

Order 11-18/19

Passage: 8-0 (Duson absent) on 7/16/2018

Effective 7/26/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF PORTLAND, MAINE AND
THE PORTLAND PARKS CONSERVANCY**

ORDERED, that the attached Memorandum of Understanding with the Portland Parks Conservancy is hereby approved in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Memorandum of Understanding and whatever other documents are necessary to effect the intent and purpose of this order.

**Memorandum of Understanding between The City of Portland, Maine and
The Portland Parks Conservancy**

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is entered into by and between the City of Portland, Maine (hereinafter the “City”) and the Portland Parks Conservancy (hereinafter the “Conservancy”) (the City and Conservancy may be referred to individually as a Party or collectively as the “Parties”).

I. RECITALS

WHEREAS, the City is a municipality in the State of Maine; and

WHEREAS, the City maintains and operates numerous parks, trails, open spaces, programs, and recreational facilities (hereinafter “Portland’s Parks and Programs”); and

WHEREAS, the Conservancy is a private non-profit corporation organized under Maine’s non-profit corporation statute for the express purpose of raising philanthropic support and encouraging civic engagement to enhance and sustain Portland’s Parks and Programs; and

WHEREAS, the Portland City Council adopted a certain Resolution, effective as of October 26, 2017, in which the Council expressed its support and enthusiasm for ongoing work to determine the structure of a partnership between the City and the Conservancy and the creation of the Conservancy to support the City’s local parks, trails and open spaces; and

WHEREAS, this MOU is in furtherance of the partnership contemplated by the Council’s Resolution;

WHEREAS, the Conservancy is presently seeking to attain tax exempt status from the Internal Revenue Service under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, the Conservancy will operate as a fiscally-sponsored program of a non-profit with existing tax exemption until it achieves such status itself; and

WHEREAS, the Parties want to formalize their relationship by setting forth a series of mutual expectations;

NOW THEREFORE, in consideration of the mutual covenants, promises and commitments herein, the parties agree as follows:

II. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation and collaboration between the City and the Conservancy. This MOU acknowledges the City’s authorization of the Conservancy acting in support of Portland’s Parks and Programs consistent with the terms set forth herein. This MOU is not intended to, and does not, create binding contractual obligations on either Party. It will assist in defining the relationship between the Parties in order to ensure that the goals of each are accomplished in a mutually supportive way.

III. GUIDING PRINCIPLES

The guiding principles and assumptions for this MOU are as follows:

- A. The Conservancy exists to support and enhance Portland’s Parks and Programs by raising and expending philanthropic capital and encouraging civic engagement in support thereof.
- B. The Parties are committed to promoting equitable access to Portland’s Parks and Programs, cognizant of geographic, socioeconomic, demographic, cultural, physical ability and population density realities.

- C. The Conservancy agrees in the exercise of all its functions and activities that it will not discriminate in any manner on the basis of race, religion, color, national origin, gender, disability, age, sexual orientation, gender identity, or marital, parental, or veteran's status in its programs and activities, and will comply with all non-discriminatory laws and policies that the City promulgates and to which the City is subject.
- D. The City and the Conservancy will work collaboratively to develop mutual priorities for which the Conservancy will support the City, which priorities will be reviewed and updated at least annually.
- E. The Parties acknowledge that the Conservancy will serve as an additive funder rather than supplanting appropriate City funding for Portland's Parks and Programs.
- F. To create a private donor base for Portland's Parks and Programs, the Conservancy will seek to create connections among foundations, the City, private funders, businesses, and community members and organizations.
- G. When the Parties collaborate on seeking additional funding for Portland's Parks and Programs, they will attempt to avoid duplication of effort and competition for the same dollars, focusing instead on maximizing funding opportunities for shared priorities.
- H. The Parties will strive for mutual transparency in their financial condition and issues, in order to inform the positions or priorities that each adopts.
- I. The Parties will adopt procedures and enter into additional operating agreements with regard to specific projects, which shall assign clear responsibilities for each Party.

IV. RELATIONSHIP BETWEEN THE CITY AND THE CONSERVANCY

- A. The Conservancy, although affiliated with the City of Portland by its purpose, is an independent corporate entity.
- B. The Conservancy's Board will include two ex-officio voting positions to be filled by the City: one by the City's Director of Parks, Recreation & Facilities or their designee, and one by the Chair of the Portland Parks Commission or their designee. The City hereby authorizes these representatives to serve in that ex-officio capacity.
- C. The Conservancy agrees to work with the City and its staff in support of mutual priorities and any operating agreement(s) between the Parties.
- D. The Conservancy may also act as an independent advocate on behalf of Portland's Parks and Programs, provided that the Conservancy shall not be an agent for the City and that any such actions shall not be binding upon the City.
- E. The City agrees to seek and obtain any necessary permits or approvals for physical improvement projects that involve Conservancy funding, including but not limited to approvals under the City's Historic Preservation Program.
- F. The Parties agree that, as separate corporate entities, each is responsible for any liabilities and costs arising from its own action(s) and/or inaction(s), and for procuring its own policies of insurance(s) or self-insurance for such liabilities and costs in policy amounts as each deems prudent.

V. COLLABORATIVE FUNDRAISING EXPECTATIONS

- A. The Conservancy's fundraising and expenditures begin with a commitment it shares with the City of Portland: to sustain and enhance Portland's Parks and Programs in order to enhance our quality of life, protect our environment, and promote the economic well-being of our city.
- B. The Conservancy agrees to coordinate with City staff regarding funding goals, programs or campaigns and to

seek gifts that can benefit Portland's Parks and Programs.

- C. The Parties expect that the City will generally pursue and accept grants from state or federal agencies, scholarship funds, the City's gift catalog, gifts of real estate or other property, and gifts in-kind of equipment and supplies intended for City use.
- D. The Parties expect that the Conservancy will generally pursue and accept foundation grants and individual philanthropic financial donations including restricted and unrestricted gifts.
- E. The Parties will work to streamline internal processes to ensure prompt and relevant support for each other's fundraising efforts to further mutual effectiveness.
- G. The Conservancy will honor the City's vision, mission, strategic priorities, goals, policies and procedures when soliciting or accepting any funds.
- H. The Parties will advise donors of the necessary approvals of either the Conservancy or the City.
- I. The Conservancy agrees, before it begins to accept gifts for a particular collaborative fundraising effort, to confer with the Director of Parks, Recreation & Facilities or their designee.
- J. Funds or gifts to the Conservancy will be owned by the Conservancy and maintained and/or distributed for the support of Portland's Parks and Programs by agreement of the parties.
- K. Funds received by the Conservancy will be maintained in accounts that are separate from City accounts, and although the Conservancy may transfer funds to the City, Conservancy and City funds will in no event be intermingled while those funds remain in the Conservancy's control.
- L. The Conservancy will provide the Director of Parks, Recreation & Facilities or their designee and City Council with a summary report of gifts received upon request.

VI. DIRECT FUNDING SUPPORT BY THE CONSERVANCY

- A. The Parties acknowledge the general understanding that the Conservancy plans to fund discrete projects or programs that are priorities of the City, rather than funding general maintenance or operations expenses.
- B. While there is an understanding that the Conservancy exists to partner with the City in support of Portland's Parks and Programs, the City does not exercise the authority to obligate the Conservancy to fund any particular City priority nor is the City obligated to accept any funds offered by the Conservancy.
- C. The Parties acknowledge the general understanding that the Conservancy will be an additive funder rather than supplanting appropriate City funding of Portland's Parks and Programs, and that, if there is a time in the future when it appears that the City does not ensure that the Conservancy's funding is additive, this would be grounds for the Conservancy to reconsider this agreement with the City.
- D. The Parties acknowledge the general understanding that the Conservancy exists for the purpose of benefiting Portland's Parks and programs and if there is a time when it appears that the Conservancy is not fulfilling that mission or contributing funds to Portland's Parks programs with some regularity, that would be grounds for the City to reconsider this agreement and terminate any relationship or affiliation with the Conservancy.
- E. The Parties understand that the Conservancy may transfer funds that are under its control to the City when there is agreement about the intention of how these funds are to be used. The City will use these funds in accordance with that understanding and provide the Conservancy timely reporting on the expenditure of these funds. If the City is unable to use all of the funds for the stated purposes, those agreements will provide that the City return the remaining funds to the Conservancy.
- F. The Conservancy agrees to obtain consent from the City Department of Parks, Recreation and Facilities prior to applying for or accepting funds intended to be used toward physical improvements of City-owned

property. There is no obligation that the City accept funds offered by the Conservancy.

- G. The Conservancy agrees to obtain consent from the City Department of Public Assembly prior to applying for or accepting funds intended to be used toward public gatherings on City property that are likely to involve 25 people or more. The Conservancy will obtain all necessary permits and approvals required under the Portland City Code for events held on City property.
- H. Any project undertaken by the Conservancy on City property shall be subject to review and approval by the City and shall be designed and completed to the City's satisfaction.
- I. The Conservancy agrees not to make any payments to a City employee except with prior written approval from City.
- J. Nothing outlined herein shall be construed to restrict in any way the City's ability to undertake maintenance of or improvements to City property on its own initiative and in its sole discretion when Conservancy funds are not being used.
- K. Nothing outlined herein shall be construed to obligate the City to undertake physical improvements of City-owned property.
- L. The parties agree that notwithstanding anything to the contrary herein, nothing in this MOU requires the City to make, or to allow the Conservancy to make, any improvements or alterations to any City-owned property.

VII. FUNDING SUPPORT BY THE CITY

- A. The Parties share the goal that the City will strive to appropriately fund Portland's Parks and Programs, but this paragraph does not obligate the City to include any particular amount of funds in its budget for such purposes.
- B. There is no obligation that the City provide financial or in-kind support to the Conservancy.
- C. The City may provide limited and reasonable support to the Conservancy, at the discretion of the City.

VIII. GIFTS FUND MANAGEMENT

- A. During the term of this MOU the Conservancy shall be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. Conservancy fund management shall include the following:
 - 1. The Conservancy is entitled to apply a certain portion of the gifts as an offset to its annual operating expenses.
 - 2. The Conservancy is authorized to accept restricted gifts that are designed to benefit Portland Parks and Programs. Distribution of restricted funds will be made in accordance with donor intent and any operating agreements between the Parties.
 - 3. The Conservancy shall follow Generally Accepted Accounting Principles for nonprofit corporations and shall enact prudent governance policies with regard to any invested funds.

IX. CONSERVANCY FILING, AUDITS AND REPORTING

- A. The Conservancy will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the Maine Non-Profit Corporations Act, Maine Charitable Solicitations Act and the United States Internal Revenue Code and shall provide the City with copies of such reports upon request.
- B. Upon request, the Conservancy will supply the City with an annual set of relevant summary financial

statements for the most recently ended fiscal year with a target date of the last business day in August.

- C. Upon request, the Conservancy agrees to provide the City, annually:
 1. An annual report; and
 2. A list of Conservancy governing board, officers, and advisors.

X. CONFIDENTIALITY

The Parties agree that information about the Conservancy’s donors and employees shall be kept confidential. To the extent permitted by law, neither the Conservancy nor the City shall disclose or use any private or confidential donor or employee information provided from one to the other except as required in and by the terms of this MOU. Notwithstanding the foregoing, the Conservancy acknowledges and agrees that the City is subject to Maine’s Freedom of Access Act (FOAA) and that the City will disclose any information that it is required by law to disclose without liability to the Conservancy or any third party.

XI. NOTICES

- A. Any notice to either party hereunder must be in writing signed by the party giving it, and, if mailed, shall be deemed given when mailed postage prepaid by the U.S. Postal Service first class, certified or express mail or other overnight mail service, or hand delivered, when addressed as follows:
 - To City: Director of Parks, Recreation & Facilities, 212 Canco Rd., Portland, ME 04103
 - With a copy to the City Manager at 389 Congress Street, Portland, ME 04101
 - To Conservancy: Attn: Portland Parks Conservancy, 769 Congress St., Portland, ME 04102
- B. Other addressee(s) may also be hereafter designated by written notice. For any notice other than a Notice of Termination under Section XII, written notice may be given by other means acceptable to the receiving party, including by electronic mail. All such notices shall be effective only when received by the addressee.

XII. AMENDMENT AND TERMINATION

- A. Unless earlier terminated as set forth below, this MOU will remain in effect until two years from the date set forth below, and is renewable for additional two year terms by mutual written agreement of the Parties.
- B. This MOU may be amended only in writing signed by an authorized representative of both Parties.
- C. This MOU may be terminated at the discretion of either Party, with or without cause, effective upon written notice to the other Party.

SIGNATURES

IN WITNESS WHEREOF, the City of Portland and the authorized representative(s) of the Portland Parks Conservancy have executed this MOU on this 15th day of JUNE, 2018, the effective date of this MOU. This MOU will expire two years from the date of signing.

CITY OF PORTLAND

By _____
(Signature)

Jon P. Jennings

Its: City Manager

PORTLAND PARKS CONSERVANCY

By_



(Signature)

ANDREW H. MAGOUN

(Printed Name)

Its: President