

**AGREEMENT BETWEEN JAXSON WILLIAM AUGUSTUS SWANK FOUNDATION
AND THE CITY OF SOUTH BEND VENUES PARKS & ARTS DEPARTMENT**

**A DONATION OF PROGRAMMATIC OPPORTUNITIES
TO FURTHER EQUITABLE ACCESS**

THIS AGREEMENT for Donation of Programmatic Opportunities to Further Equitable Access (this “Agreement”) is made effective this 22nd day of May 2023 (the “Effective Date”) by and between the City of South Bend, Indiana, an Indiana municipal corporation, by and through its Department of Venues Parks & Arts (“VPA”) (collectively, the “City”), and Jaxson William Augustus Swank Foundation, an Indiana non-profit corporation (“JWAS”).

RECITALS

WHEREAS, the City is a municipal corporation existing and operating in accordance with the laws of the State of Indiana; and

WHEREAS, JWAS is an Indiana non-profit corporation organized for charitable, scientific, and educational purposes, and is qualified as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, JWAS provides financial assistance to children from preschool through college and organizes events for Jaxson Scholars and their families to set goals, develop leadership skills, and build connections; and

WHEREAS, JWAS families must qualify within income guidelines of at or below 250% of the federal poverty level, must actively participate in leadership and development programming, and are expected to be sound moral examples of character while serving the community at large; and

WHEREAS, one of VPA’s expressed impact drivers is social equity, aimed at erasing societal divides and ensuring the ability to thrive for all, regardless of income level, race, gender, ability, orientation or age; and

WHEREAS, providing free or reduced cost access to VPA programs to JWAS furthers this goal by allowing VPA programs to reach members of the community who VPA may otherwise not reach; and

WHEREAS, the City has determined that JWAS supports community equity, constitutes a valid community purpose, and will serve the interests of the City’s residents; and

WHEREAS, the City desires to donate free or reduced cost access to VPA and VPA partner programs to JWAS for distribution to its participants.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. **DONATION AMOUNT.** The Donation shall be in the form of free or discounted access to the following VPA activities and programs, delivered within a reasonable period of time prior to the start of the activity or program described:
 - a. A Family Season Pass for each JWAS Family for the Howard Park Ice Trail.
 - b. A Family Season Pass for each JWAS Family for the Kennedy Water Playground.
 - c. Complimentary access to at least one Broadway Theater Show at the Morris Performing Arts Center per family per year, select titles and dates available.
 - d. A block of 75 free tickets to a South Bend Cubs game each year.
 - e. As available, free rental of any reservable community center space (Howard Park Event Center, Rum Village Nature Center, Charles Black Community Center, Dr. Martin Luther King Jr. Dream Center, Pinhook Park Community Center, or O'Brien Center).
 - f. The opportunity for five (5) JWAS scholars to attend a free week at Camp Awareness each year.
 - g. The opportunity for five (5) JWAS scholars to attend a free week of Tennis Camp at Leeper Park each year.
 - h. A block of 75 Potawatomi Zoo and 75 Zoo Attraction passes each year to distribute to JWAS scholars and their families.
 - i. A 45% discount to family memberships at the YMCA O'Brien Center with waived enrollment fees.
 - j. A complimentary "flex pass" three-concert subscription to the South Bend Symphony Orchestra for each household, each year.
 - k. Full scholarship to JWAS Scholars for any class or team-based program offered by First Tee of Michiana based out of Studebaker Golf Course.
 - l. Full scholarship registration(s) to play on a Michiana Soccer Association team as extended through SBVPA agreement – quantity of spots available will vary by year.
 - m. Full scholarship registration(s) to play on a East Side Baseball Softball team as extended through SBVPA agreement – quantity of spots available will vary by year.

It is understood by both parties that while the above list represents the offerings anticipated to be available throughout the term of the agreement, specific programs or activities may change year-to-year without notice. JWAS will be responsible for coordinating access to the listed programs with VPA staff and distributing them to the JWAS scholars and their families. JWAS will make reasonable efforts to ensure that these benefits are used for their intended purposes and not sold or transferred. Each program may have certain restrictions

or participation limitations (i.e. age, height, etc.) and all participants will be expected to follow stated program or activity policies. The current five-year value of these donated programs and services is estimated to total one hundred fifty thousand dollars (\$150,000) and there is no cash redemption or claim.

3. **TERM OF AGREEMENT.** This Agreement shall be for a period of five (5) years, commencing on May 22, 2023 and continuing until December 31, 2028. It is generally understood by both parties that the first year of this agreement may include slightly altered access to programming given the mid-year commencement date. This Agreement may be extended for an agreed upon number of successive terms by mutual written agreement of the Parties.
4. **RECORDS, REPORTING, AND AUDIT RIGHTS.** Annually, the City requests a report from JWAS detailing the use of contributed programs and various outcomes as they relate to the goals and mission of JWAS and VPA. JWAS shall maintain records related to all use of the Donation for a minimum of three (3) years. Additionally, the City reserves the right at its expense to audit the records of JWAS as they relate to the Donation and JWAS agrees to cooperate with the City during such audit, provided that any audit initiated by the City shall occur only during JWAS's normal business hours.
5. **DEFAULT AND CLAW BACK.** In the event that any of the Donation is not used as set forth in this Agreement, or to the extent that any of the Donation is found not to have been used in furtherance of Agreement's stipulations, then JWAS shall be in default of this Agreement, and the City shall have the right following a 10 business day period for JWAS to cure to demand in writing return of that portion of the Donation deemed to have been not used according to this Agreement. JWAS shall immediately return the Donation to the City upon such written demand. If the Donation items described in Section 2 of this Agreement are not available for any reason, JWAS shall reimburse the City for the fair market value of the Donation items.
6. **NON-DISCRIMINATION.** JWAS shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. Additionally, JWAS shall comply with all federal, state, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of persons not authorized to work in the United States). Each of the foregoing provisions is incorporated herein as if set forth in full, and JWAS certifies that it shall remain in compliance through the term of this Agreement.

7. **INDEMNIFICATION.** JWAS agrees to indemnify, defend, and hold the City, its officers, and employees harmless with regard to any and all claims of any nature which arise from JWAS's use or alleged misuse of the Donation Amount.
8. **WAIVER.** No failure or delay on the part of either party in exercising any right under this Agreement will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.
9. **SEVERABILITY.** All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case JWAS and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.
10. **DRUG-FREE WORKPLACE.** JWAS agrees to make a good faith effort to provide and maintain a drug-free workplace. JWAS will give written notice to the City within ten (10) days after receiving actual notice that an employee of JWAS within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.
11. **NOTICES.** Any notices or other communications required or permitted under this Agreement shall be in writing, and shall be (a) personally delivered, or (b) sent by certified mail, postage prepaid, return receipt requested, or (c) by overnight delivery by reputable courier to the address of the party set forth in this Section. Such notice or communication shall be deemed given if (i) sent by personal delivery or by overnight courier, when delivered in person, or (ii) in the case of mailed notice three (3) business days following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the City:
City of South Bend, Indiana
Attn. Executive Director Venues Parks & Arts
301 S. St. Louis Blvd.
South Bend, IN 46617

With a copy to:
City of South Bend, Indiana
Department of Law

Attn. Corporation Counsel
227 W. Jefferson Blvd., Ste. 1200S
South Bend, IN 46601

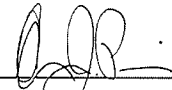
If to JWAS:
3900 Edison Lakes Parkway
Suite 201
Mishawaka, IN 46545

12. **ASSIGNMENT.** JWAS shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.
13. **REPRESENTATIONS OF JWAS.** JWAS represents and warrants that it has maintained its 501(c)(3) status and will maintain such at least through the distribution of the Donation to its participants. Additionally, the undersigned person executing and delivering this Agreement on behalf of JWAS certifies that she is the duly authorized officer of JWAS and has been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done.
14. **NON-COLLUSION.** The undersigned attests, subject to the penalties of perjury, that she has not, nor has any other director, officer, employee, representative, or agent of JWAS, directly or indirectly, to the best of her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that she has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.
15. **AGREEMENT CONSTRUCTION.** This Agreement was negotiated by the parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent counsel. Neither party shall maintain that the language in this Agreement shall be construed against any signatory hereto. The captions and Section numbers of this Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Agreement. Further, notwithstanding anything to the contrary herein, no person other than the parties hereto, and their permitted assigns, shall have any right of action under this Agreement.
16. **COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed in counterparts, which together shall constitute one and the same agreement among the parties. Facsimile and electronic signatures shall be deemed original signatures.

17. **ENTIRE AGREEMENT, AMENDMENTS, APPLICABLE LAW, AND JURISDICTION.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understandings of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both JWAS and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana and any actions arising hereunder shall be tried in the county courts of St. Joseph County, Indiana.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement for Donation of Funds to be effective as of the Effective Date stated above.


CITY OF SOUTH BEND, INDIANA
VENUES PARKS & ARTS DEPARTMENT



Aaron Perri, Executive Director

Date: 05/22/2023

JWAS FOUNDATION



Jeanie Shuck, Executive Director

Date: 6/1/23