

**AGREEMENT  
BETWEEN  
MILWAUKEE COUNTY PARKS  
AND  
FRIENDS HALES CORNERS PARK AND POOL**

This Agreement is made and entered into effective \_\_\_\_\_, by and between the MILWAUKEE COUNTY PARKS (the "County") and the FRIENDS OF HALES CORNERS PARK & POOL (the "Friends"). 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 Hales Corners Park (the "Park"); and

**WHEREAS**, the Friends 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 Park, 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 Friends mission is to keep Hales Corners Park & Pool open and operating and to continue to develop a recreational environment for residents in the Village and surrounding communities to enjoy; and

**WHEREAS**, Milwaukee County and the Friends wish to assure the continued success and growth of the Park in the future; and

**WHEREAS**, because of the close relationship of Friends groups with the County, Friends 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 Friends 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 Friends 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:**

- 1.1. 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 one (1) year written notice by either party or by mutual consent.
- 1.2. 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:**

- 2.1. Milwaukee County has the exclusive right and obligation to operate and maintain all aspects of the Park in accordance with the policies and directives established 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 Friends support upon which the Parties agree. The County and the Friends recognize that all Milwaukee County employees including the Parks Executive Director must comply with Milwaukee County's ordinances and policies.
- 2.2. The Friends 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 Friends shall, to the best of its ability, provide support to the Park upon which the Parties agree. The Friends shall direct its efforts towards support of the Park consistent with the Friends' mission.
- 2.3. The Friends shall submit to the Parks Executive Director within two months of the close of the Friend's fiscal year (its fiscal year being January 1 to December 31 currently) a written report detailing the amount of its cash support and the nature of its operations and volunteer support for the previous year. The report shall also provide an estimate of the amount of its cash support and the nature of its operations and volunteer support for the coming year. Furthermore, the report shall provide an accounting of all revenue received by the Friends in support of the Friends and in support of the Park, including all donations. The accounting shall include a description of intended uses and, if applicable, any donor intent.
- 2.4. The Friends recognize that the County Board endorses a policy of open meetings, open records, affirmative action, and a code of ethics. The Friends understand that the County Board expects Milwaukee County employees to understand and comply with such policies in working with friends' groups.

- 2.5. The Friends understand that the County Board requires Milwaukee County Departments and employees to follow the policy in Chapter 13 of the Milwaukee County Code of General Ordinances that provides guidelines for County partnerships with Friends groups.
- 2.6. The County and the Friends recognize that Milwaukee County employees may disclose to the County Executive and County Board information concerning proposed capital plans, operating support, promotional plans, programs and activities of friends' groups.
- 2.7. The County shall provide the Friends with a volunteer handbook and will provide consultation and assistance to the Friends as they develop policies and procedures for their organization.
- 2.8. 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 FRIENDS AFFAIRS:**

- 3.1. The County and Friends agree that, as independent and separate entities, each shall maintain a staff, management, and fiscal structure independent of the other.
- 3.2. The Parks Executive Director is the Milwaukee County official responsible for management of the Park and as such, shall administer this Agreement for the County.
- 3.3. Any person who controls County funds, County employees, or other County assets shall be a County employee. If the Friends wish 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.
- 3.4. The Friends may employ and supervise persons who engage primarily in Friends' activities or who offer program support or enhancement to the Park but shall not supervise county employees.
- 3.5. Insofar as volunteer activities support the mission of the Park and the Friends, the Friends may direct volunteer activities. These volunteer activities may include providing visitor information; providing tours and events; and other activities. The Parks Executive Director or designee and Friends President or designee shall agree to all volunteer activities. The Friends shall further take an active role in volunteer recruitment. Each member of the Friends who participates in any projects, activities or events conducted in the Park must complete a Volunteer Agreement if required by the County.
- 3.6. All media contacts related to the Park, which are not related to the administration of solely Friends activities, shall be approved in writing by the Parks Executive Director or designee prior to release.

### **4. OPERATING PROCEDURES:**

#### **4.1 Solicitations and Donations:**

- 4.1.1** The Friends 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 Friends for the support of the Park and the Friends.
- 4.1.2** 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 Friends. The Parks Executive Director and designees, however, may participate in solicitations with the Friends at the request of the Friends.
- 4.1.3** The Friends agree to provide written notification to the Parks Executive Director or designee of any donation it wishes to make for the benefit of the Park, and, if applicable, whether the donor has included any restrictions on the donation. No donated funds may be expended prior to the written approval of the Parks Executive Director or designee.
- 4.1.4** The Friends shall submit in writing each year by December, for approval by the Parks Executive Director, a description of Friends fundraising, promotional or other events to be held at the Park that will be solely sponsored, operated and funded by the Friends. The Parks Executive Director or designee and the Friends President shall develop a letter of intent outlining the rights and responsibilities of each Party and the actual costs of County staff and equipment to be reimbursed by the Friends, if any.
- 4.1.5** The County and the Friends may engage in joint promotional efforts provided that the Parties execute prior to the event a letter of intent specifying the rights and responsibilities of each Party. The letter of intent shall specify financial benefits to and obligations of each Party and shall be approved in writing by the Parks Executive Director or designee.
- 4.1.6** Unless the documentation indicates otherwise, the Friends and County acknowledge that any monetary donations payable to the Park and or the Parks Department are the property of Milwaukee County. If questions of donor intent arise, the County shall contact the donor for clarification.

#### **4.2 Parks Logo:**

All promotional materials, whether print or digital, that are prepared by the Friends that reference the Park shall include the Parks Logo in a prominent position and must be approved in writing by the Parks Executive Director or designee.

#### **4.2 Website:**

- 4.2.1** The Friends may fund, develop, and maintain a website for promoting the Park, providing information about the Park, promoting all programs and events at the

Park, raising funds to support the Park and soliciting Friends members and volunteers.

**4.2.2** The current design and content of the Friends website meets with the approval of Parks Executive Director, except that the Parks Logo needs to be updated and placed in a prominent position on the webpage. Any further major revisions or redesigns of the website shall require the written approval of the Parks Executive Director.

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

## **5. IMPROVEMENTS:**

**5.1 Prerequisites:** Prior to any improvement in the Park, the obligations of County and Friends hereunder are contingent upon Friends successfully meeting any applicable Milwaukee County Improvement requirements. If Friends' plans to renovate, improve or alter the Park, such alternations are contingent upon Friends obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Park. All costs associated the construction and renovation related to an improvement, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of the Friends. The County will not incur any costs, pay any expenses or issue any debt associated with the Friends' improvements and renovations to the Park or equipment used on the Park during the Term.

**5.2 County Approval:** Prior to the start of any construction or renovation in the Park, including any subsequent alterations or renovations, Friends shall submit detailed construction plans and specifications to the State Historical Preservation Office (if applicable), to Milwaukee County Parks and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of Friends' proposed contractor(s), for review and approval. Submittals shall include, but not be limited to, shop drawings containing product information and materials and products shall be approved by County. Friends shall reimburse County for the cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed the then applicable rates, which currently are Two Hundred Fifty Dollars (\$250.00) per hour, or Seven Thousand Five Hundred Dollars (\$7,500) total for the project. All costs for the Milwaukee County Project Manager work provided over the then applicable amount shall be charged to Milwaukee County Parks' operating budget. Conditions for approval shall include, but not be limited to provision that Friends shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities, including a Right of Entry permit from Milwaukee County Parks, and the execution of a separate development agreement.

**5.3 Construction Standards:** All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Friends shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Park undertaken by or on behalf of Friends. Any structures, alterations, additions or improvements installed in the Park by Friends (including generic signage permanently affixed to the Park) shall become the property of County upon the expiration or termination of this Agreement. In no event shall Friends make any alterations or additions to the Park without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed Five Thousand Dollars (\$5000) in cost per year.

**5.4 Builder's Risk:** Friends or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Park are ready for occupancy. Prior to construction, Friends shall supply the Parks Executive Director with written evidence of Builder's Risk insurance. Friends shall not commence construction activities without written approval from the Parks Executive Director and his/her designee. The Parks Executive Director shall provide a written response to the Friends within thirty (30) days of receiving written evidence of the Friends's Builder's Risk insurance documents.

**5.5 Construction Escrow:** Friends agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Park are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. Friends shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Park. Any such evidence of the Friends' financial capacity shall also include a letter from the Friends' banking institution stating that the Friends has secured a line of credit that is immediately available to Friends for such purposes in an amount sufficient to cover 100% the costs thereof.

**5.6** Licensed Tradespersons: Friends agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Friends shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Friends by County. Friends shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

**5.7** Construction Documents: Friends agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Friends shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Milwaukee final occupancy permits, if applicable.

**5.8** Removal of Equipment and Supplies: Upon expiration or termination of this Agreement for any reason or no reason, Friends shall remove, at its costs, all of its supplies, displays, and related items from the Park within three (3) days of the expiration or termination date, and shall restore the Park to its prior condition, satisfactory to the Parks Executive Director or his/her designee. Damage caused to the Park by any removal of personal property or improvements to the Park will be repaired by the Friends. If for any reason Friends does not comply in a timely manner with its obligations under this paragraph (which shall mean completion within sixty (60) days unless otherwise authorized in writing by the Parks Executive Director), then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Friends any and all reasonable costs, as determined by the County, related to this Section. The Friends agrees to surrender the Park in broom-clean condition, subject to ordinary wear and tear and casualty.

## **6. RECORDS:**

**6.1.** Pursuant to Milwaukee County Code of Ordinances Chapter 13.06(d), the Friends shall file with Milwaukee County Parks and the Milwaukee County Office of the Comptroller, within two months of the close of the Friend's fiscal year, as defined by the Friends' bylaws (currently December 31):

**6.1.1.** If the organization'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.

**6.1.2.** In addition, if the organization'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).

**6.1.3.** In addition, if the organization'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.

**6.2.** The Friends shall submit to the Parks Executive Director, or the Parks Executive Director's designee, within two months of the close of the Friend's fiscal year, as defined by the Friends' bylaws (currently December 31):

**6.2.1.** Its adopted budget for the coming year;

**6.2.2.** A report detailing the amount of the Friend's pecuniary support and the nature of its operations and volunteer support for the previous year;

**6.2.3.** An estimate of the amount of the Friend's pecuniary support and the nature of its operations and volunteer support for the coming year;

**6.2.4.** An accounting of all charitable donations over five thousand dollars received by the Friends in support of the Friends and in support of the park, which shall include a general description of the revenue, and, if applicable, any donor intent;

**6.2.5.** A description of Friends fundraising, promotional or other events to be held at the park that will be solely sponsored, operated and funded by the Friends for the coming year. If the Friends wish to hold an event that is not in this annual report, the Parks Executive Director and Friends Executive Director, or their respective designees, shall confer and work together to determine feasibility and timing of the event; and

**6.2.6.** As applicable, an updated copy of the Friends' bylaws, any amendments to its articles of incorporation and a list of its officers and directors. The Friends shall also establish and submit a code of ethics policy, conflict of interest policy, and policies and procedures on financial controls.

**6.2.7.** The Friends 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 and funds received disbursed by the Friends and/or the County for such co-sponsored event or program but shall not include any document which would contain information regarding individual donors or other sources of funds.

**6.3.** The Friends may, if it chooses, disclose to the County information regarding specific donors who have given gifts designated to be used in a specific way or for a specific purpose at the Park. Such disclosures shall not obligate the Friends to disclose any other information regarding donors or donations made to the Friends.

**7. INDEPENDENT CONTRACTORS:**

In the performance of this Agreement both the County and the Friends 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 Friends.



**8. CONFLICT OF INTEREST:**

- 8.1. The County and the Friends 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.
- 8.2. The Friends may encourage Milwaukee County employees to become members, but Milwaukee County employees shall not serve as officers or directors.
- 8.3. The Friends, 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:**

Every contractor and all parties furnishing services or product to Milwaukee County (County) or any of its subsidiary companies must provide 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:

- (a) 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
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

- (b) **Business Automobile Liability Insurance:**  
Should the performance of this Agreement involve the use of automobiles, Contractor 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.
- (c) **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.
- (d) **Employers Liability Insurance:**  
Such insurance shall provide limits of not less than \$500,000 policy limit.

**Additional Requirements:**

- (e) Contractor 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) Contractor 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. NOTICE:**

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the Party addressed as follows:

To Friends:

Friends of Hales Corners Park & Pool  
President  
PO Box 7  
Hales Corners, WI 53130

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*

**IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:**

**Friends of Hales Corners Park & Pool**

by \_\_\_\_\_ Date \_\_\_\_\_  
Donald G. Schwartz, President

**Milwaukee County Parks**

by \_\_\_\_\_ Date \_\_\_\_\_  
Guy Smith, Executive Director

***Approved as to form and independent status:***

***Reviewed:***

by \_\_\_\_\_ Date \_\_\_\_\_  
Corporation Counsel

by \_\_\_\_\_ Date \_\_\_\_\_  
Risk Management

*Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e)::*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller

*Approved:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive

*Approved as compliant under sec. 59.42(2)(b)5, Stats.:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel