

MEMORANDUM OF UNDERSTANDING
between the
CITY OF VIRGINIA BEACH
and the
VIRGINIA BEACH PARKS AND RECREATION FOUNDATION

This Memorandum of Understanding ("MOU") is made by and between the City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia ("City"), and the Virginia Beach Parks and Recreation Foundation, a not-for-profit Virginia nonstock corporation located in Virginia Beach, Virginia ("Foundation").

WHEREAS, the City, through its Department of Parks and Recreation ("Department"), owns, operates and maintains real estate, buildings and other recreational facilities, and operates a wide variety of parks and recreation programs and services; and

WHEREAS, the Department maintains the stated vision of a balanced, sustainable and value focused system of parks, recreation and public spaces that creates a sense of community; and

WHEREAS, the Department's mission is to (1) deliver parks, recreation programs and public spaces that reflect the priorities of the community; (2) support tiered levels of service that recognize the diverse needs of the community; and (3) focus on sustainability of core programs, services and facilities through efficient and effective business practices; and

WHEREAS, the Foundation was formed in 2004, and has functioned for the purpose of supporting the vision and goals of the Department; and

WHEREAS, the primary purpose of the Foundation is to secure, manage and invest privately raised funds, gifts and bequests in support of the Department's programs, services, and facilities; and

WHEREAS, the Foundation operates as a legal entity separate from the City, and is governed by an independently elected Boards of Directors, none of whom are employees of the City; and

WHEREAS, the Foundation and the City wish to assure the continued success and prosperous growth of the Department by memorializing the responsibilities and obligations of the Foundation and the City.

THEREFORE, in consideration of the mutual efforts to support the development of the Department, the City and the Foundation agree as follows:

Section 1. Operating Procedures

A. The Foundation shall communicate the following information to prospective donors:

1. The Foundation is a separate, legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the Department.
2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides with the Foundation's Board of Directors.
3. Charitable gifts from donors to the Foundation in support of any of the Department's programs, services, or facilities should be made to the Foundation, and not to the City or the Department.
4. Any gift made for a designated purpose will be dedicated in its entirety to that purpose unless (a) it is specifically understood by the donor when the gift was made, or subsequently agreed to by the donor in writing, that an administrative charge will be applied or that the gift can be used for another purpose if the original purpose has been satisfied or (b) the Department objects to the designated purpose of the gift.

B. The Foundation agrees that in accepting gifts of all kinds, the Foundation shall:

1. Advise donors that any restrictive terms and conditions the donor attaches to gifts for the Department are subject to the Department's approval.
2. Ensure that gifts designated for specific purposes are in compliance with the Department's master plans, vision, mission and philosophy before accepting the gift.
3. Coordinate its funding goals, programs and campaigns with the Department.
4. Receive prior written approval from the City Council or its designee for any gift, grant, or contract that includes a financial or contractual obligation binding upon the City.

C. The Foundation shall be responsible for reporting to a donor regarding the use of the donor's funds.

D. In return for the Foundation's contributions to and support of the Department and its programs, the City shall assist the Foundation in the following manner:

1. At the discretion of the Director of the Department, and consistent with applicable federal, state, and local law, and City policies and administrative directives, the City shall provide the Foundation with assistance as follows:

- a. Department shall provide a staff liaison to the Foundation;
- b. Department shall provide a staff member to record Foundation meeting minutes; and
- c. Department's Resource Development Bureau shall provide graphic design assistance for specific marketing materials, including Foundation stationary, fliers for the Annual Golf Tournament, sales packages, and sales materials for Bench Buddies, Tree Buddies, and the Urban Reforestation Fund programs.

2. Assist the Foundation by suggesting potential donors to the Foundation.

3. Allow the Foundation to use the name and images of the Department. The Foundation shall not be permitted to use the City Seal.

Section 2. Record Keeping

A. The City and the Foundation acknowledge and agree that all Foundation correspondence, financial records, and all Foundation documents are the property of the Foundation and shall be kept separate and apart from all City records.

B. The Foundation shall maintain publicly available, updated copies of all of its enabling documents, including its articles of incorporation, bylaws and any amendments to thereto. The Foundation shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Income Tax) without accompanying documentation providing information concerning any specific Foundation donor.

C. The Foundation shall prepare and reconcile on a monthly basis a Treasurer's Report. In addition, the Foundation should provide annually to the City a financial report prepared in accordance with *Statements of Financial Accounting Standards 117* "Financial Statements for Not-for-Profit Organizations." The financial report shall be provided to the City on or before June 30 of each year during this MOU, but shall not include any information regarding individual Foundation donors.

Section 3. Independent Contractors

In the performance of this MOU, both the City and the Foundation will be acting in an individual capacity and not as agents, employees, partners or joint venturers or associates of one another. The agents or employees of one shall not be construed to

Section 7. Termination

This MOU 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.

Section 8. Governing Law and Venue

This MOU shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the law of the Commonwealth of Virginia, and all question arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this MOU shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. The Foundation shall comply with all federal, state and local statues, ordinances, and regulations now in effect or thereafter adopted, in the performance of its obligations set forth herein. Any and all suits for any claims or for any and every breach of dispute arising out of this MOU shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach.

Section 9. Mechanic's Liens

During the term of this MOU, the Foundation will promptly remove or release any mechanic's or materialman's lien attached to or on the subject property or any portion, by reason of any act or omission by the Foundation, its contractors or agents in connection with the activities performed by the Foundation, and hold harmless the City and its agents, employees, volunteers, servants, and officials from any such lien or claim of lien. This provision shall survive the termination, cancellation, or expiration of the MOU.

Section 10. Severability

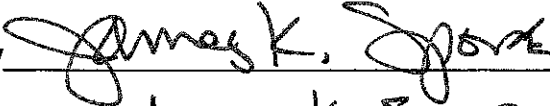
Any provision of this MOU which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 11. Entire Agreement

The parties agree that this writing constitutes the entire agreement of the parties and that there may be no modification to this MOU, except in writing, executed by the authorized representatives of the City and the Foundation.

As evidenced by their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF VIRGINIA BEACH

By 

(Name) JAMES K. SPORE

(Title) CITY MANAGER

VIRGINIA BEACH PARKS AND RECREATION
FOUNDATION

By 


(Name) Stephanie Betts Grubbs

(Title) President

Approved as to Content:


Department of Parks and Recreation

Approved as to Risk Management:


Risk Manager

Approved as to Legal Sufficiency:

A. Krupp  9/8/09
Office of the City Attorney