

DONATION AND CONSTRUCTION AGREEMENT

THIS DONATION AND CONSTRUCTION AGREEMENT (“Agreement”) is made and effective as of the date last written below by and between **City of Culver**, an Oregon municipal corporation (“City”) and **Darlene Urbach Memorial Youth Fund**, an Oregon public benefit corporation (“Urbach”). Each of the City and Urbach may be referred to as “Party” and collectively “Parties.”

RECITALS

- A. Whereas, City is supporting the creation of a recreational area that will include a skate park, bike pump track, pickleball court, and parking facility (“Project” or “Project Improvements”) to enhance its City park system and City residents with recreation that will contribute to the City’s health, fitness, and wellbeing.
- B. Whereas, Urbach has solicited private donations for the purpose of constructing a skate park and pickleball court within the Project.
- C. Whereas, third-party funds were provided for the purchase of real property located within the City of Culver (“Property”), which is described on Exhibit A, attached hereto and incorporated herein.
- D. Whereas, the City owns the Property and it is within the City park system.
- E. Whereas, the City was awarded a grant of \$750,000.00 from the Oregon State Parks for the Project.

NOW, THEREFORE, in consideration of the Independent Consideration, and the mutual covenants and agreements contained herein, including the recitals which are incorporated herein by reference, which are relied upon by Parties and which constitute part and parcel of this Agreement; and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged by the Parties, the City and Urbach hereby agree as follows:

I. **Parties’ Responsibilities**

- A. **Funding.** City shall be responsible to cover the costs of design and construction of the Project, including, but not limited to, unforeseen construction conditions, and unexpected costs regarding utilities, soil, permit requirements and the like. Any costs related to design prior to the effective date of this Agreement at their initiation or request, shall be the sole responsibility of Urbach, including but not limited to that certain Agreement with Dreamland Skateparks, LLC dated March 23, 2023.
- B. **Urbach Commitment.** Urbach hereby agrees to provide City with \$140,500.00 for the exclusive use of the construction of the Skate Park and \$71,000.00 for the exclusive use of the construction of the pickleball court. Urbach shall provide City with the funds on or before 30 days from the execution of this Agreement. Said funds shall be a donation to the City of Culver

and no ownership rights of the Improvements or the Project shall result thereof. Any additional funds raised by Urbach for the Project shall be provided to the City within thirty (30) days of receipt of the funds and shall be designated as to what facility the funds are to be contributed to.

C. **City Commitment.** City hereby agrees to provide Urbach proof of expenditures within ten (10) days documenting the funds from Section I(B) have been spent exclusively for the identified facility. In the event that this Agreement is terminated, then any funds not expended shall be returned to Urbach.

D. **Project Construction.**

1. The plans and specifications for the Project must receive the prior written approval of the City Planning Commission, City Park Committee, and City Engineer, or their respective designee, and the written approval of the City Engineer is required for all construction documents and final selections of building materials prior to construction, which approval shall not be unreasonably delayed or withheld.

2. City shall undertake the construction of the Project, including but not limited to, the site survey, tree protection, site preparation and demolition, grading, concrete, signage, site furnishings, and installation of improvements. City, or City's contractor, shall be responsible for the work, which includes but is not limited to:

a. The contracting with the General Contractor for performance of the Project.

b. Require the General Contractor to warrant that the construction of the Project was in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction of the Project and to indemnify the City and require the architect to warrant that the design and specifications for the Project are in accordance with generally recognized engineering or safety standards in existence at the time of the construction of the Project and require the architect to indemnify the City and to provide the City with the insurance coverages in conformance with the indemnification and insurance requirements as specified by the City. City shall require the General Contractor and architect (1) to provide the City with a certificate of insurance verifying the General Contractor's compliance with this coverage requirement and to provide the City with a certificate of insurance verifying the architect's compliance with this coverage requirement at least two weeks prior to the beginning of any work by the contractor.

c. The hiring of all contractors/subcontractors and/or suppliers and the purchasing of all materials for the installation/construction of the Project.

d. The scheduling and supervision of all work.

e. The timely payment of all fees, costs, charges, and expenses associated with this work, including all required permit fees.

f. City shall require any contractor or subcontractor to secure the site in a manner which is reasonable under the circumstances during the entire construction of the Project.

g. City shall require the General Contractor to comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Without limiting the generality of the foregoing, City shall require its General Contractor to expressly agree to comply with:

1. Title VI and VII of Civil Rights Act of 1964, as amended;
2. Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
3. Health Insurance Portability and Accountability Act of 1996;
4. Americans with Disabilities Act of 1990, as amended;
5. ORS Chapter 659A; as amended;
6. All regulations and administrative rules established pursuant to the foregoing laws;
and
7. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

h. City shall restore the site used for construction of the Project and construction staging area to the same condition or better as prior to the start of construction activities.

3. In the event that during the grading period of the construction process, City becomes aware of a condition of the Property which City could not have reasonably anticipated, such as an environmental hazard or protected historic artifacts, the costs of which to remediate or accommodate would be prohibitive relative to the total costs of the project, City shall have the right to terminate this Agreement. Upon such termination, City shall restore the Project in accordance with section I.B.2.h above and Urbach shall be entitled to a refund of all funds provided.

4. The City and Urbach shall mutually agree to the date and time for a ground breaking ceremony date.

E. **Fundraising.** The City reserves the right for prior review and approval of any City of Culver name or logo to be used on any fundraising items or promotional or advertising materials, with such consent shall not be unreasonably withheld or denied. Urbach agrees not to alter in any manner the names or logos approved by the City.

F. **Naming of the Improvements.**

1. The Project Improvements shall be designated per a name recommended from Urbach and approved by City Park Committee and City Council. Signage indicating names will be displayed on the Property. Such signage location and working must receive the approval of Urbach and Culver Park Committee prior to installation. Naming recognition is subject to future change/reconsideration by the City if recognition becomes damaging to the City's reputation.

2. Urbach shall have the right to install a donor recognition plaque, on the site with the location, working, size and design subject to approval of the Culver Park Committee, and the costs of such sign will be paid by Urbach.

G. Maintenance of Improvements

1. City shall maintain the Project Improvements consistent with how it maintains other similar improvements in the City. Urbach understands that maintenance, repairs and replacement of the Project Improvements are at the City's sole discretion and are subject to funding approved by the City Council.

H. Operation of the Project as a City Park

1. Urbach understands that the City will establish the rules, hours of operation and any program events at its discretion and will enforce such rules and City ordinance as determined by the City to be in the best interests of the City.

2. The City agrees that the uses allowed on the Property will be in substantial conformance with the then current park and recreation standards.

I. Preservation of Records and Access to Accounts. Urbach shall keep and preserve for at least 12 months after the end of each calendar year all deposit slips or such other evidence of donations and any funds received. City shall have the the right at any time upon reasonable notice to Urbach to audit all of the books of account, bank statements, documents, records, returns, papers and files of Urbach relating to donations received by Urbach. The purpose of this clause is to ensure compliance with Section I(b).

II. Encumbrances and Liens. Neither Urbach, nor anyone claiming by, through, or under Urbach shall have the right to file or place any mechanic's lien or any other lien of any kind or character whatsoever upon the Project Improvements, the underlying real property, or any City property. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any materials, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien thereon.

III. Indemnification. The City shall accept liability for the Project Improvements to the same extent as with other City owned park and recreational facilities in accordance with Oregon law and shall hold Urbach harmless with respect to any such liability.

IV. Term. This Agreement shall be considered to be fulfilled upon completion of the construction and City Council acceptance of the Project Improvements, subject to the continuing requirements pursuant to Sections III and I.E of this Agreement.

V. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual consent of the Parties and their successors in interest.

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VI. Miscellaneous Provisions.

A. Notices. A notice or communication under this Agreement by either party shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, and

1. In the case of a notice or communication to Urbach, address as follows:

Darlene Urbach Memorial Youth Fund
21075 Scottsdale Drive
Bend, OR 97701
Email: urbachb@helenaagri.com

In the case of a notice or communication to the City, addressed as follows:

City of Culver
PO Box 368
Culver, OR 97754
Attn: City Recorder
Email: cityhall@cityofculver.net

With a Copy to:

Jered Reid
35 SE C Street, Suite D
Madras, Oregon 97741
Email: jeredwreid@gmail.com

or addressed in such other way in respect to a party as that party may, from time to time, designate in writing dispatched as provided in this section.

2. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

3. Waivers. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by City, or Urbach of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

4. Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees,

costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceeding in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

5. Time of the Essence. Time is of the essence of this Agreement.

6. Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

7. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on a Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

8. Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9. Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

10. Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Jefferson County, or the United States District Court for the District of Oregon.

11. Good Faith and Reasonableness. The Parties' intent that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

12. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties agree to cooperate in defending such action.

13. Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the party to be excused.

14. No Third-Party Beneficiaries. City and Urbach and their successors and assigns are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

15. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf") format shall be effective as delivery of a manually executed counterpart of this Agreement.

17. Entire Agreement. This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made effective for all purposes as of the last execution date.

CITY:

URBACH:

By: Bart Carpenter
Its: Mayor

By: Brett Urbach
Its President

Date: _____

Date: _____

By: Melodie Urbach
Its Secretary

Date: _____