

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into on this 27<sup>th</sup> day of September 2016 between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation, (City), through its Board of Park and Recreation Commission, (Board) and Westside Community Action Network Center, a Missouri Nonprofit Organization (WCAN).

WHEREAS, the Department of Parks and Recreation is charged with the responsibility to provide maintenance and upkeep on all of the property designated within the Parks and Boulevard System as recognized by City ordinance and Charter, and

WHEREAS, the City and WCAN have identified a mutually beneficial plan to provide maintenance of a Fruit tree Orchard beginning in September, 2016 on park land between the Tony Aguirre Community Center and Observation Park (Premises). All the activities and educational programs will be led by WCAN volunteers and

WHEREAS, the Department of Parks and Recreation has a tradition of partnering with local organizations who are interested in donating funds or volunteers in order to receive an increased level of maintenance or specialized landscaping for a particular area of park property, and

WHEREAS, the Parties hereto now desire to enter into an Agreement (Agreement) for maintenance of the Fruit Tree Orchard (sometimes hereinafter referred to as "Work" and the maintenance thereof; and

WHEREAS, the President of the Board is authorized and empowered by the City Charter to execute agreements on behalf of the City;

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained herein, the Parties hereto do mutually agree as follows:

**Sec.1. Right to Enter Premises.** WCAN shall be permitted to enter onto and perform the following activities on the Premises:

- A. During the term of this Agreement, WCAN is permitted to enter onto the Premises to install and maintain the Work. WCAN shall, at its sole expense, install or contract or coordinate with volunteers for the installation of the Work on the Premises. WCAN is permitted to construct and maintain a tool shed for the purpose of storing tools and equipment necessary to facilitate the Work. Only said tools and equipment shall be stored in said tool shed.
- B. WCAN shall require any contractor to comply with the terms of this Agreement and to all applicable City construction policies including Missouri Prevailing Wage and Affirmative action.

**Sec.2. Term.** Unless otherwise terminated by mutual agreement, the term of this Agreement will begin September 15, 2016 for a term of ten (10) years. This agreement will terminate prior to the stated term if; (1) either party fails to follow the mutually agree upon terms and does not rectify its failure within 30 days after written notice of such non-compliance, or (2) upon 180 days written of termination by either party.

**Sec. 3. Title.** Title to the Premises shall at all times remain in the City. Title to the Work shall pass to the City upon completion of installation and acceptance of the Work by the Director of Park and Recreation.

**Sec. 4. Installation and Maintenance.**

- A. All plantings shall receive the prior approval of approval of the Natural Resources division of the Parks and Recreation Department.
- B. All maintenance performed shall meet or exceed Parks Department standards, attached hereto as **Exhibit A** and incorporated herein by reference.

**Sec. 5. Notices.** All notices required by this agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, or facsimile to the following. All notices mailed by regular U.S. mail are effective three (3) days after mailing.

**CITY**

Parks and Recreation Department  
Attn: Mark L. McHenry, Director  
4600 East 63<sup>rd</sup> Street  
Kansas City, Missouri 64130  
(816) 513-7500 Fax (816) 513-7602

**WESTSIDE COMMUNITY ACTION NETWORK CENTER**

Westside Community Action Network Center  
Attn: Jorge D. Coromac  
2130-B Jefferson Street  
Kansas City, Missouri 64108  
(816) 842-1298

**Sec. 6. Modification.**

- A. Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except by written amendment signed by City and WCAN.
- B. No act, conversation or communication with any officer, agent or employee of City either before or after the execution of this Agreement, shall affect or modify any term or terminology of this Agreement and any such act, conversation or communication shall not be binding upon City or WCAN.

**Sec. 7. Assignability/Subcontracting.** WCAN shall not subcontract, assign or transfer any part or all of its obligations or interests under this Agreement without prior approval of City.

**Sec. 8. Independent Contractor.** WCAN is an independent contractor with respect to all services performed under this Agreement. WCAN accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any State or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by WCAN on work salaries or other remuneration paid to persons employed by WCAN on work performed under the terms of this Agreement. WCAN shall defend, identify and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or WCAN, shall be deemed or construed to create any third-party beneficiary or principal and agent WCAN or relationship with City. WCAN is not City's agent and WCAN has no authority to take any action or execute any documents on behalf of City.

**Sec. 9. Indemnification.**

A. For purposes of this Section 9 only, the following terms shall have the meanings listed:

- 1. Claims means all claims, damages, liability, losses, costs and expenses, court cost and reasonable attorneys' fees, including attorney's fees incurred by the City in the enforcement of its indemnity obligation.

2. WCAN's Agents means WCAN's officers, employees, sub consultants, subcontractors, successors, assigns, invitees, and others agents.

3. City means City and its agents, officials, officers and employees.

B. WCAN 's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General Liability insurance that WCAN is required to procure and maintain under this Agreement.

C. WCAN shall defend, indemnify, and hold harmless City from and against all Claims arising out of our resulting from all acts or omissions in connections with this Agreement caused in whole or in part by WCAN or WCAN's Agents, regardless of whether or not caused in part by any act or omission including negligence, of City. WCAN is not obliged under this Section to indemnify City for the sole negligence of City.

**Section 10. Insurance**

A. WCAN shall procure and maintain in effect throughout the duration of this MOU insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this MOU, WCAN shall supply such insurance at City's cost. Policies containing a Self-Insured Retention will be unacceptable to City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation	Statutory
Employers Liability	\$100,000 accident
with limits of:	\$500,000 disease-policy limit
	\$100,000 disease-each employee

3. **Commercial Automobile Liability Insurance:** with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the License, by Licensee.
  4. If applicable, **Professional Liability Insurance** with limits per claim and annual aggregate of \$2,000,000.
- B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as **additional insureds** for the services performed under this MOU. WCAN shall provide to City at execution of this MOU a certificate of insurance showing all required endorsements and additional insureds. The certificate shall be on the standard ACORD Certificate of Liability form, or its equivalent.
  - C. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
  - D. Regardless of any approval by City, it is the responsibility of WCAN to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of WCAN's failure to maintain the required insurance in effect, City may order WCAN to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this MOU as provided for herein and by law.

**Sec. 11. Governing Law.** This agreement shall be construed and governed in accordance with the law of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

**Sec. 12. Compliance with Laws.** WCAN shall comply with all federal, state and local laws, ordinances and regulations applicable to this Agreement. WCAN, at its own expense, shall secure all occupational and professional license and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement. All references to "Code" shall mean City's Code of Ordinances, including any amendments thereto of recodification thereof.

**IN WITNESS WHEREOF:** The Parties agree to comply with the terms of this Agreement.

WESTSIDE COMMUNITY ACTION  
NETWORK CENTER (WCAN)

By: 

Title: Director

Date: 9-27-16

KANSAS CITY MISSOURI

By: 

Mark McHenry, Director  
Park and Recreation Dept.


Date: 9.29.16

Authorized by Board Resolution# 30714 on 9/27 2016

ATTEST

  
Secretary to the Board

APPROVED AS TO FORM

  
Assistant City Attorney

**EXHIBIT A**  
**Maintenance Standards**

The basic maintenance standards which apply to the healthy trees and community garden shall apply in all instances to the urban orchard and community garden.

1. Trees shall be mulched and pruned yearly, in a seasonally appropriate time.
2. Trees will be sprayed for pests and/or diseases at least twice annually, with the eradication method to be determined by the City Forester.
3. Trees shall be regularly watered during the period of their establishment (the first two years) and shall be watered also on a regular basis during dry periods which would impact the health of the tree.
4. WCAN will consult with City Forester care/maintenance issues as they arise.
5. WCAN will have a Community Garden Coordinator (CGC). The CGC is a volunteer leadership position. Responsibility of the CGC is manage garden and orchard volunteers, garden/orchard maintenance, train gardeners using appropriate techniques, and serve as a direct liaison between gardeners and the City.
6. All produce will be grown in raised beds which include landscape fabric. The lumber used for the construction of the beds must be untreated, and 10% of beds must be wheelchair accessible.
7. No plants shall be used that are listed as invasive or potentially invasive on the Missouri Invasive Plant Advisory Group list of invasive plants, including quickly spreading herbs such as mint, unless they are potted.
8. Drugs, alcohol and smoking are prohibited.
9. WCAN CGC and volunteers/ gardeners are responsible for maintaining the plots and must be present throughout the duration of the growing season.
10. WCAN must show activity in their garden before and during the growing season. A tool shed is required at each garden. Shared tools must be kept clean and stored in the tool shed when they are not in use.
11. Waste will be managed and compost bins will be used appropriately.