

EMERGENCY

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Lease and Operating Agreement* with Great Parks of Hamilton County pursuant to which Great Parks of Hamilton County will lease and operate the City-owned shared-use path known as Lunken Trail in Linwood and the East End.

WHEREAS, the City of Cincinnati owns a shared-use path known as Lunken Trail that generally encircles Lunken Airport in Linwood and the East End, which trail is under the management of the Cincinnati Recreation Commission (“CRC”); and

WHEREAS, pursuant to a *Grant of Easements* authorized by Ordinance No. 323-2020, passed by Council on September 16, 2020, the City granted Great Parks of Hamilton County, formerly known as the Hamilton County Park District, a political subdivision of the State of Ohio created and existing under Ohio Revised Code Chapter 1545 (“Great Parks”), permanent easement rights upon certain City-owned property located adjacent to Lunken Trail to facilitate the Little Miami Scenic Trail Beechmont Bridge Project, which project connects the Great Parks-owned Little Miami Scenic Trail with the City-owned Otto Armleder Trail and Lunken Trail; and

WHEREAS, the City and Great Parks are parties to a *Lease and Operating Agreement* authorized by Ordinance No. 462-2021, passed by Council on December 8, 2021, pursuant to which Great Parks leases and operates the Otto Armleder Trail; and

WHEREAS, the City and Great Parks desire to enter into a *Lease and Operating Agreement* pursuant to which Great Parks will lease and operate Lunken Trail as a shared-use path open to the public for public use for a term of up to 20 years (namely, an initial term ending December 31, 2027, followed by three successive five-year renewal terms), as further described in the *Lease and Operating Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Agreement”); and

WHEREAS, the City Manager, in consultation with CRC and the Department of Transportation and Engineering, has determined that (i) Lunken Trail is not needed for a municipal purpose for the duration of the Agreement; and (ii) leasing Lunken Trail to Great Parks is not adverse to the City’s retained interest in Lunken Trail or Lunken Airport; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by a professional appraisal that the fair market rental value of Lunken Trail is approximately \$10,250 per year; however, the City has agreed to lease Lunken Trail to Great Park for less than its fair market

rental value, namely, \$0.00, because the City will receive benefits from the Agreement that equal or exceed the fair market rental value of Lunken Trail in that the City will be relieved of the expense and administrative burden of the management, operation, and maintenance of Lunken Trail throughout the term of the Agreement; and

WHEREAS, CRC approved the Agreement at its meeting on May 17, 2022; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of Lunken Trail at its meeting on May 20, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Lease and Operating Agreement* (the “Agreement”) with Great Parks of Hamilton County, a political subdivision of the State of Ohio created and existing under Ohio Revised Code Chapter 1545 (“Great Parks”), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will lease the shared-use path known as Lunken Trail that generally encircles Lunken Airport in Linwood and the East End, as more particularly depicted in the Agreement, for a period of up to 20 years (namely, an initial term ending December 31, 2027, followed by three successive five-year renewal terms).

Section 2. That Lunken Trail is not needed for a municipal purpose for the duration of the Agreement.

Section 3. That leasing Lunken Trail to Great Parks is not adverse to the City’s retained interest in Lunken Trail or Lunken Airport.

Section 4. That eliminating competitive bidding in connection with the City’s lease of Lunken Trail is in the best interest of the City because Great Parks is a governmental entity with extensive experience in operating the Otto Armleder and the Little Miami Scenic Trails that are interconnected with Lunken Trail. Therefore, the City desires Great Parks to operate Lunken

Trail to ensure access by the public to an attractive and uniform network of interconnected public shared-use paths for transportation and recreation purposes.

Section 5. That the City's Real Estate Services Division has determined by a professional appraisal that the fair market rental value of the Park is approximately \$10,250 per year; however, the City will lease Lunken Trail to Great Parks for less than its fair market rental value, namely, \$0.00, because the City will receive benefits from the Agreement that equal or exceed the fair market rental value of Lunken Trail in that the City will be relieved of the expense and administrative burden of the management, operation, and maintenance of Lunken Trail during the term of the Agreement.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Agreement, including, without limitation, executing any and all ancillary documents associated with the Agreement, such as amendments or supplements to the Agreement deemed by the City Manager to be in the vital and best interests of the City.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need for the City to execute the Agreement so that Great Parks may undertake the operation and maintenance of Lunken Trail without delay to relieve the City of the ongoing budgetary expense and administrative burden of seasonal maintenance activities and for

the public to realize the attendant benefits of a standardized network of interconnected public trails for transportation and recreation purposes at the earliest possible time.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: Lunken Trail

LEASE AND OPERATING AGREEMENT

This Lease and Operating Agreement ("**Agreement**") is made and entered into effective as of the Effective Date (defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **Great Parks of Hamilton County**, a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 1545 (*Park Districts*), 10245 Winton Road, Cincinnati, OH 45231 ("**Great Parks**").

Recitals:

A. The City owns Lunken Airport (the "**Airport**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. The City owns a multimodal transportation and recreation trail open to the public for public use that generally encircles the Airport and is located on Airport property ("**Lunken Trail**" or "**the Trail**"). Lunken Trail is under the management of the Cincinnati Recreation Commission ("**CRC**") and is more particularly depicted on Exhibit A (Site Map) hereto.

C. The parties desire to enter into this Agreement, pursuant to which Great Parks shall lease and operate Lunken Trail as a recreation trail open to the public for public use, ensuring the Trail is a safe and attractive trail for use for transportation and recreation purposes.

D. The City is agreeable to lease Lunken Trail to Great Parks at a base rent of \$0.00 because of the considerable expenses that will be incurred by Great Parks in operating Lunken Trail, at no cost to the City, for the benefit of the people of the City. There is no City funding being provided to Great Parks under this Agreement.

E. The City has determined that eliminating competitive bidding with respect to the City's lease of the Trail is in the best interest of the public because the City has determined that Great Parks, being a governmental entity with experience in managing public parks generally, and recreation trails in particular, is the most qualified and suitable lessee of the Trail.

F. The execution of this Agreement was approved by the Cincinnati Recreation Commission at its meeting on May 17, 2022.

G. The City Planning Commission, having the authority to approve the change in the use of City owned property, approved this Agreement at its meeting on May 20, 2022.

H. The execution of this Agreement was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____, 2022.

I. The execution of this Agreement was approved by the Great Parks Board at its meeting on April 21, 2022.

NOW THEREFORE, the parties hereby agree as follows:

1. GRANT OF LEASEHOLD.

(A) Grant. On the terms and conditions set forth herein, the City does hereby lease Lunken Trail to Great Parks, and Great Parks does hereby lease Lunken Trail from the City, for the Term established under section 2 below. The City leases Lunken Trail to Great Parks subject to any and all easements,

covenants, restrictions and other matters of record, matters that would be disclosed upon an ordinary inspection or survey of Lunken Trail, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and other third parties. The City has not made any representations or warranties concerning the condition or characteristics of Lunken Trail or the suitability or fitness of Lunken Trail for the Permitted Use, as defined below, and Great Parks is not relying upon any such representations or warranties from the City. On the Commencement Date (as defined in section 2 below), Great Parks shall accept Lunken Trail in "as is" condition. During the Term, Great Parks shall not grant any easements or otherwise encumber the title to Lunken Trail without the City's prior written consent.

(B) City's Right to Inspect Lunken Trail. The City hereby reserves the right for its employees and agents to enter upon Lunken Trail from time to time for any proper purpose, provided, however, that in exercising such rights, (i) the City shall not unreasonably disrupt Great Parks' use of Lunken Trail for the Permitted Use, and (ii) except in emergencies, the City shall give Great Parks reasonable written notice prior to entering Lunken Trail.

(C) Access by Public Utilities. Great Parks shall ensure continuous access to Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) by any and all public utilities that have existing utility facilities within Lunken Trail for the maintenance, repair and replacement thereof, and Great Parks shall not undertake any action or construct any improvements within Lunken Trail that may interfere with any such utility company's rights without having first obtained such utility company's consent. If Great Parks, its employees, agents, contractors, subcontractors, licensees or invitees cause damage to such utility companies' facilities, Great Parks shall promptly reimburse the affected utility company for the cost of repairing such damage.

(D) Ingress/Egress Rights Across Lunken Trail. Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights (including but not limited to persons who have leasehold rights of airport property) across the Trail to a public way or the Airport. Although Great Parks is not responsible for the construction, maintenance or repair of driveway aprons abutting the Trail, Great Parks will coordinate with DOTE for the construction, repair, or replacement of driveway aprons for persons with ingress and egress rights across the Trail.

(E) Lease Subordinate to Airport Agreements. The rights herein granted to Great Parks are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Airport, Airport property, and Lunken Trail and to any and all existing agreements between the City and the federal government pertaining to the same. The rights herein granted to Great Parks are also subject and subordinate to any and all leases which affect the Airport and Airport property, but which do not pertain to the Permitted Use, and Great Parks' obligations regarding, the Trail as outlined in Section 4. Great Parks acknowledges that Lunken Trail is located on Airport property, which property is in a 100-year floodplain, as designated by the Federal Emergency Management Agency ("FEMA"), and the City's ability to comply with all Federal Aviation Administration ("FAA"), FEMA, or other applicable federal requirements, including, without limitation to, controlling and protecting the use of Airport property for aviation purposes is of utmost importance to the City and FAA.

2. TERM.

(A) Initial Term (5 years). The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date (the "**Commencement Date**") and, unless extended or sooner terminated as herein provided, shall expire on the **December 31, 2027**.

(B) Renewal Periods (three 5-year options). The parties may extend the Term for three (3) renewal periods of five (5) years each (each, a "**Renewal Period**") (for a total Term, including the Initial Term, of 20 years). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 3rd Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Agreement). As used herein, the "**Term**" of this Agreement means the Initial Term and, if applicable, the Renewal Periods.

3. **RENT.** \$0.00/year.

4. **PERMITTED USE; OPERATIONAL MATTERS.**

(A) **Permitted Use.** Great Parks shall use Lunken Trail solely for the operation of a trail open to the public for public use for transportation and recreation purposes (the "**Permitted Use**") and for no other purpose.

(B) **Operating Standards.** Great Parks shall keep, maintain, and operate Lunken Trail and one adjacent trailhead parking lot solely for the operation of a recreation trail open to the public for public use, in accordance with ORC Chapter 1545. Great Parks shall render the usual and customary services incidental thereto in a professional businesslike and efficient manner, including utilizing properly trained employees, volunteers and contractors. Great Parks shall not enforce its motor vehicle permit at Lunken Trail (i.e., Great Parks shall not require visitors to Lunken Trail to pay a permit fee), unless approved by the City. Great Parks shall have the right, however, to charge visitors reasonable fees for special uses, permits, programs, athletic events, and reserved areas as may be appropriate and as consistent with Great Parks' normal operations. Great Parks shall be responsible for the operation, and maintenance of Lunken Trail, at no cost to the City, in accordance with Great Parks' Code of By-Laws and in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements. Great Parks shall keep CRC and DOTE informed of any serious accidents or other incidents occurring on Lunken Trail so that the City can respond appropriately.

(C) **Operating Hours.** In order to accommodate the transportation use of Lunken Trail, and pursuant to §132.10(B) of the Code of By-Laws of Great Parks, the Chief Executive Officer of Great Parks will authorize the Trail to be open to the public twenty-four (24) hours a day.

(D) **Programs.** CRC and Great Parks shall be permitted to conduct educational, recreational, conservancy, beautification, and public athletic programs and events at Lunken Trail, and shall coordinate the dates thereof with Great Parks as appropriate.

(E) **Right to Close Trail.** Great Parks may temporarily barricade, close, or otherwise eliminate public access to Lunken Trail for safety and maintenance issues, *provided*, however, that Great Parks shall ensure continuous access across Lunken Trail (24 hours/day, 7 days/week, 52 weeks/year) for any person that has ingress and egress rights across the Trail to a public way or the Airport. Except in emergencies, Great Parks shall give the City at least seven (7) days' written notice prior to barricading, closing, or otherwise eliminating public access to Lunken Trail. The City reserves the right to temporarily or permanently barricade, close, or otherwise eliminate public access to Lunken Trail for any reason, *provided*, however, that in exercising such right, except in emergencies, the City shall give Great Parks seven (7) days' written notice prior to temporarily barricading, closing or otherwise eliminating public access to Lunken Trail and sixty (60) days' written notice prior to permanently barricading, closing, or otherwise eliminating public access to Lunken Trail.

(F) **Maintenance and Repairs.** Except as outlined in this Section, during the Term of this Agreement, Great Parks shall assume all responsibility for the maintenance and repair of Lunken Trail (including the one trailhead parking lot designated in Exhibit A and the vegetation immediately adjacent to the Trail) and shall maintain the same in a state of good and safe condition and repair, consistent with Great Parks' usual and customary practices. Except as outlined in this Section, the City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of Lunken Trail under this Agreement.

Maintenance and repair of Lunken Trail shall include, without limitation grass cutting, trash/litter/debris removal, park bench and signage management, vegetation management, snow removal and minor surface repairs. Great Parks shall not, however, be responsible for the following:

- I. Maintenance and/or repair of any public utility facilities located along or across Lunken Trail (e.g., public water mains, sanitary sewers, or storm sewers).

- II. Maintenance and/or repair of any fixtures or vegetation outside the areas designated in Exhibit A.
- III. Maintenance and/or repair of parking facilities other than the one trailhead parking lot designated in Exhibit A.

In addition, Great Parks specifically disavows any knowledge of federal regulations pertaining to aviation and airport safety and will not be responsible for knowing, learning, recognizing, or correcting any issues related to same. In the event that vegetation or other maintenance/repair issues are required due to FAA regulations, the City shall be responsible for notifying Great Parks of same. If the vegetation or other maintenance/repair issues related to FAA regulations would require services beyond those consistent with Great Parks' usual and customary practices, the City shall be responsible for same.

(G) Mitigation of Adjacent Hazards. In the event that Great Parks is made aware of any hazards (e.g. dangerous trees, deteriorating flood control structures) which are adjacent to Lunken Trail which it believes create a dangerous condition to persons utilizing the Trail, Great Parks shall notify the City of the dangerous condition as soon as practicable. Great Parks may temporarily barricade, close, or otherwise eliminate public access to any or all portions of Lunken Trail as it deems necessary to ensure the safety of persons utilizing the Trail and may keep such portions closed to the public until such time as Great Park determines that the City has mitigated the hazard.

(H) Signs. Great Parks shall maintain in good condition and repair any and all existing directional, informational, and other outdoor signs along Lunken Trail related to Lunken Trail. Great Parks has the right to install and replace signage indicating that Great Parks operates and maintains the Trail.

(I) Capital Repairs and Improvements. Great Parks shall contract for and provide construction oversight and management services for the completion of any capital repairs or improvements agreed to by the parties, in accordance with the process set forth below in Section 5.

(J) No Liens. If any mechanics' lien or other similar lien is filed against Lunken Trail as a result of labor or material furnished at Great Parks' request, Great Parks shall cause the lien to be released or bonded off within forty-five (45) days following the filing of such lien.

5. CAPITAL REPAIRS AND IMPROVEMENTS. Great Parks shall not undertake any capital repairs or improvements to Lunken Trail without prior written authorization from the City. During the Term, capital repairs and improvements to Lunken Trail shall be handled as set forth herein:

(A) Capital Repair and Improvement Definition. "**Capital Repair**" or "**Capital Improvement**" means the acquisition, construction, reconstruction, improvement, alteration, or repair of any physical or structural asset, improvement, or fixture at a cost greater than \$50,000.

(B) Upon Request by City. From time to time the City may request that Great Parks undertake, contract for, and oversee certain capital improvements to Lunken Trail, and the Great Parks may accept or reject such request. Notwithstanding the forgoing, the City at all times during the Term of this Agreement retains the ability to perform or undertake any capital improvements that it deems appropriate, in the City's complete and absolute discretion and with or without Great Parks' consent.

(C) Upon Request by Great Parks. Great Parks may also from time to time recommend to the City certain capital improvements to Lunken Trail. The City may, in its complete and absolute discretion approve such recommended capital improvements by providing written authorization to Great Parks to undertake, contract for, and oversee such capital project in accordance with the terms herein.

6. SECURITY. Great Parks shall provide the primary law enforcement and security duties for Lunken Trail (including one trailhead parking lot designated on Exhibit A) through its Ranger Department in accordance with Great Parks' most current Code of Bylaws and the current executed and effective agreement regarding the parties' respective law enforcement duties on the Trail.

7. **REAL ESTATE TAXES.** The parties acknowledge that Lunken Trail is exempt from real property taxes.

8. **INSURANCE: CLAIMS.**

(A) **Insurance.** Throughout the Term, Great Parks will maintain and cause to be maintained the following insurance throughout the Term:

- I. Workers Compensation insurance as required by law;
- II. Property insurance on all personal property of Great Parks from time to time located at the Trail in such amount as Great Parks shall from time to time determine to be reasonable;
- III. Automobile Liability Insurance in the amount of not less than \$1,000,000 per occurrence, naming the City as an additional insured; and
- IV. Commercial general liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at Lunken Trail in an amount not less than \$2,000,000 per occurrence, combined single limit/\$4,000,000 aggregate, naming the City and the CRC as additional insureds.

(B) **Policy Requirements.** Great Parks shall be permitted to satisfy the insurance requirements set forth above through primary and umbrella and/or excess liability policies under a self-insurance program authorized pursuant to ORC Section 2744.08 or a joint self-insurance pool authorized pursuant to ORC Section 2744.081 operated by or on behalf of Great Parks or written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, provided that the insurance/coverage (i) may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (ii) is primary and non-contributory with respect to insurance maintained by the City. On the Commencement Date and thereafter on an annual basis, Great Parks shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Great Parks hereunder.

(C) **Handling of Claims.** The City assumes no responsibility for any acts, errors or omissions of Great Parks or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Great Parks; and similarly Great Parks assumes no responsibility for any acts, errors or omissions of the City or any employee, agent, representative or any other person acting or purporting to act for or on behalf of the City. In the event of third-party claims filed against either party pertaining to Lunken Trail, each party shall handle its own claims in accordance with its internal policies and procedures. (The parties acknowledge that, as governmental entities, the parties are not legally permitted under Ohio law to contractually agree to indemnify each other.)

9. **CASUALTY.** If Lunken Trail is damaged or destroyed by fire or other casualty, the City and Great Parks shall jointly participate in filing claims and taking such other actions which are necessary to obtain the payment of insurance proceeds resulting from such occurrence. All proceeds from any such occurrence (with the exception of proceeds of insurance obtained by Great Parks solely to protect Great Parks' property) shall be paid to the City. The City shall determine whether it wishes to utilize the proceeds to repair/reconstruct the Trail. Unless otherwise agreed in writing, this Agreement shall terminate in the event that the City determines that it will not restore the Trail to its prior condition or if the City does not as expeditiously as possible restore the Trail to substantially the same condition it was immediately prior to the casualty or if the Trail is damaged by more than fifty percent (50%).

10. DEFAULT; REMEDIES.

(A) Default. An event of default shall be deemed to have occurred if either party fails to perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure to perform continues for longer than sixty (60) days after the defaulting party receives written notice thereof from the non-defaulting party; provided, however, that if such failure is not reasonably susceptible of being cured within such sixty (60) day period, an event of default shall not be deemed to have occurred if the defaulting party commences to cure such failure within such sixty (60) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within one hundred twenty (120) days after the defaulting party receives written notice of the default from the non-defaulting party. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the non-defaulting party, an event of default shall be deemed to have occurred if the defaulting party fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period provided for under paragraph (A) above, the non-defaulting party shall be entitled to: (i) terminate this Agreement by giving the defaulting party written notice thereof, (ii) take such actions in the way of "self-help" as the non-defaulting party determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of defaulting party, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. The failure of either party to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

11. ASSIGNMENT AND SUBLETTING. Great Parks shall not assign its interests under this Agreement, or sublet all or any portion of the Trail, without the prior written consent of the City. Great Parks acknowledges that the City is entering into this Agreement because of the City's confidence that Great Parks has the financial resources, experience, and community support that are necessary to carry out the operation of the Trail, and that therefore the City shall not be expected to consent to a proposed assignment to any individual or entity in which the City does not have similar confidence. No assignment by Great Parks of its rights or obligations under this Agreement to a third party shall relieve Great Parks from any liability to the City under this Agreement.

12. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Agreement, Great Parks shall surrender the Trail to the City in good condition and repair and free and clear of all liens and other encumbrances created by Great Parks (if any). On or before the last day of the Term, Great Parks shall remove all of Great Parks' personal property, and any property not so removed shall be deemed abandoned. Great Parks shall not remove any signs, trade fixtures, ordinary fixtures or affixed equipment used in connection with the Trail unless the City approves of such removal in writing. Great Parks shall promptly repair any and all damage to the Trail caused by its removal of any items under this paragraph.

(B) Holdover. If Great Parks fails to surrender possession of the Trail to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by either party at any time by giving written notice thereof to the other party.

(C) Documents to be Delivered to City. At the end of the Term, Great Parks shall deliver to the City originals of all operating manuals, warranty information, books and records, contracts with third parties, and all other written materials and documents that are in Great Parks' possession or under Great Parks' control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Trail.

13. NOTICES. All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, or (iii) delivered by a reputable

courier service (e.g., Federal Express, UPS), to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To the City:

Director, Cincinnati Recreation
Commission
805 Central Avenue, Suite 800
Cincinnati, OH 45202

Director, Department of Transportation
and Engineering
801 Plum Street, 4th Floor
Cincinnati, Ohio 45202

To Great Parks:

Great Parks of Hamilton County
10245 Winton Road
Cincinnati, OH 45231
Attention: Chief Executive Officer

If Great Parks sends a notice to the City alleging that the City is in breach of this Agreement, Great Parks shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202. Likewise, if the City sends a notice to Great Parks alleging that Great Parks is in breach of this Agreement, the City shall send such notice to the Executive Director of Great Parks at the address listed above by U.S. certified mail.

14. TERMINATION FOR AIRPORT PURPOSES. At any time during the Term, the City may provide written notice to Great Parks that the City is exercising its right to terminate this Agreement for Airport purposes. Any such termination for Airport purposes shall be effective immediately.

15. GENERAL PROVISIONS.

(A) Entire Agreement. This Agreement (including the exhibits hereto and the other agreements referred to herein, if any) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(C) 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. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Great Parks agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(D) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) 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.

(F) Severability. If any part of this Agreement is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(G) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

(I) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Great Parks represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(L) Representation as to Authority. The City and Great Parks each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement, and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party.

(M) Appropriation of Funds. Notwithstanding anything in this Agreement, the City's performance of its obligations under the Agreement that require the expenditure of money is subject to the appropriation of funds for such purposes by Cincinnati City Council.

(N) Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Site Map*

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by (name) _____, the (title) _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended By:

John Brazina, Director
Department of Transportation and Engineering

Daniel Betts, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

GREAT PARKS OF HAMILTON COUNTY

By: _____
Todd Palmeter, Chief Executive Officer

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Todd Palmeter, the Chief Executive Officer of **GREAT PARKS OF HAMILTON COUNTY**, a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 1545, on behalf of the Board of Park Commissioners of Great Parks of Hamilton County. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

EXHIBIT A
to Lease and Operating Agreement

Site Map

EXHIBIT A

