

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
SERENITY POINTE GARDEN AND THE ERICKSON ROSE GARDEN RETAINING WALL
AT THE OVERLAND PARK ARBORETUM AND BOTANICAL GARDENS

THIS AGREEMENT is made and entered into this 15th day of November, 2010, 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 Serenity Pointe garden, located in the area designated on the Arboretum Master Plan as the Rose Garden Overlook, and the Erickson Rose Garden retaining wall 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 the complete funding of the construction of the Serenity Pointe garden as outlined in the attached budget (Appendix A) not to exceed \$169,736.00
- B. Foundation shall partially fund the construction of the Erickson Rose Garden retaining wall as outlined in the attached budget (Appendix A) not to exceed \$23,750.00 The total cost of the retaining wall is estimated to be \$138,750.00.
- C. Foundation shall appoint two representatives to assist the City's Parks Services Project Coordinator to serve as advisors on any design or construction decisions affecting the amounts of the Foundation's funding. These representatives shall be appointed by the Foundation President from the memberships of the Foundation Board of Directors and/or the Friends of the Arboretum Executive Committee.
- D. Foundation will make grants to the City on a monthly basis according to itemized invoices provided by the Project Coordinator.
- E. Any increase(s) in the amount of funds to be provided by the Foundation shall require approval of the Foundation.

- F. Foundation shall provide the City with a timetable for the payment of any increased funds it may agree to pay.
- G. Foundation agrees that once the Serenity Pointe garden and the Rose Garden retaining wall are constructed, they are the property of the City and their ongoing maintenance will be the responsibility of the City.

ARTICLE II. RESPONSIBILITIES OF THE CITY

- A. The City will utilize \$115,000.00 budgeted for the Rose Garden retaining wall in the City's 2010 Capital Improvements Program for construction of the retaining wall.
- B. The City will be responsible for constructing the Serenity Pointe garden and the Rose Garden retaining wall and making payments to all suppliers, vendors and workers.
- C. The City will be responsible for the restoration of the areas surrounding the Serenity Pointe garden and the retaining wall following construction.
- D. The City will recognize the contribution to the Foundation of fifty-one per cent of the projected cost of the garden by naming it "Margie's Serenity Pointe."
- E. The City shall establish a project oversight committee composed of a Project Coordinator, the Foundation representatives and appropriate representatives from the City's Parks Services staff.
- F. The Project Coordinator will provide the Foundation with itemized invoices on a monthly basis to request payment to the City for the items contained in each invoice.
- G. The City shall allow the Foundation an appropriate amount of time to raise funds to pay for any increase(s) in the scope of the project as agreed to by the Foundation.
- H. The City shall be responsible for maintenance of the Serenity Pointe garden and Rose Garden retaining wall 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 the Executive Director, P.O. Box 26392, Overland Park, KS 66225, unless different notification information shall be given to the City in writing. All notifications to the City shall be sent to the Director of Recreation Services, 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 the

construction of the Serenity Pointe garden or Rose Garden retaining wall 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 Foundation has 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