

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN CARLOS
AND
THE SAN CARLOS PARKS AND RECREATION FOUNDATION, INC.**

THIS AGREEMENT is made by and between the City of San Carlos, a municipal corporation located at City Hall, 600 Elm Street, San Carlos, California 94070 (the City), and The San Carlos Parks and Recreation Foundation, Inc., a nonprofit corporation organized pursuant to state statutes, located in San Carlos, California (the Foundation).

WHEREAS, the City, through its Parks and Recreation Department, maintains the stated vision to create community through people, parks and programs; and the stated mission to strengthen community image and sense of place, support economic development, strengthen safety and security, promote health and wellness, foster human development, increase cultural unity, protect environmental resources, facilitate community problem solving and provide recreational experiences; and

WHEREAS, the City, owns or operates and maintains real estate, buildings and other recreational facilities, and operates a wide variety of programs and services in furtherance of this mission; and

WHEREAS, the City intends to have a naming policy and in the future intends to authorize the “naming” of certain facilities, buildings, landscape areas, programs, and other related Park and Recreation Department assets, in return for private sector monies donated to the Foundation and managed by the Foundation in accordance with this Memorandum of Understanding (MOU) between the City and the Foundation; and

WHEREAS, the City, through its Parks and Recreation Department, established the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds, plaque locations and size. Additionally, the City’s Parks and Recreation Department philosophically and by policy will not name any asset without the necessary monetary gift as detailed in the *Policies and Procedures Manual of the Fund Development Program* of the City’s Parks and Recreation Department; and

WHEREAS, the Foundation wishes to support the City’s Parks and Recreation Department’s vision and mission and has the opportunity to accomplish more than public funding allows; and

WHEREAS, the private nature of the Foundation also provides the added advantage of dedicated donor services; and

WHEREAS, the City wishes to assist and enhance the operation of, and appropriately recognize, the Foundation; and

WHEREAS, the City wishes to support the fund raising activities of the Foundation and promote a positive relationship with their staff and volunteer members; and

WHEREAS, the Foundation wishes to assure the City and its Parks and Recreation Department that it will operate effectively and responsibly with the reasonable expectations of both public and private interests on behalf of the City and its Parks and Recreation Department.

THEREFORE, based on the foregoing, the parties enter into the following Agreement.

Section 1. Foundation Representations. The Foundation represents and acknowledges the following with regard to its operation, creation and purpose:

1. The Foundation is created and operated primarily in support of the City and its Parks and Recreation Department's vision and mission and goals and their work will be compatible with these interests and goals and it will support the master plan of the City's Parks and Recreation Department.

2. The Foundation will have as its primary purpose to secure, purchase, manage and invest privately raised funds solely for the benefit of the City's Parks and Recreation Department's programs.

3. The Foundation will operate as a private legal entity separate from the City and its Parks and Recreation Department.

4. The Foundation will use sound fiscal and auditing procedures.

5. The Foundation will not interfere with day to day Parks and Recreation Department operations; and

6. The Foundation will obtain and maintain status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

Section 2. Foundation Documents. The Foundation shall keep on file with the City's Parks and Recreation Department updated copies of all of its enabling documents including the Articles of Incorporation, bylaws and any amendments to these documents. The City's Parks and Recreation Department Director or his or her designee shall review these documents annually.

Section 3. Foundation Enabling Documents - Required Provisions. The Foundation shall include language substantially similar to the following clauses in its enabling documents:

1. Articles of Incorporation. In the event of its dissolution, the Foundation's assets and records will be distributed to the City of San Carlos for Parks and Recreation services, provided the City remains a qualified charitable organization under relevant federal and state income tax laws.

2. Bylaws. The Foundation's Bylaws shall provide that the Director of the City's Parks and Recreation Department shall be an ex-officio member of the Foundation.

Section 4. Bond and Insurance. The Foundation shall ensure that officers and staff members are bonded in an amount of not less than \$1,000,000. The premiums payable on such bonds shall be payable from the funds of the Foundation. Further, the Foundation shall obtain and maintain general liability and directors' and officers' liability insurance in a reasonable and appropriate amount as determined by the Foundation Board. The Foundation shall annually provide the City's Parks and Recreation Department documentation of its compliance with this Section.

Section 5. Accountability and Stewardship. As the City and the Foundation want to maintain the highest levels of accountability and stewardship, the Foundation agrees to share information with the City as reasonably requested, develop reporting processes and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes and reports are made to donors on the use of such funds.

Section 6. Donor Solicitation.

6.1. Donor Communication. The Foundation agrees to make the following clear to prospective donors:

1. The Foundation is a separate, legal and tax entity organized for the purpose of encouraging voluntary, private gifts,

trusts, and bequests for the benefit of the City's Parks and Recreation Department.

2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides with the Foundation's Board.
3. Checks for charitable gifts to any of the City's Parks and Recreation Department's programs should be made payable to the San Carlos Parks and Recreation Foundation.
4. Gifts made for a designated purpose will be dedicated in their entirety to that purpose unless it is specifically stated that an administrative charge will be applied.

6.2 Conditions of Gift Acceptance. The Foundation agrees that in accepting gifts of all kinds, it will:

1. Advise donors that any restrictive terms and conditions they attach to gifts for the City's Parks and Recreation Department are subject to the City's Parks and Recreation Department approval.
2. Ensure that gifts designated for specific purposes are in compliance with the City's Parks and Recreation Department's master plans, vision, mission and philosophy.
3. Ensure that the City's Parks and Recreation Department's naming policies and procedures are adhered to as delineated in the *Policy and Procedure Manual of the Fund Development Program*.
4. Ensure that gifts are promptly reported to and approved for acceptance by the City
5. Coordinate their funding goals, programs and campaigns with the City's Parks and Recreation Department.
6. Any gift, grant, or contract that includes a financial or contractual obligation binding upon the City must have prior concurrence in writing from the City Council or its designee.

Section 7. Financial Procedures.

7.1. Standards. The Foundation will hold and invest endowments and funds functioning as endowments on a long-term basis. For this purpose, they should ensure that the following standards are applied:

1. Prudent Practices. In general, Foundation investment procedures should be conducted in accordance with applicable state law, prudent, sound practices to ensure that gift assets are protected and enhanced, that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the gift instrument.
2. Administration of Income. Income from investments, net of administrative fees, should be administered in accordance with pertinent Foundation policies, and, where appropriate, transferred to the City so as to be expended from the appropriate City's Parks and Recreation Department or program accounts.
3. Annual Report. The Foundation shall also prepare an annual report to the City that summarizes the funds transferred to the City. The City and the Foundation shall provide each other with other reports as may be necessary to ensure proper financial oversight.

Section 8. City's Parks and Recreation Department - Accountability of Funds. The Foundation, in consultation with the City's Parks and Recreation Department, shall determine who shall be responsible for reporting to the donor regarding the use of a donor's funds.

Section 9. Financial Commitments Consistent with the City's Parks and Recreation Department Vision and Mission. The Foundation shall carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's Board of Directors and consistent with the City's Parks and Recreation Department's vision, mission and goals.

Section 10. Financial Statement. The Foundation shall maintain financial records in accordance with generally accepted accounting principles, and be audited annually by a firm of certified public accountants. Copies of the audited financial statements and a current list of Foundation officers, directors or trustees, shall be made available to the City.

Section 11. Inspection of Foundation Records. Because private funds are raised to support public projects, the Foundation will permit, on reasonable notice, authorized City officials or their designees to inspect all Foundation books and records,

except to the extent such inspection violates rights to privacy or confidential donor information.

Section 12. Compliance Reviews. The City's Parks and Recreation Department will conduct periodic compliance reviews of the use of donated funds. These reviews will be conducted by the City's Parks and Recreation Department on an annual basis. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or the Foundation. The scope of the review and extent of testing will be mutually agreed upon in advance by the City and the Foundation. A written report of the results of such review shall be provided to the Foundation.

Section 13. Designation as a Gift. Funds received by the City shall only be accounted for as gifts where the appropriate donor intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

Section 14. The City's Parks and Recreation Department's Assistance to the Foundation. As long as the Foundation complies with all provisions of this Agreement, the City will assist the Foundation in the following manner:

1. Allow the Foundation to use the name and images of the City's Parks and Recreation Department.
2. Provide the Foundation with assistance in Foundation activities in the discretion of the Director of the Parks and Recreation Department, and consistent with what is permitted under state and federal law.
3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation.

Section 15. Notice of Non-Compliance - Opportunity to Cure. In the event of non-compliance with any provision of this Agreement, the City shall notify the Foundation in writing of the event or practice the City believes does not comply with this Agreement. The Foundation shall, within fifteen (15) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the City that the Foundation is in compliance. In the event the Foundation fails to comply within this time period, the City may, at its option, terminate this Agreement and its relationship with the Foundation.

Section 16. Termination. In addition to the method of termination provided for in Section 15, this Agreement may be terminated by either party by delivering written notice of termination to the non-terminating party at least thirty (30) days prior to the effective date of any termination. In the event of termination, the Foundation shall

provide the City with an accounting of all funds in its possession and transfer those receipts, along with any restrictions thereon, to the City.

Section 17. Entire Agreement and Amendment. This Agreement represents the parties' entire agreement with respect to the matters specified herein.

Section 18. Governing Law and Venue. It is understood that this Agreement shall be governed by and construed under and in accordance with the laws of the State of California. Venue for any actions arising under this Agreement shall be in the County of San Mateo, California.

Section 19. Severability. Any provision of the Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 20. Attorney's Fees. In the event of litigation or arbitration over the terms or performance of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Section 21. Mediation. Should any dispute arise out of or related to this Memorandum of Understanding or its performance by the parties hereto, the parties shall meet in mediation and attempt to reach a resolution with this assistance of a mutually acceptable mediator. The parties shall select a mediator within ten (10) days of the notice by a party to mediate a claim. Mediation shall be concluded within sixty (60) days of the notice to mediate being made unless extended by the parties by mutual agreement. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution of the claim(s). The costs of mediation shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of obtaining attorneys fees and legal costs.

This Agreement is hereby executed by the duly authorized representatives of the parties as of _____, 2007.

CITY OF SAN CARLOS

By _____
(Name) _____
(Title) _____

SAN CARLOS PARKS AND RECREATION FOUNDATION, INC.

By _____
(Name) _____
(Title) _____