

## **ATTACHMENT M**

### **Memorandum of Agreement**



**MEMORANDUM OF AGREEMENT**  
among the  
**NATIONAL PARK SERVICE,**  
**NEW YORK STATE HISTORIC PRESERVATION OFFICE,**  
and  
**THE CITY OF ROCHESTER,**  
regarding the  
**ALIENATION/CONVERSION OF A PORTION OF GENESEE VALLEY PARK WEST**  
in the  
**CITY OF ROCHESTER, MONROE COUNTY, NEW YORK**

**WHEREAS**, the City of Rochester (the "City") desires to reinforce its long-term efforts to stabilize and revitalize the Genesee Street Neighborhood by strengthening the neighborhood's connections to the University of Rochester; and

**WHEREAS**, the City has already constructed a pedestrian bridge connecting the Genesee Street neighborhood on the west side of the Genesee River with the University on the east, and now proposes to alienate/convert portions of the Genesee Valley Park in order to construct a hotel and restaurant to promote economic development in the Genesee Street neighborhood; and

**WHEREAS**, Genesee Valley Park (the "Park") is eligible for listing in the National Register of Historic Places as a contributing component of the Municipal Park System of Rochester, New York; and

**WHEREAS**, the Park has been improved with federal Land and Water Conservation Fund ("LWCF") assistance provided by the National Park Service (the "NPS"), and that, under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, LWCF involvement places a protective covenant on the Park that requires NPS approval for the City's alienation/conversion request<sup>1</sup>, which itself requires review under Section 106 of the National Historic Preservation Act of 1966, as amended, and the implementing regulations 36 CFR 800; and

**WHEREAS**, the City has consulted the Office of Parks, Recreation and Historic Preservation ("OPRHP") Grants Bureau, which acts as the NPS's state-level liaison for LWCF programs, and the Grants Bureau initiated preliminary Section 106 discussions with the State Historic Preservation Office ("SHPO") on behalf of the NPS; and

**WHEREAS**, the SHPO has determined that the alienation/conversion of historic parkland will have an Adverse Effect on the Olmsted-designed Genesee Valley Park;

**NOW, THEREFORE**, the NPS and the SHPO agree that the undertaking shall be implemented according to the following Stipulations in order to take into account its effect on historic and cultural natural and recreational resources. Also, the NPS will ensure through its agreements, contracts or approvals, that the City implements these Stipulations for each of the undertaking's components. Failure to meet these Stipulations will constitute a violation of this agreement.

<sup>1</sup>: Under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, "No property acquired or developed with assistance under this Section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location: . . ."

## STIPULATIONS

### Park System-wide Preservation Measures

1. The City will put the following additional parkland under Section 6(f) protection:
  - a 23.8-acre parcel of Genesee Valley Park on the east side of the Genesee River just south of Elmwood Avenue, and
  - the parkland conversion replacement parcel adjacent to Turning Point Park as described in the Environmental Assessment.
2. The parkland conversion replacement parcel adjacent to Turning Point Park will provide a compatible public resource amenity, be accessible to the public, and complement the existing park system design.
3. The City will survey those components of the Rochester City Park System more than 50 years old and revise its existing parks Management Plan to cite not only the System's historic nature and identify its character-defining components but also take into consideration the public benefit of preserving them. Based on the survey, the City will determine the appropriate measures for protecting those components in consultation with the SHPO.

### Project-Specific Measures

1. As per the revised site plan included in the Environmental Assessment (EA) submitted to NYSOPRHP (c/o: Kevin Burns) on April 28, 2004, the City will:
  - retain existing mature trees and/or install additional plantings at the parcel's southern Plymouth Avenue edge;
  - ensure, through enforcement of the City's Zoning Code, that the developer will provide adequate vegetation within the restaurant parking lot as well as along the perimeter of the restaurant and hotel parking lots, and
  - ensure that the developer will provide additional and adequate vegetation on the southern end of the site adjacent to the remaining portion of Genesee Valley Park as a buffer to the hotel parking spaces shown in that location.

Any plantings on the new site will be designed in such a way as to preserve the historic character of the adjacent parkland, with respect to the Olmstedian design principles that enhance the spatial character, preserve view sheds, and avoid inappropriate plantings.

2. The City will consult with the SHPO, through its site plan review process, regarding:
  - the proposed design, materials and colors for the proposed new hotel, restaurant and any other structures on the alienation/conversion parcel; a primary goal will be to provide similar designs or compatibility between the two structures, and
  - the final design and the materials and colors proposed for the pedestrian promenade and associated amenities along the Genesee River and South Plymouth Avenue.

The proposed design, materials and color for the proposed new hotel and restaurant, pedestrian promenade, and associated amenities along the Genesee River and South Plymouth Avenue should also be compatible with the historic character of the park.

The SHPO will respond to all submissions within 15 days, provided the City and/or NPS provides e-Mail notice of the pending submission.

3. The Mayor will provide a letter to the OPRHP and the NPS confirming the City's already-stated commitment to refrain from ever taking additional Genesee Valley Park parkland south of the current alienation/conversion parcel to Elmwood Avenue, on the west side of Genesee River.
4. The Mayor will distribute a memo to all departments reminding staff of Rochester's Certified Local Government (CLG) status, providing information about the reviews triggered by the involvement of state and federal agencies in any part of a project, and reinforcing the City's commitment to coordinate with the SHPO – including the need to consult with the SHPO early in a project's planning stages – under the CLG program and state and federal statutes. The City will coordinate with the SHPO on the information contained in the memo.

#### Resolving Objections

a) Should any signatory [as defined in the Advisory Council on Historic Preservation's (the "Council") regulations, 36CFR Section 800.6.c] to this agreement object to any action carried out or proposed by another signatory with respect to the implementation of this agreement, NPS shall consult with the objecting party to resolve the objection. If after initiating such consultation, NPS determines that the objection cannot be resolved through consultation, NPS shall forward all documentation relevant to the objection to the SHPO, including NPS's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the SHPO shall exercise one of the following options:

- 1) Advise NPS that the SHPO concurs in NPS's proposed final decision, whereupon the NPS will respond to the objection accordingly; or
- 2) Provide NPS with recommendation, which NPS shall take into account in reaching a final decision regarding its response to the objection; or
- 3) Notify the NPS that the objection will be referred for comment to the Council, pursuant to 36 CFR Section 800.6(b), and proceed to refer the objection and comment to the Council.

b) Should the SHPO not exercise one of the above options within 30 days after receipt of all pertinent documentation, the NPS may assume the SHPO's concurrence in its proposed response to the objection.

c) NPS shall take into account the SHPO's recommendations or comments provided in accordance with this stipulation with reference only to the subject of the objection. All responsibilities under this agreement that are not the subject of an objection shall remain unchanged.

d) At any time during implementation of the measures stipulated in the agreement, should an objection pertaining to the agreement be raised by a member of the public, NPS shall notify the signatories to this agreement and take the objection into account, consulting with the objector and with any of the signatories to this agreement to resolve the objection. Upon receipt of this notification, should a signatory agree with the objection raised, the signatory will notify the NPS. All responsibilities under this agreement that are not the subject of an objection shall remain unchanged.

e) Based on this review, NPS and the SHPO shall determine whether this agreement shall continue in force, be amended, or terminated.

#### Amendments

Any signatory to this agreement may propose to NPS that the agreement be amended, whereupon NPS shall consult with the other signatories to this agreement to consider such an amendment. 36 CFR Part 800.5(c) shall govern the execution of any such amendment.

#### Termination

Per 36CFR800.6(c)(8): "If any signatory determines that the terms of a Memorandum of Agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under 800.6(c)(1) or request the comments of the Council under 800.7(a)(1)."

**EXECUTION OF THIS MEMORANDUM OF AGREEMENT** and implementation of its Stipulations evidences that the NPS and the City of Rochester have satisfied their Section 106 responsibilities for all individual undertakings of the program.

#### **NATIONAL PARK SERVICE**

By: Marie Rust  
Marie Rust, Regional Director, Northeast Region

Date: 1/25/05

#### **NEW YORK STATE OFFICE OF PARKS, RECREATION, AND HISTORIC PRESERVATION**

By: Bernadette Castro  
Bernadette Castro, State Historic Preservation Officer

Date: 2/3/05

#### **CITY OF ROCHESTER**

By: William A. Johnson, Jr.  
William A. Johnson, Jr., Mayor

Date: 2/7/05

#### **Concur:**

#### **NATIONAL ASSOCIATION FOR OLMSTED PARKS**

By: Catherine Nagel  
Catherine Nagel, Executive Director

Date: 2/10/05