

**MEMORANDUM OF UNDERSTANDING
AMONG THE CITY OF CINCINNATI, THE CINCINNATI PARKS FOUNDATION
AND THE CINCINNATI BOARD OF PARK COMMISSIONERS¹**

This Memorandum of Understanding (the “Agreement”) is made as of the Effective Date (as defined below) by and among the Cincinnati Board of Park Commissioners (“Park Board”), the Cincinnati Parks Foundation (“Foundation”), and the City of Cincinnati (“City”) (collectively, the “Parties”).

This Agreement is hereby executed by the duly authorized representatives of the Parties on _____, 2020 (the “Effective Date”).

WHEREAS the Parties are entering into this Agreement to specify their working relationship in regards to the construction of a park, as approved by the Park Board and the City on Lot 23 of the riverfront project commonly known as the Banks (the “Lot 23 Park”);

WHEREAS the City supports the leadership of the Park Board and the fundraising activities of the Foundation, which both serve to promote a viable and sustainable parks system in the City of Cincinnati (“Cincinnati Parks”), including the Lot 23 Park;

WHEREAS as of the Effective Date, the estimated construction cost of the Lot 23 Park is approximately \$6,855,000 and the cost of a storage easement on Lot 28 for Parks Department use is \$120,000;

WHEREAS Music and Event Management, Inc. (“MEMI”) is contributing \$1,450,000 to the construction of the Lot 23 Park that will upon receipt be allocated to the Smale Riverfront Extension project account (the “Lot 23 Project Account”) and prior to the Effective Date, the City allocated \$1,450,000 to the Lot 23 Project Account;

WHEREAS MEMI, the City, and the Park Board have applied for an additional capital grant from the State of Ohio of up to \$2,000,000 (the “State Grant”);

WHEREAS, subject to the terms and conditions of this Agreement, the City commits to contribute an additional (i) \$1,300,000 and (ii) the Banks Park Financing, as defined below;

WHEREAS the Park Board and the Foundation agree to accept such commitment from the City, subject to the terms and conditions contained herein, including repayment to the City from the Foundation of the Banks Park Financing;

WHEREAS the Park Board and the Foundation each consents that repayment of the Banks Park Financing may be used for any lawful purposes, including purposes unrelated to Cincinnati Parks, as determined by the City in its sole and absolute discretion, notwithstanding any language

¹ Note to draft: This draft remains subject to the City’s continuing review and approval. The City is in the process of evaluating the terms, including, without limitation, the Foundation repaying to the City any interest or other costs of issuance related to the Banks Park Financing.

in any prior agreement among the Foundation, Park Board and/or City, as applicable;

WHEREAS the Parties are committed to the financing and construction of the Lot 23 Park and the storage easement on Lot 28 and, toward that end, this Agreement shall serve as the governing document between the Parties for the financing of the Lot 23 Park and Lot 28 storage easement;

WHEREAS the Foundation, a wholly-independent 501(c)(3) non-profit corporation, is committed to building broad-based private/public partnerships supporting the conservation and enhancement of Cincinnati Parks through education, advocacy, and fundraising;

WHEREAS the Park Board controls and manages all Cincinnati Parks as a constituent entity of the City of Cincinnati; and

WHEREAS the Parties agree transparency and accountability regarding park operations and finances are critical to maintaining public trust;

NOW THEREFORE, in consideration of the mutual commitments, forbearances, and other sufficient consideration set forth herein, the Parties agree as follows:

I. Financing of the Lot 23 Park and Lot 28 Storage Easement by the City of Cincinnati.

- A. City Financing. In connection with execution of this Agreement, the City shall allocate, subject to appropriation, an amount equal to \$2,775,000 from bond proceeds or notes (such form issuance to be determined by the City's Finance Department), the repayment of which is supported by the State Grant, fundraising revenue from the Foundation (as further defined in Section II), and/or revenues generated by the District 2-Downtown South/Riverfront District Incentive District, to the Lot 23 Project Account in order fund the construction of the Lot 23 Park and the Lot 28 storage easement (the "Banks Park Financing"). The City will also allocate, subject to appropriation, an additional \$1,300,000 to the Lot 23 Project Account. In the event that the State Grant is awarded by the State of Ohio for the construction of the Lot 23 Park, the Banks Park Financing will be reduced by an amount equal to the amount of the State Grant actually awarded.
- B. Restrictions on Banks Park Financing. The Park Board agrees that the Banks Park Financing is to be used solely for the construction of the Lot 23 Park and the storage easement on Lot 28 and is not to be used for any other Cincinnati Parks purposes. The Park Board further agrees that Park Board approval is not required in order to accept the Banks Park Financing. The Park Board consents that any savings with respect to the construction of the Lot 23 Park that remain in the Lot 23 Project Account can be appropriated by the City and used for any lawful purpose as determined by the City in its sole and absolute discretion, including specifically consenting that these remaining funds can be used for non-park purposes. If such appropriation occurs, the amount of the Banks Park Financing to be repaid by the Foundation will be correspondingly reduced. Notwithstanding any language to the contrary contained herein, in the event that the construction of the Lot 23 Park and the Lot 28 storage easement costs more than \$6,975,000, the City is not obligated to contribute any additional funds to such cost

overruns and the Park Board, in collaboration with the Foundation, is responsible for funding such additional costs.

II. Fundraising and Repayment Responsibilities of the Foundation and the Park Board.

- A. Fundraising. The Park Board and Foundation agree that, in consideration for the Banks Park Financing, the repayment to the City of the Banks Park Financing shall be a fundraising priority of the Foundation. The Park Board agrees to utilize the Foundation as its primary philanthropic partner and agrees not to direct any private donations intended or expected to be used for repayment of the Banks Park Financing away from the Foundation and/or the City, as applicable.
- B. Repayment. Upon the receipt of any gifts, donations, bequests, endowments, or any other Foundation-generated funds intended or expected to reimburse the Banks Park Financing, the Foundation shall timely transfer all of said funds to the Park Board. By executing this Agreement, the Park Board agrees to receive, accept and direct said funds to the account designated by the City at the time of transfer and no further action by the Park Board is necessary to effectuate such transfer of funds. The Park Board and the Foundation acknowledge, agree, and consent that any funds remitted by the Foundation and/or the Park Board to the City as repayment of the Banks Park Financing may be used by the City for any lawful purpose, as determined by the City in its sole and absolute discretion, and such funds are not required to be used for Cincinnati Parks purposes.
- C. Remedies Until Repayment of Banks Park Financing. Until such time as the City is repaid in full for the Banks Park Financing, the Park Board and Foundation acknowledge, agree and consent that (i) no additional improvements to the Lot 23 Park will be constructed or paid for by the Park Board and/or the Foundation and (ii) half of any revenue received by the Park Board from events on Lot 23 and, if applicable, Lot 28, will be remitted upon receipt to repay the City for the Banks Park Financing, subject to any and all agreements with MEMI. No further action by the Park Board is necessary to effectuate any transfer of funds pursuant to this Section. The Parties anticipate the Banks Park Financing will be repaid to the City on or before the date that is five years after the Effective Date.

III. Miscellaneous

- A. Necessary Steps for Implementation. The Parties hereby agree to take all reasonable steps to implement the provisions of this Agreement within their respective agencies.
- B. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.
- C. Construction. This Agreement has been prepared jointly by the Parties hereto after arms-length negotiations and any uncertainty or ambiguity existing herein shall not be interpreted against any party, but according to the application of the rules regarding interpretation of contracts.

- D. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, superseding any and all prior agreements with respect to the subject matter hereof, whether oral or written, including, but not limited to, all oral communications, oral representations, oral understandings, and oral agreements between the Parties, and may not be modified except in writing signed by all Parties hereto subject to Section III.F below.
- E. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the City of Cincinnati and the State of Ohio, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Ohio. Any actions arising out of or in connection with this Agreement shall be brought in the Hamilton County Court of Common Pleas or the United States District Court for the Southern District of Ohio, and the Parties agree that venue in such court is proper.
- F. Amendment. This Agreement may be amended only by a written amendment sign by all of the Parties.
- G. Assignment. Neither the Park Board nor the Foundation may assign its obligations or interests under this Agreement without the prior written consent of the City.
- H. Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.
- I. Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.
- J. Time. Time is of the essence with respect to the performance by the Parties of their respective obligations under this Agreement.
- K. Counterparts and Electronic Signatures. This Agreement may be executed by the Parties in two or more counterparts and each executed counterpart shall be considered an original. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

(signatures on next page)

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

CITY OF CINCINNATI

By: _____
Patrick A. Duhaney, City Manager

APPROVED AS TO FORM:

Paula Boggs Muething, City Solicitor

RECOMMENDED BY:

Kara Kish, Director of Parks

THE CINCINNATI PARKS FOUNDATION

By: _____
Donald L. Mellott, Jr.
President, Board of Directors

CINCINNATI BOARD OF PARK COMMISSIONERS

By: _____
Brad Lindner, President

ATTACHMENT A

ATTACHMENT B

SCHEDULE OF TRANSFER

Section 1. Return to Source: \$4,200,000.00

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM NUMBER: DESCRIPTION	PROJECT OR FUND TO BE TRANSFERRED TO NUMBER: DESCRIPTION	TOTAL BUDGETED COST ALL FUNDS PRIOR	BUDGETED COST REVISED	AMOUNT TO BE APPROPRIATED OR TRANSFERRED
Community & Econ Dev. Admin. 161	181643 Villages at Roll Hill Boys and Girls Club	758 Income Tax Permanent Improvement Fund	750,000.00	683,178.00	66,822.00
	181643 Villages at Roll Hill Boys and Girls Club	762 Income Tax Permanent Improvement Fund	683,178.00	0.00	683,178.00
Community & Econ Dev. 164	181646 Mercy Hospital West Site Acquisition	758 Income Tax Permanent Improvement Fund	300,000.00	0.00	300,000.00
	181693 Durner Building Renovation	758 Income Tax Permanent Improvement Fund	300,000.00	25,000.00	275,000.00
Parks Administration & Program Services 203	202008 Smale Riverfront Park Extension	757 Miscellaneous Permanent Improvement Fund	1,450,000.00	0.00	1,450,000.00
Public Services City Facility Management 255	192525 Fire Training Facility	861 Public Building Improvement Bond Fund	10,000,000.00	8,575,000.00	1,425,000.00

Section 2. Appropriate: \$8,275,000.00

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM NUMBER: DESCRIPTION	PROJECT OR FUND TO BE TRANSFERRED TO NUMBER: DESCRIPTION	TOTAL BUDGETED COST ALL FUNDS PRIOR	BUDGETED COST REVISED	AMOUNT TO BE APPROPRIATED OR TRANSFERRED
Community & Econ Dev. Admin. 161	757 Miscellaneous Permanent Improvement Fund	181643 Villages at Roll Hill Boys and Girls Club	0.00	750,000.00	750,000.00
Community & Econ Dev. 164	757 Miscellaneous Permanent Improvement Fund	181646 Mercy Hospital West Site Acquisition	0.00	300,000.00	300,000.00
	757 Miscellaneous Permanent Improvement Fund	181693 Durner Building Renovation	25,000.00	300,000.00	275,000.00
Parks Administration & Program Services 203	758 Income Tax Permanent Improvement Fund	202008 Smale Riverfront Park Extension	0.00	641,822.00	641,822.00
	762 Urban Redevelopment Permanent Improvement Fund	202008 Smale Riverfront Park Extension	641,822.00	1,325,000.00	683,178.00
	860 Park and Recreation Improvement Bond Fund	202008 Smale Riverfront Park Extension	1,325,000.00	4,100,000.00	2,775,000.00
	861 Public Building Improvement Bond Fund	202008 Smale Riverfront Park Extension	4,100,000.00	5,525,000.00	1,425,000.00
Public Services City Facility Management 255	757 Miscellaneous Permanent Improvement Fund	192525 Fire Training Facility	8,575,000.00	10,000,000.00	1,425,000.00