

Resolution Relating to

RESOLUTION

Sponsor(s): Councilors Paul, Brennan, Aubin: Parks, Arts & Culture Com.

Introduced: _____

Referred to: _____

Action: _____

Date: _____

Signed by Mayor: _____

AUTHORIZATION TO ENTER INTO
MEMORANDUM OF UNDERSTANDING WITH
THE PARKS FOUNDATION OF BURLINGTON

CITY OF BURLINGTON

In the year Two Thousand Thirteen.....

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, the City of Burlington, through the work of the Parks Foundation Task Force and the Parks, Arts, and Culture Committee has determined that private philanthropy directed to the Department of Parks and Recreation will positively impact the Burlington community; and

WHEREAS, the Parks Foundation of Burlington, is a non-profit philanthropic organization expressly created to raise funds and provide financial support to the Parks and Recreation Department; and

WHEREAS, said private funds support, ultimate receipt of which shall be subject to the approval of the City, will give the Parks and Recreation Department the opportunity to accomplish more of its goals and mission than public funding currently allows; and

WHEREAS, the private nature of the Parks Foundation of Burlington also has the added advantage of providing dedicated donor services to the Parks and Recreation Department; and

WHEREAS, the City wishes to assist and enhance the operation of, and appropriately recognize, the Parks Foundation of Burlington; and

WHEREAS, the City wishes to support the fundraising activities of the Parks Foundation of Burlington and promote a positive relationship with its staff and volunteer members; and

WHEREAS, the City, through the Parks and Recreation Department, and in consultation with the Foundation, will be establishing the terms of the fund development program including naming agreements, necessary gifting amounts, length of memorialization, management of funds, plaque locations, and size for Foundation funded projects; and

WHEREAS, the City, through its Parks and Recreation Department, philosophically and by policy will not name any asset without the necessary monetary gift as detailed in the *Policies and Procedures Manual of the Fund Development Program* to be developed; and

WHEREAS, the Parks, Arts and Culture Committee met on August 21, 2013 and heard a presentation by representatives of the Parks Foundation of Burlington and the Department of Parks and

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**AUTHORIZATION TO ENTER INTO MEMORANDUM
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FOUNDATION OF BURLINGTON**

Recreation and unanimously voted to support the Memorandum of Understanding between the two and this resolution; and

WHEREAS, the Parks Foundation of Burlington wishes to assure the City that it will operate effectively and responsibly and with the reasonable expectations of both public and private interests on behalf of the City;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the Director of the Parks and Recreation Department to execute a Memorandum of Understanding with the Parks Foundation of Burlington, in substantial conformance with the attached, and to carry out the City's obligations as defined therein.

PARKS FOUNDATION OF BURLINGTON CASE STATEMENT

MISSION

The Parks Foundation of Burlington seeks to inspire the spirit of stewardship and philanthropy for our community's treasured parks and recreation assets for our residents and visitors.

WHY ESTABLISH A PARKS FOUNDATION TODAY?

The Burlington Parks and Recreation Department of the City of Burlington, Vermont maintains recreational assets and provides excellent services that help sustain the high quality of life that makes our community such a special place. These assets, programs, and events attract visitors and contribute to our economic base. Without the City's parks, waterfront resources, the bike path, and the many events and recreational activities, Burlington would be a very different, and much less desirable, place to live and visit.

The Foundation is a separate and independent entity from the City and Parks Department, formed as a tax-exempt non-profit charity governed by its board of directors. Its purpose will be to seek opportunities to enhance the Parks assets and programs through specific initiatives, the bike path being an example (see below). It is not designed to fill budgetary shortfalls in the Department's operating expenses that would normally be the responsibility of the City.

The Foundation will seek stewardship and philanthropic opportunities for self-sustaining support, including in-kind contributions that will not impose a burden on the City of Burlington's Parks and Recreation Department's annual operating budget. The Foundation will apply for grants for which government agencies are not eligible. It will solicit and accept planned gifts that will provide support for future generations. As an entity separate from the City, the Foundation will manage and invest endowment funds.

Inspiration for the establishment of a dedicated parks foundation comes from many other municipalities and states across the country that have successfully accomplished the mission of increasing awareness of the importance of parks and recreational programming while at the same time increasing philanthropic support. For several years, discussions have taken place about the need to move forward with this effort.

WHERE ARE WE TODAY?



Partnerships

The Parks Foundation will act as the umbrella fundraising organization for all Parks and Recreation philanthropy. This will allow the great work of current groups like the Friends of Lakeview Cemetery, Leddy Park and Dog Parks to continue to raise funds in support of their particular projects. The Foundation will pride itself on being the fiscal agent for the proper stewardship of those funds while maintaining the relationship with the City to assure the money raised is spent on appropriate projects. Friends groups may continue to remain autonomous as the Foundation will focus on partnerships throughout the community to advance its mission.

Founding Board of Directors

John Bossange: Founding Chair. A retired public school administrator, Bossange now serves on several non-profit Boards in Burlington (Flynn Theater, King St. Center, and Mercy Connections), is a Commissioner for the Parks and Recreation Department, was the past Chair of the Bike Path Task Force and the Friends of the Bike Path, and volunteers for other organizations in Burlington (First Night, Dismas House) and mentors administrators for the Burlington School District.

Steve Allen: A Winooski resident, he is an active supporter of Burlington Parks & Recreation. Has served on the Burlington Parks & Recreation Commission, including two years as **Chair** and has served on the Pomerleau Family YMCA Board of Directors. He is a real estate appraiser and partner with Allen & Brooks.

John Ewing: Member and former Chair of the Parks and Recreation Commission, his current or prior engagements include President of Bank of Vermont, Chair, Vermont Environmental Board, Board Member and Chair of Vermont Housing Conservation Board, founder of **Smart** Growth Vermont and has many years of involvement in various non-profit and environmental organizations.

Sarah Muyskens: Founding Treasurer. Presently a Board Member of Vermont Land Trust, Champlain Housing Trust (Vice Chair), Vermont Nature Conservancy (Vice Chair). Past **Board** Chair of ECHO at the Leahy Center for Lake Champlain. She and her husband, Michael Green, are United Way of Chittenden County's Pomeroy Leadership Circle Co-Chairs.

The founding Directors have launched the **Parks Foundation**. We are responsible for the formation of the tax-exempt charitable 501(c)(3) non-profit corporation, including approval of the Memorandum of Understanding with the Burlington City Council. Bylaws are written and an initial budget has been approved.

Legal and Financial Advisors

Brian Dunkiel, Dunkiel and Saunders, 91 College St., PO Box 545, Burlington, VT 05402. (802) 860-1003

Jami Rivers, People's United Bank, St. Paul St., Burlington, VT. (802) 660-1309

Scott Carpenter, People's United Bank, St. Paul St., Burlington, VT (802) 660-1428

Staffing

City staff will provide direct support to the Parks Foundation and will provide facilities for any meetings. Staff involved will include; Jesse Bridges, Director and Ex-Officio Board Member, Maggie Leugers, Recreation Superintendent, and Joanne Putzier, Administrative Support.

Please contact the Parks Foundation if you have questions.

OUR SIGNATURE PROJECT THE BIKE PATH: THE FIRST OF MANY PROJECTS

Over twenty-five years ago the City of Burlington began the process of turning an abandoned railroad bed along Lake Champlain into a bike path. The total project was completed in phases over a four-year period. The path has become one of the outstanding features of the City, serving residents of Burlington and the surrounding area and attracting thousands of tourists each year. People use it to improve their health and wellness by walking, running or biking, use it as a transportation corridor to get from one part of the city to another, and the path is a popular destination for tourists who spend millions of dollars in Burlington yearly in local hotels and restaurants. An Associated Press article last year listed the bike path as the number one attraction in Burlington.

Over the course of two decades, the path has deteriorated badly and some sections have slipped into the lake. Three years ago, the Burlington City Council, understanding the vital importance of the bike path, passed a Resolution to establish a Task Force to present recommendations to rehabilitate the entire 7.5 mile pathway in Burlington.

In July of 2012, the Task Force presented its final recommendation to the City Council. The Report called for updating the design standards by widening the path to 11 feet, improving intersection crossings on path-roadways, improving path safety, increasing connectivity, enhancing amenities with signage, and establishing an on-going maintenance fund. A feasibility study placed the cost of the entire project at 11.6 million dollars. A Request for Qualification was distributed and a professional design engineering company has been hired to secure the final costs of the rehabilitation. This report will be done in the fall of 2013.

The Council enthusiastically accepted the Task Force Report and agreed with the concept of shared responsibility for funding. The Task Force's proposal called for the use of Tax Increment Financing (TIF) funding used to cover 3 million dollars of the overall costs, and a ½ cent dedicated property tax yielding \$180,000 year for on-going maintenance to the path. In November of 2012, voters in Burlington overwhelmingly approved both funding proposals.

Another part of the funding package was to raise \$1,000,000 privately through the establishment of a private Parks Foundation of Burlington. This goal, along with future ballot items in 2014 will complete the total funding for the full rehabilitation of the path. The City Council and the Mayor enthusiastically support the Foundation and understand how important it is for private donors to be able to give to the project and supplement City, state and federal funding sources.

The Foundation will begin soliciting donations once a permanent Board has been formed in September of this year.

Potential Future Fundraising Projects Include:

- Accessible Playground
- Scholarship Endowment
- Program Endowments (i.e. Playground Nutrition Program)
- Imagine City Hall Park
- Other Community Initiatives

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF BURLINGTON
AND
THE PARKS FOUNDATION OF BURLINGTON**

THIS AGREEMENT is made by and between the City of Burlington, Vermont, a municipal corporation located at 149 Church Street, Burlington, Vermont 05401 (hereinafter the "City"), and the *Parks Foundation of Burlington*, a nonprofit corporation organized pursuant to the laws of the State of Vermont, with its principal offices located in Burlington, Vermont (hereinafter the "Foundation").

WHEREAS, the City, through its PARKS AND RECREATION DEPARTMENT, maintains the stated mission of enhancing quality of life of all the citizens of Burlington and for the visitors to the community by: acquiring, developing, and maintaining a parks system to offer a broad spectrum of built facilities and open spaces; providing high quality and affordable recreation programs to meet the needs of all community segments; regulating and managing public trees and property along city streets to create attractive green space; and managing the Burlington Harbor and providing facilities to ensure safe, pleasurable, water-based recreation opportunities; and

WHEREAS, the Foundation's purpose is limited to charitable, educational, and other exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and it may raise and spend funds to develop, maintain, improve, expand, erect, enhance, support, preserve, fund, encourage, and sustain public parks operated and owned by the City of Burlington, Parks and Recreation Department for the benefit of its users and the general public; and

WHEREAS, the City, through its PARKS AND RECREATION DEPARTMENT intends to have a naming policy and in the future intends to authorize the "naming" of certain facilities, buildings, landscape areas, programs, and other related Parks and Recreation assets in consideration of private sector monies donated to the Foundation and managed by the Foundation in accordance with this MOU between the City and the Foundation, as well as private sector funds donated directly to the City's Parks and Recreation Department; and

WHEREAS, the City, through its PARKS AND RECREATION DEPARTMENT, and in consultation with the Foundation, will be establishing the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds, plaque locations, and size for Foundation funded projects. Additionally, the City, through its Parks and Recreation Department, philosophically and by policy will not name any asset without the necessary monetary gift as detailed in the *Policies and Procedures Manual of the Fund Development Program* of the City's Parks & Recreation Department; and

WHEREAS, the Foundation wishes to support the City, through its Parks and Recreation Department mission, and has the opportunity to accomplish more than public funding allows; and

WHEREAS, the private nature of the Foundation also provides the added advantage of dedicated donor services; and

WHEREAS, the City wishes to assist and enhance the operation of, and appropriately recognize, the Foundation; and

WHEREAS, the City wishes to support the fundraising activities of the Foundation and promote a positive relationship with its staff and volunteer members; and

WHEREAS, the Foundation wishes to assure the City that it will operate effectively and responsibly with the reasonable expectations of both public and private interests, on behalf of the City; and

THEREFORE, based on the foregoing, the Parties enter into the following Agreement.

Section 1. Burlington Parks and Recreation Department Naming Policy For Foundation Related Gifts. The City and its Parks and Recreation Department will draft and adopt a Burlington Parks Naming Policy, along with a Policies and Procedures Manual of the Fund Development Program, which shall be subject to prior Foundation review and approval. Any changes to the Burlington Parks Naming Policy or the Policies and Procedures Manual of the Fund Development Program shall also require prior Foundation review and approval.

Section 2. Foundation Representations. The Foundation represents and acknowledges the following with regard to its operation, creation, and purpose:

1. The Foundation is created and shall be operated for the duration of this agreement in support of the City and its Parks and Recreation Department's mission and goals, and it will support the plans of the City's Parks and Recreation Department.
2. The Foundation will have for the duration of this agreement as its primary purpose to secure, manage, and invest private support solely for the benefit of the City's Parks and Recreation Department.
3. The Foundation will operate as a private legal entity separate from the City and its Parks and Recreation Department. The Foundation's officers, employees, and volunteers are not and shall not become employees or subcontractors of the City, including the Parks and Recreation Department. The Foundation understands and agrees that its officers, employees, and volunteers have no right to claim any benefits under the Burlington Employee Retirement System, or the City's worker's compensation, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the City.
4. The Foundation will use sound fiscal and auditing procedures.
5. The Foundation will operate in conformance with this MOU.
6. The Foundation will have no oversight or involvement with the daily and regular operations and management of the Parks and Recreation Department.

7. The Foundation will maintain its status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

Section 3. Foundation Documents. The Foundation shall keep on file with the City's Parks and Recreation Department updated copies of all enabling documents including the application letter to the IRS, and all Federal and State tax information, the Articles of Incorporation, Bylaws, and any amendments to these documents.

Section 4. Foundation Enabling Documents – Required Provisions. The Foundation shall include language substantially similar to the following clauses in its enabling documents:

1. Articles of Incorporation. In the event of its dissolution, the Foundation's assets and records will be distributed to the City's Parks & Recreation Department, provided the City remains qualified to receive tax-deductible charitable donations and gifts under relevant federal and state income tax laws and such distribution is not inconsistent with any donor limitations;
2. Bylaws. The Bylaws shall provide that the Director of the Parks and Recreation Department shall be a non-voting ex-officio member of the Foundation Board.

Section 5. Bond and Insurance. The Foundation shall carry the following insurance coverage:

Management Liability Coverage and/or Director and Officer Liability Coverage in the amount of \$1,000,000 each loss

General Liability Coverage: Each Occurrence Limit: \$1,000,000
Personal and Advertising Injury Each Event: \$1,000,000
General Aggregate Limit: \$2,000,000
Products/ Completed Operations Aggregate: \$2,000,000
Medical Payments Limits: \$5,000

The City of Burlington is to be named as an additional insured on the Foundation's General Liability policy.

The Foundation will have Non-Owned and Hired Auto Liability Coverage in the amount of \$1,000,000 Combined Single Limit.

The Foundation will have Crime Insurance: Employee Dishonesty Coverage (to include a "volunteers as covered" Endorsement) with a policy limit of \$100,000.

Section 6. Accountability and Stewardship. As the City and the Foundation want to maintain the highest levels of accountability and stewardship, the parties agree to share information as reasonably requested and develop within one year of the date of this Agreement reporting processes and institute compliance and auditing procedures that

ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes, and reports are made to donors on the use of such funds.

Section 7. Donor Confidentiality. Donations to the Foundation are public knowledge, unless the donor specifically requests that personal information related to their donation be kept confidential.

Section 8. Donor Solicitation.

Subd. 1. Donor Communication. The Foundation agrees to make the following clear to prospective donors:

1. The Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the City's Parks and Recreation Department.
2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides in the Foundation's Board.
3. Checks for charitable gifts to any City Parks and Recreation Department program, facility, or land should be made payable to the Foundation.
4. Gifts made for a designated purpose will be dedicated in their entirety to that purpose unless it is specifically stated by the donor that an administrative charge will be applied.

Subd. 2. Conditions of Gift Acceptance. The Foundation agrees that prior to accepting gifts of all kinds, it will:

1. Obtain confirmation from the City's Parks and Recreation Department that the Department's Director has authority to receive gifts designated for specific purposes, and conform with the City's Parks and Recreation Department master plans, mission, and philosophy, as well as all other applicable City, State, and Federal laws and regulations.
2. Advise donors of the Parks and Recreation Department's naming policies and procedures related to Foundation gifts.
3. Coordinate its funding goals, programs, and campaigns with the City's Parks and Recreation Department.
4. Advise donors that any gift, grant, or contract that includes a financial or contractual obligation binding upon the City must have prior concurrence in writing from the Board of Finance and City Council or its designee in accordance with any and all applicable City policies and delegations of authority.

Section 9. FINANCIAL PROCEDURES.

Subd. 1. Standards.

1. Prudent Practices. The Foundation investment procedures shall be conducted in accordance with prudent, sound practices to ensure that gift assets are protected and that investments are managed with an aim to earn a reasonable return in conformance with the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the gift instrument, which shall be the responsibility of the Foundation to interpret.
2. Administration of Income. Income from investments, net of administrative fees, shall be administered in accordance with pertinent Foundation policies, and, where appropriate, as determined by the Foundation, transferred to the City so as to be expended from the appropriate City's Parks and Recreation Department or program accounts.

Section 10. City's Parks and Recreation Department - Accountability of Funds. Consistent with good stewardship, the City's Parks and Recreation Department's managing officials into whose department or program the Foundation funds are transferred are responsible to account for them in accordance with City policies and procedures, and to notify the Foundation on a timely basis regarding the use of such funds. The Foundation, in consultation with the City's Parks and Recreation Department, shall determine who shall be responsible for reporting to the donor regarding the use of such funds. A representative from the City may also be involved in the communication of this information.

Section 11. Financial Commitments Consistent with PARK AND RECREATION BOARD Mission. The Foundation shall carry out financial commitments and expenditures consistent with pertinent policies, plans, and the budget approved by the Foundation's governing board and consistent with the City's Parks and Recreation Department's mission and objectives.

Section 12. Inspection of Foundation Records. Because private funds are raised to support public projects, the Foundation will permit the City's Chief Administrative Officer and/or the Director of the Parks and Recreation Department or their designees to inspect all Foundation books and records, except to the extent such inspection violates rights to confidentiality, privacy, and confidential donor information.

Section 13. Compliance Reviews. The City and Foundation shall have the right to conduct periodic compliance reviews of the use of donated funds. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or the Foundation. The scope of the review and extent of testing will be mutually agreed upon in advance by the City and the Foundation. A written report of the results of such reviews shall be provided to each party.

Section 14. Designation as a Gift. Funds received by the City from the Foundation shall only be accounted for as gifts when the appropriate donative intent is present. Amounts received by the City from the Foundation solely in exchange for services or property shall not be accounted for as gifts.

Section 15. City's Parks and Recreation Department Representations to the Foundation. The Director of the City's Parks and Recreation Department is authorized to carry out the City's obligations under this MOU.

The City's Parks and Recreation Department shall:

1. Allow the Foundation to use the name and images of the City's Parks and Recreation Department.
2. Allow the Foundation to use the City's Parks and Recreation Department's space, equipment, and staff in the performance of the Foundation's activities, subject to the prior approval of the Parks and Recreation Director or his or her designee.
3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation.

Section 16. Notice of Non-compliance – Opportunity to Cure. In the event of non-compliance by either party with any provision of this Agreement, written notice of non-compliance shall be sent to the other party, and include an explanation of the event or practice that the party believes does not comply with this Agreement. The noticed party shall, within sixty (60) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause that the party is in compliance. In the event the party fails to comply within the 60-day time period, this Agreement may be terminated in accordance with this Agreement.

Section 17. Termination. This Agreement may be terminated by either party by delivering written notice of termination to the non-terminating party at least ninety (90) days prior to the effective date of any termination. In the event of termination, the each party shall provide an accounting of all funds in its possession pursuant to this Agreement. The Foundation shall transfer funds to the City, unless legal restrictions prohibit it from doing so.

Section 18. Entire Agreement and Amendment. This Agreement represents the parties' entire agreement with respect to the matters specified herein.

Section 19. Governing Law and Venue. It is understood that this Agreement shall be governed by and construed under and in accordance with the laws of the State of Vermont. Venue for any actions arising under this Agreement shall be Burlington, Vermont.

Section 20. Severability. Any provision of the Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

This Agreement is hereby executed by the duly authorized representatives of the parties as of _____, 2013.

City of Burlington

Parks Foundation of Burlington

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____