

**INTERLOCAL PARTNERSHIP AGREEMENT
FOR PARK OPERATION BETWEEN
THE COUNTY OF OAKLAND
AND
THE CITY OF MADISON HEIGHTS**

This Agreement (the "Agreement") is made between the County of Oakland, a Constitutional and Municipal Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County"), by, through, and administered by its statutory agent the Oakland County Parks and Recreation Commission ("OCPRC") and the City of Madison Heights, 300 West Thirteen Mile, Madison Heights, Michigan 48071 ("City"). County and the City may also be referred to jointly as "Parties".

INTRODUCTION AND PURPOSE OF AGREEMENT.

- A. On February 3, 2022, the City and the County entered into a lease for OCPRC to operate, manage, plan, and maintain certain real property and a building as a public park, natural preservation area, and nature center located at 30300 Hales Street, Madison Heights, Michigan 48071, known as the George W. Suarez Friendship Woods at Red Oaks County Park.
- B. On September 7, 2022, the City and the County executed a letter of intent expressing a desire to negotiate a mutually acceptable agreement for OCPRC to operate, manage, plan, and maintain approximately 7 acres of real property located at 600 E. Thirteen Mile Road, Madison Heights, Michigan, 48071, known as Ambassador Park.
- C. To fund park improvements in areas most disproportionately impacted by the COVID 19 pandemic, OCPRC created the Healthy Communities Park and Outdoor Recreation Investment Plan ("Plan"), which utilizes the Coronavirus Local Fiscal Recovery Fund and OCPRC monies. These funds were leveraged by commitments from local governments with long term operational agreements to facilitate the expansion of the OCPRC Park System to incorporate additional parks, including parks in the City.
- D. In October 2022, the Oakland County Board of Commissioners appropriated Fifteen Million (\$15,000,000) dollars of Coronavirus Local Fiscal Recovery Fund monies, in Miscellaneous Resolution #22-338, to fund and support the Plan.
- E. The Parties now desire to terminate the February 3, 2022 lease relating to the George W. Suarez Friendship Woods lease and enter into this Agreement to effectuate the Plan, streamline the use of Coronavirus Local Fiscal Recovery Fund and OCPRC monies, delineate duties and responsibilities between the Parties with respect to operation, management, planning, and maintenance of George W. Suarez Friendship Woods and Ambassador Park.
- F. The Parties also desire to terminate the Grounds Maintenance Agreement for the Red Oaks Youth Soccer Complex dated January 24, 2011.

The Parties agree to the following terms and conditions:

- 1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows.
 - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, addendum, or exhibit approved in accordance with Section 2.
 - 1.2. **Capital Improvement Project** means a project that: (1) costs Thirty Thousand (\$30,000) dollars or more and (2) extends the life cycle of an existing facility or asset; replaces,

renovates, or remodels an existing facility or asset; or adds a new facility or asset.

- 1.3. **City** means the City of Madison Heights, its Council, departments, divisions, elected and appointed officials, board members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
 - 1.4. **City Employee** means any City employee, officer, manager, volunteer, attorney, contractor, subcontractor, and/or any such person's successors or predecessors (whether such persons act or acted in their personal, representative, or official capacities). "City Employee" shall also include any person who was a City Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.
 - 1.5. **Claims** means any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against a Party, or for which a party may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law.
 - 1.6. **County** means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
 - 1.7. **County Employee** means any County employee, officer, manager, volunteer, attorney, contractor, subcontractor, and/or any such person's successors or predecessors (whether such persons act or acted in their personal, representative, or official capacities). "County Employee" shall also include any person who was a County Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.
 - 1.8. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
 - 1.9. **Effective Date.** The date all Parties sign the Agreement.
 - 1.10. **Exhibits** means the following documents, which this Agreement includes and incorporates:
 - 1.10.1. **Exhibit A:** describes and depicts the Premises.
 - 1.11. **OCPRC** means the Oakland County Parks and Recreation Commission, as established by resolution of the Oakland County Board of Commissioners pursuant to Public Act 261 of 1965, MCL 46.351, et seq.
 - 1.12. **Park** means the park operated and managed by OCPRC on the Premises.
 - 1.13. **Park Fees and Charges** means the following fees and charges: (1) equipment/facility rental fees, (2) event program fees, (3) sponsorship of events/programs by third parties, and (4) and all other fees and charges charged and collected by OCPRC associated with the use of the Park.
 - 1.14. **Park Revenue** means the monies generated from the Park Fees and Charges received by OCPRC and grants, gifts, and donations received by OCPRC or by the City for the Park.
 - 1.15. **Premises** means the real property that is described and depicted in Exhibit A.
 - 1.16. **Transition Period** means a period of time commencing on the Effective Date and ending on September 30, 2023, or the date the City Council approves the Park Action Plan (as described in Section 4.7), whichever occurs last.
2. **AGREEMENT TERM/PROPERTY DESCRIPTION & TERMINATION.**

- 2.1. **Agreement Term.**
 - 2.1.1. **Initial Term.** This Agreement shall commence on the Effective Date and end twenty (20) years from the Effective Date (“Initial Term”).
 - 2.1.2. **Renewal Term.** On the date the Initial Term ends, this Agreement shall automatically renew, without action of either Party, for twenty (20) years (“Renewal Term”). However, if either Party provides written notice to the other Party, at least one hundred eighty (180) days before the end of the Initial Term, of its desire that the Agreement not renew, then the Agreement shall end on the last day of the Initial Term.
 - 2.1.3. **Non-Renewal of Agreement.** The non-renewal of this Agreement pursuant to this Section shall not be deemed a termination of this Agreement under Section 2.7.
 - 2.1.4. **Continuation of Terms and Conditions.** The terms and conditions contained in this Agreement shall not change during the Initial Term or Renewal Term, unless mutually agreed to by the parties in writing.
 - 2.1.5. **Approval of Agreement.** The approval and terms of this Agreement and any amendments thereto shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State.
- 2.2. **Agreement Amendments.** All amendments or modifications to this Agreement shall be in writing and approved and filed as set forth in Section 2.1.
- 2.3. **Property Subject to Agreement.** The City grants the County use of the Premises for the purposes and according to the terms and conditions set forth herein.
- 2.4. **Use of Premises.** On the date the Transition Period ends, OCPRC shall have care, control, and use of the Premises to operate, manage, plan, maintain, and improve the Premises for public recreation activities, as further described and delineated herein, and to provide other recreation activities mutually agreed upon by the Parties. OCPRC shall obtain the City’s prior consent, in writing, to use the Premises for any purpose not described herein, such consent shall be given by the City’s Representative.
- 2.5. **Fee for Use of Premises.** The County shall not pay a monetary fee for the use of the Premises. The Parties acknowledge that the services provided by the County during this Agreement are adequate consideration for this Agreement.
- 2.6. **Designation of Park & Name of Park & Park Facilities.** During this Agreement, the park premises shall be designated as Red Oaks County Park. OCPRC may, with consent of the City’s Representative, designate a name for major park amenities and facilities within the Park.
- 2.7. **Termination/Expiration.**
 - 2.7.1. **Termination by the City.** The City may terminate this Agreement, at any time, if OCPRC is notified in writing at least one hundred eighty (180) days prior to the effective date of termination and any one of the following occur: (1) the Premises are no longer being used for the purposes identified in this Agreement; (2) OCPRC provided the City with information at any time during this Agreement that was false or fraudulent; or (3) OCPRC materially fails to perform any of its obligations under this Agreement, and such failure is not cured within ninety (90) calendar days after written notice of default to OCPRC.

- 2.7.1.1. **Termination by the City in Absence of Default/Breach.** If the City terminates this Agreement, in the absence of default or breach by OCPRC, then the City shall reimburse OCPRC the amount of the non-depreciated value of Capital Improvement Projects to the Park, paid for by OCPRC, on the date of the termination notice.
- 2.7.1.2. **Termination by the City for Default/Breach.** If the City terminates this Agreement for default or breach by OCPRC, then the City does not have to reimburse OCPRC the non-depreciated value of Capital Improvement Projects to the Park paid for by OCPRC.
- 2.7.2. **Termination by OCPRC.** OCPRC may terminate this, at any time, if the City is notified in writing at least one hundred eighty (180) days prior to the effective date of termination and any one of the following occur: (1) the Premises are no longer being used for the purposes identified in this Agreement; (2) the City provided OCPRC with information, at any time during the Agreement term, that was false or fraudulent; (3) the City materially fails to perform any of its obligations under this Agreement, and such failure is not cured within ninety (90) calendar days after written notice of default to the City.
 - 2.7.2.1. **Termination by OCPRC in Absence of Default/Breach.** If OCPRC terminates this Agreement in absence of default or breach by the City, then the City does not have to reimburse OCPRC the non-depreciated value of Capital Improvement Projects to the Park paid for by OCPRC.
 - 2.7.2.2. **Termination by OCPRC for Default/Breach.** If OCPRC terminates this Agreement for default or breach of the City, then the City shall reimburse OCPRC the amount of the non-depreciated value of Capital Improvement Projects to the Park, paid for by OCPRC, on the date of the termination notice.
- 2.7.3. **Disposition of Personal Property Upon Expiration/Termination of Agreement.** Upon expiration or termination of this Agreement, for any reason, each Party shall retain ownership of personal property purchased by them, unless the Parties agree in writing otherwise. "Personal property" does not include buildings, fixtures, or Capital Improvements as described in Section 4.4.
- 2.7.4. **Condition of Park Upon Expiration/Termination of Agreement.** Upon the expiration or termination of this Agreement, OCPRC shall cease all Park management and operation, surrender the Premises to the City, and cooperatively work with the City to transfer Park management and operation.
- 2.7.5. **Payment for Non-Depreciated Capital Improvement Projects Upon Agreement Expiration.** If the Agreement is not renewed at the end of the Initial Term for the Renewal Term, then the City shall reimburse OCPRC the amount of the non-depreciated value of Capital Improvement Projects to the Park, paid for by OCPRC with non-Coronavirus Local Fiscal Recovery Fund monies, on the date the Agreement expires. Upon the expiration of the Renewal Term, the City shall not reimburse OCPRC the amount of the non-depreciated value of Capital Improvement Projects to the Park, paid for by OCPRC.

3. **TRANSITION PERIOD.**

- 3.1. **Transition Period.** This Agreement includes a Transition Period. During the Transition

Period, the Parties shall work cooperatively to facilitate the transfer of Park management and operations to OCPRC.

3.2. **Park Information.**

3.2.1. **Grants & Endowments.** Within thirty (30) days of the Effective Date, the City shall provide OCPRC copies of all grant agreements, endowment agreements, or other agreements that impose restrictions and conditions upon the Premises and its use.

3.2.2. **Agreements between the City and Third Parties.** Within thirty (30) days of the Effective Date, the City shall provide OCPRC copies of all third-party agreements relating to the use, management, or operation of the Premises, if any. OCPRC is not under any obligation to assume any third-party agreements relating to the management or operation of the Premises.

3.3. **Rights and Obligations During the Transition Period.**

3.3.1. **Park Operation and Maintenance During Transition Period.** During the Transition Period, the City shall be responsible to operate and maintain the Park and to pay for all costs associated therewith, except that OCPRC shall be responsible to operate and maintain the George W. Suarez Friendship Woods at Red Oaks County Park in the same manner as provided in the February 3, 2022 lease until the end of the Transition Period.

3.3.2. **County Right to Access the Premises.** During the Transition Period, the County may access the Premises to perform maintenance, restoration, repairs, and improvements to the Premises, mutually agreed to by the Parties in writing.

3.3.3. **Premises Inspections.** During the Transition Period, the County shall inspect the infrastructure and conditions of the Park, including but not limited to the condition of utilities and their connections, the parking lot, trees, restrooms, playground equipment, trails and pathways, boat launch, and dock. The inspection shall be codified in a document to illustrate the condition of the Premises at the end of the Transition Period.

3.3.4. **Park Planning.** After the conclusion of the Transition Period, the County shall: (1) assume primary responsibility for Park planning, (2) regularly consult with the City about such planning, and (3) organize at least two (2) community forums in the City during the Transition Period to hear suggestions from City residents.

3.3.5. **Park Programming.** During the Transition Period, OCPRC may organize and host mutually agreed upon recreation programs, events, volunteer activities, and other activities.

3.4. **Environmental Condition.**

3.4.1. **Environmental Assessments.** During the Transition Period, OCPRC shall examine the Premises and perform a Phase I Environmental Site Assessment (ESA), Phase II ESA, and any additional environmental assessments that OCPRC deems necessary, in its sole discretion and at its sole cost.

3.4.2. **Copies of Environmental Assessments.** Upon request by the City, OCPRC will provide the City with a copy of the Phase I ESA, Phase II ESA, and any other environmental assessments. OCPRC shall take possession of the Premises subject to

the Phase I ESA, the Phase II ESA, and any other environmental assessments performed pursuant to this Section.

- 3.5. **Termination Related to Environmental Assessments.** Notwithstanding any other provision, OCPRC may terminate this Agreement prior to the end of the Transition Period, if OCPRC is not satisfied with the condition of the Premises as evidenced by the Phase I ESA, the Phase II ESA or other environmental assessment performed pursuant to this Section.

4. **PARK GOVERNANCE & OPERATIONS.**

- 4.1. **Agreement Administration.** The City Manager or their successor or their written designee is the City's Agreement Administrator (hereinafter "the City's Representative"). The OCPRC Director or their successor or their written designee is OCPRC's Agreement Administrator (hereinafter "OCPRC's Representative"). Each Party must notify the other of their written designees.
- 4.2. **Disputes.** All disputes arising under or relating to the interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties shall first be submitted to the City Representative and the OCPRC Representative for possible resolution. If the City Representative and the OCPRC Representative cannot resolve the dispute, then the Parties shall submit the dispute to the County attorney and City attorney for resolution. If the attorneys cannot resolve the dispute, then the Parties shall submit the dispute to mediation or arbitration.
- 4.3. **Park Management and Operations.** Except as otherwise provided by this Agreement, OCPRC shall manage and operate the Park in a manner consistent with other OCPRC Parks, OCPRC policies, the OCPRC 5-Year Parks and Recreation Master Plan ("OCPRC Master Plan"), and the plans and programs set forth and described herein. The OCPRC Master Plan can be found on the OCPRC website and includes the following core values: (a) Diversity, Equity, and Inclusion, (b) Health and Wellness, (c) Environmental Sustainability and Natural Resource Stewardship, and (d) Fiscal Responsibility and Organizational Excellence. OCPRC shall manage and operate the Park with OCPRC staff, volunteers, and contractors.
- 4.4. **Park Improvement Projects.** OCPRC shall be responsible to provide and perform (either directly or through third parties) improvements for the Park. This responsibility and the costs associated therewith shall be addressed in the plans and programs set forth and described herein. All Capital Improvement Projects shall become an integral part of the Premises and shall be owned by the City. OCPRC shall provide an annual report on the Capital Improvement Projects completed in the Park to the City's Representative.
- 4.5. **Park Maintenance/Repairs.** OCPRC shall be responsible to provide and perform (either directly or through third parties) maintenance and repairs for the Park. This responsibility and the costs associated therewith shall be addressed in the plans and programs set forth and described herein.
- 4.6. **Park Utilities and Services.** OCPRC shall be responsible to provide the utilities and services it deems necessary for the operation of the Park. The provision of and costs for the utilities shall be set forth in the plans and programs set forth and described herein. However, OCPRC shall not authorize or approve any easements or other encumbrances to, on, or across the Park or the Premises unless mutually agreed to by the parties in writing.

- 4.7. **Park Action Plan.** By March 31, 2024, OCPRC shall create a Park Action Plan. The Park Action Plan shall be created pursuant to OCPRC's current policies and procedures, but shall include provisions related to the City of Madison Heights Parks and Recreation Master Plan. Once completed, OCPRC shall submit the Park Action Plan to the City Representative for comments and recommendations. The Park Action Plan shall not be approved or implemented by OCPRC without prior written approval by the City Representative and a majority vote of the City's City Council. The City Representative shall submit its comments and recommendations to the OCPRC Representative within thirty (30) Days of receipt of the Park Action Plan. OCPRC Representative shall review and consider the City Representative's comments and recommendations and shall endeavor to address all comments and recommendations. Notwithstanding any other provision, if the City Council does not approve the Park Action Plan by June 30, 2024, the County may terminate this Agreement. Such termination shall not be deemed a breach or default of the City. Modifications to the Park Action Plan shall be codified according to the procedure set forth in this Section.
- 4.8. **Park Capital Improvement Plan.** When OCPRC deems necessary, OCPRC shall create a Park Capital Improvement Plan ("CIP") forecasting Capital Improvement Projects for a five (5) year period. The CIP shall be created pursuant to OCPRC's current policies and procedures and shall be included in OCPRC's annual CIP. Once completed, OCPRC shall submit the CIP, applicable to the Park, to the City Representative for comments and recommendations. The City Representative shall submit its comments and recommendations to the OCPRC Representative within forty-five (45) Days of receipt of the CIP. OCPRC shall review and consider the City Representative's comments and recommendations and shall endeavor to address all comments and recommendations; however, OCPRC is not obligated to incorporate such comments and recommendations into the CIP. After receiving the City Representative's written approval of the CIP, OCPRC shall commence to have the CIP adopted and implemented pursuant to its policies and procedures. Modifications to the CIP shall be codified according to the procedure set forth in this Section.
- 4.9. **Park Access/Parking.** OCPRC shall be responsible to determine how Park patrons will access the Park (ingress to and egress from the Park). This responsibility and the costs associated therewith shall be addressed in the plans and programs set forth and described herein. In no event shall any resident of the City incur any fee or charge for entering the Park or Premises or for parking their car in or on the Park or Premises.
- 4.10. **Endangered Species.** OCPRC acknowledges that the Premises or portions thereof may be subject to restrictions or closures, if endangered species are present.
- 4.11. **Park Rules.** During this Agreement, the Park and Premises shall be subject to OCPRC Rules and Regulations and OCPRC policies and procedures, except as otherwise provided by this Agreement.
- 4.12. **Signs.** OCPRC shall be responsible for and is permitted to erect signs to identify the Park and features/structures located therein and to erect other signs that are typical and/or necessary at a public park of this nature.
- 4.13. **Volunteers.** OCPRC will use volunteers at the Park in various capacities, including existing volunteers and volunteer groups. All volunteers providing volunteer service at the Park shall become part of OCPRC's volunteer program.
- 4.14. **Sponsorship of Events/Programs at Park by Third Parties.** Without approval from the

City, OCPRC may solicit or accept sponsorship of events/programs at the Park by third-parties, pursuant to OCPRC's policies and procedures.

4.15. **Use of Park by Third Parties.** Notwithstanding any other provision in this Agreement, OCPRC may license use of the Park to third parties for events or programs, without approval from and notification to the City. OCPRC shall allow such use via written agreement with the third party, pursuant to OCPRC's policies and procedures. OCPRC shall notify the City in writing of events and programs of significant size. To avoid scheduling conflicts at the Park, all third parties desiring to use the Park for events or programs shall schedule such use through OCPRC. The written agreement for use of the Park by third parties shall also include the City as an indemnified party and additional insured as well, if insurance is required.

4.16. **Use of Park by the City.** The City may use the Park for City-sponsored events or programs at no cost, charge, or fee, if such use does not conflict with scheduled events or programs. To avoid scheduling conflicts at the Park, the City shall reserve use of the Park for its events or programs, through OCPRC. The City shall be responsible for all costs associated with the setup, operation, and cleanup of such events or programs.

5. **PARK FINANCES.**

5.1. **Initial OCPRC Investment.** The County shall make an initial investment of, not less than One Million Five Hundred Thousand (\$1,500,000) dollars, for Park operations, management, planning, maintenance, and improvements ("Initial Park Investment").

5.2. **Establishment of Park Fees & Charges.** OCPRC shall establish all Park Fees and Charges at the Park. The Park Fees and Charges shall be created, adopted, and implemented pursuant to OCPRC's current policies and procedures. Notwithstanding any other provision in this Agreement, at no time shall City Residents and Oakland County Residents be charged a fee for entry into the Park or the Premises or for parking at the Park or on the Premises.

5.3. **Park Revenue.** Subject to applicable law, all Park Revenue shall be paid to OCPRC and shall be deemed OCPRC's. OCPRC shall record the monies of all Park Revenue according to generally accepted accounting principles and in a manner similar to how OCPRC records other revenue it collects and receives.

5.4. **Annual Accounting and Audits.** OCPRC shall provide the City with an annual accounting of Park Revenue consistent with OCPRC's policies and procedures. The City has the right to annually review and audit OCPRC's records related to Park Revenue.

5.5. **Park Grants.**

5.5.1. **Existing Grants.** The City has received three Michigan Department of Natural Resources grants relating to property acquisition and development: December 15, 1982 State Recreation Land Acquisition Trust Fund MLTF#492 – Simonds Woods Nature Area Trust Fund Project Agreement; June 1, 1994 Protecting Michigan's Future Recreation Bond Program BF93-090 – Suarez Woods Nature Center Development Project Agreement; and July 7, 1999 Michigan Natural Resources Trust Fund TF97-032 – Suarez Woods Parks Expansion. As a condition of this Agreement, the City affirms its grant obligations and the County agrees to the terms, promises, conditions, and assurances set forth in the terms and conditions of these three grant agreements.

5.5.2. **Future Grants.** The Parties shall use their best efforts to work together to secure

grant funding for Park expansion, development, improvements, operation, and maintenance. OCPRC shall be responsible for applying for and managing grants related to the Park.

6. **ASSURANCES/LIABILITY/INSURANCE.**

- 6.1. **Title to Premises.** The City warrants that it has fee simple title to the Premises and the authority to enter into this Agreement. The City, at its sole expense, shall defend (including payment of attorney fees) OCPRC against any Claim challenging the City's right to execute this Agreement or OCPRC's use of the Premises as set forth herein.
- 6.2. **Liability for Claims.** Except as otherwise provided herein, each Party shall be responsible for any Claims made against that Party by a third-party and for the acts or omissions of its employees, volunteers, officers, or officials arising under or related to this Agreement.
- 6.3. **Liability for Claims Prior to the Agreement Effective Date.** The City shall be solely responsible for and shall defend (including payment of attorney fees) OCPRC against, at the City's sole expense, any Claim that occurred prior to the Effective Date or that was incurred but not reported prior to the Effective Date, except for Claims arising from OCPRC's use of the "Nature Center" portion of the Premises, as described in Exhibit A, since the October 1, 2012 and February 3, 2022 lease of the George W. Suarez Friendship Woods at Red Oaks County Park.
- 6.4. **Liability for Environmental Matters.** Notwithstanding any other provision, OCPRC shall not be responsible to perform or pay for remediation or clean-up of any environmental contamination on or around the Premises, which existed on the Premises prior to the Effective Date and/or discovered by the Phase I ESA, Phase II ESA, or any other environmental assessments performed pursuant to this Section 3, except for remediation or clean-up arising from OCPRC's use of the "Nature Center" portion of the Premises, as described in Exhibit A, since the October 1, 2012 and February 3, 2022 lease of the George W. Suarez Friendship Woods at Red Oaks County Park.
- 6.5. **Legal Representation.** Except as provided herein, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees, for any Claim that may arise from the performance of this Agreement.
- 6.6. **Responsibility for Costs/Fines/Fees.** Each Party shall be solely responsible for all costs, fines, and fees associated with any acts or omissions by its employees, volunteers, officers, or officials arising under or related to this Agreement.
- 6.7. **No Indemnification/Reimbursement.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 6.8. **Governmental Function/Reservation of Rights.** Performance of this Agreement is a governmental function and government service. This Agreement does not, and is not intended to, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity.
- 6.9. **Limitation of Liability.** In no event shall either Party be liable to the other Party or any other person, for any consequential, incidental, direct, indirect, special, and punitive or other damages arising out of this Agreement.

6.10. **Insurance.**

6.10.1. Except for the insurance set forth in Section 6.10.2 and Section 6.10.3, this Agreement does not require either Party to obtain insurance to cover loss exposures associated with this Agreement and the Park. Each Party is solely responsible to determine whether it will obtain insurance, and in what amounts, to cover loss exposures associated with this Agreement and the Park.

6.10.2. If a Party purchases a special event insurance policy for use the Premises, for whatever reason, then the Party shall name the other Party and its boards, commissions, elected and appointed officers/officials, employees, and volunteers as “additional insureds” on such policy.

6.10.3. The City, at its sole cost, shall obtain real property insurance for existing buildings and structures located on the Premises and for any future buildings and structures located on the Premises whether built by the City or OCPRC. If a building or structure that is covered by the City’s real property insurance is damaged or destroyed, OCPRC shall repair or replace the building or structure and the City shall reimburse OCPRC for all costs associated with the repair or replacement of such building or structure. OCPRC shall invoice the City for the costs of the repair or replacement and the City shall pay such invoice within thirty (30) calendar Days.

6.11. **Waste.** OCPRC shall not commit or allow to be committed any waste or nuisance on the Premises and will not use, or allow the Premises to be used, for any unlawful purpose.

6.12. **Compliance with Laws.**

6.12.1. OCPRC shall comply with all applicable federal, state, or local laws, regulations, rules, and ordinances related to the operation, management, planning, maintenance, and improvement of the Premises and Park. OCPRC shall obtain any necessary permits regarding its use of the Premises.

6.12.2. OCPRC acknowledges that any violations of the federal, state, or local regulations or convictions of any resource violations may be considered a default by OCPRC and the City may terminate this Agreement, as provided herein.

6.12.3. The Parties acknowledge that the Initial Park Investment are monies from the Coronavirus Local Fiscal Recovery Fund allocated to the County pursuant to the American Rescue Plan Act of 2021. The County has determined that the work to be performed with the Initial Park Investment are government services that fit into the loss revenue eligible use category under the Department of Treasury Final Rule implementing the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan of 2021. 31 CFR §35.6(d) (2023).

6.13. **Authorization.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.

7. **GENERAL TERMS AND CONDITIONS.**

7.1. **No Interest in Premises.** Through this Agreement, OCPRC shall have no title interest in and/or to the Premises or any portion thereof and has not, does not, and will not claim any

such title or any easement over the Premises.

- 7.2. **Delegation or Assignment**. Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party. For purposes of this Section, consent for the County shall be given by the OCPRC Director or his/her successor and consent for the City shall be given by the City Representative.
- 7.3. **No Employee-Employer Relationship**. Nothing in this Agreement shall be construed as creating an employer-employee relationship between County and the City.
- 7.4. **No Third-Party Beneficiaries**. Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.
- 7.5. **No Implied Waiver**. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.
- 7.6. **Severability**. If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
- 7.7. **Captions**. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
- 7.8. **Force Majeure**. Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, floods, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.
- 7.9. **Notices**. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing certified U.S. mail.

7.9.1. If Notice is sent to County, it shall be addressed and sent to: OCPRC Director, 2800

Watkins Lake Road, Waterford, Michigan 48328 and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.

- 7.9.2. If Notice is sent to the City, it shall be addressed and sent to City Manager, City of Madison Heights 300 West 13 Mile Road, Madison Heights, MI 48071.
- 7.9.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.
- 7.10. **Governing Law/Consent To Jurisdiction And Venue.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
- 7.11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one Agreement. Copies (photo, fax, or electronic) of signatures to this Agreement will be deemed originals and may be relied on to the same extent as originals.
- 7.12. **Entire Agreement.** This Agreement represents the entire agreement and understanding between the Parties regarding the maintenance, operation, and management of the Park and the Premises. This Agreement supersedes all other oral or written agreements between the Parties regarding that subject matter. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party. The Parties agree and acknowledge that upon the date the Transition Period ends the February 3, 2022 lease for the George W. Suarez Friendship Woods at Red Oaks County Park shall terminate and that the January 24, 2011 Grounds Maintenance Agreement for the Red Oaks Youth Soccer Complex shall terminate. Upon termination of the Grounds Maintenance Agreement, OCPRC shall remove all OCPRC signage from the Youth Soccer Complex.

IN WITNESS WHEREOF, _____ has been authorized by a resolution of the City, to execute this Agreement.

EXECUTED: _____

DATE: _____

WITNESSED: _____

DATE: _____

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, has been authorized by a resolution of the Oakland County Board of Commissioners to execute this Agreement.

EXECUTED: _____

DATE: _____

David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: _____

DATE: _____

EXECUTED: _____

DATE: _____

Gary McGillivray, Chairperson
Oakland County Parks and Recreation Commission

WITNESSED: _____

DATE: _____