RESOLUTION NO. 3037-13

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR RESCINDING RESOLUTION NO. 361-94 AND ESTABLISHING THE POLICY FOR THE NAMING OF TOWN PARKS, FACILITIES AND PROGRAMS

WHEREAS, the Town of Windsor ("Town") owns or operates and maintains real estate, buildings, parks and other recreational facilities, and operates a wide variety of programs and services in and throughout the Town; and

WHEREAS, the Windsor Town Council ("Council") has approved an Alternative Fund Development program to support the establishment of a Windsor Parks and Recreation Foundation ("Foundation") to support the Town Parks and Recreation Department's vision and mission and to provide an opportunity to accomplish more than public funding allows; and

WHEREAS, on February 13, 2013, the Town executed a Memorandum of Understanding between the Town and the Foundation, thereby creating a formal relationship between the Town and Foundation; and

WHEREAS, the Memorandum of Understanding will ensure that the fundraising efforts of the Foundation solely support the Windsor Parks and Recreation Department and provide proper controls to ensure Foundation actions meet Town values, mission, priorities and guidelines; and

WHEREAS, the Foundation can submit grants and provide a vehicle for acceptance of endowments and gifts for park and facility development, maintenance and recreation programs, and provide a means to invest and manage gifts given for park and recreation purposes; and

WHEREAS, on July 7, 1994, the Council adopted Resolution No. 361-94 establishing a policy for the naming of park and recreation facilities; and

WHEREAS, the Council has reviewed and considered a proposed Naming and Presentation Policy for Parks, Facilities and Programs for the 21st Century Through the Year 2099 ("Policy") which, among other things, provides that no covered asset or amenity will be named without a required monetary gift, in accordance with the Policy; and

WHEREAS, it is the desire of Council to rescind Resolution No 361-94 and to substitute therefore the proposed Policy.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Windsor does hereby rescind Resolution No. 361-94.

BE IT FURTHER RESOLVED that the Town Council of the Town of Windsor adopts the attached Policy.

PASSED, APPROVED AND ADOPTED this 2nd day of October 2013, by the following vote:

AYES:	**COUNCILMEMBERS ALLEN, FUDGE, OKREPKIE, SALMON AND MAYOR GOBLE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

ROBIN GOBLE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

ATTACHMENT:
Exhibit A

Town of Windsor
Parks and Recreation Department

NAMING AND PRESENTATION POLICY FOR PARKS, FACILITIES AND PROGRAMS FOR THE 21ST CENTURY THROUGH THE YEAR 2099

The following proposed Naming and Presentation Policy for the Town of Windsor Parks and Recreation Department (Department) is consistent with the philosophy outlined in the *Alternative Fund Development Program* and detailed in the Memorandum of Understanding (MOU) attached hereto as Exhibit 1 as an operating document between the Town of Windsor (Town) for the Parks and Recreation Department and the Windsor Parks and Recreation Foundation (Foundation) which was approved by Town Council on November 2, 2011, and executed on February 13, 2013.

Definitions:

Town means the town of Windsor, California.

Department means the Parks and Recreation Department of the Town of Windsor.

Commission means the Windsor Parks and Recreation Commission.

Foundation means the Windsor Parks and Recreation Foundation.

Corporate and Presentation Naming means sponsorships by corporate entities constituting commercial speech.

Facilities refer to parks, buildings, rooms, landscape areas, or other Town properties.

In Kind Donation means a donation of goods, time, or professional services. In Kind donations do not include monetary contributions.

Legacy Naming means sponsorships by individuals, non-profit corporations, or foundations.

Sponsor means an individual or other entity entering into a Sponsorship relationship with the Town.

Sponsorship means In-Kind labor, services, materials, supplies and/or a cash contribution for reciprocal benefits such as naming rights to a park, facility or program.

Purpose & Program Administration

The Naming Policy for Parks, Facilities and Programs is an alternative funding program that is supported by individuals, nonprofits, private businesses, foundations, and corporations to enhance parks and recreation services by means of revenue generation.

The Town through its Parks and Recreation Department has and in the future intends to authorize the "naming" of certain parks, facilities, buildings, rooms, landscape areas (Facilities) and programs in return for private, corporate or non-profit contributions made to and managed by the (Foundation) in accordance with the MOU between the Town and Foundation. Contributions may be offered in the form of in-kind labor, services, materials, supplies and/or cash in exchange for reciprocal benefits. A sample list of Park Amenities and Programs is attached hereto as Exhibit 2.

The Town and Parks and Recreation Department shall establish the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds that have been given to the Town by the Foundation and plaque locations and size. Gifting amounts shall be based on the *Alternative Fund Development Program* formula reviewed by Town Council on March 2, 2011, and included in the *Policy and Procedure Manual of the Fund Development Program.*

The Foundation and Parks and Recreation Department philosophically and by policy will not name any asset without the necessary Contributions as detailed in the *MOU.*

The Town Facilities, properties or programs are limited public forums. Nothing in the policy creates a public forum.

Unavailable Sponsor

Should a Sponsor or other funding sources not be available at the time of acquisition, development or improvement of a park or facility, or at the time of program implementation, the name shall address one or both of the following objectives:

1. To enhance the values and heritage of the Town of Windsor and be compatible with community interest.

2. To be descriptive of the park's geographical location and/or function so that it will be easily identified.

Procedures for Naming Park and Recreation Facilities or Programs

1. The Park and Recreation Commission shall recommend to the Town Council the names for Park and Recreation Facilities or Programs.

2. The criteria used by the Park and Recreation Commission, and subsequently the Town Council, for considering a park, facility or program name shall be the criteria set forth in this policy.

3. Typically, parks or recreation facilities shall be named immediately after acquisition; likewise, programs shall be named upon implementation in order to be identified from the onset.

4. The Park and Recreation Commission shall provide ample public notice of its intent to solicit donors and sponsors or select a park name, providing sufficient time for other individuals/groups to propose other names prior to the Commission making a decision.

Change of name. A park, facility or program may be changed if any of the following conditions are met:

1. When the current name appears to be in appropriate.

2. When the current name is inconsistent with the objects of the Naming Policy.

3. When the naming term has expired.

4. Selecting a new name for a park, facility or program already named shall be subject to the same objectives, criteria and procedures described in this policy.

Legacy Naming

1. Only names of individuals, non-profits, and foundations are permitted within the category of Legacy Naming and names must substantially conform to the examples listed in Exhibit 3 attached hereto.

2. Naming applications are submitted and reviewed. When naming or renaming as a sponsorship benefit is to be offered in recognition of a sponsorship, the Foundation is alerted and the proposal is considered by committee. Applications will be reviewed to ensure that proposed names are consistent with all existing Windsor Parks and Recreation Department and Foundation policies. The name will be negotiated between the sponsor and the Foundation. Should the Sponsor be denied, a written appeal must be submitted within 30 days to the Executive Board of the Foundation. The Foundation shall respond within the next 14 days.

3. Facilities that have previously been given a commemorative name will not be available for naming rights but may be eligible for Corporate and Presentation Naming described below.

4. Names with connotations that by community standards are derogatory or offensive will not be considered.

5. The Town Parks and Recreation Department will exercise its reasonable discretion to determine if a proposed Contribution meets the mission and goals of the Town and the Policy in accordance with this policy and as set forth by the criteria.

6. Naming rights carry no power of direction, or implied power of direction, to the Town on matters in any respect, including and without limitations, of appointment of persons, Town policy, or any other government process.

7. The Parks and Recreation Department shall utilize the Foundation to solicit endowments and contributions as detailed in the MOU between the parties. The Town through its Parks and Recreation Department will provide the Foundation priority Facilities and programs with financial considerations for naming on an annual basis. These priorities will be reflective of a master plan annually reviewed by the Parks and Recreation Commission and approved by Town Council. It will also consider any proposals put forth by the Trustees of the Foundation.

Corporate and Presentation Naming

8. Corporate and Presentation Naming is available to commercial entities who make a monetary or other acceptable contribution to the Town in exchange for the right to name a Town Facility.

9. The Parks and Recreation Director, in consultation with the Town Manager, will have final approval on all "naming", including wording of plaques, press releases, and any and all factors and details of the Facilities or program naming.

10. Naming applications are submitted and reviewed. When naming or renaming as a sponsorship benefit is to be offered in recognition of a sponsorship, the Foundation is alerted and the proposal is considered by committee. Applications will be reviewed to ensure that proposed names are consistent with all existing Windsor Parks and Recreation Department and Foundation policies. The name will be negotiated between the sponsor and the Foundation. Should the Sponsor be denied, a written appeal must be submitted within 30 days to the Executive Board of the Foundation. The Foundation shall respond within the next 14 days.

11. Where facility, building, landscape area, programs, or other related Park and Recreation asset is named for a corporate entity, the name used should normally be the shortest name possible.

12. Where the naming rights purchased are for a private sector business, the naming rights shall be limited to not longer than the life of the private sector entity.

13. No Agreement may violate Town policies or the Sign Ordinance.

14. Names with connotations that by community standards are derogatory or offensive will not be considered.

15. Sponsorships must provide a positive and desirable image to the community and recognition benefits cannot compromise the design and visual integrity of the park or facility.

16. The Town Parks and Recreation Department shall utilize the Foundation to solicit contributions and approve naming of certain Facilities and programs as well as private sector Sponsorships as approved by Town Council and as detailed in the MOU between the parties.

17. Corporate names and sponsorships must be commercial in nature. No non-commercial speech is permitted in the limited forum created by this policy.

18. The Parks and Recreation Foundation, through the Town of Windsor Parks and Recreation Department, reserves the right to reject any corporate naming or presentation sponsorship request. The following criteria must be met by any corporate entity or business for corporate naming or presentation sponsorships and includes but is not limited to the following:

    a. Does not discriminate against any person, employee, member, or volunteer on the basis of race, color, creed, religion, gender, sexual preference, age, marital status, ancestry, national origin, or physical or mental disability, in compliance with all federal, state, and local laws and statutes; and

    b. Does not promote or support programs, activities, or products detrimental to public health, safety, or well-being. Names are not allowed that otherwise contradict the policies and missions of the Windsor Parks and Recreation Department.

    c. Is not an Industry or corporation that makes or supports products including adult night clubs, religious and political organizations, sponsors that do not portray PG or G rated images, and companies whose businesses are substantially derived from the sale of alcohol, tobacco, firearms, adult entertainment or pornography; and

    d. Does not promote environmental, work, or other practices that, if they took place in the Town, would violate U.S. or state law (i.e., dumping of hazardous waste, exploitation of child labor, etc.); and

    e. Does not constitute violations of law.

Intended Wall of Fame

Notwithstanding a financial contribution, the Parks and Recreation Department intends to establish a "Windsor Wall of Fame" in recognition of individuals and organizations that have been instrumental in

the development of Windsor and its Facilities and programs and who have exercised extraordinary commitment to the Town. This Wall of Fame will be located in a prominent area of the Town and the individuals and organizations honored will not necessarily be required to have given assets to the Parks and Recreation Department or community. This will allow the department to honor volunteers and significant In Kind donations from individuals, non-profit organizations or companies. The Wall of Fame concept is in addition to and outside the scope of the Naming Policy.

Exhibits:

1 – Memorandum of Understanding between Town and Foundation
2 – Sample list of Park Amenities and Programs
3 – Examples of Pre-Approved Legacy Names

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF WINDSOR AND
WINDSOR PARKS AND RECREATION FOUNDATION, INC.**

THIS AGREEMENT is made and entered into this 13th day of February, 2023 by and between the Town of Windsor, a municipal corporation located at Windsor Town Hall Civic Center, 9291 Old Redwood Highway, Windsor, California, 95492 (Town), and the Windsor Parks and Recreation Foundation, Inc., a nonprofit corporation organized pursuant to state statutes, located in Windsor, California (Foundation).

WHEREAS, the Town, through its Parks and Recreation Department, maintains the stated vision to create community through people, parks and programs; and the stated mission to strengthen community image and sense of place, support economic development, strengthen safety and security, promote health and wellness, foster human development, increase cultural unity, protect environmental resources, facilitate community problem solving and provide recreational experiences; and

WHEREAS, the Town, owns or operates and maintains real estate, buildings, parks and other recreational facilities, and operates a wide variety of programs and services in furtherance of this mission; and

WHEREAS, the Town intends to have a naming policy and in the future intends to authorize the "naming" of certain facilities, buildings, landscape areas, programs, and other related Park and Recreation Department assets and amenities, in return for private sector monies donated to the Foundation and managed by the Foundation in accordance with this Memorandum of Understanding (MOU) between the Town and the Foundation; and

WHEREAS, the Town, through its Parks and Recreation Department, established the terms of the naming agreements, including necessary gifting amounts, length of memorialization, management of funds, plaque locations and size. Additionally, the Town's Parks and Recreation Department philosophically and by policy will not name any asset or amenity without the necessary monetary gift as will be detailed in the *Policies and Procedures Manual of the Fund Development Program* of the Town's Parks and Recreation Department; and

WHEREAS, the Foundation wishes to support the Town's Parks and Recreation Department's vision and mission and has the opportunity to accomplish more than public funding allows; and

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

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

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

WHEREAS, the Foundation wishes to assure the Town and its Parks and Recreation Department that it will operate effectively and responsibly with the reasonable expectations of both public and private interests on behalf of the Town and its Parks and Recreation Department.

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

Section 1. Foundation Representations.
The Foundation represents and acknowledges the following with regard to its operation, creation and purpose:

1.1 The Foundation is created and operated exclusively in support of the Town and its Parks and Recreation Department's vision, mission and goals and their work will be compatible with these interests and goals and will support the master plans of the Town's Parks and Recreation Department.

1.2 The Foundation will have as its primary purpose to secure, purchase, manage and invest privately raised funds solely for the benefit of the Town's Parks and Recreation Department's parks, facilities and programs.

1.3 The Foundation will operate as a private legal entity separate from the Town and its Parks and Recreation Department.

1.4 The Foundation will use sound fiscal and auditing procedures.

1.5 The Foundation will not interfere with day to day Parks and Recreation Department operations; and

1.6 The Foundation will obtain and 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 shall keep on file with the Town's Parks and Recreation Department updated copies of all of its enabling documents including the Articles of Incorporation, bylaws and any amendments to these documents. The Town's Parks and Recreation Department Director or his or her designee shall review these documents annually.

Section 3. Foundation Enabling Documents - Required Provisions
The Foundation shall include language substantially similar to the following clauses in its enabling documents:

3.1 Articles of Incorporation. In the event of its dissolution, the Foundation's assets and records will be distributed to the Town of Windsor for Parks and Recreation parks, facilities, programs and services, provided the Town remains a qualified charitable organization under relevant federal and state income tax laws.

3.2 Bylaws. The Foundation's Bylaws shall provide that the Director of the Town's Parks and Recreation Department shall be an ex-officio member of the Foundation.

Section 4. Bond and Insurance
The Foundation shall ensure that officers and staff members are bonded in an amount of not less than $1,000,000. The premiums payable on such bonds shall be payable from the funds of the Foundation. Further, the Foundation shall obtain and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Foundation, Foundation's agents, representatives and employees.

4.1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

4.1.1 Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

4.1.2 Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

4.1.3 Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Foundation shall sign a declaration as described in California Health and Safety Code Section 19825.

4.1.4 Director's and Official's liability insurance (Bond & Fidelity).

4.2. Minimum Limits of Insurance. Foundation shall maintain limits no less than:

4.2.1 General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit

shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

4.2.2 Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

4.2.3 Worker's Compensation: statutory limit; Employer's Liability: $1,000,000 per accident for bodily injury or disease, when applicable.

4.2.4 Directors and Official's liability: as approved by Town Risk Manager

4.3 Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers, or the Foundation shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4 Other Insurance Provisions.

4.4.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

a. The Town, its officers, officials, employees and volunteers are to be covered as Insured as respects: liability arising out of work or operations as performed by or on behalf of the Foundation; or automobiles owned, leased, hired or borrowed by the Foundation.

b. For any claims related to this project, the Foundation's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Foundation's insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

4.4.2 The Worker's Compensation endorsement shall contain a Waiver of Subrogation against the Town. The Foundation shall provide to the Town an endorsement from the Worker's Compensation

insurer, if any, agreeing to waive all rights of subrogation against the Town for injuries to employees of the insured resulting from work for the Town or use of the Town's premises or facilities, when applicable.

4.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

4.6 Verification of Coverage. Foundation shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Town or on other than the Town's forms provided those endorsements conform to the Town's requirements. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

4.7 The Foundation shall annually provide the Town's Parks and Recreation Department documentation of its compliance with this Section.

Section 5. Indemnification

To the full extent allowed by law, Foundation shall indemnify, defend with counsel acceptable to Town, and hold harmless Town and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Foundation's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Town.

The Foundation's obligation to defend and indemnify shall not be excused because of the Foundation's inability to evaluate Liability or because the Foundation evaluates Liability and determines that the Foundation is not liable to the claimant. The Foundation must respond within 30 days to the tender of any claim for defense and indemnity by the Town, unless this time has been extended by the Town. If the Foundation fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Foundation under and by virtue of this Agreement as shall reasonably be considered necessary by the Town, may be retained by the Town until disposition has been made of the claim or suit for damages, or until the Foundation accepts or rejects the tender of defense, whichever occurs first. With respect to third party claims against the Foundation,

the Foundation waives any and all rights of any type to express or implied indemnity against the Indemnities.

Section 6. Accountability and Stewardship
As the Town and the Foundation want to maintain the highest levels of accountability and stewardship, the Foundation agrees to share information with the Town 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 reports are made to donors on the use of such funds.

Section 7. Donor Solicitation.

7.1. Donor Communication. The Foundation agrees to make the following clear to prospective donors:

7.1.1. The Foundation is a separate, legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the Town's Parks and Recreation Department.

7.1.2. Responsibility for governance of the Foundation, including investment of gifts and endowments, resides with the Foundation's Board.

7.1.3. Checks for charitable gifts to any of the Town's Parks and Recreation Department's programs should be made payable to the Windsor Parks and Recreation Foundation.

7.1.4. Gifts made for a designated purpose will be dedicated in their entirety to that purpose unless it is specifically stated that an administrative charge will be applied.

7.2 Conditions of Gift Acceptance. The Foundation agrees that in accepting gifts of all kinds, it will:

7.2.1. Advise donors that any restrictive terms and conditions they attach to gifts for the Town's Parks and Recreation Department are subject to the Town's Parks and Recreation Department approval.

7.2.2. Ensure that gifts designated for specific purposes are in compliance with the Town's Parks and Recreation Department's master plans, vision, mission and philosophy.

7.2.3. Ensure that the Town's Parks and Recreation Department's naming policies and procedures are adhered to as will be

delineated in the *Policy and Procedure Manual of the Fund Development Program.*

7.2.4. Ensure that gifts are promptly reported to and approved for acceptance by the Town.

7.2.5. Coordinate their funding goals, programs and campaigns with the Town's Parks and Recreation Department.

7.2.6. Any gift, grant, or contract that includes a financial or contractual obligation binding upon the Town must have prior concurrence in writing from the Town Council or its designee.

Section 8. Financial Procedures.

8.1. Standards. The Foundation will hold and invest endowments and funds functioning as endowments on a long-term basis. For this purpose, they should ensure that the following standards are applied:

8.1.1. Prudent Practices. In general, Foundation investment procedures should be conducted in accordance with applicable state law, prudent, sound practices to ensure that gift assets are 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.

8.1.2. Administration of Income. Income from investments, net of administrative fees, should be administered in accordance with pertinent Foundation policies, and, where appropriate, transferred to the Town so as to be expended from the appropriate Town's Parks and Recreation Department or program budget accounts.

8.1.3. Annual Report. The Foundation shall also prepare an annual report to the Town that summarizes the funds transferred to the Town. The Town and the Foundation shall provide each other, upon request, with other reports as may be necessary to ensure proper financial oversight.

Section 9. Town's Parks and Recreation Department - Accountability of Funds
The Foundation, in consultation with the Town's Parks and Recreation Department, shall determine who shall be responsible for reporting to the donor regarding the use of a donor's funds.

Section 10. Financial Commitments Consistent with the Town's Parks and Recreation Department Vision and Mission
The Foundation shall carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the Foundation's Board of Directors and consistent with the Town's Parks and Recreation Department's vision, mission and goals.

Section 11. Financial Statement
The Foundation shall maintain financial records in accordance with generally accepted accounting principles, and be audited annually by a firm of certified public accountants. Copies of the audited financial statements and a current list of Foundation officers, directors or trustees, shall be made available to the Town.

Section 12. Inspection of Foundation Records
Because private funds are raised to support public projects, the Foundation will permit, on reasonable notice, authorized Town officials or their designees to inspect all Foundation books and records, except to the extent such inspection violates rights to privacy or confidential donor information.

Section 13. Compliance Reviews
The Town's Parks and Recreation Department will conduct periodic compliance reviews of the use of donated funds. These reviews will be conducted by the Town's Parks and Recreation Department 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 the Town and the Foundation. A written report of the results of such review shall be provided to the Foundation, prior to its annual meeting and be placed on the master calendar.

Section 14. Designation as a Gift
Funds received by the Town shall only be accounted for as gifts where the appropriate donor intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

Section 15
The Town's Parks and Recreation Department's Assistance to the Foundation
As long as the Foundation complies with all provisions of this Agreement, the Town will assist the Foundation in the following manner:

15.1. Allow the Foundation to use the name and images of the Town's Parks and Recreation Department.

15.2. Provide the Foundation with assistance in Foundation activities in the discretion of the Director of the Parks and Recreation Department, and consistent with what is permitted under state and

federal law. This includes the use of Town facilities. Direct costs shall be paid by the Foundation.

15.3. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation.

Section 16. Notice of Non-Compliance - Opportunity to Cure
In the event of non-compliance with any provision of this Agreement, the Town shall notify the Foundation in writing of the event or practice the Town believes does not comply with this Agreement. The Foundation shall, within forty-five (45) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the Town that the Foundation is in compliance. In the event the Foundation fails to comply within this time period, the Town may, at its option, terminate this Agreement and its relationship with the Foundation.

Section 17. Termination
In addition to the method of termination provided for in Section 15, this Agreement may be terminated by either party by delivering written notice of termination to the non-terminating party at least sixty (60) days prior to the effective date of any termination. In the event of termination, the Foundation shall provide the Town with an accounting of all funds in its possession and transfer those receipts, along with any restrictions thereon, to the Town.

Section 18. Entire Agreement and Amendment.
This Agreement represents the parties' entire agreement with respect to the matters specified herein.

Section 19. 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 in the County of Sonoma, California.

Section 20. Severability
Any provision of the Agreement which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 21. Attorney's Fees
In the event of litigation or arbitration over the terms or performance of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Section 22. Mediation
Should any dispute arise out of or related to this Memorandum of Understanding or its performance by the parties hereto, the parties shall meet in mediation and attempt to reach a resolution with this assistance of a mutually acceptable mediator. The parties shall select a mediator within thirty (30) days of the notice

by a party to mediate a claim. Mediation shall be concluded within sixty (60) days of the notice to mediate being made unless extended by the parties by mutual agreement. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution of the claim(s). The costs of mediation shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of obtaining attorneys fees and legal costs.

Section 23. Headings
The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

Section 24. Survival
All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Town and Consultant shall survive the termination of this Agreement. Should both parties agree, an arbitrator may be utilized.

TOWN OF WINDSOR

J. Matthew Mullan, Town Manager
LINDA KELLY

David Kelley, Assistant Town Manager/
Risk Manager

Donna Legge
Parks and Recreation Director

Approved as to form:
Robin Paige Donoghue

Robin Donoghue, Town Attorney

WINDSOR PARKS AND RECREATION FOUNDATION, INC.

Warin J. Parker, President
Windsor Parks and Recreation Foundation
Board of Directors

Sample List of Naming Opportunities for
Town of Windsor Parks and Recreation Department
Parks, Facilities and Programs

The following is based on a staff report prepared for the Windsor Town Council meeting of March 2, 201, regarding agenda Item # 11.3 – Parks and Recreation Department Alternative Fund Development Program Update prepared by Private Sector Funding Advisor consultant Barry Weiss or Barry Weiss & Associates.

The Windsor Parks and Recreation Department has a wide variety of programs and facilities as well as projected park and program development plans that are ideal candidates for the alternate fund development through a comprehensive Private Sector Assistance Program. The programs and facilities lend themselves to different financial vehicles which are identified and delineated later in this report.

Examples of the identified priority programs and facilities are based on recent community demands and the Park Development Fund projects approved by Town Council in April 2010.

This sample list is not an official recommendation by staff or the Parks and Recreation Commission. A comprehensive master listing will be submitted for approval should the Alternative Fund Development Program concept be approved:

Update the Parks and Recreation Master Plan 2015

- Adopted by Town Council in 1999 to support General Plan 2015 and guides the Parks and Recreation Department in planning for parks, facilities and recreation programs.

Esposti Park (3-phase Master Plan)

- Athletic field renovations/sub drainage improvements
- Additional athletic fields
- Renovate restroom/concession/storage facility
- Tot Lot Playground
- Perimeter pathway
- Historic oak tree

Community Gardens

- Cement pad for disabled access
- Enhancements including picnic tables, umbrellas, planting boxes and LED lighting
- Additional new sites

Keiser Park

- Phase 1 – baseball fields and restroom/concession/storage facility
- Destination/adventure playground (3.3.2 Initiative in Windsor Economic Development Strategic Plan)
- Picnic stage area
- Playgrounds

- Phase 2 – bathhouse, competition and recreation pools
- Phase 3 - recreation center and individual rooms

Hiram Lewis Park and Pat Elsbree Skate Park

- Restroom/Concession/Storage facility

Lakewood Meadows Park

- Bocce ball court
- Playground

Michael A. Hall Park

- Oak tree groves (Majority of oak trees remaining in Windsor are in parks)
- Playground

Starr Creek Park

- Trail enhancements and expansion
- Interpretive program
- Riparian maintenance

Town Green

- Desired improvements and renovations
- Corporate program sponsorships for concerts and movies in the park
- Restroom/storage facility

Wilson Ranch Soccer Park

- Soccer Fields
- Shade structure
- Restroom/concession facility

Windsor Senior Center

- Individual rooms
- Swimming pool and spa

Town Wide

- Additional tennis courts
- Additional community gardens
- Additional dog parks
- Pickle ball courts
- Outdoor volleyball courts
- Horseshoe pits
- New neighborhood park(s)
- New community park(s)
- Tree groves
- Covered picnic structures
- Drinking fountains
- Water features
- Foot bridges

- Creeks and riparian area improvements

Additionally,

Naming Rights and Presentation Sponsorships for Neighborhood and Community Parks and facilities:

- Specific individual facilities within each park, such as, picnic sites, park benches, playgrounds, sports fields, interpretive hiking trails and riparian areas.
- Specific facilities, rooms and areas at the Cunningham House, Hembree House Cultural Center, Community Center, Senior Center, Huerta Gym, Community Gardens and Library
- Current and proposed programs of the Parks and Recreation Department include:

    - Youth and senior citizen scholarship program
    - Town wide special events
    - Youth and teen development programs
    - Hooper's youth basketball league
    - Mobile recreation neighborhood unit
    - Pre-school programs
    - Afterschool enrichment programs
    - Water safety programs

    Based on the current and projected facilities and programs outlined, it is apparent that there are many diverse funding needs and possibilities for alternative funds. Personal historical significance, nostalgia, and individual relationships will significantly impact support for many of the individual facilities. Priorities will reflect community and individual interest.

Potential Private Sector Assistance (PSA) Funding Initiatives

Foundation Vehicle

The Windsor Park and Recreation Foundation will be the organization whose purpose is to:

1. Support the mission and vision of the Parks and Recreation Department as well as the Parks and Recreation Master Plan 2015 and other applicable planning documents of the department.
2. Market the Alternative Fund Program of the Parks and Recreation Department
3. Acquire funds, as designated, for development and endowment
4. Receive estate gifts
5. Receive charitable contributions of all sizes enabling everyone to support the Parks and Recreation Department
6. Establish, maintain, manage and invest all endowments
7. Provide a mechanism to be eligible to receive funding from other non-profits
8. Conduct a Capital Campaign to support identified segments of the Alternative Fund Development Program

Funding Categories

There are a number of potential sources for alternative funds and a number of endowment and sponsorship categories that must be developed with strong parameters, policies, and procedures. Each of the categories is similar, yet distinctly different in a number of areas. In general, some will provide new monies to build facilities, some to operate facilities, some to enhance and maintain facilities, and some will reduce the Town's General Fund obligations to Parks and Recreation facilities and programs.

Legacy Endowments

A Legacy Endowment is a private individual or foundation gift that would be dedicated to a specific facility or program. The gift amount required for the facility would be pre-determined and pre-approved by the Town through the Parks and Recreation department. In some instances, the gift would be used totally as a dedicated endowment, and in some the gift would have an endowment component and a physical facility improvement component. In all endowment cases, the principal would be held for a specific period of time in a dedicated line item with the annual income from the account available as needed to maintain the program or facility. In most cases a lifetime naming right will be associated with the gift. It is suggested that for the purposes of Windsor Parks and Recreation that a finite amount of time be placed on naming rights i.e. - "the 21st century." This will assist in marketing the concept. Actual gift acknowledgements might be for 100 years with a "cap" at 2111, one hundred years from the close of a capital campaign. This can be amended and modified with each subsequent campaign.

There are many reasons why individuals and foundations would be interested in legacy endowment gifts to the Parks and Recreation Department. Although reasons vary widely, there are a number of common threads that normally appear.

- Believe organization is essential to the community
- Understand the need
- Commitment to organization – I want it to last forever
- Life was touched by the organization…I want it to touch others
- Historic ties to organization – long-time family involvement
- Commitment to organization's leadership
- Desire to "fulfill a dream"
- Belief in organization's vision and mission
- Strong passion for the cause
- Desire to impact the future – either pessimistic or optimistic about the future
- Desire to "give back" to the organization
- Has had a recent experience with death…permanence is important
- Has had a recent experience with birth…legacy is important

Legacy giving is the number one form of giving in the United States today. It has surpassed estate considerations. It is recommended that legacy endowment monies be utilized for capital projects funding with a replacement, maintenance and enhancement endowment, for existing facilities with a replacement, maintenance and enhancement endowment, and in some instances for endowing the general operating expenses of specific programs.

The formula to arrive at this gifting figure would be:

FORMULA

GA = Gifting Amount
To arrive at GA: B + X = GA
B = Capital Project Cost
X = Unknown Dedicated Endowment Amount
To arrive at X:

Assumption: The endowment money will be kept in a dedicated account with an annual return of the current local agency investment fund (LAIF), which will be moved annually to a replacement income account.

I. The replacement and enhancement costs will be based on the number of years of anticipated use of items to be replaced.
R. Replacement cost will be actual replacement plus any anticipated enhancements.
X. The unknown endowment necessary

Simplistic Example: Gifting endowment necessary for a park bench

Given:

B = Capital Bench, Plaque and labor cost are equal to $800
T. Term The bench is anticipated to last 10 years
R. Replacement The replacement cost in 10 years is anticipated to be $1,000

The dedicated endowment necessary to produce $1,000 (R) in 10 years (T) @ LAIF can be calculated by finding the dedicated endowment (X) necessary.

(R) 1,000 = (LAIF)X . 10(T)
1,000 = .50X
1,000 = X

1 .50
X = $2,000

1,000 = 2,000
.5

GA = B + X
GA = $800 + $2,000
Gifting amount for a park bench would be $2,800 if LAIF was 5%

It should also be noted that the income account of the dedicated endowment would grow annually at rate of the LAIF. The actual income account will be based on the investment return.

This formula allows Parks and Recreation management to establish gifting amounts necessary for endowments based on actual dollar amounts. It is recommended that management review the results, and in each case apply available national benchmarks, community demand, and perceived market value to the suggested gifting price. A small amount could be added for Foundation administration, possibly a percentage of interest earnings.

In cases where NO capital expenditure is necessary, such as an existing meeting room, the same formula may be used with (B) being zero (0). Meeting rooms in the Community Center or Gym are best suited for this formula.

It should also be noted that the income account of the dedicated endowment would grow annually.

Some general examples of facilities that fit this category and range of potential legacy endowment gifts include:

Town Green

- Potential long-term legacy endowment in the general range of $1 million dollars
- Town Green Pavilions have potential endowment ranging from $25 – 150,000
- Town Green Fountain
- Timeline Walk
- Holiday Tree
- Open Space Preserve
- Playground

Windsor Community Center

- Center naming rights – Potential long-term legacy endowment in the general range of 1 million dollars.
- Individual meeting rooms such as the South Room and the Kitchen have potential endowment amount ranging from 25 – 150K.

Windsor Senior Center

- The endowment naming of the Senior Center could range as high as $1 - $1.5 million and higher. The potential for a charitable remainder trust with naming rights is high for this facility as it serves the seniors of the community.
- The unnamed meeting and activity rooms of the Senior Center as well as the swimming pool offer various opportunities including endowment/legacy naming with ranges from $25,000 to $500,000, with the pool at the higher end. Optionally, these rooms and the pool might be considered for corporate naming rights, sponsorships, and "Presented by..." gifts.

Community Parks

Windsor has a number of parks named for localities or physical features which have no historical naming significance. These parks have the potential for legacy gifts, attaching a family name that could range from $100,000 to $1 million dollars, based on size, locations, community visitation, and impact. Some examples include:

- Acorn Park
- Lakewood Meadows Park
- Old Vineyard Park
- Pleasant Oak Park
- Vintage Oaks Park

Library

While the library is owned by the Town and operated by Sonoma County, it has tremendous potential for a building endowment that includes naming rights. As an example, it might have the most potential of any facility in the system based on national library naming benchmarks and popularity. The combination of serving all age groups of the community with an educational emphasis is very appealing in estate considerations to many people. The estimate for a naming endowment for this facility could be as high as $2 - $5 million dollars. This could produce as much as $100,000 to $250,000 annual income to maintain the facility and fund programs.

Windsor Parks and Recreation "Parks" Endowment

It is recommended that a fund be established as a discretionary endowment for the Parks and Recreation Department. The endowment would be funded generally by undesignated personal donations and donations solicited to support the general Parks and Recreation Department's vision and mission.

Donations would accrue as an endowment and only the annual income would be available for utilization. The fund might be marketed as "Windsor Parks and Recreation of the Future." Annual review of the fund and potential uses of the income account should be undertaken by Parks and Recreation administration with input from the community advisory groups and the trustees of the Windsor Parks and Recreation Foundation. The advisory groups could include the Town Council appointed Parks and Recreation Commission and the Senior Citizen Advisory Commission.

Corporate Naming Rights

The corporate naming rights phenomenon began in 1988, in California at the then "Forum" where the LA Lakers played basketball. A bank – Great Western – paid $1 million dollars per year to place its name on the building. Since that day professional sports venues and many collegiate venues have struck "naming rights" deals with corporate sponsors. The phenomenon has reached into local communities both large and small at venues ranging from community parks to civic centers. Many of Windsor Parks and Recreation facilities, being both the type of facilities and having the user demographics necessary, lend themselves to corporate naming right contracts.

The Library and Windsor Community Center both are examples of facilities that could be considered for 5 to 10 year naming rights gifts, even though in the long term they would be more desirable as legacy endowment facilities.

Additional facilities that fit corporate naming rights include:

- Windsor Senior Center
- Unnamed athletic fields
- Tennis courts
- Nature interpretive trails
- Town Green Pavilions
- Playground features

For Windsor, it is likely that the sponsorships will come from local and regional businesses rather than national organizations. Additionally, businesses new to the area, trying to establish a niche in the Windsor or Wine Country area will be prime candidates.

These contracts would be for specific support of facilities and programs within the Parks and Recreation Department and include short-term naming rights, usually from 5 – 10 years. The monies could be used to support annual operating costs and improvement to facilities and expansion and support of programs.

Presentation Sponsorships

Many facilities within the Parks and Recreation system have historical names attached for a variety of reasons. Some were named out of convenience, some for public figures, volunteers and donors. In these cases it would be inappropriate to bestow lifetime naming rights to a facility; however, these facilities could be opportunities to offer short-term naming rights recognition via a presentation sponsorship. The facilities would be attractive to individuals, civic groups, corporations, and small local businesses. The monies would be used for operations, maintenance and program costs. Presentation sponsorships allow for smaller, local businesses and companies to become involved in the community. Usually the presentation sponsorships would be for a shorter term, 1 to 3 years, usually renewable, and range from $25,000 to $150,000 annually. Some examples might be:

Keiser Park (good potential with new construction)
- Presented by Kaiser Permanente

Huerta Gymnasium
- Presented by Anytime Fitness

Esposti Park
- Presented by Hampton Inn & Suites

Hiram E. Lewis Park / Pat Elsbree Skate Park
- Presented by Office Depot

Town Green
- Presented by Rotary Club of Windsor

Hembree Cultural Center (Windsor Historical Society)
- Presented by Francis Ford Coppola Winery

Cunningham House (Windsor Historical Society)

- Presented by Kelly-Moore Paint Company

The sponsorship money necessary for presentation would be pre-determined with final approval by City Council assisted by a Parks and Recreation Commission recommendation. Sponsorship levels would typically be tied to annual operating costs, national benchmarks (if available), location, demographics, and market conditions.

Corporate Program Sponsorships

Program sponsorships have been successful over the past few years in the Parks and Recreation Department. Program sponsorships allow another different level of donor and are almost always local and tied to the community. Sponsorships will range from donations of products such as food for day campers to in-kind services, to actual dollars to offset operating costs. Sponsorships for local programs typically range from $250 to $50,000 and are normally solicited by program staff. Parks and Recreation sponsorships currently range from $250 to $10,000 with room to grow. The summer concert series is an excellent example of corporate sponsorship for community programs. Some other examples might be:

- Earth Day and Wellness Festival
- Cinco de Mayo
- Fine Arts Show
- July 3rd Fireworks (Merchants Association)
- Teen Camp
- Hooper's Youth Basketball league
- Mobile Recreation Neighborhood Unit
- Tuesdays Movies In The Park (Merchants Association)

Exhibit 3

Examples of Pre-Approved Legacy Names

1. First, Last
2. F. Last
3. First M. Last
4. First Middle Last
5. The ____ Family
6. Mr. & Mrs. _____ (any combination of Mr. Ms. Mrs. Miss, Dr. Honorable, etc.)
7. In Honor, In Memoriam, With Thanks, With Love, etc.
8. The ____Foundation
9. Organization Name
10. Other language that substantially resembles the above examples, as approved by the Department.

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