

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
AND
THE MONTGOMERY COUNTY PARKS FOUNDATION, INC.

This Memorandum of Understanding ("MOU") effective this 24th day of February 2010 ("Effective Date") is by and between the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), and the Montgomery County Parks Foundation, Inc. (the "Foundation").

WITNESSETH:

WHEREAS, the M-NCPPC is a bi-county agency empowered by the State of Maryland 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, in 1992, the members of the M-NCPPC appointed from the Montgomery County Planning Board (the "Planning Board") created the Foundation as a not-for-profit 501(c)(3) organization as a private organization; and

WHEREAS, the initial purpose of the Foundation was to lessen the burdens of government while serving and providing facilities for the residents of Montgomery County, Maryland by using private funding sources to promote and advance the acquisition, protection, use and development of park land located in Montgomery County, Maryland and owned and/or operated by M-NCPPC (the "Montgomery Park System"); and

WHEREAS, over the course of years since its inception, the Foundation, with the support of the Planning Board, has continued to define and refine its role as it relates to its core mission in supporting the Montgomery Park System through private funding sources; and

WHEREAS, the Planning Board and the Foundation each acknowledge that the mission and purpose of the Foundation is attaining increased financial support for the Montgomery Park System, and that the Foundation shall coordinate with appropriate Parks Department staff to develop and support of Friends Groups, attain increased volunteer support and in-kind gifts for the Montgomery Park System, acquire additional land and easements for open space and scenic enhancement for the Montgomery Park System, promote public use and enjoyment of the Montgomery Park System, promote public awareness and education about issues important to the Montgomery Park System, and advocate on behalf of the Montgomery Park System in public and quasi-public forums in a manner consistent with its non-profit status; and

WHEREAS, it is in the interest of the Planning Board to support the Foundation to accomplish its mission and to perpetuate the sustainability of the Foundation by allowing a portion of the funds that the Foundation raises to be dedicated to administrative activities and costs; and

WHEREAS, as a result of recent developments, it is necessary to refine the relationship between the Planning Board and the Foundation.

NOW THEREFORE, the parties agree as follows:

- 1) Purpose of this MOU. The purpose of this MOU is to formally set forth the respective roles, responsibilities and priorities between the Planning Board and the Foundation with regard to the purpose and the mission of the Foundation.
- 2) Term; Renewal. This agreement shall be binding on both the Planning Board and Foundation for an initial term of five (5) years from the Effective Date, and renewable for successive 5-year terms, until or unless otherwise terminated. Each successive term shall be predicated upon 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 notice to the other, within sixty (60) days prior to the expiration of the term then in effect of the desire to so modify this MOU for the next renewal period, this MOU shall automatically renew for the next successive term without the necessity of written documentation.
- 3) Foundation Board of Trustees. In accordance with Article Three of the most recently approved By-Laws of the Foundation, the Planning Board shall have the right to approve the members of the Foundation Board of Trustees (Board). Board members should be respected by the community, understand the organization, and be committed to the philosophy of M-NCPPC and its management of the Montgomery Park System with the ability to raise funds in the community at the highest levels. Their ability and commitment to raising funds should be a primary consideration. The Foundation Board will include the Chairman of the Planning Board as a permanent "ex-officio" non-voting member but will not include any other members of the Planning Board or elected body. Other ex-officio members of the Board will include the Parks Department Director and the senior Parks Department staff assigned to the Foundation.
- 4) Foundation Staff. The M-NCPPC, at its sole cost (as funding appropriations allow) and in its sole discretion, will provide administrative and staff support to assist the Foundation. Staff tasks and responsibilities will include but not be limited to:
 - a. Monitoring and managing the Foundation's financial condition and obligations;
 - b. Attending meetings of the Foundation Board;
 - c. Preparing a Foundation case for support, a Fund Development Plan and a Marketing Plan;
 - d. Creating a database of prospective donors;
 - e. Launching Friends of Montgomery Parks;
 - f. Produce marketing materials and newsletters; and
 - g. Working with Foundation counsel to insure that all state and federal filings are maintained.

The Foundation will contribute to staffing and administrative costs as the raising of unrestricted funds allows.

Fund Development Plan. The Foundation and the Planning Board will jointly develop and annually review and revise a Fund Development Plan which shall reflect the operating philosophy and strategic guide for the Foundation.

The Foundation affirms and agrees that its priority will be to pursue endowment funds for maintenance and improvements of current facilities and programs. Additionally, funding for new facilities, projects, and programs will be sought as identified in the asset inventory. The Board and Foundation staff will assure proper coordination of all fundraising efforts and campaigns.

The Foundation further affirms and agrees that its priority funding categories for endowments will be individual legacy gifts and estates.

The Foundation also affirms and agrees that it will develop a support fundraising group "Friends of Montgomery County Parks." All members of current organizations, volunteer groups, facility season permit holders, youth sports groups, current and former donors, known area philanthropists, and others will be encouraged to join in the development stages. Dues may be used as unrestricted Foundation operating funds.

- 5) Comprehensive Marketing Plan. The Foundation will develop a Comprehensive Marketing Plan in collaboration with the marketing department of the M-NCPPC to assure that current "branding" and Park Department profiles are maintained. Marketing tools and strategies will include: a "friends" newsletter at least four times annually with emphasis on legacy giving and legacy giving opportunities; and a marketing DVD of 8–10 minutes that details the relationship between the M-NCPPC and the Foundation, the Foundation philosophy, and examples of existing legacy endowments and future opportunities. The Comprehensive Marketing Plan will be utilized to support collateral marketing materials; and to education the community on the Foundation's goal to endow and support the facilities and programs of M-NCPPC. The campaign should include trust officers, CPAs, estate planners, and community social groups, as well as all identifiable users of M-NCPPC facilities. As part of the Comprehensive Marketing Plan the Foundation will produce a dedicated website for the Foundation that outlines history, philosophy, inter-connection and collaboration with M-NCPPC, specific and prioritized legacy endowment opportunities, with archived "Friends" newsletters and other pertinent information cross-linked to the M-NCPPC website.
- 6) Fundraising Goals. The Foundation will develop funding goals for the 2010 – 2012 period. The goals will include the following process and fundraising amounts:
 - a) Collaboration with M-NCPPC to create and develop a database of prospective donors.
 - b) Establishment and cultivation of the "Friends of Montgomery County Parks." This will be a donor database and an important unrestricted operating revenue source of the Foundation.
 - c) Donor research program to identify and profile prospective candidates. There are a number of research and development tools available to the Foundation staff that will assist in identifying and profiling significant wealth with philanthropic interests that match the M-NCPPC programs, projections, and philosophies. This is a time consuming process but necessary to major legacy and estate gifts for the Foundation.

d) Recommended Fundraising Goals

Major Gift Goals:

FY 2011 - \$1.5 M

FY 2012 - \$2.5M

FY ½ 2013 - \$4M

“Friends” Revenue Goals:

FY ½ 2010 - \$10,000 – Approximately 300 members

FY 2011 - \$70,000 – Approximately 1,500 members

FY 2012 - \$120,000 – Approximately 3,000 members

FY ½ 2012 - \$70,000 – Approximately 3,500 members

- 7) Naming Rights Policy. The M-NCPPC has a park naming policy and agrees to follow its policy on the “naming” of certain facilities, buildings, landscape areas, programs, and other related M-NCPPC assets, for those private sector monies donated to and managed by the Foundation in accordance with this MOU. Once approved by the Planning Board, the M-NCPPC shall establish the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds, plaque locations and size. Notwithstanding anything contained herein to the contrary, the M-NCPPC reserves the right of final approval of all naming agreements. The M-NCPPC will not name any asset that does not meet the guidelines of the park naming policy and is without the requisite monetary gift as detailed in the fund development plan of the M-NCPPC.
- 8) Naming Rights Inventory. Parks Department staff will seek the modification of the park naming policy to include a process where the M-NCPPC will pre-approve an inventory of individual naming opportunities, with guidelines, for necessary financial considerations. The inventory is not projected to be all inclusive, but to represent a cross-section of facilities and programs in each of the Montgomery County Parks. This asset inventory, approved by the Parks Department and M-NCPPC, shall be revised and updated annually and will be included as an addendum to the park naming policy.. When approved, it will be presented to the Foundation to be used in seeking legacy endowment gifts. The Naming Rights Inventory will be the “key” tool in developing a comprehensive marketing tool for the Foundation.
- 9) Reporting.
- (1) On or before March 31 of each calendar year, the Foundation shall provide to the Planning Board, for review and comment, audited financial statements (prepared by a certified public accountant in accordance with generally accepted accounting principles) with respect to the Foundation's activities during the preceding fiscal year of the Foundation.
 - (2) Upon completion, but in no event later than 30 days after each quarter of each calendar year, the Foundation shall provide to the Planning Board, for review and comment, quarterly income statements with updated year-end income projections.
 - (3) No less than four (4) times each calendar year, the Foundation shall appear before the Planning Board and make a presentation; the first of which shall include a report of its Fund Development Plan, and at each other presentation, the Foundation shall present a summary and update of significant activities conducted by the Foundation to

- promote or support the park system, and any other information reasonably requested by the Planning Board.
- 10) Use of Foundation Funds. The Foundation may use proceeds derived from donations, grants, gifts, stock exchange, land sale proceeds, and other means of philanthropic endeavors to pay for its administrative costs [provided however that administrative costs shall be limited to the lesser of 12% of the total funds raised during any given year, or the actual administrative expenses incurred during any given year].
- 11) Grant Coordination and Management. The Planning Board and the Foundation shall collaborate, consult, and coordinate with one another on all grant management activities; provided however, the responsibilities with regard to managing grants awarded must be preserved within their respective organizations.
- A. By the Planning Board. The Planning Board, through its Grants Manager shall manage, administer, and provide oversight for all grants and grant projects of which M-NCPPC or the Planning Board is the applicant and/or the direct recipient to the standard required by, and in accordance with such applications and/or conditions of award. The Planning Board shall maintain an inventory of such grants.
- B. By the Foundation. The Foundation shall manage, administer, provide oversight, and take full fiduciary responsibility for all grants and grant projects of which the Foundation is the applicant and/or the direct recipient to the standard required by, and in accordance with such applications and/or conditions of award. The Foundation shall maintain an inventory of such grants.
- 12) Audit and Inspection. M-NCPPC shall have access, at all reasonable times, to all the Foundation's personnel, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, financial accounts, data stored in computer files or microfiche, and memoranda of every description pertaining to any of the matters related to or derived from this MOU ("Services") to ensure compliance with this MOU. Foundation shall maintain supporting data and accounting records in accordance with generally accepted accounting practices. M-NCPPC shall have the right to reproduce any of these documents. Foundation shall preserve and shall cause its contractors and vendors to preserve all these documents for a period of three (3) years after completion of Services. Foundation agrees to include the necessary provisions in its contracts that shall assure access by M-NCPPC employees or representatives to applicable records of such contractors. M-NCPPC shall not be liable for costs resulting from an audit hereunder. M-NCPPC may inspect any Services performed and any equipment and materials provided in connection with Services. No inspection or approval will relieve Foundation of any obligations hereunder or its contractors of any warranties granted. This Article survives termination or expiration of this MOU.
- 13) Default.
- (1) By the Foundation. Foundation will be in default under this MOU if it fails to perform or observe any of its obligations under this MOU, and such failure continues for thirty (30) days after written notice by Planning Board to Foundation specifying the failure. If the failure is of such a nature that it cannot reasonably be remedied within the thirty (30) days, Foundation 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.

- (2) By the Planning Board. Planning Board will be in default under this MOU if it fails to perform or observe any of its obligations under this MOU, and such failure continues for thirty (30) days after written notice by Foundation to the Planning Board specifying the failure. If the failure is of such a nature that it cannot reasonably be remedied within the thirty (30) days, Planning Board 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.
- 14) Termination. This MOU may be terminated by a “super-majority” (four out of five votes) of the Planning Board at any time in the event that the Foundation is in default hereunder, after appropriate notice and opportunity to cure as provided in Article 12 herein. Within thirty (30) days of notice of such termination, i) the Foundation shall provide audited financial statements, updated from the last such report to the Planning Board that sets forth all funds currently in the control of the Foundation, and ii) the Foundation shall dissolve in accordance with Article 11 of the Foundation’s Articles of Incorporation. The terms and conditions of this Article shall survive expiration or termination of this MOU.
- 15) Mutual Indemnification. Except when caused by the negligence, willful misconduct or other wrongful conduct of the party to be indemnified, each party shall defend, indemnify and hold harmless the other, its affiliates, directors, agents, servants, employees, subsidiaries, successors and assigns, from and against all claims, liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses (including but not limited to reasonable attorneys’ fees).
- a) Right to Participate in Defense. Either party, where not otherwise represented in any claim or litigation covered by the indemnities in this Article, may participate in the defense of that claim or litigation, with any attorney of its selection, without relieving that other party of any obligations hereunder.
 - b) Gross Negligence and Willful Misconduct. Notwithstanding anything to the contrary in this Agreement, 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 Agreement. 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.
 - c) Survival. The terms and conditions of this indemnity provision shall survive termination or expiration of this MOU.
 - d) Limitations of Local Government Tort Claims Act. Notwithstanding anything herein to the contrary, any indemnification provided by the M-NCPPC under this MOU is limited by the notice requirements, types of liabilities and damage limits provided in Md. Code Ann., Cts. & Jud. Proc. Art., Sec. 5-301 through 5-304, “The Local Government Tort Claims Act,” and any such indemnification does not create any rights in third parties.

16) 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 agency, franchise or employment relationship between M-NCPPC or the Planning Board and the Foundation and any of the employees of either party. The parties acknowledge and agree that the Foundation is an independent entity, separate and apart from M-NCPPC 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 Planning Board shall consult with its counsel with regard to issues such as purchasing, procurement, and acceptance of grants and donations made directly to the Planning Board. 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 related 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 Planning Board, which consent may be withheld or conditioned in the sole and absolute subjective discretion of the Planning Board. Any transfer or assignment consented to by the Planning Board shall at all times be subject to this MOU. 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.
- d) 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 Planning Board:

M-NCPPC

6611 Kenilworth Avenue
Riverdale, Maryland 20737
Attn: Executive Director

With a copy to:

Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, Maryland 20910
Attn: Director

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

Montgomery County Parks Foundation
9500 Brunett Avenue
Silver Spring, MD 20901

- e) 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 Planning Board to or of any act by the Foundation requiring the Planning Board's consent or approval must not be deemed to waive or render unnecessary the Planning Board's consent or approval to any subsequent similar act by the Foundation.
- f) Severability. The invalidity of any provision of this MOU does not affect the validity of any other provision. 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.
- g) Captions. Captions are used in this MOU only for convenience and reference, and do not in any way define the scope of this MOU or the intent of any provision in this MOU.
- h) Excuse. Neither the Planning Board 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 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 Planning Board or the Foundation and which by the exercise of due diligence the Planning Board or the Foundation is unable, wholly or in part, to prevent or overcome.
- i) Entire MOU. This MOU, including any attached exhibits (which are incorporated into and made a part of this MOU), contains the entire MOU between the parties with respect to the subject matter hereof. No amendment is valid unless in writing and signed by a duly authorized representative of each party.
- j) Laws and Regulations; Governing Law. This MOU is subject to and construed under the laws of the State of Maryland. The Planning Board and the Foundation shall comply with all Federal, State, Montgomery County, and M-NCPPC laws and regulations relating to the subject matter of this MOU and performance under this MOU.
- k) 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.
- l) Rules of Construction. The provisions of this MOU are to be construed 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.

- m) Revisions. Either Party may make revisions to this MOU at any time and any such revisions will become effective upon the approval of the Planning Board and the Foundation Board.

[SIGNATURE PAGE FOLLOWS]

THE PARTIES, BY THEIR EXECUTION BELOW, INDICATE THEIR CONSENT TO THE TERMS OF THIS MEMORANDUM OF UNDERSTANDING.

THE MONTGOMERY COUNTY PARKS FOUNDATION

Date: _____

By: *Royce Hanson*
Royce Hanson, Chairman for MCPF Board of Trustees

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date: _____

By: *Patricia Colihan Barney*
Patricia Colihan Barney
Acting Executive Director

ATTEST

Date: 2/29/10

By: *Al Warfield*
Al Warfield
Acting Secretary-Treasurer