

**DONATION AND NAMING RIGHT AGREEMENT REGARDING THE TENNEY PARK  
SHELTER PROJECT**

Between the Madison Parks Foundation and the City of Madison

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THIS AGREEMENT, entered into by and between the Madison Parks Foundation, a 501(c)3 corporation ("Foundation"), and the City of Madison, a municipal corporation ("City"), is effective as of the date by which all parties have signed hereunder.

WITNESSETH:

WHEREAS, the City has been formulating plans to make improvements in Tenney Park in the City of Madison, including the design and construction of a new Tenney Park Shelter (the "Pavilion") and other associated improvements (such as rebuilding of the lagoon shoreline) within Tenney Park (the "Project") and is actively working with the Tenney Park Shelter Group (the "Shelter Group") in making these plans and preparations;

WHEREAS, in the 2009 Capital Budget, the City budgeted \$1.2 million for the Project, with \$500,000 to be provided by the City from General Obligation Debt, and \$700,000 to be provided by private donations;

WHEREAS, the Tenney-Lapham Corporation, Inc. has raised significant donations to support the Project, yet still is approximately \$250,000 short of meeting the \$700,000 donation goal;

WHEREAS, Donor, as defined below, has expressed a desire to close this funding gap by making a donation to the City for the Project in the amount of \$250,000, on the condition that Donor be given naming rights to the Pavilion, input into the design of the Project, and that Donor's name be maintained anonymously throughout the City's authorization process;

WHEREAS, the City desires to accept the monetary donation from Donor for the benefit of the Project, and ultimately grant Donor naming rights to the new Pavilion;

WHEREAS, to transfer naming rights to Donor while maintaining Donor's anonymity until a later date, it is necessary for the City to enter into a donation and naming right agreement with a third party who can act as a financial and legal intermediary between the City and Donor, which agreement will provide for assignment of the third party's rights to Donor at a later date;

WHEREAS, since 2002 the Foundation, a body independent of the City, has raised funds to support improvements in neighborhood parks and public spaces and is in a position where it can assist the City and Donor in meeting the Donor's requests regarding anonymity; and,

WHEREAS, Donor and the Foundation will separately agree to an agreement between themselves that will address the donation and the assignment of the Foundation's rights under this Agreement to the Donor.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following definitions shall apply:

- a. Agreement. This Donation and Naming Right Agreement Regarding the Tenney Park Shelter Project.
  - b. Donation. The Donor's \$250,000 donation, less the Foundation's 2% (\$5,000) administrative fees, made to the Foundation to support the Project pursuant to the Donor Agreement.
  - c. Donor. The donor specifically identified in the Donor Agreement, as defined below, reached between the Foundation and Donor, and the donor's heirs and beneficiaries.
  - d. Donor Agreement. The agreement reached between the Donor and the Foundation regarding the payment of Donor's \$250,000 donation to the Foundation, and the assignment of the Foundation's rights and obligations under this Agreement to Donor.
  - e. Parties. The parties to this Agreement, specifically to include the City and the Foundation or the Foundation's assignee after assignment is accepted by the City under Section 6.
2. Purpose. The purpose of this Agreement is to transfer the naming rights of the Pavilion from the City to the Foundation, and ultimately the Donor, upon the City's receipt from the Foundation of the Donation.
  3. Use of Donation. Upon receipt by the City, the Donation shall be segregated into two (2) separate funds. The first fund (the "Pavilion Fund") shall be allocated Two Hundred Thousand and 00/100 Dollars (\$200,000.00), which will be strictly used by the City for the construction and design related costs of the Pavilion. The second fund (the "Improvement Fund") shall be allocated Forty-Five Thousand and 00/100 Dollars (\$45,000) which may be used by the City for discretionary items to enhance the quality of the Pavilion and for the overall Project, including, but not limited to, certain items that may not be included in the budget for the Pavilion or the Project. Foundation shall have the right to direct the City's expenditures from the Improvement Fund, subject to the City's public works contracting requirements otherwise applicable to the Project. Any amount remaining in the Improvement Fund shall be used to offset the overall costs of the Project to the City if not otherwise used by the City within six (6) months of the issuance of the occupancy permit for the Pavilion. In any event, the City may not spend any of the Donation until the Name, as defined below, is approved by the City's Board of Parks Commissioners pursuant to the provisions of Section 5.a.1 below.
  4. Timing of Donation and Contingencies. The Donation shall be payable by the Foundation to the City by January 31, 2011, or within thirty (30) days of the City's approval of the public works contract for the Project, whichever occurs later. If Donor does not make the \$250,000 donation to the Foundation prior to these dates, this Agreement is void. In the event any of the following conditions are not met in a timely fashion, the Foundation may immediately terminate this Agreement by providing written notice of such termination to the City, and in the case of such termination all rights and obligations of the parties to this Agreement shall cease to exist and Foundation shall not be liable for, and the

City shall not have any rights to, the Donation, except that notice of such termination must be sent by the Foundation within thirty (30) days of the event occurring or said right of termination is waived:

- a. The City, its agents or contractors, fails to commence construction on the Pavilion on or before June 1, 2011.
- b. The City, its agents or contractors, fails to complete construction on the Pavilion on or before June 1, 2012.
- c. The City fails to budget and contribute five hundred thousand dollars (\$500,000) for the Project prior to June 1, 2012.

5. Naming Rights and Donation Monuments.

- a. In recognition of Donor's generosity, the City agrees that the Foundation shall have the right to declare the name of the Pavilion (the "Name"). This naming right is subject to the following terms and conditions:
  - 1) Within ninety (90) days of the execution of this Agreement, the Foundation shall provide the City with the Name along with an Assignment of all of the Foundation's rights and responsibilities under this Agreement to Donor pursuant to Section 6 below. Upon the City's Board of Park Commissioners approval of the Name, the City shall be deemed as having accepted the Name for the Pavilion and the Assignment shall be deemed as having been accepted by the City, whereupon this Assignment shall be incorporated into this Agreement. If the City's Board of Park Commissioners rejects the Name, this Agreement shall become void and the City shall therein return the Donation, in its entirety, to the Foundation.
  - 2) The City agrees that the Pavilion shall have this Name, and this Name shall be prominently displayed thereupon, during the expected natural lifetime of the Pavilion, which is projected to be one-hundred (100) years. The Pavilion shall not be known by any other name and all prior names used to identify the pavilion in Tenney Park shall be abandoned in their entirety. The City agrees that during the expected natural lifetime of the Pavilion, Foundation shall have the right to enforce against the City, by specific performance, this naming right, and the rights associated therewith as outlined in this Agreement. Should the Pavilion either be destroyed or severely damaged by an act of God or act of Man prior to the end of the expected natural lifetime of the Pavilion, the City agrees that during this period any new, renovated or repaired Tenney Park Pavilion shall continue to have this Name, which Name shall continue to be enforceable by the Foundation, and Foundation's heirs and beneficiaries, against the City as provided in this Agreement.

- 3) The City agrees that the Name will be prominently displayed on the front and rear exterior entrances of the Pavilion and shall be made an integral part of, and included in, the architect's (Plunkett Raysich) overall design of the Pavilion. The design and location of the Name on the Pavilion must be agreed to by the Foundation and the City prior to the City's approval of the public works contract for the Project.
    - 4) The Name shall be used by the City on all Pavilion (a) documents, schedules and calendars; (b) advertising/marketing materials; (c) websites and other internet sites which reference the Pavilion; (d) all external correspondence and letters concerning the Pavilion; and (e) all internal correspondence and letters concerning the Pavilion, to the extent practicable.
  - b. The Parties further agree that the City, Tenney-Lapham Corporation, Inc., and the Shelter Group may offer naming rights to third parties for the areas of the Pavilion listed on Exhibit A, attached hereto. The Parties further agree that a pledge wall and tiles with additional donor's names may be included in the construction drawings and installed in the Pavilion.
  - c. The City shall install, prior to the grand opening of the Pavilion, a bronze commemorative Plaque (the "Plaque") with an approximate size of 18 inches by 24 inches within the Pavilion in a location mutually agreed to by the Shelter Group and the Foundation. The Plaque shall be designed by the Foundation and such design shall be acceptable to the Shelter Group and the City, as determined by the City of Madison Parks Division, prior to installation. The cost of the Plaque shall be included in the Project budget or, if not included in the budget, paid for out of the Improvement Fund as specified above. The Plaque shall be permanently displayed in the Pavilion and may not be removed by the City. In the event the Plaque is defaced, destroyed or stolen from the Pavilion, the City shall, within ninety (90) days of learning of the damage to, or missing, Plaque, either in its own capacity or from Foundation, or Foundation's heirs and beneficiaries, install a true and exact copy of the Plaque in the same location the Plaque was originally located.
6. Assignment. This Agreement is binding upon the successors and assigns of the Parties hereto. The only party to whom Foundation may assign its rights and obligations under this Agreement is Donor, pursuant to the terms and conditions of the Donor Agreement. Said Assignment shall be in writing and identify Donor by name and address, and shall be provided to the City by the Foundation along with the Name. Once the City accepts the Assignment by approval of the Name pursuant to the provisions of Section 5.a.1 above, City and Donor, as assignee of this Agreement, agree to release Foundation from all of its rights and obligations under this Agreement and the Foundation shall have no further interests in this Agreement nor be a party hereto. Instead, upon acceptance of the Assignment by the City, all existing rights and obligations of the Foundation under this Agreement shall be Donor's as assignee of the Agreement and all references to Foundation in this Agreement, other than in this Section, shall be treated as if

they were references to Donor. Once accepted by the City, this Assignment shall thereafter be incorporated into this Agreement.

It is the intent of the City, the Foundation and the Donor, as the future assignee of this Agreement, that the Foundation shall have no involvement in this Agreement upon acceptance of the Assignment by the City and any attempts by either the City or the Donor, as assignee, to the contrary shall be void.

7. Press Release. In the event the City (including without limitation, the Mayor's office or the Parks Division) intends to issue a press release regarding the Donation, such press release must be reviewed and approved by the Foundation, Donor and the Shelter Group.
8. Termination. In addition to the contingencies set forth in Section 4 above, in the event that prior to the completion of the Project the design of the Pavilion (including both exterior and interior design) materially varies from that shown on Exhibit B attached hereto (other than minor design variances that may arise during construction that do not require additional approval by the City's committees and agencies), and the City, the Foundation and Shelter Group cannot agree to the new design of the Pavilion, the Foundation may terminate this Agreement. To the extent any of the Donation has been paid by the Foundation to the City and the Foundation terminates this Agreement, the City shall return, within fifteen (15) days of the notice of termination, such amount(s) in full to the Foundation. Should this occur, the City agrees that it will be liable to the Foundation for any part of the Donation that was actually spent by the City. Moreover, in the event the City shows bad faith in complying with the naming rights of the Pavilion as set forth in Section 5, which bad faith shall be presumed upon the City's failure to remedy any violation of Section 5 after receiving three (3) written notices of such violation from Foundation, or Foundation's heirs or beneficiaries, during the expected natural lifetime of the Pavilion, the Foundation, or the Foundation's heirs and beneficiaries, shall have the right to terminate this Agreement and, notwithstanding anything contained herein to the contrary, the City shall be liable to the Foundation, or the Foundation's heirs and beneficiaries, for the full amount of the Donation.
9. Enforcement. In an action for specific performance brought pursuant to this Agreement, the prevailing party shall be entitled to recover all reasonable costs (including expenses, court costs and attorneys fees) incurred in the pursuit or defense of said action from the unsuccessful party. The parties hereby waive any right to trial by jury in any proceeding based upon a breach of this Agreement. Any party's failure to declare a default immediately upon its occurrence, or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel, except as otherwise set forth in this Agreement.
10. Nondiscrimination. In the performance of this Agreement, the City and the Foundation agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The City and the Foundation further agree not to

discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin

11. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered or certified United States mail, return receipt requested, at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or three (3) days after notice is deposited in the mail. Any party may, at any time, change its notice address by giving the other party written notice of the new address.

<u>Name</u>	<u>Address</u>
The Foundation	Madison Parks Foundation PO Box 2987 Madison, WI 53701-2987
The City	City of Madison Parks Division Attn. Parks Superintendent 210 Martin Luther King Jr., Blvd., Room 103 Madison WI 53703

12. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.
13. Final Agreement. This Agreement constitutes the entire agreement of the Parties and may only be modified or supplemented by an additional writing between the Parties. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.
14. Miscellaneous.
  - a. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
  - b. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
  - c. All addendums and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addendums and exhibits shall be binding upon all parties.

- d. This Agreement shall be null and void and of no effect unless executed by the City and the Foundation on or before December 31, 2010, at 5:00 p.m. CST, or such later date as agreed to by all parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE CITY OF MADISON

\_\_\_\_\_  
David Cieslewicz, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk  
Countersigned:

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Dean Brassler, City Comptroller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael P. May, City Attorney

\_\_\_\_\_  
Date

FOR THE MADISON PARKS FOUNDATION

\_\_\_\_\_  
Dorothy Borchartt, President

\_\_\_\_\_  
Date

**EXHIBIT A**

Other Naming Right Opportunities

Other Pavilion amenities which may be offered for naming opportunities by the City, the Tenney-Lapham Corporation Inc., or the Shelter Group:

1. Benches
2. Fireplace
3. Garden
4. Kitchen
5. Welcome garden
6. Bike racks
7. Children's play equipment
8. Exterior paving bricks/tiles
9. Interior floor tiles
10. Any other Pavilion amenity agreed to in writing by the City and the Foundation



**EXHIBIT B**

Floor Plan and Site Plan of Pavilion

(see attached)