

**AGREEMENT
BETWEEN
MILWAUKEE COUNTY PARKS
AND
MILWAUKEE PARKS FOUNDATION, INC.**

This Agreement is made and entered into effective _____, by and between the MILWAUKEE COUNTY PARKS (the "County") and the MILWAUKEE PARKS FOUNDATION, INC. (the "Foundation"). Together these named entities constitute the parties ("Parties") to this Agreement.

WITNESSETH:

WHEREAS, Milwaukee County is a municipal body corporate in the State of Wisconsin, and has a commitment to operate, maintain, and improve the Milwaukee County Parks System (the "Parks"); and

WHEREAS, the Foundation is a private, non-profit corporation organized under Chapter 181 of the Wisconsin Statutes with a tax exempt status under section 501(c)(3) of the Internal Revenue Code, and was formed and has functioned for the purpose of soliciting, holding, managing, investing and expending funds and other gifts, grants and bequests exclusively for the benefit and support of the Parks, maintained by the County, and such of its educational, scientific, and cultural programming as its Board of Directors from time to time deems to be suitable and appropriate; and

WHEREAS, the Foundation's mission is to engage the Milwaukee County community in supporting Milwaukee County Parks to collectively steward a thriving park system; and

WHEREAS, Milwaukee County and the Foundation wish to assure the continued success and growth of the Parks in the future; and

WHEREAS, Per Section 59.52(19) and 27.05(2), Wis. Stats., the Milwaukee County Board may accept donations, gifts or grants for any public governmental purpose within the powers of the county; and

WHEREAS, because of the close relationship of support groups with the County, support groups acquire a quasi-public status and are often perceived by the public as a functional part and representative of the County, which is why Chapter 13 of the Milwaukee County Code of General Ordinances requires that County departments have written agreements with support groups that are approved by the County Executive and County Board; and

WHEREAS, the Milwaukee County Board of Supervisors, by adopting Resolution _____ on _____, has authorized the Executive Director of Milwaukee County Parks to enter into this Agreement with the Foundation for and on behalf of Milwaukee County;

NOW THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. TERM:

The initial term of this Agreement shall be for the calendar year in which it is signed. After the initial term, this Agreement remains in effect unless and until terminated upon six month written notice by either party or by mutual consent.

This Agreement contains all the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto, or to vary any of the terms contained herein. All the provisions of this Agreement and any amendment thereto shall extend to and be binding upon and inure to the benefit of the Parties and the successors of the respective Parties. This Agreement, or any provision hereof or any right or obligation arising hereunder, is not assignable by either Party in whole or in part, without the express written consent of the other Party. Any amendment to this Agreement shall be in writing.

2. RIGHTS AND OBLIGATIONS OF EACH PARTY:

- i) Milwaukee County has the exclusive right and obligation to operate and maintain all aspects of the Parks in accordance with the policies and directives established by the Parks Executive Director, the County Executive, and the Milwaukee County Board of Supervisors (the "County Board"). To discharge its

duties in this regard, the County may receive from the Foundation support upon which the Parties agree.

ii) The Foundation shall continue to function as a private, non-profit corporation organized under Wisconsin statutes chapter 181 with tax-exempt status under Internal Revenue Code section 501(c)(3), independent and separate from the County. The Foundation shall, to the best of its ability, provide support to the Parks upon which the Parties agree. The Foundation shall direct its efforts towards support of the Parks consistent with the Foundation's mission.

iii) The Foundation recognizes that the county board endorses a policy of open meetings, open records, affirmative action and its code of ethics, and expects county employees to understand and comply with such policies in working with support groups. The Foundation, their agents and employees shall comply with all applicable federal, state and county laws and regulations governing conflicts of interest. The Foundation recognizes that county employees are responsible to disclose promptly to the county executive and county board information concerning proposed capital plans, operating support, promotional plans, programs and activities of friends groups.

iv) The Foundation understands that the County Board requires Milwaukee County Departments and employees to follow the policies in Chapter 13 of the Milwaukee County Code of General Ordinances that provides guidelines for County partnerships with support groups.

vi) The County may provide consultation and assistance to the Foundation as they develop policies and procedures for their organization.

vii) The County may provide the Foundation with a location for its administrative office, including parking, phone, internet, and custodial services.

viii) Both Parties shall designate a coordinator or liaison to be a point of contact for the other Party in relation to this Agreement. The County designee shall have the authority to administer this Agreement on behalf of the County.

3. MANAGEMENT OF COUNTY AND FOUNDATION AFFAIRS:

- i) The County and Foundation agree that, as independent and separate entities, each shall maintain a staff, management, and fiscal structure independent of the other.
- ii) The Parks Executive Director is the Milwaukee County official responsible for management of the Parks and as such, shall administer this Agreement for the County.
- iii) The Parks Executive Director shall serve as an ex officio (nonvoting) member of the Foundation's Board.
- iv) Any person who controls County funds, County employees, or other County assets shall be a County employee. If the Foundation wishes to fund such a position, it will do so through the transfer of funds to the Milwaukee County Treasurer rather than direct payments to the employee.
- v) The Foundation may employ and supervise persons who engage primarily in Foundation activities or who offer program support or enhancement to the Parks but shall not supervise County employees.
- vi) Insofar as volunteer activities support the mission of the Parks and the Foundation, the Foundation may direct volunteer activities in collaboration with the Parks. Prior to the volunteer activity, the Foundation and the Parks will agree in writing on who the lead is.
- vii) All media contacts related to the Parks, which are not related to the administration of solely Foundation activities, shall be approved in writing by the Parks Executive Director or designee prior to release. However, specifically excluded from this provision is social media (including but not limited to Facebook, Instagram, Twitter, LinkedIn, etc.). The Parks Executive Director and Foundation's Executive Director, or their respective designees, may confer on use of social media so as not to duplicate efforts or to be consistent in their efforts and message, but otherwise the Foundation may make reasonable use of social media to increase public awareness and educate the public about the Foundations' mission.

4. OPERATING PROCEDURES:

A. Solicitations and Donations:

i) The Foundation shall have the authority to solicit and receive donations, gifts, grants, and other forms of revenue from any source during the term of this Agreement, provided all such revenue received is used by the Foundation for the support of the Parks and the Foundation.

ii) The Parks Executive Director and designees have authority to solicit funds they determine are appropriate to their programs and goals. Such funds shall be payable to the County and may not be accepted by the Foundation. When advantageous, the Parks Executive Director may include the Foundation in these solicitations. The Parks Executive Director and designees may also participate in solicitations with the Foundation at the request of the Foundation.

iii) The Foundation agrees to provide written notification to the Parks Executive Director or designee of any donation it wishes to make for the benefit of the Parks, and, if applicable, whether the donor has included any restrictions on the donation. Any proposed donation to benefit the Parks that includes restrictions or contingencies must be approved by the Parks Executive Director prior to acceptance by Milwaukee County.

iv) The Parks Executive Director has the authority to accept all donations from the Foundation, including restricted donations, that the Parks Executive Director determines, in their sole discretion, aligns with the mission of the Parks.

v) The Foundation may plan fundraising, promotional or other events throughout the year to be held at the Parks. The Foundation will pay the Parks for any actual costs associated with these events. In the instance that actual costs or labor are waived, or discounted, a separate letter of intent outlining the rights and responsibilities of each Party and the actual costs of County staff and equipment will be provided. Venue rental fees for the Foundation may, at times, be discounted at the discretion of the Parks Executive Director.

vi) The County and the Foundation may engage in joint capital campaigns and fundraising events for solicitations and donations provided that the Parties agree in writing on the rights and responsibilities of each Party prior to the event or campaign. [A3]

vii) Unless the documentation indicates otherwise, the Foundation and County acknowledge that any monetary donations payable to the Parks and or the Parks Department are the property of Milwaukee County. If questions of donor intent arise, the Foundation shall contact the donor for clarification and provide the clarification in writing to Milwaukee County.

viii) The Foundation and its partners will require a portion of solicited or donated funds to support its operations. When seeking funding, the Foundation will seek support commensurate to the project management, grant writing, reporting, etc. work it is responsible for. If questions around the Foundation's operation support should arise, the Foundation will provide a written report detailing the use of funds.

B. Parks Operational Support Provided by the Foundation:

i. By July 1 of each year, the Parties shall mutually agree on an estimate of the budgeted amount and scope of financial support for Parks operations that the Foundation anticipates providing to the County for the upcoming fiscal year. The Estimated Financial Support shall include detail regarding the projected amount of support to be provided to the County for items such as, but not limited to, cash operating support and capital support which are generated from solicitations, donations, and/or grants, as well as in-kind services. By July 1 of each year, the County will provide to the Foundation its annual budgeting objectives for the purpose of assisting the Foundation with its budgeting process. The Parties acknowledge that the Estimated Annual Financial Support is the Foundation's good faith estimate and that the actual amount may vary from the Estimated Annual Financial Support depending on the Foundation's financial position.

ii. The County and Foundation agree that the marketing staff of each organization will work closely together to provide outreach, information, and promote the Parks and programs and events for Parks.

C. Parks Capital Support Provided by the Foundation:

i. For the purposes of this Agreement, the Foundation will only solicit funding for Capital Improvements, and will not be directly involved in the design, permitting, oversight, or contracting of Capital Improvements. Capital

Improvements are non-recurring construction, renovation, improvement, vehicle/equipment acquisition(s), and major technology software/hardware projects that meet the following criteria:

1. Capital costs are greater than or equal to \$100,000 and have a useful life greater than 1 year; and
2. Project addresses core facilities and/or infrastructure needs; and
3. Project addresses major deferred maintenance and/or life-safety issues.

ii. Capital Projects eligible for Foundation funding shall be approved by the County Board, if not already approved and included in the current County budget.

D. Grants or Sponsorships Secured by the Foundation:

i. The Foundation shall provide written notification annually to the Parks Executive Director of any grant or sponsorship opportunities that will support the County's mission.

ii. Prior to applying for any such grant or sponsorship, the Foundation shall require timely written confirmation from the Parks Executive Director that the opportunity would be of benefit to programs, activities, or projects at the Parks, and that the County will cooperate in the Foundation's activities in connection with such submission.

iv. The Foundation will track and provide a status report annually of grants and sponsorships that were accepted and/or declined for programs, activities, or projects at or for the Parks to the Parks Executive Director.

v. The Foundation will provide the County with a copy of awarded grant and sponsorship agreements upon request which will outline the terms and/or restrictions.

vi. If County staff assist the Foundation in implementing all or part of a grant and sponsorship, the Parks Executive Director, or his/her designee, agrees to cooperate in the reporting to assure that uses of funds are within the approved purposes of the agreement.

E. Parks Logo:

All promotional materials, whether print or digital, that are prepared by the Foundation that reference the Parks shall include the Parks Logo or mention of “Milwaukee County Parks” in a prominent position and must be approved in writing by the Parks Executive Director or designee.

F. Website:

The Foundation may fund, develop, and maintain its own website and may use it to promote the Parks, provide information about the Parks, promote all programs and events at the Parks, raise funds to support the Parks and solicit Foundation members and volunteers. Any major revisions to the website shall require written approval of the Parks Executive Director.

The website shall include the Parks Logo in a prominent position and include a hyperlink to: <http://county.milwaukee.gov/Parks>

5. REPORTING:

Pursuant to Milwaukee County Code of Ordinances Chapter 13.06(d), the Foundation shall file with the Parks Executive Director with a copy to the Milwaukee County Office of the Comptroller, within six months of the close of the Foundation’s fiscal year, as defined by the Foundation’s bylaws (*currently December 31*):

i. If the Foundation's annual gross receipts exceed four thousand dollars (\$4,000.00), a copy of its state form 308 (charitable organization annual report) submitted to the state department of regulation and licensing to comply with s. 440.41, Wis. Stats.

ii. In addition, if the Foundation's annual gross receipts exceed twenty-five thousand dollars (\$25,000.00), a copy of its IRS form 990 (return of organization exempt from income tax).

iii. In addition, if the Foundation's annual gross receipts exceed fifty thousand dollars (\$50,000.00), a certified, independently audited, financial statement reporting an audit performed in accordance with generally accepted accounting principles.

The Foundation shall submit to the Parks Executive Director within six months of the close of the Foundation’s fiscal year, as defined by the Foundation’ bylaws (*currently December 31*):

i. its adopted budget for the coming year;

- ii. a report detailing the amount of the Foundation's pecuniary support and the nature of its operations and volunteer support for the previous year;

The Foundation and the County shall provide each other with access to all documents or records related to co-sponsored events or programs. These documents and records shall include an accounting for the expenses incurred, funds received and disbursed by the Foundation and/or the County for such co-sponsored event or program.

6. INTERNAL CONTROLS

Internal controls are policies and procedures that protect the assets of an organization, create reliable financial reporting, promote compliance with laws and regulations and achieve effective and efficient operations. They relate to accounting, to reporting, and to the organization's communication processes. The Foundation will ensure that at a minimum its internal written controls will include procedures for:

- i. Handling funds received and expended by the organization,
- ii. Preparing appropriate and timely financial reporting,
- iii. Conducting the annual audit of the organization's financial statements, if required,
- iv. Evaluating staff and programs,
- v. Maintaining inventory records of real and personal property, and
- vi. Implementing personnel and conflicts of interest policies.

A copy of the Foundation policies and procedures for internal controls will be submitted to the Parks Executive Director, or the Parks Executive Director's designee. The Foundation will update the Parks Executive Director whenever changes are made to the policies and procedures.

7. INDEPENDENT CONTRACTORS:

In the performance of this Agreement both the County and the Foundation will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The agents or employees of the one shall not be construed to be the agents or employees of the other. Milwaukee County employees shall remain employees of Milwaukee County notwithstanding the fact that they may assist the Foundation.

8. CONFLICT OF INTEREST:

The County and the Foundation recognize that the opportunity for a conflict of interest may arise where an employee of one Party is related to an employee of the other. The

Parties agree to provide for an additional oversight and disclosure of transactions between related employees.

The Foundation may encourage Milwaukee County employees to become involved in Foundation activities, but Milwaukee County employees shall not serve as Foundation officers or directors.

The Foundation, their agents and employees shall comply with all applicable Federal, State, and Milwaukee County laws and regulations governing conflicts of interest.

9. COUNTY RIGHTS OF ACCESS AND AUDIT:

The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

10. INDEMNIFICATION:

The Parties to this Agreement agree to indemnify, defend and hold harmless the other Party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney's fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional, or negligent acts or omissions of the indemnifying Party or any of the officers, employees, agents or representatives of the indemnifying Party which may result in any person, persons, or organization suffering bodily injury, personal injury,

death or property loss or damage, employment practices, civil rights or environmental liability and impairments arising out of this Agreement. Milwaukee County's liability shall be limited by Wisconsin State statute sections 345.03(3) for automobile and 893.80(3) for general liability.

11. INSURANCE:

The Foundation and all parties furnishing services or products to Milwaukee County (County) or any of its subsidiary companies must provide the County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

Commercial General Liability Insurance including contractual coverage:

The limits of this insurance for bodily injury and property damage
Combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000

Business Automobile Liability Insurance:

Should the performance of this Agreement involve the use of automobiles, the Foundation shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

Employers Liability Insurance:

Such insurance shall provide limits of not less than \$500,000 policy limit.

Additional Requirements:

The Foundation shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.

The insurance specified in (1.) and (2.) above shall: (a) name County including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.

The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.

Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

The Foundation shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

12. TERMINATION FOR CAUSE

The Agreement may be terminated for cause. Either party may terminate for cause upon thirty (30) days' written notice. Prior to termination for cause, the breaching party will be afforded thirty (30) days in which to cure the alleged breach after having been notified of such breach in writing; provided, however, that if the breaching party is diligently pursuing a cure, the breaching party will have such additional time as is reasonably necessary to effect a cure.

13. NOTICE:

All notices with respect to this Agreement shall be in writing. Electronic communication is acceptable. If delivered by hand, a notice shall be deemed duly given and received upon delivery, or three days after posting via US Mail, to the Party addressed as follows:

To Foundation:

Milwaukee Parks Foundation, Inc.

Executive Director

9480 Watertown Plank Road

Wauwatosa, WI 53226

To County:

Milwaukee County Dept. of Parks

Parks Executive Director

9480 Watertown Plank Road

Wauwatosa, WI 53226

Either Party may designate a new address for purposes of this Agreement by written notice to the other Party.

Signature Page Follows
