

LIVINGSTON PLAYGROUND EQUIPMENT DONATION AGREEMENT

THIS DONATION AGREEMENT (the “Agreement”), effective as of this ___ day of November, 2020, is between the city of the Village of Minnetonka Beach, a Minnesota municipal corporation (the “City”), and Lauren Livingston, a natural person (the “Donor”). The City and the Donor shall each be referred to herein as a “Party” and shall be collectively referred to as the “Parties.”

WHEREAS, the City owns and operates Half Moon Park (the “Park”) which currently contains certain playground improvements which are included in the City’s capital improvement plan for replacement within the next few years; and

WHEREAS, the Donor has approached the City about making a cash donation to the City to replace the existing playground improvements with new equipment, subject to the terms of this Agreement; and

WHEREAS, the City wishes to accept the proposed donation and replace the equipment located on the playground within the Park in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties, in consideration of the representations, covenants and agreements set forth herein, represent, covenant and agree as follows:

AGREEMENT

1. **Donation.** The Donor hereby agrees to make a cash donation to the City in the amount of \$145,520 (the “Donation”), subject to the terms of this Agreement. The Donation shall be used to pay for replacement of the existing playground equipment located in the Park, improvements related thereto (the “Project”), and the costs incurred by the City in the acceptance and implementation of the Donation (the “City Costs”); **provided, however**, that legal fees including costs associated with the drafting and negotiating of this Agreement shall not exceed \$2,500. The Donation shall be handled and administered according to the terms of this Agreement.

2. **Conditions on Donation.** Subject to Minnesota Statutes, section 465.03, any party making a donation to a local governmental entity may prescribe conditions to such donation, and the local governmental entity may either accept the donation subject to such conditions or restrictions or decline the donation. The City hereby acknowledges and accepts the following conditions related to the Donation, which have been expressly incorporated therein by the Donor:

- a. The City agrees to use the Donation to purchase and install the playground equipment identified on the proposal included as Attachment A, except that the City shall not be required to install a gaga pit at the Park. Instead, the City shall endeavor to purchase a gaga pit with the Donation and place the gaga pit at Ray Peters Park within the City, subject to the recommendation of the Parks Commission and approval by the City Council. The City shall retain its discretion as to whether or where to install a gaga pit at Ray Peters Park, including the

physical attributes of such gaga pit, following sufficient opportunity for public input. If the City elects not to purchase and install a gaga pit at Ray Peters Park, and there are funds remaining from the Donation which will not be spent for the costs associated with this Agreement, the City shall return any such funds to the Donor in accordance with ~~paragraph~~ [Section 2.d](#) below.

- b. The City and the Donor acknowledge that the Donor has previously engaged several bidders related to the purchase of the playground equipment and has obtained several quotes related thereto, including the Proposal. The City may obtain independent quotes necessary to accomplish the work contemplated herein if it determines that is reasonably necessary to comply with Minnesota Statutes, section 471.345. Included in the Proposal are quotes for the purchase and installation of the playground equipment, including site preparation work. The City may provide for such inspection and supervision of the grading and site work at the Park and installation of the playground equipment as it deems reasonably necessary and in accordance with sound practices, and it may reimburse itself for such costs in accordance with this Agreement; **provided, however**, that the contingency set forth in Section 2.d shall not be used to reimburse such costs.
- c. The City shall install a sign, to be paid for with the Donation, within the Park which shall state “Children’s play equipment donated by Livingston Strong.” The back of the sign may contain an equipment safety message at the discretion of the City. The sign shall be no larger than 12 inches by 18 inches in size and shall be similar to the sign at City Hall Park. The sign shall be maintained by the City until such time as the City, in its reasonable discretion, removes and/or replaces the equipment purchased and installed with the Donation. For purposes of this provision, removal and/or replacement of more than 75% of the equipment that was purchased with the Donation and installed in the Park shall be considered sufficient for the City to exercise its right to remove said sign.
- d. The Parties acknowledge that the Donation includes approximately \$10,000 which is being included in the Donation as a contingency amount to be used solely for construction cost overruns and which shall be returned, in whole or in part, to the Donor upon completion of the playground improvements. The amount required to be returned to the Donor shall be limited to those funds which are not reasonably necessary to allow the City to make the improvements permitted herein and as reimbursement of the City Costs. All funds received as part of the Donation shall be properly managed according to the City’s internal controls and all applicable laws, rules, and regulations related thereto. Any contingency or other funds which are required to be returned to the Donor according to these terms shall be so returned without interest no later than six months after the final completion of the playground improvement project.
- e. In addition to the costs associated with purchase and installation of the playground improvements, the City shall be permitted to reimburse itself for all City Costs associated with the execution and implementation of the Donation, including but not limited to reasonable staff and consultant fees and other incurred costs; **provided, however**, that the contingency set forth in Section 2.d shall not be used to reimburse City Costs. The City shall provide the Donor with itemized invoices for all such amounts prior to reimbursing itself from the Donation.

- f. ~~In the event that the City determines that Donation will be insufficient to implement this Agreement, the City will notify the Donor of such determination and may, in its discretion, alter the playground improvement plans to avoid the City incurring any additional costs in the purchase or installation of the equipment listed in the Proposal provided that the City determines in good faith that such alterations allow the Project to be completed in a manner as consistent with the original playground improvement plan as reasonably possible without the City incurring any additional costs. Such alterations may involve removing equipment from the Proposal or making other changes necessary to prevent the City from incurring additional costs. In the event that the City is required to alter such plans, and any funds remain after closeout of the installation of the equipment according to such altered plans and the reimbursement of all City Costs, the City shall return the outstanding funds to the Donor in accordance with paragraph d above [RESERVED].~~
- g. The Donor shall incur no ongoing financial obligation to improve or maintain the playground as a condition of the Donation.
- h. Grading and site work at the Park and purchase and installation of the playground equipment contemplated herein shall begin as soon as reasonably feasible in the spring of 2021 and shall be substantially completed by no later than December 31, 2021, subject to reasonable delays due to weather and the availability of construction forces and equipment as determined by the City.
- i. The City shall cause the Donor to be named as an additional insured on the City's general liability insurance policy and on its contractors' general liability policies of insurance for their operations and completed operations in connection with the ~~installation of the~~ Park improvements.
- j. ~~The~~To the fullest extent permitted by law, the City shall indemnify, defend, and hold harmless the Donor from and against any and all claims, damages, loss, liability, fines, payments, attorney's fees, and expenses arising out of or related to the ~~use or operation of the~~ Park improvements; ~~provided, however, that the City shall only be required to indemnify the Donor to the extent of its available insurance limits or in connection with any injuries (including death), damage to property, violation of any law, ordinance, or regulation, or any claim of strict liability, regardless of whether or not such claim, damages, loss, or expense is caused in part by the Donor. The rights~~ and ~~nothing in~~ obligation of this ~~provision~~Section 2.j shall ~~be deemed a waiver of the City's tort liability limits under Minnesota Statutes Chpt. 466~~survive termination or expiration of this Agreement.

3. Term. This Agreement shall commence on the date first written above and shall continue until the City has completed the playground improvements contemplated herein and returned any remaining monies according to this Agreement. Any condition that cannot, by its own terms, be completed within this time shall survive and be in full effect according to the terms of this Agreement.

4. No Property Interest. This Agreement is not an easement or a lease, creates no landlord-tenant relationship, and nothing in this Agreement will be deemed to create any ongoing property interest for the Donor in the playground equipment or the Park. Furthermore, Donor

hereby expressly waives and releases any claim that she may have, now or in the future, against the City related to ownership of the playground equipment to be installed pursuant to this Agreement. Upon execution of this Agreement, any funds donated to the City shall become the property of the City, except for those funds which are required to be returned pursuant to the terms herein.

5. Termination. The Donor may terminate this Agreement upon material breach of any of the terms herein by the City. Prior to termination, the Donor must provide written notice to the City of any material breach, and the City shall have at least 60 days from the receipt of such notice to cure said material breach. If the City fails to cure any such material breach within the cure period, this Agreement shall be terminated and the City shall return and outstanding Donation funds to the Donor, subject to deductions for any equipment which has already been purchased and any City Costs which have already been incurred.

6. Notices. Any notices permitted or required by this Agreement shall be deemed given when emailed, personally delivered, or upon deposit in the United States mail and addressed to:

If to the City: City of the Village of Minnetonka Beach
 P.O. Box 146
 Minnetonka Beach, MN 55391
 Attn: Patrick Melvin
 Email: pmelvin@ci.minnetonka-beach.mn.us

If to the Donor: Lauren Livingston
 2432 Lafayette Road
 Wayzata, MN 55391

Either Party may change such notice address by delivering written notice to the other Party in accordance with this Section 6.

7. Non-Assignment. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

8. Relationship of the Parties. Nothing in this Agreement shall constitute or cause the Parties to have created a partnership, joint venture or agency relationship.

9. Modifications. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party or an authorized representative of each Party.

10. Governing Law. This Agreement shall in all respects be governed by and interpreted under the laws of the State of Minnesota.

11. Severability. If any term, phrase, obligation or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the rest of the Agreement shall remain

in effect and be construed without regard to such term, phrase, obligation or provision.

12. Waiver. No waiver of a breach of any of the obligations contained in the Agreement shall be construed to be a waiver of any prior or succeeding breach of the same obligation or of any other obligation of this Agreement.

13. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties regarding the Donation. Any prior understanding or representation regarding the Donation which precedes the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned Parties have executed this Donation Agreement as of the date and year first written above.

**CITY OF THE VILLAGE OF MINNETONKA
BEACH, MINNESOTA**

By: _____
Jaci Lindstrom
Its: Mayor

By: _____
Heidi Honey
Its: City Clerk

DONOR - LAUREN LIVINGSTON

By: _____
Lauren Livingston

EXHIBIT A

Proposal

[to be attached]

Document comparison by Workshare Compare on Thursday, November 19, 2020
5:39:33 PM

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Rendering set	TaftStandard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	20
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Moved to	0
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Format changes	0
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