

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
AND  
PRINCE GEORGE'S COUNTY PARKS AND RECREATION FOUNDATION, INC.**

This Memorandum of Understanding ("MOU") effective this 18<sup>th</sup> day of August 2016, ("Effective Date") is by and between the Maryland-National Capital Park and Planning Commission ("Commission") and the Prince George's County Parks and Recreation Foundation, Inc. (the "Foundation").

**WITNESSETH:**

**WHEREAS**, the Commission is a public body corporate empowered by the State of Maryland pursuant to Division II (Titles 14 through 27) of the Land Use Article of the Maryland Annotated Code to acquire, develop, maintain and administer a regional system of parks within Montgomery and Prince George's Counties and to prepare and administer a general plan for the physical development of the two counties; and

**WHEREAS**, the Prince George's County Department of Parks and Recreation, a department of the Commission, oversees the regional system of parks and recreational programs within Prince George's County, Maryland; and

**WHEREAS**, the Foundation was organized for the purpose of providing financial support to the Commission to preserve, promote, and advance the acquisition, protection, use and development of parkland and parks and recreation programs owned and/or operated by the Commission for the residents of Prince George's County, Maryland, as stated in the Foundation's Articles of Incorporation; and

**WHEREAS**, the Foundation is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code; and

**WHEREAS**, the Foundation exists to raise and manage public and private resources to support the mission, goals and priorities of the Commission in Prince George's County, Maryland

**NOW THEREFORE**, the parties agree as follows:

**1. Definitions.**

The capitalized terms used herein shall have the meanings specified in this Section, unless otherwise specifically indicated in the section of this MOU in which the term is used. With respect to terms used herein, the singular shall include the plural and vice versa, and the use of any gender shall include all genders and the neuter, as the context requires.

a. "Applicable Legal Requirements" means any applicable Federal, State, and local laws, rules, and regulations, including but not limited to, the Commission's policies, practices, rules, and regulations.

b. "Commission Event of Default" shall have the meaning ascribed to it in Section 17 of this MOU.

c. "Commission Representatives" mean the Commission and its Commissioners, directors, officers, employees, agents, and representatives.

d. "Contributions" mean a gift, grant, conveyance, devise bequest, donation, and endowment or otherwise of any money or property, real or personal, received, actually or beneficially, by the Foundation for the benefit of the Department and that is consistent with the Department's park purpose.

e. "Curable Event of Default" shall have the meaning ascribed to it in Section 16 of this MOU.

f. "Department" means the Prince George's County Department of Parks and Recreation.

g. "Department Priorities" mean the plans, programs, goals, and priorities of the Department as approved by the Planning Board.

h. "Director of Parks and Recreation" means the Director of the Department or designee.

i. "Disputable Event of Default" shall have the meaning ascribed to it in Section 16 of this MOU.

j. "Enabling Act" means Titles 14 through 27 (Division II) of the Land Use Article of the Maryland Annotated Code.

k. "Financial Statements" mean audited financial statements of the Foundation, or such other financial statements requested or accepted by the Commission's Secretary-Treasurer for review.

l. "Foundation" shall mean the Prince George's County Parks and Recreation Foundation.

m. "Foundation Administrative Fee" means the reasonable percentage or amount that the Foundation may assess from Restricted and Unrestricted Funds, in an amount not to exceed 12%, to support the Foundation operations.

n. "Foundation Board" means the Foundation's Board of Directors.

o. "Foundation Policies" means any and all policies established and adopted by the Foundation.

p. "Foundation Representatives" means the Foundation and its directors, officers, employees, agents, and representatives.

q. "Foundation Operational Funds" means those funds generated through the Foundation Administrative Fee from Restricted and Unrestricted Funds and used to support the operations of the Foundation. Any additional funds required for Foundation operations will be subject to the consent of the Director of Parks and Recreation.

r. "Funds" mean any and all moneys received, held, administered or managed by the Foundation pursuant and subject to this MOU, including Restricted Funds, Unrestricted Funds, and Marketing Opportunity Funds.

s. “Grant Funds” mean funds received and administered by the Foundation from a granting authority. Grant Funds are not subject to the Foundation Administrative Fee unless specifically authorized by the granting authority.

t. “Marketing Opportunity” means any sponsorship, naming and advertising opportunities solicited and/or administered by the Foundation through which a third party will, for certain consideration, obtain the ability to sponsor, name, and/or advertise the third party, its products, or its services, in connection with a Marketing Opportunity Asset.

u. “Marketing Opportunity Asset” means any Park Asset, Park Program, or Recreation Program deemed eligible by the Commission when necessary, and/or the Department, for Marketing Opportunities. The Commission, along with its Secretary Treasurer, will review and approve all opportunities presented.

v. “Marketing Opportunity Funds” means any funds or proceeds derived from a Marketing Opportunity. These funds will be designated as Unrestricted Funds and used in accordance therewith unless otherwise defined as Restricted Funds by the Director of Parks and Recreation to be used for a particular program or project. Marketing Funds may be subject to the Foundation Administrative Fee.

w. “MOU” or “Agreement” means this Memorandum of Understanding.

x. “Park and Recreation Assets” mean any Department amenities such as recreation/athletic fields, playgrounds, pavilions, trails, structures and other facilities, buildings, rooms, landscaping, art or other physical features, in each case, owned, operated or managed by the Commission in Prince George’s County, Maryland.

y. “Park and Recreation Programs” means any recreational or interpretive programs, functions, services or similar events that are owned, operated or managed by the Commission in Prince George’s County, Maryland.

z. “Parks and Recreation System” means collectively, the Prince George’s County parks and recreation system that is managed and operated by the Department.

aa. “Person” means an individual, a corporation or any division thereof, a partnership, limited liability company, an association, a joint stock company, a joint venture, a trust, an unincorporated organization or a government or any agency or political subdivision.

bb. “Permitted Investments” means those obligations and investments permitted by the Applicable Legal Requirements and managed in accordance with the Foundation’s Investment Policy.

cc. “Planning Board” means the Prince George’s County Planning Board.

dd. “Policy” or “Policies” means, as the case may be (a) any and all policies established and adopted by the Foundation; or (b) any and all policies approved and adopted by the Commission for the purposes of governing or establishing guidelines for any activity that the Foundation may engage in on behalf of the Commission under this MOU.

ee. “Restricted Funds” mean Contributions that are designated for a specific purpose or project by the donor. Restricted Funds may be subject to the Foundation Administrative Fee.

ff. "Tax Code" means the Internal Revenue Code of 1986, as amended, and any applicable regulations, rulings or revenue procedures promulgated thereunder or under any predecessor thereto.

gg. "Trust Agreement" means the trust agreement by and between the Foundation and the Commission to manage Unrestricted and Restricted Funds held by the Foundation for use by the Department in its sole discretion.

hh. "Unrestricted Funds" means Contributions that are free from donor restrictions or conditions and available for use by the Foundation for the benefit of Department projects and programs as determined by the Director of Parks and Recreation. Unrestricted Funds may include, but are not limited to, funds generated through Marketing Opportunities, less the Foundation Administrative Fee and any associated hard costs such as signage or printed materials.

## **2. Purpose.**

The purpose of this MOU is to formally set forth the respective roles, responsibilities, policies, procedures, and priorities between the Commission and the Foundation that will enable the coordination of activities by the Foundation on behalf of the Commission to provide financial support through Contributions, for the Department's Park and Recreation Assets and Programs.

## **3. Term; Renewal.**

The term of this MOU shall commence as of the Effective Date and shall continue for a period of five (5) years (the "Term"). The Term shall be renewable automatically for successive five (5) year terms ("Successive Term"), until or unless the Foundation shall dissolve its organization or this MOU is otherwise terminated. Each successive term shall be predicated upon a mutually agreed upon review of the terms and conditions set forth herein and modified from time to time as appropriate; provided however, unless either party provides written notice to the other, within sixty (60) days prior to the expiration of the term then in effect, of the desire to so modify or terminate this MOU for the next renewal period, this MOU shall automatically renew for the next Successive Term without the necessity of written documentation.

## **4. Foundation Services and Support for the Commission and Department Priorities.**

The Foundation shall:

- a. create an environment conducive to increasing levels of Contributions to support the mission and priorities of the Department;
- b. design, coordinate, and implement programs and procedures to solicit Contributions to further the purposes, priorities, and mission of the Department;
- c. receive, hold, invest, manage, use, dispose of, and administer Contributions for the benefit of the Department and for purposes not in conflict with Department Priorities;
- d. receive, hold, invest, manage, use, dispose of, and administer Marketing Opportunity Funds for the benefit of the Department, for purposes not in conflict with Department Priorities,

and in accordance with a Trust Agreement to be entered into by and between the Foundation and the Commission;

e. solicit and accept Contributions in accordance with the Foundation Policies and subject to the approval of the Director of Parks and Recreation; Notwithstanding anything contained herein, the Department is not prohibited from directly accepting Contributions from donors;

f. manage and use all Contributions in accordance with the expressed wishes of the donor and/or grantor, as the case may be, but under no circumstances shall such Contributions be used for purposes that do not meet Department Priorities;

g. use Foundation Operational Funds as determined by the Foundation's Board of Directors, but under no circumstances shall such funds be used for purposes that are in conflict with the Department Priorities;

h. receive, hold, manage, use, disburse, and administer Unrestricted Funds as determined by the Director of Parks and Recreation, and in accordance with the Trust Agreement;

i. in consultation with the Director of Parks and Recreation, be responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the Department's Priorities;

j. not accept gifts and grants from Federal, State, and local agencies and authorities without the prior approval of the Director of Parks and Recreation;

k. comply with all Applicable Legal Requirements. For this purpose, the Foundation will establish policies and guidelines in prudent management of its business and affairs that are not in conflict with the Commission's Policies and the Department Priorities and in accordance with (a) the requirements for tax-exempt entities under Section 501(c) (3) of the Tax Code, as amended; (b) the laws of the State of Maryland and any regulations promulgated thereunder applicable to the Foundation, including but not limited to, the Maryland Uniform Prudent Management Institutional Funds Act (Md. Code Ann., Est. & Trusts § 15-410), and those governing charitable solicitations, nonprofit corporations, the investment of trust funds and accounts, and the management of funds; and (c) the laws of other states and nations applicable to the Foundation, including but not limited to, those governing charitable solicitation, charitable gift annuity issuance, and foreign corporation registration;

l. comply with and adhere to all Foundation Policies and those Commission Policies that relate to Commission Property impacted by Foundation activities, including but not limited to, the Commission's Naming Rights Policy and the Commission's Corporate Sponsorship Policy;

m. maintain donor and provider records resulting from the Foundation's development and fundraising activities, and take reasonable steps to protect donor and provider records, and adopt industry best practices regarding data gathering, maintenance, securities, and release;

n. not operate projects or programs that are in conflict with the projects and/or programs operated by the Department; and

## 5. Use of Name, Marks, and Logo.

Subject to the terms and conditions set forth in this MOU, and consistent with the Foundation's mission to help to preserve, promote, and advance the acquisition, protection, use, and development of the Parks and Recreation System, the Foundation is granted the right to use of the name, logos, seals, and identifying marks of the Department which are deemed appropriate by the Department for use, in addition to its own seal and logotype to demonstrate affiliation. However, upon termination of this MOU, any right to the use of the name, logos, seals and identifying marks of the Department will cease.

## 6. Foundation Board of Directors.

The Foundation represents and warrants that:

- a. it has adopted its bylaws which set forth the administrative provisions for internal governance of the Foundation;
- b. its Board members shall:
  - i. be respected as a members of the community in good standing;
  - ii. possess the capacity and willingness to identify sources for, and raise funds in the community to support the purposes of the Foundation and the Department;
  - iii. understand the Foundation and its purpose;
  - iv. be committed to the mission and philosophy of the Commission, the Planning Board, the Department, and the Department Priorities; and
  - v. be prepared and committed to fulfilling all duties and obligations associated with service as a Foundation Director and pursuit of the Foundation's missions and goals as they relate to the Department.
- c. it shall notify the Commission of any change to its bylaws. The Commission has a right to terminate this MOU, in its sole and absolute discretion, if there is a change to the Foundation bylaws.

## 7. Sustaining the Foundation; Foundation Budget

a. **Financial Support.** The Department, at its sole cost and in its sole discretion, will support the Foundation's operations in the Department's annual operating budget through its normal budgeting processes, as requested by the Foundation Board and deemed appropriate by the Director of Parks and Recreation. The Foundation will contribute to staffing costs, administrative costs, and other support costs as the raising of Unrestricted Funds allows. In the event the Department no longer deems supporting Foundation staffing and administrative costs as a priority, the Director of Parks and Recreation may reallocate resources and staffing for other purposes. At that point, the Foundation will be expected to provide the funding necessary to support its staff.

b. **Non Appropriation of Funds.** If the County Council fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period during the

term of the MOU succeeding the first fiscal period, any funding obligation of the Commission shall be cancelled and discharged automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. The Commission shall notify the Foundation as soon as it has knowledge that funds may not be available for the continuation of the MOU for each succeeding fiscal period beyond the first.

**c. Other Support.** The Department will further support the Foundation operations, by providing sufficient office and conference space for the Foundation staff to conduct its affairs, along with making available or donating to the Foundation, office furniture, equipment and services including computers, copy machines, printers, and telephones. The Department agrees to host the Foundation's website and provide technical support to maintain said website; provide for the printing of letterhead, flyers, mailers, and brochures. In addition, the Department will supply electricity, heat, air-conditioning, and any and all other utility services necessary for occupancy and use of the Foundation space as approved by the Director of Parks and Recreation.

**d. Review and Approval of Foundation Budget.** The Executive Director of the Foundation, in consultation with the Foundation Board, shall develop the Foundation's annual budget. The budget shall include a list of all existing and planned fundraising programs, the anticipated expenses and revenue for each fund raising program, and the Foundation's overhead cost. The Executive Director of the Foundation will then present the Foundation's annual budget to the Foundation Board for approval. Once approved, the annual budget will serve as the basis for the Foundation's request to the Department for financial support. The Foundation's request for financial support, if deemed appropriate by the Director of Parks and Recreation, will be included as a separate line item in the Department's budget request which will be transmitted to the Planning Board for approval. The timing of this budget submittal shall coincide with the Department's regular budget cycle.

**e. Administrative Fee.** The Foundation has the right to assess and receive an Administrative Fee as agreed upon by both the Foundation and the Department. However, the Administrative Fee shall not exceed twelve percent (12%) of the combined Restricted and Unrestricted Funds.

**f. Reserve for Operations.** The Commission acknowledges that the Foundation will establish an unrestricted reserve fund which shall be funded and managed in accordance with the Foundation's reserve policy. The Reserve Fund will be funded through Foundation Operational Funds.

**g. Confidentiality.** The Department will, subject to the Applicable Legal Requirements, including but not limited to the Maryland Public Information Act:

- i) work with the Foundation in establishing and enforcing policies to respect and protect the privacy and confidentiality of Foundation donor information and records;
- ii) cause Department staff with access to donor information and records to abide by such policies concerning privacy and confidentiality of Foundation donor information and records.

## **8. Foundation Operations, Officers, & Staff**

**a. Executive Director of Foundation.** The Director of Parks and Recreation, and the Foundation Board, shall participate in the selection of a person to appoint as an Executive Director of the Foundation. The Executive Director of the Foundation shall be approved by the Foundation Board and shall be someone who is committed to creating an environment conducive to increasing the levels of Contributions in support of the mission of the Foundation and consistent with the Department Priorities and mission. The Executive Director will serve at the pleasure of the Foundation Board and will consult with the Director of Parks and Recreation on a day to day basis to carry out the Foundation's mission as a supporting organization of the Commission and the objectives and purposes contemplated by this MOU.

**b. Confidential Information and Equipment.** All confidential information shall only be stored or contained in office furniture, computer servers and/or equipment owned by the Foundation.

**c. Planning and Programs.** The Foundation Executive Director and staff, in consultation with the Department, is responsible for planning and executing comprehensive fundraising and donor acquisition programs in support of and consistent with the Department Priorities. These programs will include membership, annual giving, major gifts, corporate giving and sponsorships, planned gifts, special projects and capital campaigns as appropriate and will be subject to final approval by the Director of Parks and Recreation.

**d. Staffing.** The Foundation shall hire staff to assist the Foundation in meeting its directives and goals, subject to the availability of Foundation Operational Funds, and funding approved by the Planning Board through the budget process. Any staffing needs that result in the creation of new staffing positions to be funded by the Department shall be subject to the approval of the Director of Parks and Recreation.

## **9. Foundation Fundraising and other Activities**

**a. Activities.** The Foundation will conduct all fundraising activities for the benefit of the Department, in accordance with the Foundation Policies and in a manner that is not in conflict with the Department Priorities.

**b. Grant Coordination and Management.** The Foundation shall have the authority to write, submit, manage, administer, and/or provide oversight for grants and grant projects on behalf of the Department as agreed to by the Director of Parks and Recreation and the Executive Director of the Foundation, and Planning Board as applicable. For those grant projects, the Foundation will fulfill all agreed upon obligations related to grant management on behalf of the Department, and the Department staff will be required to provide project management, required receipts, status reports and updates to ensure compliance with the reporting and reimbursement requirements of all grant projects assigned to the Foundation. The Foundation shall maintain an inventory of such grants.

### **c. Marketing Opportunities.**

i) The Foundation shall develop a comprehensive marketing plan in collaboration with the Department for the purposes of pursuing, soliciting, and procuring Marketing Opportunities. The Foundation shall only pursue, solicit, and procure such Marketing



Opportunities that are approved by the Department, the Planning Board, or the Commission, including its Executive Director and Secretary Treasurer, as the case may be.

ii) Notwithstanding anything contained in this MOU to the contrary, the Foundation shall not have the power or right to bind the Commission to any obligation.

## **10. Asset Management**

a. **General Responsibility.** The Foundation will receive, hold, manage, invest and disburse contributions of cash, securities, and other forms of property including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments, subject to the Foundation Policies, including but not limited to the Foundation's investment policy, and in a manner that is not in conflict with the Department's Priorities.

b. **Investment.** Any and all monies received, held, administered or managed by the Foundation pursuant and subject to this MOU, will be managed in accordance with the Foundation's investment policy or the Trust Agreement, as the case may be.

c. **Marketing Opportunities.** The Foundation shall receive, hold, manage, and disburse Contributions deriving from Marketing Opportunities in accordance with any applicable Foundation Policies and the Trust Agreement.

d. **Friends Groups.** The Foundation shall receive, hold, manage, and disburse Contributions deriving from friends groups to support, develop, improve, or maintain a Park and Recreation Asset or Park and Recreation Program in accordance with the Foundation Policies and in a manner that is not in conflict with the Department Priorities. The Department shall require sanctioned friends groups to enter into a written agreement with the Foundation as a condition precedent to fundraising activities by such groups for the benefit of Park and Recreation Assets or Park and Recreation Programs.

e. **Independent Audit.** Subject to Section 12 of this MOU, the Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records.

f. **Unwinding of Funds.** In the event (i) the Foundation ceases to exist or (ii) the Foundation ceases to be an Internal Revenue Code §501(c)(3) organization, or (iii) this MOU is terminated, all assets and property which remain after the discharge of the Foundation's liabilities (unless otherwise designated by a contributor of a Contribution) shall be paid over or distributed by the Foundation to the Commission, in accordance with the Articles of Incorporation of the Foundation.

## **11. Foundation Use and Disbursement of Funds**

Disbursement of any Funds shall be made in accordance with the Foundation's disbursement policy, this MOU, and/or the Trust Agreement, as the case may be.

## **12. Reporting, Performance Evaluation**

a. **Component Unit.** The Foundation acknowledges that it is a component unit of the Commission for accounting purposes and shall be subject to certain requirements as a result of such designation.

**b. Fiscal Year.** The Foundation's fiscal year shall be January 1 through December 31.

**c. Financial Statements.** The Foundation shall provide the Secretary-Treasurer of the Commission with copies of any Foundation Financial Statements within fourteen (14) days of approval of such Financial Statements by the Foundation Board.

**d. Audits & Inspection.**

i) The Foundation shall have independent annual audits conducted based on Financial Accounting Standard Board (FASB) as dictated by the Foundations non-profit and Section 501(c)(3) status.

ii) The Foundation shall provide to the Secretary-Treasurer of the Commission audited Financial Statements with respect to the Foundation's activities during the preceding fiscal year of the Foundation no later than December 1 of each year.

iii) The Secretary-Treasurer of the Commission shall have the right, at all reasonable times, at the Commission's expense, to audit and inspect all of the Foundation's books, records, documents, memoranda, correspondence, plans, drawings, instructions, receipts, vouchers, financial accounts, equipment, or data (regardless of whether stored electronically, in microfiche, hard copy, or any other media), all being of every description pertaining to any of the matters related to or derived from the matters governed by this MOU to ensure compliance with this MOU.

iv) The Foundation shall maintain supporting data and accounting records in accordance with generally accepted accounting practices.

v) The Commission, subject to the privacy rights of donors and policies developed to protect donor confidentiality and rights, shall have the right to copy and reproduce any of these documents at its own expense.

vi) The Foundation shall preserve and shall, to the extent feasible, cause its contractors and vendors to preserve all these documents for a period of at least five (5) years after completion of services. The Foundation agrees to include the necessary provisions in its contracts that shall assure access by Commission employees or representatives to applicable records of such contractors.

vii) No inspection or approval will relieve the Foundation of any obligations hereunder or its contractors of any warranties granted.

**e. Reports to Planning Board.** The Foundation shall appear before the Planning Board no later than May of each year to present an annual report summarizing the Foundation's efforts and achievements for the prior fiscal year. Subject to Section 7(d) above, The Foundation shall appear before the Planning Board no later than October 31, unless otherwise requested by the Planning Board of each year to present to the Planning Board its proposed budget and fundraising plan for the upcoming fiscal year. At either presentation, the Planning Board shall have the right to request a summary and update of significant activities conducted by the Foundation to promote or support the Department, the Department Priorities, the Park System, and any other information reasonably requested by the Planning Board. Both presentations will include an executive

summary of programs, campaigns and strategies as well as an assessment of identified fundraising trends.

**f. Reports to Commission.** The Foundation shall submit reports to the Commission on a quarterly basis, beginning with the first quarter after the execution of this MOU, summarizing the Foundation's efforts and achievements for the prior quarter. The reports shall include, but is not limited to, a summary and update of significant activities conducted by the Foundation to promote or support the Department, the Department Priorities, the Park System, and any other information reasonably requested by the Commission. The Foundation shall also meet with the Department no later than June 30 of each year to discuss the Foundation's proposed budget and fundraising plan for the upcoming fiscal year.

### **13. General Policies**

**a. Establish and Adopt Policies and Guidelines.** The Foundation shall establish and adopt policies and guidelines that govern the activities of the Foundation. Such policies shall address those matters and issues that a reasonable, prudent Foundation would address including but not limited to the following:

- i) Procurement of goods and services
- ii) Ethics and Conflicts of Interest
- iii) Reserve Account
- iv) Gift Acceptance
- v) Asset Management, Investment, Financial, Disbursement, and Spending
- vi) Whistleblower
- vii) IT/Electronic Communication

**b. Review of Policies.** Whenever the Foundation proposes, creates, amends, abolishes, or deletes a Foundation Policy, notice must be provided to the Commission's Executive Director, Secretary-Treasurer and the Director of Parks and Recreation, all of whom shall receive a copy of such proposed Policies for review and comment prior to its adoption by the Foundation Board. If the Executive Director, Secretary-Treasurer and Director of Parks and Recreation fail to provide comment on such proposed policies within sixty (60) days of receipt, such proposed policy, amendment, or deletion thereof, shall be deemed acceptable to the Commission and the Foundation Board shall be able to proceed with the adoption of such proposed policy, amendment, or deletion.

**c. Operations Manual.** The Foundation shall develop an Operations Manual that shall contain all Foundation Policies and policies adopted and approved by the Foundation that shall govern or establish guidelines for the activities of the Foundation.

#### **d. Policy Compliance.**

i) The Foundation shall not establish any Policies that are in conflict with the Commission's Policies and practices and the Department's Priorities.

ii) The Foundation will comply with and adhere to all Policies established by the Foundation and all Policies established by the Commission in connection with Foundation matters and fundraising activities including but not limited to the Naming Rights Policy and the Corporate Sponsorship Policy.

iii) With respect to the Foundation's gift management and acceptance policies, the Foundation shall promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the Department and provide appropriate recognition and stewardship of such gifts.

iv) The Foundation will comply with and enforce all policies established, recognized, or adopted by the Foundation Board, including but not limited to, policies to protect donor confidentiality and rights.

#### **14. General Covenants, Representations and Warranties.**

The Foundation covenants, represents, and warrants as follows:

**a. Tax-Exempt Status.** The Foundation is a §501(c)(3) tax-exempt, supporting organization exclusively for the Commission in Prince George's County, Maryland. The Foundation further represents and warrants that it will maintain such tax-exempt, supporting organization status.

**b. Due Organization.** The Foundation is duly existing and in good standing in Maryland and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on the Foundation's business.

**c. Power & Authority.** The making and performance by the Foundation of this MOU has been authorized by all necessary corporate action. The execution and delivery of this MOU, the consummation of the transactions herein and therein contemplated, the fulfillment of or compliance with the terms and provisions hereof and thereof, (i) are within its powers, (ii) will not violate any provision of law or of its organizational documents, and (iii) will not result in the breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the Foundation pursuant to any indenture or bank loan or credit agreement or other agreement or instrument to which the Foundation is a party. To the Foundation's knowledge, no approval, authorization, consent or other order or registration or filing with any governmental body is required in connection with the making and performance of this MOU.

**d. Financial Statements.** The Financial Statement(s) provided, or to be provided, by the Foundation, were prepared in conformity with Generally Accepted Accounting Principles (GAAP) and are correct and complete and fairly represent the financial condition and the results of operations of the Foundation for the periods and as of the dates thereof. The Foundation has no direct or contingent liabilities not disclosed in such statements.

**e. No Litigation.** No litigation is pending or threatened against the Foundation and the Foundation will notify the Commission immediately upon receipt of any notice of pending or threatened litigation against the Foundation.

**f. Accurate Information.** All information furnished or to be furnished by the Foundation pursuant to the terms hereof is, or will be at the time the same is furnished, accurate and complete.

**g. Compliance.** The Foundation is in material compliance with all Applicable Legal Requirements applicable to it, its property or the conduct of its business.

**h. Tax Filings.** The Foundation shall remain current in the filing of all tax returns and reports required to be filed by it with all federal, state or local authorities and shall pay in full or make adequate provisions for the payment of all taxes, interest, penalties, assessments or deficiencies shown to be due or claimed to be due on or in respect of such tax returns and reports.

#### **15. Separate and Independent Obligations.**

The obligations of the Foundation shall not be obligations of the Commission.

#### **16. Default by Foundation; Remedy; Termination.**

**a. Curable Event of Default.** If any of the following events occur or exist with respect to the Foundation, after the giving of notice as applicable in this MOU, it is hereby defined as, and declared to be and constitute, a “Curable Event of Default”:

i) Default by the Foundation in the performance or observance of any other covenants, agreements, conditions, representations, or warranties contained in this MOU;

ii) Any default by the Foundation under any agreement to which the Foundation is a party, the result of which could have a material adverse effect on the Foundation’s business;

iii) The Foundation makes any representation, warranty, and such representation, warranty, or other statement is incorrect in any material respect when made.

**b. Right of Foundation to Cure.** The Foundation shall have the right to cure a Curable Event of Default within thirty (30) days after the Foundation receives notice from the Commission specifying the Curable Event of Default. If the default is of such a nature that it cannot reasonably be remedied within the thirty (30) days, the Foundation will not be in default if it begins to diligently remedy the default within the thirty (30) days after a default notice is received and it continues diligently until the failure is corrected. After the third default in any twelve (12) month period, the Commission may exercise any remedy available under this MOU after the giving of notice of default and the Foundation shall not be entitled to any time to cure such default.

**c. Remedies Available for Curable Event of Default; Termination.** Upon the occurrence of a Curable Event of Default and the failure of the Foundation to cure such default, as applicable, the Commission shall have the right to exercise any and all other rights and remedies available at law or in equity, including but not limited to the termination of this MOU. This MOU may be terminated by the Commission at any time in the event that a Curable Event of Default has occurred, after appropriate notice and opportunity to cure as provided in this Section 16 of this MOU and the Foundation’s subsequent failure to cure.

**d. Disputable Event of Default.** Upon the occurrence of any one or a combination of the following events (“Disputable Events of Default”), the Commission shall have the right to immediately terminate this MOU in its sole and absolute discretion after the Foundation has had an opportunity to present to and be heard by the Planning Board in regards to the Disputable Event of Default as provided in paragraph (e) of this Section:

i) The Foundation commits acts of financial mismanagement of any of the Funds that are the subject of this MOU or the Trust Agreement which acts may include, but are not limited to (1) failing to comply with the Foundation’s Financial and Control Policies or its investment Policy; or (2) engaging in criminal acts such as, but not limited to, embezzlement, theft, conversion, misappropriation, fraud, or bribery;

ii) Any action or inaction by the Foundation that may result in damage to the reputation of the Commission including but not limited to acts of moral turpitude or against community standards; or

iii) Any action or inaction by the Foundation that may result in an unreasonable risk of legal action to the Commission, including but not limited to holding events with alcohol, unacceptable activities related to development and/or construction, or violations of law.

iv) The Foundation is unable to pay its debts as they become due or otherwise becomes insolvent;

v) The loss, suspension, or revocation of the Foundation’s tax-exempt status or of any other right or benefit the Foundation possesses, in the Commission’s sole opinion, which adversely impacts the Foundation’s ability to perform its duties and obligations under this MOU;

vi) The commencement by the Foundation of any proceeding under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief;

vii) The commencement by a third party of any proceeding against the Foundation under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief;

viii) Entry of one or more final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) rendered against the Foundation and the same is not, within any cure period provided under this MOU, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay; or

**e) Presentation Meeting; Remedies Available for Disputable Event of Default; Termination.** Upon the occurrence of a Disputable Event of Default, the Commission shall send to the Foundation written notice specifying the Disputable Event of Default and its intention to terminate this MOU (the “Commission’s Intention to Terminate”). Within five (5) days of the Foundation’s receipt of the Commission’s Intention to Terminate, the Foundation shall have the right to submit a written request, to the Planning Board Chair, to present and be heard in regards

to the Disputable Event of Default (the “Foundation’s Request for Presentation”). Thereafter, the Commission shall provide written notice to the Foundation of the date on which the Planning Board will provide the Foundation an opportunity to make such presentation to the Planning Board (the “Presentation Meeting”). In the event the Foundation fails to submit the Foundation’s Request for Presentation in accordance with this paragraph, the Commission shall have the right to exercise any and all rights and remedies available at law or in equity, including but not limited to the exercise of immediate termination of this MOU without any right to cure or notice. Further, at any time after the Presentation Meeting, the Commission, in its sole and absolute discretion, shall have the right to exercise any and all rights and remedies available at law or in equity, including but not limited to the exercise of immediate termination of this MOU without any right to cure. In the event the Commission exercises its right to immediate termination, this MOU shall terminate as of the date specified by the Planning Board at the conclusion of the Presentation Meeting or at such time as specified in writing by the Planning Board Chair or his/her designee, as the case may be.

#### **17. Default by Commission; Remedy; Termination.**

a. **Event of Default by the Commission: Right to Cure.** The Commission will be in default under this MOU if it fails to perform or observe any of its obligations under this MOU, and such failures continue for thirty (30) days after written notice by the Foundation to the Commission specifying the failure (the “Commission Event of Default”). If the failure is of such a nature that it cannot reasonably be remedied within the thirty (30) days, the Commission will not be in default if it begins diligently to remedy the failure within the thirty (30) days after notice of the failure and continues diligently until the failure is corrected.

b. **Remedies Available to Foundation: Termination.** Upon the occurrence of a Commission Event of Default and the failure to cure such default, as applicable, the Foundation shall have the right to exercise any and all rights and remedies available at law or in equity, including the termination of this MOU in accordance with this Section. In such event, this MOU may be terminated by the Foundation Board upon a “super-majority” vote of the Foundation Board (at least 75% of the Foundation Board voting members must be present for such vote) if the Commission is in default hereunder, after appropriate notice and opportunity to cure as provided in this Section 17 of this MOU.

#### **18. Indemnification by Foundation.**

Except when caused by the gross negligence, willful misconduct or other wrongful conduct of the Commission, The Foundation will indemnify, defend and hold harmless the Commission, its commissioner’s officers, employees, agents and representatives from and against all actions, liability, claims, legal actions, damages, cost or expenses of any kind which are made against or incurred by the Commission arising from the Foundation’s performance of or failure to perform any of its obligations under the terms of this Agreement.

#### **19. Indemnification by Commission.**

Except when caused by the gross negligence, willful misconduct or other wrongful conduct of the Foundation, The Commission will indemnify, defend and hold harmless the Foundation, its directors, officers, employees, agents and representatives from and against all actions, liability, claims, legal actions, damages, cost or expenses of any kind which are made against or incurred by the Foundation arising from the Commission’s performance of or failure to perform any of its obligations under the terms of this Agreement. The indemnifications

provided by the Commission under this paragraph are subject to, limited by and contingent upon the appropriation and availability of funds as well as the notice requirements, types of liabilities, and damage limits stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301 et seq. as amended from time to time. This indemnification does not create any rights in third parties.

## **20. Gross Negligence and Willful Misconduct.**

Notwithstanding anything to the contrary in this MOU, each party shall bear full responsibility, without limit, for its own Gross Negligence or Willful Misconduct and in no event will one party be required to release or indemnify the other party for Gross Negligence or Willful Misconduct attributed to the other party. Willful Misconduct is defined under this MOU as an intentional disregard of good and prudent standards of performance or of any of the terms of this MOU. "Gross Negligence" is defined under this MOU as any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences.

## **21. Termination; Dissolution of Foundation.**

It is the intent of the Foundation that it has perpetual existence. However, in the event of a termination of this MOU, involuntary dissolution or voluntary dissolution by the Foundation Board, the Foundation shall:

a) provide audited Financial Statements, updated from the last such report to the Commission, that sets forth all Funds currently in the control of the Foundation;

b) dissolve in accordance with Article SIX of the Foundation's Articles of Incorporation provided that all assets and property which remain after the discharge of the Foundation's liabilities (unless otherwise designated by a contributor of a Contribution) shall be paid over or distributed by the Foundation to the Commission in accordance with the Articles of Incorporation of the Foundation. The Foundation covenants, represents, and warrants that it shall not cease to wind up its affairs in accordance with this MOU as a result of a petition for involuntary dissolution by any Person. The Foundation further covenants, represents, and warrants that it shall not dissolve prior to winding up in all affairs in accordance with this MOU.

c) covenant, warrant, and agree to cease and desist use of any and all names, marks, trade names, trademarks, logos and/or language indicating affiliation with the Commission and Department. Upon the occurrence of any of the foregoing events set forth in this Section, the Foundation covenants and agrees to immediately remove all such names, marks, trade names, trademarks, logos, and/or language from its Articles of Incorporation, Bylaws, marketing and promotional materials, or any other materials used by the Foundation which contains any affiliation with the Commission.

## **22. Miscellaneous Provisions**

a. **Relationship of the Parties.** This MOU is and shall not be construed as a formal or legal partnership agreement, and shall not create an agency, franchise or employment relationship between the Commission or the Planning Board and the Foundation and any of the employees of either party. This clause does not preclude compensation to the Foundation for staffing under the Commission salary and benefits schedule in accordance with the terms and conditions of this MOU, if the Commission so chooses, but such Foundation employees shall not be deemed



Commission employees for hiring, management, or disciplinary purposes; but rather such Foundation employees shall be deemed employees of the Foundation for such purposes. The parties acknowledge and agree that the Foundation is an independent entity, separate and apart from the Commission and the Planning Board.

b. **Legal Counsel.** Each party shall retain its own legal counsel to provide advice and assistance on their respective legal issues. The Commission shall consult with its counsel with regard to issues such as purchasing, procurement, and acceptance of grants and donations made directly to the Commission. The Foundation shall consult with its counsel with regard to issues such as purchasing, procurement, and acceptance of grants and donations made directly to the Foundation and IRS requirements to its 501(c) (3) status.

c. **No Assignment.** The Foundation shall have no right to transfer or assign this MOU, in whole or in part, by operation of law or otherwise, without the prior written consent of the Commission, which consent may be withheld or conditioned in its sole and absolute discretion. Any transfer or assignment consented to by the Commission shall at all times be subject to this MOU.

d. **Binding Effect.** This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns, provided that nothing herein contained shall be construed to permit a transfer or assignment expressly authorized in accordance with the provisions of this MOU.

e. **Notices.** All notices provided pursuant to this MOU must be in writing and must be delivered by personal delivery, express, certified or registered mail, or prepaid private mail carrier to each of the parties at the following respective addresses, and such notices shall be deemed delivered on the date of actual delivery, whether by personal delivery or express delivery, certified or registered mail, or prepaid private mail carrier.

If to the Commission:

Patricia C. Barney, Executive Director  
Maryland-National Capital Park and Planning Commission  
6611 Kenilworth Avenue, Suite 400  
Riverdale, MD 20737

With a copy to:

Prince George's County Department of Parks and Recreation  
Ronnie Gathers, Director  
6600 Kenilworth Avenue  
Riverdale, MD 20737

Adrian R. Gardner,  
General Counsel  
Maryland-National Capital Park and Planning Commission  
6611 Kenilworth Avenue  
Suite 200  
Riverdale, Maryland 20737

If to the Foundation (with a copy to the then current President of the Foundation Board):

Prince George's County Parks and Recreation Foundation 6600 Kenilworth Avenue, Suite 100  
Riverdale, MD 20737 Attention: Director

**f. Waiver.** One or more waivers of any covenant, condition or agreement contained in this MOU shall not be construed as a waiver of a further breach of the same covenant, condition or agreement or of any other covenant, condition or agreement. Consent or approval by the Commission to or of any act by the Foundation requiring the Commission's consent or approval must not be deemed to waive or render unnecessary the Commission's consent or approval to any subsequent similar act by the Foundation.

**g. Severability.** Any provision of this MOU which is held by a court of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this MOU. Any invalid provision is deemed severed from this MOU and the balance of the MOU construed and enforced as if the MOU did not contain the particular provision or provisions held to be invalid.

**h. Force Majeure.** Neither the Commission nor the Foundation are required to perform any term, condition, or covenant of this MOU, so long as such performance is delayed or prevented by an act of God, strike, lockout, or material or labor restriction; by any governmental authority, act of war, civil riot, or flood; or by any other cause not reasonably within the control of the Commission or the Foundation and which by the exercise of due diligence the Commission or the Foundation and which by the exercise of due diligence of the Commission or the Foundation is unable, wholly or in part, to prevent or overcome.

**i. Counterparts.** This MOU may be executed in any number of counterparts, each of which, when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same MOU.

**j. Rules of Construction.** The provisions of this MOU are to be constructed as a whole according to their common meaning to achieve the objectives and purposes of this MOU. Each of the parties represents that it and its respective counsel have reviewed this MOU. The rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this MOU.

**k. Time of Essence.** Time shall be of the essence of this MOU.

**l. Amendment.** Except as otherwise specifically provided, no amendment or modification of this MOU is valid unless the same is in writing and is signed by each party to this MOU.

**m. Choice of Law.** This MOU is made in the State of Maryland and shall be governed by the laws of the State of Maryland, exclusive of its conflict of law rules.

**n. Jurisdiction; Venue.** All suits, proceedings and other actions relating to, arising out of or in connection with this MOU, whether founded in contract or tort, shall be submitted to the personal jurisdiction of the courts of the State of Maryland and the exclusive venue for all such suits, proceedings and other actions shall be the State Courts in Prince George's County, Maryland.

o. **Headings.** The section headings contained in this MOU are for reference purposes only and shall not affect the meaning or interpretation of this MOU.

p. **Integration.** This MOU constitutes the full, entire and integrated agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, correspondence, understandings and agreements among the parties hereto respecting the subject matter hereof.

q. **Survival.** The provisions of Sections 5, 10 (c), 12 (d), 14 (f), 18, 19, 20 and 21 constitute continuing obligations of the parties and shall survive the termination of this MOU.

r. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

**\*SIGNATURE PAGE FOLLOWS\***

**IN WITNESS WHEREOF** the Parties have executed and delivered this Memorandum of Understanding on the dates written next to their signatures below.

WITNESS/ATTEST:


  
\_\_\_\_\_  
Steven Carter  
Acting Foundation Director

THE PRINCE GEORGE'S COUNTY  
PARKS AND RECREATION FOUNDATION

By:   
\_\_\_\_\_  
Regina H. Forbes  
President, Board of Directors

Date: 08-07-16

WITNESS/ATTEST:

*for*   
\_\_\_\_\_  
Joseph C. Zimmerman  
Secretary-Treasurer

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

By:   
\_\_\_\_\_  
Patricia C. Barney  
Executive Director

Date: 8/18/16