

**AGREEMENT BETWEEN
THE FRIENDS OF THE ANN ARBOR SKATEPARK AND THE CITY OF ANN ARBOR
FOR THE MANAGEMENT AND OPERATION OF THE ANN ARBOR SKATEPARK**

AMENDED AGREEMENT #1

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron Street, Ann Arbor, Michigan 48107-8647 ("City"), and The Friends of the Ann Arbor Skatepark ("Friends"), a Michigan nonprofit corporation with its address at 503 Fountain Street, Ann Arbor, MI 48106 agree as follows:

The City and Friends wish to encourage the free use of the Ann Arbor Skatepark by the general public and to such ends, wish to define the management and operational responsibilities related to the Ann Arbor Skatepark.

This amended agreement is intended to supersede and replace the prior agreement between the City and the Friends, effective September 1, 2013, and all amendments thereto.

Therefore, the City and Friends agree to the following:

I. DEFINITIONS

Administering Service Area/Unit means the Parks and Recreations Services Unit, Community Services Area.

Ann Arbor Skatepark, or Skatepark means the parcel of land within Veteran's Memorial Park designated as the Ann Arbor Skatepark containing a skateboarding facility, as shown on Exhibit B.

Contract Administrator means the Parks and Recreation Services Unit Manager, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Services mean all Procedures, Responsibilities, and Programming Opportunities referenced under this Agreement.

Friends means the Friends of the Ann Arbor Skatepark, a Michigan nonprofit corporation, which has been designated tax exempt status by the Internal Revenue Service under Internal Revenue Code, Section 501(c)(3), whose mission is to provide a free, public, concrete Skatepark as a permanent resource for residents in the Ann Arbor area.

II. DURATION

This Agreement shall ~~become effective on September 1, 2013, and shall~~ remain in effect until

August 30, 2025, unless terminated as provided for in this Agreement. The City and Friends will ~~meet at least once annually to~~ review the terms of the Agreement as necessary ~~and~~ to decide if revisions are necessary. Any revisions shall be mutually agreed upon in writing, and subject to City Council approval. Any renewal of the contract shall also be subject to City Council approval.

III. SERVICES

A. The City and Friends agree to provide Skatepark management and operational services ("Services") as described in Exhibit A.

B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

IV. COMPENSATION

Friends shall not receive payment from the City for performing any services under this Agreement. Friends shall provide financial support for the Ann Arbor Skatepark as detailed in Exhibit A.

V. INDEMNIFICATION

To the fullest extent permitted by law, for any loss not covered by insurance under this agreement, Friends shall indemnify, defend and hold harmless the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this Agreement, by the Friends or anyone acting on the Friends behalf under this Agreement. Friends shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence.

VI. COMPLIANCE REQUIREMENTS

Nondiscrimination. Friends agree to comply, and to require its subcontractor(s), if any, to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal opportunity.

VII. WARRANTIES BY FRIENDS

A. Friends warrant that the quality of its services under this Agreement shall conform to the level of quality performed by people regularly rendering this type of service.

- B. Friends warrant that it has all the skills and experience necessary to perform the services it is to provide pursuant to this Agreement.

VIII. OBLIGATIONS OF THE CITY

The City agrees to provide Friends access to staff and City owned properties as required to perform the necessary services under the Agreement.

IX. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. Friends acknowledge that, if this Agreement extends for several fiscal years, continuation of portions of this Agreement is subject to appropriation of funds. If funds to enable the City to effect staff support, maintenance and capital improvements under this Agreement are not appropriated or otherwise made available by the City, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give Friends written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- C. If funds for maintenance and operations are not provided by Friends for any period as required by this Agreement, the City shall have the right to terminate the Agreement without penalty if payment is not received by City within ninety days of the date of mailing of a bill or request for payment.
- D. City shall have the right to terminate the Agreement if Friends fails to maintain its status as a Michigan nonprofit corporation, or if Friends fails to maintain its tax exempt status as conferred by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code.
- E. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

X. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XI. ASSIGNMENT

- A. Friends shall not subcontract or assign any portion of the services without prior written consent to such action by the City. Notwithstanding any consent by the City to any assignment, Friends shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City. City shall not modify Skatepark layout without agreement of Friends.

XII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the FRIENDS, it shall be addressed and sent to:

503 Fountain
Ann Arbor, MI 48103

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Colin Smith, Parks & Recreation Services Manager
301 E. Huron Street, PO Box 8647
Ann Arbor, Michigan 48107-8647

XIII. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XV. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and Friends with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Friends and the City.

XIX. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

XX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

**FOR FRIENDS OF THE ANN ARBOR
SKATEPARK**

By _____
~~XXXXX~~ Joshua Meisler,
President

~~XXXXX~~ Date: _____

FOR THE CITY OF ANN ARBOR

By _____
~~Steven D. Powers~~ Howard S. Lazarus, City
Administrator

Date: _____

Approved as to substance

~~Sumedh Bahi~~ Derek Delacourt, Community
Service Area Administrator

Colin Smith, Parks & Recreation Services
Manager

Approved as to form and content

Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

This Agreement provides the framework for the management and operation of the Ann Arbor Skatepark. Both parties seek to provide the opportunity for free public skateboarding to Ann Arbor area residents. The City and Friends acknowledge that there will not be assigned staffing or monitoring of the Ann Arbor Skatepark and that visitors will use the Facility at their own risk. Rules shall be prominently posted at the entrances to the Ann Arbor Skatepark consistent with reasonable use of the Ann Arbor Skatepark, and all applicable laws, including Ann Arbor City Code, Chapter 39 (Parks and Public Grounds)

Friends shall provide the following:

1. Funding of Operations and Maintenance. Friends shall pay all costs for the operations and maintenance of the Skatepark for the duration of the Agreement. However, at its discretion, City may decide to contribute to the payment of costs for operations and management consistent with the Funding Review Process described below. Payment shall be made on an annual basis following the end of each City fiscal year, and Friends shall pay any required amount within ninety days of the date of mailing of a bill or request for payment by the City. Payment shall be made by Friends using donations and funds held by Friends, or donations or funds held by the Ann Arbor Area Community Foundation in the Ann Arbor Area Community Foundation Ann Arbor Skatepark Fund, consistent with the Fund Agreement.
2. Fundraising. a. Friends shall hold at least one annual fundraising event at the Ann Arbor Skatepark. All net proceeds raised at this event shall be used for the purpose of funding the on-going maintenance and operations of the Ann Arbor Skatepark and/or to fund repairs or improvements to the facility. In addition to fundraising events at the Skatepark, Friends will continue to fundraise for future operations, maintenance and improvement costs for the Skatepark.
3. Programming. Friends may provide organized activities and events for the Ann Arbor Skatepark at the Skatepark, and all activities shall be subject to approval by the City Parks and Recreation Services Unit, and shall be subject to all City requirements for a special event in a City park, including but not limited to providing required insurance for the event. However, there will be no special event or rental charge for use of the Ann Arbor Skatepark when the event is hosted by Friends. Activities and events hosted by Friends shall be coordinated through the Parks Customer Service Special Event process to ensure overlap of events does not occur. Should rentals of the Skatepark for special events occur that are not organized by the Friends any rental revenue collected by the City shall be designated for Skatepark maintenance expenses.
4. Skatepark Advisory Committee. Friends shall work with the City to develop an Advisory Committee/Stewardship Program. The City ~~and Friends~~ Park Advisory Commission will form a Skatepark Advisory Committee (SAC) to assist the City with the continued

operation, maintenance and upkeep of the Park and to ensure an on-going dialogue between the City and Friends. SAC shall be an advisory committee of the City Park Advisory Commission, which shall, through the Park Advisory Commission, advise ~~the City Parks and Recreation Services Unit, the City Parks Advisory Commission (PAC), City staff~~ and City Council regarding the continued operation, ~~and~~ maintenance, and upkeep of the Skatepark. The ~~City Council~~ Park Advisory Commission shall have final discretion to appoint members to SAC. ~~SAC shall meet no less than twice a calendar year. Final composition of SAC shall be decided by City Council, but, which~~ should include two representatives of Friends and at least one person from each of the following groups: City Park staff, Washtenaw County Parks & Recreation Commission staff, and PAC membership, ~~and two Friends members. Friends may nominate Friends representatives to be members of SAC. SAC should meet no less than twice a calendar year or as many times as necessary to fulfill its purposes.~~

Responsibilities for the Skatepark Advisory Committee may include, but are not limited to, advising ~~the City~~ regarding the following:

- a. ~~Providing advice to City staff regarding~~ Skatepark operations.
- b. ~~Providing feedback to the City regarding~~ Skatepark alterations or additional amenities.
- c. Organizing and hosting educational and special events at the Skatepark.
- d. ~~Assisting the City in d~~ Developing and distributing promotional materials and event advertising regarding the Skatepark.
- e. Distributing Skatepark rules and other educational materials to Skatepark users.
- f. Feedback regarding misuse of the Skatepark ~~to the City~~.
- g. Fundraising to support additional approved amenities, programs and improvements at the Skatepark.
- h. Developing a robust volunteer base to assist the City with the maintenance and operations of the Skatepark, along with developing set volunteer work days where volunteers will work under the general supervision of the City.

City shall provide the following:

1. Signage. City shall manufacture and install all signage related to general park rules pursuant to Ann Arbor City Code, Chapter 39, as well as Skatepark specific rules for the Skatepark. Proposed Skatepark rules are referenced in Exhibit C, and are subject to approval of the Community Services Area Administrator or designee. Rules shall be reviewed and updated by the City, as necessary.
2. Staff Support. City shall provide staff support in facilitating public meetings to discuss the possibility of extending the existing boundaries of the Ann Arbor Skatepark as referenced in Exhibit B. The City shall bear the costs for public notification of any such public meeting.
3. Agreement Review. City shall schedule two meetings annually with SAC to review this Agreement. The meetings shall take place in March and October of each year. The Agreement may be adjusted as future circumstances may warrant based on operational and maintenance experience at the Ann Arbor Skatepark, as well as available funding.
4. Maintenance. Maintenance of the Ann Arbor Skatepark shall be provided by the City, a contracted service under the City's control, or by volunteer groups that are programmed

through the City's volunteer program opportunities. City shall provide general oversight of the Skatepark infrastructure, such as making periodic inspections similar to neighborhood playground inspections. The City shall maintain records of staff costs, materials and supplies, and equipment costs related to the maintenance of the Ann Arbor Skatepark.

5. Volunteer Outreach. City shall provide further staff support in the form of a Volunteer Outreach Coordinator to organize volunteer cleanup days and other maintenance activities at the Skatepark. Volunteer opportunities shall be coordinated with the Friends and managed by the City. Volunteers shall be required to comply with all applicable policies and procedures regarding City volunteers, such as using City waiver forms.
6. Funding Review Process. The City, at its discretion, may decide to contribute to the payment of maintenance and operations for the Ann Arbor Skatepark. At the annual May PAC meeting City staff shall provide a report that details current fiscal year costs for operating the Skatepark and provide a recommendation as to whether there is available funding to cover these expenses within the current, annual operating budget approved by City Council. PAC shall provide their recommendation regarding whether the City will contribute to the maintenance and operations expenses at the May meeting and their decision shall be final.

EXHIBIT B

ANN ARBOR SKATEPARK LOCATION

The attached GIS map show the location and boundaries of the Ann Arbor Skatepark, located within Veteran's Memorial Park. No extension of the existing location and boundaries shall take place without proper public process, including, but not limited to, public meetings and review and recommendation from the Park Advisory Commission.

EXHIBIT C

ANN ARBOR SKATEPARK RULES AND SIGNAGE

The Ann Arbor Skatepark is unsupervised. Use of the facility is at your own risk. The City of Ann Arbor assumes no liability for any injury or damage to you or your property resulting from your voluntary use of the Skatepark.

1. Bicycles are not allowed.
2. Wearing a helmet, knee pads, elbow pads and wrist guards is strongly recommended and should be used at all times. Know your ability and skate accordingly.
3. The following items and activities are prohibited:
 - Littering
 - Glass Containers
 - Alcoholic Beverages
 - Vending
 - Radios or boom boxes
4. The Skatepark will be open during 6am to 10pm. The City of Ann Arbor, no-trespassing ordinance will be enforced after the park is closed.
5. Graffiti in the Skatepark is prohibited and will not be tolerated. Please keep all park surfaces clean as graffiti will close the park for paint removal.
6. The Skatepark has been designed for all skill levels. Please be courteous to other people using the facility and all other park patrons.
7. All general regulations for Parks of Chapter 39 of the Ann Arbor City Code apply.