

## **FRIENDS OF RECREATION, INC.**

Friends of Recreation, Inc. ("FOR") has agreed to make a grant (the "Grant") to the Town of Palm Beach, Florida, a municipality (the "Town") and together with FOR, (the "Parties") in an amount up to five million dollars (\$5,000,000).

This Capital Grant Agreement (the "Agreement"), prepared in two (2) originals, shall become effective on the date of its signature by FOR and the Town, acting through each of their duly authorized representatives identified on the Acknowledgment page to this Agreement (the "Effective Date"). The Town has relied upon this Agreement in consideration for moving forward with the construction of the Recreation Center (as hereinafter defined).

Upon the Effective Date, the following terms and conditions shall apply:

1. The Grant.

- A. The Grant is intended to match a challenge grant from the Morton and Barbara Mandel Family Foundation (the "Foundation") for the purpose of constructing a new recreation center for the Town (the "Recreation Center").
- B. The purpose of the Grant is to provide one-third (1/3) of the total project budget, in an amount up to five million dollars (\$5,000,000), needed by the Town for the design and construction of the Recreation Center, as well as the furnishings, fixtures, and related equipment.
- C. FOR understands that the Town must have guaranteed funding in place before placing the Recreation Center under a construction contract. That guaranteed funding shall be provided by placing two million five hundred thousand dollars (\$2,500,000) in an escrow account with the Town in an account reserved solely for the construction of the Recreation Center. The remaining amount, up to the full amount due of up to five million dollars (\$5,000,000), shall be advanced by a bank which will provide a line of credit loan to FOR secured by any and all pledges identified by FOR that have not been fully paid at the time construction begins, which are evidenced by fully executed Charitable Contribution Agreements in the form attached hereto. All such Charitable Contribution Agreements required by the bank as collateral for the loan, representing the full amount due under the bank's loan and under this agreement, shall be fully executed and in the possession of the bank and all loan documents shall be executed and the loan closed prior to the Town entering into a construction agreement for the Recreation Center.

2. Miscellaneous Conditions and Expectations.

- A. It is the expectation of FOR that the Town will commit one-third (1/3) of the total project budget, using its own funds. These funds may include state and federal funding or any other grants paid directly to the Town from a party other than FOR or the Foundation to cover at least one-third (1/3) of the costs to construct the Recreation Center.
- B. It is hoped that construction of the Recreation Center will begin in the summer of 2018 and will be completed by the end of 2019. This schedule assumes progression of design, necessary approvals, and bidding without any major obstacles. The Town must advise FOR immediately of any material deviation from this expected time frame.
- C. FOR is prepared, subsequent to the Town entering into a construction agreement, to enter into an agreement with the Town of Palm Beach to use its best efforts to build an endowment with the express purpose of funding to support and enhance the recreational programs of the Town of Palm Beach. FOR intends to be an ongoing support organization for the Town and its recreation offerings.

3. The Recreation Center.

- A. The Recreation Center shall be located at Seaview Park in Palm Beach, Florida. A new physical facility (the "Building") will be constructed to replace the current recreational building (the "Current Recreation Center"), which is located at 340 Seaview Ave, Palm Beach, FL 33480. The Current Recreation Center will be demolished in order to make space to construct the Building.
- B. It is anticipated that the Recreation Center will include: (a) the Building; (b) the Playground; and (c) the rebuilt multipurpose field.

4. Payment of the Grant. FOR shall pay the Grant to the Town pursuant to the following payment schedule:

- A. First Installment: Contingent upon completion by the Town of the preparation and publication of requests for bids from contractors, the receipt and review of such bids, selection of contractors for the Recreation Center, FOR shall make the first installment payment of the Grant to the Town. The amount of the first installment payment of the Grant shall equal forty percent (40%) of the total Grant (less prior payments made totaling seventy-eight thousand six hundred and forty-two dollars (\$78,642)).
- B. Second Installment: Upon completion of forty percent (40%) of the construction of the Recreation Center, FOR shall make the second installment of the Grant to the Town. The amount of the second

installment of the Grant shall equal twenty percent (20%) of the total Grant.

C. Third Installment: Upon completion of eighty percent (80%) of the construction of the Recreation Center, FOR shall make the third installment of the Grant to the Town. The amount of the third installment of the Grant shall equal twenty percent (20%) of the total Grant.

D. Final Installment: Upon completion of the construction of the Recreation Center, as certified by the architect, including installation of the furniture, fixtures and equipment, followed by the Town's receipt of the Certificate of Occupancy for the Building, the completion of the installation of the signage of the Building and the receipt of the final invoice for any Construction Administration Fees, FOR shall pay the final installment of the Grant to the Town. The amount of the final installment of the Grant shall equal twenty percent (20%) of the total Grant

5. Reports. The Town shall provide FOR with copies of each of the reports listed below. The Town shall provide originals to the Foundation and each of the reports must be acknowledged and signed by the Town's Deputy Town Manager, Director of Recreation and Director of Public Works.

A. First Installment Status Report. Within a reasonable time following the completion of the activities listed in Section 4.A, above, the Town shall provide FOR a status report that shall include (i) a summary of any material changes made to the approved Construction Plan, (ii) a description of the construction and budgetary activities incurred as of the date of the completion of such activities, and (iii) the Grant Payment Computation Schedule used to determine the amount of the first installment.

B. Second Installment Status Report. Within a reasonable time following the completion of forty percent (40%) of the construction of the Recreation Center, the Town must provide FOR a status report that shall include (i) a summary of any material changes made to the approved Construction Plan since the date of the last Status Report, (ii) a description of the construction and budgetary activities incurred as of the date of the completion of forty percent (40%) of the construction of the Recreation Center, and (iii) the Grant Payment Computation Schedule used to determine the amount of the second installment.

C. Third Installment Status Report. Within a reasonable time following the completion of eighty percent (80%) of the construction of the Recreation Center, the Town must provide FOR a status report that

shall include (i) a summary of any material changes made to the approved Construction Plan since the date of the last Status Report, (ii) a description of the construction and budgetary activities incurred as of the date of the completion of eighty percent (80%) of the construction of the Recreation Center, and (iii) the Grant Payment Computation Schedule used to determine the amount of the third installment.

D. Final Status Report. Within a reasonable time following the completion of activities listed in Section 4.D, above, the Town must provide FOR, and FOR must approve of, a status report, which shall include (i) a summary of any material changes made to the approved Construction Plan since the date of the last Status Report, (ii) a description of the construction and budgetary activities incurred as of the date of the report, (iii) the Grant Payment Computation Schedule used to determine the amount of the final installment and (iv) a certification by the Architect stating that the construction of the Recreation Center is complete. If the Town determines that an excess of the Grant exists, the Town should indicate in this Status Report that an excess exists and that it would like to initiate discussions with respect to establishing an endowment.

E. Annual Report. After completion of the Recreation Center, the Town shall provide to FOR, on an annual basis for a period of five (5) fiscal years, a general report summarizing the previous year's activities carried on by the Town at the Recreation Center.

6. Naming Rights and Donor Recognition.

A. In honor of making the Grant, the Town hereby gives FOR the naming rights to various aspects of the Recreation Center, provided that it is understood that the name of the Building will be "The Morton and Barbara Mandel Recreation Center". The Town, in consultation with FOR, shall determine an appropriate area within the building to place a tasteful recognition of Current Recreation Center donors and the Current Recreation Center's history. A tasteful recognition will also be made of the donors to the Recreation Center (which would include those that have donated to specific areas of the Recreation Center and all other donors).

B. FOR agrees that certain physical spaces within the Building, certain areas (including benches and trees) on the grounds surrounding the Building may be named for other donors; provided, however, that any signage recognizing such other donors shall not detract from the signage recognizing the name of the Building as "The Morton and Barbara Mandel Recreation Center." A list of naming opportunities previously approved by the Town Council that FOR consents to

being named for other donors shall be attached hereto as Exhibit A. FOR shall provide the Town a revised Exhibit A at the completion of the Campaign, or as needed from time-to-time to update the list of naming opportunities that have been designated by FOR.

7. Indemnification and Insurance.

- A. The Town agrees, subject to the limitations and provisions of Florida Statute 768.28, to defend, indemnify and hold harmless FOR and its officers, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees), directly or indirectly, wholly or partially arising from or in connection with any act or omission of the Town or its respective officers, employees or agents, in obtaining or accepting the Grant, in expending or applying the proceeds of the Grant, or in carrying out the construction of the Recreation Center, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with the negligence of FOR or its officers, employees or agents. The Town agrees to implement and maintain throughout the duration of the construction of the Recreation Center insurance in types and amounts that are reasonable and appropriate for the activities being funded by the Grant.
- B. The Town agrees to implement and maintain throughout the duration of the construction of the Recreation Center insurance in types and amounts that are reasonable and appropriate for the activities being funded by the Grant.

- 8. Compliance with Laws. The Town shall at all times comply with applicable laws, executive orders, rules and regulations, and shall obtain all necessary approvals, permits and licenses.
- 9. Termination. This Agreement may be terminated by either of the Parties for cause including, but not limited to: (a) the breach of any material term or condition of this Agreement by the other party that remains uncured after reasonable notice; or (b) the Town's inability to carry out the purposes of the Grant.
- 10. Amendments. This Agreement may not be amended except by an instrument in writing signed by FOR and the Town. No provision of this Agreement and no right or obligation under this Agreement may be waived except by an instrument in writing signed by the party waiving the provision, right or obligation in question.
- 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12. Assignment: Successors and Assigns. No party shall assign its rights or obligations under this Agreement in whole or in part, without the prior written approval of the other party, which approval shall not be unreasonably withheld, conditioned or delayed. The terms and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the Parties and their respective permitted successors and assigns.
13. Governing Law and Jurisdiction. This Agreement shall be construed under and governed by the laws of the State of Florida without regard to its conflict of laws rules. The courts of Palm Beach County, Florida shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
14. Entire Agreement. This Agreement, together with all referenced exhibits (including those attached after the Effective Date), contains the entire agreement between and among FOR and the Town in relation to this subject matter and supersedes any prior or contemporaneous understandings, communications, representations, agreements, or term sheets relating to this subject matter.

**\*\*SIGNATURES ON FOLLOWING PAGE\*\***

**ACKNOWLEDGMENT**

Town of Palm Beach

**ACKNOWLEDGEMENT**

Friends of Recreation Foundation

**FRIENDS OF RECREATION, INC.**

By: \_\_\_\_\_  
Kirk Blouin

Title: Town Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Matthew K. Smith

Title: President and Chairman

Date: \_\_\_\_\_

**APPROVED FOR LEGAL  
FORM AND SUFFICIENCY:**

By: \_\_\_\_\_  
John C. Randolph

Title: Town Attorney

Date: \_\_\_\_\_

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