



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT
AND
THE FRIENDS OF MANITO**

THIS MEMORANDUM OF UNDERSTANDING is made by and between the City of Spokane Parks and Recreation Department, a Washington State municipal corporation, located at City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201 ("City"), and the Friends of Manito, a Washington State nonprofit corporation, located at 4 West 21st Avenue, Spokane, Washington 99203("TFM").

WHEREAS, City of Spokane Parks and Recreation Department, owns or operates and maintains real estate, buildings and other recreational and entertainment facilities, and operates a wide variety of programs and services; and

WHEREAS, "TFM wishes to support the City Parks and Recreation Department's vision and mission and has the opportunity to accomplish more than public funding allows; and

WHEREAS, the private nature of "TFM also provides the added advantage of dedicated donor and volunteer services; and

WHEREAS, the City wishes to assist and enhance the operation of, and appropriately recognize, "TFM; and

WHEREAS, the City wishes to support the fund raising activities of "TFM and promote a positive relationship with its staff and volunteer members; and

WHEREAS, "TFM wishes to assure the City and its Parks and Recreation Department that it will operate effectively and responsibly with the reasonable expectations of both public and private interests on behalf of the City and its Parks and Recreation Department; - Now, Therefore,

The parties agree as follows:

Section 1. TFM Representations. "TFM represents and acknowledges the following with regard to its operation, creation and purposes:

- A. "TFM will support and ensure that its projects are consistent with Spokane Parks and Recreation Department's vision, mission and goals for Manito Park, and their work will be compatible with these interests and goals;

- B. The purposes for which TFM is organized are:
 1. The betterment of Manito Park and Gardens through financial assistance, cooperative planning and development, as well as gathering community support.
 2. To promote awareness, appreciation, and understanding of public gardens and parks, particularly Manito Park.
 3. To promote and develop educational services for park and garden users of all ages;
- C. "TFM will operate as a private legal entity separate from the City and its Parks and Recreation Department;
- D. "TFM will use sound fiscal and auditing procedures;
- E. "TFM will not interfere with day-to-day Parks and Recreation Department operations; and
- F. "TFM will maintain status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that gifts and bequests received may qualify as deductible, charitable contributions for the donor.

Section 2. TFM Documents – Required Provisions. "TFM shall include language substantially similar to the following clauses in its enabling documents:

- Articles of Incorporation. In the event of its dissolution, TFM's assets and records will be distributed to the Spokane Parks Foundation, and designated to be used for Manito Park.

Section 3. Bond and Insurance. "TFM shall ensure that officers and staff members are bonded in an amount of not less than \$1,000,000. The premiums payable on the bonds shall be payable from the funds of "TFM. Further, "TFM shall obtain and maintain general liability insurance with limits of \$1,500,000 and directors' and officers' liability insurance in a reasonable and appropriate amount as determined by "TFM Board. "TFM shall annually provide the City Parks and Recreation Department a Certificate of Insurance (COI) as documentation of its compliance with this Section.

Section 4. Accountability and Stewardship. As the City and "TFM want to maintain the highest levels of accountability and stewardship, "TFM agrees to share information with the City as reasonably requested, develop reporting processes and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes and reports are made to donors on the use of such funds.

Section 5. Donor Solicitation.

5.1. Donor Communication. "TFM agrees to make the following clear to prospective donors:

- A. "TFM is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the City Parks and Recreation Department;

- B. Responsibility for governance of "TFM, including investment of gifts and endowments, resides with "TFM's Board; and
- C. Gifts made for a designated purpose will be dedicated in their entirety to that purpose, unless it is specifically stated that an administrative charge will be applied.

5.2 Conditions of Gift Acceptance. "TFM agrees that in accepting gifts of all kinds, it will:

- A. Advise donors that any restrictive terms and conditions they attach to gifts for the City's Parks and Recreation Department are subject to the City Parks and Recreation Department approval;
- B. Ensure that gifts designated for specific purposes are in compliance with the City Parks and Recreation Department's master plans, vision, mission and philosophy, as documented on their website;
- C. Ensure that gifts are promptly reported to and approved for acceptance by the City;
- D. Coordinate their funding goals, programs and campaigns with the City Parks and Recreation Department; and
- E. Any gift, grant, or contract that includes a financial or contractual obligation binding upon the City must have prior concurrence in writing from the Park Board or its designee.

Section 6. Financial Procedures.

6.1. Standards. "TFM will hold and invest funds and shall ensure that the following standards are applied:

- A. Prudent Practices.
In general, "TFM investment procedures should be conducted in accordance with applicable state law, prudent, sound practices to ensure that gift assets are protected and enhanced, that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of "TFM's Board. The investments must be consistent with the terms of the gift instrument.
- B. Administration of Income.
Income from investments, net of administrative charges, should be administered in accordance with pertinent "TFM policies so as to be accumulated in appropriate program accounts. If administrative charges exceed income from investments, charges shall not be made to program accounts less than \$5,000.00, but offset by general donations.
- C. Annual Report.
TFM shall share their financial reports with the City Horticulture Supervisor. Also, the relevant IRS form 1099 shall be made available in the public domain.

Section 7. Financial Commitments Consistent with the City Parks and Recreation Department Vision and Mission. "TFM shall carry out financial commitments and expenditures consistent with pertinent policies, plans, and budgets approved by "TFM's Board of Trustees and consistent with the City Parks and Recreation Department's vision, mission and goals.

Section 8. Financial Statement. "TFM shall maintain financial records in accordance with Generally Accepted Accounting Principles (GAAP). Copies of the financial statements and a current list of "TFM officers, and trustees, shall be made available to the City upon request.

Section 9. Inspection of TFM Records. Because private funds are raised to support public projects, "TFM will permit, upon reasonable notice, authorized City officials or their designees to inspect all "TFM books and records, except to the extent the inspection violates rights to privacy or confidential donor information.

Section 10. Compliance Review. The City Parks and Recreation Department may conduct compliance reviews of the use of donated funds. Their purpose will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or "TFM. The scope of the review and extent of testing will be mutually agreed upon in advance by the City and "TFM.

Section 11. Designation as a Gift. Funds received by the City shall only be accounted for as gifts where the appropriate donor intent is present. Amounts received solely in exchange for services or property shall not be accounted for as gifts.

Section 12. The City Parks and Recreation Department's Assistance to TFM . As long as "TFM complies with all provisions of this Memorandum, the City will assist "TFM in the following manner:

- A. Allow "TFM to use the name and images of the City Parks and Recreation Department;
- B. Provide "TFM with assistance in "TFM activities at the discretion of the Director of the Parks and Recreation Department, and consistent with what is permitted under state and federal law; and
- C. Assist "TFM by suggesting and recommending donors and contributions to "TFM.

Section 13. Notice of Non-Compliance – Opportunity to Cure. In the event of non-compliance with any provision of this Memorandum, the City shall notify "TFM in writing of the event or practice the City believes does not comply with this Memorandum. "TFM shall, within fifteen (15) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the City that "TFM is in compliance. In the event "TFM fails to comply within this time period, the City may, at its option, terminate this Memorandum and its relationship with "TFM.

Section 14. Termination. In addition to the method of termination provided for in Section 13, this Memorandum may be terminated by either party by delivering written notice of termination to the non-terminating party at least sixty (60) days prior to the effective date of any termination. In the event of termination, TFM shall provide the City with an accounting of all funds in its possession and ensure that those funds shall be restricted to use for only the benefit of Manito Park.

Section 15. Entire Agreement and Amendment. This Memorandum is fully integrated, and represents the parties' entire agreement with respect to the matters specified herein. This Memorandum, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter. Terms of this Memorandum will be reviewed and modified or renewed every three years by mutual consent of both parties.

Section 16. Additional Terms and Conditions. Additional terms and conditions may be found in Appendix A.

Section 17. Governing Law and Venue. It is understood that this Memorandum shall be governed by and construed under and in accordance with the laws of the State of Washington. Venue for any actions arising under this Memorandum shall be in the County of Spokane, Washington.

Section 18. Severability. Any provision of the Memorandum which is prohibited or unenforceable shall be ineffective only to the extent of the prohibition or unenforceability without invalidating the remaining provisions thereof.

Section 19. Attorney's Fees. In the event of litigation or arbitration over the terms or performance of this Memorandum, each party shall be solely responsible for their respective attorney's fees. Only if a court of competent jurisdiction finds a prevailing party to this dispute, shall the prevailing party be entitled to reasonable attorney's fees and costs.

Section 20. Mediation. Should any dispute arise out of or related to this Memorandum of Understanding or its performance by the parties hereto, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The parties shall select a mediator within ten (10) days of the notice by a party to mediate a claim. Mediation shall be concluded within sixty (60) days of the notice to mediate being made, unless extended by the parties upon mutual agreement. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution of the claim(s). The costs of mediation shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of obtaining attorney's fees and legal costs.

Section 21. Term. This Memorandum shall become effective upon execution by both parties and shall remain in effect for three (3) years unless terminated as provided in Section 14, or renewed by mutual consent of both parties.

CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT

By _____

Date _____

Name _____

Title _____

Attest:

Approved as to form:

City Clerk _____

Assistant City Attorney _____

THE FRIENDS OF MANITO

By _____

Date _____

Name _____

Title _____

APPENDIX A

Memorandum of Understanding Between The City of Spokane And The Friends of Manito

Section 22. Project Proposals.

22.1. Projects for TFM funding may be proposed by either the Parks and Recreation Department or by The Friends of Manito. All projects to be funded must be approved in writing by both entities following their respective spending approval policies. TFM will assist the City Horticulture Supervisor to gain City approvals, if necessary. Project requests should be submitted to the TFM board by January 30th of each year for projects to be funded in that year. Payment of funds by TFM Treasurer will take place as each invoice is received from the City (not to exceed the agreed-upon amount).

22.2. The structures and facilities paid for by TFM become the property of Manito Park, who assumes responsibility for their maintenance and repair.

Section 23. Communications.

23.1 Inter-Group Routine Communications. Minutes of TFM Board meetings will be sent to the City Horticulture Supervisor and Park Operations Manager. Minutes of Park Board meetings will be sent to TFM office. Official communication between TFM and the City Parks and Recreation Department and the Park Board will be made through TFM President or their designee.

23.2: Issue Resolution: Matters not able to be resolved between the City Horticulture Supervisor and TFM are referred to the Park Operations Director then to the Director of Parks and Recreation, and then to the Park Board if necessary.

Section 24. Contracts. TFM will not make verbal or written contracts of any kind on behalf of the City Parks and Recreation Department.

Section 25. Office Support at Manito Park for TFM.

- A. Office space, storage space for supplies as available, and an exclusive phone line will be provided for TFM by the City Parks and Recreation Department. TFM is allowed to use approximately one-third (1/3) of the storage space in the attic. Space will be available for use/access during regular park hours;
- B. The City Parks and Recreation Department owns or leases the copy machine and will share use of it with TFM. Copies exceeding a quantity of 100 will be made elsewhere. TFM will provide all white (8 1/2" X 11") paper for the copy machine. It is estimated that each of the two entities will use the copy machine fifty percent (50%) of the time; and

- C. The Manito Park meeting room and picnic shelters may be used by TFM at no charge. Reasonable use of these must be scheduled with the Parks Operations office and is dependent upon availability. The City Parks and Recreation Department reserves the right to close the meeting room or picnic shelters for site improvements and remodels and is not required to provide alternative meeting space.

Section 26. TFM Horticultural Operations. The City Parks and Recreation Department will support TFM plant growing operations as follows:

- A. Water will be provided for all in- and out-door watering needs, at no cost to TFM;
- B. TFM usage of the vacuum seeder will be predicated on proper care of the equipment, and must be scheduled during times when Parks Staff would not be using it;
- C. TFM may use the "mister" as needed for houseplant propagation when space is not occupied by the Parks Department;
- D. Personal hand tools or garden implements will not be provided for use by TFM. Employee tool lockers and contents will not be available to TFM unless a specific prearranged use agreement is negotiated with the City Horticulture Supervisor;
- E. TFM will be allowed use of the "cave" (adjacent to the south maintenance building) and the first garage in the east maintenance building for storage. Additional storage will be provided in the Head House attic. TFM will also be allowed to use the "pottery barn" (the south-most room of the east maintenance building). This is a shared room with Associated Gardeners of Spokane. Metal shelving in each room is the property of TFM. TFM is also allowed to store tables and grocery carts in the west garage of the south maintenance building. Other storage space will be made available as authorized by the City Horticulture Supervisor. TFM may make minor improvements to these facilities with the approval of the City Horticulture Supervisor;
- F. Surplus plant material from the gardens or conservatory may be made available to TFM upon authorization of the City Horticulture Supervisor;
- G. TFM is responsible for the care and watering of their plants grown anywhere within Manito Park. When not needed by the City, empty beds in the lath area, with the exception of the moss bed north of the northernmost gate, may be used by TFM. After March 1 and before the Associated Gardeners of Spokane plant sale, TFM will remove any plants from the continuous raised bed facing the east maintenance building;
- H. TFM may control weeds in the lath area through mechanical or chemical means. TFM will assume all responsibility for required training and compliance with regulations concerning pesticide usage. Prior authorization by the City Horticulture Supervisor will be required for any chemical or bed usage;

- I. TFM will be granted use of the polyhouse immediately adjacent to the meeting room. TFM is obligated to conduct their activities with the full interest of preserving this structure and equipment. Gas and electrical costs will be reimbursed by TFM to the Parks and Recreation Department. The Parks and Recreation Department is responsible for the repair and/or replacement of all structural components, electrical, heating/cooling systems, poly-covering, and the hot water heater as well as routine maintenance (e.g. checking filters and coolant reservoir). In the event of a heating or cooling malfunction, breakdown, or electrical interruption that would threaten the plant material within the polyhouse, Parks staff will alert TFM personnel and work with them to make emergency provisions to preserve the plant material.
- J. Available parking space in the Manito work yard is limited. To maintain fire lane access, employee access to storage areas, and to enable employees to park in their allocated spaces, TFM volunteers and guests are strongly encouraged to park personal vehicles on Tekoa Street below the work yard. Provisions to drive in and drop off TFM participants and supplies are granted. Evening parking for the meeting room remains unchanged.
- K. TFM is allowed from time to time to utilize the entire work yard and parking lot, mainly for plant sales. TFM will agree to limit their interference with the working of City staff during those times.
- L. Systems will be established between TFM and Manito Park staff to manage security of TFM space.