

**AGREEMENT AMONG THE CITY OF TULSA,
TULSA COMMUNITY FOUNDATION AND PARK FRIENDS, INC.**

This Agreement is entered into this ___ day of _____, 2015, by and among the City of Tulsa, a municipal corporation ("City"), Tulsa Community Foundation, an Oklahoma not-for-profit corporation ("Foundation") and Park Friends, Inc. an Oklahoma not-for-profit corporation ("Park Friends").

WITNESSETH

WHEREAS, City owns and operates, through its Park and Recreation Department, a system of public parks, including (but not limited to) playgrounds, recreation centers, picnic areas, sport fields, open spaces, and related improvements (parking lots, roads, benches, tables, etc.), and

WHEREAS, Park Friends is a non-profit corporation that exists for the purposes of assisting and enhancing the City's parks and park programs; raising money to support public parks; accepting donations and gifts from private and corporate citizens on behalf of the parks systems; donating money, volunteers, permanent fixtures, equipment and supplies to City and promoting public awareness of, and involvement in, public park programs; and

WHEREAS, Foundation is a tax exempt, public charity which is one of the largest community foundation in the United States and which provides financial and administrative management services for funds donated for charitable purposes, and

WHEREAS, the parties desire to set forth their rights and responsibilities herein.

NOW THEREFORE, the parties mutually agree as follows:

I. Park Friends' Rights and Responsibilities

1.1. Park Friends agrees to raise funds for projects enhancing City parks and to solicit donations on behalf of the City of Tulsa Park and Recreation Department. Donors solicited by Park Friends on behalf of City parks and the Tulsa Park and Recreation Department shall be directed to remit donations to the appropriate donor-designated fund at Foundation, 7030 S. Yale Ave., Suite 600, Tulsa, OK 74136.

1.2. Park Friends agrees to utilize the services of Foundation to create donor-designated fund accounts into which Park Friends' donors may make charitable contributions. Park Friends will request grant disbursements from these fund accounts. Foundation will maintain audited records of all transactions of gifts and grants received and monies disbursed on behalf of City parks and the Tulsa Parks and Recreation Department. Park Friends shall designate and Foundation shall maintain separate fund accounts at Foundation for gifts with special designations and expend such gifts according to donor designations.

1.3. Park Friends shall indemnify and hold City and Foundation harmless from any claim, loss, cost, expense or damage to any person or property which arises out of and

as a result of Park Friends' negligence or misconduct. Foundation shall indemnify and hold City and Park Friends harmless from any claim, loss, cost, expense or damage to any person or property which arises out of and as a result of Foundation's negligence or misconduct.

1.4 Park Friends shall during the term of this Agreement and at its sole expense maintain a policy of general liability insurance in the amount of One Million Dollars (\$1,000,000) issued by an insurance company licensed to do business in the State of Oklahoma covering the Park Friends Board members and any staff, and shall obtain an endorsement to the policy naming the City as an additional insured. Park Friends shall also maintain an employee dishonesty bond in the amount of Fifty Thousand Dollars (\$50,000) indemnifying the City from any willful or negligent loss or theft of municipal funds resulting from the action or inaction of Park Friends, their agents, employees, contractors or any third parties.

II. City's Rights and Responsibilities

2.1 The City and Foundation agree to provide support and guidance to Park Friends to assist it in accomplishing its objectives.

2.2 The City agrees, through its Park and Recreation Department, to serve as custodian of Park Friends' articles of incorporation, bylaws, rosters, records of attendance, and other organizational documents. City shall likewise schedule Park Friends' meetings, prepare and deliver agenda, and take and keep minutes of Park Friends' meetings.

III. General Provisions

3.1 Park Friends, its employees, volunteers, and other personnel shall at all times be independent contractors and not employees of City or Foundation.

3.2 Park Friends is required to retain all records related to this Agreement for the duration of the contract term and any renewal term and a period of three years following completion and/or termination of the contract. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

3.3 Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship among the parties. No party shall have any right, power or authority to act as a legal representative of another party, and no party shall have any power to obligate or bind another party, or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever.

3.4 **Entire Agreement.** This agreement constitutes the entire agreement among the parties and supersedes any prior agreement between the parties.

3.5 **Invalidity.** If any terms of this Agreement shall be declared invalid, illegal, or unenforceable for any reason or in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such provision had never been contained herein.

3.6 **Amendment.** This Agreement may be amended only by a written instrument signed by each party's contracting authority.

3.7 **Third Parties.** This Agreement is between the City of Tulsa, Tulsa Community Foundation and Park Friends, Inc. and creates no right unto or duties to any other person. No person is or shall be deemed a third party beneficiary of this Agreement.

3.8 **Notice.** Any notice or other communication required or permitted hereby shall be in writing and the same shall be deemed given upon delivery thereof in person or one business day after such notice is deposited with an overnight delivery service such as Federal Express or Airborne and addressed as follows:

If to City: City Clerk
The City of Tulsa, Oklahoma
175 E. 2nd Street, Suite 206
Tulsa, Oklahoma 74103

With a copy to: Director of Park and Recreation Department
The City of Tulsa, Oklahoma
175 E. 2nd Street, Suite 570
Tulsa, Oklahoma 74103

If to Tulsa Community Foundation: Phil Lakin, Jr.
Chief Executive Officer
Tulsa Community Foundation
7030 S. Yale Ave., Suite 600
Tulsa, OK 74136

If to Park Friends, Inc.: Park Friends, Inc.
c/o Director of Park and Recreation Department
The City of Tulsa, Oklahoma
175 E. 2nd Street, Suite 570
Tulsa, Oklahoma 74103

From time to time, any party may designate another address for all purposes of this Agreement by giving to the other parties not less than ten (10) days advance written notice of such change of address in accordance with the provisions hereof. The failure or refusal of a party to accept receipt of a notice hereunder shall in no manner invalidate the notice.

3.9 **Assignment.** This Agreement may not be assigned by any Party without the written consent of the other Parties.

3.10 **Governing Law; Jurisdiction; Venue.** This Agreement shall be deemed to have been executed by all parties hereto in Tulsa County, Oklahoma and accordingly, this Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma. The parties agree that any suit, action or proceeding with respect to this Agreement shall be brought in the District Court of Tulsa County, Oklahoma. All parties hereby irrevocably waive any objections which they may now or hereafter have to the personal jurisdiction or venue of any suit, action or proceeding arising out of or

relating to this Agreement brought in any such court and hereby further irrevocably waive any claim that such suit, action or proceeding brought in such court has been brought in an inconvenient forum.

3.11 **Headings.** The headings used herein are for convenience only and shall not be used in interpreting this Agreement.

3.12 **Binding Effect.** This Agreement shall be binding upon City, Foundation and Park Friends and their respective successors, heirs, legal representatives and permitted assigns.

3.13 **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable laws: (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties; (ii) no waiver that may be given by a party shall be applicable except to the specific instance for which it is given; and (iii) no notice or demand on one party shall be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

3.14 **Interpretive Matters and Definitions.** The following interpretive matters shall be applicable to this Agreement:

(1) Unless the context otherwise requires: (a) all references to Sections are to Sections of or to this Agreement; (b) each term defined in this Agreement has the meaning assigned to it; (c) “or” is disjunctive but not necessarily exclusive; (d) words in a singular include the plural and vice versa. All references to “\$” or to dollar amounts shall be in lawful currency of the United States of America;

(2) No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof;

(3) Any reference to any applicable laws shall be deemed to refer to all rules and regulations promulgated thereunder and judicial interpretations thereof, unless the context requires otherwise;

(4) The word “including” means “including, without limitation” and does not limit the preceding words or terms; and

(5) All words used in this Agreement shall be construed to be of such gender, number or tense as circumstances require.

3.15 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

3.16 The term of this Agreement shall be effective on July 1, 2015 and continue for one year. The contract may be renewed by mutual agreement of both parties.

3.17 Either party may terminate this agreement upon ninety (90) days written notice to the other.

IN WITNESS WHEREOF, this Agreement is executed by the parties on the date set forth below.

Date: _____

CITY OF TULSA

PARK FRIENDS, INC.

Mayor

Chairman

ATTEST:

City Clerk

ATTEST:

Corporate Secretary

APPROVED:

Assistant City Attorney

Director, Park & Recreation

TULSA COMMUNITY FOUNDATION

Chairman

ATTEST:

CORPORATE SECRETARY