



City of Pittsburgh

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Text File

Introduced: 4/14/2009

Bill No: 2009-1284, **Version:** 1

Committee: Committee on Finance and Law

Status: Passed Finally

Presented by Mr. Peduto

Resolution authorizing the execution of an Easement Agreement between the City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania and HOLDINGS ACQUISITION CO., L.P., a Delaware limited partnership for real property abutting the north shore of the Ohio River to be made part of the "Casino Property".

WHEREAS, Holdings is the owner of certain real property abutting the north shore of the Ohio River, located in the 21st Ward of the City of Pittsburgh, Allegheny County, Pennsylvania, which is more particularly described on Exhibit A attached hereto and made a part hereof (the "Casino Property");

WHEREAS, the City is the owner of certain real property contiguous to the western boundary of the Casino Property, which is more particularly described on Exhibit B attached hereto and made a part hereof (the "City Property");

WHEREAS, Holdings desires to perform certain work on the Casino Property and/or in the Ohio River, including, but not limited to, erecting an amphitheatre and stage, demolishing a river dock, stabilizing the riverbank and installing landscaping (collectively, the "Casino Property Improvements");

WHEREAS, Holdings desires to make certain improvements to the City Property in connection with the Casino Property Improvements, including, but not limited to, construction of a sheet pile wall along a portion of the Ohio River, filling and grading, installation of landscaping, stabilization of slopes and the construction and/or reconstruction of the pedestrian walkway/bike trail existing on the City Property (collectively, the "City Property Improvements"); and

WHEREAS, the City has agreed to grant Holdings (a) an easement, in, upon, under and across the portion of the City Property legally described on Exhibit C and graphically depicted on Exhibit D, attached hereto and made a part hereof (the "Easement Area") and (b) the right to use certain of the City's riparian rights, on the terms and conditions set forth herein, in order to allow Holdings to construct and maintain the City Property Improvements.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Mayor and the Director of the Department of Public Works, on behalf of the City of Pittsburgh, are hereby authorized to enter into an Easement Agreement with Holdings Acquisition Co., L.P., in a form approved by the City Solicitor, for real property abutting the north shore of the Ohio River to be made part of the "Casino Property".

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. The foregoing recitals are incorporated herein by reference and made a part hereof.

2. The City hereby grants and conveys, subject to any and all easements and other matters set forth in instruments of record and/or apparent on the City Property, to Holdings, (a) a non-exclusive easement to use the Easement Area for the construction, erection, location, maintenance and repair of the City Property Improvements, for so long as the City Property Improvements are in existence (the "Easement") and (b) a temporary right, license and privilege to exercise the City's riparian rights (the "Riparian Rights") in and to that portion of the Ohio River abutting the Easement Area during the construction of the City Property Improvements, which riparian rights will also be retained by the City.

3. Holdings agrees to construct the City Property Improvements in accordance with plans and specifications approved by the City of Pittsburgh. Plans and specifications for the City Property Improvements shall be submitted to the Director of Public Works for review and approval.

4. Holdings, at its sole effort and expense, shall maintain the City Property Improvements in a manner and to a standard consistent with the Casino Property Improvements (the "Maintenance Standard"), provided that the City grants to Holdings the right, license and privilege to exercise the necessary Riparian Rights to perform said maintenance. Notwithstanding the foregoing, in the event that the City determines that the City Property Improvements are not being maintained in accordance with the Maintenance Standard, then the City may notify Holdings of such failure. Unless Holdings responds within 10 days of the date of the notice, in a manner satisfactory to the City, in its reasonable discretion, then the City shall have the right to perform the maintenance in accordance with the Maintenance Standard and invoice Holdings for the same. Any maintenance in excess of the Maintenance Standard shall be performed by the City, at its sole effort and expense. The City shall use its best good faith efforts not to disrupt the operation of Holdings' business on the Casino Property while performing any maintenance to the City Property Improvements.

5. Except in instances where the City performs maintenance on the Easement Area as set forth in Section 4 herein, Holdings shall indemnify, save and hold harmless, and defend the City, its officers, agents and employees from and against all liens, charges, claims, demands, losses, costs, judgments, liabilities, and damages of every kind and nature whatsoever, including court costs and attorney's fees arising from or related to the construction, erection, location, maintenance and repair of the City Property Improvements within the Easement Area.

6. a) This Agreement contains the entire agreement of the parties respecting the matters set forth herein. This Agreement may not be modified, discharged or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties hereto.

b) This Agreement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict of

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laws principles.

c) If any provisions or portions of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

d) This Agreement is intended to be solely for the benefit of the parties hereto and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

e) The City has authorized the execution of this Agreement by Resolution No. ____ of 2009 effective _____, 2009.

[SIGNATURE PAGE FOLLOWS]