

**Memorandum of Understanding Between the
City of South Bend, Indiana Venues, Parks & Arts Department and the
Venues Parks & Arts Foundation, Inc.**

THIS AGREEMENT is made by and between the City of South Bend Venues Parks & Arts Department, by and through its Board of Park Commissioners and the Venues Parks & Arts Foundation, Inc., (each a “Party” and collectively the “Parties”).

Recitals:

WHEREAS, the Venues Parks & Arts Department (“VPA”) is a department of the City of South Bend, Indiana (the “City”); and

WHEREAS, the Venues Parks & Arts Foundation, Inc. (the “Foundation”) is as nonprofit 501(c)(3) charitable organization; and

WHEREAS, the Foundation is comprised of a volunteer board of directors, partially appointed by City officials, who oversee Foundation activities, fundraising and administration; and

WHEREAS, providing the residents and visitors of the City with a system of vibrant and well-maintained parks and trails requires a significant, on-going flow of public and private support; and

WHEREAS, this Memorandum of Understanding (“Agreement”) is intended to establish the relationship between the City and the Foundation with respect to VPA capital project funding and programmatic needs; and

NOW THEREFORE, based on the foregoing, the Parties enter into the following Agreement:

Section 1. Responsibilities of the Foundation

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

- A. The Foundation has been established for the sole purpose of raising, receiving, and distributing funds in support of VPA’s mission and goals, as a department of the City.
- B. The Foundation operates as private legal entity separate from the City and VPA.

- C. The Foundation shall use sound fiscal and auditing procedures for its internal operations.
- D. The Foundation shall maintain its current status as a tax-exempt, 501(c)(3) charitable organization under state and federal income tax laws to ensure that gifts and bequests to the Foundation may qualify as deductible, charitable contributions for the donors.
- E. The Foundation shall maintain books in accordance with generally accepted accounting principles and shall provide a filed IRS Form 990 and annual report to the Parks Board by May 15 of each calendar year.
- F. The Foundation shall protect its directors, Board members, Committee members and volunteers from liability for errors or omissions in the performance of their work on behalf of the Foundation.
- G. Upon dissolution of the Foundation, all assets shall transfer to the City.
- H. The Foundation agrees and undertakes to defend, indemnify, and hold harmless the City and its respective officials, employees, agents, successors, and assigns, from and against any liability, loss, costs, damages, or expenses, including attorneys' fees, which the City may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising solely from the negligence of the Foundation in carrying out its obligations under this Agreement. If any action is brought against the City or its respective officials, employees, agents, successors, and assigns, arising solely from the negligent actions of the Foundation under this Agreement, the Foundation agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

Section 2. Responsibilities of the City.

- A. Per Indiana law and City ordinance, the Board of Park Commissioners ("Park Board") is authorized to oversee the operation of park and recreational facilities and

has exclusive control of all property used for park purposes. Accordingly, the Park Board is responsible for ensuring the proper use and protection of park property.

- B. As sole beneficiary of the Foundation's program activities, donations, and grant funding, there necessarily is and will be work required by VPA through its employees to receive donations from the Foundation and to communicate VPA funding needs to the Foundation. Therefore, VPA staff may work in conjunction with the Foundation in pursuit of donations and grants via specific tasks including: tracking and accounting for funds received by VPA from the Foundation including preparation of any required, associated tax forms; preparation and posting in Facebook or other social media platforms notices as to VPA fundraising opportunities; grant preparation where the Foundation is required to partner with a governmental agency; occasional development of brochures describing VPA's facilities, programs and activities from a fundraising perspective; and the VPA acting as City liaison to the Foundation. The VPA has determined that its staff time associated with the foregoing activities is solely related to the receipt of Foundation donations and the time spent is sporadic and de minimis. However, any other staff time provided by VPA employees in support of Foundation operation that is not directly and specifically related to VPA's receipt of donations as determined by the City's Department of Law shall be billed to the Foundation by VPA, as approved by the Park Board. All such staff time shall be approved by the Park Board in advance and pursuant to its review of a written description of the staff services request by the Foundation. Such staff time provided to the Foundation by VPA may not include supervision of Foundation employees, officers or board members.
- C. The City agrees and undertakes to defend, indemnify, and hold harmless the Foundation and its respective officials, employees, agents, successors, and assigns, from and against any liability, loss, costs, damages, or expenses, including attorneys' fees, which the Foundation may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising solely from the negligence of the City in carrying out its obligations under this Agreement. If any action is brought

against the Foundation or its respective officials, employees, agents, successors, and assigns, arising solely from the negligent actions of the City under this Agreement, the City agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

Section 3. Necessary Steps for Implementation.

The Parties hereby agree to take all reasonable and lawful steps to implement the provisions of this Agreement, including the execution of additional agreements regarding financial protocols, to the extent necessary.

Section 4. Illegality, Governing Law and Counterparts.


If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, and all of which together shall constitute but one and the same instrument.

(Signature Page Follows)


THE VENUES PARKS & ARTS FOUNDATION, INC.

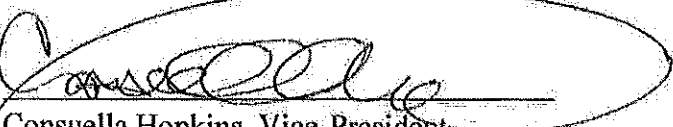
By: 
(Authorized Signature)


DRU CASH, CHAIR; BOARD OF DIRECTORS
(Printed Name and Title)


Date: 16 NOVEMBER, 2020

CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS



Mark Neal, President


Consuella Hopkins, Vice-President


Aimee Buccellato, Member


Dan Farrell, Member

Attest this 16 day of November, 2020.

By: 
Eva Ennis, Clerk