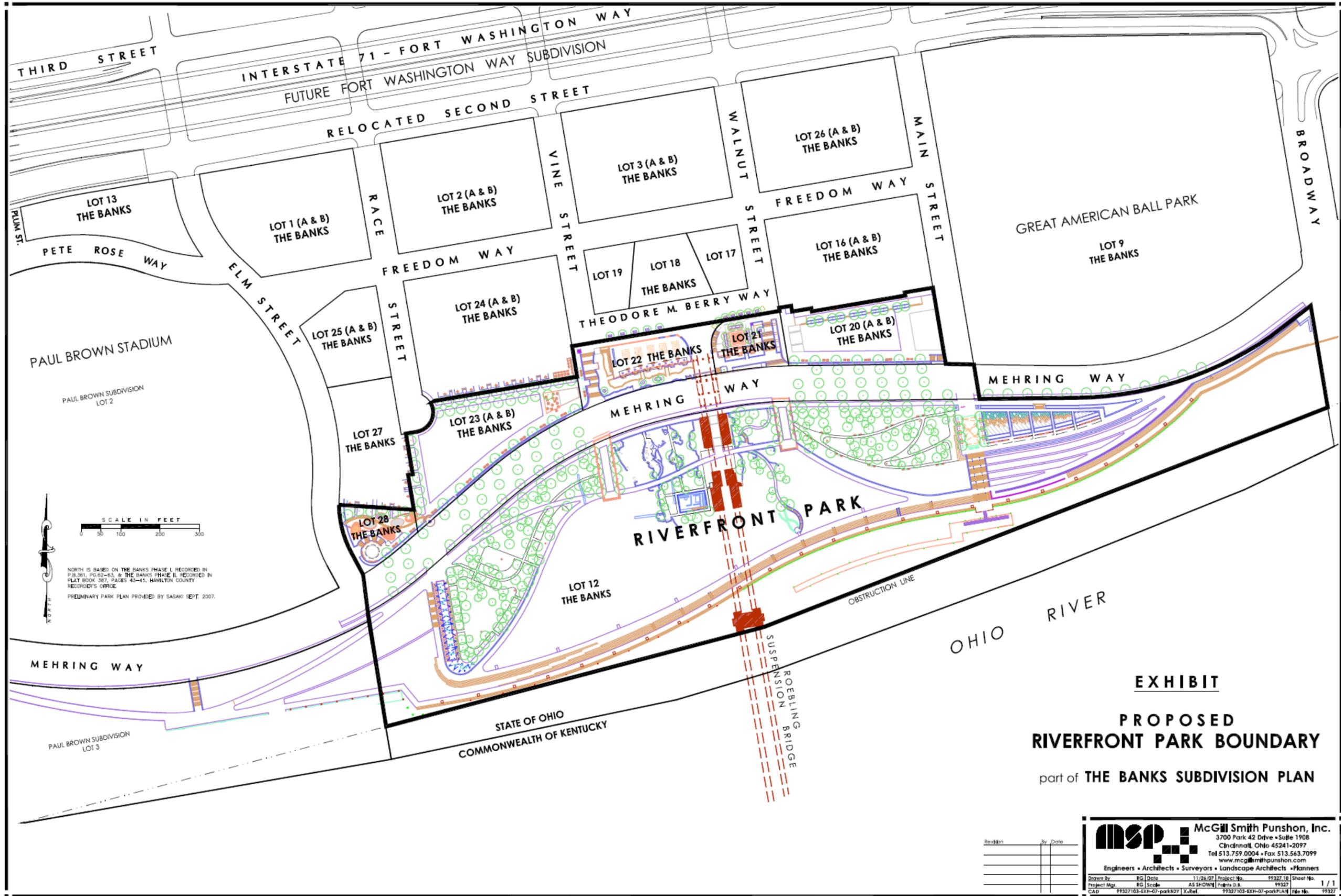


EXHIBIT
PROPOSED RIVERFRONT PARK BOUNDARY
part of THE BANKS SUBDIVISION PLAN

Revision	By	Date

msp McGill Smith Punshon, Inc.
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Drawn By	RG	Date	11/26/07	Project No.	99327.10	Sheet No.	1 / 1
Project Mgr.	RG	Scale	AS SHOWN	Project D.D.	99327		
CAD	99327103-EXH-07-parkBDY	Xref	99327103-EXH-07-parkBDY	File No.	99327		