

## **WILDER PARK MONUMENT DONATION AGREEMENT**

THIS DONATION AGREEMENT "Agreement" is made on this \_\_\_\_\_ day of December 2020 by and between THE AMERICAN PHILHELLENES SOCIETY , ("Donor") a Illinois 501(c)3 Not-For-Profit Organization and the City of Aurora, Illinois, a municipal corporation and home rule government ("City" or "Recipient"). Donor and City are hereinafter referenced collectively as "the Parties."

WHEREAS the City is a governmental entity providing services to the residents of Aurora, Illinois.

WHEREAS Donor is a not-for-profit organization that was established to identify the Americans who supported and/or fought for the independence of Greece during the years 1810-1840 and to recognize and make known their contributions to the cause of freedom.

WHEREAS Wilder Park is a community park located in the City's 6th Ward, and is approximately 3.3 acres in size.

WHEREAS the City and Donor are desirous of working together in partnership to create a monument in memory of the American Philhellenes who contributed both financially and through their military service to the efforts of the Greek Revolution of 1821. The proposed monument would be built on the southwest corner of Wilder Park ("Project"), for the education and benefit of Aurora citizens.

NOW, THEREFORE, the Parties agree as follows:

1. THE RECIPIENT'S OBLIGATIONS:

- A. To provide adequate area for the installation of the proposed monument.
- B. To allow educational signage to be installed as part of the monument.
- C. Upon completion and after inspection of the Project, to accept and assume all ownership, rights, title, interest, warranties and maintenance responsibility with respect to all equipment or materials donated and installed by or on behalf of Donor as part of the Project.
- D. To allow Donor to attend and participate in a ribbon cutting ceremony to commemorate the presentation of the monument to the public.

2. THE DONOR'S OBLIGATIONS:

- A. To provide the City with a final design plan for the monument project, at least 60 days in advance of installation so that the City can adequately clear and prepare the area for installation.
- B. Based upon mutually agreed upon final design approved, to fabricate, deliver, and install proposed monument project at location approved at Wilder Park.
- C. To maintain the following minimum insurance for purposes of the installation of the monument:
  - i. General Liability Insurance. Donor shall furnish evidence in the form of a Certificate of Insurance that it carries General Liability Insurance containing

broad form contractual liability providing for a limit of not less than One Million Dollars (\$1,000,000.00) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence under the terms of which City of Aurora is named as an additional insured; and a limit of not less than Two Million Dollars (\$2,000,000.00) for all damages occurring as a result of more than one occurrence. Contractors or subcontractors working on the Project shall have a have similar coverage with a One Million Dollars (\$1,000,000.00) single limit and Two Million Dollars (\$2,000,000.00) combined limit.

- ii. Workers' Compensation Insurance. Contractors and subcontractors working on the project shall furnish evidence that, with respect to the operations they perform, they carry a workers compensation insurance policy complying with the statutes of the State of Illinois covering all employees.
  - iii. Auto Liability Insurance:
    - a. Bodily injury with limits not less than \$1,000,000
    - b. Property damage with limits not less than \$500,000
  - iv. Umbrella excess liability of \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - v. The Donor shall include the City as a primary, non-contributory additional named insured on both General and Auto Liability Insurance policies and indicate said status on any Certificates of Insurance provided to the City pursuant to this project. All insurance premiums shall be paid without cost to the City. All insurance policies shall be written with insurance companies approved by the City of Aurora and licensed to do business in the State of Illinois and having a rating of not less than A IX, according to the latest edition of the A.M. Best Company; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the City. This provision shall also be stated on each Certificate of Insurance as: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the certificate holder named to the left".
- D. To pay for all the costs associated with the fabrication, delivery and installation of the monument project.
- E. To indemnify, defend and hold harmless, the City, its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by the City, arising out of or related to any third-party claim alleging:
- i. Breach or non-fulfillment of any provision of this Agreement by Donor, Donor's employees or contractors;

- ii. Any negligent or more culpable act or omission of Donor, its contractor's or employees, including any reckless or willful misconduct in connection with the installation of the monument;
  - iii. Any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Donor, its contractors, or employees; or
  - iv. Any failure by Donor, its contractor or its employees to comply with any applicable federal, state, or local laws, regulations, or codes.
- F. To provide, donate and install a monument and associated improvements which the Parties estimate will cost approximately \$100,000 and include the following:
  - i. Monument
  - ii. Granite Pavers
  - iii. Sidewalk
  - iv. Foundation
  - v. Lighting
- G. Upon completion and after inspection of the project, to transfer to the City all ownership, rights, title, interest, warranties and maintenance responsibility with respect to all monument donated and installed by or on behalf of Donor as part of the Project.

### 3. MUTUAL OBLIGATIONS:

- A. Upon conclusion of installation of the Project, the parties agree to work together to coordinate a ribbon cutting event.
- B. To work together to create cultural historical or educational programs and events regarding the monument.

### 4. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the intent of the Agreement be carried out as originally contemplated to the greatest extent as permitted by law.

### 5. GOVERNING LAW:

All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state courts located in Kane County, Illinois. Donor and Recipient hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

6. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and all prior or contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein. This Agreement may be modified only by written instrument executed by the parties.

7. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date that the last of the Parties executes this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by the authorized officials.

CITY OF AURORA,

THE AMERICAN PHILHELLENES  
SOCIETY,

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

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