RESOLUTION NO. ____________


WHEREAS, Santa Rosa Parks Foundation, a non-profit organization and dedicated group of community volunteers, was formed to engage the community and fundraise in support of Santa Rosa recreation and parks programs and facilities; and

WHEREAS, Santa Rosa Parks Foundation is dedicated to building partnerships between people and parks, making the parks accessible to all adults, children and pets in Santa Rosa and Sonoma County at large; and

WHEREAS, Santa Rosa Parks Foundation’s first project is to raise funds for the purchase of a new train for Howarth Park, a set of replacement parts for the train, and one new passenger car that is ADA accessible: the current train is 44 years old and in need of constant repairs, incurring annual maintenance costs in excess of $10,000; and

WHEREAS, Santa Rosa Parks Foundation will provide plaques and signage for donor acknowledgment subject to the Council Policy Number 000-25 – Park Naming Policy and Procedure; and

WHEREAS, Santa Rosa Parks Foundation has an annual marketing and outreach plan, including participating in events at Howarth Park and hosting a website to promote fundraising efforts and accept donations; and

WHEREAS, Santa Rosa Parks Foundation will donate funds to the City to replace the Howarth Park train, one of the City’s most popular park features that has been enjoyed by families for 44 years; and

WHEREAS, both the City of Santa Rosa and the Santa Rosa Parks Foundation would like to enter into Memorandum of Understanding to document their commitment to the replacement of the Howarth Park train.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa hereby approves the Memorandum of Understanding between the City and Santa Rosa Parks Foundation, attached hereto as Exhibit A, to engage the community and fundraise in support of Santa Rosa Recreation and Parks programs, specifically, the Howarth Park train as their first project, and authorizes the Director of Recreation and Parks the signing authority to enter into this Memorandum of Understanding.

IN COUNCIL DULY PASSED this _____ day of _________________, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _________________________ APPROVED: ______________________________

City Clerk  Mayor

APPROVED AS TO FORM:

________________________ City Attorney

Attachment: Exhibit A – Memorandum of Understanding Between the City of Santa Rosa and Santa Rosa Parks Foundation
EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SANTA ROSA AND
SANTA ROSA PARKS FOUNDATION

This Memorandum of Understanding ("MOU") is made as of this ______ day of ______, 2013 by and between the City of Santa Rosa, a municipal corporation ("City") and Santa Rosa Parks Foundation, a tax-exempt California non-profit corporation ("SRPF").

RECEDALS

A. The City owns and operates a train as an attraction/ride at Howarth Park, which currently is comprised of a C.P. Huntington locomotive and two passenger cars that include a total of 14 benches for passenger seating (hereinafter referred to as "Train"). The locomotive for the Train has consistently needed repair for each of the last five years, incurring maintenance costs in excess of $10,000 annually to the Santa Rosa Recreation and Parks Department.

B. The SRPF is a tax-exempt, non-profit organization whose primary purpose is to engage the community and fundraise in support of Santa Rosa’s parks and recreation programs.

C. The SRPF would like to raise funds to be applied specifically to the purchase of a new locomotive, a set of replacement parts for the locomotive, and one new passenger car that is compliant with the American with Disabilities Act ("ADA").

AGREEMENT

NOW, THEREFORE, City and SRPF agree as follows:

1. City Obligations. City agrees to:

   A. Purchase a train locomotive, a set of replacement parts for the locomotive, and an ADA-accessible passenger car, subject to prior funding for the purchase from SRPF. City will place funds received from SRPF in a project account designated for the purchase.

   B. Award a contract to the selected vendor for the purchase of the equipment identified in subsection 1.A. City shall not be obligated to award such contract unless and until it receives funding for the entire purchase from SRPF as required under subsection 2.B.

   C. Provide SRPF with a copy of the selected vendor’s bid specifying the cost of the equipment to be purchased by City pursuant to subsection 1.A.

   D. Upon receipt of locomotive and passenger car from vendor, install and operate the locomotive and passenger car at Howarth Park within 90 days of receipt.

   E. Include SRPF's contact information and website address on the City of Santa Rosa Recreation and Parks website.

   F. Allow for installation of donor acknowledgment plaques and signage, including plaques or signage on the locomotive, the passenger cars, the passenger car benches, and/or the Howarth Park Train Station. All plaques and signage will adhere to Council Policy Number 00025 – Park Naming Policy and Procedure.
2. **SRPF Obligations.** SRPF agrees to:

A. Establish fundraising goals and engage in fundraising for locomotive, locomotive service and spare parts package as specified by City vehicle maintenance staff, and ADA-accessible passenger car for the Train. SRPF shall provide its fundraising goals to City within 30 days of execution of this MOU for City's review and approval. If SRPF is unable to meet its periodic fundraising goals during the term of this MOU, it shall timely notify City.

B. Upon request by City, pay to the City the funds necessary to purchase the train locomotive, service and spare parts package, and ADA-accessible passenger car. If the City receives funds from other sources for the purchase of this equipment, SRPF will provide the balance of funds necessary to make the purchase. The parties anticipate that the transfer of funds will occur after City has selected the vendor for the purchase but before the award of contract and that it will occur in a single transfer. The parties will work together to establish the timelines for the purchase of the equipment and the transfer of funds.

C. Provide any plaques and signage for donor acknowledgment, subject to subsection 1.E.

3. **Effective Date/Term of MOU**

This MOU shall be effective on the date it is made above and shall expire on December 31, 2016, unless extended upon mutual written agreement of SRPF and the Director of Recreation and Parks. The MOU may be terminated by either party prior to the expiration date by giving sixty (60) days written notice to the other party of its intent to terminate the MOU.

4. **Indemnification.**

Each party is an independent entity, responsible for its acts and the acts of its officers, agents, employees and volunteers. Consequently, each party agrees to indemnify, defend and hold harmless the other party, its officers, agents and employees from any and all loss, injury, liability, damages, claims, demands, suits, or judgments arising from the acts or omissions of its officers, agents, employees or volunteers in connection with the performance of this MOU. The parties hereby agree that SRPF shall incur no liability to the City for any acts or omissions by SRPF in connection with SRPF's duties herein, except for loss occasioned by the gross negligence, bad faith or intentional misconduct by SRPF. The duties of SRPF shall be only those specifically set forth herein, or hereafter agreed to by it in writing. SRPF is not acting as a trustee and there are no attributes of a trust inherent in the relationship between the City and SRPF.

5. **Notices**

Except as otherwise provided in the MOU, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first class postage, and addressed as indicated below, and depositing in the United States mail to:
6. Miscellaneous.

A. **Entire Agreement.** This MOU contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this MOU are superseded by this MOU and shall have no further effect.

B. **Modification.** No modification or change to the terms of this MOU will be binding on a party unless in writing and signed by an authorized representative of that party. This MOU may not be assigned, in whole or in part, by any party hereto without the express written consent of the other party in each instance. This MOU shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

C. **Compliance with Laws.** SRPF and City shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances.

D. **Publication.** Once executed, both SRPF and the City are hereby authorized to publicize the existence of this MOU in their publications, promotional materials and initiatives so long as this MOU remains in force and so long as such materials fairly and accurately reflect the terms and conditions of this MOU. Except as expressly set forth herein, neither party shall have the right to bind the other party.

E. **Accounting Records.** SRPF and City shall provide project accounting records to each other for physical inspection upon adequate written notice. SRPF shall retain all records pertaining to this MOU while this MOU is in affect and for a period of not less than four (4) years following the expiration of this MOU.

7. **Authority and Execution.**

Each person executing this MOU on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a corporation that such corporation has the full right and authority to enter into this MOU and perform all of its obligations hereunder.
Executed as of the day and year first above stated:

SANTA ROSA PARKS FOUNDATION  
A California Non-profit Corporation

Signatures of Authorized Persons:

By: Melinda Rivera  
Print Name: Melinda Rivera  
Title: Board President

By: Rose M.  
Print Name: Rose M. Zolli  
Title: Board Vice President

CITY OF SANTA ROSA  
a Municipal Corporation

By: ______________________  
Print Name: ______________________  
Title: ______________________

APPROVED AS TO FORM:

Angela Casas Grandes, ACA  
Office of the City Attorney

Attest: ______________________

City Clerk