

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

THIS AGREEMENT is made by and between the Livermore Area Recreation and Park District (LARPD), an independent special district created pursuant to Public Resources Code sections 5780 et seq., (hereinafter “LARPD”), and the Livermore Area Recreation and Park District Foundation, a nonprofit corporation organized pursuant to state and federal statutes, located in Livermore California (hereinafter the “Foundation”).

WHEREAS, LARPD maintains the stated mission to provide the people of the Livermore area with outstanding recreation programs and a system of parks, trails, recreation areas, and facilities that promote enjoyment, lifelong learning, and healthy, active lifestyles;

WHEREAS, LARPD owns and/or maintains real estate, buildings and other recreational facilities and operates recreational and athletic programs in furtherance of this mission;

~~WHEREAS, LARPD has a naming policy and in the future intends to authorize the “naming” of certain facilities, buildings, landscape areas, programs, and other related LARPD assets, in return for private sector monies donated to the LARPD Foundation and managed by the Foundation in accordance with this Memorandum of Understanding (MOU) between LARPD and the Foundation;~~

WHEREAS, the mission of the Foundation is to improve the quality of life throughout the Livermore Area Recreation and Park District through advocacy, collaboration, and financial assistance, primarily focused on providing recreation and wellness opportunities for the underserved and enhancing parks and open space;

WHEREAS, the Foundation wishes to support LARPD’s mission which will provide an opportunity to accomplish more than public funding alone allows;

WHEREAS, the private nature of the Foundation also provides the added advantage of dedicated donor services;

WHEREAS, LARPD wishes to assist and enhance the operation of, and appropriately recognize, the Foundation;

# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

WHEREAS, LARPD wishes to support the fundraising activities of the Foundation and promote a positive relationship with their staff and volunteer members; and,

WHEREAS, the Foundation wishes to assure LARPD that it will operate effectively and responsibly with the reasonable expectations of both public and private interests, on behalf of LARPD and the Community;

THEREFORE, based on the foregoing, the parties enter into the following Agreement.

## **Section 1. Foundation Representations**

The Foundation represents and acknowledges the following regarding its operation, creation and purpose:

1. The Foundation is created and operated primarily in support of LARPD's mission and goals and their work will be compatible with these interests and goals;
2. The Foundation will have as its primary purpose to secure, manage, and invest private and business support for the benefit of LARPD and the Community;
3. The Foundation will operate as a private legal entity separate from LARPD;
4. The Foundation will use sound fiscal and auditing procedures;
5. The Foundation will not interfere with day-to-day LARPD operations; and
6. The Foundation has obtained and will maintain status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

## **Section 2. Foundation Documents**

The Foundation will keep on file and make available to the LARPD updated copies of all enabling documents including the Articles of Incorporation, Bylaws and any amendments to these documents. The LARPD General Manager or designee will

# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

review these documents as needed.

## **Section 3. Foundation Enabling Documents – Required Provisions**

The Articles of Incorporation for the Foundation shall maintain language that is substantially similar to the following:

1. In the event of its dissolution, the Foundation's assets and records will be distributed to LARPD, provided LARPD remains a qualified charitable organization under relevant federal and state income tax laws; or if LARPD is not eligible or chooses not to receive those assets and records, to another qualified charitable organization operating in the Livermore area.

## **Section 4. Insurance**

The Foundation will obtain and maintain general liability and directors' and officers' liability insurance in a reasonable and appropriate amount as determined by the Foundation Board. The Foundation will make documentation of its compliance with this Section available upon request.

## **Section 5. Accountability and Stewardship**

As LARPD and the Foundation want to maintain the highest levels of accountability and stewardship, LARPD and the Foundation agree to share information with each other, as reasonably requested, develop reporting processes and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes and all applicable provisions of State and federal law, and reports are made to donors on the use of such funds.

The Foundation agrees the LARPD General Manager or their designee should attend all regular Foundation meetings and provide input and comment, as appropriate, during these meetings. In addition, the Foundation agrees that the LARPD Board may appoint a LARPD Board member to attend all regular Foundation meetings and provide input and comment, as appropriate, during these meetings. Neither of these positions will have voting rights.

## **Section 6. Donor Solicitation** **Donor Communication**

# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

The Foundation agrees to communicate the following to prospective donors:

1. The Foundation is a separate, legal and tax entity organized primarily for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of LARPD;
2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides in the Foundation's Board;
3. Checks for charitable gifts to LARPD programs should be made payable to the Foundation; and

## **Conditions of Gift Acceptance**

The Foundation agrees that in accepting gifts of all kinds, it will:

1. Advise donors that any restrictive terms and conditions they attach to gifts for LARPD are subject to LARPD approval;
2. Receive prior concurrence in writing from the General Manager or their designee for any gift, grant, or contract that includes a financial or contractual obligation binding upon LARPD. The General Manager may predefine classes of gifts, grants, or contracts in advance so that any such obligation in that class is preapproved;
3. Ensure that gifts are promptly reported to and approved for acceptance by the LARPD General Manager or designee in accordance with LARPD policies and delegations of authority; and,
4. Coordinate their funding goals, programs, and campaigns with LARPD.

## **Section 7. Financial Procedures**

### **Standards**

The Foundation will manage funds on a sustainable basis. For this purpose, they should ensure that the following standards are applied:

1. Prudent Practices. In general, Foundation investment procedures should be conducted consistent with all applicable State and Federal laws and in accordance with prudent, sound practices to ensure that gift assets are

# **MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

protected and enhanced, that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the gift instrument.

2. Administration of Income. Income from investments, net of administrative fees, should be administered in accordance with pertinent Foundation policies, and will be utilized to support the Foundation mission.

3. Annual Report. The Foundation will prepare an annual report to LARPD that summarizes the funds distributed to LARPD each year. LARPD and the Foundation will provide each other with other reports necessary to ensure proper financial oversight.

## **Section 8. LARPD - Accountability of Funds**

Consistent with good stewardship, LARPD is responsible both to account for any funds transferred to them in accordance with LARPD policies and procedures, and to notify the Foundation on a timely basis regarding the use of such funds. The Foundation in consultation with LARPD will determine who will be responsible for reporting to the donor regarding the use of such funds.

## **Section 9. Financial Commitments Consistent with LARPD Mission**

The Foundation should carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's governing board and consistent with LARPD's mission and objectives. The Foundation will refer any questions regarding consistency of any proposed expenditures with LARPD's mission and objectives to the LARPD General Manager or their designee for a final determination.

## **Section 10. Financial Statement**

The Foundation should maintain books in accordance with generally accepted accounting principles, and should annually provide a financial review by an independent party. Copies of the financial review and a current list of Foundation officers, directors or trustees, will be made available to the LARPD General Manager or designee.

## **Section 11. Inspection of Foundation Records**

Because private funds are raised to support public projects, the Foundation will permit authorized LARPD officials or their designees to inspect all Foundation

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

books and records.

## **Section 12. Compliance Reviews**

LARPD may conduct periodic compliance reviews of the use of donated funds. These reviews may be conducted by LARPD or a mutually agreed upon independent auditor on an annual basis. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or the Foundation. The scope of the review and extent of testing will be mutually agreed upon in advance by LARPD and the Foundation. A written report of the results of such review shall be provided to the Foundation.

## **Section 13. Designation as a Gift**

Funds received by LARPD shall only be accounted for as gifts where the appropriate donative intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

## **Section 14. LARPD Assistance to the Foundation**

LARPD will assist the Foundation in the following manner:

1. Allow the Foundation to use the name and images of LARPD, with prior approval by LARPD staff;
2. Allow the Foundation to use LARPD space, facilities, equipment, digital and record storage, website, and staff in the performance of the Foundation's activities, with prior review by LARPD staff, and as practical;
3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation;
4. Assist the Foundation by suggesting and recommending projects and programs for the Foundation to support; and
5. Assist the Foundation by allowing mutually agreed upon member benefits to promote the LARPD Foundation membership program. Benefits must be approved in advance by the General Manager or their designee.

## **Section 15. Notice of Non-compliance – Opportunity to Cure**

In the event of serious non-compliance with any provision of this Agreement,

# MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION

either party shall notify the other in writing of the event or practice that does not comply with this Agreement. The notified party shall, within ninety (90) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the other party that it is in compliance. The parties will continue to meet in good faith until the non-compliance issue is cured, or the MOU is modified to address the issue.

## Section 16. Termination

This agreement will continue for an indefinite duration until one or both parties seek a substantial change in their working relationship. Either party may terminate this Agreement by delivering written notice of termination to the non-terminating party at least one year prior to the effective date of any termination. Any vote to terminate the agreement from the Foundation must be passed by at least a 2/3rds super majority vote. In the event of termination, the Foundation shall provide LARPD with an accounting of all funds in its possession and transfer those receipts, along with any restrictions thereon, to LARPD or if LARPD is not eligible or chooses not to receive those assets and records, to another qualified charitable organization operating in the Livermore area.

## Section 17. Entire Agreement and Amendment

This Agreement represents the parties' entire agreement with respect to the matters specified herein. Any future amendment to this agreement must be approved by both the LARPD Foundation Board of Trustees and the LARPD Board of Directors.

## Section 18. Governing Law and Venue

It is understood that this Agreement shall be governed by and construed under and in accordance with the laws of the State of California. Venue for any actions arising under this Agreement shall be Livermore, California or appropriate court location in the County of Alameda.

## Section 19. Severability

Any provision of the Agreement that is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

This Agreement is hereby executed by the duly authorized representatives of the

**MEMORANDUM OF UNDERSTANDING BETWEEN LIVERMORE AREA RECREATION AND PARK DISTRICT AND THE LARPD FOUNDATION**

parties as of \_\_\_\_\_, 2023.

LARPD By:

\_\_\_\_\_

Print Name

Title

\_\_\_\_\_

Signature

LARPD FOUNDATION By:

\_\_\_\_\_

Print Name

Title

\_\_\_\_\_

Signature