

**ORDINANCE NO. 3097**

MAY -5 2014

**AN ORDINANCE TO AUTHORIZE THE MAYOR OF THE CITY OF COLUMBIA, ILLINOIS TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE PLAY COLUMBIA FOUNDATION TO SECURE, MANAGE AND INVEST FUNDS, GIFTS AND BEQUESTS FOR PARKS AND RECREATION IN THE CITY OF COLUMBIA, ILLINOIS**

*J. Ronald Colyer*  
City Clerk

WHEREAS, the City of Columbia, Illinois (hereinafter "the City") enjoys a growing network of parks and recreation facilities (with more than 120 acres publicly held for parks and recreation), supports numerous recreation programs through efforts of dedicated volunteers, and has been recognized as the flagship community in the region for designation as a "Playful City USA," an honor awarded nationally;

WHEREAS, over the past few years, the City has amended its park rules (February 2011), implemented a special event permit system (January 2012), adopted a master plan for a large new park (March 2012), adopted a comprehensive pedestrian and bicycle plan (March 2013), and purchased American Legion Memorial Park to maintain its use for public recreation (August 2013);

WHEREAS, the aforementioned growth in the City's parks and recreation system, increased population growth driving increased use of that system, and decreasing state and federal resources have increased the need for more privately raised funds;

WHEREAS, in March 2012, the City adopted a policy which laid the groundwork for accepting private donations;

WHEREAS, a group of local citizens recently formed the PLAY (Parks and Leisure for Aadults and Youth) Columbia Foundation (hereinafter "the Foundation") to secure, manage and invest privately raised funds, gifts and bequests so as to support the City's current and future programs, services and facilities;

WHEREAS, the Foundation operates as a legal entity separate from the City and governed by an independently-elected Board of Directors;

WHEREAS, the City and the Foundation find it necessary and desirable to define their mutual responsibilities and obligations in a Memorandum of Understanding (hereinafter "MOU").

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

**Section 2.** The City Council of the City of Columbia, Illinois, does hereby authorize the agreement with the Foundation as set out in the attached MOU, and does further authorize and direct the Mayor to execute and deliver this MOU, in the form attached hereto, evidencing such an agreement with the Foundation, which MOU is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Holtkamp, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Roessler, Mathews, Reis and Holtkamp.

NAYS: None.

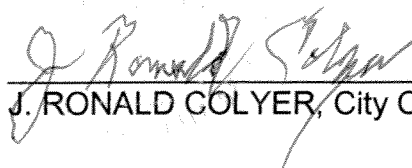
ABSENT: Alderman Huch.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor, this 5th day of May, 2014.

  
KEVIN B. HUTCHINSON, Mayor

ATTEST:

  
\_\_\_\_\_  
J. RONALD COLYER, City Clerk

(SEAL)

**MEMORANDUM OF UNDERSTANDING**  
**between the**  
**CITY OF COLUMBIA**  
**and the**  
**PLAY COLUMBIA PARKS AND RECREATION FOUNDATION**

This Memorandum of Understanding (hereinafter, “MOU”) is made and entered into as of May 5, 2014 (“Effective Date”) by and between the PLAY (Parks and Leisure for Addults and Youth) Columbia Parks and Recreation Foundation, an Illinois not-for-profit corporation (hereinafter, “Foundation”), and the City of Columbia, an Illinois municipal corporation (hereinafter, “City”).

WHEREAS, the City owns, operates and maintains real estate, buildings and other facilities, including playspaces and parks, for recreational purposes and helps to facilitate numerous recreational programs;

WHEREAS, the Foundation seeks to make Columbia’s system of parks and recreation an exemplary one in Monroe County by being a proactive Foundation seeking multiple avenues of revenue generation to improve, enhance and expand the park system while working in harmony with the City and its vision, expressed through adopted designs and master plans, for the parks and recreation system;

WHEREAS, the primary purpose of the Foundation is to secure, manage and invest privately raised funds, gifts and bequests so as to support the City’s current and future programs, services and facilities;

WHEREAS, the Foundation operates as a legal entity separate from the City and is governed by an independently-elected Board of Directors, none of whom are employed by the City; and

WHEREAS, the City and the Foundation wish to assure the continued success and growth of the City’s Parks and recreation system by memorializing the responsibilities and obligations of the Foundation and the City.

THEREFORE, in consideration of the common goals and mutual efforts to support Columbia’s parks and recreation system, the City and the Foundation agree as follows:

**Section 1. Operating Procedures**

- A. The Foundation shall communicate the following information to prospective donors:
  - 1. The Foundation is a separate, legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the Department;
  - 2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides with the Foundation’s Board of Directors;
  - 3. Charitable gifts from donors to the Foundation in support of any of the City’s programs, services, or facilities should be made to the Foundation, and not to the City;
  - 4. Any gift made for a designated purpose will be dedicated in its entirety to that purpose unless (a) it is specifically understood by the donor when the gift was made, or subsequently agreed to by the donor in writing, that an administrative charge will be applied or that the gift can be used for another purpose if the original purpose has been satisfied or (b) the City objects to the designated purpose of the gift.
  
- B. The Foundation agrees that in accepting gifts of all kinds, the Foundation shall:
  - 1. Advise donors that any restrictive terms and conditions the donor attaches to gifts for the City are subject City approval;
  - 2. Ensure that gifts designated for specific purposes are in compliance with the City’s relevant master plans, vision, mission and/or philosophy before accepting the gift;
  - 3. Coordinate its funding goals, programs and campaigns with the City’s, specifically, with the City’s Play Commission;
  - 4. Receive prior written approval from the City Council or its designee for any gift, grant, or contract that includes a financial or contractual obligation binding upon the City.
  
- C. The Foundation shall be responsible for reporting to a donor regarding the use of the donor’s funds.
  
- D. In return for the Foundation’s contributions to and support of the City and its programs, the City shall assist the Foundation in the following manner:
  - 1. At the discretion of the Director of Community & Economic Development or his/her designee, and consistent with applicable federal, state, and local law, and City

policies and administrative directives, the City shall provide the Foundation with assistance as follows:

- a. Provide a staff liaison to the Foundation:
  - b. Provide a staff member to record Foundation meeting minutes; and
2. Assist the Foundation by suggesting potential donors to the Foundation.; and
  3. Allow the Foundation to use the name and images of the City, albeit the Foundation shall not be permitted to use the City Seal.

### **Section 2. Record Keeping**

- A. The City and the Foundation acknowledge and agree that all Foundation correspondence, financial records, and all Foundation documents are the property of the Foundation and shall be kept separate and apart from all City records.
- B. The Foundation shall maintain publicly available, updated copies of all of its enabling documents, including its articles of incorporation, bylaws and any amendments thereto. The Foundation shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Income Tax) without accompanying documentation providing information concerning any specific Foundation donor.
- C. The Foundation shall prepare and reconcile on a quarterly basis a Treasurer's Report. In addition, the Foundation should provide annually to the City a financial report prepared in accordance with *Statement of Financial Accounting Standards 117* "Financial Statements for Not-for-Profit Organizations." The financial report shall be provided to the City on or before June 30 of each year during this MOU, but shall not include any information regarding individual Foundation donors.

### **Section 3. Independent Contractors**

- A. In the performance of this MOU, both the City and the Foundation will be acting in an individual capacity and not as agents, employees, partners or joint ventures or associates of one another. The agent or employees of one shall not be construed to be the agents or employees of the other. City employees shall remain employees of the City, notwithstanding the fact that they may assist the Foundation.
- B. Neither the City nor its agents, volunteers, servants, employees or officials shall be responsible or liable for any claim or suit arising from contracts, agreements, understandings or arrangements made by the Foundation with any person or entity covering services or goods procured by the Foundation, or for the negligent or willful acts of the Foundation or those for whom the Foundation acts.

**Section 4. Term**

- A. The initial term of the MOU will be for five (5) years, effective May 5, 2014 through April 30, 2019. This MOU may be renewed for additional five-year terms with the written consent of both parties.

**Section 5. Dispute Resolution**

- A. The parties agree that if there is a dispute as to any provision of this MOU or if either party materially breaches or fails to perform its obligations under this MOU, the other party may give notice in writing of the dispute or material breach. The parties agree to meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or such longer period, if agreed to in writing by the parties, the parties agree to bring in a mediator to help resolve the dispute.

**Section 6. Notice**

- A. Any notice or notices required or permitted to be given pursuant to this MOU shall be given by certified mail, postage prepaid, return receipt required, as follows:

To the City:

City of Columbia  
208 S. Rapp Ave.  
Columbia, IL 62236

To the Foundation:

PLAY Columbia Foundation  
208 S. Rapp Ave.  
Columbia, IL 62236

**Section 7. Termination**

- A. This MOU may be terminated by either party by delivering written notice of termination to the non-terminating party as least ninety (90) days prior to the effective date of any termination.

**Section 8. Governing Law and Venue**

- A. This MOU shall be deemed to be an Illinois contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise

exclusively by the law of the State of Illinois and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this MOU shall be deemed to have been delivered and accepted by the parties in the State of Illinois. The Foundation shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or thereafter adopted, in the performance of its obligations set forth herein. Any and all suits for any claims or for any and every breach of dispute arising out of this MOU shall be maintained in the appropriate court of competent jurisdiction in Monroe County, Illinois.

**Section 9. Severability**

- A. Any provision of this MOU which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

**Section 10. Entire Agreement**

- A. The parties agree that this writing constitutes the entire agreement of the parties and that there may be no modification to this MOU, except in writing, executed by the authorized representatives of the City and the Foundation.

MEMORANDUM OF UNDERSTANDING – CITY OF COLUMBIA/PLAY FOUNDATION

As evidenced by their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF COLUMBIA, ILLINOIS

\_\_\_\_\_  
Honorable Kevin B. Hutchinson, Mayor

Attest: \_\_\_\_\_  
J. Ronald Colyer, City Clerk

COLUMBIA PLAY FOUNDATION

\_\_\_\_\_  
John Traube, President

Attest: \_\_\_\_\_  
John Conrad, Vice President