



MEMORANDUM OF AGREEMENT
between
COUNTY OF ALBEMARLE, VIRGINIA
and
ALBEMARLE COUNTY PARKS FOUNDATION

This Memorandum of Agreement (“MOA”) is made by and between the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia (“County”), and Albemarle County Parks Foundation, a not-for-profit Virginia nonstock corporation (“Foundation”).

WHEREAS, the County, through its Parks and Recreation Department (“ACPR”), owns, operates, and maintains real estate, buildings, and a variety of different recreational facilities and park lands, and operates a variety of programs and services independently and with the Albemarle County Public Schools, the City of Charlottesville, and the Ivy Creek Foundation, Inc.; and

WHEREAS, one of the County’s goals is to operate, maintain, and manage a system of high-quality parks, natural areas, greenways, blueways, community centers, and other recreational facilities throughout the County; and

WHEREAS, ACPR’s vision is to create unparalleled outdoor and recreational experiences right here at home by providing a unique system of parks, trails, and recreational experiences, while being superior stewards of the environment; and

WHEREAS, the Foundation was founded and incorporated in 2023, for the purposes of (a) assisting and supporting the County by cultivating community relationships and facilitating a sustained supply of external resources, in order to help the County, through ACPR, best develop, operate, maintain, and manage public park lands, accelerate and optimize planned projects, and enable the development of innovative programs and projects, (b) obtaining and providing in-kind contributions and support services, guiding the exchange of management skills between the County and external stakeholders, and obtaining and donating financial resources, equipment, and/or materials, in order to help maximize the recreational potential, environmental sustainability and educational opportunities of, and overall visitor experiences at, ACPR facilities and lands, (c) promoting increased public awareness of the resources the County offers, through ACPR, to the Albemarle County community, and (d) recognizing ACPR staff and citizen-volunteers by acknowledging and celebrating outstanding performance and contributions throughout the community; and

WHEREAS, the Foundation operates as a legal entity separate from the County and is governed independently by a Board of Directors, the members of which are not employed by the County; and

WHEREAS, the County and the Foundation wish to cooperate to sustain and strengthen the successful operation, maintenance, and management of existing parks, recreational facilities, and recreational programs, and to expand and accelerate the development, delivery, and operation of the County's planned parks, greenways, blueways, community centers, and recreational programs by memorializing the Foundation's and the County's respective responsibilities.

NOW, THEREFORE, in consideration of the above and the mutual efforts of the County and Foundation, they agree as follows:

1. Operating Procedures.

a. In its efforts to obtain donations, the Foundation shall communicate the following information to prospective donors:

- i.** the Foundation is a separate legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit, support, and enhancement of the County's existing, future and planned parks, facilities, programs, and other recreational amenities;
- ii.** the Foundation's Board of Directors is responsible for the Foundation's governance, including the recruitment of volunteers, planning and management of projects, and investing of its endowment and other funds; and
- iii.** funds donated to the Foundation in support of any of the County's parks, facilities, or programs must be made to the Foundation and not to the County or ACPR.

b. The Foundation agrees that in its efforts to solicit and accept donations of any kind, the Foundation shall:

- i.** coordinate its funding goals, programs, and campaigns with the County so that together the County and the Foundation can ensure the Foundation's efforts align with (A) ACPR's vision, mission, community needs assessment(s), priority projects, procedures and policies (collectively, "ACPR Guidance"), and (B) the County's vision, mission, strategic plan, comprehensive plan, current and future master plans,

- iii.** obtain all necessary permits, licenses, special insurance, equipment, and inspections for Foundation programs, activities, events, and projects, and pay all expenses incidental to the planning and conduct of such programs, activities, events, and projects;
 - iv.** plan, coordinate, and work with the County on specific park programs, projects, and funding opportunities, which the parties contemplate may require additional agreements from time-to-time, both between the County and the Foundation, and among the County, the Foundation and third parties;
 - v.** be solely responsible for recruiting, enrolling, instructing, and managing its members, volunteers, and contractors;
 - vi.** plan, coordinate, and work with the County on fundraising activities, including those activities to occur on park properties;
 - vii.** expend donations, both financial and in-kind, in support of Foundation operations and in furtherance of Foundation programs, activities, and projects, and events that are intended to benefit County parks programs and facilities; and
 - viii.** upon dissolution, apply all remaining funds designated to support a specific site, program, or project to the County to be used as designated for support of ACPR programs and facilities.
- e.** In consideration of the Foundation’s contributions to and support of the County’s parks, programs, and facilities, the County shall assist the Foundation, subject to and in alignment with ACPR Guidance and County Guidance, as follows:

- i.** advise the Foundation of a liaison or liaisons from the County to the Foundation, designated by the County Executive, to facilitate communications and to attend meetings of the Foundation's Board of Directors;
- ii.** suggest potential donors and grant sources to the Foundation;
- iii.** coordinate with the Foundation in its efforts to obtain grant awards appropriate to the County's parks, programs, and facilities;
- iv.** allow the Foundation to use the County's name (but not its seal) and ACPR's name and logo in its promotional and fund-raising materials, subject to the prior written approval of the County;
- v.** allow the Foundation to apply for special event permits to conduct fundraising programs and activities on County properties in coordination with the County without having to pay the County's special event permit application fees or County site/room reservation fees; and
- vi.** obtain the approval of the County Board of Supervisors of any grant or donation, including an in-kind donation of goods or services, in an amount equal to or greater than \$500,000.00 (the County Executive being expressly authorized, in the exercise of the County Executive's discretion, to accept any grant or donation less than \$500,000.00).

2. Record Keeping.

- a.** All Foundation correspondence, financial records, donor and prospective donor information, and records of every kind belong exclusively to and under the control of the Foundation. The Foundation must maintain such information and records separate and apart from all County records.

- b.** The Foundation shall maintain publicly available, updated, and current copies of its articles of incorporation, bylaws, and amendments to such governing documents. The Foundation shall provide to the County a photocopy of its IRS Form 990 (Return of Organization Exempt from Income Tax) without any accompanying documentation disclosing the names of any specific Foundation donors.
- c.** The Foundation shall prepare and reconcile on an annual basis a Treasurer's Report, which it will share with the County. Additionally, the Foundation will provide annually to the County a financial report prepared in accordance with *Statements of Financial Accounting Standards 117* (Financial Statements for Not-for-Profit Organizations). This financial report must be provided to the County on or before June 30 of each year, but it shall not contain any information disclosing the names of any specific Foundation donors.
- d.** Nothing in this MOA shall be construed to preclude the County from disclosing any records as and to the extent required by the Virginia Freedom of Information Act.

3. No Agency, Partnership, or Employment Relationship.

This MOA does not create a partnership between the Foundation and the County and creates no rights or duties arising from a partnership. Neither does this MOA create an agency relationship between the Foundation and the County. No rights of or entitlement to employment between the parties and their respective officers, directors, employees, agents, members, or volunteers arise by virtue of this MOA.

4. Insurance, Indemnification, and Hold Harmless.

- a.** Prior to the commencement of any project or the conduct of any special event on County property, the Foundation shall provide to the County a certificate of insurance evidencing maintenance by the Foundation of (i) commercial general liability insurance, in an amount not less than \$1,000,000.00, covering all of the Foundation's operations relating to the performance (A) by the Foundation and its officers, directors, employees, agents, members, and volunteers of work under this MOA on County property, and (B) by the Foundation of its other obligations under this MOA, and (ii) directors and officers liability insurance, in an amount acceptable to the County. The County (and the City of Charlottesville, Virginia, if the performance concerns Darden Towe Park or Ivy Creek Natural Area), and their officers, employees, and agents shall be named as additional insureds. The certificate of insurance must provide, in a substantially similar form, that the insurance covered by the certificate shall not be canceled or materially altered except after thirty (30) days written notice provided to and received by the County. Such insurance coverage shall be primary and noncontributory. The Foundation defends, indemnifies, and holds harmless the County and the City of Charlottesville, as the case may be, and their officers, employees and agents from claims, suits, liability, damage, and expenses of any kind that might arise from the Foundation's or its officers', directors', employees', agents', members', or volunteers' negligence, recklessness, or intentional misconduct or the Foundation's failure to perform its obligations under this MOA. The provisions of this section shall survive termination of this MOA as to acts or omissions occurring prior to the effective

date of termination. Nothing in this MOA shall be construed to waive or limit the County's or the City of Charlottesville's sovereign immunity or to waive or limit any immunity the Foundation may enjoy under Virginia law as a charitable non-profit organization or by virtue of its work in County park facilities. By signing this MOA, the Foundation certifies that, as of the date of this MOA, it has no employees and is not subject to Workers' Compensation Insurance requirements under Title 65.2 of the Code of Virginia, 1950, as amended. If at any time hereafter the Foundation becomes subject to such Workers' Compensation Insurance requirements, then it must certify in writing its compliance with such requirements and provide to the County written verification of Workers' Compensation Insurance coverage.

- b.** If the Foundation organizes and provides services to the County under this MOA, the Foundation shall require all of its officers, directors, employees, agents, members and volunteers who provide such services under this MOA to sign an Assumption of Risk, Release of Liability, and Indemnification Agreement (each a "Release Form" and collectively, the "Release Forms") before providing such services. The Foundation must maintain all original Release Forms for at least three (3) years after the conclusion of a project covered by such Release Form and provide to the County a true copy or copies upon request. Parents, guardians, or legal custodians of members and volunteers under the age of eighteen (18) years must sign Release Forms on their own behalf and on behalf of the minor member or volunteer participating hereunder.

5. Term.

This MOA becomes effective upon execution by all parties. The initial term of this MOA shall expire on December 31, 2028. It may be renewed for subsequent five-year terms upon the written consent of both parties.

6. Termination.

Either party may terminate this MOA in whole or in part at will by delivering to the other party written notice of termination at least ninety (90) days prior to the effective date of any such termination.

7. Dispute Resolution.

If a dispute as to any provision of this MOA arises or if either party materially breaches or fails to perform its obligations under this MOA, the other party may give written notice of the dispute or material breach. The parties will meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or a longer time upon which the parties might agree, the parties will enlist the services of a mediator to resolve the dispute.

8. Notice.

Any notice or notices required or permitted to be given under this MOA shall be given by certified mail, postage prepaid, to the following at the noted addresses. Any notice or notices provided shall also be delivered in a pdf format by email.

To the County:

Albemarle County Parks and Recreation
401 McIntire Road
Room 118
Charlottesville, Virginia 22902
Attention: Director
Email: bcricke@albemarle.org

with a copy to: County of Albemarle
401 McIntire Road
Suite 228
Charlottesville, Virginia 22902
Attention: County Executive
Email:

To the Foundation: Albemarle County Parks Foundation

109 Vincennes Road, Charlottesville, VA 22911
Attention: Lesley Hamilton
Email: teddyhamilton59@gmail.com

9. Mechanic’s Liens.

During the term of this MOA, the Foundation will promptly remove or release any mechanic’s or materialman’s lien attached to or on any County property or any portion by reason of any act or omission of the Foundation, its contractors or its agents in connection with any activity performed by the Foundation. The Foundation will hold harmless the County and the City of Charlottesville, as the case may be, and their respective officers, employees, agents, and volunteers from any such lien or claim of lien. This provision shall survive termination, cancellation, or expiration of this MOA.

10. No Funding Obligations.

This MOA creates no fiscal or funding obligation on either party. Nothing in this MOA shall be construed to require either party, the Albemarle County Board of Supervisors, the Board of Directors of the Foundation, or any affiliate, agency, or department of the parties or respective boards to obligate or expend funds.

11. Ownership of Improvements.

Unless the parties otherwise agree in writing, all improvements made under this MOA belong to and are owned by the County, provided that any improvements made pursuant to this MOA at Darden Towe Park or Ivy Creek Park shall be jointly owned by the County

and the City of Charlottesville. The parties intend immunity from liability for damages arising from the installation, maintenance, and operation of any improvement hereunder, as provided in Virginia Code § 15.2-1809, as amended, and under Virginia common law and other statute, shall apply fully and without limitation.

12. Modification, Amendment, and Waiver.

Modification or amendment of this MOA and waiver of any of its provisions must be done only in writing executed by the party against whom such modification, amendment, or waiver is sought to be enforced.

13. Severability.

Any provision of this MOA which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the MOA's remaining provisions.

14. Governing Law and Venue.

This MOA and all matters related hereto shall be governed exclusively by the laws of the Commonwealth of Virginia and all questions arising with respect to the validity, interpretation, obligations, or performance under and pursuant to this MOA shall be determined in accordance with such laws. The Foundation shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted in the performance of its obligations set forth in this MOA. Any and all suits for any claim or for any and every breach of duty arising out of this MOA shall be maintained in the appropriate court of competent jurisdiction in the County of Albemarle, Virginia.

15. Entire Agreement.

This writing constitutes the entire agreement of the parties and there may be no modification to this MOA except in a writing executed by the authorized representatives of the Foundation and the County.

16. Participation in Similar Activities.

This MOA is non-exclusive in that it does not restrict either party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives as of the latest date noted below.

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson
County Executive

Date

Approved as to form:

County Attorney

ALBEMARLE COUNTY PARKS FOUNDATION

By: _____

Name: Lesley Hamilton

Title: President

Date 03/02/2024