

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PARK AND RECREATION BOARD
AND
THE PARK FOUNDATION**

THIS AGREEMENT is made by and between the *Park and Recreation Board*, a municipal corporation located at (Address) (hereinafter the “Park and Recreation Board”), and the *Park Foundation*, a nonprofit corporation organized pursuant to state Statutes, located in (City, State) (hereinafter the “Foundation”).

WHEREAS, the PARK AND RECREATION BOARD maintains the stated mission of striving to permanently preserve, protect, maintain, improve and enhance the City of () park land and its citizens’ recreational opportunities;

WHEREAS, the PARK AND RECREATION BOARD owns real estate, buildings and other recreational facilities and operates a number of recreational and athletic programs in furtherance of this mission;

WHEREAS, the PARK AND RECREATION BOARD has a naming policy and has in the future intends to authorize the “naming” of certain facilities, buildings, landscape areas, programs, and other related Park and Recreation assets, in return for private sector monies donated to the Parks Foundation and managed by the Foundation in accordance with this MOU between the Park Department and the Foundation;

WHEREAS, the PARK AND RECREATION BOARD establishes the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds, plaque locations and size. Additionally, the Park and Recreation Board philosophically and by policy will not name any asset without the necessary monetary gift as detailed in the *Policies and Procedures Manual* of the *Fund Development Program* of the Park and Recreation Board;

WHEREAS, the Foundation wishes to support the PARK AND RECREATION BOARD’s mission and has the opportunity to accomplish more than public funding allows;

WHEREAS, the private nature of the Foundation also provides the added advantage of dedicated donor services;

WHEREAS, the PARK AND RECREATION BOARD wishes to assist and enhance the operation of, and appropriately recognize, the Foundation;

WHEREAS, the PARK AND RECREATION BOARD wishes to support the fundraising activities of this Foundation and promote a positive relationship with their staff and volunteer members; and,

WHEREAS, the Foundation wishes to assure the PARK AND RECREATION BOARD that it will operate effectively and responsibly with the reasonable expectations of both public and private interests, on behalf of the PARK AND RECREATION BOARD;

THEREFORE, based on the foregoing, the Parties enter into the following Agreement.

Section 1. Foundation Representations. The Foundation represents and acknowledges the following with regard to its operation, creation and purpose:

1. The Foundation is created and operated primarily in support of the PARK AND RECREATION BOARD's mission and goals and their work will be compatible with these interests and goals and it will support the master plan of the Park and Recreation Board;
2. The Foundation will have as its primary purpose to secure, manage, and invest private support solely for the benefit of the PARK AND RECREATION BOARD;
3. It will operate as a private legal entity separate from the PARK AND RECREATION BOARD;
4. It will use sound fiscal and auditing procedures;
5. It will not interfere with day to day Park Board operations; and
6. It will obtain and maintain status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

Section 2. Foundation Documents. The Foundation shall keep on file with the PARK AND RECREATION BOARD updated copies of all enabling documents including the Articles of Incorporation, Bylaws and any amendments to these documents. The PARK AND RECREATION BOARD Superintendent or his or her designee shall review these documents annually.

Section 3. Foundation Enabling Documents – Required Provisions. The Foundation shall include language substantially similar to the following clauses in its enabling documents:

1. Articles of Incorporation. In the event of its dissolution, the Foundation's assets and records will be distributed to the PARK AND RECREATION BOARD, provided the PARK AND RECREATION BOARD remains a qualified charitable organization under relevant federal and state income tax laws;
2. Bylaws. The Bylaws shall provide that the Superintendent of the PARK AND RECREATION BOARD shall be an ex-officio member of the Foundation.

Section 4. Bond and Insurance. The Foundation shall insure that officers and staff members are bonded in an amount of not less than \$ _____ or ____% of the market value of the assets of the funds in the Foundation. The premiums payable on such bonds shall be payable from the funds of the Foundation. Further, the Foundation shall obtain and maintain general liability and directors' and officers' liability insurance in a reasonable and appropriate amount as

determined by the Foundation Board. The Foundation shall annually provide the PARK AND RECREATION BOARD documentation of its compliance with this Section.

Section 5. Accountability and Stewardship. As the PARK AND RECREATION BOARD and the Foundation want to maintain the highest levels of accountability and stewardship, the Foundation agrees to share information with the PARK AND RECREATION BOARD, as reasonable requested, develop reporting processes and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes and reports are made to donors on the use of such funds.

Section 6. Donor Solicitation.

Subd. 1. Donor Communication. The Foundation agrees to make the following clear to prospective donors:

1. The Foundation is a separate, legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the PARK AND RECREATION BOARD;
2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides in the Foundation's Board;
3. Checks for charitable gifts to the any PARK AND RECREATION BOARD programs should be made payable to the Foundation; and
4. Gifts made for a designated purpose will be dedicated in their entirety to that purpose unless it is specifically stated that an administrative charge will be applied.

Subd. 2. Conditions of Gift Acceptance. The Foundation agrees that in accepting gifts of all kinds, it will:

1. Advise donors that any restrictive terms and conditions they attach to gifts for the PARK AND RECREATION BOARD are subject to PARK AND RECREATION BOARD approval;
2. Ensure that gifts designated for specific purposes are in compliance with PARK AND RECREATION BOARD master plans, mission and philosophy;
3. Ensure that the PARK AND RECREATION BOARD's naming policies and procedures are adhered to as delineated in the Policy and Procedure Manual of the Fund Development Program;
4. Ensure that gifts are promptly reported to and approved for acceptance by the PARK AND RECREATION BOARD Superintendent in accordance with any PARK AND RECREATION BOARD policies and delegations of authority;
5. Coordinate their funding goals programs, and campaigns with the PARK AND RECREATION BOARD; and

6. Any gift, grant, or contract that includes a financial or contractual obligation binding upon the PARK AND RECREATION BOARD must have prior concurrence in writing from the Superintendent or his or her designee.

Section 7. FINANCIAL PROCEDURES.

Subd. 1. Standards. The Foundation will hold and invest endowments and funds functioning as endowments on a long-term basis. For this purpose, they should ensure that the following standards are applied:

1. Prudent Practices. In general, Foundation investment procedures should be conducted in accordance with prudent, sound practices to ensure that gift assets are protected and enhanced, that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the gift instrument.
2. Administration of Income. Income from investments, net of administrative fees, should be administered in accordance with pertinent Foundation policies, and, where appropriate, transferred to the PARK AND RECREATION BOARD so as to be expended from the appropriate PARK AND RECREATION BOARD department or program accounts.
3. Annual Report. The Foundation shall also prepare an annual report to the PARK AND RECREATION BOARD that summarizes the funds transferred to each PARK AND RECREATION BOARD department. The report shall summarize these amounts by each account and the total for each department. The PARK AND RECREATION BOARD and the Foundation shall provide each other with other reports necessary to assure proper financial oversight.

Section 8. PARK AND RECREATION BOARD - Accountability of Funds. Consistent with good stewardship, PARK AND RECREATION BOARD principals into whose department or program the Foundation funds are transferred, are responsible both to account for them in accordance with PARK AND RECREATION BOARD policies and procedures, and to notify the Foundation on a timely basis regarding the use of such funds. The Foundation in consultation with the PARK AND RECREATION BOARD shall determine who shall be responsible for reporting to the donor regarding the use of such funds.

Section 9. Financial Commitments Consistent with PARK AND RECREATION BOARD Mission. The Foundation should carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's governing board and consistent with the PARK AND RECREATION BOARD's mission and objectives.

Section 10. Financial Statement. The Foundation should maintain books in accordance with generally accepted accounting principles, and should be audited annually by a firm of certified public accountants. Copies of the audited financial statement and a current list of Foundation

officers, directors or trustees, shall be made available to the PARK AND RECREATION BOARD Superintendent.

Section 11. Inspection of Foundation Records. Because private funds are raised to support public projects, the Foundation will permit authorized PARK AND RECREATION BOARD officials or their designees to inspect all Foundation books and records, except to the extent such inspection violates rights to privacy or confidential donor information.

Section 12. Compliance Reviews. The PARK AND RECREATION BOARD will conduct periodic compliance reviews of the use of donated funds. These reviews will be conducted by the PARK AND RECREATION BOARD on an annual basis. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or the Foundation. The scope of the review and extent of testing will be mutually agreed upon in advance by the PARK AND RECREATION BOARD and the Foundation. A written report of the results of such review shall be provided to the Foundation.

Section 13. Designation as a Gift. Funds received by the PARK AND RECREATION BOARD shall only be accounted for as gifts where the appropriate donative intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

Section 14. PARK AND RECREATION BOARD Assistance to the Foundation. As long as the Foundation complies with all provisions of this Agreement, the PARK AND RECREATION BOARD will assist the Foundation in the following manner:

1. Allow the Foundation to use the name and images of the PARK AND RECREATION BOARD;
2. Allow the Foundation to use PARK AND RECREATION BOARD space, equipment, and staff in the performance of the Foundation's activities;
3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation.

Section 15. Notice of Non-compliance – Opportunity to Cure. In the event of non-compliance with any provision of this Agreement, the PARK AND RECREATION BOARD shall notify the Foundation in writing of the event or practice the PARK AND RECREATION BOARD believes does not comply with this Agreement. The Foundation shall, within fifteen (15) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the PARK AND RECREATION BOARD that the Foundation is in compliance. In the event the Foundation fails to comply within this time period, the PARK AND RECREATION BOARD, may, at its option, terminate this Agreement and its relationship with the Foundation.

Section 16. Termination. In addition to the method of termination provided for in Section 15, this Agreement may be terminated by either party by delivering written notice of termination

to the non-terminating party at least thirty (30) days prior to the effective date of any termination. In the event of termination, the Foundation shall provide the PARK AND RECREATION BOARD with an accounting of all funds in its possession and transfer those receipts, along with any restrictions thereon, to the PARK AND RECREATION BOARD.

Section 17. Entire Agreement and Amendment. This Agreement represents the parties' entire agreement with respect to the matters specified herein.

Section 18. Governing Law and Venue. It is understood that this Agreement shall be governed by and construed under and in accordance with the laws of the State of (). Venue for any actions arising under this Agreement shall be (City, State).

Section 19. Severability. Any provision of the Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

This Agreement is hereby executed by the duly authorized representatives of the parties as of _____, 201_.

PARK AND RECREATION BOARD

PARK FOUNDATION

By:

By: