

COOPERATIVE AGREEMENT

Between the Madison Parks Foundation and the City of Madison

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, beginning in the 1890’s and the establishment of the Madison Parks and Pleasure Drive Association (“MPPDA”), the City has been fortunate to enjoy widespread community support and funding from its citizens to acquire and develop the City’s valuable parkland; and,

WHEREAS, the Madison Parks Division (“MPD”) took over authority of the City’s parks from the MPPDA in 1938, and has grown and developed the current Park system, however a need still exists for private fundraising, community outreach, and public involvement in the continued development and maintenance of the City’s Park system; and,

WHEREAS, during its history, the City has been the recipient of numerous bequests, gifts or other donations for park purposes (“Donation Funds”), however, because many of these assets, or their income streams, are maintained by the City, the City has been unable to recognize reasonable returns on these assets, leaving many of them undervalued in comparison to what they would be worth if they were maintained by a non-governmental entity; and,

WHEREAS, in 2002 the Foundation was formed as a non-profit entity independent of the City, and since that time has successfully raised funds to support numerous Park improvement projects in neighborhood parks and public spaces throughout the City; and,

WHEREAS, the Foundation wishes to take on a more active role in fund raising, promoting philanthropic opportunities, and asset management on behalf of the City’s parks, but is in need of an Executive Director and permanent staff, which it currently does not have, to accomplish this goal; and,

WHEREAS, the City has agreed to establish the limited term position of Madison Parks Foundation Coordinator (the “Coordinator”) within the MPD to assist the Foundation’s efforts on behalf of Madison Parks, including the eventual establishment of the Executive Director position; and,

WHEREAS, it is in both the City’s and the Foundation’s best interests to transfer some of the Donation Funds to the Foundation to assist the Foundation’s growth and to better utilize the potential of the Donation Funds, to set forth the parameters of the Coordinator and the Executive Director positions as they relate to the Parties, and to generally more formally define the relationship between the Parties.

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. Purpose. The purpose of this Cooperative Agreement (“Agreement”) is to formally declare and establish the Foundation as the City’s official non-profit fund raising collaborator as it relates to the City’s parks and open space system, to set forth the roles and responsibilities of the City and the Foundation relating to the transfer of Donation Funds to the Foundation and their ultimate use by the City, and to outline the Parties’ roles and responsibilities regarding the Coordinator and the Executive Director positions.

2. Relationship of Parties. The Foundation shall be the City’s official non-profit fund raising collaborator as it relates to the City’s parks and open space system. The Foundation shall use the Donation Funds transferred to the Foundation for the benefit of the City’s parks and open spaces and the growth of the Foundation, pursuant to Section 3 below. The Foundation shall work with the MPD to target areas for park and open space improvements (“Projects”), engage in donor development, and effectuate community outreach programs to promote the City’s parks and open spaces. It is expected that the Foundation, in particular the Executive Director, once that position is created, will work closely with the City, specifically the Superintendent of Parks, in creating and overseeing targeted fundraising efforts and setting its goals and priorities so that the interests of the Parties do not differ greatly.

The Foundation is a legal entity separate from the City, and no partnership, agency, or other legal relationship other than the contractual relationship as set forth herein is created by this Agreement.

The Foundation shall retain sole authority over its own operations, and may make its own decisions about whether it wishes to participate in a designated Project, either by raising or donating funds in support thereof.

The City shall retain sole authority over Project approval, and may make its own decisions about whether to support a Foundation initiative by approving a Project.

3. Donation Funds.
 - a. Transfer of Funds. Upon approval by the City of Madison Common Council, specified Donation Funds may be transferred from the City to the Foundation, subject to the terms of this Agreement. Once transferred, the Donation Funds will become the assets of the Foundation, subject only to the terms of this Agreement.

 - b. Management of Funds. Once transferred, the Foundation shall note and comply with any specific restrictions that the Foundation is aware of, or that it reasonably should be aware of, in regard to any Donation Funds (e.g., “for aquatic purposes only”) and ensure that any such restrictions that applied to the City continue to apply to the use of those portions of transferred Donation Funds. If necessary, the Foundation will create segregated accounts to achieve this purpose. Subject to any such restriction, the Foundation shall have the discretion to invest the Donation Funds in any manner it sees fit.

- c. Accounting for Donation Funds. The Foundation shall create a separate accounting mechanism to keep track of the “balance” of the transferred Donation Funds, including creating separate “accounts” depending on any specific restrictions that may apply to the transferred Donation Funds. These accounts shall solely exist for the purposes of this Agreement to enable adequate reporting to the City of how Donation Funds transferred to the Foundation have been handled, and provide for a mechanism to determine how much of the Foundation’s assets should be returned to the City in the event this Agreement is terminated. In determining the current balance of such Donation Funds accounts, the following shall apply:
- i. Each account shall note the initial balance of any Donation Fund(s) transferred to the Foundation that are being tracked by the account, and the date of the transfer.
 - ii. Each account shall deduct any amounts spent by the Foundation (a) as payment for the Coordinator’s salary under Section 4(c), (b) to support Projects that are approved in accordance with Section 6, or (c) as otherwise agreed to in writing by the Superintendent of Parks and the President of the Foundation.
 - iii. For each reporting period, each account shall add (or subtract) to the account balance any appreciation (or depreciation) that would have otherwise applied to the funds if they were separately maintained by the Foundation. This amount shall be calculated by applying the actual rate of return on the Foundation’s overall investment portfolio for the period in question to the average daily balance of the account over the reporting period. For example, if an account’s average daily balance over a reporting period was \$100,000 and the Foundation had an actual rate of return on its investments of 5% during that period, the account would be credited with a \$5,000 gain during the reporting period.
 - iv. If there are more than one accounts being tracked under this Section, the final balances of each account after applying the rules set forth above shall be compiled into one figure.
 - v. The final balance of all Donation Fund accounts as determined by applying the above rules will, for the purposes of this Agreement only, be called the “City’s Share.”
- d. Termination. Upon termination of this Agreement by either Party, the Foundation shall arrange for the transfer of the City’s Share of the Foundation’s assets back to the City, and note any remaining restrictions that should apply to portions of the City’s Share.

4. Madison Parks Foundation Coordinator.

- a. Creation of the Coordinator Position. It is anticipated by the Parties that having an Executive Director will assist the Foundation with expanding its fundraising efforts to promote additional philanthropic opportunities benefiting Madison Parks. However, the Foundation does not currently have the institutional capacity to directly employ an Executive Director. Therefore, to assist the interim development of the Foundation's infrastructure until an Executive Director may be hired, the Parties agree that the City will create the limited term employment position of "Madison Parks Foundation Coordinator" within the MPD, which position is expected to benefit the City's parks by helping the Foundation's growth and development. The position shall last no longer than four (4) years, or whenever an Executive Director is hired by the Foundation, whichever comes first.
- b. Duties of the Coordinator. The Coordinator will be responsible for managing the day to day activities of the Foundation, engaging in fund raising and sponsorship development activities on behalf of the Foundation and MPD, and participating in special events. The Coordinator shall make reports to the Foundation's Board, and work with the Board in developing the Foundation's infrastructure so that an Executive Director may eventually be hired. The full responsibilities of the Coordinator are set forth on the Madison Parks Foundation Coordinator job description attached hereto as Exhibit A. At no time shall the Coordinator be a director or officer of the Foundation.
- c. City's Responsibilities. The Coordinator will report directly to the Superintendent of Parks and shall be subject to all City rules of employment.
- d. Foundation's Responsibilities. The Foundation shall be responsible for the salary (including benefits) of the Coordinator. The City shall prepare quarterly invoices of the salary paid to be paid the Coordinator and the Foundation shall remit payment to the City for this amount within fifteen (15) days of the invoice. Failure to remit payment is a default under this Agreement. Other than the salary payment described in this Subsection, the Foundation shall have no obligations relative to the Coordinator, however the Foundation is encouraged to communicate with the Superintendent about the Coordinator's performance in the exercise of his or her duties.
- e. Hiring and/or Termination. The City shall oversee the hiring process of the Coordinator, and efforts will be made to include the Foundation in this process. The City retains the sole authority to terminate the Coordinator. In addition, if funding for the position is not paid to the City by the Foundation as required above, the City may terminate, or temporarily lay off, the Coordinator for lack of funding.
- f. Hiring of an Executive Director. It is expressly foreseen that the Foundation will eventually hire an Executive Director who will assume many of the same duties

and responsibilities of the Coordinator in regards to the Foundation. In hiring the Executive Director, the Foundation is not required to hire, or even consider, the Coordinator, and the Foundation's hiring process is entirely up to the Foundation. Upon the hiring by the Foundation of an Executive Director, the Parties' responsibilities under this Section are void.

5. Executive Director of the Foundation. Once hired, the Executive Director shall report directly to the Foundation's Board of Directors. The Executive Director shall serve as a liaison between the Foundation and the MPD, and shall work closely with the Parks Superintendent in coordinating the efforts of the Parties pursuant to this Agreement.
6. Annual Business Plan. The Coordinator or Executive Director shall prepare and submit to the City and the Foundation, no later than June 30 of each year of this Agreement, an annual business plan for the Foundation detailing the Foundation's fund raising goals and development strategies, along with the Foundation's project and development priorities. The annual business plan shall set the agenda of the Foundation for the following year, and shall be considered by the MPD in setting forth its annual operating and capital improvement budget submissions. In preparing the report, the Coordinator or the Executive Director shall work with the MPD and the Foundation in establishing and planning project and development priorities for the upcoming year. The Foundation shall approve the annual business plan, either as submitted or with such modifications as the Foundation and City may agree on, within thirty (30) days of its submission. The annual business plan shall be presented to the Board of Park Commissioners for approval, which approval may include the specific approval of designated Projects set forth therein.
7. City's In-Kind Contribution to Foundation. In recognition of the Foundation's continued commitment to the City's park and open space system, and the increasing role of the Foundation which will bring with it increased costs, the City agrees that, during the term of this Agreement, and as long as requested by the Foundation, the City shall provide the Foundation with office space, telephone and internet service, information technology services, basic office supplies, and the use of office equipment. MPD shall accommodate the Foundation to the extent possible in its request for office space and equipment (within the parameters of its budget), and the Foundation agrees to abide by any restrictions set forth by the Superintendent of Parks upon the specific use of these supplies for Foundation purposes.
8. Project Approval Process. The Parties anticipate continuing their current collaborative efforts toward planning and funding park and open space improvement projects within the City. Regarding specific Projects, the following shall apply:
 - a. Either Party may approach the other Party to discuss a specified Project and gauge the other's interest. Neither Party is bound to participate in a specified Project.
 - b. If the Parties agree that a specified Project should proceed, they should create a Project plan that incorporates a general timeframe for the Project, sets forth

general planning concepts, lays out specific fundraising goals, and any other relevant factors to the success of the Project.

- c. Prior to implementing the Project plan, the Foundation's Board and the Board of Parks Commissioners should both approve the collaborative plan, formally recognizing the joint-effort.
 - d. If the Foundation, through its Board, makes specific Project funding commitments, it shall abide by them, subject to any contingencies included therein. However, if specific Project fund raising fails goals are not met, the Foundation will not be responsible for any shortage that it specifically authorizes. Moreover, should there be a deficiency in fund raising, the City reserves the right to cancel a Project.
 - e. Notwithstanding any provision hereof, any Project described in any business plan prepared and approved in accordance with Section 6 shall be deemed approved pursuant to this Section.
9. Reporting Requirements. The Foundation shall provide the City with an annual accounting of the Foundation's holdings, revenues and expenditures, within thirty (30) days of these reports being prepared for tax reporting purposes. The annual report shall account for all the Foundation's holdings, revenues and expenditures so that the City may ensure that the Foundation is continuing to effectively operate in the City's interests. In addition, the Foundation shall, upon request, provide the City with an up to date accounting of the City's Share of the Foundation's assets, as described above in Section 3. This report shall be provided within fifteen (15) days of a request being made by the City.
 10. Term. This Agreement shall remain effective until either party, with at least thirty (30) days advance written notice, declares its intention to terminate this Agreement, in which case this Agreement shall terminate on the stated date. Upon termination, the Foundation shall begin the process of transferring all of the City's Share of Foundation assets back to the City.
 11. Default. Notwithstanding Section 10, in the event that the Foundation defaults in any of the terms of this Agreement, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to the Foundation, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the Foundation, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the Foundation under this Agreement.
 12. Assignment. The roles and responsibilities of the Foundation as set forth in this Agreement may not be assigned to any other party without the City's prior written approval.
 13. 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

14. Affirmative Action. It is understood by the Parties that the Foundation currently has no permanent employees and is a volunteer organization. However, it is anticipated that during the term of this Agreement the Foundation will hire an Executive Director and additional employees of the Foundation may be added. The Parties agree that in the event the Foundation ever has fifteen (15) or more employees that the Parties will immediately execute an addendum to this Agreement to ensure that this Agreement complies with the City's affirmative action requirements set forth in Madison General Ordinances Section 39.02(9) as that section may be amended from time to time.
15. Indemnification. The Foundation shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Foundation and/or the Foundation's contractor's or agent's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
16. Insurance. The Foundation will insure, as indicated, against the following risks to the extent stated below. The Foundation shall not commence work under this Agreement until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability. The Foundation shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Foundation's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker's Compensation. Prior to hiring any employees, the Foundation shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin. The Foundation shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Foundation shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. The Foundation shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Foundation shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Foundation and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

17. 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

18. 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.
19. 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.

20. 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. No third parties (including without limitation the Coordinator and the Executive Director) are intended to benefit from this Agreement, and no third party beneficiary rights shall be implied from anything contained in this Agreement.
- c. This Agreement may be executed in one or more counterparts, each or which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
- d. 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.

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 MADISON PARKS FOUNDATION

Grant Frautschi, President

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

EXHIBIT A

Madison Parks Foundation Coordinator Job Description