

## MEMORANDUM OF UNDERSTANDING

between

MONTGOMERY COUNTY, MARYLAND

and

GLEN ECHO PARK PARTNERSHIP FOR ARTS AND CULTURE, INC.

This Memorandum of Understanding (the "MOU") is entered into between MONTGOMERY COUNTY, MARYLAND, (the "County") and GLEN ECHO PARK PARTNERSHIP FOR ARTS AND CULTURE, INC. (the "Entity"), (the County and the Entity together the "Parties") on this 5th day of September, 2002.

### BACKGROUND

1. Glen Echo Park, a unit of the National Park System located 1.5 miles northwest of Washington, D.C., in Montgomery County, Maryland, has served the region as a center for education, entertainment and cultural development for over a century.
2. The County entered into a cooperative agreement with the National Park Service ("NPS") dated June 7, 2002 (the "NPS Cooperative Agreement"), to implement the Modified Public Partnership Alternative identified in the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued in the Federal Register on March 9, 2001, and selected in the Record of Decision issued in the Federal Register on May 29, 2001.
3. Subsequent to entering into the NPS Cooperative Agreement, the County

designated the Entity to, among other things: a) manage and provide stewardship for Glen Echo Park as a center for educational, artistic, historical, cultural, environmental and recreational activities; b) market and promote Glen Echo Park to assure that the entire community, including persons of diverse racial, ethnic and socio-economic backgrounds, has access to the opportunities the park provides; c) promote and support both the study of and participation in the arts and humanities, history and environmental concerns; d) encourage effective working relationships, and active cooperation and collaboration, among individuals and organizations who provide programming within the park and between users of the park and surrounding communities; and e) ensure the long term success, financial and environmental sustainability of Glen Echo Park as an important community and national institution; and f) engage in any other activities which are not inconsistent with Section 501(c)(3) of the Internal Revenue Code.

4. The County's designation is stated in the Agreement between Montgomery County, Maryland and Glen Echo Park Partnership for Arts and Culture, Inc., dated September 5, 2002, a copy of which is attached to this MOU as **Exhibit A**, and incorporated as if fully set forth.

5. Pursuant to **Exhibit A**, the Entity shall serve as the County's designated management entity, as identified in the NPS Cooperative Agreement, to conduct the day-to-day operations at Glen Echo Park.

6. It is the County's intent to designate the Entity as, and the Entity desires to be, the management entity, as identified in the NPS Cooperative Agreement, Attachment B to **Exhibit A**, until June 30, 2017.

7. The term of **Exhibit A** expires on June 30, 2006, after which this MOU shall take effect. Thereafter, the Entity shall serve as the management entity, as identified in the NPS Cooperative Agreement, until June 30, 2017, subject to the terms and conditions of this MOU.

NOW, THEREFORE, in consideration of the foregoing premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

#### I. Scope

A. The Entity shall serve as the County's designated management entity, as identified in the NPS Cooperative Agreement, to conduct the day-to-day operations at Glen Echo Park. During the Term of this MOU and so long as the agreement contained in **Exhibit A** is effective, the Entity may use the those parcels of land and Government improvements described in Appendix A to the NPS Cooperative Agreement, Attachment B to **Exhibit A** (the "Premises"), to conduct the operations authorized in this MOU and subject to **Exhibit A** and the NPS Cooperative Agreement.

B. The Entity will: a) manage and provide stewardship for Glen Echo Park as a

center for educational, artistic, historical, cultural, environmental and recreational activities; b) market and promote Glen Echo Park to assure that the entire community, including persons of diverse racial, ethnic and socio-economic backgrounds, has access to the opportunities the park provides; c) promote and support both the study of and participation in the arts and humanities, history and environmental concerns; d) encourage effective working relationships, and active cooperation and collaboration, among individuals and organizations who provide programming within the park and between users of the park and surrounding communities; e) ensure the long term success, financial and environmental sustainability of Glen Echo Park as an important community and national institution; and f) engage in any other activities which are not inconsistent with Section 501(c)(3) of the Internal Revenue Code.

C. The Entity must comply with all applicable provisions of the NPS Cooperative Agreement, which is attached as Attachment B to the NPS Cooperative Agreement, and is incorporated herein by reference as though fully restated.

D. As stated in the NPS Cooperative Agreement, the Entity must, among other things, do the following:

1. Develop, maintain, and administer programs and services occurring on Glen Echo Park in accordance with NPS guidelines, including, but not limited to, National Environmental Protection Act and National Historic Preservation Act.

2. Be aware of and agree to abide by all conditions of the NPS

Cooperative Agreement.

3. Carousel and Band Organ

a. Assume responsibility for the operation, routine maintenance, and staffing of the carousel and band organ at Glen Echo Park. The carousel and band organ may be operated four days per week, during appropriate weather conditions, from May 1 through September 30 of each year during the term of this MOU. The carousel and band organ may be operated four hours per day during two of the four days of operation per week, and six-and-one-half hours per day during the remaining two days of the four days of operation per week. The carousel and band organ may also be operated on another ten occasions, provided that no single occasion shall exceed more than four hours of use. No deviation from this operation schedule may occur without the prior approval of the NPS.

b. Submit the carousel for annual inspection prior to the opening of each carousel season.

c. Establish a fee structure for the public's use of the carousel and band organ. The Entity must submit the proposed fee structure to the NPS for approval.

d. Maintain and test, at least once a year, the fire suppression system, security alarm, and fire detection alarm at the carousel and band organ.

e. Deposit at least 20% of the annual gross revenue generated from the operation of the carousel band organ into an interest bearing account controlled by the Entity. The funds deposited into this account must be dedicated to the restoration and maintenance of the carousel and band organ.

4. Community Relations

a. Minimize impact of events and programming on adjoining communities through scheduling and public transportation improvements.

b. Obtain prior approval of the NPS before using federal property bounded by Tulane, Bowdoin, and Oberlin Avenues, as depicted on Figure 3-4 of the Final Management Plan/Environmental Impact Statement for Glen Echo Park, issued by the NPS in February 2001.

c. Obtain prior approval of the Town of Glen Echo before using town property bordering Tulane, Bowdoin and Oberlin Avenues.

5. Concessions

a. Provide Guest Services, Incorporated ("GSI"), the NPS' current concessioner, with an advance schedule of programs occurring in Glen Echo Park and the anticipated number of program participants, so that the concessioner will be prepared with a sufficient amount of food and refreshments to meet the anticipated need. With respect to catered events, the notice to GSI should be given at least two weeks prior to the catered event. With respect to major public events, the notice should be given at

least 30 calendar days prior to the event.

b. Ask the NPS to negotiate with GSI with respect to any foods or refreshments the Entity desires to have offered at Glen Echo Park. Alternatively, if permitted by NPS, the Entity will negotiate with GSI with respect to any foods or refreshments the Entity desires to have offered at Glen Echo Park.

6. Cooperating Association

a. The Entity may serve as a cooperating association subject to this MOU and the NPS Cooperative Agreement. Accordingly, the Entity may operate and staff the store at Glen Echo Park and supply inventory for the store.

b. The Entity may also oversee the sale of art by other cooperating associations. This oversight shall be in conjunction with the NPS' role under *Director's Order No. 32: Cooperating Associations*.

c. The Entity may also oversee the sale of educational materials by other cooperating associations. This oversight shall be in conjunction with the NPS' role under *Director's Order No. 32: Cooperating Associations*.

7. Copyright. Assure that copyright and licensing requirements are met with respect to performances occurring at Glen Echo Park.

8. Development, Maintenance, and Administration of Premises.

Develop, maintain, and administer the premises at Glen Echo Park in cooperation with the NPS. With respect to programmatic details, the Entity must:

- a. Develop programs and activities consistent with the NPS' goals for Glen Echo Park;
- b. Improve the diversity of program offerings and program participants; and
- c. Collect fees for program offerings, subject to the prior approval of the NPS.

9. Personnel. Provide all necessary personnel for the operation of its activities under this Memorandum of Understanding.

10. Public Participation. Provide the opportunity for public participation for a wide variety of affordable and accessible recreational and educational activities with both wide popular appeal and specialized appeal to different ethnic, age, cultural, and educational groups.

11. Resource Protection. Enhance the protection and preservation of cultural and historical resources at Glen Echo Park through the creation of an improved revenue structure, thereby making more funds available for such protection and preservation.

12. Security

- a. Secure, electronically or otherwise, all buildings, equipment, and facilities on the premises at Glen Echo Park, including, but not limited to, a final check at the end of each day and each event to ensure that: i) the lights are turned off; ii)



the doors are locked; iii) the water is turned off; and iv) the alarm system is properly set. In the event the Entity must contact a law enforcement agency, the Entity must contact the United States Park Police at (202) 619-7310.

b. Develop, implement, and maintain a written Crime Prevention/Physical Security Plan approved by the NPS. This plan must identify responsibilities for, among other things: i) daily securing of buildings; ii) access to buildings and assignment of keys; iii) frequency of security patrols; and iv) emergency contacts.

c. Provide, if the NPS, the County and the Entity collectively agree, additional unarmed security for special events and programs extending beyond the normally prescribed hours. The United States Park Police must approve in writing any unarmed security prior to its being used at Glen Echo Park.

13. Signage. Design a uniform signage plan for the premises at Glen Echo Park. The signage plan is subject to the NPS' prior approval.

14. The Entity's obligations in the day to day management and operation of Glen Echo Park are specified in the NPS Cooperative Agreement. It is not the intent of the parties to exclude any of the provisions of the NPS Cooperative Agreement where those provisions have not been specifically stated, cited or referred to. It is the intent of the parties to identify certain portions of the NPS Agreement, acknowledging, however, that all of the provisions, conditions and requirements of the NPS Cooperative Agreement

apply with equal force and effect with respect to the Entity's obligations to the County under this MOU. In that regard, the parties agree that this MOU is subject to the NPS Cooperative Agreement.

## **II. The Entity's Fundraising Activities**

In order to fulfill its obligations under this MOU, the Entity may seek funding from private foundations, individuals, corporations, and federal, state and county governments in connection with the development, maintenance, and administration of programs and services occurring at Glen Echo Park. The Entity's fund raising activities must be in accordance with its corporate charter and by-laws and further in accordance with all applicable federal and state laws. The Entity may also pledge or encumber the NPS Cooperative Agreement as security as provide under the NPS Cooperative Agreement, Article IV, Section A, subsection 13, "Pledging or Encumbrance of this Agreement."

## **III. Spanish Ballroom**

The Entity will operate the Spanish Ballroom in accordance with the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 16, "Spanish Ballroom."

#### IV. Life Cycle Maintenance

A. The Entity may also raise revenue through sales and business transacted at Glen Echo Park as authorized in the NPS Cooperative Agreement. The Entity must set aside a percentage of its "gross receipts" as that term is defined in the NPS Cooperative Agreement, in a life cycle maintenance account. Beginning in the fifth year of the Entity's operation at Glen Echo Park and or all subsequent years this Memorandum of Understanding is in effect, the Entity must set aside five percent of the Entity's "gross receipts."

B. The Entity must comply with all of the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 8, "Life Cycle Maintenance Account," in collecting, maintaining, managing and expending the funds related to the Life Cycle Maintenance Account.

#### V. Maintenance

The Entity must physically maintain and repair all facilities used in its operations under this MOU and in accordance with **Exhibit A** and the NPS Cooperative Agreement. The Entity's obligations with respect to maintenance shall be in accordance with the requirements of the NPS Cooperative Agreement, Article IV, Section A, subsection 9, "Maintenance."

## VI. Term

Performance under this MOU shall commence upon the expiration of the Agreement contained in Exhibit A, unless the Agreement in Exhibit A is terminated, or on July 1, 2006. This MOU expires on June 30, 2017.

## V. Limitation on Liability of County

The County is not liable for any obligation, act or omission of the Entity or its agents or employees. Any contract executed by the Entity must state that the County is not liable for any obligation of the Entity under the contract. The Entity is not liable for any obligation, act or omission of the County or its agents, contractors, subcontractors, or employees. The County is responsible for any loss, personal injury, death and any other damage (including incidental or consequential) that may be done or suffered by reason of the County's negligence or failure to perform any contractual obligations, PROVIDED, however, that the County's liability is subject to the notice requirements and damages caps stated in the Local Government Tort Claims Act, Md. Ann. Code Cts. & Jud. Proc. §§5-301 through 5-304 (1974, 1998 Repl. Vol.), any other applicable law, and subject to all applicable immunities the County enjoys.

## VI. On-Site Visits and Inspection of Records

- A. The County has the right to monitor and inspect all services performed and

to make on-site visits at all reasonable times and places, including at the Entity's place of business, for the purpose of monitoring and evaluating the Entity's programs and operations, as well as to ensure compliance with all requirements under this MOU.

B. The County may inspect the Entity's records in connection with the Entity's performance under this MOU upon reasonable notice at a mutually convenient time and location.

#### **VII. Limitations**

In addition to any other limitation in this MOU and under applicable laws, the Entity must not: 1) pledge the full faith and credit of the County; 2) issue bonds or notes; 3) exercise any police power of the County, except those expressly authorized by law or in this Memorandum of Understanding; 4) exercise the power of eminent domain; 5) lease any property as a tenant for a term of years beyond the date of termination of the Entity; 6) purchase, sell, construct, or as a landlord, lease any real property; or 7) compete with the private sector, except as otherwise authorized by Montgomery County law, the Agreement in Exhibit A, this MOU, or any other applicable law.

#### **VIII. Miscellaneous**

A. This MOU shall be governed by the laws of Montgomery County, Maryland, and the State of Maryland. Any civil action brought to enforce the terms of

this MOU must be brought in a court of competent jurisdiction in Montgomery County, Maryland.

B. This MOU, the Agreement in Exhibit A, and the NPS Cooperative Agreement (and all attachments thereto) constitute the entire agreement of the Parties, and no other documents constitute the agreement of the Parties.

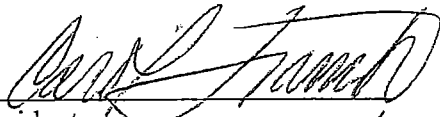
C. This MOU may only be amended by written agreement signed by the Parties.

D. If any part of this MOU is deemed unenforceable by a court of competent jurisdiction, that provision may be severed from this MOU and the remaining provisions remain in full force and effect.

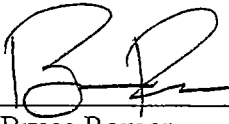
**[SIGNATURES FOLLOW]**

The Parties have executed this MOU on the date and year first written above.

GLEN ECHO PARK PARTNERSHIP  
FOR ARTS AND CULTURE, INC.


By:   
President  
Carol Trainick  
Printed Name

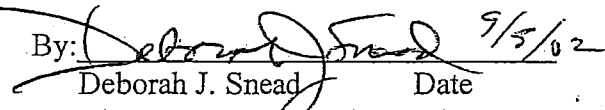
MONTGOMERY COUNTY,  
MARYLAND

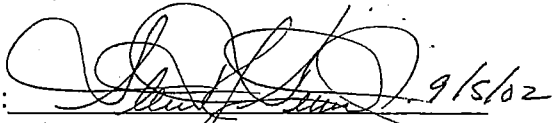
By:  9.5.02  
Bruce Romer Date  
Chief Administrative Officer

I hereby certify that the above-named person is a corporate officer and empowered to sign contractual agreements on behalf of Glen Echo Park Operating Entity, Inc.

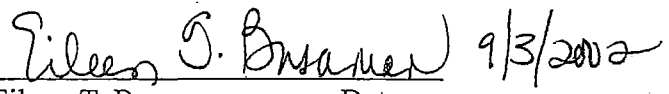
RECOMMENDED:

By:  9/4/02  
Secretary Date

By:  9/5/02  
Deborah J. Snead Date  
Director, Bethesda-Chevy Chase  
Regional Services Center

By:  9/5/02  
Albert J. Genetti, Jr. Date  
Director, Department of Public Works  
and Transportation

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By:  9/3/2002  
Eileen T. Basaman Date  
Assistant County Attorney