

Property: Otto Armleder Memorial Park and Recreation Complex

**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, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”, as lessor), and **Great Parks of Hamilton County** (f/k/a Hamilton County Park District), a political subdivision of the State of Ohio created under Ohio Revised Code Section 1545 (*Park Districts*), the address of which is 10245 Winton Road, Cincinnati, OH 45231 (“**Great Parks**,” as lessee).

Recitals:

A. The City owns the public park known as the Otto Armleder Memorial Park and Recreation Complex, located along the Little Miami River (referred to herein as the “**Property**”, or the “**Park**”). For purposes of this Agreement, the Park is comprised of the following sections, as depicted on Exhibit A hereto:

- (i) the “**Active Section**”, which is managed by the Cincinnati Recreation Commission (“**Recreation**”);
- (ii) the “**Passive Section**”, which is managed by the Board of Park Commissioners for the City of Cincinnati (also referred to as the “**Park Board**”, or “**Cincinnati Parks**”, or “**Parks**”); and
- (iii) the “**Landfill Section**”, which is managed by the City (generally).

B. Pursuant to an agreement between the City and Great Parks dated August 12, 2005, as authorized by Ordinance #300-2005 passed by Cincinnati City Council on August 3, 2005, Great Parks has operated the Passive Section of the Property as a public park (the “**2005 Agreement**”).

C. The initial term of the 2005 Agreement commenced on March 1, 2005 and expired on December 31, 2017. Since that time, the parties have continued to abide by the terms of the 2005 Agreement.

D. The parties desire to enter into this Agreement (which, upon its execution, shall automatically terminate the 2005 Agreement), pursuant to which Great Parks shall continue to provide various operation and management-related services that is in general accordance with the 2005 Agreement, for a five (5) year period, ending December 31, 2025.

E. The City is agreeable to lease the Property to Great Parks at a base rent of \$0.00 because of the considerable expenses that will be incurred by Great Parks in operating the Property, 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.

F. The City has determined that eliminating competitive bidding with respect to the City’s lease of the Property 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 this park in particular, is the most qualified and suitable Great Parks of the Property.

G. The execution of this Agreement was approved by the Great Parks Board at its meeting on \_\_\_\_\_, 2021.

- H. The Park Board approved this Agreement at its meeting on September 16, 2021.
- I. Cincinnati Recreation Commission approved this Agreement at its meeting on September 21, 2021.
- J. Cincinnati City Planning Commission approved this Agreement at its meeting on November 5, 2021..
- K. Cincinnati City Council authorized the execution of this Agreement by Ordinance No. \_\_\_\_ - 2021, passed on \_\_\_\_\_, 2021.

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 the Passive Section of the Property to Great Parks, and Great Parks does hereby lease the Passive Section of the Property from the City, for the Term established under section 2 below. The City leases the Passive Section of the Property 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 the Property, 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 the Property or the suitability or fitness of the Property for the Permitted Use, 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 the Passive Section of the Property in "as is" condition. During the Term, Great Parks shall not grant any easements or otherwise encumber the title to the Property without the City's prior written consent.

(B) City's Right to Inspect Property. The City hereby reserves the right for its employees and agents to enter upon the Property 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 the Property for the Permitted Use, and (ii) except in emergencies, the City shall give Great Parks reasonable written notice prior to entering the Property.

(C) Access by Public Utilities. Great Parks shall ensure continuous access to the Property (24 hours/day, 7 days/week, 52 weeks/year) by any and all public utilities that have existing utility facilities within the Property for the maintenance, repair and replacement thereof, and Great Parks shall not undertake any action or construct any improvements within the Property 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.

**2. TERM (5 years).** The term ("**Term**") of this Agreement shall commence on the Effective Date (also referred to herein as the "**Commencement Date**"), and, unless extended or sooner terminated in accordance with the provisions of this Agreement, shall expire on **December 31, 2025**. The parties may extend the Term for successive renewal periods of five (5) years each upon mutual written agreement, as memorialized by an amendment to this Agreement executed by both parties. The parties acknowledge and agree that the 2005 Agreement shall terminate effective as of the Commencement Date.

**3. PERMITTED USE; OPERATING STANDARDS; REPORTS.**

(A) Permitted Use. Great Parks shall use the Passive Section of the Property solely for the operation of a public park (the "**Permitted Use**") and for no other purpose.

(B) Operating Standards.

(I) Throughout the term of this Agreement, Recreation shall keep, maintain and operate the Active Section of the Property, including all improvements thereon.

(II) Great Parks shall use the Passive Section solely for the operation of a public park, in accordance with ORC Section 1545, and in a first-class manner. 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 the Property (i.e., Great Parks shall not require visitors to the Property to pay a permit fee), unless approved by the Park Board. Great Parks shall have the right, however, to charge visitors reasonable fees for special uses, permits, programs, and reserved areas (including costs associated with the provision of additional Rangers) as may be appropriate and as consistent with Great Parks' normal operations. Great Parks shall be responsible for the operation, maintenance, safety, security and park law enforcement of the Passive Section and Active Section, at no cost to the City or Park Board, 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 Recreation and the Park Board informed of any serious accidents or other incidents occurring in the Passive Section so that they can respond appropriately. Additional details are described in Exhibit B (Additional Guidelines) hereto. The Great Parks Board shall ensure that an appropriate level of funding is allocated annually for the maintenance and operation of the Passive Section of the Property in accordance with the Great Parks' overall budget.

(C) Programs. The Park Board, Recreation, and Great Parks shall be permitted to conduct educational, recreational, conservancy, beautification, and public athletic programs and events in the Park, and shall coordinate the dates thereof with Great Parks as appropriate.

(D) Off-Leash Dog Park: Great Parks shall manage the off-leash dog park areas for use by the general public. If Great Parks determines that the dog park area becomes a potential hazard and cannot be safely operated at a reasonable cost, Great Parks may, after prior consultation with the City, close the dog park area.

(E) Reports. Great Parks shall submit an annual operating report to the Park Board Director by **March 31** of each year during the Term of this Agreement (the "**Annual Report**"), documenting (i) the major events and activities occurring at the Passive Section of the Property during the calendar year then just ended, (ii) all expenses incurred by Great Parks for park maintenance, repairs, and capital costs, and (iii) income received from shelter rentals and any other income generated from the operation of the Park.

4. RENT. \$0.00/year.

5. MAINTENANCE AND REPAIRS. During the Term of this Agreement, Great Parks shall assume all responsibility for the maintenance and repair of the Passive Section of the Property and shall maintain the same in a state of good and safe condition and repair, whether such maintenance or repairs are routine or non-routine. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Passive Section of the Property under this Agreement. The foregoing notwithstanding, Great Parks shall not be responsible for maintaining or repairing any public utility facilities located on the Property (e.g., public water mains, sanitary sewers, or storm sewers).

6. ALTERATIONS; SIGNS; NO LIENS.

(A) Alterations. Great Parks shall not make any material alterations, additions or other changes to the Property without the prior written consent of the Park Board, which approval shall not be unreasonably withheld or delayed provided the proposed alterations, additions or changes are consistent with the Permitted Use. Great Parks shall have the right to make all minor and cosmetic-type alterations to the Passive Section of the Property without having to obtain the City's prior consent. All alterations made by Great Parks shall be made in a good and workmanlike manner, in compliance with all applicable legal requirements, shall not diminish the fair market value of the Property, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Property. Once installed, Great Parks shall not remove such alterations (unless such removal shall have been consented to in writing by the City), and Great Parks shall surrender the same to the City at the end of the Term. If the parties determine that capital improvements are needed, they shall work cooperatively to address the matter, including without limitation identifying a source of funding.

(B) Signs. Great Parks shall maintain in good condition and repair any and all existing directional, informational, advertising and other outdoor signs in the Passive Section. The parties will work cooperatively to establish signs to inform the public of which party is responsible for which facilities/sections of the Park, including telephone numbers informing the public of which party to contact regarding questions or concerns regarding those facilities/sections. For instance, restrooms and playground equipment areas will include signage indicating that those facilities are maintained by the City, with a telephone number to contact for maintenance or service issues.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Property 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.

**7. SECURITY.** Great Parks shall provide the primary law enforcement and security duties for the Active and Passive Sections of the Property 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 Property.

**8. REAL ESTATE TAXES.** The parties acknowledge that the Property is exempt from real property taxes.

**9. INSURANCE; CLAIMS.**

(A) Insurance. Great Parks acknowledges that with respect to the sections of the Park that are managed by the City (the Active and Landfill Sections), the City is self-insured and does not maintain commercial insurance coverage. With respect to the section of the Park that is managed by Great Parks pursuant to this Agreement (the Passive Section) and with respect to security duties performed by Great Parks in the Active and Passive Sections of the Park, 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 Property 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 the Park in an amount not less than \$2,000,000 per occurrence, combined single limit/\$4,000,000 aggregate, naming the City, Recreation Commission, and the Park Board 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 Park Board with a certificate of insurance evidencing the insurance required to be maintained by Great Parks hereunder. The City is self-insured and will provide proof of such coverage upon request.

(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 the Property, 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.)

**10. CASUALTY.** If the Property 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 Property. Unless otherwise agreed in writing, this Agreement shall terminate in the event that the City determines that it will not restore the property to its prior condition or if the City does not as expeditiously as possible restore the Property to substantially the same condition it was immediately prior to the casualty or if the Passive Section of the Property is damaged by more than fifty percent (50%).

**11. DEFAULT; REMEDIES.**

(A) Default. If either party fails to pay any amount due the other party hereunder or perform or observe any of the covenants, terms or conditions contained in this Agreement, and such failure to pay or 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.

**12. ASSIGNMENT AND SUBLETTING.** Great Parks shall not assign its interests under this Agreement, or sublet all or any portion of the Property, 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 Property and that therefore the City shall not be expected to consent to a proposed assignment or sublease to any individual or entity in which the City does not have similar confidence. No assignment or sublease 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.

**13. ESTOPPEL CERTIFICATES.** Within fifteen (15) days after written request from the other party (or, with respect to certificates from the City of Cincinnati, within such longer period of time as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate: (i) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Agreement, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Agreement as the requesting party may reasonably request.

**14. SURRENDER; HOLDOVER.**

(A) Surrender. On the last day of the Term of this Agreement, Great Parks shall surrender the Property 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 Property unless the City approves of such removal in writing. Great Parks shall promptly repair any and all damage to the Property caused by its removal of any items under this paragraph.

(B) Holdover. If Great Parks fails to surrender possession of the Property 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 Property.

**15. 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, first class, postage prepaid, or (iii) delivered by a reputable courier service (e.g., Federal Express), 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 Parks  
950 Eden Park Drive  
Cincinnati, OH 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.

**16. 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. At the request of either party, the parties shall execute a memorandum of Agreement for recording purposes.

(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*  
Exhibit B – *Additional Guidelines*

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the “**Effective Date**”.

**CITY OF CINCINNATI**

**GREAT PARKS OF HAMILTON COUNTY**

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

By: \_\_\_\_\_  
Todd Palmeter, Chief Executive Officer

Date: \_\_\_\_\_, 2021

Date: \_\_\_\_\_, 2021

Recommended By:

\_\_\_\_\_  
Kara Kish  
Director, Cincinnati Park Board

\_\_\_\_\_  
Daniel Betts  
Director, Cincinnati Recreation Commission

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

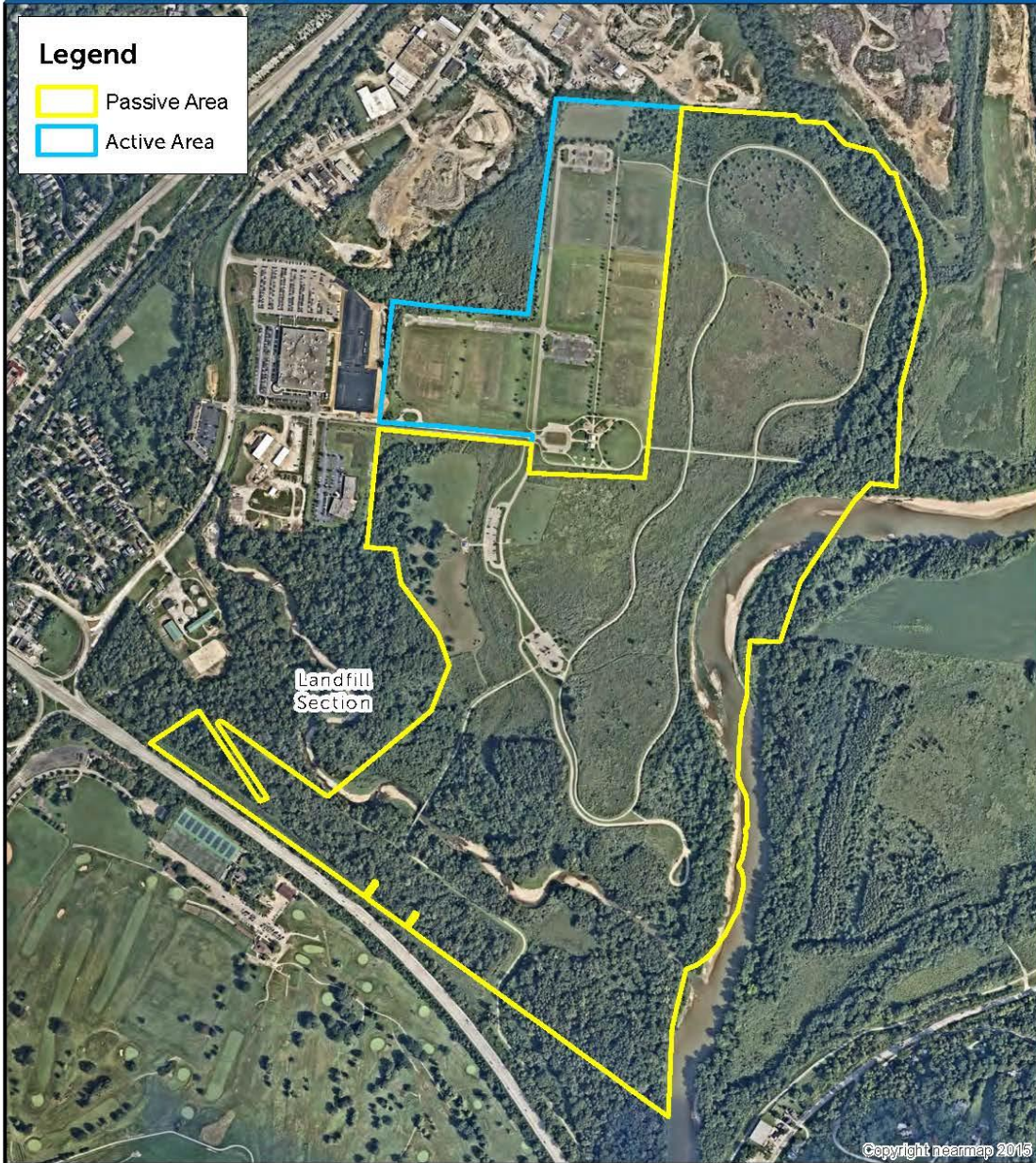
Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director





Great Parks of Hamilton County makes every effort to ensure this map is free of errors but does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. Great Parks provides this map without any warranty of any kind whatsoever either express or implied.



**EXHIBIT B**  
to Lease and Operating Agreement

ADDITIONAL GUIDELINES

Management and Operation of the Passive Section of the Property by Great Parks shall at a minimum include:

- Routine mowing;
- Trail maintenance and repair of trail areas;
- Snow Removal of road and parking areas;
- Flood clean-up as needed;
- Routine litter pick-up of trail areas;
- Ranger Patrol;
- Shelter Maintenance (including tables) and repair;
- River access and overlooks;
- Lighting and electric utilities maintenance and repair;
- Drinking fountain, hydrant and waterline maintenance and repair;
- Roadway, walkway, bike trail and parking lot maintenance and repair; and
- Sign maintenance and repair, with the exception of the main entrance sign which will be maintained, repaired and potentially replaced as a cooperative effort with all parties to this Agreement.

Management and Operation of the Active Section of the Property by the City, through CRC, shall at a minimum include:

- Routine turf management of lawn areas; including athletic fields;
- Snow removal of road and parking areas;
- Flood clean-up as needed;
- Routine litter pick-up and removal of trash;
- Routine janitorial maintenance of restroom building and picnic shelters;
- Routine safety inspections and maintenance of play equipment, recreational equipment and furniture;
- Shelter maintenance (including tables) and repair;
- Lighting and electric utilities maintenance and repair;
- Drinking fountain, hydrant and waterline maintenance and repair;
- Roadway, walkway, bike trail and parking lot maintenance and repair;
- Sign maintenance and repair; and
- Proper staffing/personnel for special events and tournaments.