

TO: Thomas Frutchey, City Manager

FROM: Julie Dahlen, Director, Library and Recreation Services

SUBJECT: Establishment of City Park Playground Endowment Fund

DATE: August 16, 2016

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**Needs:** For the City Council to authorize the City Manager to enter into an agreement with the Paso Robles REC Foundation to establish an endowment fund for Downtown City Park playground maintenance.

**Facts:**

1. The Paso Robles REC Foundation was established in February 2000 as a non-profit organization and fundraising arm of the Paso Robles Department of Library and Recreation Services in support of enhanced recreational experiences and facilities in the City.
2. On June 5, 2012, the City Council authorized the REC Foundation to begin a fundraising campaign for renovation of the Downtown City Park Playground.
3. To date, the REC Foundation has raised approximately \$100,000 for the City Park Playground.
4. On November 18, 2014, the City Council authorized the acceptance by the City of a Housing Related Parks Program Grant in the amount of \$804,450 from the State of California, through the Department of Housing and Community Development, to rehabilitate City Park. This grant, in addition to other funds available to the City, is sufficient to pay for the costs to rehabilitate City Park, including the playground.
5. On June 17, 2015, in light of the availability of grant and other funds to pay for playground renovation, the REC Foundation voted to enter into an agreement with the City, establishing that funds raised to renovate the playground be kept in a designated fund to help pay for and/or defray future maintenance costs of the rehabilitated playground.

#### **Analysis and**

**Conclusion:** The Paso Robles REC Foundation has raised approximately \$100,000 in support of Downtown City Park renovation. During the Foundation's fundraising campaign, the City received a Housing Related Parks Program Grant and identified additional funds to cover the costs of

park renovation, including the playground. The REC Foundation voted to designate approximately \$100,000 raised for the City Park playground as an endowment fund, intended to help pay for and/or defray future City Park playground maintenance.

**Policy**

**Reference:** 2016-2017 adopted Council goals regarding maximizing revenues and investing in City infrastructure.

**Fiscal**

**Impact:** Potential revenue of \$100,000 plus interest, restricted for costs relevant to maintaining the City Park playground.

**Options:**

1. Approve Resolution #17-XX, authorizing the City Manager to enter into an agreement with the Paso Robles REC Foundation to establish an endowment fund of approximately \$100,000 for Downtown City Park playground maintenance.
2. Amend, modify, or reject Option 1.

**Attachments:**

1. Playground Endowment Fund Agreement for Downtown City Park playground maintenance.
2. Resolution #17-XX

## **PLAYGROUND ENDOWMENT FUND AGREEMENT (Downtown City Park Playground Maintenance )**

This Playground Endowment Fund Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2016, between the PASO ROBLES REC FOUNDATION, a California non-profit corporation (the "Foundation") and the CITY OF EL PASO DE ROBLES, a municipal corporation and general law city (the "City"), individually a "party" and collectively the "parties."

### **RECITALS**

WHEREAS, the Foundation was established in February 2000 as a non-profit organization and fundraising arm of the Paso Robles Department of Library and Recreation Services to raise funds to enhance recreational experiences and facilities in the City; and

WHEREAS, on June 5, 2012, the City Council authorized the Foundation to begin a fundraising campaign to raise funds for the renovation of the Downtown City Park Playground (the "Playground"), and to date Foundation has raised approximately \$95,000 (the "Playground Funds") for this purpose; and

WHEREAS, on November 18, 2014, the City Council authorized the acceptance by the City of a Housing Related Parks Program Grant in the amount of \$804,450 (the "Grant"), from the State of California, through the Department of Housing and Community Development, to rehabilitate City Park, which in addition to other funds available to the City, is sufficient to pay for the costs to rehabilitate City Park, including the Playground; and

WHEREAS, in light of the Grant obtained by City, on February 18, 2015 the Foundation Board has determined that the Playground Funds shall be kept in a designated fund to help pay for and/or defray future maintenance costs of the rehabilitated Playground;

NOW, THEREFORE, in consideration of the promises herein stated and intending to be legally bound hereby, the parties mutually agree as follows:

### **AGREEMENT**

#### **1. Incorporation of Recitals.**

The Recitals set forth above, and all defined terms set forth in such Recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

#### **2. Term.**

The term of this Agreement shall commence on the date of its execution by both parties and shall continue in effect until all funds in the Playground Maintenance Endowment Fund (as

defined below) have been expended in accordance with this Agreement, or otherwise terminated by the parties.

3. Playground Maintenance Endowment Fund.

The Foundation shall maintain the Playground Funds in a separate Playground Endowment Fund (the "Playground Endowment Fund"), which shall be established as a separate bank account and/or trust account or shall be administered through a separate accounting within the Foundation's financial accounting system.

4. Deposit And Disbursement Of Monies Into The Playground Endowment Fund.

The Playground Funds of approximately \$100,000 that has been raised to date for the renovation of the Playground shall be deposited into, and disbursed from, the Playground Endowment Fund. The Playground Endowment Fund shall be used to help pay future maintenance costs of the refurbished Playground, including costs for maintenance, repairs and/or replacement (as may be necessary or appropriate) of any of the refurbished improvements and playground equipment within the Playground area located at City Park.

The City shall be responsible for any actual maintenance and repair work at the Playground. Following completion of the renovation or rehabilitation of the Playground by the City, the City may, from time to time, submit to the Foundation a request for disbursement of monies from the Playground Endowment Fund to help pay for certain costs for the maintenance, repairs and replacement of any of the improvements or equipment within the Playground, together with evidence to support such costs. The requests shall be submitted to the Foundation Board, and the Board shall, in good faith, review and approve or disapprove each such request. If the Foundation Board approves a request, the Foundation shall process and submit to the City a check for such approved costs in accordance with the Foundation's normal funds disbursement procedures. City agrees to expend any such monies received from the Foundation for the purposes for which such monies were to be used. If all or any portion of the costs submitted by the City are disapproved by the Foundation Board, the Foundation shall notify the City of such disapproval, including the reason for such disapproval.

The Foundation shall only disburse monies from the Playground Endowment Fund on behalf of the Foundation in such amounts and at such times as the same are directed by the Foundation Board.

5. Other Sources of Funding.

The Foundation may, but is not required to, solicit and accept additional donations for deposit into the Playground Endowment Fund. In the event that the Foundation receives donations for the Playground Endowment Fund, the Foundation shall first determine whether the gift is in a form that may be accepted by a public agency. If the Foundation determines that it may accept the donation, it will accept the donation and deposit such donation into the Playground Endowment Fund. In the event that a donor's gift includes restrictions binding upon

the Foundation, the Foundation shall notify the City, in advance, of any such restrictions so that the City may determine whether it may accept such funds.

In no event shall the City be responsible for, and the City is specifically prohibited from, making determinations as to whether the disbursement of monies from the Fund is in accordance with a donor's wishes or is in compliance with an agreement between the Foundation and the donor.

The Foundation may from time to time request the City provide specific reports to the Foundation for use by the Foundation and/or the donor(s) regarding the status and performance of the Playground Endowment Fund.

6. Termination.

This Agreement shall terminate upon disbursement of all of the monies from the Playground Endowment Fund in accordance with this Agreement, or at any time by the mutual agreement of the parties.

If either party materially breaches any term or condition of this Agreement in any manner, the breaching party shall have a period of thirty (30) business days in which to cure the breach after written notice thereof is presented to the breaching party specifying the nature of the breach and requesting that it be cured. In the event the breach remains uncured at the end of the thirty-day period after written notice is given, this Agreement may be terminated by either party by giving thirty (30) days' written notice of termination to the other party.

Upon termination of this Agreement prior to disbursement of all of the monies in the Playground Endowment Fund for the purposes set forth herein, the Foundation may use such remaining funds for any purposes for which the Foundation was established.

7. Reports to the City.

The Foundation shall, when requested by the City, provide a report to the City regarding the Playground Endowment Fund's balance, and any other information the City has timely asked the Foundation to provide.

8. Assignment and Delegation.

Neither party shall in any manner assign, subcontract or otherwise delegate its duties under this Agreement unless the other party approves such assignment or delegation by prior written consent.

9. Amendment.

Modifications or amendments to the terms of this Agreement shall be in writing and executed by both parties.

10. Notice.

Any notice or notices given pursuant to this Agreement may be personally served on the other party by the party giving such notice or may be served by certified mail, return receipt requested, to the following addresses:

Foundation: Paso Robles REC Foundation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

City: City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: Director, Library and Recreation Services

11. Waiver.

No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach or such provision. Failure of either party to enforce at any time, or from time-to-time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

12. Severability.

If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

13. Governing Law and Choice Of Forum.

This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of San Luis Obispo County.

14. Integration.

This Agreement contains the entire agreement of the parties relating to the rights herein granted and obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto. Nothing in this Agreement shall in any way be construed to affect the rights or obligations of either party pursuant to any memorandum of understanding or other agreement that is now, or may be, in effect related to the provision of other services by the Foundation or the City to the other.

Executed by FOUNDATION and CITY on the date shown next to their respective signatures.

**CITY OF EL PASO DE ROBLES**

**PASO ROBLES REC FOUNDATION**

By: \_\_\_\_\_

Name: Thomas Frutchey

Title: City Manager

Date: \_\_\_\_\_, 2016

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2016

APPROVED AS TO FORM:

\_\_\_\_\_  
Iris P. Yang, City Attorney

RESOLUTION NO. 16-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
EL PASO DE ROBLES AUTHORIZING THE CITY MANAGER TO ENTER INTO AN  
AGREEMENT WITH THE PASO ROBLES REC FOUNDATION TO ESTABLISH AN  
ENDOWMENT FUND FOR DOWNTOWN CITY PARK PLAYGROUND MAINTENANCE

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WHEREAS, the Paso Robles REC Foundation was established in February 2000 as a non-profit organization and fundraising arm of the Paso Robles Department of Library and Recreation Services in support of enhanced recreational experiences and facilities in the City; and

WHEREAS, on June 5, 2012, the City Council authorized the REC Foundation to begin a fundraising campaign for renovation of the Downtown City Park Playground; and

WHEREAS, to date, the REC Foundation has raised approximately \$100,000 for the City Park Playground; and

WHEREAS, on November 18, 2014, the City Council authorized the acceptance by the City of a Housing Related Parks Program Grant in the amount of \$804,450 from the State of California, through the Department of Housing and Community Development, to rehabilitate City Park. This grant, in addition to other funds available to the City, is sufficient to pay for the costs to rehabilitate City Park, including the playground; and

WHEREAS, on June 17, 2015, in light of the availability of grant and other funds to pay for playground renovation, the REC Foundation voted to enter into an agreement with the City, establishing that funds raised to renovate the playground be kept in a designated fund to help pay for and/or defray future maintenance costs of the rehabilitated playground.

NOW, THEREFORE, LET IT BE RESOLVED by the City Council of the City of El Paso de Robles that the City Manager is authorized to enter into an agreement with the Paso Robles REC Foundation to establish an endowment fund for Downtown City Park playground maintenance.

APPROVED by the City Council of the City of El Paso de Robles this 16th day of August, 2016, by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Steven W. Martin, Mayor

ATTEST:

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Kristen L. Buxkemper, Deputy City Clerk