

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF SYRACUSE
ACTING BY AND THROUGH THE COMMISSIONER OF THE DEPARTMENT OF
PARKS AND RECREATION AND YOUTH PROGRAMS
AND
SYRACUSE PARKS CONSERVANCY, INC.

September 15, 2009

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “*Memorandum*”), effective the 15th day of September, 2009, is by and between the **City of Syracuse** (the “*City*”) acting by and through the Commissioner of the Department of Parks, Recreation and Youth Programs, having an office at 233 East Washington Street, Syracuse, New York (referred to respectively as the “*Commissioner*” and the “*Department*”) and the **Syracuse Parks Conservancy, Inc.**, a not-for-profit corporation incorporated under the laws of the State of New York, having an office at 212 Melrose Avenue, Syracuse, New York 13206 (the “*Conservancy*”).

RECITALS:

WHEREAS, the City holds all right, title and interest in various public parks, playgrounds and open spaces located within the City (collectively, “*City Parks*”);

WHEREAS, the Commissioner, pursuant to Section 5-1201 of the Charter of the City of Syracuse, is charged with the responsibility of maintaining and operating the City Parks and planning and improving recreations facilities located thereon;

WHEREAS, the Conservancy, a not-for-profit corporation incorporated under the laws of the State of New York, was organized to assist the City through a public/private partnership to help ensure that the City Parks are restored, enhanced, protected, developed and operated to optimize the educational, recreational and wellness uses thereof by the citizens of the City, the surrounding communities and their guests;

WHEREAS, the City, the Commissioner and the Conservancy, without usurping the rights and responsibilities of the City and the Commissioner in maintaining and operating the City Parks, intend to work together to create an effective public/private partnership in furtherance of the joint and consistent objectives of the City and the Conservancy, bringing to the City, amongst other things, additional input from the residents of the City and the surrounding communities and various educational and other institutions regarding the restoration, enhancement, protection, development and operation of the City Parks, coordinating their efforts to best serve the interest of the citizens of the City, the surrounding communities and their guests;

WHEREAS, the Conservancy intends to provide additional funding through, *inter alia*, solicitation of private and public funds and/or available grants not otherwise available to or pursued by the City together with other resources generated by and/or available through the Conservancy in furtherance of the purposes set forth herein and, in addition thereto, labor, through volunteers and otherwise, to assist in bring about the common objectives of the parties hereto; and

WHEREAS, this Memorandum is intended to establish and outline the public/private partnership between the City and Conservancy in furtherance of the joint objectives thereof.

NOW, THEREFORE, the City, the Commissioner and the Conservancy, to the extent authorized by law and within existing legal authorities, agree as follows:

1. The Conservancy shall remain a not-for-profit corporation with all revenues used to cover Conservancy costs and to fund capital projects and/or operational expenses for the benefit of City Parks in furtherance of its objective of the restoration, enhancement, protection, development and operation of City Parks to optimize the educational, recreational and wellness use thereof by the citizens of the City, the surrounding communities and their guests.

2. The governing board of the Conservancy shall consist of four (4) ex officio members, one (1) individual as appointed by the Mayor of the City; one (1) individual as appointed by the Commissioner; and two (2) individuals as appointed by the Common Council of the City, together with eight (8) community trustees and nine (9) at-large trustees.

3. Consistent with the notion of a public/private partnership and in an effort to ensure the efficient allocation of the resources of the parties hereto, the City and the Commissioner, as reasonably practical, shall solicit and take due consideration of input from the Conservancy in the preparation of the operating and capital budgets for the City Parks and shall review and consult with each other concerning operating assumptions, major fund raising projects, budget allocations, maintenance, operations, program priorities and the like; *provided, however*, nothing in this Memorandum shall usurp the rights and responsibilities of the City and the Commissioner in maintaining and operating the City Parks, the Commissioner remaining entitled, in his sole judgment, make any additions, alterations, repairs, decorations or improvements to any City Parks and/or improvements located thereon at the City's expense, without any requirement to do so. The City and the Commissioner shall have final authority over all capital projects and programs undertaken in City Parks. The Conservancy shall be responsible for deciding the projects and programs for which it will raise monies from donors; *provided, however*, any capital projects undertaken in the City Parks shall be subject to the approval of the Commissioner. The parties hereto shall share with each other all existing or hereafter obtained information including all plans and proposals, whether or not effectuated, research and other data regarding the City Parks and the common objectives thereof and the parties will support each other's efforts regarding major fund raising projects.

4. (a) The Commissioner shall permit access to the City Parks to the Conservancy or its duly authorized representative(s) at all reasonable times. The Conservancy may provide services in City Parks upon reasonable notice to and under the general supervision of the Commissioner, including horticultural, maintenance, educational, recreational tours, food, products, programs together with design and construction services (when such design and construction services have been approved and accepted by the City in accordance with applicable laws, ordinances and City rules and regulations) and, where appropriate, may derive revenues through fees or other charges for services or products; *provided, however*, net revenues generated by any activities in City Parks shall be used in furtherance of the restoration, enhancement, protection, development and operation of the City Parks.

(b) Any activity or use contemplated by any proposed concession in any of the City Parks shall comply with all applicable requirements, rules and regulations, as well as the procedures for

the selection of concessionaires if other than the Conservancy. The Commissioner shall be provided with reasonable notice of any proposed concession in a City Park, which notice shall include a detailed description of all goods proposed to be sold thereat (hereinafter referred to as the “Goods”), if any. The Conservancy shall be deemed to warrant that any Goods sold at any concession shall be merchantable and of good quality. Not later than the 15th day of February of each year, the Conservancy shall certify to the Commissioner as to the net revenues generated as a result of its activities in City Parks and that such revenues have been expended in furtherance of the restoration, enhancement, protection, development and operation of the City Parks and/or are being held for such purpose.

5. The Conservancy and the Commissioner shall work together to organize and coordinate joint work done by the Conservancy and employees of the Department in order to promote maximum efficiency. The Conservancy and the Commissioner shall work together to monitor and assess the success of any joint projects and to disseminate lessons learned to interested parties to benefit the continued maintenance and operation of City Parks.

6. The Conservancy shall faithfully perform and carry out the provisions of this Memorandum and cause its agents, employees and invitees to conform to all rules, regulations and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the City Parks and the Conservancy’s use and occupation thereof. The Conservancy shall not use or allow any City Park to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy or the provisions on the use of such City Park as set out in this Memorandum or prohibited by federal, state or local law, ordinance or rules and regulations.

7. Prior to conducting any activities in City Parks as authorized by this Memorandum, Conservancy, at its own cost and expense, shall procure and maintain public liability insurance in commercially reasonable coverages of at least one million (\$1,000,000 dollars single limit with the City named as an additional insured and with reasonably acceptable insurers to protect the Conservancy, Commissioner and the City from any claims for loss or damage to property and for personal injuries, including death, which may arise directly or indirectly from any activities in City Parks as authorized by this Memorandum by the Conservancy, sub-licensees or anyone directly or indirectly employed by the Conservancy. The Conservancy shall provide and maintain workers compensation insurance of at least the statutory minimum for any employees of the Conservancy. Upon request, certificates of insurance shall be provided to the Commissioner.

8. The City, the Commissioner and the Conservancy shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (the “State”) or governmental agency or authority of the City that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath or conducted by the inspector general of any such governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

9. The Conservancy shall keep books of account and records of all operations pursuant to this Memorandum in a manner reasonably satisfactory to the Commissioner and allow an inspection of such books of account and records upon reasonable request thereof. In addition thereto, the Conservancy, upon request, shall provide the Commissioner with copies of sales tax reports regarding net revenues generated as a result of its activities in City Parks as well as annual tax returns.

10. It is understood that no employees, servants or agents of the Conservancy are, solely by reason thereof, employees of the Department or the City and that the Conservancy alone is responsible for their work, direction, compensation and personal conduct while engaged under this Memorandum solely as an employee, servant or agent of the Conservancy. Nothing included in this section or in any other provision of this Memorandum shall be construed to impose any liability or duty upon the Department or the City to persons, firms or corporations employed or engaged by the Conservancy as consultants, experts or independent contractors or in any other capacity whatsoever to make the Department or the City liable for the acts, omissions, liabilities, obligations and taxes of whatsoever nature of the Conservancy or its consultants, experts, employees, servants, agents or independent contractors.

11. The Conservancy shall not discriminate against any employee, applicant for employment or anyone desiring to attend or participate in the Conservancy's activities or programs because of race, creed, religion, color, sex, age, national origin, sexual orientation or affectional preference.

12. Where provision is made herein for notice to be given in writing, the same may be given by nationally recognized overnight carrier or by registered or certified mail, return receipt requested, addressed to the address first above provided or to such other address as shall be filed with the Commissioner or Conservancy or by personally delivering a copy of said notice to Conservancy or the Commissioner at such address.

13. The Conservancy assumes all risk in its operation pursuant to this Memorandum. The Conservancy shall hold harmless the City, the Department and their officers, employees and agents from any and all claims, actions or judgments arising out of any violation of any law and from any and all claims for loss, damage or injury including death or property damage of whatever kind or nature arising from the Conservancy's operation hereunder including the negligence thereof.

14. If any provision of this Memorandum is held unenforceable for any reason, each and all other provisions shall nevertheless remain in full force and effect.

15. Except as expressly provided herein, this Memorandum is neither a fiscal or funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations and procedures. Such endeavors, if any, will be outlined in separate agreements and shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.

16. Nothing in this Memorandum prohibits the parties from soliciting or receiving advice and assistance in the objectives set forth above from other governmental entities and private groups or individuals.

17. This Memorandum becomes effective when signed by all signatory parties and shall remain in effect until modified or terminated by any party hereto by written notice to the other parties.

18. The parties intend to conduct activities contemplated in this Memorandum in accordance with existing authorities. If any provisions of this Memorandum are determined to be inconsistent with existing laws or regulations or directives governing the signatories, then the provisions of this Memorandum not affected by the finding of inconsistencies shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Memorandum effective as of the date first above written.

CITY OF SYRACUSE

By: _____
Matthew J. Driscoll, Mayor

**THE CITY OF SYRACUSE
DEPARTMENT OF PARKS, RECREATION
AND YOUTH PROGRAMS**

By: _____
Patrick Driscoll, Commissioner

SYRACUSE PARKS CONSERVANCY, INC.

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

On the ___ day of September in the year 2009 before me, the undersigned, personally MATTHEW J. DRISCOLL appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

On the ___ day of September in the year 2009 before me, the undersigned, personally PATRICK DRISCOLL appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

On the ____ day of September in the year 2009 before me, the undersigned, personally _____ appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC