



Memorandum of Understanding

between the

Belle Isle Conservancy

and the

the Friends of Oudolf Garden

and the

Department of Natural Resources

Parks and Recreation Division

This Memorandum of Understanding (MOU) is intended to provide a framework for a collaborative working relationship between the Michigan Department of Natural Resources (DNR) Parks and Recreation Division (PRD), the Belle Isle Conservancy, a Michigan non-profit corporation (BIC), and the Friends of Oudolf Garden, Inc., a Michigan non-profit corporation (FOG) for the purpose of construction of the Piet Oudolf Garden (Garden) to be located on Belle Isle Park at the Nancy Brown Carillon Peace Memorial. It is understood between the Parties that this MOA does not limit the Parties from supporting other projects in any way.

This MOU, upon being signed by both parties, shall be valid for a period of two (2) year, or until such time as the Garden has been constructed. Revisions, amendments and/or extensions to this MOU may be entered into by the Parties if they are mutually agreed upon in writing.

As with any MOU, there is an acknowledgement that situations may arise that are not addressed in this document. At those times, DNR-PRD staff BIC representatives, and FOG, must come together and work cooperatively to resolve the situation in a manner that is mutually satisfactory to the Parties.

I. General Understanding of the Relationship:

The Parties desire to work collaboratively towards the construction of a perennial Garden designed by world-renowned land scape designer Piet Oudolf on Belle Isle Park at the Nancy Brown Carillon Peace Memorial. To accomplish this construction, the Parties agree as follows:

1. The Garden construction will be undertaken utilizing the design plans prepared by Piet Oudolf (the "Garden Design Plans").

2. The Garden will be located on Belle Isle in front of the Nancy Brown Carillon Peace Memorial.
3. Prior to and during construction of the Garden, the BIC, the FOG and its agents or contractors will be allowed to use the asphalt parking area adjacent to the site and in front of the Remmick Bandshell as a temporary staging area.
4. The Garden shall incorporate ADA accessible elements to ensue ADA compliance, which may include, but is not limited to, ADA accessible parking to the Garden and ADA accessible connections from the existing parking to the Garden, signage and striping to accommodate barrier free access, proper alignment between the Garden and the existing infrastructure, including the entrance to the Anna Scripps Whitcomb Conservatory Gardens, and seating area(s). The ADA parking shall include a minimum of three (3) parking spaces with two (2) of the spaces being car accessible and the remaining one (1) space being van accessible, all consistent with the City of Detroit's Parking Regulations.
5. The BIC has entered into an agreement with FOG to act as the BIC's representative and agent to undertake the project management for the Garden, including fundraising, construction and installation on behalf of the BIC. DNR-PRD understands and acknowledges that FOG shall be the primary representative of BIC in undertaking construction of the Garden.
6. The BIC, acting through FOG or its agents or contractors, will be responsible for preparation of and application, if necessary due to the scope of the project, an MDOT lane closure plan or permit plans for submittal and/or a soil erosion and sedimentation control permit, DWSD permits and any other permits legally required for the construction of the Garden.
7. Prior to undertaking the construction of the Garden, the following items must be completed and documentation provided to DNR-PRD:
 - a. An established endowment by a portion of the directors of FOG with the Community Foundation of Southeastern Michigan will be exclusively used for the perpetual maintenance and operation of the Garden (the "Endowment"). FOG and BIC shall have procured **[pledge agreements]** from donors to the Endowment of at least One Million (\$1,000,000.00) Dollars, of anticipated fully-funded Endowment amount of Two Million and 00/100 (\$2,000,000.00) Dollars and shall also have **received** at least One Million and 00/100 (\$1,000,000.00) Dollars into the Endowment fund; and
 - b. DNR-PRD is provided with the staffing position description for the full-time employee or volunteer responsible for the maintenance and operation of the Garden for review.

8. BIC understands that DNR-PRD is prohibited from spending money out of the State Treasury without a valid appropriation.

II. DNR-PRD Responsibilities

DNR-PRD agrees to:

1. Allow BIC, FOG and their employees, agents, members and contractors non-exclusive access to the area surrounding the Nancy Brown Carillon Peace Memorial to undertake the Garden construction activities.
2. Work collaboratively with BIC and FOG in carrying out the activities authorized by this MOU.
3. Work collaboratively with the City of Detroit in carrying out the activities authorized by this MOU.
4. The DNR-PRD acknowledges that the Garden will be located within a state park and agrees to include the Garden into the overall management plan of the Belle Isle Park.
5. The DNR-PRD shall have no financial obligations for the planning, construction, or perpetual maintenance and operation of the Garden.

III. BIC and FOG Responsibilities

BIC and FOG agree:

1. That BIC will be responsible for the payment of the Garden construction from the funds raised by FOG or other donors.
2. That BIC and/or FOG will be responsible for perpetual maintenance and operation of the Garden, the funding of which activities shall come from the endowment provided for under Section 7(a), a copy of the Endowment Agreement is attached as Exhibit B.
3. To work with together to ensure that the Garden construction respects the historic nature of the setting, preserve and protect the historical characteristics and cultural significance of Belle Isle Park, and be mindful of the sightlines to the respective monuments. The DNR-PRD acknowledges and agrees that the Garden Design Plans, identified in EXHIBIT A meet the requirements of Section III(2).
4. Require that the Garden construction activities be modified if such activities are deficient in complying with the Garden Design Plans Section III(2), referenced above.

IV. Additional PRD Policies

Authorized Representatives

The Belle Isle Conservancy
Michele Hodges
300 River Place Drive
Suite 2800
Detroit, MI 48207

Friends of the Oudolf Garden
Duncan Campbell
124 Merriweather Road
Suite 200
Gross Pointe Farms, MI 48236

DNR-PRD
Amanda Hertl, Project Manager
1801 Atwater Street
Detroit, MI 48207

The Parties shall provide the other with changes to staff/leadership of BIC, FOG or DNR-PRD on a regular basis, or as necessary.

Addressing Issues and Concerns

Any concerns or issues should first be discussed with the designated Authorized Representatives and, if resolution is not possible at this level, the concerns or issues should then be directed to Ron Olson, Chief, DNR-Parks and Recreation.

Disputes

In the event a Party materially breaches this MOU, upon formal written notice from one Party to the others, a cure must occur within thirty (30) business days. Failure of the Party to cure the breach will result in immediate termination of the agreement, unless otherwise agreed or unless the matter is subject to a dispute as set forth in the paragraph immediately below.

Any dispute concerning the subject of this MOU that remains unresolved for thirty (30) days from the date of the start of negotiations between the Parties shall be decided by a third party arbitrator to be agreed upon by the Parties, or if the Parties are unable to agree on an arbitrator, by one appointed by the American Arbitration Association. The arbitration will be held in Wayne County, or other such location as agreed by the parties hereto, in accordance with the National Rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Unless otherwise required by law or pursuant to an award by the arbitrator, the parties shall each pay separately its counsel fees and expenses. Notwithstanding the foregoing, the arbitrator may, but need not, award the prevailing party in any dispute its legal fees and expenses.

Nothing contained in this MOA precludes consideration of questions of law nor shall be construed as making final the decision of any administrative official, representative, or board on the question of law.

Termination

Should matters between the Parties become unresolvable, this MOU may be terminated by any party with ninety (90) days' written notice and the Parties.

Insurance and Indemnification

The BIC shall provide certificates of insurance listing the **State of Michigan and the City of Detroit, their departments, boards, agencies, commissions, officers, and employees and FOG and its officers and employees as additional insureds** to the MDNR-PRD. The insurance policies shall provide that they may not be modified, canceled, or allowed to expire without thirty (30) days prior written notice given to the MDNR-PRD.

BIC shall obtain **General Liability Insurance**, naming FOG, MDNR-PRD, and their officers and employees as additional insureds and protecting against all claims, demands, suits, actions or causes of action and judgments, settlements or recoveries, for bodily injury or property damage arising out of a condition of the Premises, or arising in connection with or as a direct or indirect result of the BIC's use and occupancy of the Premises granted in this MOU.

- BIC agrees to maintain a minimum policy limit, in the amount of:
\$500,000 per occurrence for property damage; \$1,000,000 per occurrence for bodily injury

As may be required by law, BIC shall obtain **Workers' Compensation Insurance** for BIC's employee and/or volunteer claims under Michigan Workers' Compensation Act or similar employee benefit act or any other state act applicable to an employee, along with Employer's Liability Insurance for claims for damages because of bodily injury, occupational sickness or disease, or death of an employee when Workers Compensation may not be an exclusive remedy.

- Subject to a limit of liability of **not less than \$100,000 each accident.**

As may be required by law, BIC shall maintain **Automobile No-Fault coverage Insurance.**

BIC shall report to the MDNR-PRD any incident that may result in personal injury or property damage. The BIC shall make complete reports in writing to MDNR-PRD within twenty-four (24) hours of any such incident. Incidents resulting in serious personal injury, death, or property damage estimated to exceed \$100 are to be reported to MDNR-PRD immediately, by telephone or in person. A written report is to follow as described above.

Liability

DNR-PRD assumes no liability for any actions or activities conducted under this MOU, except to the extent that recourse or remedies are provided by federal or state law. All activities will be conducted in accordance with all applicable federal, state, and local laws, rules, and regulations.

Assignment

Neither Party may assign or transfer any rights or obligations under this MOU without prior written consent of the other Party; provided, however, MDNR-PRD understands that FOG will be undertaking activities under this MOU on behalf of BIC. Subject to the preceding sentence, any such assignment or transfer of rights or obligations shall not be effective until an agreement consenting to such is approved and executed by the same Parties, or their successor in office, who executed and approved this MOU.

Waiver of Default

The failure of a Party to insist upon strict adherence to any term of this MOU does not deprive the Party of the right to insist upon strict adherence to that term, or any term, of this MOU.

Severability

Should any provision of this MOU or any addenda thereto, be found to be illegal or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the MOU, and such action shall not affect the enforceability of the remaining provisions of the MOU.

Entire Agreement Complete

This MOU contains the results of all prior negotiations and agreements between DNR-PRD and BIC. No other understanding regarding this MOU, whether written or oral, may be used to bind either Party.

GOVERNING LAW

This MOU shall be governed by, and construed in accordance with, the laws of the State of Michigan.

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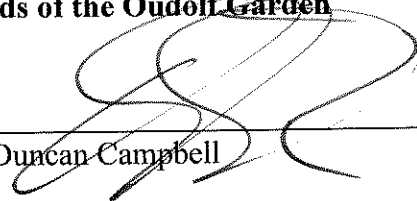
IV. Approval//Signatures

In WITNESS WHEREOF, the Parties hereto, through their duly authorized agents and representatives, set their hands the day and year indicated below, effective as of December __, 2018. This MOU may be executed in multiple counterparts, all of which, when taken together, shall constitute one instrument. Photocopies, faxes and emailed versions shall be valid for all purposes as an original.

Belle Isle Conservancy

By:  12.20.18
Michele Hodges, President/CEO Date

Friends of the Oudolf Garden

By:  12-20-2018
Duncan Campbell Date

**Michigan Department of Natural Resources
Parks and Recreation Division**


By:  _____
Ronald A. Olson, Chief Date

EXHIBIT A

Garden Design Plans

Oudolf Garden Detroit



| | Acres | Sq Meters | Sq Feet |
|-------------------|-------|-----------|---------|
| Path | 0.4 | 1,618 | 17,433 |
| Beds | 1.18 | 4,659 | 50,248 |
| Grass | 0.18 | 671 | 7,244 |
| Improved Area | 2.37 | 9,602 | 103,363 |
| Existing Sidewalk | 0.08 | 334 | 3,604 |
| Carillion | 0.31 | 1,242 | 13,370 |

EXHIBIT B

Endowment Agreement

AGREEMENT ESTABLISHING
OUDOLF GARDEN DETROIT ENDOWMENT FUND
OF THE COMMUNITY FOUNDATION FOR SOUTHEAST MICHIGAN

THIS AGREEMENT made as of this date October 15, 2018, by and between the Jean W. Hudson, Maura Campbell, Anne Milligan and Duncan Campbell (the "Founders") and the Community Foundation for Southeast Michigan, a Michigan nonprofit corporation classified as a tax-exempt organization within Section 501(c) of the Internal Revenue Code of 1986, as amended (the "Foundation").

WHEREAS, the Founders desire to irrevocably establish at the Foundation, and the Foundation is willing to hold and administer, an endowed charitable fund to be known as the Oudolf Garden Detroit Endowment Fund (the "Fund"), it is hereby agreed as follows:

1. Purpose The purpose of the Fund is to support the public charity then currently providing for the design, construction, improvement and/or maintenance of, and/or charitable programming provided at, the Oudolf Garden Detroit located on Belle Isle. At the time of this Agreement, the Belle Isle Conservancy is the public charity currently involved in these activities but another public charity may provide those services in the future and it is intended that the Fund support that public charity as it may be identified from time to time.

2. Administration The Foundation shall hold and administer all property which the Founders or any other person or organization contributes to the Fund, all of said gifts being irrevocable, in accordance with the provisions of this Agreement and the provisions of the governing instruments and written policies of the Foundation and any future amendments or modifications thereof, all of which provisions and amendments are hereby incorporated by reference.

3. Distributions The Foundation shall distribute so much of the assets of the Fund as the Foundation deems appropriate, in accordance with investment and distribution policies adopted by the Foundation and amended from time to time, in furtherance of the charitable purposes set forth above. All such payments shall be made at such times, in such proportions and for such general or specific charitable purposes included within the purposes set forth above, as the Foundation deems appropriate.

4. Endowment Fund Subject to paragraph 3 hereof, the Fund shall be held as an endowment fund and invested and administered in accordance with the investment and other policies applicable to endowment funds adopted by the Foundation and amended from time to time. The Founder understands and acknowledges that under the current policies of the Foundation the amount available to grant from an endowment fund is determined annually by the Board of Trustees of the Foundation.

5. Commingling The Foundation may commingle the assets of the Fund with the assets of any other fund or funds which the Foundation holds and administers, provided that the separate identity of the Fund, and the distributions therefrom, are at all times maintained.

6. Not a Trust The parties acknowledge that a trust is not created by this Agreement; however, the Foundation shall administer the Fund in accordance with its charitable purposes.

This writing constitutes the entire agreement of the parties with respect to the subject matter of the Agreement.

7. Variance Power The Founders understand and acknowledge that the Foundation has the duty and power to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the judgment of its Board of Trustees, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community the Foundation serves, as provided by the provisions of the governing instruments and written policies of the Foundation and any future amendments or modifications thereof, all of which provisions and amendments are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

FOUNDERS:

COMMUNITY FOUNDATION FOR
SOUTHEAST MICHIGAN:



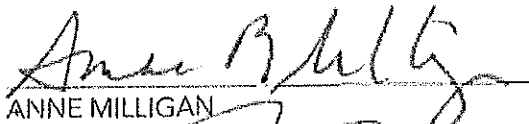
JEAN W. HUDSON



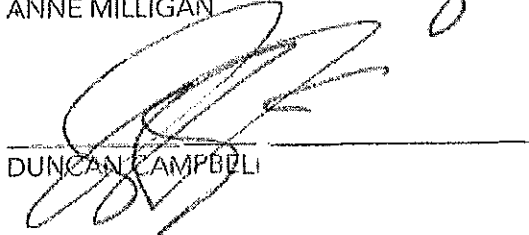
MARIAM C. ENGLAND, PRESIDENT



MAURA CAMPBELL



ANNE MILLIGAN



DUNCAN CAMPBELL