TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: John Burch Park Donation Agreement and Dugout Plan Approval

MEETING DATE: May 16, 2023

## BACKGROUND

The JBP Supporters have been fundraising and are ready to begin construction on the 3<sup>rd</sup> base dugout project. Attached is the donation agreement and a draft set of plans for approval. The plans are at 90% with only a few changes needed to comply with building code which is governed by Goodhue County Building Department. After their review, changes will be made to meet building code.

The JBP Supporters will be in attendance to answer any questions that the City Council have for the project.

The city will need to provide water and sewer services to the site which will include a grinder pump for sewer to lift it up the hill. City Staff will also help in any way we can to make the project a success. The alley into JBP will need a resurface after the project is complete which will be in 2024.

This was presented to the Park Board and was approved unanimously and with great enthusiasm. This is a great community project that improves Cannon Falls as a place to live.

# **STAFF RECOMMENDATION**

Please approve the Donation Agreement and plans for the 3<sup>rd</sup> base dugout project.

# **REQUESTED COUNCIL ACTION**

Please make a motion to approve the Donation Agreement and plans for the 3<sup>rd</sup> base dugout project with John Burch Park Supporters.

### **DONATION AGREEMENT**

THIS DONATION AGREEMENT ("Agreement") is made and effective as of the day of \_\_\_\_\_\_, 2023 ("Effective Date"), by and between the City of Cannon Falls, a Minnesota municipal corporation (the "City"), and John Burch Park Supporters, Inc., a Minnesota nonprofit company ("Park Supporters"). The City and Park Supporters are each a "Party" and collectively the "Parties" to this Agreement.

## **RECITALS:**

WHEREAS, the City owns John Burch Park located at Highway 19/Main Street W and 7<sup>th</sup> St., Cannon Falls, MN 55009 (the "Property");

WHEREAS, Park Supporters has offered to construct and donate to the City a third base dugout and concession stand with a bathroom on the Property (the "Improvements") according to the plans attached hereto as Exhibit A (the "Plans");

WHEREAS, the Improvements will enhance and provide additional facilities on the Property for use by the public; and

**WHEREAS**, the City desires to accept the donation of the improvements pursuant to Minn. Stat. § 465.03 and the terms of this Agreement.

**NOW, THEREFORE,** in consideration of the foregoing, and in consideration of the mutual terms, covenants, conditions and agreements herein contained, the Parties agree as follows:

1. <u>Incorporation</u>. The above recitals and the attached exhibits are a material part of this Agreement and are incorporated herein.

2. <u>Term</u>. The term of this Agreement shall commence on the Effective Date and terminate upon the City's acceptance of the donated Improvements pursuant to the terms of this Agreement (the "Term").

3. <u>Improvements</u>. Park Supporters represents that it has retained the services of ("Contractor") to design and construct the Improvements in accordance with the Plans, which Plans have been submitted to the City for its review and approval. Park Supporters agrees, by and through itself and Contractor, to construct the Improvements in compliance with the Plans and all applicable local, state and federal laws, rules, regulations and ordinances. Construction shall commence within \_\_\_\_\_ days of the City's approval of the Plans (the "Commencement Date") and shall be completed on or before \_\_\_\_\_\_, 2023, and shall not unreasonably interfere with the City's operation and maintenance of the Property.

4. <u>Costs</u>. Park Supporters shall be solely responsible for all costs associated with the Improvements including, but not limited to, labor, services and material costs and the Contractor's fees and charges (collectively, the "Improvement Costs"). Park Supporters represents that the Improvement Costs are estimated to be \$\_\_\_\_\_ ("Estimated Costs"). Park

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Supporters shall provide evidence satisfactory to the City that it has, prior to the Commencement Date, at least the Estimated Costs in readily available funds, which may be reduced based on proof of payments already made by Park Supporters to the Contractor towards the Estimated Costs.

5. <u>Completion</u>. The Improvements are subject to the City's inspection and approval to ensure conformity with applicable laws and ordinances, City standards, and the Plans. Park Supporters shall notify the City upon completion of the Improvements and the City will thereafter inspect the completed work. The City may either deem the Improvements complete or provide Park Supporters a punch-list of issues relating to the Improvements that require correction (the "Punch-List"). Park Supporters will diligently correct the issues on the Punch-List to the City's satisfaction. Once the City deems the Improvements complete or Punch-List satisfied, the Improvements shall be complete ("Completion"). Upon Completion and as conditions precedent to the City's acceptance of the donated Improvements, Park Supporters shall provide the City the following documentation:

A. Proof of payment for all labor, services and materials for the Improvements in a form acceptable to the City, including fully executed lien waivers from all persons and entities that provided labor, services and materials relating to the Improvements; and

B. Documentation that any warranties related to the Improvements have been assigned and transferred to the City.

6. **Donation and Acceptance of Improvements**. Upon Completion, Park Supporters agrees to donate to the City and the City agrees to accept from Park Supporters the donation of the Improvements (the "**Donation**"), subject to the terms and conditions in this Agreement. Evidence of the City's acceptance of the Donation shall be by resolution of the City Council. Once the Donation is accepted, the Improvements shall become the property of and under the control of the City, and Park Supporters shall no rights to the Improvements.

7. <u>Liens</u>. Park Supporters shall not cause or permit any liens for labor, services, or materials to be created against the Property. To the extent any such lien is created, Park Supporters shall cause such lien to be released of record within thirty (30) days of the City obtaining knowledge of such lien by either satisfying the lien or transferring the lien to a bond.

8. <u>Park Supporter's Representations and Warranties</u>. In order to induce the City to enter into this Agreement, Park Supporters represents and warrants to the City that:

A. <u>Warranty of Title</u>. Upon donating the Improvements to the City pursuant to this Agreement, all of Park Supporter's rights, title and interests in and to the Improvements will pass to the City free and clear of all liens, encumbrances and other security interests. No person or entity has any right to assert any lien, encumbrance or other security interest in any amount against any of the Improvements.

B. <u>Organization and Qualification</u>. Park Supporters is duly organized, validly existing and in good standing as a Minnesota nonprofit company.

C. <u>Authority</u>. Park Supporters has all requisite power and authority to execute, deliver and perform its obligations under this Agreement, and to consummate the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement by Park Supporters and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Park Supporters and constitutes the valid and binding obligation of Park Supporters, enforceable against it in accordance with its terms.

D. <u>**Funds**</u>. Park Supporters has or will have prior to the Commencement Date readily available funds for the Estimated Costs.

9. <u>Independent Contractor</u>. Park Supporters and its directors, officers, staff, members, employees and agents, or any other person, while engaged in the performance of any service or activity under this Agreement, shall not be considered employees of the City and nothing contained in this Agreement is intended or should be construed as creating the relationship of partners or joint venturers. No tenure or any rights or benefits of City employment, including, but not limited to, Worker's Compensation, Unemployment Insurance, medical care, sick leave, vacation leave, severance pay, PERA, or other benefits available to employees, shall accrue to Park Supporter's directors, officers, staff, members, employees or agents.

10. **Indemnification**. Park Supporters shall indemnify, defend and hold the City harmless from and against any and all claims for property damage or personal injuries, including reasonable attorneys' fees, arising out of, in connection with, or in any way related to Park Supporter's, including its directors, officers, staff, members, employees, agents, contractors, subcontractors, consultants, licensees, lessees, guests and/or invitees, exercise of any rights or obligations under this Agreement; provided, however, that Park Supporter's indemnification obligations shall not apply to any claims to the extent arising from any intentional or negligent acts or omissions of the City or its agents, contractors, sub-contractors, consultants, licensees, lessees, guests and/or invitees.

11. <u>Insurance</u>. During the Term, Park Supporters shall maintain, and shall cause the Contractor to maintain, insurance providing comprehensive, general liability, and property damage coverage in minimum amounts of \$1,500,000.00 and the City shall be named as an additional insured. Park Supporters shall provide the City with evidence of all required insurance coverage prior to the Commencement Date.

12. **Default/Remedies**. If any default occurs under this Agreement by any Party, the non-defaulting Party shall have all remedies available to it at law or in equity. The Party prevailing in any dispute arising out of the this Agreement shall be entitled, in addition to other damages or costs, to recover its reasonable attorney's fees and court costs.

13. <u>Notices</u>. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each referred to as a "Notice") shall be in writing and deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal

Service (receipt requested). Notices must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

To City:	City of Cannon Falls Attn: City Administrator 918 River Road Cannon Falls, MN 55009
To Park Supporters:	John Burch Park Supporters, Inc. Attn: Rich Burr PO Box 301 108 North 4 <sup>th</sup> Street Cannon Falls, MN 55009

14. <u>Permits</u>. This Agreement is not an approval of any permits required for the Improvements. Park Supporters shall be responsible for obtaining all required permits for the construction of the Improvements.

15. <u>Modification</u>. Any alteration, modification or variation of this Agreement shall be reduced to writing and signed by both Parties.

16. <u>Entire Agreement</u>. This Agreement and any other documents incorporated herein by reference constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

17. <u>**Time of Essence**</u>. Time is of the essence in the performance of the terms and obligations of this Agreement.

18. <u>Controlling Law</u>. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in state court located in Goodhue County, Minnesota, and each Party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

19. <u>Assignment</u>. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party.

20. <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is

intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. <u>Headings</u>. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

22. <u>Survival</u>. The agreements of the Parties set forth in Sections 3, 4, 6 - 10, and 12 - 22 shall survive Donation of the Improvements.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed as of the day and year first above written.

# JOHN BURCH PARK SUPPORTERS, INC.

By: \_\_\_\_\_\_ Its: \_\_\_\_\_

## **CITY OF CANNON FALLS**

By: \_\_\_\_\_ Matt Montgomery, Mayor

By: \_\_\_\_\_\_ Neil Jensen, City Administrator

# EXHIBIT A

PLANS

# JOHN BURCH PARK CANNON FALLS, MN 55009



# **GENERAL NOTES:**

- ALL STRUCTURAL METAL FRAMING (PRIMARY & SECONDARY FRAMING) IS DESIGNED BY METAL BUILDING MANUFACTURER (PRE-ENGINEERED METAL BUILDING OR "PEMB") STRUCTURAL METAL FRAME SHOWN IN ARCHITECTURAL DRAWINGS IS FOR REPRESENTATION ONLY. VERIFY SIZE & LOCATION WITH PEMB DRAWINGS.
- ALL BATH MIRRIORS TO BE SUPPLIED BY GLASS CONTRACTOR.
- ALL HANDRAILS, IF ANY, ARE TO BE INSTALLED AT BOTH SIDES OF STAIR AND/ OR RAMP. ALL TRADES SHALL COMPLY WITH ALL APPLICABLE NATIONAL, STATE, AND LOCAL ٠
- **BUILDING CODES** ALL TRADES TO CALL FOR THEIR OWN REQUIRED INSPECTIONS & MUST OBTAIN ANY REQUIRED PERMITS.
- NOTIFY KCI OF ANY DISCREPANCIES ON THESE PLANS
- FRAMING & DRYWALL
- ALL NEW STEEL STUDS FOR PARTITION FRAMING SHALL BE MINIMUM 2'-0" O.C. 20 • GAUGE. INCREASE GAUGE AS NECESSARY DUE TO HEIGHT, THICKNESS, BEARING, ETC., **REFER TO STRUCTURAL**
- CARPENTER TO PROVIDE BACKING FOR GRAB BARS, BATH ACCESSORIES, TOILET PARTITIONS, & MILLWORK. COORDINATE WITH MILLWORK CONTRACTOR FOR BACKING LOCATIONS.
- CARPENTER TO INSTALL ALL DOORS WITH HARDWARE, BATH ACCESSORIES, TOILET PARTITIONS, & DOOR SIGNAGE.
- FRAME/FURR OUT COLUMNS IN OFFICE AREA TO SMALLEST PROFILE.
- **DIMENSIONS**
- ALL DIMENSIONS FOR INTERIOR PARTITION FRAMING IS TO CENTERLINE OF WALL • UNLESS OTHER WISE NOTED.
- ALL DIMENSIONS FROM THE EXTERIOR START / END ON "STEEL LINE" UNLESS OTHERWISE NOTED.
- MECHANICAL / ELECTRICAL / PLUMBING
- MECHANICAL, ELECTRICAL, AND PLUMBING TO BE DESIGN BUILD.
- MECHANICAL, ELECTRICAL, AND PLUMBING DESIGN BY OTHERS. ALL WORK SHOWN ON ARCHITECTURAL DRAWINGS THAT IS M/E/P IS FOR REFERENCE ONLY. SEE ALL NOTES FOR ADDITIONAL M/E/P INFORMATION
- VERIFY MECHANICAL, ELECTRICAL, AND PLUMBING EQUIPMENT LOCATIONS WITH GENERAL AND/OR OWNER.
- GRAB BARS TO BE SUPPLIED BY PLUMBER & INSTALLED BY CARPENTER. BATH FANS, GAS PIPING, THERMOSTATS, MOTOR STARTERS, ALL CONTROLS & RELAYS TO BE SUPPLIED & INSTALLED BY MECHANICAL.
- ALL CONTROL WIRING TO BE BY ELECTRICIAN.
- ELECTRICAL TO ENSURE PROPER LIFE SAFETY LIGHTING, EMERGENCY LIGHTING, AND EXIT SIGNAGE TO PROVIDE AS ACCESS TO EXIT(S)

# DESIGN CRITERIA:

- STRUCTURE DESIGN SHALL COMPLY WITH BUILDING CODES REQUIRED BASED ON **BUILDING LOCATION.**
- DESIGN WIND LOAD: BY METAL BUILDING MFR, REFER TO PEMB PLANS. SNOW LOAD: BY METAL BUILDING MFR, REFER TO PEMB PLANS.
- ROOF LIVE LOAD: BY METAL BUILDING MFR, REFER TO PEMB PLANS.
- ROOF DEAD LOAD: 3 PSF (3/4" MTL LINER, 3" ISO RIGID, 3" EPS RIGID, & SSR PANEL) COLLATERAL LOAD: 2 PSF
- MEZZANINE LIVE LOAD : 100PSF













Finished Floor 0' - 0"

Foundation -3' - 6"



Scale

3/16" = 1'-0"











16"x16" PIER WITH (4) #5 VERTICALS ON A 36"x36"x12" PAD WITH (4) #5 BARS EACH WAY BOTTOM

55009 PARK AN Z Ц FOUNDATION JOHN BURCH ĽS, AL LL CANNON

A2.2 Project #**Project Number** 

05.03.23

1/4" = 1'-0"

Date

Scale



WIND LOAD   BASIC WIND SPEED (3 SECOND GUST)
ROOF LOAD LIVE LOAD (L.L.)
<u>ROOF_DECK</u> LIVE_LOAD (L.L.)100 PSF DEAD_LOAD (DESIGN_D.L.)60 PSF
ROOF SNOW LOAD:
GROUND SNOW LOAD, Pg50 PSF FLAT ROOF SNOW LOAD, Pf

