

MEMORANDUM OF UNDERSTANDING

I. PARTIES

A. The City of Concord, New Hampshire, a municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire (the “City”).

B. The Friends of the Concord City Auditorium, a not-for-profit corporation, with a principal place of business at the Concord City Auditorium, Prince Street, Concord, New Hampshire 03301 (the “Friends”).

C. The City and Friends are collectively referred to as the Parties.

II. PURPOSE

The purpose of this Memorandum of Understanding (“Agreement”) between the City and the Friends is to support and maintain the City of Concord Auditorium (“Audi”) so that it may operate as a community theater and as a venue for public meetings and gatherings.

III. TERMS AND CONDITIONS

A. Term

The term of this Agreement shall be December 17, 2018 through August 31, 2023, and may be extended by mutual consent of the Parties.

Either Party may terminate this Agreement at any time and for any reason.

B. Audi Property

The Audi, which comprises the western section of City Hall, is a public building owned and held in trust by the City for the good of the City and its citizens. In addition to ownership of the Audi, the City owns all fixtures within the Audi, including but not limited to the lighting and sound equipment.

C. City Duties

1. The City shall maintain the Audi infrastructure, subject to City Council approval and appropriation.

2. The City shall retain ownership of the Mason and Hamlin Model BB Grand Piano (s/n 41525) for so long as it is practical, and to not dispose of said Piano without notice to the Friends.

3. The City Parks and Recreation Department shall coordinate the scheduling of all Audi performances.

D. Friends Duties

1. Fundraise and Market the Audi

a. In accordance with applicable provisions of this Agreement, the Friends shall fundraise and market the Audi.

b. The Friends shall assist the City in maintaining a policy and procedure manual to operate the Audi.

c. The Friends shall develop, implement, and manage a marketing program to promote the Audi toward achieving the financial stability.

Specifically, the Friends shall promote the Audi through the use of brochures, banners, social media and other appropriate means. In addition, the Friends shall promote the facility through participation in community activities such as the Greater Concord Chamber of Commerce, Intown Concord, Concord Community Television and other community, state, and national organizations that may be suited to the purpose.

d. The Friends shall institute fundraising activities to support the Audi's infrastructure, equipment and furnishings.

2. Training Audi Personnel

a. The Friends shall train House Managers, Stage Electricians, Sound Technicians and other persons as necessary for Audi performances and operation.

b. The Friends and the City shall coordinate the request and review of a State of New Hampshire background check on any person the Audi advertises as a person for hire or volunteer at any Audi performance.

c. The Friends may coordinate volunteers to assist in general upkeep of the Audi as approved by the City Manager or his/her designee.

E. Audi Improvements

1. Friends shall not perform any maintenance, work or improvement to the Audi without the express authorization from the City Manager or his/her designee.

2. The Parties agree that any and all improvements to the Audi, shall remain property of the City, unless specifically excluded by the City Manager or his/her designee.

F. City and Friends Annual Meeting

In consideration for the Friends, marketing, fundraising and training services, the City agrees to hold an annual meeting with the Friends to plan, discuss, and review Audi operations, maintenance and performances, and may further specifically address the following issues:

1. Review actual and estimated Audi budget, including, revenues, expenditures (direct and indirect costs) and net asset position;

2. Estimate of Audi revenues and expenses for the upcoming year;
3. Review actual and estimated results of the Friends financial operations and representation of its financial soundness;
4. Review Audi use in relation to its purpose and any related objectives;
5. Review Audi complaints and evaluate the effectiveness of the complaint resolution process;
6. Review Audi donations, in-kind and volunteer programs and services, and future volunteer plans;
7. Review Audi schedule;
8. Review Audi policy or procedural manual;
9. Discuss Audi long-term capital and other plans, giving due consideration to long-term, operational, and maintenance cost impacts on the City;
10. Review Friends marketing and fundraising results and discuss future marketing and fundraising plans;
11. Review and discuss updates to this Agreement.
12. Review Friends' annual report of the planned activities for the Audi in the upcoming year.
13. Review Audi rental rates and user fees.
14. Review any suggestions for improved and cost-efficient operations and management, or capital improvement needs or plans, including long-term capital improvements for the Audi.

IV. SEVERABILITY

If any term or provision of this Agreement shall to any extent be determined to be void, invalid, or unenforceable, or should violate any law of the United States, this Agreement shall be considered divisible as to such provisions, both the enforceability or validity of the remainder of the Agreement shall not be affected.

V. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. The Parties agree that any and all prior and contemporaneous communications, either written or oral, and all previous and contemporaneous agreements, if any, between the Parties with respect to the subject matter hereof are automatically canceled by the signing of this Agreement. The Parties acknowledge and agree that they are not relying upon any statement, representation, or communication of any kind not contained in this Agreement. No change, amendment, or modification of this Agreement shall be effective unless made in writing and signed by each Party.

VI. ASSIGNABILITY

This Agreement cannot be directly or indirectly assigned, sold, transferred or encumbered by the Friends in whole or in part, without authorization in writing from the City.

VII. NONDISCRIMINATION

Notwithstanding any other or inconsistent provision in this Agreement, Friends, for itself, its personal representatives, as part of the consideration for this Agreement, do hereby covenant and agree, as a covenant running with this Agreement, that:

- A. No person on the grounds of age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental disability or nationality shall be

excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Audi.

B. The Friends shall perform its duties under this Agreement in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

C. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement.

VIII. INSURANCE

It is agreed that during the term of this Agreement, Friends, at its sole cost and expense, shall carry and maintain the following types of insurance which shall name the City as “Additionally Insured”. The Insurance shall be as follows:

Certificate of Liability Insurance:

- General Liability Insurance in the Aggregate of One (1) Million Dollars.
- Each Occurrence of Injury One (1) Million Dollars.
- Medical Expense (any one person) Five (5) Thousand Dollars.

IX. INDEMNIFICATION

The Friends shall defend, indemnify and hold harmless the City and its officials, agents and employees (collectively, the “Indemnified Parties”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “Liabilities”) resulting from this Agreement and from injury to or death of persons,

and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the Friends (or its contractors, agents or employees) in connection with this Agreement provided, however, that nothing herein shall require the Friends to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the City. Additionally, to the fullest extent permitted by law, no official, employee, agent or representative of the City shall be individually or personally liable for any obligation or liability of the Friends.

X. NOTICES

Any notice or other communication required by this Agreement will be deemed to have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to a Party at the address set forth above. Notice to the City, shall be directed to the City Manager, Notice to the Friends shall be to its President.

XI. AMENDMENTS TO THIS AGREEMENT

The provisions herein may be modified or changed by vote of the City Council and the Friends of the Auditorium. City Council authority to enter into this agreement was granted on _____.

XII. EXECUTION

Executed on this ____ day of _____, 2018.

**FRIENDS OF THE CONCORD
CITY AUDITORIUM**

CITY OF CONCORD

By: _____
Its Treasurer/City Liaison
Duly Authorized

By: _____
Its City Manager
Duly Authorized