

**FIRST ADDENDUM TO THE
AGREEMENT BETWEEN THE CITY OF FORTUNA AND THE
HUMBOLDT SKATEPARK COLLECTIVE**

THIS FIRST ADDENDUM (this “Addendum”) is entered into on this day, _____, by and between the CITY OF FORTUNA (hereinafter referred to as “CITY”) and the HUMBOLDT SKATEPARK COLLECTIVE, a federally recognized 501(c)(3) non-profit organization (hereinafter referred to as “COLLECTIVE”), for the FORTUNA SKATE PARK.

RECITALS

- A. The CITY and COLLECTIVE are parties to that written Agreement Between the City Of Fortuna and the Humboldt Skatepark Collective dated March 3, 2019 (the “Agreement”), through which the CITY granted to COLLECTIVE the right to enter upon certain CITY owned property to develop a proposal for the design and potential construction of a Skate Park. Capitalized terms not expressly defined herein shall have the same meaning as stated in the Agreement.
- B. The COLLECTIVE, as a public service to the citizens of Fortuna and pursuant to the Agreement, has assisted the CITY with the development, financing, preliminary design, and planning for said Skate Park.
- C. By way of this Addendum, the CITY and the COLLECTIVE desire to supplement the Agreement to provide terms and conditions upon which the COLLECTIVE will construct the Skate Park.

AGREEMENT

NOW, THEREFORE, for adequate consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. **Right to Enter and Construct.** For a period of twenty-eight (28) months following the full execution of this Addendum and subject to the conditions set forth in Section 2, below, COLLECTIVE and its approved contractors and subcontractors shall have the right to enter upon the CITY’s real property, commonly referred to as Newburg Park, for the purpose of constructing a half-pipe in accordance with the plans and specifications approved by the CITY (the “Project”), which plans and specifications are collectively attached to this Addendum as *Exhibit B* (the “Plans”). COLLECTIVE shall construct the Project at its own cost and expense.
- 2. **Conditions That Must be Met Prior to Construction.** COLLECTIVE shall not commence any construction-related activities unless each of the following conditions have been satisfied:

- 2.1 CITY and COLLECTIVE have agreed upon a construction window during which physical construction activities on CITY property may occur;
 - 2.2 COLLECTIVE has secured all necessary and final permits and approvals for the Project;
 - 2.3 COLLECTIVE has demonstrated to CITY that it has adequate funding for the completion of the Project;
 - 2.4 COLLECTIVE has submitted to CITY, and the CITY has approved in writing, any proposed contractors and/or materials suppliers that will be providing materials, labor, or other services to the Project;
 - 2.5 COLLECTIVE has submitted to CITY, and the CITY has approved in writing, any proposed forms of contracts to be utilized between the COLLECTIVE and contractors and/or materials suppliers that will be providing materials, labor, or other services to the Project;
 - 2.6 The City Council of the CITY shall have approved this Addendum;
 - 2.7 COLLECTIVE shall have provided all proofs of insurance meeting the insurance requirements required by Section 7, below.
3. **Inspections.** The CITY shall have the right, with or without prior notice, to inspect the Project for compliance with this Addendum and the Plans. Upon substantial completion of the Project, COLLECTIVE shall notify the CITY, which shall complete an inspection and provide COLLECTIVE a punch-list of any incomplete items. COLLECTIVE shall complete the punch-list items. The CITY shall then perform a final inspection.
 4. **Completion; Ownership.** Upon successful completion of the final inspection, and close out of the Project permits, ownership of the improvements shall pass to the CITY which shall thereafter maintain, manage, and operate the Project improvements in its sole and absolute discretion. Provided, however, that COLLECTIVE will use its best efforts to provide ongoing assistance to the CITY with ongoing maintenance of the Project. This includes (but is not limited to): consultation with CITY on necessary repairs and maintenance of Project on a (minimum) annual basis, assistance with the procurement of materials or work to make necessary repairs to Project that CITY staff do not have the means, or expertise to repair or maintain.
 5. **Use of City Property.** While entering CITY property pursuant to this Addendum, COLLECTIVE shall:

- 5.1 Comply with all applicable local, state, and federal laws;
 - 5.2 Conduct its activities in a manner that does not interfere with the public's enjoyment of Newburg Park;
 - 5.3 Comply with all conditions of applicable permits issued for construction of the Project;
 - 5.4 Comply with requests from the City officials; and
 - 5.5 Ensure that all construction equipment, materials, and debris are safely maintained and secured to prevent injury.
6. **Signage.** During construction and upon completion, the CITY shall install signage at the Project location stating, "This Project was made possible through generous contributions from the Humboldt Skatepark Collective."
7. **Insurance.** The COLLECTIVE and each of its contractors and their subcontractors shall maintain during the course of their performance of the Project insurance in compliance with *Exhibit A* hereto.
8. **Indemnity.** COLLECTIVE shall hold harmless, indemnify and defend CITY, its officers, agents, employees, insurers, and managers from and against any and all claims, liabilities, demands, costs, and contracts of any nature arising out of, resulting from or in any way related to the activities under this Addendum. This obligation shall survive the delivery of the Project to the CITY. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage.
9. **Prevailing Wage.** The work contemplated by this Addendum may be subject to prevailing wages under California Labor Code Sections 1770-1781. COLLECTIVE has the sole responsibility to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, COLLECTIVE, at its expense, shall indemnify, defend (including COLLECTIVE's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.
10. **Independent Contractor.** COLLECTIVE understands and agrees that at all times it is an independent contractor of CITY. COLLECTIVE further understands that CITY will not carry worker's compensation liability insurance on behalf of COLLECTIVE or otherwise contribute towards any disability benefits for COLLECTIVE. COLLECTIVE is exclusively responsible for the payment of all wages, payroll taxes, fringe benefits and any other expenses that may become owing to or on behalf of all persons employed by COLLECTIVE under this Addendum.

11. General Provisions.

- 11.1 **Assignment and Successors.** Neither party may transfer or assign its rights or obligations under this Addendum, in part or in whole, without the other party's prior written consent. This Addendum is binding on the heirs, successors, and permitted assigns of the parties hereto.
- 11.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Addendum.
- 11.3 **Nondiscrimination.** COLLECTIVE shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Addendum are incorporated by this reference.
- 11.4 **Choice of Law and Venue.** This Addendum shall be governed by California law, and venue shall be in the Superior Court for the county in which City is located, and no other place.
- 11.5 **Severability.** If any provision of this Addendum is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Addendum shall remain in full force and effect.
- 11.6 **Amendment.** No amendment or modification of this Addendum shall be binding unless it is in a writing duly authorized and signed by the parties to this Addendum.
- 11.7 **Provisions Deemed Inserted.** Every provision of law required to be inserted in this Addendum shall be deemed to be inserted, and this Addendum shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Addendum shall be amended to make the insertion or correction.
- 11.8 **Entire Agreement.** This Addendum, along with the Agreement, constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Addendum.
- 11.9 **Attachments.** If any provision in any attachment to this Addendum conflicts with or is inconsistent with the provisions set forth in the body of this Addendum, the provisions set forth in the body of this Addendum shall control over the conflicting or inconsistent provisions in the attachment.

- 11.10 **Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Addendum shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 11.11 **Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability (“Force Majeure Event”), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.
- 11.12 **Headings.** The headings in this Addendum are included for convenience only and shall neither affect the construction or interpretation of any provision in this Addendum nor affect any of the rights or obligations of the parties to this Addendum.
- 11.13 **Execution in Counterparts.** This Addendum may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- 11.14 **Authorization.** Each individual executing this Addendum, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Addendum constitutes the legally binding obligation of the entity which he/she represents.

CITY OF FORTUNA

_____ Date _____
 Merritt Perry, City Manager- City of Fortuna

HUMBOLDT SKATE PARK COLLECTIVE

_____ Date _____
 Charles E. Caldwell II, Director- Humboldt Skatepark Collective

_____ Date _____
 Stacey Mintey, Secretary- Humboldt Skatepark Collective

Exhibit List:

Exhibit A – Insurance Requirements

Exhibit B – Plans

Exhibit A

Insurance Requirements

Insurance. COLLECTIVE shall be required to procure and provide proof of the insurance coverage required by this Exhibit A in the form of certificates and endorsements. The required insurance must cover the activities of COLLECTIVE and its employees, volunteers, contractors, consultants, agents, or subcontractors relating to or arising from the performance under this Addendum, and must remain in full force and effect at all times during the performance of the Addendum. All required insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of “A” or better and a financial size rating of “VIII” or better.

The following insurance policies and limits are required for this Agreement:

- Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if COLLECTIVE has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

The City of Fortuna, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the COLLECTIVE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the COLLECTIVE’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the COLLECTIVE’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Fortuna, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Fortuna, its officers, officials, employees, or volunteers shall be excess of the COLLECTIVE’s insurance and shall not contribute with it.

Notice of Cancellation

COLLECTIVE shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, COLLECTIVE shall forthwith obtain and submit proof of substitute insurance.

Waiver of Subrogation

COLLECTIVE hereby grants to City of Fortuna a waiver of any right to subrogation, which any insurer of said COLLECTIVE may acquire against the City by virtue of the payment of any loss under such insurance. COLLECTIVE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the COLLECTIVE, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the COLLECTIVE to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

COLLECTIVE shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before disbursement of the Award. However, failure to obtain the required documents prior to disbursement of the Award shall not waive the COLLECTIVE's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Exhibit B

[PLANS AND SPECIFICATIONS FOLLOW THIS PAGE]