

# SEVENTH AMENDMENT TO AGREEMENT FOR HEADWATERS PARK

**THIS SEVENTH AMENDMENT TO AGREEMENT FOR HEADWATERS PARK** (“Seventh Amendment”) is made as of the 18th day of November, 2021 by and between the Headwaters Park Alliance, Inc. (“HPA”), an Indiana nonprofit corporation and the Fort Wayne Board of Park Commissioners (“Park Board”).

**WHEREAS**, HPA and the Park Board entered into an Agreement for Headwaters Park dated **September 17, 2009**, as amended by a **First Amendment to Agreement for Headwaters Park**, dated **March 18, 2010**, a **Second Amendment to Agreement for Headwaters Park**, dated **November 15, 2013**, a **Third Amendment to Agreement for Headwaters Park**, dated **December 10, 2015**, a **Fourth Amendment to Agreement for Headwaters Park**, dated **September 13, 2018**, a **Fifth Amendment to Agreement for Headwaters Park**, dated **September 5, 2019**, and a **Sixth Amendment to Agreement for Headwaters Park** dated \_\_\_\_\_, 2021 (together, the “Agreement”) for the management of Headwaters Park by HPA in Fort Wayne, Indiana (the “Park”);

**WHEREAS**, the Park Board, through the Fort Wayne Parks and Recreation Department (“Parks Department”) and HPA desire to extend the Agreement from January 1, 2022 through March 31, 2023, by entering into this Seventh Amendment.

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Effective December 31, 2021, Section 3 of the Agreement is deleted in its entirety and replaced with the following:  
The term of this Agreement shall be renewed for a term of fifteen (15) months commencing on January 1, 2022 and terminating on March 31, 2023, unless earlier terminated by the Park Board or HPA as provided in this Agreement (the “Seventh Renewal Term”).
2. Effective January 1, 2022, Section 6(D) of the Agreement is deleted in its entirety and replaced with the following:  
The Park Board, through the Parks Department, shall contribute to HPA during the first twelve (12) months of the Seventh Renewal Term a lump sum payment of Ninety Thousand and 00/100 Dollars (\$90,000.00) and shall contribute a lump sum payment to HPA during the last three (3) months of the Seventh Renewal Term of Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00), as follows:

<u>Seventh Renewal Term</u>	<u>Park Board Contribution</u>	<u>Payment Date</u>
First 12 Months	\$90,000.00	On or before 1-31-2022
Final 3 Months	\$22,500.00	On or before 1-31-2023

Notwithstanding the foregoing, the parties acknowledge that, for reasons beyond the control of HPA and the Park Board, the amount of the Park Board Contribution for the Renewal Term may not provide adequate public funding for HPA to fulfill its obligations under this Agreement. Therefore, HPA may: (a) request a contribution of additional funds from the Park Board in either or both of years 2022 and 2023 , which request shall be made on or before September 1, 2022 and (b) terminate this Agreement if such additional contribution of funds is not granted by the Park Board If HPA elects to terminate the Agreement because additional funds are not contributed the requested, HPA shall provide written notice to the Park Board of HPA's intention to terminate no later than November 30, 2022 , and such termination shall be effective at the close of business on December 31, 2022.

3. The Agreement shall be amended by adding the following Section 10.K:  
10.K. The Park Board shall assume sole and exclusive authority and responsibility for the cost, use, operation, maintenance, repair, replacement and removal of the fog system and source fountains during the Renewal Term.
  
4. The Agreement shall be amended by adding the following Section 10.L:  
10.L The Park Board shall assume responsibility for payment of a maximum of Twenty-five thousand and 00/100 dollars (\$25,000.00) of water usage for the operation of the Park (in addition to water use in connection with the operation of the fog system and source fountains) during the Seventh Renewal Term. HPA shall be responsible for the payment of water usage for the operation of the Park in excess of Twenty-five thousand and 00/100 dollars (\$25,000.00) during the Seventh Renewal Term.
  
5. The Agreement as amended remains in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Sixth Amendment to Agreement for Headwaters Park as of the date first written above.

**FORT WAYNE BOARD OF PARK COMMISSIONERS**

**HEADWATERS PARK ALLIANCE, INC.**

**By:** \_\_\_\_\_  
**Commissioner                      Its: President**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Commissioner**

**By:** \_\_\_\_\_  
**Commissioner**

**By:** \_\_\_\_\_  
**Commissioner**

**By:** \_\_\_\_\_  
**Steve McDaniel, Director of Fort Wayne Parks and Recreation Department**