



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), dated February 14, 2023 (Effective Date), is made between the **National Recreation and Park Association**, a New York not-for-profit corporation and Section 501(c)(3) organization located at 22377 Belmont Ridge Road, Ashburn, Virginia, 20148 ("NRPA") and the **City of Imperial Beach Parks & Recreation Department**, a provider of park, recreation, or community services located in Imperial Beach, CA ("Grantee").

1. Purpose

The purpose of this MOU is to confirm approval of the terms governing the acceptance and use of twenty thousand dollars (\$20,000) (Grant Funds) made available to the Grantee for the implementation of the NRPA Youth Sports Equity Grant Program ("Project").

Made possible through the support of Musco Lighting, NRPA is managing the administration of the grant program ("Program"). Grants made through this Program are intended to support local park and recreation agencies and community-based organizations as they advance equitable access to youth sports.

Having been selected as a recipient of Grant Funds through this Program, Grantee is required to accept the terms contained within this MOU in order to receive the Grant Funds and participate in this Program.

2. Project Funding

- A. Within thirty (30) days upon execution of this MOU and delivery to NRPA, NRPA will send Grantee a check or wire transfer in the amount of twenty thousand dollars (\$20,000).
- B. Grantee will work with NRPA to finalize project budget by March 15, 2023. NRPA must be notified of any changes made to the project budget if they are greater than 10% of the project costs.
- C. Grant Funds will be distributed by NRPA.
- D. No matching funds are required.

3. Grantee Requirements

Grantee will use the Grant Funds to:

- A. Advance equitable access to youth sports through the activities identified in the original grant proposal:
 - a. To start a youth advisory committee to help guide decisions around the city's sports offerings.
 - b. To provide and market free/low-cost sports programs, subsidizing cost for low-income youth.
 - c. Changes to these activities must be provided to NRPA in writing for approval.
- B. Participate in project interviews in April 2023 to discuss progress related to the activities listed above.
- C. Participate in the learning community and all learning community activities (format TBD by the cohort).
- D. Collaborate with NRPA to assess the impact of the implemented strategy (or strategies). Methods of assessment could include sharing program metrics, surveys, focus groups and/or interviews with local park and recreation professionals, youth, parents, coaches, and/or other local stakeholders.
 - a. Agencies will also participate in an annual focus group.
- E. Share stories, photos, videos, and written content with NRPA to promote project impacts.
- F. If selected, host a site visit for NRPA during the project period.
- G. Projects must be complete by October 1, 2023.



- a. Final reports are due to NRPA on this date.

4. Promotion

NRPA and Musco Lighting may use Grantee and/or park names, photos, and/or information in connection with the Project for promotional or other purposes associated with the Project, in any and all media, without limitation and without further payment, notification, or permission, except where prohibited by law. If the Grantee's photo release form does not cover promotional and other uses, NRPA can provide one upon request.

NRPA also grants the City of Imperial Beach a limited, non-exclusive, and royalty-free license to use NRPA's name, trademark, logos, and other identifying marks ("Licensed Marks") for promotional or other purposes associated with the Project, unless prohibited by law. NRPA shall have the right to review and approve the use of the Licensed Marks, as well as any and all related promotional and advertising material, in order to ensure that the use of the Licensed Marks meets NRPA's quality assurance standards.

Grantee shall also provide NRPA an opportunity to review and approve any statement or message related to the Grant Funds or Project in advance of release to the public. Any promotion, public announcement, or promotion relating to the Grant Funds or Project shall be subject to the prior review of NRPA and Musco Lighting.

All Parties shall retain all title, ownership, rights, and intellectual property rights in their own respective marks, logos, content, materials, tools and intellectual property. Under no circumstance will any Party to this MOU use another Party's Licensed Marks in a false, misleading, or disparaging manner. Upon completion of the Project, Parties shall, at their own expense, return all copies Licensed Marks to their respective owners beyond what is necessary for record-keeping purposes.

5. Limits of Liability

To the fullest extent permitted by applicable law, Grantee hereby releases NRPA and Musco Lighting, and each of their directors, officers, managers, members, employees, agents, attorneys, advisors, consultants, volunteers and other like parties (collectively the "Support Parties"), from any liability whatsoever relating to or arising out of the Project or the use of the Grant Funds. Grantee further waives any right to sue or bring any action of any kind against the Support Parties relating to or arising out of the Project or the use of the Grant Funds. This limitation of liability shall apply whether the Support Parties' liability arises due to breach of contract, breach of warranty, or as a result of tortious conduct, including, but not limited to, negligence (of any kind), strict liability, statutory liability, or any other causes of action.

NRPA's liability, if any, arising out of or in any way related to the relationship and/or dealings between NRPA and Grantee, shall be limited to the payment amounts paid pursuant to this MOU. NRPA shall not be liable for any damages caused by or arising out of the acts or omissions of a third party.

6. Indemnification

To the fullest extent permitted by applicable law, Grantee shall indemnify, defend and hold harmless the Support Parties from any and all causes of action, suits, settlements, judgments, liens, indebtedness, damages, losses, costs, expenses, fees (including attorney's fees and costs), penalties, claims, claims for relief, liabilities and demands of every kind, nature, and character (collectively, "Claims") relating to or arising out of: (i) Grantee's involvement in the development, planning, demolition, construction, installation, implementation, maintenance, repair and/or management of the Project; (ii) any failure by Grantee to comply with any applicable



laws, rules and/or regulations (including, without limitation, building, safety and fire codes, etc.); (iii) Grantee's negligence, misconduct, or malfeasance of Grantees or their agents or representatives; or (iv) any breach by Grantee of any agreement involving the Project or the use of the Grant Funds. In no event shall the Support Parties be liable for any punitive, exemplary, special, incidental, indirect or consequential damages of any kind (including, but not limited to loss of profits, loss of reputation and/or loss of current or prospective business advantage, even where such losses are characterized as direct damages) arising out of or in any way related to the relationship and/or dealings between the parties, regardless of whether the claim under which damages are sought is based upon contract, tort, negligence (of any kind), strict liability or otherwise, and regardless of whether the parties have been advised of the possibility of such damages at the time of contracting or otherwise.

7. Confidentiality

During the term of this MOU, the Parties may learn certain Confidential Information of each other. For purposes of this MOU, Confidential Information means the confidential and proprietary information, not generally known by non-party personnel, used by the disclosing party and which is proprietary to the disclosing party, and includes, without limitation, the disclosing party's trade secret or proprietary personnel, financial, marketing and business information, including strategic, operations and other business plans or forecasts, and Confidential Information provided by the disclosing party regarding its employees, customers, vendors, sponsors and other contractors. The receiving party shall: (i) protect and safeguard the confidentiality of the disclosing party's Confidential Information with at least the same degree of care as the receiving party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the disclosing party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this MOU; and (iii) not disclose any such Confidential Information to any person, except to the receiving party's officers, employees, consultants, accountants, and legal advisors who are bound by written confidentiality obligations and have a need to know the Confidential Information to assist the receiving party, or act on its behalf, to exercise its rights or perform its obligations under this MOU.

8. Term

This MOU shall be effective as of the Effective Date hereof and shall continue until October 31, 2023 (the "Term") in accordance with Section 11.

9. Use of Grant Funds

The Grantee shall use the full amount of the Grant Funds exclusively for the purposes set forth in Section 1. Unless otherwise agreed in writing by the Grantor, the Grantee shall return any portion of the Grant Funds and the income earned thereon that is not expended for such purposes in accordance with Section 11.

All unspent or uncommitted Grant Funds shall be invested in highly liquid investments (such as an interest-bearing bank account) with the primary objective being preserving the Grant Funds availability for the Project. Any interest or other income generated by the Grant Funds must be applied to the purposes described in the Grant Project.

The Grantee agrees not to use any portion of the grant or any income derived from the grant for the following:



- A. To carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Internal Revenue Code of 1986, as amended (the Code);
- B. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Section 4945(d)(2) of the Code;
- C. To provide a grant to an individual for travel, study, or similar purpose within the meaning of Section 4945(g) of the Code, without prior written approval of Grantor.
- D. Payments of salaries, other compensation, or expense reimbursement to employees of the Grantee within the scope of their employment do not constitute "grants" for these purposes and are not subject to these restrictions;
- E. Except as expressly may be authorized in the approved Project, to provide a grant to any other organization without prior written approval of the Grantor; or
- F. To promote or engage in the following, but not limited to, acts that would create civil liability, criminal acts, criminal acts of violence, terrorism, hate crimes, the destruction of any state, or discrimination on the basis of race, national origin, religion, military and veteran status, disability, sex, age, or sexual orientation, or support of any entity that engages in these activities.
- G. To travel to NRPA's Annual Conference or any other conference travel without written approval from Grantor.

10. Audit

Grantee is expected to keep and maintain detailed books and records relating to the Grant, and the Grant Funds (including, without limitation, all uses thereof and expenditures therefrom) (collectively, the "Records") during the Term and for a period of seven (7) years thereafter (the "Audit Period"). NRPA and its assigns have the right to audit the Grantee's financial records relating to this MOU upon not less than ten (10) business days' advance written notice to Grantee by NRPA at any time during the Audit Period, at NRPA's sole expense, during Grantee's normal business hours. If as a result of an audit, NRPA determines that Grant Funds were not spent in accordance with the purposes of this Grant, the Grantee shall: (1) be required to return any Grant Funds not substantiated, and (2) reimburse NRPA for all costs and expenses incurred in connection with such audit. If NRPA determines that Grant Funds were used for fraudulent purposes, the Grantee shall be barred from participation in any further programs. Grantee shall further indemnify, defend, and hold the Support Parties harmless from any acts or omissions relating to its fraudulent use of the Grant Funds.

11. Termination and Repayment

Any party may terminate this MOU at any time for any reason upon providing the other party thirty (30) calendar days' written notice. Further, either party may terminate this MOU at any time effective upon receipt of written notice by the other party of failure to perform. In the event that this MOU is terminated for any reason, Grantee shall promptly repay to NRPA any portion of the Grant Funds not already spent (subject to and in accordance with all of the terms and conditions hereof) as of the effective date of such termination.

None of the Parties shall be liable to the other by reason of termination of this MOU for compensation, reimbursement or damages for any loss of prospective profits on anticipated sales or for expenditures, investments, leases or other commitments relating to the business or goodwill of any of the parties, notwithstanding any law to the contrary. No termination of this MOU shall release the obligation to pay any sums due to the terminating party which accrued prior to such termination.



12. Compliance with Laws

Grantee will comply in full with all applicable federal, state, and local laws and regulations and rules of governmental agencies and bodies relating to Grantee's acceptance and use of the Grant Funds, including those that govern gifts, donations, contributions, expenditures, and anything else of value that benefit, directly or indirectly, public officials. Grantee agree to notify Grantor immediately: (a) of any conduct on Grantee's part that may be in violation of any applicable federal, state and local laws and (b) if Grantee receives notice of, or otherwise becomes aware of, any actual or threatened investigation, action, litigation, or disciplinary or other proceeding of which Grantee is or may be a subject in connection with the Grant Funds and to the extent permitted by applicable law, shall provide Grantor with all written notices and communications received by Grantee relating to or any such investigation, action, litigation, or disciplinary proceeding.

13. Governing Law, Jurisdiction, Venue and Dispute Resolution

This MOU and the performance thereof shall be governed, interpreted, construed and regulated by the law of the Commonwealth of Virginia, without reference to or application of principles concerning conflicts of laws of any jurisdiction. Before commencing any litigation arising out of or relating to the relationship of the parties, this MOU, or the breach hereof, the parties agree to negotiate in good faith to resolve such dispute within fifteen (15) business days of notice by the other party of such dispute. Should the parties fail to mutually resolve their dispute and commence litigation, the parties hereby irrevocably consent to venue before the federal and state courts situated in the Commonwealth of Virginia and each party hereby irrevocably submits to the jurisdiction of such courts. The prevailing party in any action or litigation, including appeals, arising out of or related to this MOU shall be awarded its reasonable attorney's fees and costs. The Parties agrees that NRPA would not have an adequate remedy at law and would be irreparably injured if Grantee breaches its covenants hereunder and NRPA shall be entitled to injunctive relief as a remedy for any breach or threatened breach hereof without showing or proving any actual damages.

14. No Agency; Relationship of the Parties

Each party and their respective officers, employees, agents, contractors and/or consultants are independent contractors and are not, nor shall they hold themselves out to as or claim to be, employees or agents of the other party or any department, agency or unit thereof; accordingly, neither party shall have any authority to enter into any agreement on behalf of the other party or otherwise cause the other party to incur any obligations whatsoever other than as set forth herein.

15. Notices

All notices, requests, demands and other communications required or permitted under this MOU must be in writing and will be deemed to have been duly given, made and received only (a) when personally delivered, or (b) on the date specified for delivery when deposited with an overnight courier service such as Federal Express for delivery to the intended addressee, or (c) when sent via facsimile, only so long as followed by a hard copy sent in a manner set forth in (a) or (b) above, or (d) when delivered via email, only so long as followed by a hard copy sent in a manner set forth in (a) or (b) above, each of the foregoing addressed as set forth below:

If to Grantee, to:

City of Imperial Beach Parks & Recreation Department
825 Imperial Beach Blvd
Imperial Beach, CA 91932
Attn: Shannon Bullock



Email: sbullock@imperialbeachca.gov

If to NRPA, to:
National Recreation and Park Association
22377 Belmont Ridge Road
Ashburn, VA 20148
Attn: Teresa Morrissey, Senior Program Manager
Email: tmorrissey@nrpa.org

16. Entire Agreement

This MOU supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter covered herein and contains all of the covenants and agreements between the parties with respect to the Grant purpose and Project in any manner whatsoever. Each party to this MOU acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this MOU shall be valid or binding. Any modification of this MOU will be effective only if it is in writing signed by the parties hereto. Any changes, additions or deletions to this MOU, including the Project, must be approved in writing by all the parties. This MOU and all amendments may be signed in counterparts, each of which will constitute one and the same document. Any signature delivered via facsimile or other electronic means shall be deemed an original signature to this MOU. The section headings contained in this MOU are for reference purposes only and shall not affect in any way the meaning or interpretation of this MOU.

17. Severability

If any term, covenant, or condition of this MOU or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant, or condition of this MOU shall be valid and enforced to the fullest extent permitted by law.

These parties have caused this MOU to be signed by their duly authorized representatives as of the last date set forth below.

National Recreation and Park Association

City of Imperial Beach Parks & Recreation Department

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____