

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: January 14, 2025

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: an Agreement with the Parks Foundation of Palm Beach County, Inc. (Foundation) to provide philanthropic support to the Parks and Recreation Department (Parks).

**Summary:** The Foundation is a Florida not-for-profit corporation established in 2023 for the exempt purpose of promoting and advancing advocacy and philanthropic support to ensure thriving and accessible County parks to improve the quality of life for all current and future residents of Palm Beach County. The Foundation's board of directors is comprised of community volunteers as outlined in their by-laws. Parks will annually provide a list of park projects benefitting the public and otherwise underfunded for Foundation philanthropic consideration. Proposed projects will focus on accessibility and the County's strategic priorities in Parks. The Foundation will select which projects to pursue for philanthropic support. Parks will continue to follow all applicable County policies in the acceptance of the philanthropic support. The Foundation will also be eligible to seek and apply for park and recreation related donations and grants only available to 501(c)3 organizations for the benefit of the public parks and recreation programs. Parks will continue to manage all operations of funded park projects and programs. Parks will provide an office space for the Foundation to utilize when needed. Countywide (AH)

**Background and Justification:** Foundation support is identified in our Park Master Plan as an important supplemental funding stream specifically to help close the gaps in underserved area park deserts and to break down barriers to recreation access in our County. Across the United States, many high achieving park systems have a 501(c)3 park foundation supporting their efforts through philanthropy and grants that would otherwise not be available.

Parks has existing long-standing agreements with four (4) park facility specific 501(c)3 philanthropic organizations: Morikami, Inc., The Friends of Okeeheelee Nature Center, Inc., The Friends of Green Cay, Inc., and the Friends of Daggerwing Nature Center, Inc. The Foundation's philanthropy will benefit Parks facilities and programs County-wide and is not facility specific.

**Attachment:** Agreement

Recommended by:   
Department Director

12/11/2024  
Date

Approved by:   
Assistant County Administrator

12/30/24  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2025	2026	2027	2028	2029
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	_____	No	<u>X</u>
Does this item include use of Federal Funds?		Yes	_____	No	<u>X</u>
Does this item include use of State Funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ / Revenue Source \_\_\_\_\_ Program \_\_\_\_\_

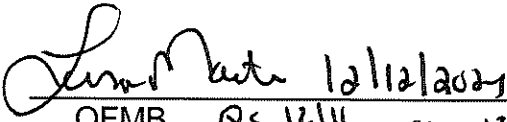
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**


There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 12/12/2024  
 OFMB Qs 12/11 CB 12/12

 12/17/24  
 Contract Development and Control  
 26.12.13.24

**B. Legal Sufficiency:**

 12-18-24  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

This summary is not to be used as a basis for payment

**AGREEMENT BETWEEN THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS  
AND THE PARKS FOUNDATION OF PALM BEACH COUNTY**

**THIS AGREEMENT** ("Agreement") is made and entered into as of this 14<sup>th</sup> day of JANUARY, 2025 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and the **Parks Foundation of Palm Beach County, Inc.**, a Florida not-for-profit corporation, ("Foundation").

**WITNESSETH:**

**WHEREAS**, the County is responsible for the care, maintenance, management, and control of all land, buildings, and recreational activities that comprise the Palm Beach County Parks and Recreation Department ("Department"); and

**WHEREAS**, the Foundation, established in 2023, is formed for the exempt purpose of promoting and advancing advocacy and philanthropic support to ensure thriving and accessible County parks to improve the quality of life for all current and future residents of Palm Beach County, Florida, and it's primary responsibility, as set forth in its Articles of Incorporation is to solicit, secure, manage, and invest funds solely for the benefit of the parks' department; and

**WHEREAS**, the Foundation is an independent organization recognized as tax exempt as a public charity under Section 501(c)(3) of the Internal Revenue Code and operates as a legal entity separate from the County governed by an independently elected Board of Directors; and

**WHEREAS**, the County wishes to formalize a public-private partnership among the Parties in order to accomplish their separate and collective missions, optimize resources, and to eliminate duplication of efforts in the conduct of their affairs; and

**WHEREAS**, the County recognizes that the success of this relationship is enhanced by mutual cooperation and support at all organizational levels within both the public and private sectors; and

**WHEREAS**, the County and the Foundation wish to have their respective representatives assist each other to the fullest extent possible and reasonable for the benefits of their respective missions; and

**WHEREAS**, the County and Foundation wishes to clearly define their respective roles for effective and efficient delivery of services.

**NOW THEREFORE**, in consideration of the mutual covenants, obligation, and agreements herein contained, the parties agree as follows:

## DEFINITIONS

1. **Public-private partnership** - A cooperative arrangement between two or more public and private sectors, typically of a long-term nature involving government and business working together to complete a project and/or to provide services to the population.
2. **Director** – Director of the Palm Beach County Parks and Recreation Department.

### Article I. Foundation Representations/Responsibilities

**Section 1.01** The Foundation shall:

- (a) operate for the duration of this Agreement to support the Department’s mission, vision, and goals;
- (b) not attempt to manage, control, or interfere with the day to day operations of the Department;
- (c) operate as a separate legal entity from the County;
- (d) maintain status as a tax-exempt charitable organization under federal laws and materially comply with state solicitation laws and the Florida Not For Profit Corporation Act; and
- (e) be principally responsible for efforts to solicit donations of money or in-kind contributions that support the Department’s mission, vision, goals, and Master Plan.

### Article II. County Representation/Responsibilities

**Section 2.01** The County Shall:

- (a) not attempt to manage, control, or interfere with the day to day operations of the Foundation, its Board of Directors, and staff;
- (b) as budget permits, provide the Foundation access to a designated department employee(s) to be a liaison to the Foundation for intra-departmental communication purposes and general assistance to the Foundation’s Board of Directors, staff, and volunteers;
- (c) as budget permits, provide the Foundation non-exclusive access to air conditioned office/meeting space located at 2700 6th Ave. South, Lake Worth, 33461, or within an available park property. The Foundation shall have the right to use the premises for as long as: the building is occupied by the County or this Agreement has not expired or otherwise terminated, or the Foundation’s rights have not been revoked. In addition, the Department may provide at no cost to Foundation access to furnishings, computer, phone, multi-function copy device, and internet access. Access to

meeting/office space and any furnishings and/or equipment provided by the County shall be used solely and exclusively to conduct the Foundation's day to day operations and fundraising business by its Board of Directors, staff, and volunteers;

- (d) The Department Director shall be the final authority as to the cooperative operation, use and occupancy of the Foundation's designated office/meeting space under the terms and conditions of this Agreement with the rights to resolve and disputes that may arise, so long as such resolution does not require or result in any act that constitutes a breach of this Agreement by either the County or the Foundation. The Foundation shall make every reasonable effort to cooperate with other Department employees and to facilitate performance of this section;
- (e) as budget permits, provide access to meeting space at no charge for the Foundation to conduct board meetings. The Foundation must give adequate notice in advance of requesting meeting space and space will only be provided if available.
- (f) provide access to graphic design assistance through the Department's Office of Public Engagement (OPE). All Foundation projects shall be scheduled with OPE and shall be completed within a reasonable time. The County requests the right to charge the Foundation for direct and indirect costs associated with use of the OPE.
- (g) regarding any disagreement between the parties related to this Section 2.01, the Department Director's decision shall be final and binding.

### **Article III. General Operating Procedure**

**Section 3.01** The responsibility for the governance of the Foundation, including investment of gifts and endowments, resides with the Foundation's Board of Directors.

**Section 3.02** The Foundation shall provide the County with copies of all enabling documents including the Articles of Incorporation, Bylaws, and any amendments to these documents.

**Section 3.03** The Foundation President, or designee, shall act on behalf of the Foundation in all matters pertaining to this Agreement and shall be the contract administrator of this Agreement.

**Section 3.04** The Foundation President, or designee, shall be responsible to carry out the provisions of this Agreement.

**Section 3.05** To avoid misunderstandings or miscommunication, improve management, optimize resources, increase and eliminate duplication of efforts in the conduct of their affairs so as to better accomplish their separate and collective missions, the Foundation President, or designee, will communicate the Foundation's needs, concerns, and suggestions directly with the Department Director, or designee, and the Department Director, or designee, shall communicate the County's needs, concerns, and suggestions directly with the Foundation President, or designee. Both the County and Foundation understand social and general communication between both parties is necessary and encouraged.

**Section 3.06** The Department Director, or designee, shall act on behalf of the County in all matters pertaining to this Agreement and shall be the contract administrator of this Agreement.

**Section 3.07** The Department Director shall be authorized and directed by the County to act on its behalf carrying out the provisions of this Agreement.

**Section 3.08** The Foundation shall, in accordance with its bylaws, elect a Board of Directors and an Executive Committee. The Foundation shall use best practices for non-profit entities from local and national industry leaders in the identification, recommendation, and recruitment of individuals to the Board of Directors.

**Section 3.09** The Department Director, or designee, may, but is not obligated to, serve as an ex-officio and non-voting member of the Foundation's Board of Directors.

#### **Article IV. Financial Procedures**

**Section 4.01** The Foundation shall execute all financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's governing board and consistent with the Department's mission, vision, and goals. Funds raised for County parks purposes are restricted to use for County park purposes, however, nothing herein shall prevent Foundation from providing assistance to other governmental entities or non-profit organizations.

**Section 4.02** The Foundation shall maintain its books in accordance with generally accepted accounting principles.

**Section 4.03** The Foundation shall conduct an annual, independent audit, pursuant to the requirements of the Florida Solicitation of Contributions Act, as such may be amended from time to time. The audit shall include, but not limited to its operating account and records, including all books, records, bank accounts and accounting statements.

**Section 4.04** The Foundation shall preserve and make available for audit and examination by the County all records described in this Article, as well as a copy of all business and income tax returns. The Foundation's records shall be open for inspection by the County for five (5) years after termination of this Agreement, except that such records shall be retained by the Foundation until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the five (5) year period. All records will be made available locally at the County's request within five (5) days of said request. The Foundation shall allow the County, and its auditors to inspect said books and records, correspondence, memoranda and other information at all reasonable times during normal business hours.

**Section 4.05** The County has the right to conduct, but not the obligation, annual compliance reviews of the use of donated funds with the purpose to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors/and or

Foundation. Following the compliance review, a written report of the results of such review shall be provided by the County to the Foundation.

**Section 4.06** Consistent with the requirements of Chapter 496 of the Florida Statutes, the Foundation shall provide the Department Director an annual report that shall include:

- (a) a summary narrative description of the Foundation's activities and the funding amounts provided to the County;
- (b) a list of Foundation board members and their addresses;
- (c) financial statements, which shall be audited if required by law;
- (d) form 990 including all attachments as filed with the Internal Revenue Service; and
- (e) financial report form as filed with the Florida Department of Agriculture and Consumer Services, pursuant to the requirements of Florida Statutes section 496.407.

#### **Article V. Fundraising**

**Section 5.01** The Foundation shall:

- (a) establish giving policies and guidelines in prudent management of its business and affairs in accordance with the requirements for tax-exempt entities under Section 501(c)(3) of the Tax Code, as may be amended; and those governing charitable solicitations and charitable gift annuity issuance;
- (b) create an environment and culture, in collaboration and cooperation with the Department, that is conducive to increasing levels of private contributions to support the mission and priorities of the Department;
- (c) design, coordinate, and implement programs and procedures to solicit in-kind and financial contributions, includes sponsorship of Foundation activities, to further the purposes and priorities of the Department;
- (d) receive, hold, invest, manage, use, dispose of, and administer contributions for the benefit of the Department and for purposes not in conflict with the Department's priorities, projects and/or programs operated by the Department;
- (e) seek introductions and cooperatively collaborate with the Department's leadership team to maximize common individual and corporate relationships to advance fundraising efforts;
- (f) advise donors the Foundation is a separate, legal tax entity organized for the purpose of encouraging voluntary, private gifts, trust, and bequests for the benefit of the Department;
- (g) advise donors the responsibility for the governance of the Foundation, including investment of gifts and endowments, resides with the Foundation Board of Directors;
- (h) manage and use all contributions in accordance with the expressed written intent of the donor and/or grantor;

- (i) advise donor that any restrictive terms and conditions, including naming rights, the donor attaches to the contribution for the Department is subject to approval by the County;
- (j) not apply for grants from Federal or State agencies and authorities without the prior approval of the Department Director, or designee;
- (k) clearly identify the source of any required matching funds, department or private, and secure such funds prior to requesting a grant;
- (l) provide the Department with grant pass-through opportunities limited to when the Foundation is not directly pursuing the funding; and
- (m) own and maintain donor, volunteer, and provider records resulting from the Foundation's development and fundraising activities, and take reasonable steps to protect the donor and provider records, and adopt industry best practices regarding data gathering, maintenance, securities, and release.

## **Article VI. Fundraising Activities**

**Section 6.01** Annually, as part of the budget process the Department Director shall provide the Foundation President with a prioritized master list of specific projects to include: proposed renderings and specifications, approximate cost, and estimated timeline of completion. The Foundation will review and select projects to sponsor from the prioritized list and in turn, shall establish a compatible fundraising plan with anticipated timeline which plan shall be made available to Department from time-to-time. The Foundation, in conjunction with the Department, will establish criteria to fund Department projects.

**Section 6.02** Capital Improvements. Upon request of the County, in agreement with the Foundation and with written approval from the Director, the Foundation shall fund and implement jointly agreed upon capital improvements to park premises. The Department and the Foundation shall comply with County PPM CW-O-095 Capital Improvements to County Facilities by Non County Entities. The County, in its sole discretion, may elect to reimburse the Foundation for capital improvements that it makes on behalf of the County up to a maximum of two hundred and fifty thousand dollars per project. Request for reimbursement of eligible capital improvements shall be submitted to the County, along with proof of performance and payment, including, without limitation, vendor invoices and corresponding cancelled checks or bank advices. The Director's approval may include conditions the Foundation must adhere to. The improvements shall meet County standards, rules, regulations, and all applicable federal, state, and local laws. The title to and ownership of all improvements shall be vested with the County. For jointly funded projects, a separate agreement shall be created to detail project management and each party's responsibilities for the completion of the project. While completing joint partnership projects, the County shall have the right to independently fund and make any additional capital improvement, addition, modification, or repair to park premises it determines are warranted or are deemed necessary.

**Section 6.03** The County shall provide quarterly, or as reasonably requested by the Foundation, project status reports for Foundation funded projects.



**Section 6.04** The Foundation shall schedule all fundraising activities requiring County resources or amenities with a minimum of 60 days notice and a maximum of 18 months in advance. The County reserves the right to approve or reject fundraising plans requiring Department resources outside of those activities directly benefiting the Department or Foundation missions.

**Section 6.05** As budget permits, fees for the use of County resources and amenities to perform fundraising activities may be waived by the Department Director with the exception of documented additional expenses incurred by the County.

#### **Article VII. Use of Name, Marks, Logo**

**Section 7.01** Subject to the terms of and conditions set forth in this Agreement, and consistent with the Foundation's mission to promote and advance advocacy and philanthropic support to ensure a thriving and accessible County parks system, the Foundation is granted the right, upon approval by the Director, to use of the name, logos, seals, and identifying marks of the County and Department which are deemed appropriate by the County for use, in addition to its own seal and logotype to demonstrate affiliation. However, upon termination of this Agreement, the right to the use of the name, logos, seals and identifying marks of the Department shall cease. The Foundation may, but is not obligated to, create its own marks, logos or brand, separate and independent from the Department.

#### **Article VIII. General Provisions**

**Section 8.01 Dissolution.** Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, by either party, with or without cause, upon thirty (30) days written notice to the other party. Upon termination of this Agreement, any and all permanent improvements or additions made by Foundation to County Premises shall remain the property of the County.

Upon dissolution of the Foundation or termination of this Agreement, all funds and other tangible property purchased by or donated to the Foundation, shall at all times be utilized in a manner consistent with the intent of Foundation donors and in furtherance of the Foundation's exempt purpose.

**Section 8.02 Term.** The term of this Agreement shall be for a period of one (1) year, with annual auto renewal up to ten (10) years, unless either party provides a written notice of intent to terminate this Agreement to the other party thirty (30) days in advance.

**Section 8.03 Availability of Funds.** The County's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body for subsequent fiscal years.

**Section 8.04 Insurance.** Foundation shall, at its sole expense, agree to maintain in full force and effect at all times from and after the first one-year term of this Agreement, insurance coverage and limits (including endorsements), as described herein. Foundation shall agree to provide the County with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Foundation are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Foundation under this Agreement.

- (a) **Commercial General Liability Insurance.** Commercial General Liability insurance with minimum limits of \$500,000 combined single limit for property damage and bodily injury per occurrence. Foundation shall endorse Palm Beach County Board of County Commissioners as an Additional Insured on this policy.
- (b) **Dishonesty Bond or Crime Liability Insurance.** Dishonesty Bond or Crime Liability Insurance with minimum limits of \$100,000 each claim.
- (c) **Workers' Compensation and Employer's Liability.** Workers' Compensation and Employer's Liability in compliance with Chapter 440, Florida Statutes.
- (d) **Waiver of Subrogation:** Foundation hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Foundation shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Foundation enter into such an agreement on a pre-loss basis.
- (e) **Certificate of Insurance:** Within seventy-two (72) hours of the County's request to do so, the Foundation shall deliver to the County a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage and endorsements required by this Agreement have been obtained and are in full force and effect.

**Section 8.05 Indemnification:**

- (a) **By Foundation:** Foundation shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Foundation's performance of the terms of this Agreement or due to the acts or omissions of Foundation.
- (b) **By County:** The County shall be liable for its own actions and negligence and, to the extent permitted by law, County shall defend and hold harmless the Foundation, its agents, employees, officers and directors, against any actions,

claims or damages arising out of the negligence of County in connection with this Contract. The foregoing defense and hold harmless requirement shall not constitute a waiver of sovereign immunity beyond the limits set forth in F.S. 768.28, nor shall the same be construed to constitute agreement by the County to defend or hold harmless the Foundation for the Foundation's negligent, willful or intentional acts or omissions.

**Section 8.06 Default:** The parties agree that, in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure the default within the thirty (30) day cure period, the non-defaulting party shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement and seek damages, if any.

**Section 8.07 Notice:** All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

**IF TO COUNTY:**

Palm Beach County Department of Parks and Recreation  
Attn: Director of Parks and Recreation  
2700 Sixth Avenue South  
Lake Worth, Florida 33461

**IF TO FOUNDATION:**

John Gorski, Foundation President  
% Phil DiComo  
Nason Yeager  
3001 PGA Blvd, Suite 305  
Palm Beach Gardens, FL. 33410

**Section 8.08 Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, Foundation certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**Section 8.09 Criminal History Records Check:** The Foundation, Foundation's employees, subcontractors of Foundation and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolutions R2013-1470 and

R2015-0572, as amended. The Foundation is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above referenced Resolutions, as amended. County staff representing the County department will contact the Foundation(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The Foundation shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the term of this Agreement and return them to the County. If the Foundation or its subcontractor(s) terminates an employee who has been issued a badge, the Foundation must notify the County within two (2) hours. At the time of termination, the Foundation shall retrieve the badge and shall return it to the County in a timely manner.

**Section 8.10 Regulation:** Licensing Requirements: Foundation shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Foundation is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**Section 8.11 Nondiscrimination:** The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Foundation warrants and represents that throughout the term of this Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of this Agreement.

As a condition of entering into this Agreement, the Foundation represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the Foundation shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Foundation retaliate against any person for reporting instances of such discrimination. The Foundation shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The Foundation understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may

result in termination of this Agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Foundation shall include this language in its subcontracts.

**Section 8.12 Severability:** If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**Section 8.13 Entirety of Agreement:** County and Foundation agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**Section 8.14 Access and Audits:** If applicable, should any payments be made to Foundation for charges, expenses, and costs incurred in performing the services to be performed hereunder, Foundation will maintain adequate records to justify all such charges, expenses, and costs for at least seven (7) years after the expiration or termination of this Agreement. The County shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at Foundation's place of business upon reasonable advance written notice to Foundation.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Foundation, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**Section 8.15 Independent Contractor:** The Foundation is, and shall be, in the performance of provisions pursuant to this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. The Foundation does not have the authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement. The County shall have no contractual obligation to any person or entity retained

or engaged by the Foundation to perform any services pursuant to this Agreement. Any disputes, claims, or liability that may arise as a result of the Foundation's procurement of such services is solely the responsibility of the Foundation and the Foundation hereby holds the County harmless for same to the extent permitted by law.

**Section 8.16 No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Foundation.

**Section 8.17 Remedies:** This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 8.18 Public Records:** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Foundation: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Foundation shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Foundation is specifically required to:

- (a) Keep and maintain public records required by the County to perform services as provided under this Agreement
- (b) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Foundation further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time
- (c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement, if the Foundation does not transfer the records to the public agency
- (d) Upon completion of this Agreement the Foundation shall transfer, at no cost to the County, all public records in possession of the Foundation unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Foundation transfers all public records to the County upon completion of the Agreement, the Foundation shall destroy any duplicate public

records that are exempt, or confidential and exempt from public records disclosure requirements. If the Foundation keeps and maintains public records upon completion of this Agreement, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically by the Foundation must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Foundation to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Foundation acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FOUNDATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBC.GOV](mailto:RECORDSREQUEST@PBC.GOV) OR BY TELEPHONE AT 561-355-6680.**

**Section 8.19** **Counterparts:** This Agreement, including the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same contract. The County may execute this Agreement through electronic or manual means. The Foundation shall execute by manual means only, unless the County provides otherwise.

**Section 8.20** **Recitals:** The recitals set forth on the first page of this Agreement are true and correct and incorporated herein by reference.

**Section 8.21** **Preservation of Exempt Status:** Foundation has been granted tax exempt status pursuant to Section 501(c) (3) of the Internal Revenue Code ("Tax Exempt Status"). County acknowledges the importance of the Tax-Exempt Status to Foundation, and County agrees to execute any amendments to this Agreement and to take such other or further actions required by Foundation to preserve Foundation's Tax Exempt Status, provided the same do not increase the costs and risks, or reduce the rights and benefits of County hereunder. If, as a result of a change in law or regulation or judicial or administrative decision or interpretation, the performance by either party hereto of any provision of this Agreement should, as reasonably determined in good faith by Foundation, jeopardize Foundation's Tax-Exempt Status, or constitute a violation or threatened violation of any statute, regulation, or ordinance, Foundation may request that this Agreement be negotiated to eliminate the jeopardy and, if agreement is not reached within thirty (30) days after such renegotiation

commences, then Foundation may terminate this Agreement on notice in writing to County; provided, however, that in the event of any such termination, County and Foundation will seek to find alternative means to carry out the objectives of this Agreement.

**Section 8.22 Human Trafficking Affidavit:** Foundation warrants and represents that it does not use coercion for labor or services as defined in section 787.06, Florida Statutes. Foundation has executed **Exhibit "A"**, Nongovernmental Entity Human Trafficking Affidavit, which is attached hereto and incorporated herein by reference

[This space left intentionally blank]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

JOSEPH ABRUZZO  
CLERK OF THE CIRCUIT COURT &  
COMPTROLLER PALM BEACH COUNTY

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Maria G. Marino, Mayor

WITNESSES:

PARKS FOUNDATION OF PALM BEACH COUNTY, INC.

By: Jennifer Mahoney 11-12-2024  
Signature Date

By: [Signature] NOV 12, 2024  
Signature Date

Jennifer Mahoney  
Name (type or print)

John J. Gorski  
Name (type or print)

President  
Title

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: Anne Delmont  
Sr. Assistant County Attorney

By: [Signature]  
Director, Parks & Recreation Dept.

EXHIBIT "A"

NONGOVERNMENTAL ENTITY HUMAN TRAFFICKING AFFIDAVIT

Section 787.06(13), Florida Statutes

THIS AFFIDAVIT MUST BE SIGNED AND NOTARIZED

I, the undersigned, am an officer or representative of Park's Foundation of Palm Beach County, Inc. (CONTRACTOR) and attest that CONTRACTOR does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

Under penalty of perjury, I hereby declare and affirm that the above stated facts are true and correct.

[Signature]  
(signature of officer or representative)

John J. Gorski president  
(printed name and title of officer or representative)

State of Florida, County of Palm Beach

Sworn to and subscribed before me by means of  physical presence or  online notarization this, 3rd day of December 2024, by John J. Gorski.

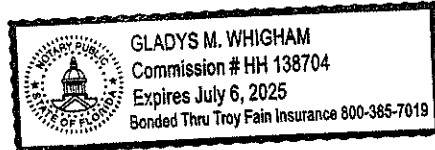
Personally known  OR produced identification .

Type of identification produced Florida Drivers License

Gladys Whigham  
NOTARY PUBLIC

My Commission Expires: July 6, 2025

State of Florida at large



(Notary Seal)