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DUPLICATE
ORIGINAL

Master Agreement

This Master Agreement is made on the 30th day of July, 1991 by and between the City of San Diego, a municipal corporation herein called "City" and the Mission Trails Regional Park Foundation Inc. a California non-profit public benefit corporation herein called "Foundation."

Recitals

- A. Foundation is organized under the Non-profit Public Benefit Corporation Law pursuant to which Articles of Incorporation were endorsed and filed with the office of the Secretary of State of the State of California as Document Number 1554194 on February 22, 1988, a copy of which are incorporated into this Agreement as Exhibit A.
- B. The public purposes of the Foundation are to preserve, improve, develop and maintain Mission Trails Regional Park, herein called the "Park," in the City and County of San Diego and to foster public appreciation and understanding of Mission Trails Regional Park.
- C. From time to time, public funds may become available to the Foundation to support its public purposes pursuant to Recital B.
- D. City and Foundation desire to establish a process to govern the use of public funds which may from time to time be allocated to the Foundation by the City.

Now therefore, in recognition of the Recitals and the mutual obligations of the parties as herein expressed, City and Foundation do agree as follows:

- I. Within five (5) days of Foundation's first receipt from City of any public funds referred to in Recital C of this Agreement, Foundation shall establish an account with a bona fide financial institution acceptable to City, which account shall be separate and apart from any other accounts established by the Foundation. Said account is hereinafter referred to as "Public Fund Account", and shall serve the sole and exclusive purpose of a repository of all of the public funds referred to in Recital C of this Agreement. Thereafter, no later than five (5) days after date of Foundation's receipt of public funds from City pursuant to Recital C of this Agreement, Foundation shall deposit said funds into the Public Fund Account established pursuant to this Paragraph.

Nothing in this Agreement, however, shall obligate the City to make public funds available for the purposes of this Agreement, including but not limited to development fees or communication facility lease revenues, without a Resolution of the San Diego City Council.

- II. Interest earned by the Public Fund Account shall accrue to the Public Fund Account.

DOCUMENT NO. M278444-1
FILED JUL 30 1991
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

- III. The Public Fund Account shall be used to support the Foundation's Annual Work Program which shall consist of an Operating Program and a Capital Improvement Program. The Annual Work Program shall be supported by a line item budget which shall be prepared by the Foundation in a format provided by the City.
- IV. Each Annual Work Program shall constitute an addendum to this Master Agreement, which addenda shall be subject to the approval of the City Manager.
- V. The Annual Work Program shall be submitted to the City no later than April 1, provided however, that the first Annual Work Program shall be Addendum No. 1 to this Master Agreement and shall be effective on the effective date of this Agreement. Annual Work Programs shall be on a fiscal year basis, beginning July 1 and ending on the following June 30.
- VI. Once City Manager has approved the Annual Work Program, Foundation may proceed with expenditure of funds from the Public Fund Account provided that:
- a) The purposes of the expenditures are consistent with the approved Annual Work Program.
 - b) That total expenditures do not exceed the total of the approved Annual Work Program.
 - c) All checks drawn on the Public Fund Account bear the signatures of two (2) duly authorized representatives of the Foundation.
- Failure of Foundation to comply with the provisions of this paragraph without the prior written approval of the City shall be cause for suspension or termination of the Agreement.
- VII. Implementation of the Capital Improvement Program shall be the subject of a separate Agreement which shall address the roles and responsibilities of the parties in regard to design, management, construction, financing, operation and maintenance of each project. No funds may be expended from the Public Fund Account for Capital Improvements until the parties have entered into a separate project agreement.
- VIII. City, upon reasonable notice, shall have the right to inspect all books and records of Foundation relating to Public Fund Account and may perform any audit it cares to during the term of this Agreement and for a period of three (3) years following termination of this Agreement. Foundation shall retain all such records for those three (3) years.
- IX. Annually, on September 1, Foundation shall submit to City a report of financial activity of the Public Fund Account for the preceding fiscal year, which report shall comply with generally accepted accounting procedures.

- X. Foundation shall provide City with a copy of Foundation's audited annual Financial Report as required by the State of California to retain its non-profit status.
- XI. Except as hereinafter provided, the office of the City Attorney shall defend and the City of San Diego shall indemnify the Mission Trails Regional Park Foundation established pursuant to the bylaws on file with the Office of the Secretary of State as Document Number 1554194 and incorporated herein as Exhibit "A", and the duly elected or appointed members thereof against any claim or action against the Foundation or member if all of the following circumstances exist:
- a) The person is a duly elected or appointed member of the Foundation;
 - b) The alleged act or omission occurred or was authorized during a lawful meeting of the Foundation or subcommittee thereof;
 - c) The alleged act or omission was within the reasonable scope of duties of the Foundation as described in Foundation's bylaws on file with the Office of the Secretary of State as Document Number 1554194 and incorporated herein as Exhibit "A";
 - d) The Foundation or member thereof has made a request in writing to the City for defense and indemnification within five (5) working days of having been served such legal papers; and
 - e) The Foundation or member thereof has performed his, her or its duties in good faith with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.
- XII. The City of San Diego may decline to represent Foundation or member thereof that would otherwise be entitled to defense and indemnification under this Agreement if either of the following circumstances exist:
- a) The Foundation or member thereof does not reasonably cooperate with the City Attorney in the defense of the claim or action; or
 - b) The Foundation or member thereof acted or failed to act because of fraud, corruption, actual malice or bad faith.
- XIII. In the event the City Attorney determines that Foundation or member thereof is not entitled to or should not receive a defense and indemnification under this Agreement, the City Attorney shall promptly advise the Foundation and the member.
- XIV. Representation and indemnification shall not be provided by the City of San Diego in any administrative or judicial proceeding initiated by Foundation or its members against the City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be

provided to Foundation or its members against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by Foundation or its members.

- XV. In no event shall representation or indemnification be provided against a claim or judgement for punitive damages.
- XVI. In the event either party commences litigation for specific performance or damages for the breach hereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs.
- XVII. No amendment, modification, supplement, termination or waiver of any provision of this Agreement shall be effective unless executed in writing by both parties and then only in the specific instance and for the specific purpose given.
- XVIII. Foundation may terminate this Agreement at any time upon ninety (90) days advance notice to City. In the event of termination by Foundation, all funds in the Public Fund Account shall be returned to City.
- XIX. City may terminate this agreement at any time upon adoption of a resolution by the San Diego City Council. In the event of termination by City, all funds in the Public Fund Account shall be returned to City.
- XX. Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective (a) on a personal delivery, (b) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service use

(e.g. Federal Express) postage or fee prepaid as appropriate,
addressed to the party at the address shown below:

For the City:

GEORGE I. LOVELAND
PARK AND RECREATION DIRECTOR
CITY OF SAN DIEGO
202 "C Street
Mail Station 9B
San Diego, California 92101
(619) 236-6643

For the Foundation:

MICHAEL PENT
PRESIDENT, MISSION TRAILS REGIONAL PARK FOUNDATION, INC.
4014 Tambor Road
San Diego, California 92124
(619) 531-3620

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Resolution No. R-278442 authorizing such execution and by Consultant this 30th day of July, 1991.

THE CITY OF SAN DIEGO

BY [Signature]
PARK AND RECREATION DIRECTOR

MISSION TRAILS REGIONAL PARK FOUNDATION INC.

BY [Signature]
MICHAEL PENT, PRESIDENT

I HEREBY APPROVE the form and legality of the foregoing Agreement this 8th day of Aug, 1991.

JOHN W. WITT, Attorney

BY [Signature]

(R-92-172)

RESOLUTION NUMBER R- 278444

ADOPTED ON JUL 30 1991

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a Master Agreement with Mission Trails Regional Park Foundation Inc., governing its role in the preservation, development and maintenance of the park, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR-278444-1, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute an agreement with the Mission Trails Regional Park Foundation, Inc., for design and construction of the park's visitor's center project, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR-278444-2, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the above project and agreement.

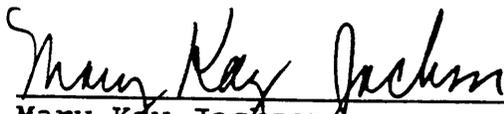
BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to transfer an amount not to exceed \$480,000 from CIP 29-680.0, Mission Trails Regional Park Visitors' Center, Fund 392010, Lusk-Regional Park Improvements, to the Mission Trails Regional Park Foundation, Inc.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to transfer the amount of \$360,000 and all subsequent revenues, including interest accrued, from Fund 392010, Lusk-Regional Park Improvements, to the Mission Trails Regional Park Foundation, Inc.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to transfer an amount not to exceed \$50,000 from Mission Trails Regional Park Fund, Fund No. 10580, to CIP 29-680.0, Mission Trails Regional Park Visitors' Center.

APPROVED: JOHN W. WITT, City Attorney

By



Mary Kay Jackson
Deputy City Attorney

MKJ:mb
07/24/91
Aud.Cert:9200053
Or.Dept:Pk.&Rec.
R-92-172
Form=r.auagr

Passed and adopted by the Council of The City of San Diego on July 30, 1991 by the following vote:

YEAS: Wolfsheimer, Hartley, Pratt, Behr, Henderson, McCarty, Mayor O'Connor.

NAYS: None.

NOT PRESENT: Roberts, Filner.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: RHONDA R. BARNES, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 278444, passed and adopted by the Council of The City of San Diego, California on July 30, 1991.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Blonda R. Barnes, Deputy

EXHIBIT A

FOUNDATION ARTICLES OF INCORPORATION

PR-55
CC
10/2



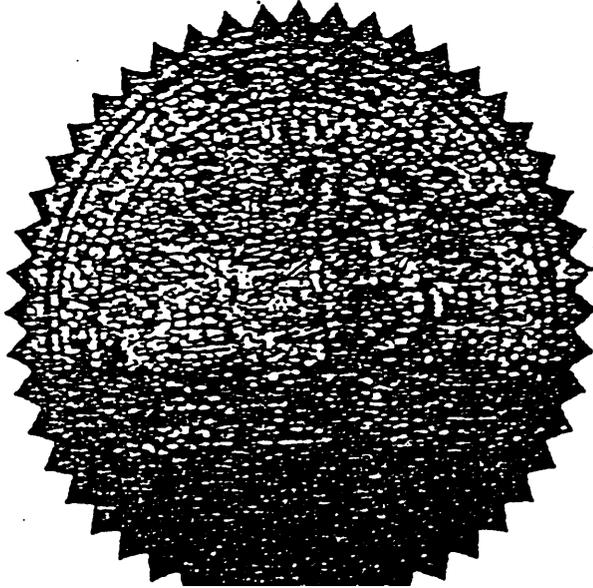
State
of
California
OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

FEB 22 1988



March Fong Eu

Secretary of State

1554194

ENDORSED
FILED

In the office of the Secretary of State
of the State of California

ARTICLES OF INCORPORATION

FEB 22 1988

OF

MARCH FONG EU, Secretary of State

MISSION TRAILS REGIONAL PARK FOUNDATION, INC.

I

The name of this corporation is Mission Trails Regional Park foundation, Inc.

II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The public purposes are to preserve, improve, develop and maintain Mission Trails Regional Park in the County of San Diego, California and to foster public appreciation and understanding of Mission Trails Regional Park. Such purposes for which this corporation is organized are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and Section 23701d of the California Revenue and Taxation Code and are exclusively charitable within the meaning of Section 214 of the California Revenue and Taxation Code.

Notwithstanding any other provisions of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and this corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or any future United States Internal Revenue Law).

III

(a) This corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits, or dividends to the members thereof or to any private shareholder, as defined for purposes of Section 501(c)(3) of the Internal Revenue Code of 1986, or individual.

(b) The property, assets, profits, and net income of this corporation are irrevocably dedicated to the purposes set forth in Article II above and no part of the net income

or assets of this corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person.

(c) Upon the dissolution and winding up of this corporation after paying or adequately providing for all debts and liabilities of this corporation, the remaining assets of this corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable or educational purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and under Section 214 and Section 23701d of the California Revenue and Taxation Code.

IV

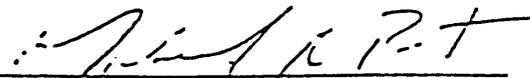
No substantial part of the activities of this corporation shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code of 1986, and this corporation shall not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in Section 501(h) of the Internal Revenue Code of 1986.

V

The name and address in the State of California of this corporation's initial agent for service of process is:

Michael R. Pent
4014 Tambor Road
San Diego, California 92124

Dated: January 17, 1958



Michael R. Pent

I hereby declare under penalties of perjury under the laws of the State of California that I am the person who executed the foregoing Articles of Incorporation, which execution is my free act and deed.



Michael R. Pent