

NORTH CAROLINA

ORANGE COUNTY

PERFORMANCE AGREEMENT
FRIENDS OF CHAPEL HILL PARKS AND
RECREATION DEPARTMENT

THIS AGREEMENT, made and entered into by and between the TOWN OF CHAPEL HILL, a North Carolina Municipal Corporation, 405 Martin Luther King Jr. Boulevard, Chapel Hill, North Carolina, hereinafter referred to as "Town", and Friends of Chapel Hill Parks and Recreation Department d/b/a Friends of Chapel Hill Parks, Recreation, and Greenways, 200 Plant Road, Chapel Hill, North Carolina, hereinafter referred to as "Friends".

WITNESSETH:

WHEREAS through the annual budget process, the Town funds the operations and personnel of the Town Departments, including the Chapel Hill Parks and Recreation Department; and

WHEREAS, the Town recognizes the importance of charitable giving to help fund the mission of the Chapel Hill Parks and Recreation Department; and

WHEREAS, in addition to direct gifts and donations to Chapel Hill Parks and Recreation Department, gifts and donation can be made to the Friends; and

WHEREAS, the Friends is a 501 (c)(3) non-profit organization established to provide financial support to enhance the capabilities, resources and services of the Chapel Hill Parks and Recreation Department; and

WHEREAS, the Friends is engaged in fundraising activities on behalf of the Chapel Hill Parks and Recreation Department, including the receipt of gifts in the form of cash and non-cash items for the benefit of the Chapel Hill Parks and Recreation Department; and

WHEREAS, it is in the mutual interest of the Town and the Friends to formalize the relationship in order to support communication and coordination of efforts between the Chapel Hill Parks and Recreation Department and the Friends and align with all financial policies and fiscal practices of the Town;

NOW, THEREFORE, in consideration of the above-stated premises and the mutual covenants and conditions hereinafter set forth, the Town and the Friends agree as follows:

1. Duties of the Town: The Town agrees to:
 - a. Facilities: The Town will provide office or other space in a Town Facility on an ongoing basis to the Friends, for its regular meetings, subject to room availability, scheduled in advance.

- b. Events: If Town provides space in a Town Facility for Friends fundraising events, then the following terms and conditions apply.
 - i. Events held on Town property will be mutually agreed upon and coordinated with the Parks and Recreation Director prior to the Friends entering into any related contractual agreements and/or announcing or marketing the event.
 - ii. The Parks and Recreation Director and staff, as they may designate, may attend and participate in events.
 - iii. The Friends will directly contract with and pay any third parties its hires for any such events and will assume responsibilities for such events in the same manner as other users under Town policies.
- c. Promotion and marketing support: The Parks and Recreation Director and staff, as they may designate, will include Friends events, initiatives, and information in Town communication channels as appropriate and as jointly agreed to.
- d. Use of Chapel Hill Parks and Recreation Department name: The Friends, consistent with parameters established herein, may conduct fund raising activities in the name of the Chapel Hill Parks and Recreation Department. The fund raising activities must be:
 - i. Consistent with the Chapel Hill Parks and Recreation Department's mission and the Friend's stated mission to provide financial support to enhance the capabilities, resources and the services of Chapel Hill Parks and Recreation Department
 - ii. Mutually agreed upon and coordinated with the leadership of the Chapel Hill Parks and Recreation Department, including joint design of campaigns, initiatives, endowments, etc. and associated communications.
- e. Funds Handling and Reporting: The Chapel Hill Parks and Recreation Department agrees to:
 - i. Receive funds from the Friends and to place those funds in designated Town budget accounts for the purposes agreed to by the Chapel Hill Department of Parks and Recreation and the Friends, and
 - ii. Provide a regular budget report to the Friends showing how funds received from the Friends are tracked and spent.
 - iii. Any reallocation of funds in the designated Town budget accounts, any change of use from the funds original intent, or change in reporting of those accounts has to be agreed to by the Friends, in advance.

2. Duties of the Friends: The Friends agree to:

- a. Maintain its status as a not for profit organization under State law and an organization exempt from Federal income taxation under 501(c)(3).
- b. Provide evidence annually of insurance and/or bonding protecting the assets against malfeasance in an amount equal to the total of all assets.
- c. Provide to the Town documents consistent with the notification requirements for Type III Supporting Organizations under federal guidelines, including:
 - i. Notice describing the type and amount of support provided
 - ii. Copy of tax return (form 990)
 - iii. Copy of governing documents, as most recently amended, to the extent not previously provided.

These documents will be provided by the last day of the fifth month following the close of the taxable year.

- d. Involve Chapel Hill Parks and Recreation Department staff in the governance and activities of the Friends including:
 - i. The Chapel Hill Parks and Recreation Department Director or designee will have a designated, ex officio seat on the Friends' governing board.
 - ii. The Chapel Hill Parks and Recreation Department Director or designee will be invited to all Friends committee meetings.
 - iii. The Chapel Hill Parks and Recreation Department Director or designee will be notified of any proposed changes to the Friends' Policies or Bylaws.
- e. Mutually design and coordinate fund raising efforts with Chapel Hill Parks and Recreation staff, including;
 - i. Identification of fund raising goals and priorities
 - ii. Joint design of fund raising marketing and communications media
 - iii. Collaborative planning of use of Chapel Hill Parks and Recreation Department space for fund raising events
 - iv. Annual evaluation of fund raising efforts
 - v. Notification to Department Director or designee of receipt of all gifts, including amount and donor information
 - vi. Agreement on acceptance of conditional gifts prior to acceptance.
- f. Maintain annual operating expenditures below 20% of the annual revenue from fundraising activities. Operating expenditures are defined as all operational

8. E-Verify: To the extent required by law, the Friends shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, should the Friends utilize a subcontractor(s), the Friends shall require the subcontractor(s) to comply with the requirements of Article 2, Chapter 64 of the General Statutes. Pursuant to North Carolina General Statute § 143-133.3 (c)(2), contracts solely for the purchase of apparatus, supplies, materials, and equipment are exempt from this E-Verify provision.
9. Amendment: This Agreement may be amended in writing by mutual agreement of the Town and the Friends.
10. Termination of Agreement: Either party may terminate this Agreement at any time by giving the other party thirty (30) days written notice of termination prior to the end of the term as described herein.
11. Interpretation/Venue: This Agreement shall be construed and enforced under the laws of North Carolina. The courts and the authorities of the State of North Carolina shall have exclusive jurisdiction over all controversies between the parties which may arise under or in relation to this Agreement. In the event of any dispute between the parties, venue is properly laid in Orange County, North Carolina for any state court action and in the Middle District of North Carolina for any federal court action. Contrary to any provision that may be contained in any exhibit attached hereto the Town shall not consent to 1) resolving any dispute by means of arbitration and/or 2) waiver of a trial by jury.
12. Termination of Nonprofit: In the event that the Friends shall cease to exist as an organization or fail to provide the services described or shall significantly reduce its services or accessibility to the Chapel Hill Parks and Recreation Department during the term of this Agreement; or in the event that the Friends shall fail to render a satisfactory accounting as provided herein, then and in that event the Town may terminate this Agreement and call for any funds raised on behalf of Chapel Hill Parks and Recreation Department to be surrendered to the Town for the benefit of the Chapel Hill Parks and Recreation Department.
13. Severability: The parties intend and agree that if any provision of this Agreement or any portion thereof shall be held to be void or otherwise unenforceable, all other portions of this Agreement shall remain in full force and effect.
14. Term: This Agreement, unless amended as provided herein, shall be effective _____ through _____

IN WITNESS WHEREOF, the parties hereunto cause this Performance Agreement to be executed in their respective names.

**FRIENDS OF CHAPEL HILL PARKS AND RECREATION DEPARTMENT
d/b/a FRIENDS OF CHAPEL HILL PARKS, RECREATION, AND GREENWAYS**

SIGNATURE

PRINTED NAME & TITLE

ATTEST

PRINTED NAME & TITLE

TOWN OF CHAPEL HILL

DEPARTMENT HEAD OR DEPUTY/TOWN MANAGER

PRINTED NAME & DEPARTMENT

ATTEST BY TOWN CLERK:

TOWN CLERK

TOWN SEAL

Town Clerk attests date this the _____ day of _____, 20__.

Approved as to Form and Authorization

TOWN LEGAL STAFF

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE OFFICER

DATE