

**FUNDING AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
THE SAN MATEO COUNTY PARKS FOUNDATION**

This Funding Agreement ("Agreement"), effective July 1, 2019 ("Effective Date"), is entered into by the County of San Mateo ("County"), a political subdivision of the state of California, and the San Mateo County Parks Foundation ("Foundation"), a 501(c)(3) non-profit corporation incorporated in the State of California. In this Agreement, the County and the Foundation are referred to individually as a "Party" and collectively as "Parties."

* * *

WHEREAS, the County, through its Parks Department ("Parks Department"), administers and oversees 23 county parks comprised of 16,000 acres, 190 miles of trails, two historic sites, and a dedicated marina; and

WHEREAS, the Foundation, established in 1998, is a 501(c)(3) organization incorporated and doing business in the State of California, with a mission to inspire people to care for, learn about, and enjoy San Mateo County parks; and

WHEREAS, in cooperation with the Parks Department, the County has long provided the Foundation funds so that the Foundation can engage County residents and communities and raise funds to support projects, programs, and volunteers for the benefit of the parks and park visitors; and

WHEREAS, the County and the Foundation desire to continue their cooperative relationship through this Agreement, which sets forth the funding that the County will provide the Foundation in exchange for the fundraising and outreach services that the Foundation will undertake to support the Parks Department's strategic plans, during the 2019-2020 and 2020-2021 Fiscal Years.

NOW, THEREFORE, it is agreed by the Parties to this agreement as follows:

1. Foundation's Obligations

Under this Agreement, the Foundation will do all of the following:

- a. Help the Parks Department raise funds for programs or projects that support the Parks Department's strategic plan goals of community engagement, environmental literacy, stewardship, healthy communities, and engaging non-traditional park users; and
- b. Provide in-kind goods and services, including tentatively gathering donations for Friends Group grants, Nature Center focus groups, Edgewood Park grassland restoration, OpenRoad sponsorship, OuterSpatial public education, Coyote Point Kite Festival Sponsorship, Transportation to Park events and/or County Parks; and

- c. Provide annual funding for County Park core programs, and one-time funding for County Park special projects, described in Exhibit A, and for other, as-yet-unspecified fundraising efforts and projects; and
- d. Have its Executive Director meet bi-weekly, or as otherwise mutually determined by the Foundation and the Parks Department, with the Parks Director or her designee, based on the Director/designee's availability, to coordinate on goals, activities, and messaging on campaigns and materials intended for public distribution and to review proposed donations of funds and in-kind goods and services to be provided to the Parks Department to ensure that they meet the Department's needs, requirements, and specifications.

2. County's Obligations

Under this Agreement, the County will do all of the following:

- a. Provide funding to the Foundation in an amount not to exceed Seventy-Five Thousand Dollars (\$75,000) for the period July 1, 2019, through June 30, 2020, for FY 2019-20; and
- b. Provide funding to the Foundation in an amount not to exceed Seventy-Five Thousand Dollars (\$75,000) for the period July 1, 2020, through June 30, 2021, for FY 2020-21; and
- c. Meet with the Foundation's Executive Director as provided in Section 1(d) above.

3. Payments

The County shall provide the funding required under Section 2 above upon completion of previously agreed-upon projects and tasks, within 30 days of the Parks Department's receipt of a detailed invoice from the Foundation. Subject to availability of funding, the Foundation shall be entitled to receive payment for work/services provided prior to termination of the Agreement.

In no event shall the County's total fiscal obligation under this Agreement exceed One Hundred Fifty-Thousand Dollars (\$150,000). In the event that the County makes any advance payments, the Foundation agrees to refund any amounts in excess of the amount owed by the Parks Department at the time this Agreement is terminated or expires.

4. Term and Termination

This Agreement shall commence on the Effective Date written above and remain in effect through June 30, 2021. Either Party may terminate this Agreement with or without cause upon thirty (30) days' prior written notice. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future funding from the County.

The County, through the Parks Director, may terminate this Agreement or a portion of the services referenced in Exhibit A based on the unavailability of Federal, State, or County funds by providing written notice to the Foundation as soon as is reasonably possible after the County learns of said unavailability of outside funding.

5. Relationship of Parties

The Foundation understands and agrees that the work/services performed under this Agreement are performed as an independent non-profit foundation and not as an employee or contractor of the Parks Department, and that neither the Foundation nor its employees acquire any of the rights, privileges, powers, or advantages of San Mateo County employees or contractors. The Foundation further understands and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of the County or of the Parks Department, and that this Agreement is not intended and does not create an agency, partnership, joint venture between the Parties or between the Foundation and the Parks Department.

6. Insurance

a. General Requirements

Prior to its receipt of any funds pursuant to this Grant Agreement, the Foundation shall obtain all insurance required under this Section; such insurance shall be subject to the approval by the County's Risk Management; and the Foundation shall use diligence to obtain such insurance and to obtain such approval. The Foundation shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Foundation's coverage to include the contractual liability assumed by the Foundation pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Liability Insurance

The Foundation shall take out and maintain during the Term of this Agreement such bodily injury liability and property damage liability insurance as shall protect the Foundation and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Foundation's operations under this Agreement, whether such operations be by the Foundation, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

<input checked="" type="checkbox"/>	Comprehensive General Liability...	\$1,000,000
<input checked="" type="checkbox"/>	Motor Vehicle Liability Insurance...	\$1,000,000

The County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to the County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any payment pursuant to this Agreement.

7. Hold Harmless/Indemnification

The Foundation shall indemnify and save harmless the County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of the Foundation under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- i. Injuries to or death of any person, including the Foundation's employees/officers/agents;
- ii. Damage to any property of any kind whatsoever and to whomever belonging;
- iii. Any sanctions, penalties, or claims of damages resulting from the Foundation's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- iv. Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the County and/or its officers, agents, or servants. However, the Foundation's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Foundation to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The obligations set forth in this Section shall continue beyond the term of this Agreement as to any act or omission that occurred during or under this Agreement.

8. Assignment

The Foundation may not assign this Agreement or any portion of it to a third party without the County's prior written consent. Any such assignment or subcontract without the County's prior written consent shall give the County the right, notwithstanding Section 4, to automatically and immediately terminate this Agreement without penalty or advance notice, and the County shall have the right to a refund of all funds disbursed under this Agreement.

9. Compliance with Laws

The Foundation shall perform all services pursuant to this Agreement in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code.

Unless otherwise agreed to in writing by the Parks Department, the Foundation bears responsibility to obtain, at the Foundation's expense, any license, permit, or approval required from any agency.

10. Merger Clause and Amendments

This Agreement, including Exhibit A, constitutes the sole Agreement of the Parties regarding the services and obligations described herein, and correctly states the rights, duties, and obligations of each Party as of this document's Effective Date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the Parties regarding the services and obligations described herein that are not expressly stated in this document are not binding. Any amendment, modification, or supplement to this Agreement must be in writing signed by both Parties.

11. Controlling Law and Venue

The validity of this Agreement and its terms, the rights and duties of the Parties under this Agreement, the interpretation and performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict-of-law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

12. Notices

Any notice, request, demand, invoice, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of the County, to:	In the case of the Foundation, to:
Invoice should be submitted to the attention of: NAME: Rolando Jorquera CONTACT INFO: 455 County Center 4 th Floor Redwood City, CA 94063 EMAIL: rjorquera@smcgov.org	NAME: Michele Beasley CONTACT INFO: 1701 Coyote Point Drive San Mateo, CA 94401 EMAIL: michele@supportparks.org

13. Electronic Signatures

If both the County and the Foundation wish to permit this Agreement and future documents

relating to this Agreement to be digitally signed in accordance with California law and the County's Electronic Signature Administrative Memo, both boxes below must be checked. Any Party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For the County: ☒ If this box is checked by the County, the County consents to the use of electronic signatures in relation to this Agreement.

For the Foundation: ☒ If this box is checked by the Foundation, the Foundation consents to the use of electronic signatures in relation to this Agreement.

* * *

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO FUNDS WILL BE DISTRIBUTED UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY'S AUTHORIZED DESIGNEE.

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For the Foundation:


Foundation Signature

6-13-2019
Date

MICHELE BEASLEY
Foundation Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board