

Town of Carlisle  
Grant Agreement with Non-municipal Entity

PROJECT NAME:	Carlisle Pickleball Park
RECIPIENT:	Town of Carlisle
PROJECT SPONSOR/GRANTOR:	Steinberg-Lalli Charitable Foundation
GRANT AMOUNT:	\$1,500,000
PROJECT DESCRIPTION:	The design and construction of an indoor and outdoor pickleball facility
PROJECT LOCATION:	The Moseley Property, the rear lot at 338 Bedford Road, Carlisle, MA 01741

***This Grant Agreement*** made this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between the Town of Carlisle, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at 66 Westford Street, Carlisle, MA 01741 (hereinafter referred to as the “Town”), and Steinberg-Lalli Charitable Foundation, a trust having an address of 69 Great Road, Box 2350, Acton, MA 01720 (hereinafter referred to as the “Foundation”). The Town and the Foundation are hereinafter referred to as the “Parties.” The purpose of this Grant Agreement is to implement the following grant award:

One Million Five Hundred Thousand US Dollars (US\$1,500,000.00) (hereinafter the “Grant Funds”) to fund the construction of an indoor/outdoor pickleball facility.

***Witnesseth***

***Whereas***, the Foundation wishes to support the sport of pickleball in the Town by providing the Grant Funds for the construction of an indoor and outdoor pickleball facility (the “Project”); and

***Whereas***, the Town is prepared to devote certain municipal land, specifically the rear lot known as the Moseley Land situated at 338 Bedford Road, Carlisle, MA 01741 (hereinafter the “Site”), to this purpose; to expend the proposed grant funds on the design and construction of the Project; and to thereafter own and operate the herein described pickleball facility; and

***Whereas***, the Town and the Foundation wish to memorialize the terms and conditions of the grant funds described herein;

***Now, Therefore***, the Town and the Foundation agree as follows:

1. **Project Description**. The Project shall consist of the design, permitting, and construction of a building suitable for housing a minimum of six (6) indoor pickleball courts, the construction of the courts in said building, and the construction of a minimum of six (6) outdoor pickleball courts (the building and courts together hereinafter the “Facility”), and related site work, including without limitation necessary grading, landscaping, hardscaping, and other related work.
2. **Grant Funds**. Subject to the terms of this Grant Agreement, the Foundation agrees to grant the Town the amount of One Million Five Hundred Thousand US Dollars (US \$1,500,000.00) for the Project. The Foundation further agrees, pursuant to the terms of this Grant Agreement, to grant the Town \$250,000 toward the construction of a Community Center in the Town of Carlisle if the Town authorizes the construction of a building at the Site for such a purpose within five (5) years of the Effective Date of this agreement.
3. **Engineering and Site Review**. Prior to the Foundation’s disbursement of the Grant Funds, the Town shall perform the following:

- a. Conduct an engineering site review for the purpose of obtaining necessary approvals by the Town of Carlisle Planning Board.
  - b. The site review and subsequent site plan review by the Planning Board will determine the feasibility for the Project pursuant and subject to the following:
    - i. Site location at 338 Bedford Road, Carlisle, MA, and, as needed, to incorporate parts of the adjacent parcel known as Banta Davis.
    - ii. Providing access for the Project to potable water, and satisfying septic and wastewater disposal requirements.
    - iii. Providing required parking, access and safety at the proposed site.
    - iv. Ensuring sufficient space, water, parking, for a Community Center located at the Site.
4. Award Contingent Upon Approvals. The disbursement of the Grant Funds f is contingent on, and shall occur only after the Foundation has received from the Town confirmation of the following (hereinafter “Approvals”):
- a. A majority vote of the Town of Carlisle Recreation Commission in support of this Grant Agreement.
  - b. Final Site Plan Approval by the Planning Board.
  - c. A majority vote of the Carlisle School Committee approving access and/or development of the site known as the Banta-Davis Land.
  - d. A majority approval of the Project plans and this Grant Agreement by the Town of Carlisle Select Board.
  - e. A vote by Town Meeting, authorizing the establishment of an Enterprise Fund for the management and maintenance of the Pickleball facility.
  - f. An opinion letter from Town Counsel, indicating that all approvals necessary for the development of final construction plans for the Project have been secured.

If all Approvals have not been obtained on or before June 30, 2022, this Grant Agreement and the Grant shall be void and of no further force and effect. Notwithstanding the foregoing, the Foundation may extend by a written extension the time allowed for satisfaction of this requirement upon a showing for good cause for delay by The Town.

5. Community Center Grant. The Foundation agrees to grant additional funds to the Town for the construction of a Community Center at the Site in the amount of \$250,000, which grant shall be contingent on the following conditions:

- a. The successful completion of the construction of a Pickleball facility; and
- b. The authorization of the Town to begin construction of a Community Center at the proposed Site, or

The Foundation agrees, upon satisfaction of the above conditions, to promptly negotiate and execute a further grant agreement with the Town for the disbursement of the Community Center Grant funds. In no event, shall the Community Center Grant be disbursed prior to the commencement of construction of said Community Center.

If the Town does not satisfy the above conditions as set forth in Section 5(a) and 5(b) within five (5) years of the Effective Date of this agreement, the Foundation shall have no further obligations in regard to the Community Center Grant..

6. Project Design and Specifications. The design and construction of the Project shall be subject to terms and conditions as follows:

- a. The Facility shall have at least six regulation indoor pickleball courts and six (6) regulation outdoor pickleball courts, which shall conform in all respects to the design standards for pickleball courts as issued by USA Pickleball. The courts shall be asphalt. The net posts shall be installed in the asphalt. Portable nets shall not be used. The Facility shall be designed to operate year-round.,The design of the Facility shall plan for the future construction of additional regulation indoor and outdoor courts. The Foundation shall approve in writing the design of the Facility, which approval shall not be unreasonably withheld or delayed. The design of the Facility shall in all respects conform to all applicable laws. It shall include without limitation bathrooms as required by law, adequate vehicular access, parking and a viewing area.
- b. The Town shall establish a design committee, which shall consult with a representative of the Foundation on all aspects of the design of the Facility.

7. Facility Operation and Maintenance. After completion of the Project, the operation and maintenance of the facility shall be subject to terms and conditions as follows:

- a. The Town shall have the right to name the facility, subject to the written approval of the Foundation, which approval shall not be unreasonably withheld or delayed.
- b. The Foundation, as the donor of the Facility shall have the sole right to place a plaque or sign in recognition of this gift, which sign shall be subject to Town approval, which shall not be unreasonably withheld or delayed. The Foundation may further, subject to necessary permitting request the placement of additional commemorative plaques or signs.

- c. The Town will maintain in first class condition all parts of the Facility, including the landscaping, access, and parking areas. The Town will monitor the safety and security of the Facility and insure it adequately for casualty and liability.
  - d. The Town shall staff the facility, including with qualified teaching staff, as necessary to ensure its successful operation and maintenance. The Town is committed to hiring staff consistent with its established fair hiring process.
  - e. The Town shall manage, use, and provide access to the facility as follows:
    - i. The facility shall be open to the residents of Carlisle and all other persons who wish to join, provided however, that membership preference may be given to residents of Carlisle and Concord.
    - ii. The Town shall manage membership and access to the facility for participants, including establishing and collecting membership and other fees. The Town may provide a reasonable discount on all such fees to residents of Carlisle.
    - iii. The Town may establish member rules, and is empowered to enforce such rules.
    - iv. The Town shall permit the maximum number of members to join the Facility consistent with reasonable industry standards.
    - v. For each year, members in good standing shall have priority in renewal of their memberships.
  - f. The Town shall, subject to its best efforts in obtaining Town Meeting approval, establish the statutory funds necessary to reserve revenue from the facility to be expended on the facility's operation and maintenance as follows:
    - i. First, payment for ongoing maintenance and operating costs, including staffing.
    - ii. Second, establishing sufficient reserves for payment for long-term capital needs of the facility such as substantial repairs, renovations, or improvements.
    - iii. Third, to the ongoing maintenance of a Community Center if constructed and located on the Site.
  - g. Any Town committee or similar group charged with supervision or governance of the Facility shall periodically consult with a representative of the Foundation, and the Foundation may request to be heard at any meetings of such committee to provide input and guidance on matters within its jurisdiction.
8. Limitations on Use of Facility. The Town agrees that the Facility shall be primarily used for pickleball, except where another temporary use is required by law or emergency, or where other municipal programming may be accommodated without

disrupting the routine operation of the Facility for pickleball and such other municipal programming is approved by the governing subcommittee established pursuant to paragraph 7(g) of this Grant Agreement. The limitation on the use of the facility set forth herein shall remain in force and effect for an initial period of twenty (20) years, which may be further extended at the option of the Foundation for additional periods of 5 years on or before - the final six (6) months of the current period, or by other agreement of the parties.

9. Use of Grant Funds.

- a. Upon distribution of the Grant Funds as provided herein, the funds shall be accounted for separately by the Town, and may be used, without limitation, as follows:
  - i. To hire architects or other expert advisors.
  - ii. For the construction of the facility, including any prefabricated components.
  - iii. For reasonably necessary improvements to the Site, the neighboring Banta-Davis Land, and facilities thereof insofar as they are recommended for the operation of the facility, including improvements that may address water access, drainage, wastewater treatment, roadways, outdoor landscaping or hardscape, lighting, signage, tree removal, utility access, or the relocation of any existing infrastructure.
  - iv. To reimburse the Town for amounts spent on the engineering and site design process.
- b. Notwithstanding the foregoing, the use of the Grant Funds shall be limited as follows:
  - i. Under the Internal Revenue Code and other applicable laws, all grants made by the Foundation must be expended for charitable, scientific, literary, or educational purposes. The Grant to The Town is being made only for the purpose stated in this Grant Agreement, and the Grant funds as well as any interest earned thereon may not be expended for any other purpose without the Foundation's prior written approval.
  - ii. The Grant funds may not be used for any of the following purposes: (1) to attempt to influence legislation or the outcome of any specific public election; (2) to carry on, directly or indirectly, any voter registration drive; (3) to make grants to individuals or to any organizations that do not comply with the requirements of S. 4945(d)(3) or (4) of the Internal revenue Code; or (4) to fund or undertake any activities for a non-charitable purpose.

- iii. Although the Grant funds need not be physically segregated, the funds shall be shown separately on The Town's books for ease of reference and verification. Records of expenditures under the Grant as well as copies of reports submitted to the Foundation should be kept for at least four years following completion of such expenditures. The Town's books and records relevant to the Grant shall be available for the Foundation's inspection at reasonable times during normal business hours.
- iv. The foregoing conditions comply with the Foundation's obligation under the Internal revenue Code to make reasonable efforts to establish adequate procedures to ensure that grant funds are spent only for the purpose for which they are granted and to obtain full and complete records of how the grant funds have been expended. Changes in the Internal Revenue Code, or in the Treasury Regulations interpreting them, may require the Foundation to ask more detailed reports be submitted or that other steps be taken. The Town agrees to comply with the foregoing requests.

10. Disbursement of Funds for a Pickleball Facility. The Grant Funds for the construction of The Facility under this agreement shall be disbursed to the Town in in a minimum of three separate installments as follows:

- a. First, when the Town has obtained all necessary approvals other than a building permit, The Town's attorney shall send a written opinion to the Foundation that all approvals, other than a building permit have been obtained. Upon receipt of this opinion, the Foundation shall disburse to the Town a sum of money, in an amount sufficient to reimburse parties for documented amounts spent by the Town or others in obtaining permits, designs, engineering studies, and the like.
- b. Second, upon the Town's request for bids to secure all necessary engineering and architectural design services associated with the Project, the Foundation shall disburse to the Town a sum of money, sufficient to pay the estimated contractual deposits on all contracts anticipated in connection with the design and engineering of the Facility.
- c. Third, and thereafter, upon the Town's request for bids to provide construction services consistent with the agreed upon designs and specifications for the Facility, the Foundation shall disburse to the Town a sum of money, sufficient to pay the full value of all contracts for services then anticipated in connection with the final construction of the Facility and completion of the Project.

Should further rounds of procurement be required, the Foundation agrees to make further disbursements in such amounts as are necessary to provide for the completion of the Project without delay. Said disbursements shall be made at the time bids for such services are requested, in amounts up to and not exceeding a total disbursement amount of \$1,500,000 for the Project.

In no event shall the Foundation's obligation exceed \$1,500,000. The Town shall be responsible for providing any funds necessary to complete the Facility in excess of \$1,500,000. If the Facility costs less than \$1,500,000, any unexpended funds shall be returned to the Foundation.

If the Facility has not been completed on or before five hundred forty (540) days from the Effective Date, the Grant Agreement shall terminate and the Town shall return any unexpended funds to the Foundation. Notwithstanding the foregoing, the Foundation may extend in writing the time allowed for satisfaction of this requirement upon a showing for good cause for delay by the Town.

11. Reporting. The Town shall provide the Foundation with periodic project status reports at its discretion.
12. Records. The Town agrees to maintain such records with respect to utilization of the grant funds and income derived therefrom as are kept in the normal course of business.
13. Project Liaison. The Foundation may designate a Project Liaison for the Project being funded by this Grant Agreement. The Project Liaison may be a municipal employee, a Trustee of the Foundation, or a consultant retained by the Foundation for that purpose. The Town shall cooperate with the Project Liaison, including providing access to the project site at reasonable times and with reasonable notice. The Project Liaison shall serve as the agent of the Foundation for the purpose of monitoring project compliance with the terms of this Grant Agreement and shall periodically report to the Foundation regarding the progress of the project funded by this Grant Agreement and the compliance of the Town with the terms of this Grant Agreement.
14. No Assignment. This Grant Agreement may not be assigned by Foundation without prior written agreement by the Town.
15. Default and Termination.
  - a. If either the Town or the Foundation determines that the other has failed to fulfill all obligations set forth under the terms of this Grant Agreement and so defaulted in said obligations, notice in writing shall be provided within ten (10) days to the parties in the manner provided herein, setting forth the nature and details of the default.
  - b. The Town and Foundation agree to negotiate in good faith to resolve any conflicts or defaults that may arise under this Grant Agreement.

- c. The Town and Foundation expressly agree to submit themselves to mediation if resolution of a dispute arising under this Grant Agreement cannot be otherwise resolved.
- d. Should negotiation and mediation fail to resolve a dispute arising under this Grant Agreement, the Town and Foundation expressly agree to submit their dispute to a mutually agreeable arbitration provider, such as the American Arbitration Association, and agree to be bound by the decision of the arbitrator which shall be final and unappealable.
- e. Should the Town and Foundation at any time agree to the termination of this Grant Agreement, the Town agrees to promptly return any unexpended grant funds, and both Town and Foundation shall thereafter be released from all obligations under this Grant Agreement unless otherwise provided for by further agreement at the time of termination.

16. Notice. Any and all notices, or other communications required or permitted under this Grant Agreement, shall be in writing and delivered in hand or mailed by certified mail, return receipt requested or by other reputable delivery service to the parties hereto at the following addresses:

If to the Town:                   Town of Carlisle  
66 Westford Street  
Carlisle, MA 01741

If to the Foundation:         Steinberg-Lalli Charitable Foundation  
69 Great Road, Box 2350  
Acton, MA 01720

With copies to:                 Town Administrator  
Timothy Goddard  
66 Westford Street  
Carlisle, MA 01741

Town Counsel  
Thomas Harrington  
Miyares and Harrington LLP  
40 Grove Street · Suite 190  
Wellesley, MA 02482

17. Severability. If any term or condition of this Grant Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Grant Agreement shall not be deemed affected thereby.

18. Provisions of Agreement Subject to Applicable Laws. This Grant Agreement shall be governed, construed, and enforced under the laws of the Commonwealth of Massachusetts. If any provision or part thereof is contrary to any existing law, such provision or part thereof shall be deemed voided or modified to conform to such law.
19. Compliance with Laws. The Town will comply with all laws, ordinances or other governmental regulations in the use and operation of the Facility.
20. Entire Agreement. This Grant Agreement constitutes the entire agreement between the parties hereto, and may be amended only in writing executed by both the Town of Carlisle and the Foundation. Signatory below acknowledges and avers that he/she has the authority to execute this Grant Agreement on behalf of the Foundation.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this GRANT AGREEMENT under seal on the day and year first above written.

TOWN OF CARLISLE,  
BY ITS SELECT BOARD

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TOWN OF CARLISLE RECREATION COMMISSION

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STEINBERG-LALLI CHARITABLE FOUNDATION,

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(Signature)

Cornelia Steinberg Sullivan, Trustee

(Print name and title of authorized agent)