

**Memorandum of Understanding
between
The Mayor and Aldermen of the City of Savannah
and
Friends of Forsyth Park Conservancy, Inc.**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered and into effective as of _____, 2024 by and between the Mayor and Aldermen of the City of Savannah (hereinafter “City”) and Friends of Forsyth Park Conservancy, Inc. (hereinafter “Conservancy”), each a “Party” and collectively the “Parties.”

WITNESSETH:

WHEREAS, the City of Savannah is a municipal corporation in the State of Georgia; and

WHEREAS, Friends of Forsyth Park Conservancy, Inc. is a non-profit corporation organized under Georgia’s non-profit corporation statute with tax-exempt status from the Internal Revenue Service under Section 501(c)(3) organized for the purpose of engaging stakeholders and for formulating, prioritizing, and implementing a collective vision for Forsyth Park (hereinafter “Park”) in partnership with the City of Savannah; and

WHEREAS, Forsyth Park is a significant asset of the City requiring appropriate maintenance and management commensurate with its value and importance to the well-being of the citizens of the greater Savannah area as well as a key contributor to attracting visitors to the City and as such makes a significant positive impact on the economy of the City and would benefit from support both financially and through volunteerism to ensure its preservation and development, to the extent practicable, in accordance with the Forsyth Park Master Plan prepared by Nelson Byrd Woltz Landscape Architects in 2022 (hereinafter “Master Plan”); and

WHEREAS, the City is committed to ensuring that all maintenance, improvements, enhancements and projects are completed, to the extent practicable, in accordance with the Master Plan for Forsyth Park which identifies maintenance standards, enhancement projects and design guidelines for the Park; and

WHEREAS, the City and the Conservancy wish to formalize the relationship between the Parties by setting forth a series of mutual expectations with regard to the stewardship of Forsyth Park, to the extent practicable, in accordance with the Forsyth Park Master Plan;

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

I. PURPOSE

The purpose of this Memorandum of Understanding is to establish a framework for cooperation and collaboration between the City and the Conservancy with the goals of implementation, to the extent practicable, of the Master Plan for Forsyth Park and the preservation of the Park's historic integrity. 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.

II. GENERAL AGREEMENTS

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

- A. The City received the Forsyth Park Master Plan prepared by Nelson Byrd Woltz Landscape Architects (2022) as the proposed guiding document and standard for all maintenance, enhancements, improvements and projects in Forsyth Park regardless of funding source. The Master Plan was developed over two years through a comprehensive public engagement process, including the participation of thousands of community members and input from key City departments.
- B. The Conservancy exists to support and enhance the City's implementation of the Forsyth Park Master Plan by raising and expending philanthropic capital and encouraging civic engagement in support thereof.
- C. The City reserves sole authority to make all final decisions regarding the Park, but will exercise this authority in the spirit of good faith cooperation with the Conservancy as resources allow.
- D. The Conservancy's Bylaws are intended to reflect four core values: open, democratic decision-making; preservation of the Park's historic integrity; enhancement of natural areas and environmental sustainability; and access to the Park for a variety of activities to be enjoyed by all.
- E. The Parties are committed to promoting equitable access to Forsyth Park, cognizant of geographic, socioeconomic, demographic, cultural, physical ability and population density realities.

- F. The City and the Conservancy will work collaboratively to develop mutual priorities in accordance with the Master Plan for which the Conservancy will support the City, which priorities will be reviewed and updated at least annually.
- G. The Parties acknowledge that the Conservancy will serve as an additive funder rather than supplanting appropriate City funding for Forsyth Park's maintenance and enhancement.
- 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 acknowledge and agree that they will adopt procedures and enter into additional agreements as necessary, which will assign clear responsibilities for each Party. Such additional agreements may include but are not limited to funding allocation agreements, operating agreements, organizational agreements, programming agreements, design and construction agreements, and donor recognition and naming rights agreements. The City hereby authorizes the City Manager to execute additional agreements and/or amendments to this Agreement that are in furtherance of the terms and conditions contained herein to the extent consistent with the City Code of Ordinances and all other applicable laws or regulations.
- J. The Parties will each appoint one designee to be the official contact person with regard to this Agreement, and all communication will be between the official designee of each Party. The City's designee will be the Director of the Park and Tree Department or his/her designee and the Conservancy's designee will be the Chair of the Conservancy Board or his/her designee.

III. RELATIONSHIP BETWEEN THE CITY AND THE CONSERVANCY

- A. The Conservancy, although affiliated with the City of Savannah by its purpose, is an independent non-profit corporate entity.
- B. The Conservancy will be the Park's primary, philanthropic fundraising agent. The Conservancy's role will not prohibit the City from accepting or recognizing any other donation of cash, products, or services related to the Park. The City will request, but not require, any third-party organization or individual with a desire to raise funds for the Park to partner with the Conservancy.
- C. The Conservancy's Board will permanently include as Appointed Directors, one (1) Director from the City of Savannah's Park and Tree Department.

- D. The Conservancy agrees to work with the City and its staff in support of mutual priorities and any additional agreement(s) between the Parties.
- E. The Conservancy may also act as an independent advocate on behalf of Forsyth Park, provided that the Conservancy will not be an agent for the City and that any such actions will not be binding upon the City.
- F. In recognition of the Conservancy's investment in the Park, the City agrees to consult with the Conservancy regarding any substantial modification to the Park or its use or maintenance during the term of this Agreement.
- G. The Conservancy will be entitled to reserve rights to use the Park for public or private programming and/or fundraising events to benefit the Conservancy and the Park up to 24 months in advance. The City will waive permitting and usage fees for all Conservancy programming in the Park.
- H. 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 or self-insurance for such liabilities and costs in policy amounts as each deems prudent.
- I. Any personnel employed by or volunteering on behalf of the Conservancy will be deemed "employees" or "volunteers" respectively of the Conservancy and will not be deemed employees or volunteers of the City. The Conservancy will remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work. Any personnel employed by the City will be deemed "employees" of the City and will not be deemed employees or volunteers of the Conservancy.

IV. COLLABORATIVE FUNDRAISING EXPECTATIONS

- A. The Conservancy's fundraising and expenditures begin with a commitment it shares with the City of Savannah: to preserve and enhance Forsyth Park in accordance with the Forsyth Park Master Plan and to advocate for the preservation of the historic integrity of the Park.
- B. The Conservancy agrees to coordinate with the City regarding funding goals, programs or campaigns and to seek gifts that can benefit the implementation of the Master Plan.

- C. The Parties expect that the City will generally pursue and accept grants from State or Federal agencies and gifts in-kind of equipment and supplies intended for City use in the Park.
- 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.
- F. The Parties will advise donors of the necessary approvals of either the Conservancy or the City.
- G. The Conservancy agrees, before it begins to accept gifts for a particular collaborative fundraising effort, to confer with the Director of the Park and Tree Department or their designee.
- H. Funds or gifts to the Conservancy will be owned by the Conservancy and maintained and/or distributed for the support of Forsyth Park by agreement of the Parties.
- I. 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.
- J. The Parties acknowledge the general understanding that the Conservancy plans to fund discrete projects, programs and maintenance enhancements that are identified in the Master Plan, rather than funding general maintenance or operations expenses.
- K. The Conservancy, in consultation with the City, is authorized to require, at their discretion, that an endowment for maintenance and/or upkeep be included in donations toward discrete projects and improvements.
- L. The Parties acknowledge the general understanding that the Conservancy will be an additive funder rather than supplanting appropriate City funding of Forsyth Park maintenance, improvements, enhancements and projects 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.
- M. The Parties understand that the Conservancy may transfer funds that are under its control to the City when there is written agreement about the intention of how these funds are to be used. The City will use these funds in accordance with that agreement 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.

- N. While there is an understanding that the Conservancy exists to partner with the City in support of Forsyth Park, 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.
- O. The Conservancy will provide the Director of the Park and Tree Department or his/her designee, the City Manager, and City Council with a summary report of gifts received upon request.

V. RESPONSIBILITIES OF THE CONSERVANCY

- A. The Conservancy will serve as the major catalyst for interested parties to be involved with the Park through advocacy, volunteer, and/or fundraising activities.
- B. The Conservancy will be the Park's sole private, philanthropic fundraising agent and may conduct certain operations and/or capital campaigns during the term of this MOU in furtherance of its support of the Park and with the goal of implementing the Master Plan for Forsyth Park.
- C. Any project undertaken by the Conservancy on City property will be subject to review and approval by the City and will be designed and completed to the City's satisfaction.
- D. In addition to the above-referenced fundraising goals, the Conservancy may also establish an endowment, the corpus of which will remain with the Conservancy and will not pass to the City upon termination or expiration of this MOU for any reason. The corpus and all income from the endowment will be exclusively for the use of the Conservancy in connection with its mission and purpose.

VI. RESPONSIBILITIES OF THE CITY

- A. As budgetary concerns permit, the City will appropriate funds for maintenance and improvements in Forsyth Park to the extent practicable in accordance with the Master Plan, but this paragraph does not obligate the City to include any particular amount of funds in its budget for such purposes.
- B. The City will maintain the full range of existing commitments to the Park, including, but not limited to, maintenance, litter control, utilities commitments, event permitting and coordination and will provide a letter reflecting those commitments to the Conservancy upon request for fundraising purposes.

- C. The City will protect the Park and new investments therein by ensuring that the management of events held in the Park is consistent, to the extent practicable, with the design features and other guidelines set forth within the Master Plan.
- D. The City agrees to seek and obtain any necessary permits or approvals for physical improvement projects regardless of funding, including but not limited to approvals under the City's Historic Preservation Ordinance.
- E. The City will ensure that any maintenance, construction, or work performed in the Park is consistent, to the extent practicable, with the Master Plan and protects the historical integrity of the Park.
- F. There is no obligation that the City provide financial or in-kind support to the Conservancy.
- G. The City may provide limited and reasonable support to the Conservancy, at the discretion of the City.

VII. GIFTS FUND MANAGEMENT

- A. During the term of this MOU, the Conservancy will be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. Conservancy fund management will 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 Forsyth Park. Distribution of restricted funds will be made in accordance with donor intent and any operating agreements between the Parties.
- B. The Conservancy will follow Generally Accepted Accounting Principles for nonprofit corporations and will enact prudent governance policies with regard to any invested funds.

VIII. 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 Georgia Non-Profit Corporations 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.
- C. Upon request, the Conservancy agrees to provide the City, annually, an annual report and a list of Conservancy governing board, officers, and advisors.

IX. CONFIDENTIALITY

The Parties agree that information about the Conservancy's donors and employees will be kept confidential. To the extent permitted by law, neither the Conservancy nor the City will 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 Georgia's Open Records Act 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.

X. AMENDMENT AND TERMINATION

- A. This MOU will remain in effect until ten (10) years from the day and year first above written and is renewable for four (4) additional consecutive ten (10)-year terms (such that the initial term plus all option periods is fifty (50) years). Options shall renew automatically without any action by either Party. Either Party may terminate this agreement upon three (3) months written notice to the other Party.
- B. This MOU may be amended only in writing signed by an authorized representative of both Parties.

XI. ENTIRE AGREEMENT

There are no other agreements or understandings, either oral or written, between the Parties affecting this Agreement or the subject matter covered by this Agreement, except as otherwise specifically provided for or referred to herein. No change or addition to, or deletion of, any portion of the Agreement shall be valid or binding upon the Parties hereto unless the same is approved in writing by the Parties.

XII. NOTICES

Any notice to either party hereunder must be in writing signed by the Party giving it, and will 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, Park & Tree Department, City of Savannah, P.O. Box 1027, Savannah, GA 31402

To Friends of Forsyth Park Conservancy, Inc.: Dolly Chisholm, Interim Board Chair, Friends of Forsyth Park Conservancy, Inc., 1 West Park Avenue, Savannah, GA 31401

Other addressee(s) may also be hereafter designated by written notice. All such notices will be effective only when received by the addressee. For any notice other than a Notice of Termination under Section X, written notice may be given by other means acceptable to the receiving Party, including by electronic mail. All such notices will be effective only when received by the addressee.

XIII. GOVERNING LAW

This MOU will in all respects be governed by and construed in accordance with the laws of the State of Georgia.

XIV. SIGNATURES

IN WITNESS WHEREOF, the Mayor and Aldermen of the City of Savannah and Friends of Forsyth Park Conservancy, Inc. have executed this Understanding under seal as of the day and year first above written.

THE MAYOR AND ALDERMEN OF THE
CITY OF SAVANNAH

By _____
(Signature)

(Printed Name)

(Title)

FRIENDS OF FORSYTH PARK CONSERVANCY, INC.

By _____
(Signature)

(Printed Name)

(Title)