

## LETTER OF UNDERSTANDING

This Letter of Understanding (LOU) is made and entered into on June 5, 2000 between The City of Costa Mesa (City) and the Costa Mesa Bark Park Volunteer Foundation (CMBPVF).

The term of the LOU will commence on June 5, 2000, for an initial 90-day period. It shall continue thereafter on a month-to-month basis until terminated by either party by giving ten (10) days prior written notice to the other party.

## RECITALS AND DEFINITIONS

A. The City of Costa Mesa is the owner of the property located in the southeast corner of Tewinkle Park in the City of Costa Mesa, currently utilized as a leash-less dog park and commonly referred to as the Costa Mesa Bark Park (Bark Park).

B. The CMBPVF is a non-profit foundation dedicated to the raising and administering of donated funds to preserve and improve Bark Park and to pay for certain expenses and provide other services on behalf of Bark Park as specifically agreed upon in this LOU.

C. The parties acknowledge that the Costa Mesa Bark Park is a City park, owned and operated by the City of Costa Mesa for the benefit of the general public. The parties further acknowledge that no provision of this LOU shall in any way be construed to provide the CMBPVF with a possessory interest in this land or any responsibility, legal or otherwise, for the activities of the general public in utilizing this recreational area.

D. This LOU constitutes the entire understanding of the parties and supersedes all prior negotiations, both written and oral, as to the subject matter hereof. This LOU may be modified only by an instrument in writing signed by the parties hereto.

## TERMS AND CONDITIONS

1. **CMBPVF's Duties and Responsibilities.** The CMBPVF hereby agrees to be responsible for performing the duties, and paying the expenses, set forth below:

A. Applying for non-profit status with the State of California immediately upon execution of this LOU, submitting the appropriate forms in a timely manner, and establishing a non-profit corporation as expediently as possible.

B. As soon as sanctioned by the State of California as a non-profit corporation, opening and maintaining proper bank account(s) for the accumulation, protection, and disbursement of funds donated on behalf of the Bark Park.

(1) Until non-profit status has been achieved and said bank accounts opened, the City shall continue to manage existing Bark Park's donated funds, as previously or currently collected by the CMBPVF, until September 30, 2000, or until the CMBPVF becomes sanctioned as a non-profit corporation, whichever comes first. If the CMBPVF has not

made reasonable effort to become sanctioned as a non-profit corporation on or before September 30, 2000, said funds may be placed in the City's general fund at the City Council's discretion for general park improvement and maintenance purposes.

(2) As soon as such bank accounts are established, however, the City shall turn over all funds in its possession that were designated to the CMBPVF, to the CMBPVF for deposit in the non-profit corporation's bank accounts.

(3) CMBPVF acknowledges and hereby agrees that all donated funds, when placed in the corporation's bank accounts, shall be used exclusively for the maintenance and improvement of the Bark Park and at no time shall such funds be used for the personal benefit of CMBPVF members, volunteers, or park users.

C. Preparing and submitting all tax forms required by the Federal Internal Revenue Service and the State of California Franchise Tax Board for donated funds.

D. Providing fiscal accountability to donors for all funds and financial transactions associated with donated funds.

E. Installing and/or renovating Bark Park turf and paying for all materials and supplies necessary to fulfill this obligation.

F. Purchasing, placing and maintaining all interior amenities within the Bark Park that are not otherwise designated to be the responsibility of the City in this LOU, including, but not limited to, tables, benches, chairs, bag dispensers, and display boards. However, before purchasing or adding any such amenities to Bark Park, the CMBPVF shall request in writing, approval from the City's Maintenance Services Manager. The Maintenance Services Manager shall respond in writing to the CMBPVF within seven (7) working days of receipt of such request.

G. Promptly notifying the City's Maintenance Services Manager of needed repairs and/or dangerous conditions in the Bark Park.

H. When appropriate, preparing reports and making presentations concerning the Bark Park before City Commissions and the City Council.

I. Handling public relations and media requests for Bark Park fundraisers and for other circumstances, when appropriate.

J. Ordering, purchasing and restocking supplies necessary for Bark Park users to keep the Bark Park clean and free of animal feces and trash, including, but not limited to, poop bags, poop bag dispensers, poop scoopers, shovels, etc., and keeping bag dispensers full. The Bark Park users also shall ensure that all dog feces are removed from the park prior to any scheduled maintenance.

K. Monitoring, responding to, and removing messages from the Bark Park hotline and message line and changing the message when necessary.

L. Providing volunteers to educate park users in canine related matters and concerns.

M. Conducting fund raising events when necessary, paying for all expenses incurred during such functions, and securing all required City permits for special events.

N. Paying for the cost of utilities (water and electricity) pertaining to the operation of the Bark Park above an established 12-month baseline, described more fully below in Paragraph 2D.

O. Programming and operating the irrigation system in accordance with the "Rules and Regulations for Reclaimed Water Service" per the Mesa Consolidated Water District. Providing a re-claimed water irrigation supervisor to act as the "on-site supervisor" as required by the "Rules and Regulations for Reclaimed Water Service".

P. Determining the need for, paying for, and administering any program for pest control in accordance with the California Department of Pesticide Regulations.

Q. Working with the City to amend or change Bark Park rules when deemed necessary by either party.

R. Paying for the cost of signage (including installation and replacement), pamphlets, flyers and newsletters, including any postage.

**2. City's Duties and Responsibilities.** The City hereby agrees to be responsible for performing the duties, and paying the expenses, set forth below:

A. Providing and paying for regular, routine irrigation maintenance (excluding setting irrigation controller and operating irrigation system, see Paragraph 1.O above) and landscape maintenance as scheduled by the City's Maintenance Services Manager.

B. Paying and providing for facility maintenance to the same levels as other City Parks, including, but not limited to, parking lot maintenance and cleaning, weed control, fence repair; tree trimming, lighting system repair, trash removal, dumping fees and porta-potty rental and maintenance.

C. Providing Park Ranger, Police, and Animal Control assistance.

D. Paying utilities (water and electricity) up to a baseline set in the first 12 months of operation after the park is renovated. Any use over and above this baseline figure may, at the discretion of the Maintenance Services Manager, result in an assessment to be paid by the CMBPVF (See Paragraph 1.N. above).

E. Providing and paying for a voice mail system for Bark Park including an information line and a message line. The City shall immediately notify CMBPVF of any changes to the system, when the system is "down" and/or when it is being repaired.

F. Providing training and support to the CMBPVF for the operation of the irrigation controller, and training for the CMBPVF's re-claimed water irrigation supervisor (on-site supervisor). Provide a copy of Mesa Consolidated Water District "Rules and Regulations for Reclaimed Water Service".

G. Providing support for enforcement of Bark Park rules (police, park ranger, and animal control services) and working with CMBPVF in changing or amending when

necessary, the Costa Mesa Municipal Code, Title 12 sections, applicable to use of the Bark Park.

3. City agrees to provide CMBPVF, upon request, all pertinent information necessary for it to effectively carry out its responsibilities under the terms of this LOU, including but not limited to, relevant financial information, staff reports, plans, schematics, etc.
4. City agrees to provide CMBPVF with adequate advance notice of Bark Park issues pending before the City Council or the Parks, Recreation Facilities and Parkways Commission to ensure that the CMBPVF will have sufficient time to prepare requested reports. If adequate notice has been received, CMBPVF agrees to provide City staff, on the normal due date for inclusion in Commission and Council mailing packets, copies of any reports or correspondence it wishes to be included.
5. The City shall have the right to close a portion, and/or the entire Bark Park, to allow for any extraordinary maintenance as deemed necessary by the Maintenance Services Manager upon two weeks posted notice, or sooner, if conditions warrant.
6. Signs, banners, flags, and posters, displaying sponsorship trademarks, logos or advertisement are allowed on the Bark Park premises on a temporary basis during fundraising events only.
7. Signs, banners, flags, and posters, advertising special events may be displayed on the bulletin board and the fence at the entrance of the Bark Park. The attachment of any such notice to any tree or fence within the interior of the Bark Park is strictly prohibited. Excepted from this prohibition are containers for donation envelopes, C.A.N. newsletter and the Free Pooch Press, which are used on a regular basis and permanently attached to the entrance fence.
8. Upon termination of this LOU, the CMBPVF shall immediately discontinue all committee activities at the Bark Park. At City's option, the designated area of the Bark Park premises may be re-designated for other recreational purposes and/or as passive open space. In the event of the CMBPVF's refusal to vacate, City may take possession and dispose of any property located on the premises.
9. The CMBPVF shall not discriminate in providing recreational services to the public related to the use of the designated area of the Bark Park on the basis of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sexual orientation.
10. The CMBPVF shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Committee's interest in the LOU. Any attempted assignment, transfer, subletting, or encumbrance shall be void and shall constitute a breach of this LOU and cause for termination of the same.
11. CMBPVF shall not change, alter, or otherwise cause the existing physical contours features, and improvements of the Bark Park to be altered without having first been issued a permit from the City. City will confer with Committee prior to the performance of any work by City crews or by City agents within the park considered to be extraordinary maintenance or alteration. If any renovation operation of the Bark Park, including grading, rototilling, amending soil, and/or modification of irrigation system is planned, CMBPVF shall submit their renovation plan to the Maintenance Services Manager for prior approval.

12. CMBPVF may broadcast grass seed throughout the Park and purchase and install donation tiles in the areas designated for such purpose on the Bark Park design plans at their discretion--without permits, prior approval or submission of plans. CMBPVF shall be responsible for assuring that any tiles placed in walkway areas do not present a tripping hazard to the public.

13. Any notices, requests and demands made by the City and the CMBPVF regarding this LOU are to be directed as follows:

If to the City:

City of Costa Mesa  
Public Services Department  
P.O. Box 1200  
Costa Mesa, CA 92628-1200

If to the CMBPVF:

Costa Mesa Bark Park Volunteer Foundation (CMBPVF)

~~179 East 17th Street #133 #753~~ 1835 Newport Blvd. A-109  
~~Costa Mesa, CA 92627-3343~~

949-548-8521

PMB 153

Costa Mesa, CA 92627

COSTA MESA BARK PARK VOLUNTEER FOUNDATION

Date June 5, 2000

By: Maynard Marks  
Title: President CMBPF  
Address: 206 Mayfair Lane  
Costa Mesa, CA 92627

CITY OF COSTA MESA

Date: 6/5/2000

By: William J. Mori  
Director of Public Services