

CITY OF OVERLAND PARK, KANSAS

AGREEMENT BETWEEN

CITY OF OVERLAND PARK, KANSAS, AND THE ARTS AND RECREATION
FOUNDATION OF OVERLAND PARK, INC.

FOR FUNDING THE CONSTRUCTION OF THE TRAIN GARDEN AT THE OVERLAND
PARK ARBORETUM AND BOTANICAL GARDENS

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and between the City of Overland Park, Kansas, hereinafter the “City”, and the Arts and Recreation Foundation of Overland Park, Inc. hereinafter the “Foundation”;

WITNESSETH:

WHEREAS, the City and the Foundation have agreed to cooperate with respect to the construction of the Train Garden to be located at the Overland Park Arboretum and Botanical Gardens:

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Foundation for itself, and its successors, as follows:

ARTICLE I. RESPONSIBILITIES OF FOUNDATION

- A. Foundation shall be responsible for funding the purchase of materials, construction services, and plant materials for the Train Garden in the approximate amount of \$400,000.
- B. Foundation shall appoint one representative to assist the City Project Coordinator in obtaining bids, plans, permits, etc., and to serve as advisor on any design or construction decisions.
- C. Foundation agrees that once the Train Garden is constructed, it will become the property of the City and the ongoing maintenance of the Train Garden will be the responsibility of the City.
- D. Foundation agrees that once the Train Garden is constructed, future maintenance will be the responsibility of the City, however, the Foundation may assist in funding the maintenance or enhancing the maintenance in partnership with the City.

ARTICLE II. RESPONSIBILITIES OF THE CITY

- A. The City will provide a project coordinator who will be responsible for obtaining any required permits, coordinating the ordering of materials, supplies, and construction services, and providing supervision of the construction of the Train Garden.
- B. The City will provide support funding in the approximate amount of \$40,000 for materials, supplies, and construction services for the construction of the Train Garden.
- C. The City shall be responsible for coordinating and/or providing maintenance of the Train Garden upon completion of construction.

ARTICLE III. GENERAL PROVISIONS

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. It is understood and agreed between the parties that there shall be no waiver or modification of the Agreement unless such waiver or modification is first reduced to writing and signed by all parties hereto.
- B. All notifications to the Foundation shall be sent to Vicki Lilly, 4209 W. 104th Terrace, Overland Park, KS 66207, unless different notification information shall be given to the City in writing. All notifications to the City shall be sent to the Director of Parks and Recreation, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212, unless different information is given to the Foundation in writing.
- C. Either party may terminate this agreement if it becomes apparent during the planning process that there will be additional costs above what is outlined in this agreement. Either party may terminate this agreement during the planning process if any issues arise that are not acceptable or would make the project undesirable. Either party may terminate this agreement if the final cost estimates for all the materials and services required to construct the Train Garden exceed the financial commitment of either party as outlined in this agreement.

IN WITNESS WHEREOF, the City of Overland Park, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the Friends have executed this Agreement in the prescribed form and manner, the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

J. Bart Budetti, Attorney for City

THE ARTS AND RECREATION FOUNDATION OF OVERLAND PARK, INC.

By _____
Vicki Lilly, President