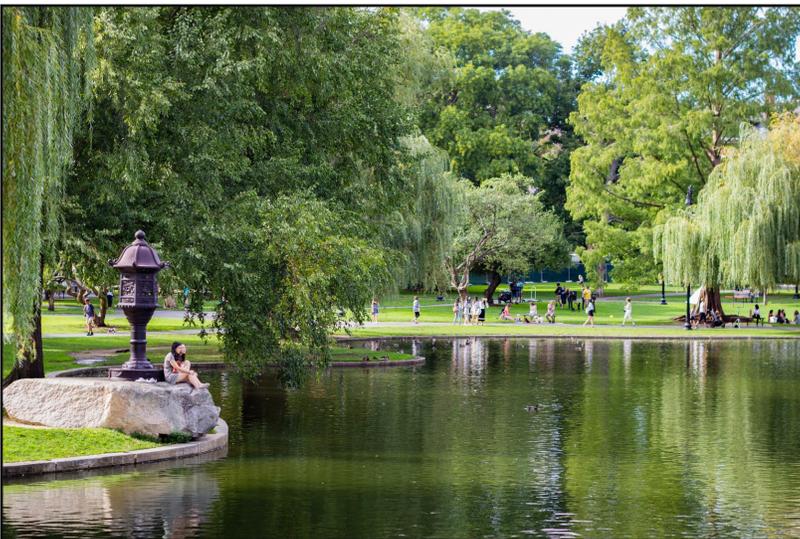


# MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF BOSTON AND THE FRIENDS OF THE PUBLIC GARDEN



Martin J. Walsh , Mayor



**FRIENDS**  
OF THE  
**PUBLIC GARDEN**

**JANUARY 10, 2020**

## **MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (this “Agreement”) is between the **City of Boston, acting by and through its Parks and Recreation Department** (BPRD) and the **Friends of the Public Garden** (FOPG) to provide enhanced maintenance and operations for, and to improve the management of, the Public Garden, Boston Common and Commonwealth Avenue Mall (collectively the “Parks”, or each, individually, a “Park” as shown on Exhibit A) aimed at ensuring the high standards of excellence for the Parks.

### **Recitals**

WHEREAS, the Parks are signature parks for Boston requiring a high level of maintenance and management commensurate with their value and importance to the greater Boston area and are in need of long-range planning and funds for their future stability and development;

WHEREAS, FOPG was established in 1970 for the principal purpose of preserving and enhancing the Parks that serve all Bostonians, by (1) preserving the integrity of the Parks, (2) enriching their heritage and history for residents and visitors, (3) playing a vital role in the stewardship of the Parks, helping to transform them into premier parks;

WHEREAS, FOPG has been instrumental in raising money and coordinating efforts with BPRD bringing support to maintain and enhance the landscape and features of the Parks;

WHEREAS, FOPG is prepared to maintain its existing funding obligations and continue to provide at least its current level of operational support for the Parks;

WHEREAS, BPRD and FOPG (the “Parties,” or, individually, a “Party”) desire to assure that their coordinated partnership will continue to serve the best interest of the public; and

WHEREAS, the Parties wish to establish a process for cooperatively planning for the operations and maintenance of the Parks; and to authorize FOPG to conduct and/or oversee appropriate non-City funded work and activities for the benefit of the Parks.

NOW, THEREFORE, in furtherance of the foregoing, FOPG and BPRD do mutually agree as follows:

### **Agreement**

**Section 1. Transparent Governance.** The Parties agree to perform their partnership responsibilities through transparent governance and decision making.

**Section 2. Purpose, Goals, and Vision Statement.** The Parks are signature parks for Boston that attract hundreds of thousands of visitors every year. The Parties agree to collaborate on a new management strategy for these iconic Parks that leverages the skills, resources, and funding along with the Parks’ strong base of support to achieve a higher level of excellence for maintenance and operations. The goals for this Agreement and the partnership shall include accomplishing this purpose through the: (i) creation of a cooperative annual maintenance plan (the “Annual Plan”); (ii) creation of a short term (1-3 years) prioritized investment plan (the “Investment Plan”); and, (iii) completion of a master plan for Boston Common (the “Master Plan”). In connection with the above, the Parties adopt the following vision statement reflecting their respective objectives for their relationship:

- A strengthened/improved partnership with more collaboration, joint planning, and enhanced team work to support the preservation, management, and improvement of the Parks.
- A communication strategy that ensures true collaboration, transparency of operations, and a productive relationship.
- Standards of excellence for the Parks informed by research and joint planning.
- Coordinated work plans that become incorporated into each Party's team management that promote effectiveness of both Parties by clarifying tasks, roles, and responsibilities.

**Section 3. General Agreements: Role of Each Party in Working Relationship.** In general, BPRD is responsible for managing and operating the Parks and providing a core level of service, maintenance, and security for the Parks. In addition, BPRD will partner with FOPG in good faith and subject to the approval of the Commissioner (defined below) to: (i) complete the Master Plan not later than February 1, 2021; (ii) develop the Investment Plan for each Park not later than December 31, 2020 (subject to completion of the Master Plan and budget); (iii) create and enforce policy to oversee and manage special events; (iv) develop the Annual Plan not later than May 31 of each year for each next succeeding City of Boston fiscal year to guide operations, maintenance, management, and programs in each Park; and (v) identify ongoing challenges and opportunities for the Parks, reassessing and adjusting plans as needed, to maintain successful Parks.

In addition, the following is a list of agreements regarding the basic roles of each Party in their working relationship which the Parties agree to use their best respective efforts to complete not later than the dates set forth in this Agreement:

A. BPRD shall maintain ownership and its authority to make all final decisions regarding the Parks.

B. The Parties shall annually jointly complete the Annual Plan (July 1-June 30) for the Parks that, without creating a legal obligation, sets forth and specifies projects, activities, maintenance tasks and budget, and that details roles and responsibilities for implementation and meeting budget goals, and includes a set of performance measures by which to assess success. The Annual Plan shall also include development of maintenance standards for ongoing stewardships of the Parks. The Parties shall implement the Annual Plan together, in good faith cooperation, consistent with this Agreement and with the future maintenance and master plans that may be required or developed for the Parks, and shall complete such plans.

C. The Parties shall work together to develop, not later than March 31, 2020, a communications plan for internal and external communications regarding their partnership and the Parks including guidance for signage and branding, marketing and social media, all subject to BPRD's procedures, ordinances, and policies as well as State and Federal law.

D. BPRD decisions regarding the Parks that arise from this Agreement shall be made by the Commissioner of Parks and Recreation or his/her designee (the "Commissioner"), and all such decisions shall be communicated in writing to FOPG.

E. BPRD hereby agrees to permit FOPG to access the Parks to exercise its rights and perform all of its commitments under this Agreement and all other activities that are reasonably necessary and appropriate in connection with the goals for the Parks and commitments under this Agreement, subject, however, to the conditions on access detailed in Exhibit B and to any other condition imposed by the Commissioner.

G. Project proposals and implementation plans for improvements, restoration and other initiatives in the Parks shall be prepared by either Party for review by both Parties and approval by the City for any project to be undertaken by FOPG.

H. BPRD shall have the right to oversee all work performed upon the Parks, including but not limited to maintenance, construction of capital improvements, landscaping, and other initiatives. FOPG shall not construct or make any capital improvements to the Parks without prior Parks approval, which approval may include terms and conditions incorporating any applicable law, City ordinance, or other requirement as Parks deems appropriate, including but not limited to, applicable public bid law, insurance and bonding requirements.

I. FOPG may operate donor and sponsor recognition programs in the Parks in an effort to encourage donors and sponsors for the Parks' continued care, maintenance, operation and programming, within the limits set by BPRD's regulations on naming and donor recognition in public parks, and with the approval of BPRD in each instance. With the written consent of the Commissioner, FOPG shall, from time to time, take responsibility to raise additional funding for the Parks and will oversee the use of the funds it raises making certain that the funds are used consistent with plans for the Parks and this Agreement.

J. Subject to paragraph H of this section, title to all of FOPG improvements for the Parks shall vest in BPRD upon completion of construction or installation.

**Section 4. City Responsibilities.** In addition to the responsibilities in this Agreement, the Parties acknowledge that this Agreement is based upon their joint understanding that BPRD will continue to:

A. Maintain the full range of existing commitments to the Parks, including basic maintenance, litter control, sanitation, garbage collection, cleaning of restrooms, security and utilities commitments.

B. Subject to appropriations, provide annual operational funding for the Parks at or greater than fiscal year 2018 budgeted levels, unless any reduction is part of a broader reduction of operational funding that is not concentrated on the Parks.

C. Provide maintenance of the Parks' infrastructure such that the management, operation and coordination of the Parks' activities are consistent with its design features and other guidelines; and maintain the full range of existing commitments to the Parks, including maintenance of the landscapes, park facilities, and preservation of the Parks' natural resources.

D. Provide visitor services and enforcement of Park regulations through the Park Rangers.

E. Provide police services for the Parks as determined by the Chief of Police or his or her designee in his or her sole discretion.

**Section 5. FOPG's Responsibilities.** In addition to the responsibilities listed above, the Parties acknowledge that this Agreement is based upon their joint understanding that FOPG shall have the following responsibilities, subject to available funding:

A. Actively pursue and engage in fundraising to support restoration, maintenance, general betterment of the Parks and any additional care or capital improvements needed for enhancing the

Parks. FOPG fundraising in the name of the Parks will support its mission of renewing, caring, and advocating for the Parks.

B. In addition to the BPRD's performance of basic maintenance, to the extent deemed reasonably appropriate by FOPG, provide additional basic and enhanced maintenance aimed at assuring that: (i) the Parks remain in a safe and attractive condition; and (ii) all capital improvements are adequately maintained to protect the investments made.

C. Serve as the major catalyst for interested parties to be involved with the Parks through advocacy, volunteer and/or fundraising activities and through working with FOPG Board of Directors.

D. Notify the Commissioner as soon as possible of discovering a safety, sanitary and/or maintenance issue that needs to be addressed in the Parks regardless of who needs to resolve the issue. BPRD agrees to use all good faith efforts to do the same.

E. Notify the Commissioner immediately upon learning of any emergency event regarding or arising in the Parks that involves the media, the police or fire departments or emergency medical services. BPRD agrees to use all good faith efforts to do the same.

F. Use all reasonable efforts to ensure that all funds committed by or to FOPG for use regarding the Parks are used effectively, efficiently and as intended.

#### **Section 6. Regular Meetings and Communications.**

A. The Commissioner and appropriate staff and FOPG staff shall meet a minimum of once a year during the Term of this Agreement to discuss the previous year's accomplishments against goals set by the partnership and to set goals and develop a work plan for the following year.

B. BPRD staff and FOPG staff shall meet regularly to assure implementation of the Annual Plan, including as needed, to provide training and guidance to their collective team.

C. The Parks Commissioner and FOPG shall jointly prepare an annual report deliverable during BPRD's budget process that details activities, financial reporting, and projects of the partnership in the past year.

**Section 7. Cooperation and Collaboration.** BPRD and FOPG both recognize that their mutual cooperation and collaboration are essential in all matters related to planning, design, development, programming and event planning, and management of the Parks. BPRD agrees to provide FOPG with the opportunity to participate, to the extent feasible, in planning exercises related to the Parks and adjoining areas including, but not limited to, proposed changes to BPRD's open space plan and zoning changes that will affect the Parks and adjoining areas. Both Parties further recognize the importance of completing and jointly implementing the Master Plan.

**Section 8. Term of Agreement.** The term of this Agreement (the "Term") will commence as of the date set forth on the signature page and will continue in effect for three years unless either Party withdraws because the Agreement becomes inconsistent with its institutional purposes or the public interest. Upon mutual agreement of the Parties, the Agreement may be renewed for two additional three-year terms.

**Section 9. Authority and Representations.**

A. FOPG represents that it has the power to execute, deliver and carry out the terms and provisions of this Agreement applicable to it and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and that this Agreement constitutes the legal, valid and binding obligation of FOPG, subject, however, to the availability of funding.

B. BPRD represents that it has the power to execute, deliver and carry out the terms and provisions applicable to it and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and that this Agreement constitutes the legal, valid and binding obligation of BPRD.

C. This Agreement, which includes the Exhibits that are attached to and made a part of this Agreement, contains all of the written agreements that are in place between the Parties, and expresses the entire understanding between the Parties with respect to the provisions herein. All prior communications, written or oral, concerning this matter are merged in and replaced with this Agreement. This Agreement may only be amended by a further agreement in writing signed by all of the Parties.

D. This Agreement shall be binding upon the heirs, personal representatives, successors, and permitted assigns of the Parties and the rights and privileges of the Parties shall benefit their respective successors and assigns. This Agreement may only be assigned by a Party with the prior written approval of the other Party.

**Section 10. Dispute Resolution.** If unanticipated issues arise with respect to this proposed Agreement or their relationship, the Parties agree to promptly in good faith discuss them and seek resolution.

**Section 11. Notices.** All notices and other communications to be given pursuant to this Agreement shall be given in writing and delivered personally, by first-class mail or by electronic e-mail to the appropriate party at the address or e-mail address set forth below.

If to BPRD: City of Boston  
Parks and Recreation Department  
1010 Massachusetts Avenue, 3rd Floor  
Boston, MA 02118  
Attention: Commissioner

And: City of Boston Law Department  
City Hall, Room 615  
Boston, MA 02201  
Attention: Corporation Counsel

If to FOPG: Friends of the Public Garden  
69 Beacon St  
Boston, MA 02108  
Attention: Executive Director

**Section 13. General Provisions.**

A. This Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts.

B. FOPG shall act solely as an independent contractor with respect to this Agreement. The relationship between the Parties shall in no way be construed to create a joint venture or partnership, or to constitute either Party as an agent of the other for any purposes other than as set forth in this Agreement.

C. BPRD shall be responsible for any claim, damage, loss or expense arising from the Parks that is attributable to intentional or negligent acts, errors, or omissions by BPRD, its consultants/contractors or their officers, agents or employees. FOPG shall be responsible for any claim, damage, loss or expense arising from the Parks that is attributable to intentional or negligent acts, errors or omissions by FOPG, its consultants/contractors or their officers, agents or employees.

D. Any personnel employed by or volunteering on behalf of FOPG shall be deemed employees or volunteers respectively of FOPG, and shall not be deemed employees or volunteers of BPRD. FOPG shall be 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 or volunteering on behalf of BPRD shall be deemed employees or volunteers respectively of BPRD, and shall not be deemed employees or volunteers of FOPG.

The undersigned Parties agree that the provisions of this Agreement shall be binding on them.

*[Signatures on following page]*

Dated: January 10, 2020

**THE FRIENDS OF THE PUBLIC GARDEN**

By: Leslie Singleton Adam  
Leslie Singleton Adam, Board Chair

By: Elizabeth Vizza  
Elizabeth Vizza, Executive Director

**CITY OF BOSTON**

By: Martin J. Walsh  
Martin J. Walsh, Mayor

By: Ryan Woods  
Ryan Woods, Parks Commissioner

Attest: Maura Scenery  
City Clerk

**List of Exhibits:**

- A. Map of the Parks
- B. Conditions on Access
- C. Art Conservation Revocable Permit of 2019
- D. Art Conservation Permit Agreement
- E. Operations Manual