



MEMORANDUM

July 2, 2012

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator
Lisa R. Clayton, Parks Director
Anna Shuford, Parks & Recreation Superintendent
Vernon Gerth, ACA Community & Economic Development

SUBJECT: Agreement between the City Of Franklin and Friends of Franklin Parks, LLC.

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an agreement between the City of Franklin and the Friends of Franklin Parks, LLC.

Background

The Friends of Franklin Parks, LLC was established in April 2011 and their mission is to bridge the gap between the services and amenities offered by government funding and those that allow us to take full advantage of the incredible natural and historic resources of our community. The primary purpose of the Friends of Franklin Parks, LLC is to secure, manage and invest privately raised funds, gifts and bequests in support of the Parks Department's programs, services and facilities and promote parks through citizen involvement, education and fundraising activities while working toward accomplishing the Franklin Tomorrow's goals and strategies within the nine areas.

The proposed agreement (MOU) between the City of Franklin and the Friends of Franklin Parks, LLC provides for an overall framework for how the two organizations will work together.

Financial Impact

The proposed agreement describes how the two parties will work together to designate private funds to support Franklin Parks projects.

Recommendation

It is recommended that the City of Franklin enter into a MOU with Friends of Franklin Parks, LLC for five years with the option to renew for an additional five years.

AGREEMENT
between the
CITY OF FRANKLIN
and the
FRIENDS OF FRANKLIN PARKS, LLC
COF Contract No. 2012-106

This Agreement (“Agreement”) is made by and between the City of Franklin (“City”) and the Friends of Franklin Parks, LLC, a Tennessee limited liability company created under the laws of the State of Tennessee and located in Franklin, Tennessee (“FoFP”).

WHEREAS, the City, by and through its Parks Department (“Department”) owns, operates, and maintains real estate, buildings, sports fields, greenways, trails, parklands and other recreational facilities and operates a variety of park programs and services; and

WHEREAS, the Department, on behalf of the City, maintains the public parks in a balanced, sustainable and value focused system of active, passive and historic parks, greenways and trails, and manages and operates these facilities for the benefit of the people within the City of Franklin; and

WHEREAS, the Department’s mission is to deliver quality and efficient services and is fully dedicated to the preserving, enhancing and protection of City parks, green spaces and outdoor facilities for the present and future generations; and

WHEREAS, the FoFP was formed in 2011, as a non-profit limited liability company, formed under the laws of the State of Tennessee; and

WHEREAS, the purpose of the FoFP is, among other things, to promote the social welfare of the citizens of the City by promoting the development and improvement of public park facilities in the City, including securing, managing and investing privately raised funds, gifts and bequests in support of the Department’s programs, services and facilities and by promoting the City’s parks through citizen involvement, education and fundraising activities; and

WHEREAS, the FoFP operates as a legal entity separate from the City, and is governed by an independently elected Board of Directors, none of whom are elected or appointed officials of the City or employees of the City; and

WHEREAS, the FoFP and the City wish to assure the continued success, growth and development of the Department by determining the responsibilities, obligations, roles and procedures of the FoFP and the City.

NOW THEREFORE, in consideration of the cooperative efforts to support the continued development of City park facilities and Department programs and maintenance, the City and the FoFP agree as follows:

SECTION 1: OPERATING PROCEDURES

A. Purpose and Nature of the Agreement

The FoFP and the City acknowledge that this Agreement does not grant permission to allow the FoFP any control over the management, direction, and policy of the City parks and such are not assigned in any way by the FoFP. Members of the FoFP will not be actively involved in any

personnel or management issues or internal decisions.

B. The City and the FoFP understand their purposes to be:

1. To assist the Department staff in preserving and protecting the historic, cultural, and natural resources of the City parks system.
2. To provide for the enjoyment and safety of all visitors to the City parks.
3. To interpret the natural, historic and cultural resources of the City parks to the public by providing special programs and information.
4. To be all inclusive and have a broad vision when considering projects to enhance and develop City parks.
5. Create opportunities for in-kind contributions or work in lieu of monetary donations through volunteers acting under the leadership of the FoFP.

C. Department Designee

The Department shall appoint a staff designee to be the liaison to the FoFP (hereinafter referred to as the Department Designee). The Department Designee will have specified authority and responsibilities as granted by the City Administrator and will act as the representative advocating for the needs of the Department.

D. Responsibilities of The FoFP

The FoFP represents and agrees that it will do the following:

1. Become familiar with the needs and operations of the Department, as informed by the Department Designee.
2. With the Department Designee, conduct an annual review of facility development and /or programming projects that are desired by the City or proposed by the FoFP for the following year.
3. Consult with the Department Designee prior to embarking on a project to ensure the project aligns with the master plan and the City and Department mission.
4. To the extent that any agreements purport to obligate the City to accept, or infer that the City would be willing to accept, funds, goods or services for the City parks from third parties, submit such agreements to the Department Designee, who will seek approval from the proper authorities within the City.
5. Submit any material prepared for public distribution that promotes projects for the City parks including, but not limited to, individual promotional activities, brochures, or other forms of publicity or visual media to the Department Designee for review and approval prior to its release. This provision shall not apply to communications that are in general support of FoFP's mission of promoting City park resources without specificity.
6. Provide a detailed report containing project information and costs to the Department Designee once each project is completed.
7. Act in a supportive but autonomous manner.
8. Propose from time to time to the Department Designee contributions of cash, real or personal property, professional services, or physical labor related to general Department needs or for specific projects for consideration by the City
9. FoFP may develop a website and/or may use its existing website to promote the solicitation of donations. Such website(s) may provide a link to the City's website.

Upon FoFP's request, the City shall provide one or more links to the portion of FoFP's website dedicated to the solicitation of donations for City parks.

10. FoFP understands and agrees that this Agreement is not exclusive. The City may, independently and without FoFP's involvement, seek or accept funds or in-kind services from any other person or company at any time for any reason.
11. FoFP shall observe and comply with all federal, state and local laws and regulations pertaining to its activities under this Agreement.

E. Responsibilities of the Department

The Department represents and agrees that it will do the following:

1. Provide information and training to the FoFP volunteers as needed. The Department and Department Designee are not responsible for the recruiting of volunteers for any activity developed by the FoFP.
2. Encourage and consider the concerns and desires of the FoFP in decisions affecting the City park resources.
3. Allow the FoFP to use the name and images of the Parks Department. The FoFP will not be permitted the use of the City seal.

F. Offers of Support to the Department and City

1. From time to time, FoFP may offer to the Department donations of cash, real or personal property, or in-kind professional or volunteer assistance, including construction or repair assistance.
2. If the offer is an offer of cash with no limitations as to use, the Department may accept the donation and determine its use according to procedures and principles established by the City and the Department, and will endeavor to use the cash on Department projects.
3. If the offer is an offer of personal or real property, the Department will determine whether such property is appropriate for acceptance, and if acceptable will use the property according to procedures and principles established by the City and the Department.
4. If the offer is an offer of cash, or real or personal property, that is intended to be restricted to a particular project, as stated by FoFP, the Department will make a determination as to whether the restriction and the use of such funds or the acceptance of such property is suitable, and if so both FoFP and the City or Department, as determined by the City, shall enter into a suitable agreement as to the acceptance and use of such funds or acceptance of such property.
5. If the offer is an offer of unskilled volunteer labor, the Department will make a determination as to whether the volunteer labor is suitable and will provide information and training and FoFP will coordinate scheduling and assignment of such volunteers. The parties understand that volunteers will be required to submit waivers of liability for each project.
6. If the offer is an offer of professional services, construction, maintenance or repair services, the City will determine whether and under what conditions to accept such services. The City may, as part of its acceptance and in its discretion, require bonding or other assurances of quality, may require the assignment of any applicable manufacturer's warranties to the extent property is conveyed, and may require that FoFP follow normal building permit or other City processes.

G. Organizational Requirements

1. The FoFP shall communicate the following information to prospective donors:
 - a. The FoFP is a separate, legal entity organized for the purpose of encouraging voluntary private gifts, trusts, and bequests for the benefit of the Department.
 - b. The FoFP Board of Directors is solely responsible for the governance of the FoFP and all gifts and endowments.
 - c. All charitable gifts from donors in support of any of the Department's programs, services, or facilities should be made out to the FoFP and not to the City or Department.
2. The FoFP agrees that in accepting gifts of all kinds, the FoFP shall:
 - a. Advise donors that any restrictive terms and conditions that the donor attaches to gifts for the Department are subject to the Department's approval.
 - b. Ensure that the gifts that have been designated for a specific purpose are in compliance with the Department's master plans, vision, and mission.
 - c. Coordinate the funding goals, programs and campaigns with the Department.
 - d. Receive prior written approval from Department, City Administration, &/or BOMA for any gift, grant or contract that includes a financial or contractual obligation binding upon the City.

SECTION 2 RECORDKEEPING

- A. The City and the FoFP acknowledge and agree that all FoFP correspondence, financial records, and all FoFP documents are the property of the FoFP and shall be kept separate and apart from all City records.
- B. FoFP shall maintain complete and accurate financial records relating to the solicitation and acceptance of donations and for projects undertaken under this Agreement. Such financial records and supporting documentation shall be preserved for at least five (5) years from the date of the last sponsorship payment received by FoFP.
- C. The FoFP shall make publicly available all the enabling documents including articles of incorporation, by laws, and any amendments. The FoFP will provide the City with a copy of its IRS Form 990 without any information concerning specific FoFP donors.

SECTION 3 INDEPENDENT CONTRACTORS

In the performance of this Agreement both the City and the FoFP will be acting in an individual capacity and not as employees, partners, joint venturers or associates of one another.

SECTION 4 TERM

The initial term of this Agreement will be for five (5) years. This Agreement may be renewed for additional five-year terms with the written consent of both parties.

SECTION 5 INDEMNIFICATION AND INSURANCE

The FoFP agrees to assume the defense of and indemnify and hold harmless the City, its Mayor, Aldermen, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by,

arising out of or as a consequence of FoFP's performance of its obligations pursuant to this agreement between the City and FoFP, and not resulting from the acts or failure to act on the part of the City or its agents. The FoFP will maintain Liability Insurance in the amount of no less than ONE MILLION DOLLARS (\$1,000,000) naming the City as additional insured. If the FoFP should hire employees, they will be required to show proof of worker's compensation insurance to the extent such insurance is required by the laws of the State of Tennessee.

SECTION 6 TERMINATION

Either party will have the right to terminate this Agreement upon ninety (90) days written notice to the other .

SECTION 7 NOTIFICATION AND COMMUNICATION

Written Communication shall be addressed as follows:

City of Franklin
P.O. Box 305
Franklin, TN 37065
615 794-2103

Friends of Franklin Parks, LLC
P.O. Box 383
Franklin, TN 37065-0383
Attention: Executive Director

SECTION 8 NON-ASSIGNABILITY

This Agreement or any part of hereof, or the administration, or performance of any activity or service performed by the FoFP, cannot be assigned, sublet, contracted away, or in any manner transferred without prior written consent and full approval by the City.

SECTION 9 NON DISCRIMINATION

The FoFP will not discriminate in its employment practices against any individual because of race, color, religious creed, ancestry, age, sex, national origin, or disability.

SECTION 10 OTHER PROVISIONS

- A. If any clause or provision of this Agreement is illegal, invalid or unenforceable while this Agreement is in effect, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- B. No amendment, modification or alteration of the terms of this Agreement will be binding unless the same is in writing and duly and lawfully executed by the parties hereto.
- C. The covenants and rights herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and such assigns as have been approved by City.
- D. The signer of this Agreement for FoFP hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of FoFP.

IN WITNESS whereof the parties have executed this Agreement on the date set forth above.

City of Franklin

By: _____
Dr. Ken Moore
Mayor
Date: _____

Friends of Franklin Parks, LLC

By: _____
Print Name: _____
Title: _____
Date: _____

Attest

By: _____
Eric Stuckey
City Administrator

Approved as to Form by:

Shauna R. Billingsley
City Attorney

J. Bryan Echols
Counsel for FoFP