

COOPERATIVE AGREEMENT

Between the Madison Parks Foundation, Inc. and the City of Madison

THIS AGREEMENT, entered into by and between the Madison Parks Foundation, Inc., a 501(c)3 non-stock 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 the community to acquire and develop the City’s valuable park and open space system; and,

WHEREAS, the Madison Parks Division (“Madison Parks”) took over authority of the City’s parks from the MPPDA in 1938, and has grown and developed the City’s 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, in 2002 the Foundation was formed as a non-profit entity independent of the City, and since that time has successfully raised funds and worked with Madison Parks to support numerous park improvement projects, as well as programs in parks and public spaces throughout the City; and,

WHEREAS, in 2013 the City and Foundation (the “Parties”) entered into a Cooperative Agreement (the “2013 Agreement”) to formally declare and establish the Foundation as the City’s official non-profit fund raising collaborator as it relates to the City’s park system. The 2013 Agreement also addressed the transfer and use of certain City funds, and to outline the Parties’ roles and responsibilities regarding the creation of the Foundation’s Executive Director position, which position was created and transitioned to the Foundation’s full control in 2018; and,

WHEREAS, since the 2013 Agreement, the Foundation has taken on an active role in fundraising and promoting philanthropic opportunities, as well as managing transferred funds on behalf of the City to assist the Foundation’s growth and to better utilize the potential growth of those funds, which arrangement has worked to the benefit of the Parties; and,

WHEREAS, the City has been and anticipates it will continue to be the recipient of numerous bequests, gifts or other donations for park purposes, which funds may be better utilized by the Foundation.

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 update and replace the 2013 Agreement by reaffirming that the Foundation is the City’s official non-

profit fundraising collaborator as it relates to the City's park and open space system, to set forth the roles and responsibilities of the City and the Foundation relating to transferred funds and their ultimate use by the City, and to outline the Parties' roles and responsibilities with respect to each other.

2. 2013 Agreement. Upon the effective date of this Agreement, the 2013 Agreement is hereby terminated and replaced by this Agreement.
3. Relationship of Parties. The Foundation shall continue to be the City's official non-profit fundraising collaborator as it relates to the City's park and open space system. The Foundation is an Affiliated Organization (AO) for the City of Madison, and as such is governed by Madison General Ordinances Sec. 4.29. Pursuant to the Rules of Procedure and Basic Policies of the City of Madison Board of Park Commissioners, the Board of Park Commissioners, acting through the President, shall appoint two Trustees for one-year term(s) to the Madison Parks Foundation Board.

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 regarding the use of its funds, subject to any limitations contained in this Agreement, and consistent with its own articles of incorporation and by-laws.

4. Foundation's Obligation. The Foundation shall use funds transferred to the Foundation or other funds raised by the Foundation for the benefit of the City's parks and open spaces and the growth of the Foundation. The Foundation shall work with Madison Parks to target areas for park and open space improvements ("Projects"), engage in donor development and recognition, and effectuate community outreach programs to promote the City's parks and open spaces ("Programs"). It is expected that the Foundation, in particular the Executive Director, 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 are aligned.
5. Transferred Funds.
 - a. Definition. For the purposes of this Agreement, Transferred Funds shall refer to those funds received by the City by private, non-governmental parties for a specific park related purpose that were either transferred to the Foundation under the 2013 Agreement or under this Section. Transferred Funds shall include funding provided to the City by bequest, trust, agreement or other means, and for a purpose involving the City's park system. Transferred Funds shall not include any funds raised by the Foundation separately from the City, or the income generated by the Foundation on any Transferred Funds held.
 - b. Future Transfer of Funds. Following the execution of this Agreement, City-held funds may be transferred from the City to the Foundation, subject to the terms of this Agreement. Once received, these funds will be considered Transferred Funds

and become the assets of the Foundation, subject only to the terms of this Agreement. Transfers of under \$10,000 may be approved by the Parks Superintendent and the City Finance Director, while transfers over \$10,000 will require the approval of the Common Council.

- c. Management of Funds. Once received, 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 Transferred 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 Funds by the Foundation. If necessary, the Foundation will create segregated accounts to achieve this purpose. The Foundation shall have the discretion to invest the Transferred Funds in any manner it sees fit. Transferred Funds can be used with the approval of the Foundation Board and the Parks Superintendent, provided that such use is consistent with the Foundation’s mission and any restrictions that may apply to the use of the Transferred Funds.
- d. Accounting for Transferred Funds. The Foundation shall maintain a separate accounting system to keep track of the “balances” of the Transferred Funds, including creating separate “accounts” depending on any specific restrictions that may apply to the Transferred Funds. These accounts shall exist solely for the purposes of this Agreement to enable adequate reporting to the City under Section 12 of how Transferred Funds have been handled by the Foundation, 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 Transferred Funds accounts, the following shall apply:
 - (1) Each account shall note the initial balance of any Transferred Fund(s) that are being tracked by the account, and the date of the transfer.
 - (2) Each account shall deduct any amounts spent by the Foundation, as follows:
 - (a) As payment for Foundation employees salary and benefits;
 - (b) To support Projects or Programs that are approved in accordance with Section 10; or,
 - (c) As otherwise agreed to in writing by the Superintendent of Parks and the President of the Foundation.
- e. Termination. Upon termination of this Agreement by either Party, the Parties shall arrange for the return of Transferred Funds to the City, except those funds that were used by the Foundation as provided for under Subsection c. Once received by the City, the Transferred Funds shall continue to be used solely for park and open space purposes, or as otherwise restricted under the terms of the respective donations. The City shall be entitled to the entire balance at the time of the transfer of funds. Funds that are to remain with the Foundation must only be used in a manner consistent with the Parks Foundation 2002 Articles of Incorporation, and be used only for park uses.

6. Annual Initiatives Summary. No later than March 1 of each year of this Agreement, the Executive Director shall meet with Madison Parks and detail the Foundation's approved fundraising initiatives. At this meeting, the Parties shall discuss the fundraising goals set for the next year, the Foundation's long term strategies for organizational development, and fundraising capacity growth.
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 restricted access office space of not less than 126 square feet for office and storage purposes, as well as related utilities, shared conference and meeting space available for reservation, telephone and internet service, limited information technology services, basic office supplies, mailbox and the use of office equipment (ie. printer/copier). Madison Parks shall accommodate the Foundation to the extent possible in its request for office space, equipment and storage (within the parameters of its budget and contingent upon available space), and the Foundation agrees to abide by any restrictions set forth by the Superintendent of Parks upon the specific use of office space and supplies for Foundation purposes. Any information technology services provided under this provision shall be subject to approval by the City's Information Technology Department and City policies. The value of the City's In-Kind Contribution is anticipated to be approximately \$15,000 per year. Upon request, the City shall provide documentation to support this in-kind contribution valuation.
8. Foundation Workspace within City Facility. Foundation shall provide for all other business needs it may have, including:
 - a. Information technology equipment and software, including, but not limited to, computer/monitor, software licenses and separate data storage from the City network, as well as website design and hosting;
 - b. Any furniture for the Foundation's City-provided office, other than the initial desk for the Foundation's Executive Director that was provided by Madison Parks on a one-time basis;
 - c. Any other items necessary for its operations not otherwise provided by Madison Parks under Section 7.
9. Special Events, Fees and Charges. The Foundation may organize and host various events annually throughout the course of the Agreement term for the sole purpose of benefitting Madison Parks and the City. The Foundation must follow established special event application processes for each public event occurring on park property, obtain all necessary permits and comply with permit conditions. Because of the Foundation's status as an affiliated organization and as the official non-profit fundraising collaborator as it relates to the City's park and open space system, Foundation shall be exempt from all park-related fees, including application fees, reservations, temporary structure, amplification, vending and rental of Madison Parks' equipment, for up to ten (10) events

per year. However, Foundation will be required to obtain, or have its contractor obtain, alcohol/liquor licenses if necessary and will be responsible for covering all other costs associated with the event, unless otherwise agreed upon in writing with the Parks Superintendent.

10. Project/Program Approval Process. The Parties anticipate continuing their current collaborative efforts toward planning and funding Projects and Programs within the City. Regarding specific Projects or Programs, the following shall apply:
 - a. The Parties shall work together to establish a standard process for developing Project and Program ideas, and other work order requests.
 - b. Either Party may approach the other to discuss a specified Project/Program and gauge the other's interest. The Board of Park Commissioners or members thereof may suggest through its appointees to the Foundation's Board, or through City staff, projects and programming for which private philanthropic support may be appropriate. Neither Party is bound to participate in a specified Project/Program.
 - c. 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/Program, either by raising or donating funds in support thereof.
 - d. The City shall retain sole authority over Project/Program approval, and may make its own decisions about whether to support a Foundation initiative by approving a Project.
 - e. If the Parties agree that a specified Project/Program should proceed, they will create a Memorandum of Understanding or other agreement (MOU) that incorporates a general timeframe for the Project/Program, sets forth general planning concepts, and lays out specific fundraising goals, cooperative marketing efforts of both Parties and any other relevant factors to the success of the Project/Program. The MOU will include, if applicable, donor recognition and will incorporate financial details, including total donation, MPF Administrative fees and costs, total amount to be provided to the City, and expected timeline of receipt of the funds. As part of the MOU, the Parties may include reporting requirements wherein the Foundation may be required to provide an annual fundraising update for the Project/Program including the funds available by certain dates.
 - f. Prior to implementing a Project/Program under an MOU established under this Section, the Foundation's Board and the Parks Superintendent should both approve the collaborative plan, formally recognizing the joint-effort. If, due to the complexity/scope of the Project/Program or because of additional City or legal requirements, the approval of the Board of Parks Commissioners is needed, such approval shall be granted before the Parks Superintendent approves the MOU.
 - g. If the Foundation, through its Board, makes specific Project/Program funding commitments, it shall abide by them, subject to any contingencies included therein.

However, if specific Project/Program fundraising goals are not met, the Foundation will not be responsible for any shortage. Moreover, should there be a deficiency in fund raising, the City reserves the right to cancel a Project/Program, or to proceed with the Project/Program using other funding sources.

- h. The Parties will annually review all MOUs approved under this Section to determine if the Project/Program has been completed. Upon mutual agreement, the MOU will be considered completed. Parks Staff will prepare a report detailing such MOU's and their status for the Board of Park Commissioners by February 1 each year.
- 11. Invoicing. During the course of a Project/Program, the Parties shall communicate on Project/Program timelines, including, if necessary, the anticipated billing periods. This communication is necessary to ensure that the Foundation has access to funds when needed. Following completion of a specified Project or Program, or at periodic intervals for a continuing Project or Program, Madison Parks shall prepare an invoice and provide documentation to request reimbursement of expense. Reimbursement of City expenses shall be made within thirty (30) days of invoicing, unless another arrangement is approved by the Parks Superintendent.
- 12. Reporting Requirements. The Foundation shall provide the City with the following reports, if requested:
 - a. 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 interest.
 - b. The Foundation shall annually provide the City with an up to date report of the Transferred Funds, as described above in Section 5.d. This report shall include an accounting of the balances at the beginning of the year, any new funds received, funds expended, and remaining balances at the end of the reporting period.
 - c. The Foundation shall prepare a formal written Annual Business Plan to be presented to the Board of Park Commissioners at its June meeting each year. The Business Plan shall include annual initiatives, expected fundraising, expenditures, prior year's performance and audited financial statements of the Foundation. Because the Business Plan will be included in the Legislative file for Commission review and acceptance, no private donor or otherwise confidential information should be included therein.
 - d. Foundation will provide an Informational Year-End Review Report to be presented at the Commission's January meeting each year. The report should include an update on Annual Initiatives and a copy provided for the Legislative File.

13. Term.

- a. Term; Renewal. This Agreement shall remain effective through December 31, 2028, and, unless either Party provides written notice to the other of its intent to allow the Agreement to expire no later than 6 months prior to the expiration of the term, shall automatically renew for successive 5-year periods under the same terms and conditions set forth herein, or as amended from time-to-time.
- b. Termination. Notwithstanding the foregoing, either party may, with at least 6 months advance written notice, declare 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 Transferred Funds back to the City.

14. Default. Notwithstanding Section 13, in the event that the either party defaults in any of the terms of this Agreement, and any such default shall continue unremedied for a period of sixty (60) days after written notice thereof to the other, the non-defaulting party may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the other, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the other under this Agreement.

15. Continued Effect. In the event of termination of this Agreement, the terms of this Agreement shall remain effective at least until such time as the Parties are able to effectuate the return of the Transferred Funds to the City as required under Section 5.e

16. 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.

17. 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, gender identity, 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, sexual orientation, gender identity or national origin.

18. Affirmative Action.

- a. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):

The Foundation (the "Contractor" in this Section) agrees that, within thirty (30) days after the effective date of this Agreement (the "Contract" in this Section), Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by

the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 18.a) at the time the Request for Exemption in 18.b(2) is made.

b. Articles of Agreement, Request for Exemption, and Release of Payment:

The “ARTICLES OF AGREEMENT” beginning in para (5) apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director
Rights

**As determined by the Department of Civil

- (1) Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in section 18.b(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights (“Department”) makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 18.b(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

- (2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.
- (3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City for the calendar year in which the contract is in effect. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 18.b(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.
- (4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.
- (5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be

provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (**check one**):

- ☐ A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- ☐ B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- ☐ C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- ☐ D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.

- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

19. Indemnification and Insurance.

- a. 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.
- b. Insurance.
 - (1) Required 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, nor shall Foundation allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
 - (a) 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.

(b) Worker's Compensation. 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. Foundation shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

(2) 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.

(3) 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.

(4) Notice of Change in Policy. Foundation, its subcontractors, and/or the Insurers 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.

(5) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

20. Notice. Any notice or offer or demand required to be sent hereunder shall be sent in writing 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 259336 Madison, WI 53725
The City	City of Madison Parks Division Attn. Parks Superintendent 330 E. Lakeside St. Madison WI 53715

21. 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.
22. 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.
23. 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 Foundation staff) are intended to benefit from this Agreement, and no third party beneficiary rights shall be implied from anything contained in this 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.
24. Compliance with Applicable Laws. The Parties shall become familiar with, and shall at all times comply with and observe, all federal, state and local laws, ordinances and regulations which in any manner affect the services or conduct of the Parties and their agents and employees in the performance of this Agreement.
25. Authority. The Parties each represent that they have the authority to enter into this Agreement, and the person(s) signing on behalf of the City and Foundation represent and warrant that they have been duly authorized to bind the City and Foundation and sign this Agreement on their behalf.
26. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an

original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

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

Ty Beck, President

Date

CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by the City was authorized by Resolution Enactment No. RES-____ - _____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20 ____.