

RESOLUTION NO. _____

A RESOLUTION APPROVING A SPONSORSHIP AGREEMENT WITH KINGSPORT COMMUNITY FOUNDATION AND NAMING OF THE RED FOX HABITAT AT THE BAYS MOUNTAIN PARK; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, Kingsport Community Foundation desires a sponsorship of the Red Fox Habitat at the Bays Mountain Park by providing \$100,000.00 over a term of three years ending in January, 2026; and

WHEREAS, the sponsorship allows naming rights and the renaming of the Red Fox Habitat at the Bays Mountain Park to the Red Fox Habitat sponsored by the Kingsport Community Foundation and the naming rights will be for 10 years with the right of refusal to enter into a subsequent sponsorship agreement;

WHEREAS, pursuant to the Policy for the Naming of Public Buildings, Infrastructure, Prominent Public Spaces, and Facilities adopted by Resolution No.: 2023-219, the board may consider sponsorship of buildings and facilities to include naming the building or facility after the sponsor; and

WHEREAS, upon consideration of those factors specified in Section VI of the naming policy the board deems it advisable to re-name the Red Fox Habitat at the Bays Mountain Park to the Red Fox Habitat sponsored by the Kingsport Community Foundation; and

WHEREAS, it is further deemed advisable and in the best interest of city for the board to exercise its discretion in considering the naming of the Red Fox Habitat at the Bays Mountain Park outside of the period for consideration set forth in Section IV.) 2.) of the policy.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That based upon the findings set forth above which are incorporated herein by reference, the board hereby approves the naming of the Red Fox Habitat at the Bays Mountain Park to the Red Fox Habitat at the Bays Mountain Park to the Red Fox Habitat sponsored by the Kingsport Community Foundation.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a sponsorship agreement with Kingsport Community Foundation, and all documents necessary and proper to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

BAYS MOUNTAIN PLANETARIUM SPONSORSHIP AGREEMENT
BAYS MOUNTAIN RED FOX HABITAT SPONSORSHIP AGREEMENT

This Sponsorship Agreement ("Agreement") is entered into this XX, XXX 2023, by and between The Bays Mountain Park Association (BMPA), a Tennessee Nonprofit Corporation and the

City of Kingsport, Tennessee ("City"), a municipal corporation, with offices located at 415 Broad Street, Kingsport, Tennessee, 37660.

RECITALS

A. BMPA is a non-profit corporation formed for the purpose of supporting Bays Mountain Park and whereas the Kingsport Community Foundation is required to remit donations to a 501(c)3 status organization and the BMPA has agreed to accept funds and enter into a sponsorship agreement on the Kingsport Community Foundation's (KCF) behalf.

B. City is a municipal corporation organized and operating under the laws of the State of Tennessee.

C. Bays Mountain Park is in beautiful Kingsport, Tennessee, is a 3,750-acre nature preserve and the largest city owned park in the state of Tennessee. The Park features a picturesque 44-acre lake, a Nature Center with a state-of-the-art Planetarium Theater, and Animal Habitats featuring wolves, bobcats, raptors, and reptiles.

D. KCF desires to sponsor the Bays Mountain Planetarium feature to continue and strengthen its community support for the benefit of its members and residents, as well as prospective residents, of the greater Kingsport area.

In consideration of the parties' desire to work together for the benefit of Kingsport and the surrounding communities and the mutual covenants and agreements of the parties as contained herein, the parties agree as follows:

1. Term; Renewal; Situs. The term of this Agreement shall be effective as of XX, XXX 2023 and shall continue for a term of ten (10) years from the effective date of the agreement. At termination of this Agreement, BMPA shall have the right of refusal to enter into a subsequent Fox Habitat Sponsorship Agreement for an additional ten (10) years. Should BMPA exercise this right, BMPA and City shall negotiate in good faith an Agreement to renew sponsorship on such terms and conditions as the parties may agree. If BMPA rejects the terms offered by City to renew its sponsorship of the Fox Habitat, City may offer the sponsorship to a different entity but not on terms more favorable than offered to BMPA without providing a ten (10) business day right of first refusal with respect to any such more favorable terms. The parties agree that the place of this Agreement, its situs and forum, shall be Kingsport, Sullivan County, Tennessee, where all matters, whether sounding in contract or tort relating to its validity, construction, interpretation, and enforcement shall be determined.

2. Sponsorship Payment. Shall consist of three (3) payments as outlined.

a. Payment 1. Upon execution of Sponsor Agreement, city will invoice BMPA for \$33,333.33. Invoice to include copy of W-9.

b. Payment 2. City will invoice BMPA \$33,333.33 one year from signed agreement but no earlier than Jan. 1, 2025.

c. Payment 3. City will invoice BMPA \$33,333.34 one year from payment of second payment, but no earlier than Jan.1, 2026.

3. Duties of City. In consideration of BMPA's sponsorship (on behalf of KCF), City agrees to the following:

a. The City will continue to designate Bays Mountain's Fox Habitat feature as the "Red Fox Habitat sponsored by The Kingsport Community Foundation" or alternative name agreed upon in writing by both parties. The City will allow access and permission to place signage for the Fox Habitat in one location near the Fox Habitat with approval of the Park Manager. The city also agrees that it may promote its sponsorship of the Fox Habitat in its own Promotional materials and on the website.

4. Exclusive Sponsorship. During the term of The Bays Mountain Park Association's (on behalf of the KCF) sponsorship of the Fox Habitat, and during any subsequent renewal term, the City covenants and agrees that it will not enter into any other sponsorship agreement for the Fox Habitat with any entity or any individual but may have sponsorship for certain pieces or features of the Fox Habitat.

5. Termination. This Agreement shall terminate at the end of the initial ten (10) year term or, if renewed, at the end of the renewal term, except that:

a. City may terminate this Agreement upon serving written notice to BMPA if BMPA fails to make any payment due under this Agreement within thirty (30) days of the date payment is scheduled to be made.

b. BMPA may terminate this Agreement upon serving written notice to City if:

i. A default or breach of this Agreement by City occurs, and the parties are unable to resolve the default or breach within thirty (30) days following good faith discussions and negotiations as provided in Paragraph 8 below; or

ii. Fox Habitat is closed, materially altered, sold, or transferred to another entity, or otherwise changed such that BMPA reasonably determines it is no longer in BMPA's best interests to continue the sponsorship. In such event BMPA shall have no right to or claim for any funds paid prior to a termination under this subsection ii.

c. Either party without cause and/or for its convenience may terminate this Agreement at any time upon written notice to the other party given at least ninety (90) days prior to the termination date, which termination shall not be a breach of this Agreement. If the City terminates this Agreement for its convenience, BMPA shall be entitled to refund of a pro rata share of the payment made by BMPA for that year, determined by dividing the amount paid for that year by 365 and then multiplying that amount by the number of days remaining from the date of such termination to the next January 1. All identification of BMPA shall be removed from Bays Mountain Park.

6. Certain Covenants. BMPA agrees and acknowledges that during the term of this Agreement it shall not take any action in any manner that would adversely affect the federal tax status of the City's bonds; and it shall conduct its onsite activities solely in furtherance of the City's tax-exempt purpose of owning and operating Bays Mountain Park for the general public and to support the City's exempt activities at Bays Mountain Park. Notwithstanding the aforementioned, this section does not prevent BMPA from hosting an event approved by the City at Bays Mountain Park.

7. No Payment for City's Bonds. The Parties shall not apply any monetary amounts derived from this Agreement to pay debt service on the City's bonds.

8. Nature of the Agreement. It is mutually agreed that this Agreement is for special, unique, and extraordinary services that provide benefits to the community at large. In the event of any breach or perceived breach of the Agreement or in the event of any other issue that may affect the parties' ability to work together or their goodwill toward one another, the parties agree that they will meet and discuss in good faith their concerns and work together toward a mutual resolution of such concerns. The parties agree that neither will terminate the Agreement nor proceed with any legal action to enforce any term of the Agreement until or unless either party makes a good faith determination that further attempts at informal and negotiated resolution under this Section have failed or are futile. However, this provision shall not limit either party's rights under provision 5.c. of this agreement.

9. Severability. In the event this Agreement, or any provision contained herein, is found to be illegal or unenforceable under the law as it is now or hereinafter in effect, either party may elect to have the parties excused from performance of such portion or portions of this Agreement as shall be found to be illegal or unenforceable under the laws or regulations without affecting the validity of the remaining provisions of the Agreement.

10. Relationship of the Parties. All operations by each party under the terms of this Agreement shall be carried on by it as an independent contractor and not as an agent for the other. This Agreement does not create a partnership or joint venture and neither party is authorized to act as an agent or bind the other party except as expressly stated in this Agreement. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties except as expressly stated in Section 3 of the Agreement. City is free to enter into other sponsorship agreements to promote or support Bays Mountain Park except as prohibited by this Agreement.

11. Entire Agreement. This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understanding, and discussions between the parties relating to the subject matter of this Agreement.

12. Modification or Waiver. This Agreement may be modified or amended by the parties. Any modifications or amendment of this Agreement must be authorized in writing, which may include modifications authorized by electronic mail. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

13. Assignment. Any assignment or transfer of a right or interest under this agreement shall only be made pursuant to a written agreement between City and BMPA.

14. Notice. All notices to be given hereunder shall be transmitted in writing by electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall

be sent to the addresses identified below, unless notification of change of address is given in writing.
Notice shall be effective upon receipt of confirmation of receipt.

If to City:
City of Kingsport
Atten: City Manager
415 Broad Street
Kingsport, TN 37660
With a copy to:
City Attorney
Kingsport, TN 37660

If to:

With a copy to:

IN WITNESS WHEREOF, the parties have caused this Agreement to be extend by their
duly authorized representatives.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 17th day of October, 2023.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY