



RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO THE ATTACHED MEMORANDUM OF AGREEMENT WITH THE REFLECTION GARDEN AND LABYRINTH COMMITTEE RELATIVE TO THE CONSTRUCTION OF A REFLECTION GARDEN AND LABYRINTH AT ROTARY COMMON

CITY OF NASHUA

In the Year Two Thousand and Ten

WHEREAS, on December 22, 2009, the Board of Aldermen passed R-09-253 amended, which authorized the City of Nashua to enter into a Memorandum of Agreement with the Reflection Garden and Labyrinth Committee relative to the construction of a reflection garden and labyrinth at Rotary Common, and authorized the City of Nashua to accept a donation of approximately \$125,000 from the Rotary Club of Nashua, Inc. on behalf of the Reflection Garden and Labyrinth Committee to be used pursuant to the agreement, and resolved that the funding for the City's obligations under the Agreement in the anticipated amount of \$2,000 would come primarily from account 553-45060 "Street Department – Construction Materials"; and

WHEREAS, R-09-253 amended required that the Memorandum of Agreement be brought back to the Board of Aldermen through the form of resolution for final approval;

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the City of Nashua is authorized to enter into the attached Memorandum of Agreement with the Reflection Garden and Labyrinth Committee.

LEGISLATIVE YEAR 2010

RESOLUTION: R-10-07

PURPOSE: Authorizing the Mayor to enter into the attached Memorandum of Agreement with the Reflection Garden and Labyrinth Committee relative to the construction of a reflection garden and labyrinth at Rotary Common

SPONSOR(S): Mayor Donnalee Lozeau
Alderman Paul M. Chasse, Jr.

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: Previous legislation, R-09-253, amended, resulted in the fiscal impact of a donation of approximately \$125,000, which can only be used for specific purposes detailed by the terms of the agreement approved by this legislation. The agreement also contains a commitment for the City to perform general site preparation. The estimated fiscal impact of the city's obligations includes labor costs of \$4,500 and materials costs of \$2,000 for a total of \$6,500.

ANALYSIS

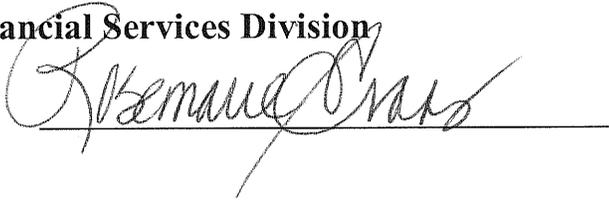
This resolution authorizes the Mayor to enter into the attached Memorandum of Agreement with the Reflection Garden and Labyrinth Committee relative to the construction of a reflection garden and labyrinth at Rotary Common, which is required by R-09-253 amended.

The agreement also provides for a commitment of city funds and labor. This legislation should be referred to the Board of Public Works.

**Approved as to account
structure, numbers,
and amount:**

Financial Services Division

By:



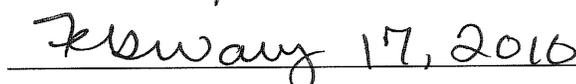
Approved as to form:

Office of Corporation Counsel

By:



Date:



Memorandum of Agreement

This memorandum of agreement is a legal, valid and binding agreement made and executed by and between:

The Reflection Garden and Labyrinth Committee (hereinafter referred to as 'the Committee')
P O Box 3327
Nashua, NH 03061-3327

And

The City of Nashua (hereinafter referred to as 'the City')
229 Main Street
Nashua, NH 03060-1729

The City and the Committee (collectively referred to as the "Parties") hereby agree to construct a Reflection Garden and Labyrinth at a site known as Rotary Common, a City Park located at 315 Main Street, Nashua, NH ("the Site") under the following terms and conditions:

1. The Committee shall raise up to \$125,000 of private funding (hereinafter "Funds") on behalf of the City which shall be expended for the following:
 - a. The design and construction services of *Labyrinths in Stone* at the Site, as agreed upon in a professional services contract between the City and *Labyrinths in Stone*, which will require approval of the Finance Committee;
 - b. The construction and installation of a concrete ring on the Site, per *Labyrinths in Stone's* specifications;
 - c. The construction and installation of three granite benches, one fountain, a walkway around the Labyrinth, a "Walkway of Honor" leading to the entrance of the Labyrinth and for the purchase and planting of plants for the gardens;
 - d. The balance of the funds, should any exist, may be used solely for other design and construction costs, as mutually agreed upon by the Parties.
2. The Parties shall agree to the design of the site located near Bridal Path prior to initiating any construction work.
3. The City, at its own expense, exclusive of the funds raised by the Committee, shall be responsible for funding and implementing the following:
 - a. Two handicap parking spaces;
 - b. A walkway connecting the Labyrinth to Rotary Common;
 - c. Any and all site preparation, excavation, grading and fill in advance of construction and installation, except for items described in Section 1 of this agreement.
4. The City will contract for, or provide internally, the labor, materials, and equipment necessary to carry out the entire project. Activities that fall within Section 1 of the agreement will be paid for using the funds donated to the city, and activities that fall within Section 3 of the agreement will be paid for using city funds.
5. The City shall provide access for *Labyrinths in Stone* to complete the Labyrinth once the remainder of the Site preparation is complete.
6. The Parties shall agree to a reasonable timetable for all phases of construction and fundraising.
7. The Parties shall agree to a budget with an expenditure schedule.
8. In the event that sufficient Funds are not raised by either the City or the Committee all funding raised by the Committee for this project will be refunded to the Committee; unless an alternative plan can be mutually agreed upon within 60 days of this determination.

9. In the event that there are unforeseen complications that arise on site, additional unforeseen costs that arise above and beyond those set forth in writing prior to the start date of the project, or unforeseen issues related to the archeologist and his or her findings on Site, the parties agree to develop a written and mutually agreeable plan for a reasonable outcome immediately. If a reasonable outcome of the foregoing is not reached within 60 days, the Parties will terminate this Agreement and the unexpended funds raised by the Committee will be refunded to the Committee and be redistributed to the donors.
10. Upon completion of the Labyrinth and gardens, all materials in place as part of the Labyrinth and Gardens will become the property of the City of Nashua. The City shall be responsible for the maintenance, perpetual care, irrigation, lighting, and upkeep of these additions to the Park, consistent with the City's maintenance, insurance and legal responsibilities regarding other City Parks and spaces.
11. This Agreement shall be effective once signed by both the City and the Committee.
12. Nothing in this Agreement creates any enforceable rights in third parties.
13. No party hereto shall be entitled to assign this Agreement or rights and obligations hereunder without the consent in writing of the other party hereto.
14. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous or contemporaneous discussions, negotiations, agreements, or understandings relating thereto whether written or oral between the parties hereto with respect to the subject matter hereof.
15. No change to this agreement shall be binding unless and until reduced to writing and signed by duly authorized individuals from both the City and the Committee.

IN WITNESS WHEREOF, the parties have signed this Memorandum of Agreement, this _____ day of _____, 2010.

For the Committee

for the City

Yvonne Dunetz
Reflection Garden and Labyrinth
Committee Chairperson

Mayor Donnalee Lozeau
City of Nashua

John Callahan
Reflection Garden and Labyrinth
Co-Chair and Project Manager