

The Board of Park Commissioners of Mill Creek MetroParks met in Regular Session on Monday, March 10, 2014, at 6:00 p.m. with members Bob Durick, Jay Macejko, Valencia Marrow, John Ragan, and Louis Schiavoni present.

Justin Rogers, Planning Manager, gave an update on the trolley.

Mr. Schiavoni presented the Minutes of the Meeting of February 10 and 17, 2014, and asked that they be approved. Dr. Durick motioned they be approved. The motion was seconded by Mr. Ragan and passed, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

Kevin Smith, Administrative Services Director/Treasurer, presented the 2014 Budget.

	Mill Creek Metropolitan Park District							
	2014 Original Budget							
	100	701	702	704	705	706	805	
General Fund	Special Revenue Funds					Capital Project		Total All Funds
	Replacement Reserve	Law Enforce. Asst. Fund	Clean Ohio Prop. Acquisition	Bikeway Phase III	Golf Course Spec. Rev.	Wetland Restoration		
Estimated Income								
Unencumbered Cash Balance	\$ 1,718,754.10	\$ 1,604,912.05	\$ 1,351.39	\$ -	\$ 0.19	\$ 5,579.39	\$ 7,340.88	\$ 3,337,938.00
Prior Year Encumbrances	332,974.21	236,603.27	65.00	0.00	0.00	0.00	3,600.00	573,242.48
General Property Tax	\$ 6,506,867.97							\$ 6,506,867.97
Local Government Fund	307,424.00							307,424.00
Park Activities	1,947,000.00	137,468.00	2,000.00					2,086,468.00
ODOT - West Golf Drive	0.00	116,600.00						116,600.00
FHWA Grant	0.00				741,657.00			741,657.00
Partnerships	75,000.00							75,000.00
WRSSP Grant	0.00						3,600.00	3,600.00
Clean Ohio Fund	0.00	0.00		607,376.00				607,376.00
Fellows Trust	19,536.92							19,536.92
Mill Creek Park Foundation	125,000.00			24,327.00				149,327.00
Advances Repaid	0.00	47,027.88						47,027.88
Transfers From Other Funds	0.00			45,537.00				45,537.00
Total Receipts	\$ 11,032,557.20	\$ 2,142,611.20	\$ 3,416.39	677,240.00	741,657.19	5,579.39	\$ 14,540.88	\$ 14,617,602.25
Disbursements								
General Expense	2,303,027.00		\$ 3,351					\$ 2,306,378.39
Park Operations-Mat. & Supplies	2,200,250.00							2,200,250.00
Park Operations-Salaries & Wages	4,828,661.61							4,828,661.61
Capital Equipment	157,907.38							157,907.38
Capital Improvements	25,000.00	726,140.00		633,953.00	741,657.19	5,579.39	7,200.00	2,139,529.58
Transfers To Other Funds	45,537.00	0.00						45,537.00
Advances Repaid	0.00		0.00	43,287.00	0.00	0.00	3,740.88	47,027.88
Total 2014 Expenses	9,560,382.99	726,140.00	3,351.39	677,240.00	741,657.19	5,579.39	10,940.88	11,725,291.84
Outstanding Purchase Orders (2013)	332,974.21	236,603.27	65.00	0.00	0.00	0.00	3,600.00	573,242.48
Total Expenditures	\$ 9,893,357.20	\$ 962,743.27	\$ 3,416.39	\$ 677,240.00	\$ 741,657.19	\$ 5,579.39	\$ 14,540.88	\$ 12,298,534.32
Projected Ending Fund Balance	\$ 1,139,200.00	\$ 1,179,867.93	\$ 0.00	\$ -	\$ -	\$ -	\$ -	

After discussion Mr. Schiavoni and Mr. Macejko commended the staff on their hard work getting the budget together. Ms. Marrow motioned that the budget be accepted. The motion was seconded by Mr. Macejko and passed, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

Kevin presented the Treasurer's Report. Ms. Marrow moved, the funds having been certified as on hand and duly appropriated, that disbursements #63553 through #63800 be approved. The motion was seconded by Mr. Macejko and the roll being called upon its adoption, the vote resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

Kevin presented the full-time hourly rates for 2014.

2014 Full-Time Hourly Rates

Last Name.....	First Name.....	Rate/hr..
BRICKLEY	MARIE E	12.0192
MARTUCCIO	LILY J	15.625
GOMEZ	CYNTHIA	16.0938
FEDOREK	DONNA	16.5625
DONALDSON	DAVID S	16.875
EVANS	THOMAS J	16.88
ROTH	ANTONIO R	17.4
DUBEC	MARCIA	18.05
MONTELEONE	KATHLEEN	18.05
COWAN	PAUL E	18.43
BAILEY	LANCE	18.4375
VIGORITO	CAROL L	18.4375
MALLESKE	RANDALL E	18.59
DUTKO	GERALD J	18.59
SMITH	MANDY L	18.75
THOMAS	CLIFFORD A	19.08
BENJAMIN	GARY TYRELL	19.08
THOMAS	PETER G	19.08
KONDOS	SUSAN L	19.125
HUNTER	CHRISTIAN D	19.28
LANZ	ARLENE B	19.3125
PIKE	WARREN R	19.44
SUDIMAK	SHEA J	19.89
ROSKO	DENNIS M	19.89
HUNT JR	JAMES E	19.89
SCHLOSSER	MICHAEL W	20.32
ORR	RANDALL J	20.32
WALDO JR	FRANK	20.32
ROSS	THOMAS M	20.435
MOORE JR	ROBERT	21
PENNER	DENNIS F	21
MOSS	JACK	21.5
WALKER	AMANDA G	21.5435
BRAMMER	JAMES R	21.875
VASKO	ANNETTE L	21.9375
BRODE JR	PAUL HENRY	22.11
MURPHY JR	PATRICK J	22.11
STRINES	DUSTIN E	22.11
GRIMALDI	CARYLON L	22.11
MALKOVITS	ROBERT J	22.11
WEST	KIRSTEN	22.3125
WALSH	DANIEL J	22.3125
KAYLA	SCOTT M	22.7935
FAHNDRICH	DENNIS L	23
NOVOSEL	JOHN D	23.6
CLARK	JASON M	23.6
BOWERSOCK	DOLORES	24.0385

SPEICHER	ELLEN M	24.4375
NOVOTNY	RAYMOND J	25.3125
FUTEY-PETERSON	JULIE M	25.3125
CARBON	ROBERT	25.5
ROGERS	JUSTIN A	26
MARKLEY	BRENDA E	26.625
PEZZUTO	PHILLIP J	26.75
CAMPANA	RANDALL A	27
KOSTKA	LINDA	27.5
VILLELLA	SAMANTHA L	27.5
WILLOCK JR	JAMES D	31.25
KAISER	KEITH S	32.25
SMITH	KEVIN W	32.75
TOTH	PERRY P	35.5
AVERY	STEPHEN L	37.9375
MILLER	DENNIS L	42.0675

After discussion, Dr. Durick motioned that the rates be accepted. The motion was seconded by Ms. Marrow and passed, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

Dennis Miller, Executive Director, presented his employment contract for approval. Motioned that it be accepted as follows:

EMPLOYMENT AGREEMENT EXECUTIVE DIRECTOR

THIS AGREEMENT is made and entered into by and between **Mill Creek MetroParks** ("MetroParks") and **Dennis L. Miller** ("Executive Director").

RECITALS

A. MetroParks is a political subdivision of the State of Ohio pursuant to Chapter 1545 of the Ohio Revised Code, with its principal place of business located Canfield, Ohio.

B. MetroParks Board of Park Commissioners ("Board") is responsible for employing the staff of MetroParks and in particular the Executive Director to serve as a Chief Executive Officer.

C. Prior to serving in his current capacity for MetroParks, Executive Director has been employed since May 1, 1998 by MetroParks as head golf professional and as golf director.

D. Executive Director has served in the capacity of Executive Director without a written Employment Agreement since September 28, 2012 and the Board and the Executive Director desire to enter into a five (5) year Employment Agreement beginning April 14, 2014 and concluding on April 13, 2019, according to the terms and conditions of employment set forth herein after in this Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions set forth hereinafter, the parties agree as follows:

AGREEMENT

1. Services To Be Performed by Executive Director.

a. Executive Director shall serve as Chief Executive Officer of MetroParks, during the term of this Agreement. Executive Director shall report to the Board.

b. Subject to the supervision and direction of the Board, the duties of Executive Director shall include, but are not limited to:

Administer and manage all MetroPark activities consistent with Ohio Revised Code Chapter 1545 and MetroPark by-laws rules, and regulations, including without being limited to, implementing programs, planning for future operation, funding and development; developing an annual budget; overseeing all expenditures; hiring and discharging personnel; working closely with the Board of Park Commissioners to develop short and long term plans for the MetroParks; and, performing such other duties as the Board of Park Commissioners may assign from time to time.

2. Term. The initial term of this Agreement shall be for a period of five (5) years commencing on April 14, 2014 and terminating on April 13, 2019 ("Initial Term"). At the end of the Initial Term, this Agreement shall continue in effect for year-to-year Renewal Terms (April 14 through April 13) unless Executive Director resigns earlier or unless the Board provides a written non-renewal notice to the Executive Director on or before October 1 of the year in which the Initial Term or Renewal Term expires on the ensuing April 13. The parties may also negotiate one or more Renewal Terms for longer than a term of one year if they desire.

3. Compensation. For the services to be performed under this Agreement, MetroParks shall pay Executive Director in equal bi-weekly installments the annual rate of salary of \$87,500.00, unless increased by the Board during the Term of this Agreement:

4. Benefits.

a. Public Employees Retirement System (P.E.R.S.) of Ohio. The Board shall pay the employer's contribution as required by law.

b. Vacation Leave and Sick Leave. Executive Director shall be entitled to accrue and use paid vacation leave of seven (7) weeks per year and paid sick leave pursuant to MetroParks Employment Policies applicable to all non-bargaining unit employees of MetroParks, except as may otherwise be stated herein.

During each year of employment under this Agreement, Executive Director shall use all of the vacation leave allotted to each year, or lose it; no unused vacation leave may be carried over to a subsequent year without the prior written consent of the Board. (As used throughout this Agreement, "year" shall mean a contract year of April 14 through April 13.)

c. Transportation. Executive Director shall be entitled to use a fully serviced MetroParks owned or leased vehicle for MetroParks business purposes, not personal use.

d. Life Insurance. Executive Director shall be entitled to term life insurance in the amount of the Executive Director's annual salary rate through MetroParks group coverage plan. The amount of insurance shall be adjusted from time to time to reflect the above-referenced salary rate.

e. Health Insurance. MetroParks shall provide Executive Director with health insurance consistent with that offered to all employees of the MetroParks through its

group coverage plan, subject to the conditions of such coverage determined by MetroParks.

f. Professional Memberships. MetroParks shall provide Executive Director with memberships in professional organizations directly related to the performance of Executive Director's duties pursuant to this Agreement.

g. Other. MetroParks will provide Executive Director with all other applicable benefits that are specified in the MetroParks Employment Policies applicable to all non-bargaining unit employees.

h. All employment records, evaluations, and other official files or notes relating to the employment of Executive Director with the MetroParks and/or his performance, will be placed in his personnel file and available to him with reasonable advance notice. No separate or secret personnel files will be kept.

5. Termination.

a. Termination for Cause. Notwithstanding anything contained in this Agreement to the contrary, MetroParks shall have the right to terminate the employment of Executive Director upon the occurrence of any of the following events (which shall constitute "Cause" for termination):

(i) Executive Director shall commit a material breach of any of the provisions of this Agreement, which breach continues for a period of ten (10) days following detailed written notice thereof from the Board (except in the event of a breach which is not capable of cure, which shall require no notice to Executive Director prior to termination).

(ii) Executive Director's refusal or failure to perform Executive Director's duties with MetroParks, which failure has continued for at least ten (10) days following receipt by Executive Director of detailed written notice specifying the reasons for the determination by the Board of Executive Director's failure to substantially perform such duties.

(iii) Executive Director shall engage in misconduct that is materially injurious to MetroParks, monetarily or otherwise.

(iv) Executive Director shall be convicted of a felony or any misdemeanor involving dishonesty, fraud or moral turpitude, or the entry of a guilty or nolo contendere plea with respect thereto.

(v) Executive Director shall violate or willfully refuse to obey the lawful and reasonable instructions of the Board, provided that such instructions are not in violation of this Agreement and are consistent with the best interests of MetroParks as determined in good faith by the Board.

b. Death or Disability. This Agreement shall be automatically terminated (i) at the death of the Executive Director, and/or (ii) upon the determination by MetroParks, in the exercise of MetroParks sole discretion, that Executive Director is disabled by reason of a medically determinable physical or mental impairment. The term "disability" shall mean the inability of Executive Director, with or without reasonable accommodation, to continue to perform Executive Director's duties under this Agreement on an active basis as a result of a medically determinable mental or physical impairment which condition continues for a period of sixty (60) consecutive days or for shorter periods aggregating ninety (90) days in any one hundred-eighty (180) day period. If a dispute should arise

between the parties as to the disability of Executive Director, such dispute shall be submitted to binding arbitration before a medical practitioner mutually acceptable to the Executive Director or his personal representative, and MetroParks. In the event that the parties are unable to agree upon such an arbitrator within ten (10) days after any such dispute might arise, then the matter shall be submitted to binding arbitration before a panel of three (3) medical practitioners, one to be selected by the Executive Director or his personal representative; the second to be selected by MetroParks; and the third to be appointed by the two medical practitioners selected by the Executive Director and MetroParks. The arbitration proceeding shall take place within a period of thirty (30) days after the date that any such dispute arises, and the decision of the arbitrators shall be final and binding upon the parties. Upon the death or disability of the Executive Director, the Executive Director's named beneficiary or beneficiaries shall be entitled to receive any and all accrued compensation in accordance with MetroParks policy as well as any other benefits afforded to other Executive Directors of MetroParks upon death or disability.

c. Resignation of Executive Director. Should Executive Director resign, he shall waive any further obligation for payment by MetroParks except for those amounts then due and owing to Executive Director for services provided. Executive Director shall provide a minimum of ninety (90) days notice of his resignation, unless the Board waives in writing the minimum number of days to permit a shorter period of notice of resignation.

d. Termination Without Cause. If the Board determines to terminate this Agreement effective on a date prior to the April 13 expiration date of the Initial Term or any Renewal Term, without cause, the Executive Director shall be paid Severance Payment(s) for the Severance Period until the Termination Date selected by the Board which shall be the lesser of (i) three (3) months of his then salary rate if in first year of Initial Term, two (2) months of his then salary rate if in second year of Initial Term, or one (1) month of his then salary rate if in third, fourth or fifth year of Initial Term or in any Renewal Term, or (ii) the remaining balance of his annual salary if it is less than one (1) month until the expiration date of his then current term (Initial or Renewal) of this Agreement. Executive Director shall accept such amount as payment in full of all claims against MetroParks. MetroParks shall pay Severance Payment(s) to Executive Director, subject to applicable withholdings, by paying Executive Director's Salary Rate during the Severance Period. Notwithstanding anything contained in this Agreement to the contrary, MetroParks shall have the right to terminate the employment of Executive Director for any reason, including reasons other than those described in Section 5(a), upon written notice to Executive Director. Such termination shall be effective upon the effective date specified in such notice. In the event of termination by MetroParks for any reason "without cause", Executive Director shall be entitled to the Severance Payment(s) described above; provided, however, that for the avoidance of doubt, any termination by reason of death or disability of Executive Director shall not constitute termination "without cause" and shall not give Executive Director any rights to Severance Payment(s).

(i) During the Severance Period of three months, two months, or one month or less as determined in paragraph 5.d. above, MetroParks shall continue on behalf of Executive Director (and Executive Director's dependents and beneficiaries) those benefits available to Executive Director pursuant to COBRA (e.g., medical benefits) and the expense shall be allocated between MetroParks and Executive Director on the same basis as prior to the termination date.

(ii) Notwithstanding anything contained in this Agreement to the contrary, Executive Director shall be entitled to the Severance Payment(s) and benefits described in this section 5(d) only if (i) on or within twenty-one (21) days following Executive Director's last date of employment Executive Director signs and does not rescind a Release Agreement in a form prepared by MetroParks, to include

but not be limited to a comprehensive release of all legal claims by Executive Director in favor of MetroParks, and (ii) Executive Director fully complies with all aspects of this Agreement. Executive Director further understands and agrees that if he does not sign the required Release Agreement, if he rescinds the required Release Agreement after signing, or if he does not fully comply with all aspects of this Agreement he will not be entitled to the Severance Payment(s) or benefits described in Section 5(d) and will be obligated to return any Severance Payment(s) and/or benefits already received.

6. Membership. Executive Director shall actively participate in local, state and national organizations that will aid him in performing the duties pursuant to this Agreement and which participation shall be beneficial to the standing of MetroParks in the housing community.

7. Accountability. Throughout the term of this Agreement, Executive Director shall be directly accountable to and be supervised by Board.

8. Performance Evaluation. The Board shall perform a performance evaluation of the Executive Director on an annual basis. The evaluation shall include illustrations or examples of strengths and/or weaknesses. The evaluation shall address progress on goals achieved and identify organizational and personal goals for the forthcoming evaluation period. Any such evaluation shall not create an expectancy of continued employment for the Executive Director.

As part of the evaluation process, the Board may schedule and conduct quarterly evaluation conferences with the Executive Director to establish performance goals for the ensuing quarter and to assess the areas of performance by the Executive Director that are strengths, that need improvement, or that are unsatisfactory in the preceding quarter.

For any quarterly or annual performance of evaluation, the Board shall recommend improvement in areas cited as needing improvement or as unsatisfactory, and shall indicate any assistance given or to be given by the Board in those areas; the Board shall also indicate a reasonable period in which the desired improvements are to be attained, and a statement of consequence that may occur if acceptable improvement is not shown; and similarly, the Board shall indicate any progress achieved by the Executive Director in areas cited on prior evaluations as needing improvement or as unsatisfactory.

9. Indemnification. As part of his responsibilities pursuant to this Agreement, Executive Director shall carry out significant administrative duties on behalf of MetroParks. MetroParks agree to defend, indemnify and hold harmless Executive Director from and against any and all liability and expense incurred resulting from any claim, action, suit or proceeding arising from Executive Director performing services pursuant to this Agreement as long as Executive Director acts in good faith, in what he reasonably believes to be the best interest of MetroParks, and within the scope of his employment. MetroParks shall have the right to control in all respects the defense of any such claim, action, suit or proceeding.

10. Applicable Law. All questions regarding the validity or construction of this Agreement shall be determined in accordance with the laws of the State of Ohio. Any action brought by either party against the other on the basis of this Agreement shall be brought in the County of Mahoning, in the State of Ohio.

11. Assignability. Executive Director shall not assign any rights under this Agreement without the prior written approval of MetroParks. Any such assignment, without such written approval, shall be void.

12. No Waiver. The failure or delay of either party to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege.

13. Confidentiality. In exercising the duties pursuant to this Agreement, Executive Director may be exposed to information that is considered confidential. Executive Director agrees that he shall not disclose such information to any third parties during the term, and after termination of this Agreement.

14. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by personal service or by mailing the same by United States Certified Mail, Return Receipt Requested, postage prepaid, to the other party at their last known address.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein, and supersedes and replaces any prior agreements, whether written or verbal, between the parties.

WHEREFORE, the parties have hereto affixed their signatures below.

After discussion, Mr. Ragan motioned that the Employment Contract be accepted. The motion was seconded by Mr. Macejko and passed, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

Dennis Miller thanked the Board.

Dennis Miller presented an amended Mill Creek MetroParks Foundation Agreement for approval. Mr. Macejko motioned that it be accepted as follows:

SIXTH AMENDED AND RESTATED TRUST AGREEMENT

This Sixth Amended and Restated Trust Agreement (hereafter "Agreement") is entered into by and between the Board of Park Commissioners of the Mill Creek Metro Parks, successor to the Board of Park Commissioners of the Youngstown Township Park District and the Mill Creek Metropolitan Park District (the "Board of Park Commissioners") and Huntington National Bank, successor by merger to Sky Trust (the "Trustee").

WHEREAS, on the 14th day of March, 1979, the Board of Park Commissioners and The Dollar Savings and Trust Company entered into a written Trust Agreement (hereinafter referred to as the "Trust Agreement") which Trust Agreement, as later amended, states in part at ¶13 – Amendment of the Trust Agreement:

13. Amendment of the Trust Agreement. The BOARD OF PARK COMMISSIONERS may, by resolution unanimously adopted, and with the approval of the Trustee, change the name of the Trust and details of the machinery of administration, but no such change shall in any way alter or abrogate the object or purpose of the Trust;

and

WHEREAS, the Trust Agreement further provides at ¶14 – Removal of the Trustee:

14. Removal of the Trustee. The BOARD OF PARK COMMISSIONERS may, by resolution unanimously adopted, remove the Trustee named herein and appoint a successor Trustee, provided that the Trustee named herein shall be reimbursed for all expenses incurred and shall be paid all compensation to which it is entitled up to the date of such removal;

and

WHEREAS, the Trust Agreement was amended by a First Amendment to Trust Agreement executed by the parties on November 8, 1979; and

WHEREAS, the Trust Agreement was amended by a Second Amendment to Trust Agreement executed by the parties on February 8, 1984; and

WHEREAS, the Trust Agreement was amended by a Third Amendment to Trust Agreement executed by the parties on September 1, 1989; and

WHEREAS, pursuant to the authority contained in ¶14 of the Trust Agreement, National City Bank, successor by merger to The Dollar Savings and Trust Company, was removed by resolution unanimously adopted on May 8, 2000, and Butler Wick Trust Company was substituted as Trustee; and

WHEREAS, the Trust Agreement was amended by a Fourth Amendment to Trust Agreement executed by the parties on July 13, 2000; and

WHEREAS, pursuant to the authority contained in ¶14 of the Trust Agreement, Butler Wick Trust Company was removed by resolution unanimously adopted on November 14, 2004, and Sky Trust was substituted as trustee, then, by virtue of a merger, Huntington National Bank became and now is the current Trustee; and

WHEREAS, the Trust Agreement was amended by a Fifth Amendment to Trust Agreement executed by the parties on December 17, 2007; and

WHEREAS, the parties desire by this instrument to amend further and restate in its entirety the Trust Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, it is agreed that the Trustee shall hold and administer all property and assets which may come into this trust in accordance with the terms, provisions and conditions of this Sixth Amended and Restated Trust Agreement.

1. Creation of Trust. Simultaneously with the execution of the original trust agreement, and in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the Board of Park Commissioners conveyed, assigned, transferred and delivered to the Trustee certain property described in Schedule "A", attached to the original trust agreement and identified by signatures of the Board of Park Commissioners and referred to as the "Trust Estate". The Trust Estate shall also consist of any other property which may hereafter be transferred and delivered to the Trustee under the terms of this Agreement. The Trustee agrees to hold the Trust Estate and any property which may later be added to the Trust pursuant to the terms of this Agreement.

2. Name of Trust. The name of this Trust shall be THE MILL CREEK METRO PARKS FOUNDATION.

3. General Purpose. This Trust is created and shall be operated exclusively for charitable and educational purposes, to wit, for the purpose of supporting and advancing the mission of keeping and promoting Mill Creek Metro Parks to its highest level of excellence through fund development essential for its maintenance and growth for future generations, including but not limited to making capital improvements within the Mill Creek Metro Parks District, a political sub-division of the State of Ohio. No part of the Trust Estate shall inure to the benefit of any private shareholder or individual, and no part of the activities of the Trust shall consist of carrying on propaganda or otherwise attempting to influence legislation or participating in or intervening in any political campaign on behalf of any candidate for public office. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is tax exempt or by an organization donations to which are deductible from taxable income to the extent allowed by the provisions of the Internal Revenue Code and other applicable legislation and regulations as they now exist or may hereafter be amended.

4. Acceptance by Trustee. The Trustee will accept any gift, grant, devise or bequest in trust, consistent with the general purpose of this Trust expressed in paragraph 3. All such gifts, grants, devises and bequests so received, together with income therefrom, shall be held, managed, administered and paid out by the Trustee pursuant to the terms of this Agreement.

Provided, however, that any donor to this Trust may, in the instrument providing for his or her donation, express a desire:

- a. As to the time when and the specific purpose for which the principal shall be distributed; or
- b. As to the specific purpose for which the income shall be used for a definite or indefinite period.

Any such expressed desire of a donor shall be respected and observed unless it is deemed inconsistent with the general purpose of this Trust by a majority of the Foundation's Board of Directors, hereafter referred to, subject, however, in every case to the condition that if and whenever it shall appear to the Foundation's Board of Directors that circumstances have so changed since the execution of the instrument containing any gift, grant, devise or bequest as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of such instrument, such board by resolution adopted by a majority of its members, may at any time or from time to time, direct the application of such gift, grant, devise or bequest to such other specific purpose as may, in their judgment, be consistent with the general purpose of this Trust, without regard to and free from any specific restrictions, limitations or directions contained in such instrument.

5. Foundation's Board of Directors: The Foundation's Board of Directors shall have full power and authority over the administration of the Trust, except as otherwise provided herein. The Foundation's Board of Directors shall consist of not less than five (5) nor more than fifteen (15) members who shall be constituted and appointed as follows:

- a. Primary Members. The President of the Board of Park Commissioners shall be a member of the Foundation's Board of Directors. A person selected by the Judge of the Probate Court of Mahoning County shall be a member of the Foundation's Board of Directors. The third member of the Foundation's Board of Directors shall be selected by the other two Committee Board members; however, members of the Board of Park Commissioners, other than its President, shall not be eligible to appointment to the Foundation's Board of Directors.
- b. Additional Members. The foregoing three (3) primary members of the Foundation's Board of Directors, by majority vote among them, may select and appoint additional members of the Foundation's Board of Directors after considering any recommendations made by the Board of Park Commissioners and/or the Probate Judge of Mahoning County, Ohio.
- c. Conditions and Terms of Office. Members selected as above in paragraph 5.b. are not required to live in Mahoning County but must have exhibited an interest in Mill Creek Metropolitan Park District and its needs and who are not holding or seeking a public office. Selected members shall hold office for up to three (3) consecutive ~~a term of six (6)~~ three (3) years terms and shall take office immediately following the expiration of the terms of their predecessors.
- d. Partial Term Vacancies. Should a selected member's term be interrupted by death, resignation or refusal to serve, the Judge of the Probate Division of the Court of Common Pleas of Mahoning County, or the remaining Board members as the case may be, shall promptly appoint a successor to serve the remainder of such member's unexpired term. Failure of a selected member of the Foundations' Board of Directors to attend three (3) consecutive meetings of the Board without excuse shall in the discretion of the remaining members of the Board, operate as a resignation from membership on the Board.

6. Board Administration. The Foundation's Board of Directors first appointed shall organize as soon as may be convenient, and the Board shall thereafter meet quarterly or more frequently as they may determine. At the first and subsequent annual organizational meetings, the Board shall elect a Chairman from among its members. The Board shall have the power, with the advice of the Trustee, to nominate and appoint, from outside its own members if it so desires, a Secretary and such other officers and agents as may be found necessary or desirable, who shall hold their several offices subject to the will of the Board. The expense of the Board, including office supplies and such compensation to the Secretary and other officers and agents as the Board may fix and the Trustee approve, shall be paid out of income from the Trust Estate, but the members of the Board shall serve without compensation.

Any written order or direction to the Trustee for the payment of money made pursuant to a resolution or motion adopted at a meeting of the Foundation's Board of Directors shall be deemed sufficiently made and executed if signed by the Chairman and attested by the Secretary, and the Trustee shall be protected in acting upon any such written order or direction believed by the Trustee to have been signed by the proper person or persons. Written orders for payments of money of \$5000 or less shall be deemed sufficiently made and executed if signed by the Secretary.

A majority of the members of the Foundation's Board of Directors shall constitute a quorum for the transaction of any business at any meeting of such committee, but the affirmative votes or action of at least a majority of the members of the Board shall be required for the making of any order or direction for the payment of money. The Board shall have power to adopt regulations and bylaws not inconsistent with this Agreement for meetings, regular or special, the appointment of sub-committees for special purposes and for the government of its action and may, at its pleasure, amend any such regulations and bylaws. The Board shall keep complete records of all its proceedings.

The Foundation's Board of Directors shall further have the authority to establish one or more separate subcommittees to assist the Board in carrying out its business, soliciting funds for the Foundation or carrying out other activities on behalf of the Foundation. The Foundation's Board of Directors shall appoint all members of any subcommittee established by the Board, and shall have the authority to remove any members or to fill any vacancy on a subcommittee. The members of the Foundation's Board of Directors may, but need not, be members of such subcommittees. Each subcommittee shall report to the Foundation's Board of Directors on a regular basis on the activities of the subcommittee.

7. Application of Trust Estate. Subject to the particular terms of any gift, grant, devise or bequest as an only to the extent provided in paragraph 4, the income and principal of the Trust Estate shall be applied perpetually, unless and until the principal is distributed toward the purchase, acquisition, or improvement of land or facilities and the provision of arts and educational programs for the Mill Creek Metropolitan Park District, and to this end shall be expended for such park projects and purposes, and in such amounts, as the Foundation's Board of Directors shall from time to time determine, in its absolute and uncontrolled discretion.

The Trustee shall pay and disburse such portions of the net income or of the principal of the Trust Estate at such times and in such amounts as shall from time to time be ordered or directed by the Foundation's Board of Directors. The Trustee shall certify to the Foundation's Board of Directors, at least quarterly, the amount of income received by the Trustee since the last such certification and the amount of principal and income available for distribution hereunder.

8. Title and Powers of the Trustee. In the administration of this Trust and of the Trust Estate, the Trustee shall have all powers and authority necessary or available to carry out the purposes of this Trust and, without limiting the generality of the foregoing, shall have the following powers and authority, all subject, however, to the condition that no power or authority shall be exercised by the Trustee in any manner or for any purpose whatsoever which may not be exercised by an organization

which it tax exempt or by an organization donations to which are deductible from taxable income to the extent allowed by the provisions of the Internal Revenue Code and other applicable legislation and regulations as they now exist or may hereafter be amended:

- a. To receive the income, profits, rents and proceeds of the Trust Estate, and to collect and receipt for the same.
- b. To purchase, subscribe for, retain, invest and reinvest in securities or other property wherever situated, and whether or not productive or of a wasting nature, and without any requirements for diversification as to kind or amount. The words "securities or other property" as used in this Agreement shall be deemed to include real or personal property, corporate shares, common or preferred, or any other interest in any corporation, association, investment trust, or investment company, bonds, notes, debentures, or other evidences of indebtedness or ownership, secured or unsecured, even though the same may not be legal investments for a Trustee under the laws applicable hereto.
- c. To sell for cash or on credit, convert, redeem, exchange for other securities or other property, or otherwise dispose of any securities or other property at any time held by it.
- d. Subject to the approval of the Foundation's Board of Directors, to alter, repair, improve, erect buildings upon, demolish, manage, partition, mortgage, lease, exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale, and, upon such conditions and such terms as to cash and credit as it may deem advisable, real property.
- e. Subject to the approval of the Foundation's Board of Directors, to pay all administration expenses of this Trust and any taxes imposed upon it, and to settle, compromise, or submit to arbitration, any claims, mortgages, debts, or damages, due or owing to or from this Trust, to commence or defend suits or legal proceedings, and to represent this Trust in all suits or legal proceedings.
- f. To exercise any conversion privilege or subscription right available in connection with any securities or other property at any time held by it; to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company, or association or to the sale, mortgage, pledge, or lease of the property of any corporation, company, or association any of the securities of which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions, and the payment of expenses, assessments or subscriptions which may be deemed necessary or advisable in connection therewith, and to hold and retain any securities or other property which it may so acquire.
- g. To vote directly, or by general or limited proxy, any shares of stock which may be held by it at any time, and similarly to exercise directly, or by general or by limited power of attorney, any right appurtenant to any securities or other property held by it at any time.
- h. Subject to the approval of the Foundation's Board of Directors, to borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or

proper to carry out the purpose of this Trust and to pledge any securities or other property for the repayment or any such loan.

- i. To hold part or all of the Trust Estate uninvested.
- j. To employ suitable accountants, agents, counsel and custodians and to pay their reasonable expenses and compensation.
- k. To register any securities held by it hereunder in its own name, or, to the extent permitted by law, in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities unregistered or in bearer form.
- l. To make, execute and deliver all instruments necessary or proper for the accomplishment of the purpose of this Trust or of any of the foregoing powers, including deeds, bills of sale, transfers, leases, mortgages, security agreements, assignments, conveyances, contracts, purchase agreements, waivers, releases and settlement.

9. Bond and Compensation. The Trustee shall not be required to furnish any bond or surety. The Trustee shall receive compensation equivalent to that negotiated and agreed upon by the Trustee and the Foundation's Board of Directors, subject to the approval of the Probate Division of the Court of Common Pleas of Mahoning County, Ohio, but the Trustee's annual fee shall not be less than \$150.00.

10. If and whenever the Trustee shall certify to the Foundation's Board of Directors that the total accumulated assets of the Trust Estate exceed ONE MILLION DOLLARS (\$1,000,000) as of the end of the fiscal year just completed, the Committee shall provide for an audit of the receipts and disbursements of the Foundation's Board of Directors and the Trustee for such year, to be conducted by an independent auditor appointed by the Board and paid out of the income of the Trust Estate as part of the expenses of the Board. Within six (6) weeks after the completion of each such audit, there shall be published in a newspaper of general circulation in Mahoning County, Ohio, a certified statement by such auditor showing in detail, for the year in question, the investments constituting the MILL CREEK PARK FOUNDATION as of the end of such year, the amount of income received, the purpose for which any expenditures shall have been made, and a classified statement of the expenses of the Foundation's Board of Directors. The cost of the publication of such statement shall be regarded as part of the Committee's expenses.

The Attorney General of the State of Ohio, or such other law officer having similar jurisdiction as may hereinafter be appointed with another title, and any representative of the Foundation's Board of Directors thereunto duly authorized by resolution or motion adopted by the Foundation's Board of Directors shall have, at all reasonable times during business hours, the right to inspect the books, vouchers and records of the Trustee and of the Foundation's Board of Directors in any way related to the Trust Estate or the management thereof or the distribution and application of the income, rents or profits thereof.

11. Successor Trustees. Successor Trustees, however or for whatever reason appointed or created, shall have all powers and discretions, be charged with all duties and invested with all rights, titles, estates and interests, as are herein conferred upon and vested in the Trustee as provided herein, and shall be and act the same in all respects, as though originally named herein as Trustee.

12. Provisions Independent. To further assure the carrying out of the purposes hereof, each of the provisions of this Agreement is to be regarded and construed as independent of every other provision. In the event that the final determination of a court of competent jurisdiction shall adjudge that any of the terms, conditions or provisions of this Agreement are invalid, such adjudication shall in no way affect the validity of the remaining provisions. In any such case the BOARD OF PARK COMMISSIONERS may, at a meeting called for that purpose, direct that the administration of this Trust be proceeded with in such manner as will most nearly conform, in their judgment, to the intent and purpose of this Agreement, due consideration being given to the judgment entered by the Court and to changed conditions and circumstances, if any. All funds, principal and income, shall at all times be held for and applied to such of said uses and purposes only as then may be valid and lawful.

13. Amendment of the Trust Agreement. The BOARD OF PARK COMMISSIONERS may, by resolution unanimously adopted, and with the approval of the Trustee, change the name of the Trust, the method of distributing income, and other details of the machinery of administration, but no such change shall in any way alter or abrogate the object or purpose of the Trust.

14. Removal of the Trustee. The BOARD OF PARK COMMISSIONERS may, by resolution unanimously adopted, remove the Trustee named herein and appoint a successor Trustee, provided that the Trustee named herein shall be reimbursed for all expenses incurred and shall be paid all compensation to which it is entitled up to the date of such removal.

15. Dissolution of Trust. Upon the dissolution of the Trust, the Trustee shall, after paying or making provisions for the payment of all the liabilities of the Trust, including all fees of the Trustee, distribute all assets of the Trust to the Board, exclusively for the purposes of the Trust. In the event that the Board ceases to exist, the assets of the Trust of any dissolution shall be distributed in such manner and to such qualified organization or organizations as the Foundation's Board of Directors shall determine to carry out the purposes of the Trust. An organization shall be deemed to be a "qualified organization" for purposes of this paragraph only if at the time of the distribution of such assets it is operated exclusively for the purposes described in Section 501(c)(3) of the Internal Revenue Code of 1954 and is described in Section 509(a)(1) or (2) thereof. Any of such assets not so distributed shall be distributed by the Court of Common Pleas of Mahoning County to such qualified organization or organizations as said Court shall determine, but to carry out the purposes of the Trust.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate at Youngstown, Ohio, by the BOARD OF PARK COMMISSIONERS and the Trustee acting through their duly authorized officers the day and year first above written.

After discussion, the motion was seconded by Ms. Marrow, and passed, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni
Voting Nay: None

The Board received the following public comments.

- Nancy Brundage – commented on Mr. Miller's employment contract, and thanked him.
- Bob Durick – mentioned that Mr. Schiavoni and his son were awarded men of the year in the boxing association.

At the end of the public comment session, the Board thanked the public for their comments.

Mr. Schiavoni announced that the next Regular Board Meeting has been scheduled for Monday, April 14, at 6:00 p.m. at the MetroParks Farm.

Mr. Ragan moved the Board meet in Executive Session to consider the appointment, employment, discipline, or compensation of public employees.

The motion was seconded by Mr. Macejko and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni

Voting Nay: None

The motion was passed, and the Board met in Executive Session at 6:20 p.m.

The Board returned from the Executive Session at 7:05 p.m.

There being no further business, Mr. Ragan moved to adjourn the meeting. Mr. Macejko seconded the motion, and the vote taken resulted as follows:

Voting Aye: Durick, Macejko, Marrow, Ragan, Schiavoni

Voting Nay: None

The meeting adjourned at 7:06 p.m.