

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SALEM
AND
MISSION STREET PARKS CONSERVANCY**

This Memorandum of Understanding (hereinafter “MOU”) is made and entered into by and between the City of Salem Public Works Department, an Oregon municipal corporation (hereinafter the “City”) and Mission Street Parks Conservancy, a federally recognized non-profit corporation (hereinafter “Conservancy”), collectively referred to herein as the “Parties”, for the use of the MOU located at Bush’s Pasture Park.

RECITALS

1. Bush’s Pasture Park, and all of its buildings and appurtenances, are owned by the City of Salem and managed by the City of Salem Public Works Department.
2. The Conservancy is an Oregon nonprofit corporation that exists to assist the City of Salem to maintain, enhance, and interpret the landscape of Bush’s Pasture Park.
3. The Conservancy is the successor to the Friends of Bush Gardens (FOBG). FOBG since its inception in 1991 has contributed leadership, tens of thousands of volunteer hours, and raised over \$500,000 for Bush’s Pasture Park.
4. The City and the Conservancy share a set of goals, including:
 - a. Building public support for the parks as evidenced by user satisfaction surveys, increased participation, volunteer hours, and private in-kind and monetary donations;
 - b. Managing and maintaining parks’ plant material to a high standard of health and aesthetics;
 - c. Securing the health, longevity, and succession of the parks’ iconic White Oaks;
 - d. Encouraging parks’ use by the City’s diverse residents and visitors;
 - e. Developing the public’s appreciation of the parks’ unique horticultural and historic assets; and,
 - f. Ensuring that the parks successfully meet the challenges of the future, including aging infrastructure, changing demographics, invasive species, and climate change.

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

ACKNOWLEDGMENTS:

1. The Conservancy may assist the City by:
 - a. Promoting the parks to the City's diverse residents;
 - b. Raising funds for City-approved capital projects;
 - c. Developing and leading tours of the parks' grounds, providing workshops and lectures, and organizing public events to promote and celebrate the park;
 - d. Assisting the City with the development of policies, management plans, and best practices documents for the parks;
 - e. Assisting in the preservation of the parks' historical integrity and features; and,
 - f. Additional activities that are agreed-upon by the City and the Conservancy in an annual work plan, corresponding with the City fiscal year, which may be amended as needed.
2. In the designated areas of the park (ATTACHMENT A), the Conservancy may also undertake the following activities to support the City:
 - a. Maintain the plant material, including trees, shrubs, perennial and annual plants, and bulbs, but excluding turf;
 - b. Design existing gardens, planting beds, containers;
 - c. Upon City review, purchase, propagate, install, and remove plant material as described in Conservancy's policies;
 - d. Maintain records related to the accession and deaccession of trees and woody shrubs; and,
 - e. Other activities as mutually agreed upon.
3. The Conservancy will endeavor to be a good partner to the City by:
 - a. Obtaining a 501(c)(3) determination letter and providing a copy to the City;
 - b. Maintaining its books of account according to Generally Accepted Accounting Principles (GAAP);
 - c. Providing the City with reports on its finances, volunteer hours, activities, and other information as requested;

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

- d. Following all federal, state, and local requirements governing its activities:
 - e. Permitting the City to use its name, logo, and any of its images and material to educate the public, apply for grants or gifts, and report to stakeholders; and,
 - f. Providing updates to Salem Parks and Recreation Advisory Board no less than on a quarterly basis.
 - g. Including a Public Works staff member on the Conservancy's Board of Directors and keeping them apprised of proposed Conservancy projects.
4. The City will assist the Conservancy by:
- a. Providing the Conservancy with information necessary to accession plant material, for City-purchased trees and shrubs;
 - b. Assigning a liaison to the Conservancy who is available to discuss the day-to-day needs of the park;
 - c. Notifying the Conservancy of pertinent park projects; including capital improvement projects, and sub-surface activities, with sufficient time for the Conservancy to comment;
 - d. Holding a position on the Conservancy Board to coordinate activities, consider future projects, and share information. Position will be in a sitting (voting) member capacity;
 - e. Collaborating on the development of written management plan(s) and policies regarding the park. Specific areas for collaboration include, but are not limited to:
 - i. Rhododendron Garden Hillside;
 - ii. Oak Groves
 - f. Permitting the Conservancy to hold up to four (4) events in a defined area (e.g., the Rose Garden) in the park to recognize its donors and members; and,
 - g. Permitting the Conservancy to use the City of Salem name and logo on its promotional and fundraising material on a case-by-case basis and subject to City approval.

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

GENERAL CONDITIONS:

1. The Conservancy is an independent organization and is not an employee or officer of the City for any purpose whatsoever.
2. The Conservancy is not entitled to, and expressly waives any and all claims to City benefits, including but not limited to: health insurance, disability insurance, paid leave, and retirement.
3. In the event that any provision of this MOU is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intentions of the Conservancy and the City as set forth in this MOU.
4. The following laws of the State of Oregon related to public procurements are hereby incorporated by reference into this Agreement: *Oregon Revised Statute* (ORS) 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235.
5. The Conservancy agrees that no person shall, on the grounds of race, religion, color, sex, marital status, domestic partnership, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, or source of income, suffer discrimination in the performance of this MOU when employed by the Conservancy.
6. The Conservancy agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Further, the Conservancy agrees not to discriminate against minority-owned, women-owned or emerging small businesses or business enterprises owned or controlled by or that employ a disabled veteran when awarding subcontracts as required by ORS 279A.110.
7. The Conservancy shall abide by all applicable regulations, laws, and ordinances of the City, the State of Oregon, Marion County, and any federal agency in fulfillment of its obligations under this MOU.
8. All subject employers working under this MOU are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
9. This MOU sets forth the entire understanding between the Parties with respect to the subject matter hereof. All previous and written and oral MOUs, promises, representations, negotiations, and course dealings are hereby superseded and terminated. No evidence of any oral waiver or modification of this MOU shall be offered or considered in a proceeding to determine or enforce the provisions of this MOU.

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

10. Subject to the limitations and conditions set forth in the Oregon Constitution and the Oregon Tort Claims Act, the City shall indemnify, defend, save, and hold harmless the Conservancy, its officers, agents, volunteers, and employees from and against any and all damages, expenses, and costs of any kind or nature whatsoever, sustained or incurred as a result of any act or omission arising out of, relating to, or connected with the performance of this MOU by the City, its officers, employees, volunteers, or agents or the activities of any person for whose actions the City is legally responsible.
11. This MOU shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the State of Oregon Circuit Court for Marion County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal court for the District of Oregon. Each party expressly waive any and all rights to maintain an action under this MOU in any other venue and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
12. Neither party to this MOU shall hold the other responsible for any damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other's officers, employees, or agents.
13. The failure of either party hereto to insist upon strict performance of any of the terms and conditions of this MOU, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of such, or any such other terms, conditions, covenants, or MOUs but the same shall be and remain in full force and effect.
14. The Conservancy acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. The Conservancy is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

MISCELLANEOUS:

1. The Conservancy is responsible for becoming familiar with, and abiding by, the City's Park Operating Policy provisions as set forth in *Salem Revised Code* 94.200.
2. Prior to Salem City Council action for approval of the MOU, the MOU will be sanctioned by the Salem Parks and Recreation Advisory Board (SPRAB).

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

INSURANCE:

1. The Conservancy shall obtain and maintain during the term of this Agreement a policy or policies of liability insurance, including commercial general liability or comprehensive general liability insurance, with combined single limits, or the equivalent of \$2,000,000 (two million dollars) for each occurrence for bodily injury, death, or property damage unless otherwise approved in writing by the City's Risk Manager. Such insurance shall be per occurrence and not on a "claims made" form. Such insurance shall also include contractual liability coverage for the indemnity provision set forth in this MOU. Such insurance shall cover as additional insureds the City, its officers, employees, agents, and volunteers. As evidence of the insurance coverage required by this MOU, the Conservancy shall furnish an endorsement listing the City as an additional insured to the City prior to the effective date of this MOU. The Conservancy shall be financially responsible for all pertinent deductibles, self-insured retention, and/or self-insurance. Such insurance shall be issued by a carrier that is authorized to conduct business as an insurance company in the State of Oregon and shall not be canceled or altered with a minimum of thirty (30) days' prior written notice to the City.

NOTICE:

1. Whenever notice is required or permitted to be given under this MOU, such notice shall be given in writing to the other party by personal delivery; electronic mail; by sending via a reputable commercial overnight courier, or by mailing using registered or certified United States mail, return receipt requested and postage prepaid, at the addresses set forth below:

If to the City: City of Salem, Public Works Department
ATTN: Jennifer Kellar, Parks Operations & Recreation
Services Manager
1460 20th Street SE, Building 14
Salem OR 97302

If to the Conservancy: Mission Street Parks Conservancy
ATTN: Michael Slater
600 Mission Street SE
Salem OR 97392

Notice delivered by personal delivery shall be deemed to be given upon actual receipt.

Notice sent by overnight courier shall be deemed to be given five (5) days after dispatch.

Notice sent by United States mail shall be deemed to be given five (5) days after mailing.

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

TERMS AND TERMINATION:

1. Unless sooner terminated as provided herein, this MOU shall be effective on the latest date of signature (the "Effective Date") and will remain in effect through and including July 31, 2020. This MOU may be extended in two year intervals, not to exceed two additional two year extensions per extension, through and including July 31, 2024.
2. This MOU may be terminated by mutual written correspondence by the Parties at any time.
3. Either party may terminate this MOU for cause by providing either party with not less than fourteen (14) days prior written notice of the alleged breach and providing the breaching party with the opportunity to cure. If the alleged breach is not cured within fourteen (14) days after receiving written notice, the non-breaching party may terminate this MOU. Such termination is in addition to and not in lieu of any other remedy at law or equity.
4. This MOU shall remain in effect until replaced, renewed, or terminated.
5. After July 31, 2024, the City may terminate the MOU for any reason and at its sole discretion with thirty (30) days prior written notice to the Conservancy.
6. The Conservancy shall notify the City prior to the Conservancy disbanding or otherwise ceasing operation. The MOU will be terminated upon the date the City receives this notice from the Conservancy.

MODIFICATIONS:

1. This MOU may be amended or modified only by written instrument executed with the same formalities as this MOU.

SIGNATURES:

The Parties, by their signatures, acknowledge having read this MOU, understand it, and agree to be bound by its terms and conditions. The individual signing this MOU on behalf of his or her respective party hereby certifies that such signature has been authorized by his or her party and that the individual has the authority to act on behalf of and to bind his or her party.

Memorandum of Understanding: City of Salem and Mission Street Parks Conservancy
May 24, 2018

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed in their respective names by their authorized representatives as of the dates set forth below:

Mission Street Parks Conservancy
(Conservancy)

CITY OF SALEM, OREGON
(City)

Michael Slater
President, Mission Street Parks Conservancy

Steven D. Powers
City Manager

Date: _____

Date: _____

APPROVED

Peter Fernandez, PE
Public Works Director

Date: _____

Mission Street Conservancy Boundaries

Legend

- ParkBoundaries
- 10' contour
- MSC Boundary

N



0 140 280 Feet

