

**PASSED 12/18/17 BY A 6-1 VOTE. COTTON VOTING NO**

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT**

THIS AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT (“Agreement”) by and between the City of Valparaiso, Indiana, and Center Township, Indiana, shall be effective as of \_\_\_\_\_, 2017.

W I T N E S S E T H:

Declaration of Purpose

WHEREAS, the elected representatives of the City of Valparaiso, Indiana (“City”) and Center Township of Porter County, Indiana (“Township”) have decided to utilize Indiana’s Interlocal Cooperation Statute, I.C. 36-1-7-1 *et seq.* to formally establish the Valparaiso/Center Township Department of Parks and Recreation to provide park and recreational services to the residents of the City and Township; and

WHEREAS, it has been determined that the best interests of the citizens and taxpayers of the City and Township would be served by administering the park and recreational needs of their respective territories through a joint board consisting of members representing the interest of the parties hereto; and

WHEREAS, the parties hereto have reached an agreement concerning the formation of a joint board, the use of facilities, funding and other matters.

NOW, THEREFORE, it is mutually agreed by and between the parties:

ARTICLE I. DEFINITIONS

It is understood and agreed that the following terms, clauses or names shall be defined as follows for the purpose of this Agreement.

1.1 “City” shall mean the City of Valparaiso, Indiana.

1.2 “Township” shall mean Center Township of Porter County, Indiana.

1.3 “Council” shall mean the Common Council of the City.

1.4 “Mayor” shall mean the duly elected and acting Mayor of the City.

1.5 “Department” shall mean the jointly created Valparaiso/Center Township Department of Parks and Recreation established pursuant to the authority of I. C. 36-1-7 *et seq.* and under the authority of I.C. 36-10-3-3 in the case of the City and I.C. 36-10-7.5-5 in the case of the Township.

1.6 “Parks and Recreation Program” shall mean all park operations, capital assets, management and activities.

1.7 “Trustee” shall mean the duly elected and acting Trustee for the Township.

1.8 “Township Board” shall mean the duly elected and acting members of the Township Board for the Township.

1.9 “Joint Facilities” shall mean land owned, leased or acquired for park and recreation purposes including, but not limited to, office and programming space for the Department and any improvements including, but not limited to, building, remodeling or repair of park and recreation facilities owned or leased by the City, the Township or the Joint Board. It shall also mean all tangible personal property and equipment owned or leased by the City, the Township or the Joint Board for park and recreation purposes.

1.10 “Joint Board” shall mean the entity established pursuant to Article II hereof.

## ARTICLE II. JOINT BOARD

2.1 There is hereby created the Valparaiso/Center Township Board of Parks and Recreation with the composition, rights, duties and responsibilities as set forth in this Agreement.

2.2 The Joint Board shall consist of six (6) members appointed or selected as follows:

a. The Mayor and Trustee shall appoint the following number of members to the Joint Board.

b. Four (4) members of the Joint Board shall be appointed by the Mayor on the basis of their interest in and knowledge of parks and recreation and must be residents of the City.

c. Two (2) members of the Joint Board shall be appointed by the Trustee on the basis of their interest in and knowledge of parks and recreation and must be residents of the Township.

d. No more than two (2) of the Mayor's appointments to the Joint Board may be from the same political party. No more than one (1) of the Trustee's appointments to the Joint Board may be from the same political party.

f. An elected official of the City or the Township shall not be eligible to serve as a member of the Joint Board.

2.3 After the initial terms, each member of the Joint Board shall serve a term of four (4) years. During their initial terms, the terms of the members of the Joint Board will be staggered.

a. All terms expire on the first Monday in January of the applicable year; however, a member of the Joint Board will continue to serve until his or her successor is appointed.

b. A member of the Joint Board serves at the pleasure of the appointing authority.

c. If a vacancy on the Joint Board occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term.

2.4 Each member of the Joint Board shall have one (1) vote on all matters coming before the Board. The Joint Board shall elect a President, Vice President, Secretary and Treasurer to perform the duties normally associated with such offices. The Joint Board may

adopt by-laws which may provide for its meetings, agenda, operations of the Joint Board, election of officers, and such other matters as are normally contained in by-laws. Four (4) Joint Board members shall constitute a quorum and a majority of those present at any duly constituted meeting may take official action. The Joint Board shall establish a regular meeting date at least once each month. All meetings and proceedings of the Joint Board shall be conducted in accordance with Indiana law respecting “open door” requirements and all records and documents shall be made available to the public as required by Indiana law. All agendas and minutes of the Joint Board shall be provided to the Mayor, the Trustee and to members of the Council and Township Board as they become available to the members of the Joint Board.

ARTICLE III. TRANSFER OF POWER UNDER INTERLOCAL COOPERATION ACT

3.1 Pursuant to and by the authority granted under I.C. 36-1-7-2, the City hereby grants to the Joint Board full power and authority to administer a Parks and Recreation Program in accordance with this Agreement.

3.2 Pursuant to and by the authority granted under I.C. 36-1-7-2, the Trustee and Township Board hereby grant to the Joint Board full power and authority to administer a Parks and Recreation Program in accordance with this Agreement.

3.3 The City and the Township hereby jointly establish the Valparaiso/Center Township Department of Parks and Recreation which shall be governed and administered by the Joint Board in accordance with the terms of this Agreement.

3.4 So long as this Agreement is in full force and effect, the City and the Township shall exercise their authority to create a parks department and administer Parks and Recreation Programs exclusively through the Department as governed by the Joint Board; however, nothing contained herein shall prohibit the City or the Township from exercising independently the

additional authority to acquire or condemn property or construct and maintain improvements for park and recreation purposes which are not inconsistent with the terms of this Agreement.

3.5 The Mayor shall have the sole authority to appoint and remove the director of the Department and fix the director's duties.

ARTICLE IV. POWERS AND DUTIES OF THE JOINT BOARD

4.1 The Joint Board shall:

a. exercise general supervision of and make rules for the employees of the Department;

b. establish rules governing the use of all Joint Facilities by the public;

c. provide security and police protection for all Joint Facilities and Department activities, either by requesting assistance from state, municipal, or county police authorities, by entering into contracts with private parties, or by having specified employees deputized as police officers; the deputized employees, however, are not eligible for police pension benefits or other emoluments of police officers.

d. establish standards and qualifications for the appointment of all Department personnel equal with those standards and qualifications established by the City for employees of the City;

e. make recommendations and an annual report to the executive and fiscal body of the City and Township prior to April 1 of each year concerning the operations of the Joint Board and the Department and the status of Parks and Recreation Programs;

f. prepare and submit an annual budget in the manner as provided for in Article VI of this Agreement; and

g. appoint a member of the Joint Board to serve on any other board or commission whenever a statute allows a park or recreation board to do so.

4.2 The Joint Board may, in its own name:

a. enter into contracts and leases for facilities and services;

b. contract with persons for joint use of facilities for the operation of Parks and Recreation Programs and related services;

c. contract with another board, a unit, including any other department of the City or the Township, or a school corporation for the use of park and recreation facilities or services, and a township, school corporation, or a department of the city may contract with the Joint Board for the use of park and recreation facilities or services all on terms agreed to by the Joint Board and the other party;

d. contract with a department of the City for the use of City personnel, services, facilities, equipment, or other services or materials, all of which will be billed to the Joint Board by the City at an hourly rate fixed by the City and agreed to in advance by the Joint Board;

e. acquire and dispose of real and personal property, and provide for Joint Facilities by the issuance of bonds in accordance with Article VII hereof;

f. purchase and maintain its own equipment;

g. engage in self-supporting activities;

h. contract for special and temporary services and for professional assistance;

i. sue and be sued collectively by or in its legal name, as the “Valparaiso/Center Township Board of Parks and Recreation”, with service of process being had

upon the president of the Joint Board, but costs may not be taxed individually against any member of the Joint Board in any action;

j. accept gifts, donations, grants and subsidies for park and recreational purposes;

k. delegate authority to perform ministerial acts in all cases except where final action of the Joint Board is necessary;

l. prepare, publish, and distribute reports and other materials relating to activities authorized by this Agreement or Indiana park and recreation law in general;

m. exercise the power of eminent domain under statutes available to the City or the Township, with the written approval by resolution of both the City and the Township;

n. sell, lease, or enter into a royalty contract for the natural or mineral resources of land that it owns, the money received to be deposited in a nonreverting capital fund of the Joint Board; and

o. invoke any legal, equitable or special remedy for the enforcement of the powers vested with the City under I.C. 36-10-4 or vested with the Trustee under I.C. 36-10-7.5 except as otherwise modified or limited by this Agreement.

4.3 Joint Board members shall not be compensated or receive any per diem allowance.

#### ARTICLE V. PARK AND RECREATION FUNDING

5.1 The Council and the Township Board shall determine and provide the revenues necessary for the operation of the Joint Board and the Department or for capital expenditures not covered by the issuance of bonds by:

a. a specific levy to be used exclusively for park and recreation purposes;

- b. a special appropriation; or
- c. both.

5.2 The City's funding obligation defined in Section 5.1 shall be the annual budget amount approved by the City Council for the Joint Board and Department. The Township's funding obligation defined in Section 5.1 shall be Sixty-Five Thousand Dollars (\$65,000.00). The Township's funding obligation shall be paid to the City in two (2) equal installments. The installments shall be paid by the Township to the City within thirty (30) of the Township receiving its spring and fall real property tax distributions from Porter County.

5.3 The Fiscal Officer of the City, as the disbursing officer of the City, is hereby delegated the authority to receive, disburse, and account for all revenues raised under this Agreement, including all revenue produced or received by the Joint Board or Department for operations or capital expenditures. No disbursements from any park and recreation account shall be made except as to claims approved by the Joint Board in accordance with Indiana State Board of Accounts' practice and procedure.

5.4 Upon the request of the Joint Board, the Council and the Township Board may establish a special non-reverting capital fund for the purpose of acquiring land or making specific capital improvements. Such fund shall be established in accordance with I.C. 36-10-4-16(g) in the case of the City and in accordance with I.C. 36-10-7.5-18 in the case of the Township.

5.5 Upon the request of the Joint Board, the Council and the Township Board may establish a cumulative building fund to provide funds for the building, remodeling and repair of park and recreation facilities and the purchase of land for park and recreation facilities. Such fund shall be established in accordance with I.C. 36-10-4-36 in the case of the City and in accordance with I.C. 36-10-7.5-19 in the case of the Township.



5.6 Upon the request of the Joint Board, the Council and the Township Board may establish a non-reverting operating fund.

5.7 Upon request of the Joint Board, the Township may use funds in the Township's Rainy Day Fund to finance the acquisition of real estate or construction of improvements or other amounts related to the creation of a new Joint Facility. Such use of the Township's Rainy Day Fund shall be subject to the approval of the Township Board. The parties acknowledge and agree that the Township has previously earmarked funds in the Township's Rainy Day Fund in the amount of at least Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to be expended for the above purposes. The Township shall not transfer or otherwise spend the aforementioned earmarked funds without prior notice to and prior approval of both the Joint Park Board and City Council.

5.8 Each officer and employee who handles money in the performance of duties under this Agreement must execute an official bond for the term of office or employment before entering upon the duties of the office or employment. The Council may, under I.C. 5-4-1-18, authorize a blanket bond to cover all officers' and employees' faithful performance of duties. All bonds shall be in the amount of not less than twenty-five thousand dollars (\$25,000) and shall be recorded in the Office of the Recorder of Porter County, Indiana.

5.9 To the extent permitted by law and upon the request of the Joint Board, the Council and Township Board may adopt and impose a park impact fee or fees on properties located within the City and Township.

#### ARTICLE VI. BUDGETS

6.1 The Joint Board shall formulate its estimated budget for each year and submit the same to the Council and the Township Board on or before June 1 of each year. The budget shall

be submitted on forms prescribed by the Indiana State Board of Accounts and shall adequately address the revenue needs for parks and recreation as contemplated by this Agreement. The budget shall be broken down into the following series of accounts:

- a. Personal services, wages and employment related costs.
- b. Supplies.
- c. Other services and charges.
- d. Capital outlays.

6.2 The Council in its sole discretion shall have the authority to approve the annual budget for the Joint Board subject to the funding limitations imposed in Article V. Prior to final approval by the Council, the Township Board shall be permitted the opportunity to review the proposed annual budget of the Joint Board and to take action to either favorably or unfavorably recommend its passage by the Council. The Township Board shall take action on the proposed annual budget of the Joint Board by no later than August 1<sup>st</sup> of each year

6.3 The City and the Township shall pay their respective contributions within thirty (30) days of receiving their respective property tax draws from Porter County. If payment is not received within such time, the amount payable shall bear interest until paid at a rate equal to one percent (1%) per annum over the rate of interest payable to the party on its sweep account with its primary depository for the same period of time.

#### ARTICLE VII. JOINT FACILITIES: ISSUANCE OF BONDS

7.1 All real property or improvements intended for park and recreation use in the City and Township shall be deemed Joint Facilities under this Agreement irrespective of location or record title. As Joint Facilities, all taxpayers and residents of the City and Township shall have equal access to and benefit of said real property or improvements.

7.2 This section applies only to the acquisition of real property or an improvement that will be financed in whole or in part by the issuance of bonds and which will become Joint Facilities under this Agreement. If the Joint Board decides to (a) acquire land for park and recreational purposes, either by purchase or appropriation, and in conjunction with the acquisition to proceed with an improvement; (b) acquire real property without proceeding at the time with an improvement; or (c) proceed with an improvement where the real property has already been secured; it shall adopt the resolution required by I.C. 36-10-4-25 and I.C. 36-10-7.5-21. In addition, the Joint Board shall issue and publish the notices required by the above referenced citations and conduct a public hearing in accordance therewith. After considering all the evidence and public comments or written remonstrances, the Joint Board shall take final action determining the public utility and benefit of the proposed park or recreational project by confirming, modifying or rescinding its original resolution.

7.3 In order to raise money to pay for land to be acquired and/or an improvement authorized under this Agreement and in anticipation of the special benefit tax which may be levied in accordance with I.C. 36-10-4 and I.C. 36-10-7.5, bonds may be issued in the name of the City or the Township, depending upon whether the land and/or improvements are located within the geographic boundaries of the City or the Township at the time the bonds are issued. Before bonds may be issued, however, the Joint Board shall give notice of a public hearing to disclose the purposes for which the bond issue is proposed, the amount of the proposed issue and all other pertinent data. After the public hearing and before additional proceedings on the bond issue, the Joint Board must obtain an ordinance from the Council approving the bond issue and a resolution of the Township Board approving the bond issue.

7.4 Where the land and/or improvements are located within the boundaries of the City at the time of issuance, the bonds shall be issued in the manner prescribed by I.C. 36-10-4. Where the land and/or improvements are located outside the boundaries of the City at the time of issuance, the bonds shall be issued in the manner prescribed by I.C. 36-10-7.5.

7.5 All bonds issued pursuant to the authority of this Agreement shall be subject to the provisions of either I.C. 36-10.4 or I.C. 36-10-7.5, and any other applicable law.

7.6 To raise money to pay all bonds issued under this Agreement, the Joint Board shall request that the Council and Township Board levy annually a special tax upon all of the real and personal property located in their respective Special Taxing Districts sufficient to pay the costs of issuance and principal and interest as the bonds mature. Subject to the passage of the approving ordinance and resolution provided for in Section 8.3 above, the Council and the Township Board shall have the tax levied annual for this purpose. The tax shall be collected and enforced by the Porter County Treasurer as other taxes are collected and enforced.

7.7 As the above referenced tax is collected, it shall be accumulated and kept in a separate fund to be known as the Valparaiso/Center Township Park District Fund. The fund shall be maintained by the City and the tax shall be applied to the payment of the bonds as they mature and, if so determined, costs of issuance.

7.8 The amount of the annual tax levy allocation for the payment of bonds issued under this Article shall be based upon the City's and Township's proportionate share of the aggregate assessed valuation as determined under Section 6.2 of this Agreement.

7.9 It is specifically understood by the parties that this Agreement and the Joint Board may be terminated pursuant to this Agreement even though bonds issued under this Agreement may remain outstanding. However, if the Joint Board is discontinued under this Agreement, the

City and Township's obligation on bonds issued under this Agreement will not be affected. In such case, each unit herewith expressly assumes liability for the payment of the bonds according to their terms and this Article VIII.

ARTICLE VIII. DURATION AND TERMINATION OF AGREEMENT

8.1 This Agreement shall continue from year to year unless terminated pursuant to Section 8.2.

8.2 This Agreement may be terminated pursuant to an ordinance of the Council or resolution of the Township Board directing that the Agreement be terminated and that the Joint Board be disbanded. Such ordinance or resolution must be finally adopted and transmitted to the Joint Board and the non-terminating party on or prior to June 1 of the year preceding the effective date of the termination. Such termination shall be effective as of January 1 of the year following the date of the termination ordinance or resolution as provided for in this section.

8.3 Upon a termination of this Agreement pursuant to Section 8.2, a Termination Committee comprised of the Mayor, the Trustee, the President of the Council, the President of the Township Board and the Fiscal Officer of the City shall be convened for the purpose of equitably dividing the real property, equipment, personal property and joint funds or other cash resources on account and other assets acquired pursuant to this Agreement. Such division shall be based upon the respective contributions of the City and the Township to the acquisition of such assets, the respective contribution for the acquisition of real property and the final ownership of such property as determined in this Section, and such other factors as are deemed appropriate by the Termination Committee. Unless there is more than one (1) member of the Termination Committee dissenting from the final distribution determination of the Committee, such distribution determination shall be binding on the parties hereto. In the event the

Termination Committee is unable to adopt a final distribution determination pursuant to this Section, any party to this Agreement may submit the question of appropriate distribution of such assets to the Superior Court of Porter County for a final determination, which shall be binding on the parties hereto. Each party to the action shall be responsible for its own costs and legal fees.

8.4 Upon termination of this Agreement, the City shall be liable for and indemnify, defend and hold harmless the Township and its officers, agents and employees against claims, liabilities, damage or loss, including costs, expenses and reasonable attorney fees, in connection with any action, suit or proceeding asserted by any person or persons other than the parties hereto, arising out of or based upon the use or occupancy of Joint Facilities reverting to the City.

8.5 Upon termination of this Agreement, the Township shall be liable for and indemnify, defend and hold harmless the City and its officers, agents and employees against claims, liabilities, damage or loss, including costs, expenses and reasonable attorney fees, in connection with any action, suit or proceeding asserted by any person or persons other than the parties hereto, arising out of or based upon the use or occupancy of Joint Facilities reverting to the Township.

8.6 In the event this Agreement is terminated, the Trustee shall reassume jurisdiction for park and recreational purposes which was previously released and transferred to the City pursuant to I.C. 36-10-7.5-7(13) and Article V of this Agreement.

8.7 The termination of this Agreement will not operate to relieve the City and the Township from providing the revenues necessary to pay for bonds issued in accordance with Article VIII hereof. Accordingly, it is specifically understood and agreed that the contracting parties' obligation to levy taxes and appropriate funds for debt service, shall continue year-to-

year until such indebtedness is discharged and paid in full, despite the termination of this Agreement.

#### ARTICLE IX. MISCELLANEOUS

9.1 This Agreement is subject to any applicable laws which may apply to the parties and which give rights or responsibilities to persons who are not parties to this Agreement.

9.2 The contracting parties may, by mutual written agreement, alter, change or amend the terms and conditions hereof, unless said alteration, change or amendment would violate the terms or covenants of any bond ordinance of the City or Township or otherwise prejudice the rights of any bond holders. Any alteration, change or amendment of this Agreement requires the written approval of the fiscal body of the City, the fiscal body of the Township, the executive of the City, and the executive of the Township.

9.3 In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

9.4 This Agreement is entered into pursuant to I.C. 36-1-7-1, *et seq.*, as the same may be amended or supplemented from time to time. This Agreement, and any amendments or supplements thereto, shall be recorded in the office of the Porter County Recorder after approval by the City and the Township and shall be filed with the State Board of Accounts for audit purposes, all as required by I.C. 36-1-7, and shall not be deemed enforceable and binding until recorded with the County Recorder.

9.5 This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IT WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts in their respective names by the duly authorized signators.

**CITY OF VALPARAISO, INDIANA**

By: \_\_\_\_\_  
H. Jon Costas  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF PORTER     )

Before me, the undersigned a Notary Public in and for said County and State, personally appeared, H. Jon Costas and Sharon E. Swihart, personally known by me to be the Mayor and the Clerk-Treasurer, respectively, of the City of Valparaiso, Indiana (the "City"), and acknowledged the execution of the foregoing Interlocal Cooperation Agreement for and on behalf of the City.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of December, 2017.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

**CENTER TOWNSHIP OF PORTER COUNTY,  
INDIANA**

\_\_\_\_\_  
Amy Daly,  
Chairman, Center Township Board

\_\_\_\_\_  
Debra Fray,  
Member, Center Township Board



Dr. Stephen Buck,  
Member, Center Township Board

ATTEST:

\_\_\_\_\_  
Doug Miller,  
Center Township Trustee

APPROVED BY:

\_\_\_\_\_  
Doug Miller,  
Center Township Trustee

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF PORTER     )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dr. Stephen Buck, Debra Fray and Amy Daly, personally known by me to be the members of the Center Township Board, and Doug Miller, personally known by me to be the Township Trustee of Center Township, Porter County, Indiana (the "Township") and acknowledged execution of the foregoing Interlocal Cooperation Agreement for and on behalf of said Township.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of December, 2017.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Ethan S. Lowe.*

**This Instrument Prepared By:**  
Ethan S. Lowe, Esq.  
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