

**Memorandum of Understanding
Between
Friends of the Shaw Family Playground, Inc.
and
City of Sheboygan**

This Memorandum of Understanding (“MOU” or “Agreement”) sets forth the terms and understanding between the Friends of the Shaw Family Playground, Inc. (“Friends”) and the City of Sheboygan (“City”) regarding fundraising, location, ownership, construction, and naming rights for a universally accessible playground designed for use by children of all abilities.

Background

Angie and Ryan Shaw created an organization called the Sheboygan Park Project (“SPP”) to raise funds for a universally accessible playground designed for children of all abilities. They did this after Angie gave birth to conjoined twins, Mateo and McHale, in 2006. The Shaws and SPP had previously worked with city officials on a plan for such a park, but fundraising difficulties and the economic downturn stalled their efforts. The Shaws restarted their fundraising efforts in 2016.

SPP partnered with Steve Schmitt and the Sheboygan Jaycees to help create the playground. SPP worked with Landscape Structures, Inc., a playground design firm based in Delano, Minnesota, to create a plan for such a playground. Members of SPP and city park staff reviewed potential locations for the playground, and all parties involved agreed that Evergreen Park Area Two would be best suited for this playground.

This plan was then presented to the City of Sheboygan Public Works Committee and Board of Marina, Parks, and Forestry Commissioners. Each body reviewed the plans, approved of them, and entered into an agreement related to the playground. The playground has become a cherished asset to the Sheboygan community and the City appreciates its partnership with Friends of Shaw Family Playground, the non-profit developed by SPP after project completion.

Friends desires to enter into a new MOU with the City to replace the prior MOU under the name of SPP and to further clarify the expectations of the parties related to the playground.

Purpose

The purpose of this MOU is to acknowledge the agreement of the parties and set forth the parties’ understanding as to their respective obligations and responsibilities with respect to the fundraising, location, ownership, construction, and naming rights for a universally accessible playground. This MOU outlines certain responsibilities for each party during the period of this Agreement and outlines the general nature of the agreement among the parties. This MOU is intended to enhance the success of the Agreement.

Section 1

1. The universally accessible playground will be called the Shaw Family Playground (“the Playground”).
2. The Playground is located at 2614 Pine Grove Avenue, Area Two of Evergreen Park.
3. Friends desires to aid the City in maintaining, adding to, and improving the Playground, including the pavilion.
4. The Playground is property of the City and part of a public park and will be cared for by the City under the supervision of the Department of Public Works. Friends may raise funds to be used to further improve and maintain the park. The City is not obligated to Friends to expend additional City funds for construction, improvement, or additional park and playground maintenance beyond that customarily contemplated in the City’s annual operating budget. Any such expenditure shall be at the sole discretion of the City.
5. Any past, present, or future funds raised by Friends or its predecessor organization for construction costs, improvements and maintenance, including funds previously held on their behalf by the Sheboygan Jaycees, shall be placed into an endowment fund for the Playground. Said funds shall be controlled by Friends. The City may request funds from the endowment fund to fund the repair or replacement of playground structures, signs, poured-in-place fall areas, fencing, any item that is part of the playground structure; or for the purchase of new items. All structures, ramps, and other items that are part of the Playground will be owned and controlled by the City.
6. Notwithstanding its right as owner, the City will seek consensus from Friends before making any change to the Playground, play components, any structure or ramp that provides accessibility within the Playground, the shade area, donor plaques and fence pickets, signage, independent play areas located inside the fenced area, or any other item paid for by donations from or provided by Friends. Friends understands the City will promptly remove any known hazard that arises within the playground area regardless whether consensus is first obtained but in such case, the Department of Public Works shall promptly notify Friends of such removal and the reason therefor.
7. The City will permit recognition of donors within the playground area. All signage would need to be approved by the City through its normal procedures.
8. The City agrees not to rent the pavilion for private rentals. The pavilion will remain open for all visitors to use during hours the Playground is open. Parties that set up to use the pavilion for private events will be discouraged and told that decorations and private parties are not permitted. Notwithstanding this provision, the City will allow Friends to use the pavilion for fundraising events for the Playground.
9. The City’s Director of Public Works or his designee will serve as the Friends’ primary point of contact and may attend meetings of the board of directors of Friends upon Friends’ request.

10. This MOU is intended to last for the intended life of the Playground, and shall therefore expire December 31, 2043. This MOU shall automatically renew for three ten-year terms and may be further extended by mutual, written agreement of the parties. It should be noted, however, that warranty periods on items in the playground range from three years for smaller movable parts, 15 years for steel structures and plastic slides and 100 years for posts.

Section 2

By entering into this Agreement, the parties do not intend to create any obligations, expressed or implied, other than those set out herein. Further, this Agreement shall not create any rights in any party not a signatory hereto and shall not be interpreted as binding the City contrary to Wis. Stat. s. 65.06(1).

Section 3

Indemnification. Each party agrees to defend, hold harmless, and indemnify the other party against any and all claims, liabilities, damages, judgments, causes of action, costs, loss and expense, including reasonable attorney's fees, imposed upon or incurred by the party arising from or related to the negligent or intentionally tortuous acts or omissions of the indemnifying party's officers, employees, or agents in performing the services pursuant to this agreement. Each party shall promptly notify the other of any claim arising under this provision and each party shall fully cooperate with the other in the investigation, resolution, and defense of such claim.

Section 4

Except as otherwise provided in this Agreement, each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 5

This Agreement shall become effective upon the signature of the parties hereto through their authorized representatives.

Section 6

This Agreement may be terminated by either party for cause if the other party shall default in the performance of this Agreement and the default shall continue for a period of thirty (30) days after written notice to the other party stating specifically the default. Expiration or termination of this Agreement for any reason shall not release any party from its obligations thereunder that have accrued prior to the termination or expiration date. Additionally, this Agreement may be terminated upon sixty (60) days' notice by the City to Friends that the Playground has reached the end of its intended life as determined at the sole discretion of the City based on the wear and tear on the playground structures, signs, poured-in-place fall areas, fencing, and any other item that is part of the playground structure. Whenever the City removes potentially unsafe playground equipment or components or desires to remove playground equipment or components because it has reached the end of its useful life, the City shall offer

Friends the right of first refusal to receive the equipment. Friends may then use the equipment as it desires.

Section 7

Any notice or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, postage prepaid, to the address each of the parties keeps on record for the other party, or to such other address as either party may give notice of from time to time in accordance with this section. Delivery shall be deemed effective upon personal delivery or deposit in the United States mail.

Approved by the parties through signature of the following authorized representatives:

CITY OF SHEBOYGAN:

Mayor

Date

City Clerk

Date

Director of Public Works

Date

FRIENDS OF THE SHAW FAMILY PLAYGROUND, INC.:

Date

Date

Date