

# Report to the Rock Island City Council

## **Subject:**

Friends of Hauberg Operational Agreement

**From:** John Gripp

**Date:** May 15th. 2017

## **Information:**

The Friends of Hauberg is a 501 c3 group that formed to help the Department operate, fund and program the Hauberg Civic Center. Over the past year the group and Department have developed a working relationship that has led to the group painting the exterior of Hauberg, removing old carpeting, refinishing hardwood floors, repair/replace windows, roof repair, gutter repairs and various grounds work. This has drastically improved Hauberg and the grounds. The group has more than proved that they are passionate about and capable of operating Hauberg. This is extremely exciting as the Department does not have the resources to maintain Hauberg at the level it is being maintained by the FOHCC.

Over the past several months, the City Attorney and the FOHCC Attorney, Mark Schwiebert, have been developing an operational agreement between the FOHCC and the Parks & Recreation Department. This agreement has been modeled after the Black Hawk Lodge operational agreement.

Please see the attached proposed operational agreement for Hauberg.

## **Recommendation:**

Staff recommends the Park Board approve the operational agreement between the Friends of Hauberg Civic Center (FOHCC) and the Parks & Recreation Department for the operation of the Hauberg Civic Center.

## **Submitted by:**

**John Gripp**  
**Parks & Recreation Director**

MEMORANDUM OF UNDERSTANDING AND OPERATING AGREEMENT  
BETWEEN THE CITY OF ROCK ISLAND, ILLINOIS AND  
FRIENDS OF HAUBERG CIVIC CENTER FOUNDATION

THE CITY OF ROCK ISLAND, ILLINOIS and its Parks and Recreation Department, (hereinafter the "CITY") and FRIENDS OF HAUBERG CIVIC CENTER FOUNDATION, (hereinafter the "FOUNDATION") enter into this Memorandum of Understanding and Operating Agreement (hereinafter the "Agreement") to govern the parties' overall relationship and responsibilities regarding the operation and management of the Hauberg Estate, and its grounds and outbuildings excluding the former Public Parks and Recreation Department office building and warming hut (hereinafter "HAUBERG") located in the City of Rock Island, Illinois.

The parties agree that this Agreement shall be governed by the following provisions:

1. Not-for-Profit Status. The FOUNDATION represents that it is an Illinois not-for-profit corporation in good standing, organized for the purpose of preserving, improving and enhancing HAUBERG;

2. Premises. By this Agreement, the CITY Parks and Recreation Department grants to the FOUNDATION, and the FOUNDATION accepts the right and obligation, to maintain, manage, and improve the HAUBERG Residence and Carriage House, but excluding the former Parks and Recreation office and warming hut. The Parks and Recreation Department will maintain the HAUBERG grounds while being responsible for mowing, landscaping, snow removal and salt. Any enhancements to the HAUB'ERG grounds or interior of HAUBERG, will be done by the FOUNDATION, including maintaining the collectibles, in collaboration with the CITY for the purposes set out in this Agreement. All proposed improvement projects must be approved by the Parks and Recreation Director and/or the Park Board. Any lease of the apartment in the Carriage House shall be subject to CITY approval.

3. Designated Representative and Notices. The CITY's designated agent, who shall serve as its official representative for the purposes of implementing and administering the provisions of this Agreement, is the CITY's Parks and Recreation Director whose address is 4303 - 24<sup>th</sup> Street, Rock Island, Illinois 61201. Written notices made by either party under this Agreement shall be sent to the following addresses:

City of Rock Island	Friends of Hauberg, President of the Foundation
Parks and Recreation Department	c/o 842 - 20 <sup>th</sup> Street
Attention: Parks & Recreation Director	Rock Island, IL 61201
4303 - 24 <sup>th</sup> Street	or such other address the Foundation indicates
Rock Island, IL 61201	in writing

4. Term. The term of this Agreement shall be from the last date of the parties' signatures below to the 30<sup>th</sup> day of April, 2027. This term may be extended upon the mutual written agreement of both parties for additional ten (10) year terms thereafter.

5. Rent. The FOUNDATION shall not be required to pay any rent to the CITY.

6. Rent Concession. The rent provision above reflects the benefits to the public and the CITY in obtaining the convenience and services of site support for HAUB ERG without any operational or management costs to the CITY other than as specified hereunder; the other benefits that the FOUNDATION has agreed to provide in this Agreement; the required use of income from operations to support HAUBERG as set forth below in paragraph 7; and the additional beneficial services provided by the FOUNDATION to the public and HAUB ERG visitors in support of HAUBERG.

7. Use of Income. Net income from rental and tour operations, which is defined as gross fees and sales less expenses arising directly out of the operation of the rentals and tours, or, in the case of operation by a subcontractor pursuant to paragraph 26 of this Agreement, the total amount of money paid to the FOUNDATION under any subcontract, shall be used for the

following purposes only: 1) to defray the direct costs of managing and operating the rentals and tours; 2) to make improvements to or maintain HAUBERG as allowed under this Agreement; and 3) to directly support HAUBERG, including but not limited to programming and marketing relating to HAUBERG events, and capital improvements.

8. Period of Operation. The FOUNDATION agrees that during the term of this Agreement the facilities shall be open and operating for the purposes of serving visitors to HAUBERG on all days and at all hours that HAUBERG is open to the public. The CITY shall provide an administrative assistant at its cost to serve as liaison with the FOUNDATION for HAUBERG for up to 20 hours per week. Any cost for such administrative assistant over 20 hours shall be paid at an agreed hourly rate at the FOUNDATION's expense. Hours of operation will be posted at conspicuous places for the benefit of the visitors to HAUBERG, subject to the CITY's authority to approve signage, as set forth below in paragraph 20.

9. Types of Service and Merchandise. The FOUNDATION is authorized and obligated to manage and collect fees for the rental of HAUBERG. The FOUNDATION is also authorized to operate a concession offering for sale at HAUBERG, a selection of film books, periodicals, publications, interpretive information, post cards and souvenirs relating to the history of HAUBERG. It shall be the FOUNDATION's sole obligation to comply with all copyright licensing and distribution agreements for items sold at the souvenir shop. It shall also be the sole responsibility of the FOUNDATION to comply with all federal and state laws regarding items sold at the gift shop and that the FOUNDATION shall comply with all federal and state laws regarding items sold at the gift shop and that the FOUNDATION shall indemnify and hold harmless the CITY from any violations of copyright licensing or distributorship requirements including reimbursement for court costs and attorney fees.

The FOUNDATION agrees to restrict the use of HAUBERG to the described rentals, tours and related activities.

The FOUNDATION shall be responsible for providing security and cleaning services for event rentals, tours and related activities at HAUBERG.

The FOUNDATION may carry in stock at times a full line of new and salable stock of such of the merchandise described above that it has the right to sell. The amount of such stock shall be a reasonable amount determined by the FOUNDATION's store manager. All merchandise shall be in keeping with the character of HAUBERG and for its promotion and improvements. The CITY has discretion to object to the types, items, quality and pricing of all merchandise sold and services rendered by the FOUNDATION. The FOUNDATION agrees to discuss removal of any merchandise or cease any service objected to by the CITY until mutually agreeable results can be found.

The FOUNDATION understands and agrees that a price list shall be maintained and provided to the CITY upon request. The price of all merchandise offered for sale shall be marked in plain figures.

The FOUNDATION agrees to operate the rental and gift shop operations in a proper and businesslike manner, and in accordance with the rules and regulations of the CITY as prescribed by the CITY. The FOUNDATION agrees to maintain HAUBERG in a clean and orderly condition sufficient to meet the reasonable demands of the public and satisfactory to the CITY.

The FOUNDATION agrees that the CITY shall have the right to object to the condition of HAUBERG and direct reasonable objectionable conditions be remedied.

10. Utilities. The CITY shall be responsible for all utilities. Maintenance of all utility service lines shall be the responsibility of the CITY and the utility company rendering the

service. Utilities shall include gas, electric, water, sewer and waste removal, security systems, telephone, and internet services to HAUBERG.

11. Sanitation. The FOUNDATION shall keep HAUBERG in a sanitary condition at all times, in conformity with applicable federal, state and local laws. An authorized representative of the CITY inspection department may inspect HAUBERG periodically and the FOUNDATION agrees to comply with inspector's recommendations. Failure of the FOUNDATION to comply with such recommendations may result in the termination of this Agreement as provided below at paragraph 33.

The FOUNDATION shall provide all janitorial supplies and services required to properly clean and operate HAUBERG, including clean up after rental events have concluded.

The CITY shall provide refuse containers and recycling containers for hauling of the trash and refuse accumulated at HAUBERG.

12. Equipment and Furnishings. The CITY will provide for the FOUNDATION's use of all furniture, furnishings and equipment presently owned by the CITY and utilized at HAUBERG Residence and Carriage House, but excluding the former Parks and Recreation office building and warming hut. The FOUNDATION will provide all furniture, furnishings and equipment not initially provided by the CITY which is necessary for the proper operation of HAUBERG. Prior to commencement of operations, the CITY will provide the FOUNDATION with an inventory of the CITY's equipment and furnishings for which the FOUNDATION is responsible. At least once a year, the CITY shall have the right to conduct a physical inventory of the CITY's equipment and furnishings. The FOUNDATION shall be responsible for any discrepancies found in the CITY's inventory.

The FOUNDATION agrees to review and confirm the CITY'S initial inventory of facility equipment and furnishings prior to commencing operations and shall review such inventory annually thereafter.

13. **Inspection and Condition of Premises** The FOUNDATION has examined HAUBERG prior to and as a condition precedent to entering into this Agreement and is satisfied with its physical condition. The FOUNDATION's execution of the Agreement by its authorized agents shall be conclusive evidence of its receipt of HAUBERG in good order and repair, except as otherwise specified in this Agreement. The FOUNDATION agrees and admits that no representations as to the condition of HAUBERG and no agreements or promises to alter, repair or improve HAUBERG, either before or after the execution of this Agreement, have been made by the CITY or its agents, except for those expressly stated in this Agreement. The FOUNDATION agrees to return HAUBERG to the CITY in a condition as good as or better than the condition when the FOUNDATION executed this agreement, except for fire, flood, tornado, or ordinary wear and tear.

14. **Maintenance, Repairs and Replacements** The CITY shall be responsible for the repair and replacement of all structural and mechanical components and equipment permanently attached to the structure of HAUBERG including roofs, walls, foundations, and plumbing and electrical systems. These obligations shall not include any obligation to repair or restore the organ. Furthermore, the decision of what repairs or replacements, if any, or what structural and mechanical work will be performed, shall be at the sole discretion of the CITY. The CITY agrees to consider recommendations from the FOUNDATION; however, that final decision on all maintenance repair and replacement issues related to HAUBERG shall be at the sole discretion of the Parks and Recreation Director and/or the Park Board. Notwithstanding the

foregoing, funds raised by the Foundation for specific projects approved in advance by the Parks and Recreation Director and/or the Park Board (for example, for organ or window repair) shall be used for these purposes only, unless agreed by the parties hereto in writing to the contrary.

As part of its services hereunder, the FOUNDATION agrees to supply funds raised from operating HAUBERG and fundraising to help defray costs of repair and maintenance.

15. Safety. The FOUNDATION shall correct safety deficiencies and violations of safety practices as soon as reasonably possible after the condition becomes known. The FOUNDATION shall cooperate fully with the CITY in the investigation of accidents occurring at HAUBERG. In the event of injury to a patron or customer, the FOUNDATION shall, as reasonably appropriate, ensure that the injured person receives prompt and qualified medical attention as soon as possible thereafter, and the FOUNDATION shall immediately notify the CITY and shall within fourteen (14) days, submit a written accident report on the CITY's standard accident report form to the CITY.

16. Security. The FOUNDATION shall at its own expense, provide security services for rental events.

17. Improvements to Premises. The FOUNDATION shall not make any improvements to HAUBERG, or enter into any construction projects of any kind at HAUBERG, or subcontract any such work to a third party, without the CITY's prior written permission. The CITY has absolute discretion in its approval of improvements, construction projects, and the selection and use of any subcontractor. The FOUNDATION agrees and understands that any improvements, equipment and fixtures become the sole property of the CITY.

18. Right of Entry. The CITY reserves the right to enter HAUBERG at any time to view the premises, to ensure compliance with the provisions in this Agreement, to work or make

repairs or improvements, to preserve and manage HAUBERG, and to carry out its public duties and mission. The CITY shall not unduly interfere with the FOUNDATION' s operation of HAUBER O.

The FOUNDATION shall be liable for all expenses incurred by the CITY for all work done by the CITY to preserve, maintain or operate HAUBERG when such work is the result of the FOUNDATION's, the FOUNDATION's invitees, or its subcontractor's negligence or noncompliance with the provisions of this Agreement.

19. Advertising. The FOUNDATION agrees to coordinate its advertisements of the merchandise offered for sale by it in HAUBERG with the Director of the CITY Parks and Recreation Department. Such advertisements shall be subject to the CITY' s approval. The FOUNDATION agrees that it will advertise its goods judiciously for the furtherance of its business.

20. Signs. The FOUNDATION will submit to the CITY for approval samples of all proposed signs advertising HAUBERG, and shall not put up any signs on the inside or outside of HAUBERG without the CITY's written consent to both design and placement, which shall not be unreasonably withheld.

21. Not a Joint Venture. The parties do not undertake a partnership or joint venture in this Agreement. Instead the parties will operate as separate legal entities, carrying out the individual responsibilities that are specified in this Agreement.

22. Agents or Employees. The FOUNDATION agrees to operate HAUBERG'S facility or to employ sufficient and qualified personnel to operate its activities in a businesslike manner. The FOUNDATION is responsible for ensuring compliance with all applicable labor laws in relation to its employees and volunteers. The activities shall be operated by an individual

authorized to act and represent the FOUNDATION in all matters pertaining to the operation and management of its activities at HAUBERG. The FOUNDATION agrees that it may obtain a competent manager, who shall promote and further the activities at HAUBERG.

The FOUNDATION agrees that all employees and volunteers shall be neat in appearance and shall be courteous at all times to HAUBERG visitors. The FOUNDATION further agrees that, if requested by the CITY, all non-management personnel of the FOUNDATION or its subcontractors shall, while on duty, wear a badge, or other identifying insignia by which they may be known to patrons and visitors as an employee or representative of the FOUNDATION or its subcontractor. Employees and agents of the FOUNDATION or its subcontractors shall not represent themselves to be employees or agents of the CITY.

The FOUNDATION understands and agrees that it has no authority to control the CITY's employees or agents.

23. **Bills.** The FOUNDATION agrees to pay promptly all bills arising from its operations at HAUBERG. The FOUNDATION shall not cause any mechanics' liens to be created in HAUBERG or attached fixtures. If any claim to a mechanics' lien in HAUBERG or attached fixtures arises, the FOUNDATION shall satisfy or otherwise discharge such lien within thirty (30) days.

24. **Authority to Hire** The FOUNDATION shall have no authority to employ any person as an employee or agent for or on behalf of the CITY for any purpose. In addition, neither the FOUNDATION nor any person engaging in any work at the request of the FOUNDATION shall be deemed to be an employee or agent of the CITY. The CITY agrees to consult with the FOUNDATION in the hiring of personnel to serve as liaison with the FOUNDATION.

25. **Managment.** The FOUNDATION and its employees, subcontractors and agents shall be governed by all rules prescribed by the CITY for the management of HAUBERG and shall operate HAUBERG with due regard for the CITY's rights. The Parks and Recreations Director is the CITY's representative empowered to manage HAUBERG as well as the CITY's interest at Hauberg. The Parks and Recreation Director may make requests regarding the operation of HAUBERG to ensure compliance with the terms of this Agreement. Such requests will be made in writing to the FOUNDATION. If the CITY believes that a violation of the Agreement has occurred, it shall provide the FOUNDATION with written notice of the violation and provisions for cure of same under paragraph 33 hereunder shall apply.

26. **Assignment of Subletting.** The provisions of this Agreement shall be binding on the successors and assigns of the parties in like manner as upon the original parties, unless modified by mutual agreement.

The FOUNDATION shall not assign this Agreement in whole or in part, nor sublet HAUBERG or any part thereof, nor sell, transfer or assign any right or privilege herein granted to the FOUNDATION, without the written approval of the CITY. All solicitations and selections of a third party subcontractor to operate all or a part of the services hereunder shall be done in consultation with the CITY and shall be subject to the written approval of the CITY. All subcontracts must be in writing and include a clause stating that the rights and obligations created under that agreement shall be subject and subordinate to this Agreement.

Any sale, transfer or assignment under this Agreement or sublease of HAUBERG by the FOUNDATION, without the written approval of the CITY under this provision, shall be void and constitute grounds for termination of this Agreement.

27. **Audit and Access to Records.** The FOUNDATION shall maintain or cause to be maintained, for a minimum period of four (4) years, adequate books, records and supporting documents relating to its activities at HAUBERG, so as to verify the amounts, recipients and uses of all funds relating to this Agreement, including the amounts of income and expenses of operations.

The FOUNDATION shall furnish to the CITY a profit and loss statement and balance sheet covering each calendar year. These documents shall be furnished no later than March 1st of the following year. These documents shall be sufficient to demonstrate all amounts of sales and expenses relating to operations, and the use of all net income pursuant to paragraph 7.

The FOUNDATION shall provide to the CITY copies of the following documents as applicable and available: (a) the FOUNDATION's Illinois Charitable Organization Annual Report on Form AG990 for each year during the term of this Agreement, which shall be provided within fourteen (14) days of its filing with the Illinois Attorney General's office; and (b) the FOUNDATION's annual audited financial statements, applicable management letters (SAS-115) and applicable SAS 114 letters (Auditor's communication with those charged with governance) for each fiscal year during the term of this Agreement, if an audit is required by an entity other than the CITY such as the Attorney General, which shall be provided within thirty (30) days of the FOUNDATION's receipt of the audit report. The CITY Parks and Recreation Director shall also be given notice and the opportunity to attend the FOUNDATION's board meetings.

28. **Liability and Indemnification** Each of the parties (hereinafter "that party") agrees to indemnify and hold harmless the other party from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contract attorneys' fees and expenses, arising out of: (a) any willful breach or violation by that

party or its subcontractor of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss claimed to result in whole or in part from that party's negligence or intentional or reckless conduct; or (c) any act, activity or omission of that party or any of its employees, representatives, subcontractors or agents.

29. **Insurance and Liquor License.** For the term of this Agreement and any extension or renewal of this Agreement, the FOUNDATION shall maintain, and provide to the CITY with all endorsements, a Certificate of Insurance, written by a company or companies qualified to write insurance in the State of Illinois, naming the CITY as additional insured. Certificates may not be modified or canceled until at least thirty (30) days' notice has been provided to the CITY. This Certificate shall insure against claims for injuries to persons, damage to property and products liability which may arise from or in connection with the use of HAUBERG by the FOUNDATION including, at a minimum:

- (a) General Liability, occurrence form, including general commercial liability, premises and operations liability, and products and food products liability, at a minimum in amounts of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate;
- (b) Worker's Compensation Insurance, at a minimum in the amount required by the Illinois Worker's Compensation Act.

The FOUNDATION shall require rental clients to provide insurance as directed by the CITY. If alcohol is to be served at a rental event, the FOUNDATION shall coordinate with the CITY Parks and Recreation Department or Parks Director to ensure the conduct of such activity is in

accordance with the CITY's policies and procedures applicable to alcohol sales as set forth in the CITY Code of Ordinances and applicable state law.

30. **Compliance with Laws.** The FOUNDATION and its employees, agents, assignees, transferees and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this Agreement including all requirements relating to the FOUNDATION's status as a not-for-profit entity. The FOUNDATION shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. The FOUNDATION shall obtain at its own expense, all licenses and permissions necessary for the performance of this contract. The FOUNDATION shall not permit any immoral or illegal business, trade, occupation or purpose at HAUBERG. The FOUNDATION shall not allow the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of this Agreement.

31. **Entire Agreement** The parties understand and agree that this written Agreement and any attachments constitute the entire cooperative agreement regarding operation and management between the parties and supersedes all prior oral and written communications, understanding and agreements, and that neither party has relied on any promise or statement that is not expressly recited or referenced within this written Agreement and any attachments.

32. **Modifications, Survival and Applicable Law.** Any modification of this Agreement must be in writing and signed by authorized representatives of the parties. Any provision of this contract officially declared void, unenforceable, or against public policy shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to

the parties' intent. All provisions that by their nature would be expected to survive, shall survive termination. This Agreement shall be construed in accordance with Illinois law.

33. **Termination.** This Agreement may be terminated by either of the parties by giving the other party ninety (90) day's written notice to the other party.

The CITY may terminate this Agreement upon written notice if the FOUNDATION breaches a material provision of this Agreement, unless the FOUNDATION corrects the breach within a thirty (30) day cure period following such notice. This cure period does not apply to the immediate termination provided in paragraphs 26 and 27. The CITY may also terminate this Agreement immediately upon written notice, without a cure period, if: (a) the CITY determines that the actions or inactions of the FOUNDATION, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, safety, or property, or (b) the FOUNDATION has notified the CITY that it is unable or unwilling to perform the Agreement.

The FOUNDATION agrees to discontinue operation of the HAUBERG Civic Center and remove all property to which the FOUNDATION holds proper title at the expiration or termination of this Agreement without further demand or notice, and will leave the premises in as good a condition as when the FOUNDATION began operation of HAUBERG, except for loss by fire, flood, tornado, or ordinary wear. The FOUNDATION acknowledges that pursuant to the terms of this Agreement, including the terms of paragraph 17, any improvements, repairs, including but not limited to, windows, fixtures, paint and any other additions or improvements to the HAUBERG facility become the sole property of the CITY.

34. **Amendments or Addendums** The parties agree to meet at least once annually to consider proposed amendments or addendums to this Agreement. Any amendments or

addendums agreed to by both parties shall become effective upon both parties executing a written agreement setting forth the terms of the amendment or addendum.

35. **Special Events** The parties understand and agree that the CITY uses the HAUBERG Civic Center from time to time for programming and special events. The Parks and Recreation Director and Foundation shall review programming at a minimum three months in advance of any special event or program of the City to seek to avoid conflicts between programming of the City and Foundation. Likewise, the Parks and Recreation Director and Foundation shall at least annually review anticipated City programming or special events to seek to avoid conflicts in scheduling. In the case of a conflict between a special event or meeting scheduled by the CITY and an event scheduled by the FOUNDATION, the events scheduled by the CITY shall ordinarily take precedence over proposed events of the FOUNDATION.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the

date set forth below.

The City of Rock Island, Illinois  
(hereinafter, the "CITY")

Friends of Hauberg Civic Center Foundation  
(hereinafter, the "FOUNDATION")

BY: \_\_\_\_\_  
Its Authorized Representative

BY: \_\_\_\_\_  
Its Authorized Representative

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Parks and Recreation Department

BY: \_\_\_\_\_  
John Gripp, Director

Date: \_\_\_\_\_