

ORDINANCE #65480
Board Bill No. 334
Committee Substitute

An ordinance pursuant to Sections 70.210 et seq. RSMo, recommended by the Board of Public Service; authorizing certain improvements projects in Forest Park; authorizing and directing the execution on behalf of the City of St. Louis of a cooperation agreement pursuant to Sections 70.210 et seq. RSMO between the City and Forest Park Forever, Inc. relating to the installation of such improvements, in substantially the form attached;

WHEREAS, the City has adopted a Master Plan for Forest Park; and

WHEREAS, the City pursuant to Ordinance 64122 has contracted with Forest Park Forever, Inc. to raise funds for the implementation of projects constituting part of the Master Plan; and

WHEREAS, Forest Park Forever, Inc. has raised approximately Twenty-Three Million Dollars for projects for the improvement or reconstruction of the Jewel Box, the Grand Basin and Post-Dispatch Lake, the Boathouse and the Lindell Pavilion in Forest Park; and

WHEREAS, Forest Park Forever, Inc. proposes to implement such projects, subject to approval procedures provided by the Master Plan, including the approval of plans and specifications therefor by the Board of Public Service, and subject to the terms and conditions of a cooperation agreement authorized hereby; and

WHEREAS, the cooperation agreement authorized hereby provides in part that Forest Park Forever, Inc. may be authorized to implement additional specific projects in Forest Park, subject to various specified approvals; and

WHEREAS, pursuant to Sections 70.210 et seq. RSMo the City and Forest Park Forever, Inc. are authorized to enter into a contract for the planning, development and construction of public improvements or facilities; and

WHEREAS, this ordinance has been recommended by the Board of Public Service.

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. Any provision of Ordinance 64122 or of Ordinance 59741 (Ch. 22.42, City Code) to the contrary notwithstanding, installation of the following projects in Forest Park (the "FPF Projects") by Forest Park Forever, Inc. is hereby authorized and approved on behalf of the City, subject to Section Two hereof:

- A) Repair and renovation of the Jewel Box as described in Exhibit A hereto.
- B) Repair and renovation of the Grand Basin and Post-Dispatch Lake as described in Exhibit A hereto.
- C) Demolition of the existing boathouse and construction of a new boathouse at Post-Dispatch Lake as described in Exhibit A hereto.
- D) Repair and renovation of the Lindell Pavilion as described in Exhibit A hereto.

SECTION TWO. The authorization and approval of the installation of the FPF Projects by Forest Park Forever, Inc. pursuant to this ordinance is conditioned on the approval of such projects and the plans and specifications therefor as provided in the cooperation agreement authorized hereby (the "Cooperation Agreement"), and compliance by Forest Park Forever, Inc. with all of the provisions of the Cooperation Agreement.

SECTION THREE. The Director of Parks, Recreation and Forestry, Comptroller and other appropriate City officials are authorized and directed to execute and deliver, on behalf of the City, the Cooperation Agreement, in substantially the form attached as Exhibit B hereto.

SECTION FOUR. The Director of Parks, Recreation and Forestry, Comptroller and other appropriate City officials are authorized to execute on behalf of the City additional agreements or documents relating to and useful for the installation of the Forest Park Forever Projects and which are approved by the City Counselor as consistent with this Ordinance and the Cooperation Agreement.

SECTION FIVE. Upon its execution the Register shall cause a copy of the Cooperation Agreement to be filed in the office of the Missouri Secretary of State and in the office of the Recorder of Deeds of the City of St. Louis, as required by Section 70.300 RSMo.

SECTION SIX. This being an Ordinance for the immediate preservation of public peace, health and safety, it is hereby declared to be an immediate measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

**COOPERATION AGREEMENT CONCERNING
FPF-FUNDED PROJECTS IN FOREST PARK**

This Agreement ("Agreement") entered into as of the _____ day of _____, 2002 (the "Effective Date"), by and among The City of St. Louis, a Missouri municipal corporation ("City"), and Forest Park Forever, Inc., a Missouri not-for-profit corporation ("FPF").

PREMISES

1. The City is the owner of Forest Park, a park located within the City.
2. The City adopted a Master Plan for the revitalization of Forest Park on December 5, 1995 (as amended, the "Master Plan"), which calls for and approved various improvements to Forest Park.
3. The City and FPF are parties to a contract dated September 9, 1997 (the "City-FPF Contract") pursuant to which FPF is endeavoring to raise funds to be utilized in the implementation of the Master Plan.
4. The Master Plan and the City-FPF Contract provided certain procedures (the "Prior Procedures") for the approval and construction of projects which were to be jointly funded by the City and FPF.
5. The purpose of this Agreement is to provide procedures for the approval and construction of projects which are to be solely funded and implemented by FPF and upon completion by FPF donated to the City (the "FPF Projects"). The FPF Projects are: Grand Basin Post-Dispatch Lake, Boathouse, Jewel Box and Lindell Pavilion (the "FPF Projects"). The nature and locations of the FPF Projects are described in Exhibits 1 and 2 hereto.
6. The City, FPF and the Missouri Development Finance Board (the "MDFB") are parties to a contract dated August 18, 1998 (the "Tax Credit Agreement"), pursuant to which the MDFB grants credits against Missouri state income taxes to contributors of funds to be used for implementation of infra-structure projects, as defined in the Tax Credit Agreement, in Forest Park to be constructed pursuant to the Master Plan.
7. The presently estimated cost of each of the FPF Projects (including a 10% contingency) is set forth in Exhibit 2 hereto (the "Project Cost").
8. FPF has secured all of the funds necessary to pay the Project Costs for each of the FPF Projects from the sources set forth in Exhibit 3 hereto and has selected BSI Constructors, Inc. ("BSI") to act as FPF's Construction Manager in connection with the FPF Projects.
9. The plans for each FPF Project (the "Plans") have been approved by or will be presented for review by all necessary City departments pursuant to the approval process in the Master Plan for Privately Funded Projects, the Board of Public Service ("BPS"), and the utility companies prior to the issuance of a building permit to FPF by the City for each FPF Project.
10. Whereas, pursuant to Section 70.220 RSMo municipalities and private corporations authorized to contract and cooperate for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service.
11. The execution and delivery by the City of this Agreement has been authorized by Ordinance No. _____. (BB 334 as amended).
12. FPF is a Missouri not-for-profit corporation, which was organized to benefit Forest Park by raising money from private donors. FPF acknowledges that the promises and undertakings of the City herein are in furtherance of FPF's corporate purpose and constitute good and valuable legal consideration to FPF.

13. The parties wish to express their respective rights and obligations with respect to the FPF Projects and their desire to continue to cooperate in their efforts to implement the Master Plan for the revitalization of Forest Park in this Agreement.

TERMS

For and in consideration of the foregoing Premises, and of their mutual promises and undertakings herein set forth, the parties hereto contract and agree as follows:

Section 1. This Agreement is applicable to FPF Projects only after the Master Plan approval process for Privately Funded Projects depicted in Exhibit 4 (“the Approval Process”) has been completed for a FPF Project, including the final approval of the plans and specifications for the FPF Project by the City’s Board of Public Service. The Prior Procedures and Board of Public Service Order Number 782 shall not be applicable to the FPF Projects. The Director of Parks, Recreation and Forestry may authorize the full funding, implementation and donation to the City by FPF, pursuant to and subject to compliance with the Approval Process and the provisions of this Agreement, of additional FPF Projects which comply with the spirit and intent of the Master Plan.

Section 2. The cost of each FPF Project shall not exceed the amount stated on Exhibit 3, subject to the provisions of this Agreement.

Section 3. FPF on its own behalf and on behalf of BSI acknowledges that local contractor participation in the construction of the FPF Projects is an objective of the City and is desirable.

Section 4. FPF in the construction of each Project agrees to comply with the federal Americans with Disabilities Act; and shall file with the Secretary of BPS the name and address of all contractors and subcontractors who will work on the Project and the dollar amount of all contracts for FPF projects. All such contractors and subcontractors shall be licensed by the City and current on payment of all applicable City taxes; and shall secure and pay for all necessary licenses, permits and inspection fees relating to each FPF Project.

Section 5. FPF agrees that it will comply and will cause its contractors and subcontractors to comply in any work on the FPF Projects with the City’s policy on MBE/WBE participation in City contracts, presently established by Mayor’s Executive Order No. 28, to the extent applicable, and the following state statutes pertaining to public works; prevailing wages on public works, §§290.210-290.340, RSMo; public works during excessive unemployment §§290.550-290.580, RSMo; and prompt payment §§34.057, 34.058, RSMo.

Section 6. FPF and BSI shall issue a bid package for each FPF Project and shall broadly solicit bids from qualified contractors through public advertisement and other standard methods generally used in the St. Louis region to insure that competitive bids are received for each FPF Project. FPF shall, in its project bid packages as well as its construction and design contracts, require that the City shall secure all the rights and benefits of contractor and supplier warranties and, upon Project completion, shall receive copies of the “as-built” drawings for the Project. Within seven (7) days of receipt of the construction bids for each FPF Project, FPF shall provide a summary report of said bids to the City.

Section 7. If after receiving construction bids for each FPF Project FPF determines that qualified contractors cannot be secured to construct the Project in accordance with the Plans for the Project Cost, it shall immediately notify the Department of the President of BPS and the Director of Parks, Recreation and Forestry. In such event, the parties shall meet as soon as practical with BSI, the President of the Board of Public Service or his designee, the Director of Parks, Recreation and Forestry or his designee and FPF’s Design Consultant to determine what changes might be made in the Plans to secure a bid for the Project Cost. The parties shall have thirty (30) days to evaluate such changes and agree on modifications to the Plans. If the parties cannot agree to proceed with revised Plans, either the City or FPF may notify the other that the Project is terminated, in which event this Agreement shall cease and terminate, as to that Project, and neither party shall have any subsequent obligations hereunder as to that Project.

Section 8. Upon determination by FPF, based upon FPF’s own criteria, that acceptable bids which conform to the approved plans and specifications for the Project have been received from one or more contractors for each FPF Project, FPF shall have the authority to select the contractor(s) for the Project. FPF, upon such selection, shall designate on its financial statements the required FPF amount of the Project Cost (the “FPF Funds”) which shall thereafter be restricted solely for the payment of the contractors for the Project and other Project costs. A copy of the FPF financial statements shall be provided to the City Monitor quarterly during the construction of each FPF Project. FPF shall also provide the City Monitor evidence that the MDFB has received tax credit contributions for the Project (the “Tax Credit Funds”), which when added to the FPF Funds equal the Project Cost and that MDFB has restricted said funds for the payment of the MDFB portion of the Project Cost. FPF shall cause the MDFB to provide evidence

to the FPF and the City Monitor that it shall transfer the Tax Credit Funds portion of each monthly draw to FPF within ten (10) days after receipt of a request for disbursement from FPF in the form attached hereto as Exhibit 5.

Section 9. After notifying BPS that the provisions of Sections 4, 6 and 8 have been complied with, FPF shall secure, or cause its contractors to secure, and file with the City, payment and performance bonds for work to be performed by its contractors, in the amounts and types recommended by BPS, and naming the City as an additional obligee. Unless recommended otherwise by BPS, the following shall be minimum requirements for any such payment and performance bonds:

- (i) Bonds shall be executed by a surety company satisfactory to the City and duly authorized to transact business in Missouri as evidenced by a Certificate of Authority granted by the Director of the Department of Insurance for the State of Missouri; and
- (ii) The surety company shall have a policy holder’s rating of “A-” or better and a financial rating of “V” or higher as indicated in the latest edition of Best’s Key Rating Guide; and
- (iii) The bonds shall be for the full dollar amount of the contract and any amendments thereto.

FPF shall also procure, or cause its contractors to procure, and maintain in force throughout the period of occupation of City property Workmen’s Compensation Insurance in amounts as required by Missouri law for work provided by their contractors, and Comprehensive General/Public Liability and Property Damage Insurance (including Automobile Public Liability & Property Damage) issued by an insurance provider authorized to transact business in the State of Missouri, in minimum amounts recommended by BPS. Unless recommended otherwise by BPS, said Comprehensive General/Public Liability and Property Damage Insurance shall be for the following minimum amounts:

- (i) General/Public Liability and Property Damage
 - Bodily Injury:

Each occurrence	\$1,000,000
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 - Property Damage:

Each accident	\$1,000,000
Aggregate	\$1,000,000
- (ii) Automobile Public Liability and Property Damage
 - Bodily Injury:

Each person	\$ 250,000
Each accident	\$1,000,000
 - Property Damage:

Aggregate	\$ 500,000;
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provided, however, that any such required minimum amounts shall not be construed to limit the liability of FPF or contractor(s). FPF shall file certificates of insurance with BPS reflecting the approved minimum coverage, naming the City as an additional named insured, and containing the statement, “The insurance policy or policies described by this certificate may not be canceled or altered without at least ten (10) days’ advance written notice sent by Registered Mail and received by the City at the Office of the Secretary of the Board of Public Service.”

Section 10. Upon compliance with Section 9, FPF shall negotiate and execute the construction contract(s) with the successful bidder(s). Thereupon, the City shall issue all necessary building permits and other authorizations to allow FPF and its contractors to commence construction on the FPF Project and authorize entry of FPF and its contractors onto the Project site for the purpose of constructing the Project.

Section 11. FPF shall have the right, in its sole discretion, to terminate and/or replace any contractor on a Project. FPF shall notify BPS, in writing, within seven (7) days of such action.

Section 12. The City shall designate a City representative as Monitor in connection with the FPF Projects. The initial Monitor is Joseph Kuss, Deputy City Engineer. The Monitor may be changed by the President, Board of Public Service upon one week's prior notice to FPF.

FPF shall furnish the Monitor with a copy of the bid package pursuant to Section 6 for review and comment within a reasonable time prior to its issuance, and shall advise the Monitor of the process for soliciting bids for each FPF Project.

FPF shall notify the Monitor when it believes acceptable bids have been received for an FPF Project and shall certify to the City that the bids to be accepted conform to the plans and specifications approved by the Board of Public Service for the FPF Project.

FPF shall furnish the Monitor with evidence of restriction of accounts and availability of MDFB funds pursuant to Section 8.

FPF shall notify the Monitor when FPF believes that Sections 4, 6 and 8 have been complied with for purposes of an FPF Project. Thereafter, if the Monitor agrees that such compliance has occurred, he shall notify FPF and BPS of that fact.

The Monitor shall review all bonds and insurance posted or tendered by FPF and its contractors in connection with any FPF Project for compliance with this Agreement and shall notify FPF of any deficiency.

The Monitor shall receive from FPF copies of all Project applications for payment (as that fee is used in Section 13 hereof) or other payment requisitions submitted to FPF and lien waivers for FPF Projects.

If the Monitor reasonably believes any material provision of this Agreement has been violated by FPF or that work being done or facilities being installed do not conform to the plans and specifications approved by the Board of Public Service, he shall notify FPF and the Monitor and the Director of Parks, Recreation & Forestry or his designee shall confer with FPF about the matter. If in the reasonable judgement of such Director the matter is not satisfactorily resolved within ten (10) days after notice to FPF, the Director may, but need not, request suspension of the building permits or other authorization to FPF and its contractors to enter City property for project installation purposes until the matter is resolved.

Section 13. FPF's contracts with BSI and all contracts of FPF or BSI with contractors, subcontractors or supplies shall contain the following provisions:

A. Based on the Construction Manager's observations and evaluations of each Subcontractor's Application for payment, the Construction Manager shall review and certify the amounts due the respective Subcontractors. The Construction Manager shall prepare a Project Application for Payment based on the Subcontractor's Certificates for payment. The Construction Manager's Certification for Payment shall constitute a representation to FPF, based upon the Construction Manager's determinations at the site and on the data comprising the Subcontractors' Applications for Payment, that to the best of the Construction Manager's knowledge, information, and belief, after reasonable inquiry, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents. The issuance of a Certificate for Payment and acceptance by the Construction Manager shall further constitute a representation that the Subcontractor is entitled to payment in the amount certified.

B. Each Application for Payment submitted by the Construction Manager to FPF shall itemize and identify the amounts within each application which the Construction Manager intends to pay to each Subcontractor, materialman or supplier for work performed on the Project up to the date of each application. The Construction Manager hereby agrees and is required to make payment, no later than ten (10) days after the receipt of payment from FPF, to each Subcontractor, materialman or supplier of all amounts identified in each application for payment as intended for said Subcontractor, materialman or supplier.

C. Notwithstanding the issuance of an approval or certificate for payment from the Project Architect, FPF shall have the right to withhold from payments due to the Construction Manager such sums as may be necessary to protect FPF against any loss or damage which may result from the negligence or unsatisfactory work by the Construction Manager or Subcontractors, failure by the Construction Manager or Subcontractors to perform their obligations, including failure to maintain satisfactory progress of the work, or claims against the Construction Manager or FPF relating to the Construction Manager's performance. In addition, FPF may withhold amounts because of a failure of the Construction Manager or Subcontractors to make proper payments to material suppliers, Subcontractors, or Sub-subcontractors, and where there is reasonable evidence indicating a probable failure or any claim against FPF

or the Construction Manager in connection with the work on the Project. When the reasons for withholding certification or payment are removed, payment shall be made for amounts withheld because of them in response to the next filed Application for Payment.

D. FPF shall retain ten percent (10%) of the amount requested for each work category identified in the schedule of values, which retention shall not be released or reduced, except and only as permitted by this Section. When fifty percent (50%) of the value of the work for a given work category identified in the schedule of values has been completed, no further retainage shall be withheld from payments to the Construction Manager for work installed and material (fabricated) and equipment suitably stored in that category, provided that the Construction Manager and the Subcontractor responsible for the performance of the work in the category have met and continue to meet their schedule commitments and have met and continue to satisfy all other requirements of the Contract Documents. If the Construction Manager or the Subcontractor responsible for such work subsequently fails to meet schedule commitments or fails to satisfy any conditions of the Contract Documents, or if any of the circumstances or conditions described herein exist as would permit FPF to decline to make or certify payment, then the retainage fund for the category of work shall be restored to an amount equal to ten percent (10%) of all of the progress payments then and thereafter approved with respect to such work. Such fund shall be restored by deducting from the next progress payment an amount which, when added to retainage then withheld, will equal ten percent (10%) of all of the progress payments then approved with respect to such work. The retention held by FPF with respect to any work category shall be retained until Substantial Completion of all work on the Project, unless and only to the extent that FPF, in its sole and absolute discretion, chooses to release such retention at an earlier date. Within thirty (30) days after the work is Substantially Complete, the Construction Manager shall be entitled to payment of a sum sufficient to increase the total amount of the progress payments on the Project to 100% of the actual Cost of the work and the Construction Manager's Fee, minus an amount equal to 200% of the reasonable value of any work remaining to be completed. This retained amount shall be withheld until Final Payment, at which time it shall be released. Notwithstanding the foregoing, FPF may agree (in its sole discretion and on a case-by-case basis) to waive or reduce the retention requirements for specific subcontractors or suppliers.

E. Unless otherwise provided in the Project's Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Project. If approved in writing and in advance by FPF, payment may similarly be made for materials and equipment suitably stored off site at a location agreed upon by FPF. Payment for materials and equipment stored off site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to FPF to establish FPF's title to such materials and equipment or otherwise to protect FPF's interest and the Project from assertion of liens or encumbrances, and, on the Construction Manager's continued responsibility for damage or loss to such materials and equipment (subject to recovery allowed by the builder's risk insurance policy procured by FPF) and for safe delivery of such material and equipment to the site and their proper incorporation into the Project, and shall include applicable insurance, storage and transportation to the site for material and equipment stored off the site.

Section 14. FPF shall in each construction contract require each contractor to agree that no labor performed or materials furnished and incorporated in an FPF Project shall be the basis for filing a lien against the City or the Project. Furthermore, FPF shall indemnify and hold harmless the City from and against any liability arising from the claim of any lien against the City or against any FPF Project for construction performed or for labor, materials, services or other products incorporated in each Project. FPF shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien charge, encumbrance or claim on or with respect to any FPF Project or any part thereof other than as provided herein. FPF shall reimburse the City for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 15. FPF shall furnish any request for a change order for the City Monitor within one (1) business day of FPF's receipt thereof, and shall notify the Monitor of any changes in Plan proposed by FPF. If FPF receives a request for a change order or desires to make such a change in Plan which would result in a substantial change in the FPF Project as designed, or would cause the FPF Project to be inconsistent with the approved plans and specifications or with any other prior approval of a City agency, such as the Cultural Resources office, it shall, prior to approving such change, secure the approval of the City to such change order. If any change order would increase the cost of any FPF Project beyond the Project Cost, the City and FPF shall endeavor to determine ways to reduce the Project Cost to cover the change. However, if FPF and the City agree on the design change and FPF agrees to pay the increased cost, FPF may, in its sole discretion, proceed with the change order. If the parties determine, after their analysis that the cost of a Change Order makes the completion of a Project financially infeasible, they shall jointly devise a plan to utilize the remaining Project Funds to mitigate the impact of the termination or abandonment of the Project.

Section 16. FPF shall retain at its offices copies of all Project invoices, lien waivers and payment records showing the amounts paid and the retainage, which shall be available during normal business hours to the City. If the City desires copies of such records, FPF shall provide them at no cost within seven (7) days of a written request for them from the City.

Section 17. Prior to the commencement of construction, FPF shall notify the City of the dates of commencement and anticipated completion of construction on each FPF Project. BPS, in conjunction with a representative of the Parks Department designated, shall determine and perform an inspection schedule at appropriate times during Project construction.

Section 18. Neither the City nor FPF shall take any action or fail to take any action which action or failure would cause the interest on the Forest Park Leasehold Revenue Improvement Bonds (City of St. Louis, Missouri, Lessee) Series 1997 issued by St. Louis Municipal Finance Corporation (the "Bonds") to be includable in gross income for Federal or Missouri income tax purposes. FPF further covenants that, so long as the Bonds remain outstanding, it will, to the best of its ability, maintain its status as an organization exempt from taxation.

Section 19. Upon completion of each FPF Project and prior to final payments and release of retainage, FPF shall notify the City, which shall inspect the Project. If the Project has been completed according to the Plans, BPS shall issue a Certificate of Completion to FPF. FPF shall then make the final payment to the contractors and suppliers and shall thereafter deliver copies of the "as built" drawings and warranties to BPS. Upon delivery and acceptance thereof by the City, the completed Project shall be the property of the City.

Section 20. Representations and Warranties of The City.

a. The City is a municipal corporation organized and existing under the constitution and laws of the State of Missouri and its Charter.

b. Execution of this Agreement has been duly authorized by the City and this Agreement is binding and enforceable against the City.

c. Execution of this Agreement and performance by the City of its obligations under this Agreement does not conflict with any other agreements to which the City is party.

d. The City is not a party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

Section 21. Representations and Warranties of FPF.

a. FPF is a not-for-profit corporation duly organized and in good standing under the laws of the State of Missouri. FPF is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (the "Code"). Contributions to FPF are eligible for federal income tax deductions.

b. FPF is a charitable organization which is described in Sections 170(d)(2)l, 2055(a) and 2522(a) of the Code. The contributions to FPF pursuant to the terms and conditions of this Agreement qualify for the federal gift tax charitable deduction or federal estate tax charitable deduction. If a contribution to FPF does not qualify for the gift tax charitable deduction or the federal estate tax charitable deduction, FPF will return the contribution to the party contributing the funds.

c. FPF has not engaged in any activity or accepted any contributions which would jeopardize its tax-exempt status or otherwise cause contributions to FPF to be ineligible for a federal income tax charitable deduction and federal gift tax charitable deduction or federal estate tax charitable deduction and FPF will not engage in any activity or accept any contributions which would jeopardize its tax-exempt status.

d. Execution of this Agreement has been duly authorized by the Board of Directors of FPF and this Agreement is binding and enforceable against FPF.

e. Execution of this Agreement and performance by FPF of its obligations under this Agreement does not conflict with any other agreements to which FPF is a party.

f. FPF is not party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

g. Exhibit 3 hereto accurately reflects funds available to FPF as of the date hereof for the FPF Projects.

Section 22. Representations and Warranties: Binding, When; Survival of. The foregoing representations and warranties of the parties hereto shall be binding as of the date of execution of this Agreement.

Section 23. Event of Default. Except as expressly provided herein, if either party to this Agreement is in default hereunder, the other party shall give written notice to the Defaulting Party that such Defaulting Party is in default hereunder with respect to the matters described in such notice and such Defaulting Party has thirty (30) days in which to cure such default. If the

Defaulting Party fails to cure such defaults within thirty (30) days after such default has occurred then an "Event of Default" shall be deemed to have occurred.

Section 24. Remedies Following an Event of Default. Following an Event of Default, the nondefaulting party shall have all rights and remedies available at law or in equity.

Section 25. Notices. All notices required to be given hereunder shall be given by certified mail, personal delivery or telefax (with a hard copy sent by first class mail) to the following addresses:

If to City: Director, Department of Parks, Recreation & Forestry
5600 Clayton Avenue
St. Louis, MO 63110
Facsimile Number: (314) 535-3901

with copies to: City Counselor
314 City Hall
1200 Market Street
St. Louis, MO 63103
Attention: Francis M. Oates, Esq.
Facsimile Number: (314) 622-4956

The President of the Board of Public Service
c/o City Hall
1200 Market Street
St. Louis, MO 63103

If to FPF: Forest Park Forever
5595 Grand Drive
St. Louis, MO 63112
Attn: Executive Director
Facsimile Number: (314) 367-7622

with a copy to: S. Jerome Pratter, Esq.
The Stolar Partnership
911 Washington Avenue
St. Louis, MO 63101
Facsimile Number: (314) 436-8400

or to such alternate address as any party designates by notice given in accordance herewith. All notices delivered or delivered by fax shall be deemed received on the day delivered or faxed. All documents sent by certified mail shall be deemed received two (2) business days after placement in the mail.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed to its respective name and behalf and its official seal to be hereunto affixed and attested by duly authorized officers, all as of the date first above written.

CITY OF ST. LOUIS, MISSOURI

By: _____
Director of Parks, Recreation and Forestry

By: _____
Darlene Green
Comptroller

APPROVED AS TO FORM:

City Counselor

ATTEST:

By: _____
Register

FOREST PARK FOREVER, INC.

By: _____

Title: _____

**EXHIBIT A (to Ordinance)
and
EXHIBIT 1 (to Agreement)**

Grand Basin/Post-Dispatch Lakes – renovation, deepening, lake expansion and re-landscaping of existing lakes and surrounding areas in accordance with plan dated 2-1-02 by HOK Architect

Boathouse – new boathouse storage and repair facility and restaurant buildings design by Laurent Torno Architect

Jewel Box – total renovation of building in accordance with plans dated 12-1-01 by Christner & Associates Architect

Lindell Pavilion – total renovation of facility for visitor’s and education center, food service and lockers design by Mackey Mitchell & Associates

EXHIBIT 2

<u>Project</u>	<u>Estimated Cost</u>
Grand Basin/Post-Dispatch Lake	\$10.9 million to \$12.9 million
Boathouse	\$2.2 million
Jewel Box`	\$3.3 million
Lindell Pavilion	<u>\$3.8 million</u>
	\$20.2 million to \$22.2 million

EXHIBIT 3

Sources of Project Funds

Presently on deposit with Missouri Development Finance Board
pursuant to Tax Credit Agreement dated August 18, 1998 \$ 8,173,115.52

Funds donated to FPF presently on deposit:

Bank of America account 873848 par value FHLB Discount Note	1,300,000.00
Bank of America safekeeping account 3-33383-5 FHLB par value discount notes, Freddie Mac Discount Note and US Treasury Bill	7,100,000.00
Nations Treasury Reserves Advisor Fund #333835	1,153,129.86
Nations Treasury Reserves Advisor Fund #873848	453,624.06
Nations Treasury Reserves Advisor Fund #1427062	425,700.12
Bank of America RTG money market #0118 5100 4704	326,952.86
SalomonSmithBarney account #486-19165-10 110 (Board designated endowment)	<u>892,277.64</u>
	11,651,684.54

Art Museum funds pledged and committed 1,000,000.00

\$20,824,800.06

See attached Exhibit - Project Approval Process

EXHIBIT 4

Flow Chart from Master Plan

EXHIBIT 5

FORM OF DISBURSEMENT REQUEST

Disbursement Request No. _____

TO: Missouri Development Finance Board
Harry S. Truman Building
301 W. High Street, Room 680
Jefferson City, Missouri 65101
Attn: Finance Director

Re: **Forest Park Forever – Disbursement Request for the Board Project Account**

You are hereby requested pursuant to Section 4.2 of the Tax Credit Agreement dated as the 18th day of August, 1998 (the "Agreement"), to issue a check to Forest Park Forever for the project, _____, to permit Forest Park Forever to issue checks to provide for the payment or reimbursement of the attached Project Costs (as defined in the Agreement), subject to and in accordance with the requirements of the Cooperation Agreement between Forest Park Forever, Inc. and the City of St. Louis concerning Forest Park Forever funded projects and the Agreement.

The undersigned hereby state and certify that:

1. These Project Costs to be paid or reimbursed have been incurred and are due and payable in connection with the Project.
2. None of these Project Costs has previously been paid or reimbursed.
3. All necessary permits and approvals required for the Project for which this withdrawal is to be made have been issued and are in full force.
4. The Public Entity has furnished to the Board the information necessary to determine its compliance with Section 5.11 of the Tax Credit Agreement.

Dated this _____ day of _____, 20____.

By: _____
Executive Director
Forest Park Forever

Director of Parks, Recreation & Forestry

City Monitor

Approved for Payment on _____, 20____ :

MISSOURI DEVELOPMENT FINANCE BOARD

By: _____
Executive Director

cc: Comptroller, City of St. Louis

Approved: March 21, 2002

