

**MEMORANDUM OF AGREEMENT  
BETWEEN THE HEADWATERS PARK ALLIANCE, INC. AND THE CITY  
OF FORT WAYNE BOARD OF PARK COMMISSIONERS**

This Memorandum of Agreement ("**MOA**") is entered by and between **Headwaters Park Alliance, Inc.** (the "Alliance") and the City of **Fort Wayne Board of Park Commissioners** (the "Park Board"), by and through the **Fort Wayne Department of Parks and Recreation** ("Parks") effective the date and year set forth below.

**RECITALS:**

The Alliance is an Indiana nonprofit corporation organized and operating as a charitable and educational organization under Section 501(c)(3) of the Internal Revenue Code, as amended. The Alliance was formed in 2000 to manage, operate, and improve the Headwaters Park Flood Control Project ("Headwaters Park").

The Alliance managed, operated, and improved Headwaters Park from January 1, 2000, to April 1, 2023, the date on which the Alliance transferred management and operational responsibilities for Headwaters Park to Parks, while continuing to pursue sources of funding to finance additional capital improvements to Headwaters Park.

The Alliance has proposed as a capital improvement that would significantly improve and enhance Headwaters Park the restoration and refurbishment of the source fountain/splash pad in Headwaters Park to its substantially original design and condition at an estimated project cost in excess of \$600,000.00 (the "Splashpad Project"). Parks has agreed to support the design, construction, and installation of the Splashpad Project subject to the terms and conditions of this MOA.

**NOW, THEREFORE**, in consideration of the Recitals and other good and valuable considerations, Parks and Alliance agree as follows:

1. The foregoing Recitals are incorporated into this MOA as if fully set forth herein.
2. The design plans and specifications for the Splashpad Project shall be prepared by Parks. The cost of the design, plans, and specifications shall be paid by the Alliance from the Alliance Commitment (as herein defined) or otherwise.
3. Of its currently available funds, the Alliance will commit up to Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000.00) to fund the Splashpad Project (the "Alliance Commitment") which the Alliance will deliver to Parks on or before July 31, 2024 for deposit into a dedicated account to be established by Parks as a repository for funds received from the Alliance to finance the Splashpad Project (the "Splashpad Project Account").
4. Until such time as the Alliance is no longer in operation, the Alliance will continue to exercise reasonable efforts to secure funds in addition to the Alliance Commitment for the Splashpad Project and to deliver such funds to Parks for deposit into

Bank of \$10,000 and Wilson Foundation of \$10,000 have not been spent on the Splashpad Project by December 31, 2024, the balance of such unspent donations shall be returned to those donors.

8. All rights granted to Parks and all obligations assumed by Parks under this MOA shall continue as provided herein, notwithstanding the cessation of operations or corporate dissolution of the Alliance.

9. The Alliance does hereby irrevocably and unconditionally release, cancel, and forever discharge the Park Board, Parks, the City of Fort Wayne, Indiana and their respective directors, officers, employees, affiliates, agents, representatives, departments and divisions (collectively, the "Releasees") from any and all claims, complaints, causes of action, demands, damages, obligations, liabilities, losses, promises, agreements, controversies, penalties, expenses, and executions of any kind or nature whatsoever, whether known or unknown, actual or potential, whether arising in law or in equity, which the Alliance may have, may have had, or may in the future obtain against the Releasees, jointly or severally, arising out of or relating to any acts, omissions, agreements, or events relating in any manner to this MOA or the course of conduct or actions taken by Releasees, jointly or severally, in connection with the matters contemplated by this MOA, including without limitation, the use of the funds now or hereafter existing in the Splashpad Project Account for the Splashpad Project or any other Headwaters Park expenditure; provided, however, that the foregoing release of Releasees shall exclude the release of claims which result directly from the intentional or grossly negligent acts of Releasees, collectively or individually, in connection with the expenditure of funds which have been deposited in the Splashpad Project Account during the Splashpad Project Account Term or any continuation thereof by Parks.

10. This MOA is conditioned upon and shall become binding on Parks and the Alliance following approval of this MOA by the Park Board and the Alliance Board of Directors.

DATED effective this 23<sup>rd</sup> day of May, 2024.

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Steve McDaniel  
Director Fort Wayne Parks and Recreation

Michele Herald  
Michele Herald  
President, Headwaters Park Alliance, Board of Directors

## Exhibit A

List of Donors to Headwaters Splashpad Project as of May 23, 2024

1. \$40,000.00	ARPA Funds	Megan Butler, City of Fort Wayne
2. \$10,000.00	PNC Bank	Kathryn Myers, 461-6218
3. \$10,000.00	Wilson Foundation	Kathryn Myers, 461-6218
4. \$10,000.00	FW Comm. Foundation	Allison Gerardot, 426-4083
5. \$10,000.00	SDI Foundation	Cynthia Lipocky, 969-3500
6. \$5,000.00	Paul Wolf	Paul Wolf, 600-2529
7. \$5,000.00	Parker Family Foundation	Mac Parker, 436-2128
8. \$3,000.00	Waterfield Foundation	Becky Teagarden, 434-8512
9. \$7,000.00	HPA Year-End Giving	Geoff Paddock, 341-3250
10. \$10,000.00	UEA/SEED	Andrea Robinson, 427-2395