

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH**

RESOLUTION NO. 24-108

AUTHORIZE PARTNERSHIP WITH MONMOUTH CONSERVATION FOUNDATION

WHEREAS, the Borough is the owner of property located at the terminus of Sunset Avenue in Red Bank, and designated as Block 84, Lot 64 ("the Property"), which Property formerly served as the site of the Red Bank incinerator and landfill; and

WHEREAS, the Borough, being responsible for the management, care, operation, protection, and improvement of Borough lands and facilities for the benefit, use, and enjoyment of the public, wishes to transform the ±8.55-acre Property into a municipal park ("the Project"); and

WHEREAS, in furtherance of the Project, and in accordance with prevailing Environmental Laws (defined below), the Borough must investigate, delineate and remediate the environmental contamination identified within the Property in a manner acceptable to the New Jersey Department of Environmental Protection ("NJDEP"); and

WHEREAS, Monmouth Conservation Foundation (MCF) is a nonprofit corporation of the State of New Jersey, dedicated to assisting municipalities with acquiring and converting lands for the public purposes of open space preservation, parks and recreation, natural resources conservation, historic and cultural resources protection and horticultural, educational and programming facilities; and

WHEREAS, MCF has agreed to assist the Borough with the Project by procuring site investigation services, community outreach, and grant solicitation, as may be required; and

WHEREAS, The Borough shall reimburse MCF for its actual out-of-pocket expenses, including MCF staff-time spent rendering services hereunder (presently \$55.00 per hour) and any legal fees (presently \$210 per hour), both of which are subject to an annual increase of up to four percent (4%).

NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the Borough of Red Bank, in the County of Monmouth, State of New Jersey, that the governing body in the Borough of Red Bank has determined that it is in the best interest of the citizens of Red Bank to engage in a partnership with Monmouth Conservation Foundation, P.O. Box 4150, Middletown, NJ 07748-4150 and authorizes the Mayor and/or Borough Administrator to execute the agreement with MCF on behalf of the Borough of Red Bank.

	MOVED	SECONDED	AYES	NAYS	ABSTAIN	ABSENT	
Councilmember Bonatakis			x				
Councilmember Cassidy			x				
Councilmember Facey-Blackwood			x				
Councilmember Forest	x		x				
Councilmember Jannone			x				
Councilmember Triggiano		x	x				
Mayor Portman			x				
ON CONSENT AGENDA	Yes <u>x</u>		No <u> </u>				

I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Red Bank, In the County of Monmouth at a Meeting held on April 11, 2024.


Laura Reinertsen, Borough Clerk

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (“Agreement”) made as of this ____ day of _____, 2024 (“Effective Date”),

BETWEEN

THE BOROUGH OF RED BANK, having offices located at 90 Monmouth Street, Red Bank, NJ 07701, (hereinafter “the Borough”),

AND

MONMOUTH CONSERVATION FOUNDATION, whose mailing address is P.O. Box 4150, Middletown, NJ 07748-4150 (hereinafter “MCF”; collectively referred to herein as the “Parties”).

WITNESSETH

WHEREAS, the Borough is the owner of property located at the terminus of Sunset Avenue in Red Bank, and designated as Block 84, Lot 64 (“the Property”), which Property formerly served as the site of the Red Bank incinerator and landfill; and

WHEREAS, the Borough, being responsible for the management, care, operation, protection, and improvement of Borough lands and facilities for the benefit, use, and enjoyment of the public, wishes to transform the ±8.55-acre Property into a municipal park (“the Project”); and

WHEREAS, in furtherance of the Project, and in accordance with prevailing Environmental Laws (defined below), the Borough must investigate, delineate and remediate the environmental contamination identified within the Property in a manner acceptable to the New Jersey Department of Environmental Protection (“NJDEP”); and

WHEREAS, MCF is a nonprofit corporation of the State of New Jersey, dedicated to assisting municipalities with acquiring and converting lands for the public purposes of open space preservation, parks and recreation, natural resources conservation, historic and cultural resources protection and horticultural, educational and programming facilities; and

WHEREAS, MCF has agreed to assist the Borough with the Project by procuring site investigation services, community outreach, and grant solicitation, as may be required; and

WHEREAS, the Borough has bonded for the expenses set forth herein in the amount of \$217,140 (“the Bonded Amount”).

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration hereinafter recited, MCF and the Borough do and hereby covenant, stipulates, and agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated by reference as if set forth at length.
2. **Initial Review.** The Parties acknowledge and ratify MCF’s retention of Vanasse Hangen Brustlin, Inc. (VHB), a Licensed Site Remediation Professional, to perform the first phase of remediation planning, design, and funding application for the Property, at a cost of \$25,040. The Borough shall reimburse MCF for this expense upon receipt of the Bonded Amount.
3. **Further Review & Plans.** The Parties agree that MCF may authorize VHB to conduct additional site investigation and prepare a Remedial Action Workplan (“RAW”) at an estimated cost of \$192,100. Upon MCF’s receipt of any invoice for such work, MCF shall promptly supply same to the Borough for payment to MCF within 30 days of the Borough’s receipt. Upon receipt of such payment, MCF shall promptly pay said invoice. The prior written approval of the Borough shall be required for the reimbursement of any costs related to a change order that would increase said estimated cost. MCF shall provide to the Borough a copy of the RAW and any other documents related to the Project, along with copies of all invoices for the services rendered. MCF and its consultant, VHB, shall be authorized to speak with NJDEP officials regarding any matters directly related to the Project on behalf of the Borough.
4. **Community Outreach.** The Parties agree that MCF is authorized to hire one or more consultant(s) to conduct community outreach to assist the Borough in assessing the present and future open space and

recreational needs of the members of the community; provided, however, any such hiring must be within the Bonded Amount. If the Bonded Amount would be exceeded, the Parties agree to confer in good faith to and to reasonably attempt to amend the this Agreement. MCF shall produce all findings promptly to the Borough.

5. **Reimbursement Programs.** The Parties agree to cooperate and assist each other in seeking reimbursement of various expenses hereunder through publicly available grant programs, as detailed below. For the purposes of such grants, the Borough agrees that it shall remain responsible for the remediation of the Property and shall, as necessary, enter into a remediation management agreement with MCF. It is agreed that the Party who incurred the expense being reimbursed shall be the Party entitled to said reimbursement, regardless of which Party receives said reimbursement directly from the funding authority.
 - a. **NJDEP Hazardous Discharge Site Remediation Fund.** MCF will authorize VHB to make application to the NJDEP Hazardous Discharge Site Remediation Fund (“HDSRF”) for reimbursement to the Borough and/or MCF for any and all eligible costs associated with the work on behalf of the Borough.
 - b. **Grants.** MCF shall assist the Borough in its pursuit of grant funding to help the Borough offset its costs of the activities necessary to transform the Property into a municipal park. MCF shall be authorized to apply for and accept grant monies on behalf of the Borough.
6. **MCF Staff and Legal Costs.** The Borough shall reimburse MCF for its actual out-of-pocket expenses, including MCF staff-time spent rendering services hereunder (presently \$55.00 per hour) and any legal fees (presently \$210 per hour), both of which are subject to an annual increase of up to four percent (4%). MCF shall issue monthly invoices to the Borough for such expenses, which shall be payable within 30 days of receipt.
7. **Other Funding.** The Borough represents and warrants: (1) the funding required hereunder shall not be dependent upon the grant monies described in Section 5 above, and (2) the Borough intends to bond for \$217,140 to cover the cost of the VHB work described herein.
8. **Park Use.** The Borough further represents and warrants that: (1) the Property is listed on the Borough’s Recreation and Open Space Inventory (“ROSI”), (2) the Property shall remain, at all times, on the Borough’s ROSI, and (3) the Borough shall file a deed restriction to ensure that the Property is not utilized for any use other than public recreation and open space.
9. **Indemnification of MCF.** The Borough shall, at all times, indemnify, defend and hold MCF and its respective officers, trustees, employees, representatives and agents harmless from all loss or damage resulting from MCF entering into this Agreement, including but not limited to, the condition of the Property, any offsite contamination having emanated or emanating from the Property, or any violation of Environmental Law. This obligation shall survive the expiration or termination of this Agreement. As used herein:
 - a) The term “loss or damage” shall mean and include all losses, damages, liabilities, obligations, penalties, litigations, proceedings, claims, causes of actions, demands, defense of costs, disbursements, judgments and the like of whatever nature including, but not limited to, reasonable attorneys’ fees, experts’ fees and other costs of litigation or administrative proceedings including the preparation therefore, as well as, (i) the costs of removal of any and all hazardous materials from all or any portion of the Property or surrounding areas, (ii) costs incurred for the Property to comply with all applicable Environmental Laws, and (iii) Natural Resource Damages;
 - b) the term “Environmental Laws” shall mean and include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 *et seq.*, the New Jersey Spill Compensation Act, N.J.S.A. 58:10-23.11 *et seq.* or the Leaking Underground Storage Act, N.J.S.A. 58:10A-21 *et seq.*, and all other similar existing federal, state, and municipal statutes and ordinances governing the environment all as amended from time to time together with all rules, regulations, opinions, orders, judgments, and directives issued or promulgated pursuant to or in connection with any of the foregoing by NJDEP, the U.S. Environmental Protection Agency, any bureau or subdivision thereof or any governmental agency, court or entity having jurisdiction; and
 - c) the term “hazardous materials” shall mean and include asbestos, petroleum products and any other hazardous or toxic materials, wastes and substances which are defined, determined, or identified as such in any Environmental Law or any judicial or administrative interpretation thereof.

10. Term and Termination.

- a) The term of this Agreement shall be two (2) years from Effective Date or the date upon which MCF furnishes the Borough with the RAW as approved by DEP.
- b) This Agreement may be terminated by either party upon written notice of a material breach of this Agreement that remains uncured for a period of ten (10) or more business days, or upon any formal determination by the Borough that it no longer intends to remediate and/or develop a park upon the Property.
- c) MCF, upon twenty (20) days written notice to the Borough, shall be permitted to terminate and declare null and void the Agreement without penalty or any financial responsibility to the Borough, should MCF in its sole discretion, be unable to fulfill the terms and conditions of this Agreement.
- d) The Borough shall reimburse MCF for all its out-of-pocket expenses incurred prior to the termination of the within Agreement.

11. Additional Duties and Obligations. With respect to the portion of the Project described in this Agreement, the Parties hereto further agree as follows:

- a) MCF and the Borough shall designate Project Coordinators responsible for all support services required and other matters affecting the coordination and timely completion of the Project. The initial Project Coordinators are designated in Section 12 below.
- b) MCF agrees to communicate any material problems pertaining to the Project to the attention of the designated Borough Project Coordinator in a timely manner.
- c) MCF agrees that all work performed shall meet acceptable professional and industry standards.
- d) MCF shall protect and hold harmless the Borough with regard to the imposition and discharge of liens resulting from contracts made by MCF provided MCF receives payment for same from the Borough according to the terms and conditions of this Agreement.
- e) The Borough agrees upon satisfactory completion of the portion of the Project described herein and the payment of all monies owed by MCF and after the release of all liens, if any, to accept the Project and to relieve MCF of any further obligations.
- f) The Borough agrees to communicate any problems arising out of the Project contract(s), including but not limited to, specifications, scheduling of work, materials, workmanship, and completion dates to the attention of MCF.
- g) MCF and Borough mutually agree to resolve any conditions or problems encountered during the life of the Project in an expeditious and timely manner.

12. Notices. Any correspondence or communication shall be directed to the respective party at the address first stated above, or by email to:

If to MCF:

Jena Cosimo (jcosimo@monmouthconservation.org)

If to the Borough:

Shawna Ebanks (sebanks@redbanknj.org)

13. No Partnership. This Agreement between Parties does not and shall not be construed to create a partnership, joint venture, agency, or other relationship between the Parties except as specifically established herein.

14. Cooperation. Subject to the terms and conditions herein provided, each of the Parties hereto shall execute and deliver such documents as the other shall reasonably request in order to consummate and make effective this Agreement; provided, however that the execution and delivery of such documents by such Parties shall not result in any additional liability or cost to such party.

15. **Construction.** The Parties acknowledge that each party and its counsels have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

16. **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. For purposes of this Agreement, a facsimile signature, pdf signature or other electronic or digital signature delivered by email shall be deemed an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused these presents to be signed, sealed and acknowledged as of the date first written above.

ATTEST

BOROUGH OF RED BANK

LAURA REINERTSEN, RMC, CMR, AHP
Borough Clerk

By: _____
WILLIAM PORTMAN
Mayor

BE IT REMEMBERED, that on this _____ day of _____, 2024, before me the subscriber, personally appeared _____, who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that she is the Clerk of the Borough of Red Bank named in the within instrument, that _____, is the _____ of the Borough of Red Bank, that the execution as well as the making of this instrument has been duly authorized by a proper Resolution of the governing body of the Borough of Red Bank; and said instrument is signed and delivered by said _____, the _____ of the Borough of Red Bank as and for the voluntary act and deed of said Borough, in the presence of deponent, who thereon subscribed her name thereto as attesting witness.

Sworn to and Subscribed before me
this ____ day of _____, 2024.

Notary Public of the State of New Jersey

WITNESS

MONMOUTH CONSERVATION FOUNDATION

JENA COSIMO,
Director of Acquisitions

By: _____
WILLIAM D. KASTNING,
Executive Director

STATE OF NEW JERSEY)
)
COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____, 2024, before me the subscriber, personally appeared _____, who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that he is the Executive Director of MONMOUTH CONSERVATION FOUNDATION, who, I am satisfied, is the person who signed the within instrument pursuant to a resolution of the members of said Corporation, and that the within instrument is the voluntary act and deed of such Corporation.

Sworn to and Subscribed before me
this _____ day of _____, 2024.

Notary Public of the State of New Jersey
