

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SOUTH BEND
DEPARTMENT OF VENUES PARKS & ARTS AND THE BOTANICAL SOCIETY OF SOUTH
BEND, INC.**

THIS AGREEMENT is made and executed between the City of South Bend, Indiana, a municipal corporation existing under the laws of the State of Indiana ("City") Department of Venues Parks and Arts ("VPA"), acting by and through its Board of Park Commissioners ("Board"), and the Botanical Society of South Bend, Inc., a not-for-profit corporation ("Society"), organized under the laws of the State of Indiana and having its offices located at Mishawaka Avenue, South bend, Indiana 46615.

WHEREAS, the VPA owns the Ella Morris and Muessel-Ellison Botanical Conservatories, hereinafter referred to as ("Conservatories"), for conservation, education, and recreation; and

WHEREAS, the Society exists for the purpose of promoting and supporting the Conservatories and its programs in conservation, education, and recreation, and provides private sector support, both financial and otherwise, to the operations and capital improvements of the Conservatories; and

WHEREAS, VPA is the Society's largest partner and benefactor.

NOW, THEREFORE, VPA and the Society do hereby mutually agree as follows:

I. GATE ADMISSION

VPA hereby agrees to grant free gate admission to the Conservatories to the members of the Society and reserves the right to require all members of the Society to present photo identification with their membership cards before gaining admission to the Conservatories' facilities.

II. VPA FINANCIAL CONTRIBUTION

VPA will provide the Society a total sum of \$15,000.00 per year for one (1) year to assist in administrative and development cost of the Conservatories. Payment shall be made to the Society no later than July 1st during the duration of this Agreement. In addition, VPA will pay all monthly utility fees for the Conservatories.

III. SOCIETY MEETINGS

As long as this Agreement is in existence, VPA hereby agrees to allow the Society to use the public areas of the Conservatories for the purpose of Society meetings.

IV. EVENTS

The Society will be allowed to host events, both public and private, on the Conservatories' grounds for the purposes of education, raising money for the betterment of the Conservatories, recreation of the public, or any other reason consistent with the mission of the Society. Notification of all public events to be held on Conservatories' grounds must be provided to the VPA Executive Director or designees. At the VPA's sole discretion, the Society may also be required to seek permission from the Board of Park Commissioners at least one month in advance of the event

V. RIGHT TO SALES

The Society will be permitted to sell Society memberships which will allow for access to the Conservatories in support of their mission. The Society will be permitted to sell merchandise in support of their mission. The society will be permitted to sell naming rights to exhibits or portions of the Conservatories with the prior approval of the Board of Park Commissioners.

VI. CONSIDERATION

In consideration for the free gate admission by members of the Society, use of the Conservatories by the Society, and sales opportunities granted to the Society, the Society agrees as follows:

- a) The Society shall use monies acquired from the sale of memberships and merchandise for the betterment of the Conservatories, or for the Society-sponsored projects for the betterment of the Conservatories, as determined to be appropriate by the Society's Board and as agreed upon by the Society and the VPA, provided, however, that the Society may use its membership and merchandise monies first to pay for the reasonable expenses involved with the operation of the Society.
- b) The Society shall (subject to its means and its Board's direction) assist the Conservatories by sponsoring and managing volunteers for the benefit of the Conservatories. Volunteers shall provide their services in conjunction with the Society and Conservatories activities. Training, access hours, supervision, age, behavior, appearance, and other criteria are the responsibility of the Society, but will be reviewed and approved by the VPA Executive Director or its designee. This does not limit the City, VPA or the Society from running concurrent volunteer programs independently at the Conservatories.
- c) The Society shall (subject to its means and its Board's direction) assist the VPA in financing capital improvements and equipment for the Conservatories;
- d) The Society shall be responsible for all plant collection acquisitions.
- e) The Society shall (subject to its means and its Board's direction) conduct development programs on behalf of the Conservatories;
- f) The Society shall (subject to its means and its Board's direction) assist the Conservatories in educational programs and promotions;
- g) The Society shall coordinate with and notify the VPA Executive Director, or its designee of prior to any promotions where City or VPA logos will be used;;
- h) The VPA Executive Director or its designee shall serve as an ex-officio member of the Society Board;
- i) The Society shall carry liability insurance which shall cover its operation and name the City and VPA as additional insureds. The limits of the insurance shall be at least as high as that required by the Indiana Tort Claims Act.
- j) The Society members shall not utilize the Conservatories or its events for political purposes;
- k) Upon request, Society shall send its financial reports to the VPA Executive Director or its designee. Further, Society shall provide a capable representative to answer any questions regarding said financial reports during meetings of the Board of Park Commissioners.

VII. FINANCIAL CONTRIBUTIONS

The financial contributions provided to the Conservatories by the Society under this agreement shall be derived from monies acquired for the Conservatories projects from the sale of Society memberships, merchandise, naming rights, fund raising activities, bequests, donations, and grants from public and private entities.

No administration fee or commission shall be paid to any individual or group for the purpose of receiving or soliciting funds concerning any development activity, campaign, or project at the Conservatories. This restriction shall not apply to the management of investment of the Society's monies. Additionally, any financial contributions provided by the Society pursuant to this Agreement shall be in accordance with Conservatories plans and budgets.

Financial contributions acquired by the Society for a specific Conservatories development activity, campaign or project shall be deposited in an interest bearing account held by the Society and designated for the specific activity, campaign or project. Non-designated contributions acquired for the Conservatories by the Society shall be deposited in an account(s) maintained by the Society to be used for the support of such Conservatories acquisitions or improvements as determined by the Society in consultation with the VPA. Acceptance of donations designated for a specific purpose must be in accordance with the VPA's Mission, Master Plan and Capital Improvement Plan. This Agreement shall not restrict the Society from raising funds, as it deems appropriate.

Recognizing the Conservatories will need specialized maintenance, VPA may, at its sole discretion, provide limited repairs and upgrades per their means and resources available. The Society will be responsible for routine facility maintenance, such as keeping the facility clean, orderly and maintain any plant population inside or outside the Conservatories. The Society will also be responsible for such repairs including basic custodial services, routine interior and exterior painting of the conservatories (excluding "white washing" & support beams), general building repairs, general furniture and fixture repairs, pest control, care of green roof, shrubbery, sidewalk approaches, entrances, and snow removal associated with those areas.

VIII. TERMINATION

This Agreement shall automatically terminate, without further action, when the Society ceases to be in existence or established for the above-mentioned purposes or loses its 501(c)(3) status or the expiration of one (1) year from the date of execution. Additionally, this Agreement can be terminated by either party, with or without cause, after forty-five (45) days written notice to the other party.

IX. AUTHORITY OF DIRECTOR

It is understood and mutually agreed that, except as may be provided in the Agreement, on all matters affecting the Conservatories, the VPA under the guidance of the Executive Director or its designee, shall determine the ultimate course of any action affecting the Conservatories. VPA is responsible for the Conservatories operations of the Conservatories. The management of the Society is the sole responsibility of the Society Board of Directors.

X. FINANCIAL RECORD

The Society shall maintain complete and accurate records of all of its financial transactions and such other minutes and records as are required by its current bylaws. The Society shall provide VPA with a copy of its annual IRS Form 990 and financial audit and account summaries upon request.

XI. COMPLIANCE WITH LAW

The Society must at all times remain in compliance with the applicable State and Federal laws and City ordinances governing charitable solicitations by not-for-profit organizations. All events held on City or VPA property shall be in accordance with all State and Federal laws and City ordinances.

XII. ASSIGNMENT

The Society or its individual members may not assign the rights granted in the Agreement without first obtaining written consent from VPA.

XIII. ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

XIV. NON DISCRIMINATION

The City and VPA are committed to ensuring equality of opportunity and does not exclude, deny the benefit of, or otherwise subject any person to discrimination in any City program, service or activity on the basis of race, color, sexual orientation, national origin, sex, age or disability. Society agrees to comply with and to act consistently with this policy in the performance of Society's duties.

XV. ENTIRE AGREEMENT

This document contains all of the Agreements between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

XVI. LAW GOVERNING AGREEMENT

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

(Remainder of page intentionally left blank)

BOTANICAL SOCIETY OF SOUTH BEND, INDIANA

Signature

Printed Name and Title

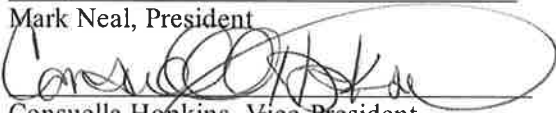
Street Address

P.O. Box


City, State Zip

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARKS COMMISSIONERS**

Mark Neal, President



Consuella Hopkins, Vice-President



Sam Centellas, Member

ATTEST:

Jessica Williams, Clerk

