

ORDINANCE #69042
Board Bill No. 189
Floor Substitute

An ordinance relating to Forest Park, recommended by the Board of Estimate and Apportionment and the Board of Public Service; providing for the execution and delivery of a 2011 Supplemental Maintenance Cooperation Agreement (the “**2011 Supplemental Maintenance and Cooperation Agreement**”), between the City of St. Louis and Forest Park Forever, Inc.; with an emergency provision.

WHEREAS, the City’s Community Development Commission has duly adopted a Master Plan (as amended from time to time, the “**Master Plan**”), which calls for multiple projects including repairs of infrastructure, new construction and landscaping in Forest Park (the “**Park**”); and

WHEREAS, Forest Park Forever, Inc. (“**FPF**”) is a Missouri not for profit corporation which promotes the rebuilding and restoration of the Park through development of wide-based financial and citizen support; and

WHEREAS, since the formation of FPF in 1986 the City and FPF have established successful working relationships reflected in various duly authorized agreements relating to the Park; and

WHEREAS, the City Comptroller’s office and the City’s Auditor have previously determined that the net assets held by FPF and the amount of financial support to the City provided by FPF did not qualify FPF as a “component unit” of the City as defined in the Government Accounting Standards Board Statements Nos. 14 and 39, and the Comprehensive Annual Financial Report of the City dated January 3, 2011, did not include any reference to FPF; and

WHEREAS, in 2007 the City and FPF executed a Trust Agreement (the “**2007 FPF Trust Agreement**”) which provides that FPF will donate the sum of \$1,800,000 per year, in trust, for “**Costs of Maintaining Forest Park**” (as defined in the 2007 Maintenance Cooperation Agreement, hereinafter defined); and

WHEREAS, in 2007 the City and Barnes Jewish Hospital (“**BJH**”) executed a Second Amendment to an Agreement, and a Maintenance Trust Agreement (the “**BJH Trust Agreement**”), which provide that BJH will donate a sum, presently \$2,000,000 per year, in trust, for costs of maintaining the Park; and

WHEREAS, in 2007 the City and FPF entered into a Maintenance Cooperation Agreement (the “**2007 Maintenance Cooperation Agreement**”) which provides for the allocation and expenditure of the annual FPF and BJH trust donations for Park purposes and which remains in full force and effect in all respects; and

WHEREAS, the 2007 Maintenance Cooperation Agreement established a “**Forest Park Maintenance Steering Committee**” consisting of the City’s Director of Parks, Recreation and Forestry and the President of Forest Park Forever, Inc.; and

WHEREAS, the City and FPF now wish to continue and expand their relationship and upon final approval by the City of the Forest Park Bonds wish to make additional funding commitments and undertakings with respect to the Park, as provided in a 2011 Supplemental Maintenance Cooperation Agreement , in the form attached to this Ordinance as Exhibit 1; and

WHEREAS, St. Louis Municipal Finance Corporation (“**SLMFC**”), a not-for-profit corporation, proposes to issue Subordinate Forest Park Leasehold Revenue Improvement Bonds (City of St. Louis, Missouri, Lessee) in an aggregate principal amount of approximately Thirty Million Dollars (“**the Forest Park Bonds**”) for the construction, renovation, equipping and installation of site furnishings and improvements for Forest Park; and

WHEREAS, FPF proposes to buy the Forest Park Bonds in a three year period beginning on the Forest Park Bond Effective Date; and

WHEREAS, the City shall use the proceeds of the sale of the Forest Park Bonds for capital projects in the Park, and pay debt service on the Forest Park Bonds to FPF over a period of thirty (30) years; and

WHEREAS, upon the Effective Date and pursuant to Exhibit 1 hereto FPF shall be obligated to apply the debt service payments from the City on the Forest Park Bonds to fund enhanced maintenance services in the Park as provided therein; and

WHEREAS, the City and FPF are authorized to enter into and perform the 2011 Supplemental Maintenance Cooperation Agreement by Sections 70.210 et seq. RSMo and St. Louis Ordinance _____ (B.B.____);

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

SECTION ONE. The Mayor and Comptroller are hereby authorized and directed to execute and deliver, on behalf of the City, a 2011 Supplemental Maintenance Cooperation Agreement between the City and Forest Park Forever, Inc., in substantially the form attached hereto as Exhibit 1, with such changes and corrections consistent herewith as are approved by them and the City Counselor.

SECTION TWO. This ordinance, being deemed necessary for the immediate preservation of the public peace and safety, is declared to be an emergency ordinance under and pursuant to Sections 19 and 20 of Article IV of the City Charter.

**EXHIBIT 1 (Floor Substitute)
2011 SUPPLEMENTAL MAINTENANCE COOPERATION AGREEMENT**

This is a 2011 Supplemental Maintenance Cooperation Agreement ("**this Agreement**" or the "**2011 Supplemental Maintenance Cooperation Agreement**") made and entered into this ___ day of _____, 2011, (the "**Date of this Agreement**") pursuant to Sections 70.210 et seq. RSMo and St. Louis City Ordinance _____ (B.B. _____), by and between the City of St. Louis, Missouri (the "**City**"), and Forest Park Forever, Inc., a Missouri not-for-profit corporation ("**FPF**").

WHEREAS, the City's Community Development Commission has duly adopted a Master Plan (as amended from time to time, the "**Master Plan**"), which calls for multiple projects including repairs of infrastructure, new construction and landscaping in Forest Park (the "**Park**"); and

WHEREAS, Forest Park Forever, Inc. ("**FPF**") is a Missouri not for profit corporation which promotes the rebuilding and restoration of the Park through development of wide-based financial and citizen support; and

WHEREAS, since the formation of FPF in 1986 the City and FPF have established successful working relationships reflected in various duly authorized agreements relating to the Park; and

WHEREAS, in 2007 the City and FPF executed a Trust Agreement (the "**2007 FPF Trust Agreement**") which provides that FPF will donate the sum of \$1,800,000 per year, in trust, for "**Costs of Maintaining Forest Park**" (as defined in the 2007 Maintenance Cooperation Agreement, hereinafter defined); and

WHEREAS, in 2007 the City and Barnes Jewish Hospital ("**BJH**") executed a Second Amendment to an Agreement, and a Maintenance Trust Agreement (the "**BJH Trust Agreement**"), which provide that BJH will donate a sum, presently \$2,000,000 per year, in trust, for costs of maintaining the Park; and

WHEREAS, in 2007 the City and FPF entered into a Maintenance Cooperation Agreement (the "**2007 Maintenance Cooperation Agreement**") which provides for the allocation and expenditure of the annual FPF and BJH trust donations for Park purposes; and

WHEREAS, the 2007 Maintenance Cooperation Agreement established a "Forest Park Maintenance Steering Committee" consisting of the City's Director of Parks, Recreation and Forestry and the President of Forest Park Forever, Inc.; and

WHEREAS, the City and FPF now wish to continue and expand their relationship and wish to make additional funding commitments and undertakings with respect to the Park, as provided in this Agreement; and

WHEREAS, St. Louis Municipal Finance Corporation "**SLMFC**", a not-for-profit corporation, proposes to issue Subordinate Forest Park Leasehold Revenue Improvement Bonds (City of St. Louis, Missouri, Lessee) in an aggregate principal amount of approximately Thirty Million Dollars ("**the Forest Park Bonds**") for the construction, renovation, equipping and installation of site furnishings and improvements for Forest Park; and

WHEREAS, FPF proposes to buy the Forest Park Bonds in a three year period beginning on the Forest Park Bond Effective Date; and

WHEREAS, the City shall use the proceeds of the sale of the Forest Park Bonds for capital projects in the Park, and pay debt service on the Forest Park Bonds over a period of thirty (30) years; and

WHEREAS, pursuant to this Agreement FPF shall be obligated to apply the debt service payments from the City on the Forest Park Bonds to fund enhanced maintenance services in the Park as provided therein; and

WHEREAS, the City and FPF are authorized to enter into and perform the 2011 Supplemental Maintenance Cooperation Agreement by Sections 70.210 et seq. RSMo and St. Louis Ordinance _____ (B.B. ____);

NOW THEREFORE, in consideration of the foregoing premises and their agreements and covenants herein set forth and for other good and valuable considerations, receipt of which is mutually acknowledged, the City and FPF hereby agree as follows:

1. DEFINITIONS.

Annual Budget: the yearly budget for Park Maintenance and Operations pursuant to this Agreement and the 2007 Maintenance Cooperation Agreement.

Annual Program: the annual designation and allocation of Maintenance and Operations functions and services in the Park by the City and FPF as determined by the Maintenance Steering Committee pursuant to this Agreement and pursuant to the 2007 Maintenance Cooperation Agreement.

BJH Trust Agreement: the 2007 trust agreement among the City, Barnes Jewish Hospital (“**BJH**”) and UMB Bank, N.A. relating to the deposit, investment and disbursement of the BJH Trust Funds for Park maintenance and operations.

BJH Trust Funds: the donations of funds by BJH for Park purposes pursuant to the BJH Trust Agreement.

Department: the City’s Department of Parks, Recreation and Forestry.

Director: the Director of the Department.

Executive Director: the President and Executive Director of FPF.

Forest Park Bonds: Bonds that are anticipated to be issued and sold by Saint Louis Municipal Finance Corporation, a Missouri not-for-profit corporation (“**SLMFC**”) pursuant to St. Louis City Ordinance ____ (B.B. ____) and the Forest Park Bond Documents.

Forest Park Bond Documents: Documents anticipated to be drafted and executed pursuant to St. Louis Ordinance ____ (B.B. ____), relating to the issuance, sale and purchase of the Forest Park Bonds, including i) a Third Supplemental Indenture of Trust between SLMFC and UMB Bank, N.A., Trustee; ii) a Third Supplemental Lease Purchase Agreement among SLMFC, the City and FPF (“**the Lease Purchase Agreement**”) and iii) a Bond Purchase Agreement between FPF and SLMFC.

Forest Park Bond Effective Date: the effective date of the Bond Purchase Agreement between FPF and SLMFC pursuant to the Forest Park Bond Documents.

FPF: Forest Park Forever, Inc., a Missouri not for profit corporation incorporated to promote the rebuilding and restoration of the Park.

FPF 2011 Endowment: accounts established by FPF to manage the new endowment funds raised by FPF during its fundraising campaign which is anticipated to begin on or before the Forest Park Bond Effective Date, including proceeds of payments or pledges designated for such fundraising campaign made prior to the start of such campaign.

FPF 2007 Trust Funds: Funds paid by FPF into the 2007 Maintenance Trust for Park purposes under the 2007 Maintenance Trust Agreement.

FPF Investment Policy Statement: The most current statement, as approved by the FPF Board of Directors, governing the investment policy, objectives, and constraints of the FPF 2011 Endowment for the purpose of providing funds to support the mission of FPF. The FPF Board of Directors has set an annual spending target as a percentage of the total portfolio market value in order to

meet regular and predictable needs. The FPF Board of Directors' current policy, dated December 22, 2009, has set such spending target using a spending policy equal to four percent (4%) of the portfolio value calculated based on the average market value of the FPF endowment assets over the preceding twelve quarters. FPF shall provide the Director with a current copy of the FPF Investment Policy Statement. The FPF Board of Directors may change the FPF Investment Policy Statement and its annual spending target from time to time, subject to the provisions of Section 12 hereof. Subject to approval of the FPF Board of Directors, FPF shall periodically draft modifications to the FPF Investment Policy Statement with respect to significant new endowment contributions, to protect principal and prudently maximize spending from the FPF 2011 Endowment. FPF shall furnish the Director with a written copy of the changed or modified FPF Investment Policy Statement within ten days after a change or modification is adopted.

Maintenance: functions and services performed by the City and FPF within the Park, pursuant to this Agreement and the 2007 Maintenance Cooperation Agreement, including but not limited to design, acquisition, installation, fertilization, watering, pruning, mowing, repair and replacement of landscaping materials and equipment, repair and replacement of Park user amenities and facilities, including roads, lakes, waterways, bridges, sidewalks, play structures and equipment, sculptures and utilities.

Maintenance Steering Committee: the Forest Park Maintenance Steering Committee as defined in the 2007 Maintenance and Cooperation Agreement as the Director and the Executive Director; provided, the Maintenance Steering Committee shall establish a Finance and Operations Subcommittee, and a Capital Projects Subcommittee, and additional subcommittees determined to be necessary from time to time by the Maintenance Steering Committee, each subcommittee to consist of one designee of the Director and one designee of the Executive Director.

Master Plan: the City's 1995 Master Plan for Forest Park, as amended.

Operations: tasks and services performed by the City and FPF within the Park involving the use of the land and facilities within the Park, including but not limited to (i) Special Event support services as defined in this Agreement, (ii) coordination and development of traffic management plans, including traffic strategy, planning, circulation, traffic models and improvements, (iii) Park visitor services, including information, assistance and educational programs related to the Park and the institutions within it, (iv) Park recreational support services, including maintenance of park amenities and facilities including but not limited to athletic fields, open space, trails and other amenities, v) Park security; and vi) issuance of permits, concessions and leases for use of areas of the park as provided herein.

Park: the property of approximately 1,300 acres generally located between Lindell Boulevard, Kingshighway Boulevard, Oakland Avenue and Skinker Boulevard, owned by the City subject to rights of others, as more fully described in the Master Plan.

SLMFC: Saint Louis Municipal Finance Corporation, a non-profit corporation organized and existing under Ch. 355 RSMo.

Senior Vice President for Finance and Operations: (sometimes referred to herein as the "FPF Vice President"): an FPF officer hired to administer funds received by FPF.

Special Event: an organized event in the Park for which one or more City permits is required, i) involving use of the Park by 1,000 or more persons, or ii) which in the judgment of the Maintenance Steering Committee may cause damage necessitating non-routine maintenance or repairs of the Park.

2011 Net Investment Income: the amount of interest and dividends earned on the FPF 2011 Endowment, after the deduction of such amounts normally and customarily charged, including but not limited to, investment management fees, brokers' charges, custody and transaction expenses, accounting fees and any legal fees or other expenses directly attributable to establishment, management or protection of the new endowment funds, available (i) for Park expenditures pursuant to this Agreement, and (ii) for other FPF expenditures in the Park, provided that this amount shall not exceed the maximum annual amount permitted to be spent by the FPF Investment Policy Statement from the FPF 2011 Endowment.

2011 Park Maintenance Fund: a fund established by FPF pursuant to this Agreement, in which the payments received by FPF on the Forest Park Bonds shall be deposited.

2007 Maintenance Cooperation Agreement: the 2007 agreement between the City and FPF concerning the Park, which remains in full force and effect in all respects.

2007 Maintenance Trust Agreement: the 2007 agreement among the City, FPF and UMB Bank, N.A. relating to the deposit,

investment and disbursement of funds pursuant to the 2007 Maintenance Cooperation Agreement.

2. **TERM.** The Term of this Agreement (“**Term**”) shall commence on the Date of this Agreement and shall continue until the expiration of the Lease Purchase Agreement term under the Forest Park Bond Documents, unless earlier terminated or amended pursuant to Section 25 hereof; provided, however, that the provisions of Sections 3 through 37 hereof, inclusive, shall not be effective until the day after the Forest Park Bond Effective Date.

3. **DUTIES OF FOREST PARK MAINTENANCE SUPERINTENDENT AND DUTIES OF DIRECTOR**

A.

1. Management of Park Maintenance shall be under the general direction of the Forest Park Maintenance Superintendent, as hereinafter provided. On or before July 1 immediately following the Forest Park Bond Effective Date, FPF shall employ a Forest Park Maintenance Superintendent, whose general employment scope and responsibilities shall be determined by the Maintenance Steering Committee consistent with Exhibit A hereto and this Section 3.

The Forest Park Maintenance Superintendent shall:

- (i) provide advice to the Maintenance Steering Committee on the development of the Annual Program and Budget;
- (ii) provide direction and leadership for FPF staff performing the Annual Program;
- (iii) develop yearly objectives, performance measures, training programs, and work standards for FPF and Department staff relating to the Annual Program;
- (iv) report to the Director on the Superintendent’s observations of the performance of Department personnel;
- (v) report to the Executive Director on the Superintendent’s observations of the performance of FPF personnel;
- (vi) serve as a consultant and advisor to the Maintenance Steering Committee, including providing input and comment on Department and FPF staff performance involved in Park Maintenance and Operations duties.

2. FPF with input from the Director shall conduct annual performance reviews and appraisals of the Forest Park Maintenance Superintendent’s performance and deliver reports thereon to the Maintenance Steering Committee.

B.

1. The Director shall be responsible for the following tasks regarding the Park:

- (i) performance appraisals of Department staff and comments on FPF staff performance to the Executive Director;
- (ii) rewards, discipline or consequences placed on Department staff based on Department criteria, and
- (iii) supervisory responsibilities over areas which are solely under the control of the Department as described in Section 14 hereof.
- (iv) performance of supervisory duties as required by the City Charter and applicable ordinances.
- (v) provide input to the Executive Director on the Superintendent’s performance for use in performance review of the Superintendent.

2. The Director shall notify the Superintendent in advance of tree removals by the Department within the Park, so that FPF can respond to public inquires regarding such tree removals. If the City’s Forest Park Arboricultural Crew cannot perform tree removals on trees constituting a public hazard in a timely manner, the City agrees that FPF may perform or pay for acquiring additional services to perform such tree removals as part of the Annual Program with Annual Budget funds.

4. PERFORMANCE STANDARDS; INITIAL TASKS; MAINTENANCE ZONES

A. All Maintenance and Operations work performed by or on behalf of the Department and FPF shall be done using best efforts to provide the public with a quality urban park experience by keeping the Park and improvements therein in good condition and repair. All Maintenance and Operations work will be performed as provided herein and to the extent that funds are available in accordance with standards and procedures adopted by the Maintenance Steering Committee from time to time; provided, the initial standards and procedures are: the "Forest Park Management and Maintenance Plan", a collaborative effort with the City of St. Louis and Forest Park Forever also known as the "Spaid Plan", dated January 9, 2004; and "Forest Park Ground Maintenance Operations Manual prepared by the City of St. Louis Department of Parks, Recreation and Forestry" dated June 22, 2004 (the "**Manual**").

B. The initial responsibilities of the City and FPF relating to Park Maintenance and Operations have been divided into certain tasks identified in Exhibit B.

C. The areas of the Park in which FPF is presently authorized by the 2007 Maintenance Cooperation Agreement to have maintenance responsibilities are depicted in Exhibit C hereto. FPF may in future be authorized by the Maintenance Steering Committee to have maintenance responsibilities in additional areas of the Park as shown on Exhibit C pursuant to Annual Programs and Annual Budgets.

D. The initial Zone Management System procedures are set forth in Exhibit D.

5. ACQUISITION AND USE OF EQUIPMENT. During the term of this Agreement, FPF shall deed to the City or title in the name of the City, and the City will accept, equipment which has been acquired by FPF with funds budgeted pursuant to this Agreement. Each party hereto may upon reasonable prior request to the Maintenance Steering Committee or its designee, use such equipment, and the Equipment described in Section 7 of the 2007 Maintenance Cooperation Agreement, subject to its availability and compliance with any applicable rental, insurance or security agreements, and evidence satisfactory to the party in possession of the equipment that the proposed operator of the equipment has the skill and licenses needed for the use of such equipment. Each party agrees to exercise reasonable care in the use, operation and custody of the other party's equipment. Each party shall comply with all provisions of this Agreement in the use, operation and custody of the other party's equipment, and shall not be responsible for the cost of repairs or maintenance of the other party's equipment, unless the party using the equipment has been negligent in its use. If either party rents equipment, it will use reasonable efforts to cause the other party to be an additional insured on any insurance purchased in connection with the rental.

6. PERMITS, CONCESSIONS AND LEASES.

A. The Department shall continue to award, issue, manage and collect fees for permits, concessions and leases in the Park as per current Department practices as of the date hereof.

B. The parties agree that initial Standard Conditions for Special Events are set forth in Exhibit E hereto. Such standard conditions are subject to change by the Maintenance Steering Committee from time to time.

C. Within 48 hours after receipt by the Department of an application for a permit for a Special Event the Department will deliver a copy of such application and any special proposed conditions therefor to FPF. Within 48 hours of such delivery, if the application is for use of an area of the Park maintained by FPF, if FPF believes the Department's permit conditions are not sufficient to protect the Park and other users of Park facilities, the Maintenance Steering Committee shall develop revised or additional permit conditions, including but not limited to bond or insurance requirements, for such Special Event.

D. At least thirty (30) days prior to the execution of a new lease of part of the Park, (other than leases to any subdistrict of the Metropolitan Zoological Park and Museum District or the MUNY) or finalization by the Department of an advertisement and directly applicable documents for any concession in the Park, the Department shall provide FPF a written copy of the proposed form of the lease or advertisement for concession for FPF review and comment. FPF may provide written comment within fifteen (15) days thereafter.

E. FPF and the Department shall collect information on upcoming Park events and develop an annual comprehensive parkwide calendar, with appropriate periodic updates, to disseminate to the public. Subject to the prior approval of the Department, which shall not be unreasonably withheld, FPF shall also disseminate to the public information about general park activities, and information on services provided by the Department and the Park institutions and how to access such services.

F. The Forest Park Maintenance Superintendent shall provide FPF staff on an as needed basis to assist the Department in providing oversight of Special Events and Special Event permittees.

G. The Maintenance Steering Committee may conduct debriefing meetings and field evaluations and compile reports for its consideration after Special Events to assess damage to Park grounds or services provided for Special Events.

H. The Forest Park Maintenance Superintendent shall advise the Maintenance Steering Committee of excessive damage or abuse to Park grounds or facilities caused by Special Events or Park permittees, and shall advise the Maintenance Steering Committee of anticipated or incurred repair costs in excess of any permit deposits, bonds or insurance.

I. The Maintenance Steering Committee shall determine the Park areas available for Special Events, the activities permitted and standards for promotion and management of such events.

7. FPF FUNDRAISING EVENTS. The parties agree that FPF may use without charge locations throughout the Park for FPF fundraising events, the proceeds of which will be used to support FPF's obligations under this Agreement. Such fundraising events will not be considered Special Events or concessions, but the events and their location are subject to availability and the prior approval of the Director. FPF shall comply with generally applicable requirements and conditions on similar events held by other parties in the Park .

8. FPF FACILITIES AND AREAS FOR MAINTENANCE AND OPERATIONS.

Any provision of Ordinance 59741 (Ch.22.42, City Code) to the contrary notwithstanding, the City shall grant to FPF throughout the term of this Agreement a license for use of i) a minimum of two thousand seven hundred square feet (2,700 sq. ft.) of office space in an existing maintenance building within the Park without charge, and ii) storage space/parking for FPF vehicles, equipment and supplies in the Forest Park maintenance yard area located west of 5600 Clayton Road. FPF and the City acknowledge these space requirements are expected to grow as this Agreement is implemented, and the Department will, as reasonably possible, make additional space available to FPF to house additional staff and equipment.

9. REVIEWS OF PARK MAINTENANCE.

Beginning in the first full calendar year after the Forest Park Bond Effective Date and every third year thereafter, the Maintenance Steering Committee may in its discretion select a qualified independent expert to inspect and review the quality of Park maintenance of facilities, hardscapes, landscapes and any user amenities. Any retained expert shall make non-binding recommendations for the subsequent year's Annual Program and Annual Budget to the Maintenance Steering Committee in writing on or before December 31 of the year in which the expert is hired. Any reports requested by the Maintenance Steering Committee under this section shall comply with Maintenance Steering Committee instructions. The cost of expert services shall be borne by the City and FPF equally and shall be part of the Annual Program and Combined Annual Budget for the year in which the expert is hired.

10. ANNUAL PROGRAM AND ANNUAL BUDGET.

By February 1 of each year beginning in the first full calendar year after the Forest Park Bond Effective Date, and each year thereafter:

A. The Maintenance Steering Committee shall (1) review the expert reports, if any, provided for under Section 9 hereof, and public input received from time to time relating to Park maintenance and operations, (2) approve the Annual Program for the subsequent City fiscal year, (3) assess the fiscal requirements of the Annual Program for the subsequent City fiscal year, (4) approve an Annual Budget for the subsequent City Fiscal Year, and (5) agree to a future three year forecasted budget. In the event of emergency or pursuant to Section 12 or Section 13 hereof, the Maintenance Steering Committee may draft and approve revisions to the Annual Program and Annual Budget during a budget year.

B. The total Maintenance and Operations component of the Annual Budget shall not in any year exceed the sum of:

- (a) the \$1,800,000 payable by FPF under the 2007 Maintenance Trust Agreement,
- (b) the sum, currently \$2,000,000, donated by BJH to the 2007 Maintenance Trust under the BJH Trust Agreement,

- (c) the amount projected by the Maintenance Steering Committee as payable, subject to appropriation, by the City on the Forest Park Bonds, and
- (d) the 2011 Net Investment Income from the FPF 2011 Endowment.
- (e) proceeds of available gifts, grants or donations received by the City and FPF which are designated for specific uses in the Park.

11. LACK OF AGREEMENT ON ANNUAL PROGRAM OR COMBINED ANNUAL BUDGET.

In the event that the Maintenance Steering Committee has not agreed on an Annual Program and Annual Budget for the subsequent City fiscal year by April 30 of any year, the current City fiscal year's Annual Program and Annual Budget shall remain in effect to the extent of funds available, until a new Annual Program and Combined Annual Budget are agreed upon by the Maintenance Steering Committee.

12. FUNDING SHORTFALLS.

A. In the event the City fails to make payments as required on the Forest Park Bonds, or in the event FPF fails to make payments in the amounts provided under Section 20 (a "Shortfall" or a "Funding Shortfall"), and such failure continues throughout the remainder of the current Annual Budget year, then (i) the other party in its discretion may reduce its contributions to the Annual Budget for the following year by an amount proportionate to the Shortfall in the preceding year in the other party's payments, or (ii) the Maintenance Steering Committee shall draft revisions to the current year's Annual Program or Annual Budget to reflect the reduced sources due to the Funding Shortfall; or (iii) either party may terminate this Agreement on ninety (90) days written notice to the other party.

B. In the event the FPF Board of Directors adopts and reduces its annual spending target as described in the definition of FPF Investment Policy Statement in Section 1 to 2% or less of the portfolio value calculated based on the average market value of the FPF endowment assets over the preceding twelve quarters for more than one year or to a level which causes this Agreement to become unworkable in the reasonable judgment of the Director, then the City, in its discretion, may treat such reduction from the preceding year as (i) a Funding Shortfall under subparagraph A of this Section, or (ii) a material breach under Section 25 subsection D hereof.

13. FUNDING WINDFALLS.

In the event the City or FPF in any year during the term of this Agreement secures funds from sources set forth in Section 10 of this Agreement in excess of the amounts provided in the current Annual Budget from such sources, such party shall independently determine how much, if any, of such excess amount it is willing to commit to the Maintenance and Operations components of the current Annual Budget, after which determination the Maintenance Steering Committee may provide for use of such excess amounts in the Annual Budget.

14. SPECIAL CITY MAINTENANCE, REPAIR AND UTILITIES RESPONSIBILITIES.

A. Subject to appropriation from general City revenue, and subject to the provisions of Section 16 subsection D hereof, and except with respect to Park areas and facilities in or for which third parties are responsible for such costs and functions, throughout the term of this Agreement the City shall solely be responsible for all maintenance, repair and replacement costs related to parking lots, streets, street lighting, roads, sidewalks, utilities, water, sewers and security within the Park, and for the costs associated with water, gas, electricity, waste disposal, street and sidewalk paving, lighting, sweeping and salting, and snow management in the Park, unless otherwise specified in this Agreement and/or the Forest Park Bond Documents.

B. The Department shall notify the Maintenance Steering Committee reasonably in advance of performance of such special City maintenance, repair and utilities responsibilities and activities under sub-paragraph A of this Section, so that management of Park Operations and Maintenance can be coordinated with the provision of such City responsibilities and activities.

C. In the event the City reduces expenditures for maintenance, repair and utilities responsibilities and listed in subparagraph A of this Section in a City fiscal year to less than 50% of such expenditures by the City in the preceding City fiscal year, (a "Maintenance Shortfall"), then, without limiting any other remedies set forth hereunder or under the Forest Park Bond Documents, on sixty (60) days written notice to the City, FPF in its sole discretion (i) may reduce its payments of Annual Program

expenses, set forth in Section 20 subparagraphs B and C hereof, during the current or following year by an amount proportionate to the Maintenance Shortfall, or (ii) may reduce FPF's efforts in the Zone Management System undertaken during the term of this Agreement (but not its obligations pursuant to the 2007 Maintenance and Cooperation Agreement) for as long as such reduced sources due to the Maintenance Shortfall shall continue; or (iii) may treat the Maintenance Shortfall as a material breach under Section 25 subsection D hereof.

15. MINIMIZATION OF INTERFERENCE.

The parties agree that they will use reasonable efforts to ensure that interference with the other party's functions and responsibilities pursuant to this Agreement caused by their activities hereunder is minimized.

16. FUNDING OBLIGATIONS AND FPF DISBURSEMENT.

A. Throughout the term of this Agreement, the City and FPF shall use their best efforts to comply with their funding commitments hereunder. The parties will also use their best efforts to comply with procedures approved by the Maintenance Steering Committee regarding scheduling of payments and reporting.

B. Except as provided in Section 14, neither the City nor FPF shall be obligated to contribute funds: (i) for purposes not contained in the yearly Annual Program and Annual Budget; or (ii) for purposes in violation of a written specific restriction imposed by a donor or grantor.

C. FPF shall distribute funds for execution of the Annual Program pursuant to the Annual Budget and in accordance with the provisions of this Agreement. In the event of a payment dispute relating to a performance issue or disagreement relating to any expenditure approved in the current Annual Budget, FPF shall notify the Maintenance Steering Committee and may withhold payment for up to ten (10) additional days within which period the Maintenance Steering Committee may endeavor to resolve the dispute.

D. The parties agree that the Annual Budget and Annual Program shall include costs each year for direct expense categories listed below as items (i) through (v), which items shall not be eliminated unless agreed to by the Maintenance Steering Committee. The parties agree the total aggregate cost of such direct expense categories is expected to be approximately \$1,000,000 annually initially:

- (i) purchases of repair supplies or materials solely to perform services within the Park as agreed to in the Annual Program;
- (ii) rental of equipment within the Park, such as barricades as agreed to by the Maintenance Steering Committee,
- (iii) replacement of turf equipment solely for the Park as stated in the Annual Program,
- (iv) temporary contracts to repair a facility or equipment for use solely within the Park, such as HVAC systems, sewer cleaning, and professional service contracts such as engineering, architectural, turf maintenance, landscaping design services, or other service contracts necessary for facilities and/or Maintenance and Operations for the Department as approved by the Annual Program and Annual Budget;
- (v) a minimum of five hundred thousand dollars (\$500,000) shall be budgeted annually to cover the cost of emergency capital repair and other unanticipated capital needs.

E. Throughout the term of this Agreement, FPF agrees to develop financial operations procedures subject to approval by the Maintenance Steering Committee, such as for reviewing invoices, approving expenses and making timely payments. FPF agrees to amend such procedures from time to time, subject to approval by the Maintenance Steering Committee, to improve its services in these matters. Furthermore, FPF shall deposit in the 2011 Park Maintenance Fund the payments received by FPF on the Forest Park Bonds as they are received by FPF.

F. The Maintenance Steering Committee shall determine and specify the aspects of the Annual Program that constitute the Program pursuant to the 2007 Maintenance Cooperation Agreement and which shall be paid for pursuant to the financial processes set forth thereunder.

G. The City Comptroller may submit monthly invoices to FPF indicating Annual Program and Annual Budget tasks and services requiring payment.

17. CITY PAYMENT CONDITIONS.

The provisions of this Agreement are not intended to and shall not be construed to constitute a general obligation or debt of the City. FPF acknowledges and agrees that payments by the City provided for in this Agreement are subject to annual appropriation by the City's Board of Aldermen.

18. CITY PAYMENTS TO 2011 PARK MAINTENANCE FUND.

Pursuant to the Forest Park Bond Documents, the City agrees to make the payments on the Forest Park Bonds and FPF agrees to deposit such payments when received by FPF in the 2011 Park Maintenance Fund. Such payments to be made by the City shall be made in accordance with the terms of the Forest Park Bond Documents.

19. FPF FUNDRAISING.

Beginning on or before the Forest Park Bond Effective Date, FPF agrees it will use its best efforts to raise \$130,000,000 for the benefit of the Park from contributions not previously paid or pledged. FPF agrees shall publicly announce and conduct a fundraising campaign for such funds, which is anticipated to begin on or before the Forest Park Bond Effective Date, which campaign will continue in subsequent years thereafter consistent with this Section. The approximately \$20,000,000 which FPF currently has in its endowment shall not be included in the FPF 2011 Endowment Accounts for purposes of calculating 2011 Net Investment Income. Approximately as used in the remainder of this Section 19 means "within 10% of". Approximately \$100,000,000 of the new funds raised by FPF in its fundraising campaign starting in accordance with the provisions this Section shall be placed in the FPF 2011 Endowment for use in accordance with the provisions of this Agreement. Approximately \$30,000,000 of the new funds to be raised by FPF shall be provided to purchase the Forest Park Bonds.

FPF agrees to use its best efforts to raise such funds on the schedule set forth below:

- (i) Approximately \$30,000,000 for purchase of the Forest Park Bonds over a three year period to begin on or before the Forest Park Bond Effective Date.
- (ii) Approximately \$30,000,000 pledged to the 2011 Endowment on or before one year after FPF's fundraising campaign begins.
- (iii) Approximately \$30,000,000 additional pledges to the 2011 Endowment on or before two years after FPF's fundraising campaign begins, for a total of \$60,000,000.
- (iv) Approximately \$20,000,000 additional pledges to the 2011 Endowment on or before three years after FPF's fundraising campaign begins, for a total of \$80,000,000.
- (v) Approximately \$10,000,000 additional pledges to the 2011 Endowment on or before four years after FPF's fundraising campaign begins, for a total of \$90,000,000.
- (vi) Approximately \$10,000,000 additional pledges to the 2011 Endowment on or before five years after FPF's fundraising campaign begins, for a total of \$100,000,000.

FPF and the City acknowledge that money pledged over a five (5) year period to FPF set forth in this Section may be paid to FPF by donors over a ten (10) year period after FPF's fundraising campaign begins, for deposit in the FPF 2011 Endowment.

20. PAYMENT OF ANNUAL PROGRAM EXPENSES.

Annual Program expenses incurred by either the City or FPF shall be paid as follows:

A. Expenses which constitute the Program pursuant to the 2007 Maintenance Cooperation Agreement shall be paid for pursuant to the financial processes set forth under the Maintenance Cooperation Agreement, the BJH Trust Agreement and the 2007 Maintenance Trust Agreement, in the same manner in effect prior to the date of this Agreement.

B. Annual Program expenses incurred by FPF shall be paid by FPF.

C. Subject to the provisions of Section 16 hereof, beginning in the first full calendar year after the Forest Park Bond Effective Date, Annual Program expenses incurred or paid by the City in accordance with the Annual Budget approved in accordance with Section 10 hereof (including Annual Program expenses the City has paid from general revenue or other available funds) shall be paid by FPF within fourteen (14) days after submission of bills or requisitions by the City to the FPF Vice President.

21. FINANCIAL INFORMATION.

A. FPF shall provide the Director complete copies of its monthly financial statements and its yearly audit within fourteen (14) days of when it provides such statements and audits to the members of its Board of Directors, showing information including but not limited to FPF revenues, expenses and the status of its fundraising efforts without, however, disclosure of the specific information about any of its donors. FPF shall also provide the Director and the City's Comptroller its "Annual Report" within thirty (30) days of approval of such report by FPF's Board of Directors.

B. The City shall provide FPF complete copies of (i) its monthly financial data which the parties agree will be appropriate for FPF to review for due diligence regarding the Park, and/or (ii) its audits within thirty (30) days after such statements and audits are completed. The Department or its designee shall provide monthly financial reports to FPF detailing lease, permit, concession and special event revenues received within the Park. Such statements, audits and reports will be due to FPF no later than one (1) month after the end of the preceding month.

C. The Department shall submit as part of the city's budget process requests for appropriation based on the Annual Budget that would meet the City's obligations under this Agreement and under the Forest Park Bond Documents.

D. Upon approval by the Maintenance Steering Committee of each Annual Program and Annual Budget, the Maintenance Steering Committee shall notify the FPF Vice President and within thirty (30) days provide such FPF Vice President with a copy of such documents and any additional information deemed appropriate by the Maintenance Steering Committee concerning these matters.

22. FPF MAINTENANCE AND CAPITAL PROJECT EXCLUSIONS.

Except as set forth in (i) this Agreement or (ii) pursuant to the approved Annual Programs and Annual Budgets as approved from time to time by the Maintenance Steering Committee hereunder, (iii) the Lease dated November 6, 2002, from the City to FPF of the Visitor Center and (iv) the Cooperation Agreement dated November 1, 2005, regarding the Variety Club Children's Playground, FPF shall have no duties, responsibilities or obligations with respect to the construction, maintenance and operation of any utilities, facilities, improvements, areas or zones in the Park or any part of the Park and agrees to not perform any Maintenance, Operations, alteration or repair work of any kind whatsoever within the Park unless agreed to by the Maintenance Steering Committee or required under the 2007 Maintenance Cooperation Agreement, contracts pertaining to the Boathouse, or any agreement relating to a project wholly funded and overseen by FPF.

23. INDEPENDENT CONTRACTOR STATUS.

The parties agree that FPF is an independent contractor. As such, FPF must adhere to the City of St. Louis "Living Wage" ordinance, the City's executive order(s) relevant to minority participation in contractual agreements and to any federal or state laws that relate to "prevailing wage" issues. Work performed by FPF under this Agreement must not displace current City employees currently performing these tasks. It is understood and agreed that all personnel employed by FPF are employees of FPF and are not employees of the City, and that all personnel employed by the City are employees of the City and not employees of FPF, and that FPF alone is responsible for the work of FPF employees direction, compensation and personal conduct and the City alone is responsible for the work of the City employees, direction, compensation and personal conduct, while engaged pursuant to this Agreement. FPF agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or employee retirement system membership or retirement credit or benefit. The City agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of FPF, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of FPF, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or employee retirement system membership or

retirement credit or benefit. Except as provided in Section 32 hereof, nothing in any provision of this Agreement shall be construed to impose any liability or duty upon either party to persons, firms or corporations employed or engaged by the other party as employees, servants, agents, consultants, experts or independent contractors or in any other capacity whatsoever, or to render either party liable to any persons, firms, corporations, associations or to any government for any acts, omissions, liabilities, obligations (including those relating to taxes of any nature and unemployment insurance) of the other party or its consultants, experts, employees, servants, agents or independent contractors.

24. DISPUTE RESOLUTION.

If the City and FPF have a dispute regarding compliance with the terms and conditions of this Agreement which cannot be resolved by the Maintenance Steering Committee within thirty (30) days after it meets to consider the matter, the parties hereto agree to each prepare within two (2) weeks thereafter a written report regarding the nature of dispute and the party's proposed resolution, and submit such reports to a panel consisting of (i) the Mayor of the City of St. Louis or his/her designee, (ii) a designee chosen by the Executive Committee of FPF, and (iii) a person chosen and agreed to by the first two members of such panel. To the extent permitted by law, such panel shall have the sole authority to resolve the dispute.

25. BREACHES AND REMEDIES.

- A. It shall be a breach of this Agreement by FPF if FPF:
- i. fails to make a timely payment as required herein or a Donation as provided under the 2007 FPF Trust Agreement;
 - ii. fails to perform any act required by this Agreement or takes any action prohibited by this Agreement;
 - iii. makes any false representation of a material fact or matter to the City;
 - iv. fails to pursue its fundraising campaign as provided in this Agreement;
 - v. fails to use its best efforts to maintain its Missouri nonprofit corporate and Federal tax-exempt status;
- B. It shall be a breach of this Agreement by the City if the City:
- i. causes to occur an Event of Default, as defined in Forest Park Bond Documents;
 - ii. fails to perform any act required by this Agreement or takes any action prohibited by this Agreement;
 - iii. makes any false representation of a material fact or matter to FPF.
- C. CITY AND FPF REMEDIES. The parties each acknowledge that the other will act in reliance on the promises and undertakings expressed in this Agreement and, in doing so, will invest and expend significant amounts of money on property heavily used by the general public. FPF further acknowledges that it is a public benefit corporation under Chapter 355 R.S. Mo. and that its contributions and donations are made for the benefit of the Park and received by it pursuant to the specific terms and conditions imposed in some cases from time to time by its donors and grantors. Accordingly, the parties agree that in the event of a material breach of this Agreement by the other, in addition to all available remedies at law, the other party shall be entitled to seek mandatory equitable relief, but said party remains free in all respects to defend on the merits of its claim.
- D. This Agreement may be terminated by either party on ninety (90) days written notice to the other party for any material breach of this Agreement.

26. APPOINTMENTS OF KEY PERSONNEL.

A. FPF will notify the Director in writing within seven (7) days of appointments to or occurrence of vacancy in the positions of FPF President and Executive Director, Senior Vice President for Finance and Operations, Annual Fund Manager, and Park Operations Manager. In addition, FPF will notify the Director in writing, within ten (10) days of the occurrence of any change in the membership of the Board of Directors and Executive Committee of FPF.

B. The Department will notify the Executive Director in writing within seven (7) days of appointments to or occurrence of vacancy in the positions of Director, Commissioner of Parks, Commissioner of Recreation and Commissioner of Forestry.

27. REPORTS AND NOTICES.

FPF shall prepare and provide to the Department such reports on its operations and maintenance activities in the Park as reasonably requested by the Director, and reports of major accidents or unusual incidents involving employees and/or agents of FPF occurring in the Park, on a regular basis and in a form reasonably acceptable to Director. FPF shall promptly notify the Department, in writing, of any claim for injury, death, property damage or theft which may be asserted against FPF with respect to the Park for which indemnification is not sought by FPF pursuant to this Agreement. Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required or authorized to be given by this Agreement if the same is duly mailed by first class, certified or registered mail, addressed as follows, or to such other addresses or persons as the parties may designate from time to time:

To the City: Department of Parks, Recreation and Forestry
5600 Clayton Road (Forest Park)
St. Louis, Missouri 63110
Attn: Gary Bess, Director
Fax: (314) 535-3901

and City Counselor's Office
314 City Hall
1200 Market Street
St. Louis, Missouri 63103
Attn: City Counselor and
F. M. Oates, Esq.
Fax: (314) 622-4956

and Daniel Skillman
Parks Commissioner
Department of Parks, Recreation & Forestry
5600 Clayton Road
St. Louis, Missouri 63110

To Forest Park Forever, Inc.
5595 Grand Drive
St. Louis, Missouri 63112
Attn: Lesley Hoffarth
President and Executive Director
Fax: (314) 367-7622

And Bill Reininger
Park Operations Manager
Forest Park Forever, Inc.
5595 Grand Drive in Forest Park
St. Louis, Missouri 63112

With a copy to: S. Jerome Pratter, Esq.
805 Louwen
St. Louis, Missouri 63124

28. INSURANCE.

A. FPF, at its own cost and expense, shall procure and maintain on file with the City's Comptroller at all times during the term of this Agreement Certificates of Insurance as specified in Subparagraph B of this Section, which policies shall name FPF as insured.

B. (i) Commercial General Liability Insurance (to include premises, operations, products and completed operations and personal and bodily injury including death) shall be provided in the initial minimum amounts specified below and include “the City of St. Louis officers, agents, and employees” as additional insureds for on-going operations only.

Coverage

Each Occurrence	Aggregate
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Combined Single Limit Bodily Injury/Property Damage

\$ 1,000,000	\$ 2,000,000
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Excess Liability

\$ 2,000,000	\$ 2,000,000
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(ii) Worker’s Compensation	Missouri Statutory limits
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(iii) Comprehensive Automobile Liability. FPF shall carry automobile liability and property damage insurance with limits of liability and for types of vehicles further described herein and with the City of St. Louis, its officials, agents and employees as additional insureds:

Each Occurrence	Aggregate
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\$ 1,000,000	0
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This Automobile insurance shall include bodily injury and property damage for:

- (i) owned automobiles
- (ii) hired automobiles
- (iii) non-owned automobiles
- (iv) personal property insurance on personal property, furnishings and equipment owned by FPF at replacement cost coverage.

C. All Certificates of Insurance shall state that prior to cancellation of any FPF insurance policy, the City shall be given thirty (30) days prior written notice.

D. Any insurance required to be carried under this Agreement may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this Agreement and to prior written approval of the City’s Comptroller.

E. If at any time any of the insurance policies required by this Section shall fail to satisfy the requirements of this Section as to form or substance (including coverage amounts) or if a company issuing such policy shall have a Bests’ Rating of less than B 12, FPF shall, upon notice to that effect from the Comptroller, promptly obtain a new policy and submit same for approval to the Comptroller, provided, however, that within ten (10) days of receipt of notice to such effect from the City, FPF may notify the City that it disputes the content of such notice. In that event, such issue shall be resolved within forty five (45) days by a panel consisting of the Comptroller or a designee, a designee of FPF and an insurance broker doing business in the metropolitan St. Louis area jointly selected by the Comptroller or designee and FPF within ten (10) days of FPF’s notice under this paragraph.

F. FPF shall also procure and maintain Employers Liability Insurance with limits of \$1,000,000 per accident.

G. FPF in its sole discretion may require its subcontractors who perform work for FPF pursuant to this Agreement and in connection with FPF’s responsibilities in the Park to procure and maintain a policy of commercial general liability insurance with such limits as may be requested by the Director from time to time, but not less than \$1,000,000 combined single limit for bodily injury or property damage for Commercial General Liability Each Occurrence \$2,000,000 Annual Aggregate plus \$2,000,000 Each

Occurrence \$2,000,000 Annual Aggregate for Excess Liability. Any policy or policies evidencing such insurance shall include the Department, the City, FPF, and their officers, trustees, employees, volunteers, and agents as additional insured parties, and FPF shall require its subcontractor(s) to provide FPF with a Certificate of Insurance naming such additionally insured parties prior to the execution of any agreement with FPF. All policies to be maintained pursuant to this Agreement shall be issued by an insurance company or companies authorized to do business in the State of Missouri having a Best's rating of at least A-(7) or a Standard & Poors rating of at least AA.

H. FPF shall also require the following terms and conditions to be written into all subcontractors' policies of insurance as riders:

- (a) The policies shall not be canceled, terminated or modified unless thirty (30) days prior written notice is sent by certified mail to FPF;
- (b) Notices of claim shall be given by such subcontractor to its insurance company within 120 days after such claim is filed with the City;
- (c) The subcontractor shall defend, indemnify and hold harmless the Department, the City, FPF, their officers, trustees, employees, volunteers, and agents from any and all claims, suits, demands or judgments by reason of property damage or personal injuries, including death, arising out of or as a result of subcontracts under this Agreement.
- (d) The subcontractor waives all rights of subrogation against the Department, the City, FPF, their officers, trustees, agents, volunteers, and employees.

I. From time to time, but not more frequently than once every five (5) years, the levels or nature of insurance required to be maintained by FPF or its subcontractors under this Section shall be reviewed upon the written request of the City's Comptroller or FPF to determine whether such levels or nature of coverage are consistent with those maintained by other parties in similar activities in similar locations and with the parties' claims experience and the levels or nature of required coverages shall be reasonably adjusted.

J. At any time during the term of this Agreement, upon written notice from the City's Comptroller that the limitations on liability of the City under Section 537.610 R.S. Mo have been increased pursuant to Subsection 537.610.5 above the levels of coverage provided by FPF at the time of such notice, FPF shall within ten (10) business days cause its and the City's liability coverage to be changed to the amount determined pursuant to Subsection 537.610.5, and shall provide evidence of such increase to the Comptroller.

29. NON-DISCRIMINATION; MBEs/WBEs. FPF shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, age, national origin, disability, marital status or sexual orientation. FPF agrees that the Mayor's Executive Order #28, as amended, shall be applicable to this Agreement and to its contractors and subcontractors.

30. CONFLICT OF INTEREST.

FPF represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. FPF further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, by the City, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which such person is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

31. RESERVATION OF RIGHTS AND INTERESTS; PUBLICITY.

A. Public Events. The parties will make reasonable efforts to give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to this Agreement.

B. Public Communications. In any statement or release made to the public relating to this Agreement, each part shall acknowledge the involvement of the other party. If the Director or the Executive Director determines that any release, advertisement,

or statement made to the public relating to programs and activities conducted in or relating to the Park is incorrect or unacceptable, the Director or the Executive Director, shall, upon receiving notice, use reasonable and timely efforts to revise such release, advertisement or statement so that it shall be accurate and acceptable to both parties.

C. Publications. If either party publishes a work discussing any aspect of performance of any service covered by this Agreement, each party will acknowledge therein the involvement and role of the other party, and each party will have a royalty-free right and appropriate license to reproduce, publish or otherwise use such publication.

32. INDEMNIFICATION

A. To the extent permitted by law, City agrees to indemnify and hold harmless FPF, its officers, directors, employees, and volunteers from and against any and all liabilities, obligations, damages and expenses arising as a result of or in the course of services performed and activities conducted by FPF pursuant to this Agreement, to the extent attributable to the negligence or wilful misconduct of the City, its officers or employees.

B. To the extent permitted by law, FPF agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all liabilities, obligations, damages and expenses arising as a result of or in the course of services performed and activities conducted by the City pursuant to this Agreement, to the extent attributable to the negligence or wilful misconduct of the FPF its officers, directors, employees, volunteers, agents or subcontractors.

C. Both parties shall cooperate and assist the other in notification concerning, and in the review, adjudication and/or settlement of all claims and actions against the other party subject to the indemnity obligations outlined in this paragraph and shall provide all documents, incident and/or accident reports and such other assistance as is necessary for the formulation and presentation of any defense pursuant to the indemnity obligations outlined herein.

33. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS.

The parties agree to comply with the Master Plan and all applicable laws, ordinances, rules, regulations, requirements, guidelines, directives, instructions and orders which are issued by duly authorized officials or agencies of the United States, the State of Missouri and the City of St. Louis.

34. GOVERNING LAW.

This Agreement shall be construed in accordance with and be governed by Missouri law.

35. SEVERABILITY.

The provisions of this Agreement are severable. In the event one or more provisions hereof is finally decreed to be or otherwise becomes unenforceable, the other provisions hereof shall remain in effect unless without the unenforceable provisions the essential nature of this Agreement is altered.

36. NO ASSIGNMENT.

No assignment of this Agreement by FPF or the City, in whole or in part, will be effective unless it is agreed to in advance, in writing, by both the City and FPF.

37. MODIFICATION.

No waiver, modification or amendment to any provision of this Agreement will be effective unless it is duly authorized, in writing, and signed by duly authorized representatives of both the City and FPF.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first set forth above.

FOREST PARK FOREVER, INC

THE CITY OF ST. LOUIS, MISSOURI

By: _____

By: _____

Mayor, City of St. Louis

Title: Chairman of Board

By: _____
Comptroller, City of St. Louis

By: _____

Title: President and Executive Director

By: _____
Director of Department of Parks,
Recreation and Forestry of the City of St. Louis

Special Counsel

APPROVED AS TO FORM:

S. Jerome Pratter

City Counselor

ATTEST:

Register

EXHIBIT A

**INITIAL ORGANIZATION STRUCTURE
FOR PARK COOPERATION**

Is on file in the Register Office.

EXHIBIT B

Initial Tasks to be Performed by the City of St. Louis Parks Department and Forest Park Forever

City of St. Louis Parks Department to:

Park Operations:

Trash Removal

- Empty trash receptacles
- Remove loose litter

Restrooms

- Maintain, clean, and stock Comfort Stations

Permitted Event Set-up & Break-down

- Set-up and break-down City permitted events

Turf

- Maintain, repair and replace soft and grass paths in Natural Areas
- Maintain, repair and replace turf

Sports Field Maintenance

- Maintain fields and dugouts for sports and events
- Drag and maintain infields

Snow Removal

- Snow removal on streets, lots and walks

Greenhouse

- Plan, acquire, grow and maintain plant collections for displays, gardens and other floral installations throughout the City.
- Provide bench space for FPF annuals and perennials

- Hold and maintain FPF tropical plants over winter months

Jewel Box

- Maintain, repair, design and replace seasonal displays in Jewel Box

Forest Park Arboriculture Crew

- Responsible for medium and large tree pruning and removal
- Tree mulching, watering, and planting to be done in conjunction with FPF
- Responsible for tree health care practices
- Responsible for keeping the tree inventory and Tree Planting Master Plan current

Exhibit B Page 1

City of St. Louis Parks Department to:

Facilities Maintenance:

Building Maintenance

- Maintain and clean Concession Stands
- Maintain and repair all structures and facilities not within leaseholds

Irrigation Repair & Maintenance

- Repair and replace irrigation systems

Equipment/Vehicle Maintenance

- Maintain all equipment and vehicles used in maintenance activities, solely in Forest Park, in functional condition

Hardscapes (benches, paths, trails, etc.)

- Maintain, repair and replace features in Turtle Playground
- Maintain and repair statues, monuments, and fountains
- Maintain, repair and replace trails
- Maintain and replace fencing
- Maintain, repair and replace Racquetball and Handball courts including asphalt aprons
- Maintain, repair and replace water control structures in Natural Areas
- Maintain, repair and replace concrete structures (railings and steps) at Grand Basin

Fountains

- Maintain, repair and replace water features

Drinking Fountains

- Maintain, repair and replace drinking fountains

Signage

- Lot striping
- Maintain and replace directional, wayfinding, and interpretive signage

Playground Maintenance & Inspections

- Maintain, replace and perform safety inspections (except Variety Wonderland Playground)

Statue Maintenance

- Maintain and preserve statues and monuments, including bases and pedestals

Decorative Lighting

- Maintain and replace all lighting used to enhance structures and facilities

Mechanical Services (Mechanic, Plumbing, etc.)

- Perform all activities related to plumbing, electric, carpentry, and painting required to repair and maintain Park amenities

Park Rangers:

- Perform activities related to Park security and law enforcement
- Monitor Park permit holders activities and enforce permit regulations

Exhibit B Page 2

Forest Park Forever to:Small tree care

- Perform small tree pruning
- Tree mulching, watering, and planting to be done in conjunction with FPAC. Tree plantings to be done in accordance with plans agreed to by both parties.

Ornamental beds

- Design, install and maintain plantings in annual beds
- Design, install and maintain perennial and ground cover plantings
- Perform maintenance (such as weeding, watering, edging, mulching, etc.) in landscape beds
- Perform maintenance (such as pruning, replacing, rejuvenation cuts, etc.) on woody plant material in zones

Turf

- Employ a Turf manager to oversee all Park turf maintenance

Litter

- Supply trash receptacles
- Remove loose litter
- Transport trash receptacles to side of street to be emptied by City

Nature Reserve Maintenance

- Maintain, repair, replace and increase natural plantings throughout the Park in accordance with plans approved by both parties.
- Perform control measures on invasive plants
- Adjust Stop Log Structures to maintain proper water levels in Natural Areas
- Coordinate wildlife management
- Perform high mowing in Natural Areas

Aquatic Management

- Monitor and maintain aquatic ecosystems
- Dredge to retain depth of Post-Dispatch Lake as designed

Irrigation Operations

- Maintain and operate irrigation systems

Jewel Box

- Provide tropical interior-landscape maintenance for Jewel Box

Hardscapes

- Maintain, repair and replace paths (asphalt and soft) including bollards in the Dual Path system
- Maintain, repair and replace donor benches and concrete pads
- Maintain, repair and replace stone slab bridges

Playground Maintenance & Inspections

- Maintain, perform safety inspections and repair Variety Wonderland Playground

Event Coordination

- Work with all stakeholders within the Park to coordinate a Master Calendar
- Maintain a "Forest Park" website

EXHIBIT C
ZONE MANAGEMENT SYSTEM MAP

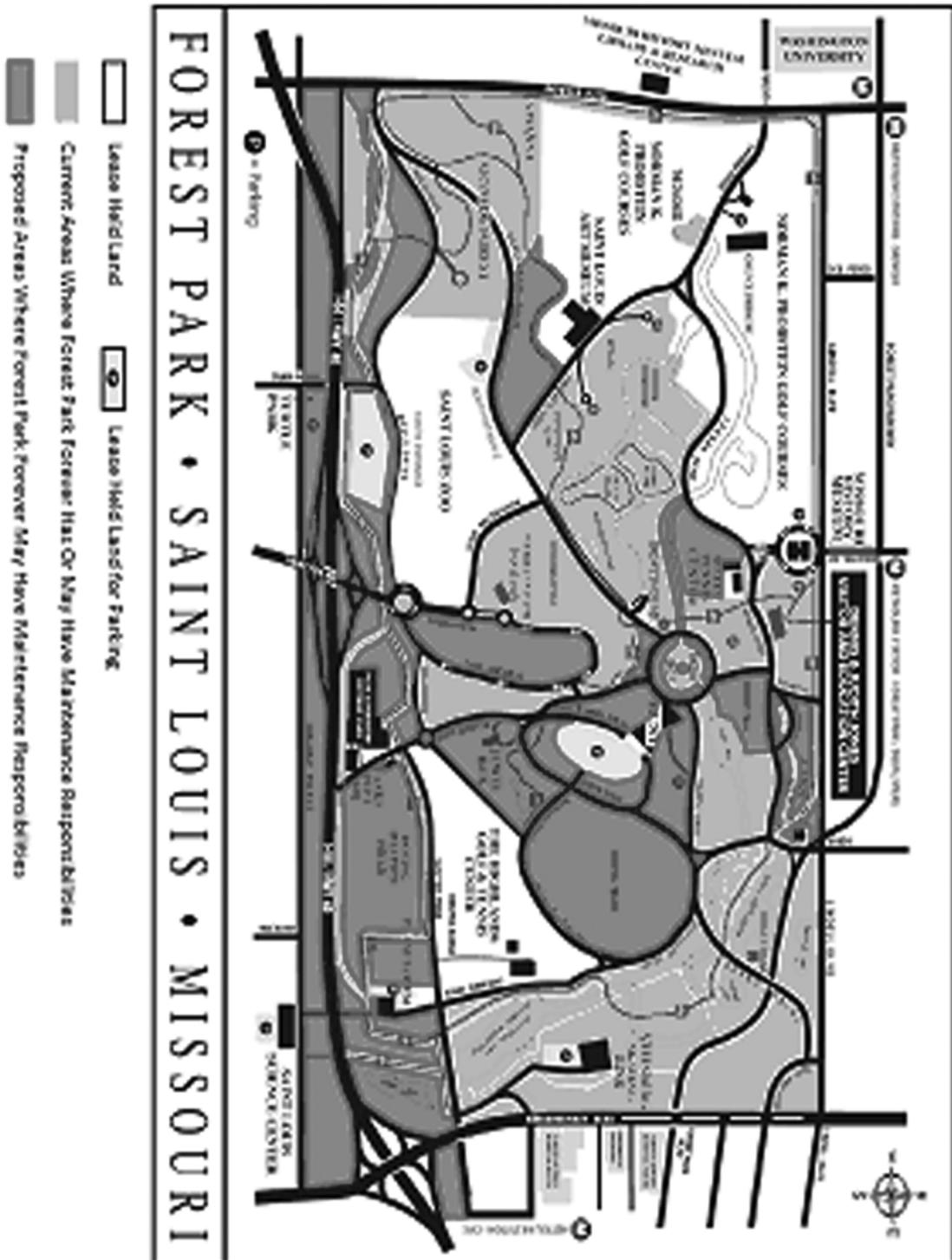


EXHIBIT D**ZONE MAINTENANCE PROCEDURES**

The "Forest Park Management and Maintenance Plan", a collaborative effort with the City of St. Louis and Forest Park Forever also known as the "**Spaid Plan**", dated January 9, 2004; and "Forest Park Ground Maintenance Operations Manual prepared by the City of St. Louis Department of Parks, Recreation and Forestry" dated June 22, 2004 (the "**Manual**") includes lists of standards, procedures, employee positions, trades, equipment, tools, vehicles and services to be included from time to time in the Annual Program and Combined Annual Budget as approved by the Maintenance Steering Committee. Throughout the term of this Agreement, the parties shall use their best efforts to increase Park Maintenance and Operations contained in the Annual Program and Combined Annual Budget and comply with the Spaid Plan and Manual. FPF shall evaluate, modify and recommend to the Maintenance Steering Committee the dates and future timeline FPF shall perform its additional scope and responsibilities.

EXHIBIT E**STANDARD CONDITIONS FOR SPECIAL EVENTS**

1. Permittees are subject to rules of the Department, the specific terms and conditions of their permit, and all applicable City, State and Federal laws and regulations.
2. Permittees must have their permit in their possession during the Event.
3. Permittees must conform their event to the times and location stated in their permit.
4. Permits may be suspended up to and at the time of the permitted event by the Department if exigent circumstances arise.
5. Permits are not transferable.
6. If Permittees intend to drive vehicles such as buses, trucks, or delivery vans into the Park for their event the permit must include the conditions regarding the use and parking of such vehicles.
7. Permittees are responsible for the cleanup and restoration of their site [and the surrounding area] after the event and the costs associated with the cleanup and/or restoration of the site after the event shall be borne by the Permittee if the site is not cleaned up adequately as determined by the Department.
8. Permittees shall be held liable for any and all damages to property and injuries to persons that may occur as a result of the event. By accepting a permit, Permittees agree to indemnify and hold harmless the City and the Department and FPF for any and all claims whatsoever that may result from such use.
9. Permits are subject to cancellation or relocation to another site by the Director at any time if conditions exist that will increase the likelihood of damage to the Park.
10. Permittees may be required by the Department to post bond or other surety or assurance payable to the Department to pay for any anticipated damage to the Park solely as determined by the Department. The amount of the bond will be determined by the Department based upon the size of the event, the length of the event, the time of year of the event, the nature of the event, the number of people expected to attend the event, prior experience with similar events, and whether the event presents a high risk of damage to the Park.

Approved: December 6, 2011