

**AGREEMENT  
BETWEEN THE CITY OF COLUMBIA, MISSOURI,  
AND  
COLUMBIA CENTER FOR URBAN AGRICULTURE, INC.  
FOR THE DEVELOPMENT AND OPERATION OF AN AGRICULTURE PARK  
AT CLARY-SHY COMMUNITY PARK**

THIS AGREEMENT (hereinafter “Agreement”) is, made and entered into on the date of the last signatory noted below (hereinafter “Effective Date”) by and between the City of Columbia, Missouri, a municipal corporation (hereinafter called "City"), and Columbia Center for Urban Agriculture, Inc., a nonprofit corporation organized in the State of Missouri (hereinafter called "CCUA"). City and CCUA are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, City owns and operates Clary-Shy Community Park at 1701 West Ash Street, Columbia, Missouri (hereinafter “Park”); and

WHEREAS, City and CCUA would like to make improvements to the site as part of a phased development of the Agriculture Park at the Park; and

WHEREAS, CCUA, Columbia Farmers Market, Inc., and Sustainable Farms & Communities (collectively, hereinafter “Friends of the Farm”), have obtained grants, donations and pledges of donations to contribute to the development of the Agriculture park and has paid for the development of construction documents which CCUA will donate to the City for the Agriculture Park; and

WHEREAS, the Parties have agreed to name the pavilion “MU Health Care Pavilion;” and

WHEREAS, the Parties desire to share in the construction and operation of an Agriculture Park at the Clary-Shy Community Park, 1701 West Ash Street, Columbia, Missouri, which is of benefit to the community.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. Purpose and Use of Property. City shall allow CCUA to operate an Agriculture Park and to conduct educational and agricultural related events on the land owned by City located at Clary-Shy Community Park, 1701 West Ash Street, Columbia, Missouri. The City of Columbia, Missouri’s Parks and Recreation Director (hereinafter “Parks Director”) shall designate the exact location of the features of the Agriculture Park, parking areas and street access. CCUA shall use the property solely for an Agriculture Park, community education garden and any related uses approved in writing by the Parks Director. The

City may terminate this Agreement in the event of a material violation of this paragraph by CCUA.

2. Leased Premises. The City hereby leases to CCUA the designated areas in the City's Clary-Shy Community Park, 1701 West Ash Street, Columbia, Missouri, that are designated in Attachment A, for the sole purpose of the operation of an Agriculture Park and events and services related to the operation of the agriculture park. Hereinafter, this area shall be known as the "Leased Premises."
3. City's Obligations. City shall be responsible for the construction and maintenance of the MU Health Care Pavilion, plaza, walkways, practice field and common areas of the Park that are not designated as part of the Agriculture Park. City shall maintain the sports practice field so long as it is used as a sports practice field by the City. City will be responsible for maintenance and repairs of all real property and furniture, fixtures, and equipment owned by City. City shall also pay for the utilities services used at the MU Health Care Pavilion.
4. CCUA's Obligations. CCUA shall:
  - a. provide to City the funding and construction plans/documents as outlined in the donation letter attached as Attachment B;
  - b. construct, install and maintain at CCUA's sole expense the agricultural features of the Agriculture Park, including but not limited to the crops, gardens, orchards, agricultural plantings and supporting amenities such as a shed, fencing, chicken coop, etc.;
  - c. performs maintenance to the areas designated for CCUA's agricultural park development as designated in Attachment A or as otherwise agreed to by the Parties;
  - d. make no alterations or major repairs to the Leased Premises without the prior written consent of the Director (all such alterations and repairs shall be at CCUA's expense);
  - e. obtain the written consent of the City or the Director before installing any signs;
  - f. take good care of the property and keep it in good order and repair and free from filth, danger of fire or explosion and any nuisance. CCUA shall keep the area clean of all trash and garbage. CCUA shall not perform any acts or carry on any practices that may injure the building, structures or premises;
  - g. return the premises to the City at the expiration of the lease in a reasonable condition;
  - h. be responsible for maintenance and repairs of all furniture, fixtures, and equipment owned by CCUA; and
  - i. pay for utilities to the agricultural areas (if possible, the utilities for these agricultural areas shall be registered in the name of CCUA.)
5. Maintenance Responsibilities During Phased Development. The Parties recognize that the development of the Agriculture Park will be phased in over time. The Parties shall work together to develop a maintenance plan to reflect an equitable distribution of the

maintenance responsibilities of the Leased Premises during the phased development. The maintenance plan is subject to the approval of the Director.

6. Hours of Operation. CCUA may operate the Agriculture Park during established park hours to conduct production and programming activities, and on any other day of the week and during such hours as requested by the CCUA and approved by the Parks Director.
7. Non-exclusive Use of the Park. CCUA does not have the right to exclusive possession of any portion of the City's property. City shall at all times have free access to and use of the Leased Premises. The Parties agree that CCUA may lock the maintenance center and the outdoor classroom building and other areas as agreed to in writing by CCUA and the Director.
8. Naming Opportunities. The Columbia City Council shall name the Agriculture Park. City shall consider naming recommendations suggested by Friends of the Farm. CCUA may name specific areas of the Agriculture Park after principal donors, subject to City approval.
9. Special Events. Special events organized by CCUA are anticipated to occur at the Agriculture Park. CCUA shall comply with the City ordinances, rules, and regulations and shall obtain any and all required permits for its special events and pay any required fees related to such special events.
10. Use of Herbicides, Pesticides and Fertilizers. City and CCUA will coordinate use and application of herbicides, pesticides, and fertilizer at Clary-Shy Park. Each Party shall be responsible for its own costs related to herbicides, pesticides and fertilizers each Party uses.
11. Concessions. CCUA shall have all concessions rights during their hours of operation as outlined in this Agreement at the locations in the Agriculture Park specified in writing by the Parks Director. City shall have concession rights at all times and all locations not granted to CCUA. All Parties involved with the selling of food and beverages shall adhere to all applicable City ordinances, federal and state laws, rules, and regulations. CCUA will retain any and all proceeds generated from CCUA activities that are held at the Leased Premises. City shall retain any and all proceeds from City activities that are held at the Park.
12. Design Considerations And Requirements. The Agriculture Park shall follow the general intent of the master plan for the Park. The Facility and Agriculture Park shall be fully ADA accessible. All signage shall comply with City code and will be subject to review and approval of City. The final design shall provide adequate infrastructure, such as utilities, parking, roads, landscaping and a storm water detention pond or comparable storm water facilities approved by City.

13. Term. The “Term” of this Agreement shall commence on the Effective Date and shall continue until December 31, 2033 (hereinafter “Initial Term”). Thereafter, the Agreement shall automatically be renewed for up to twenty (20) successive terms of one (1) year (hereinafter “Renewal Term”), unless the Agreement is terminated pursuant to the provisions of this Agreement or unless either Party provides written notice of termination at least ninety (90) days prior to the end of the then current Renewal Term. Should the City opt not to renew the Agreement for an additional Renewal Term, Director shall obtain authorization of the non-renewal by a majority vote of the City Council.
14. Rent. Rent shall consist of a combination of services and the payment of all utility costs for the agriculture park.
- a. Utilities. CCUA shall pay all utility costs (water, electric, storm water, trash, sewer, gas, etc.) associated with and for the agricultural components of the property. If possible, CCUA shall place the utility bills in CCUA’s name and pay the utility providers directly. If separate metering or billing is not possible, City shall bill CCUA for utilities once each month. CCUA shall pay City within thirty (30) days of receipt of an invoice.
  - b. Services. In addition to the payment of utilities, CCUA shall provide ongoing services in installing, maintaining, and operating the agriculture park and related facilities. CCUA shall also continue to raise funds for the maintenance and operation of the agriculture park.
  - c. Office Space. Should the City construct office space for CCUA’s use, CCUA shall pay rent for the office space. The amount of rent will be negotiated by the Parties and the Parties will execute either a separate lease for the office space or will amend this Agreement.
  - d. Rent Adjustments. Rent is subject to adjustment by the City as part of the City’s annual budget process. City shall provide a written notice of a proposed rent adjustment no later than September 1st of the year. This amount will be approved by the City Council as part of the annual budget process and the approved rent amount will take effect on January 1st of the following calendar year.
  - e. Payments. Any payments due to the City pursuant to the terms of this Agreement shall be delivered to:
    - City of Columbia, Missouri
    - Finance Department
    - ATTN: Accounts Receivable
    - 701 East Broadway, 5<sup>th</sup> Floor
    - P.O. Box 6015
    - Columbia, Missouri 65205-6015
15. Insurance. CCUA, at its sole expense, shall obtain and keep in force liability insurance to cover CCUA’s activities on City’s property in an amount not less than the State of Missouri’s sovereign immunity limits, adjusted annually pursuant to Section 537.610 RSMo on a per occurrence basis for both personal injury or death and property damage, naming the City of Columbia as an additional insured. CCUA shall provide City with proof of such insurance and a copy of the policy upon request.

16. Termination.
- a. Termination by Mutual Agreement. The Parties may mutually agree to terminate this Agreement.
  - b. Cancellation by CCUA due to Events of Default by the City. The following event shall constitute an “Event of Default by the City”: If the City fails after receipt of written notice from CCUA to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by the City and such failure continues for thirty (30) days, or if by its nature such Event of Default by the City cannot be cured within such thirty (30) day period, and the City fails to commence to cure or remove the same as promptly as reasonably practicable. If the City has begun the process of approval of certain purchases or expenditures, such action will constitute a cure of the Event of Default by the City so long as the process is continued in a reasonable manner.
  - c. Remedies for the City’s Default. Upon the occurrence of an Event of Default by the City, CCUA shall have the right to terminate this lease by giving the City written notice. Thirty (30) days after the City has received the written notice to terminate, the lease shall terminate unless the default is cured by the City.
  - d. Cancellation by the City due to Events of Default by CCUA. Each of the following events shall constitute an “Event of Default by CCUA”: (i) CCUA fails to pay rent or utilities within twenty (20) days of the date due, and such default continues for a period of ten (10) days after receipt of written notice from City that such non-payment constitutes an event of default; (ii) CCUA fails after receipt of written notice from City to keep, perform, or observe any term, covenant, or condition of this lease, and such failure continues for thirty (30) days after such receipt or, if the performance cannot be reasonably had within the thirty (30) day period, if CCUA shall not diligently proceed to completion of performance; (iii) CCUA shall become insolvent, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall take the benefit of any present or future insolvency statute by answer or other means, or shall make a general assignment for the benefit of creditors; (iv) If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against CCUA, or if a receiver or trustee shall be appointed of all or substantially all of the property of CCUA, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment; (v) If CCUA shall vacate or abandon the Leased Premises; or (vi) If this lease or the estate of CCUA hereunder shall be transferred to, assigned to, or shall pass or devolve on any other person, entity, or party, except in the manner herein permitted.
17. Destruction of Property. If the Leased Premises is destroyed or substantially damaged by fire, earthquake, tornado, storm or any cause beyond the control of the City, so that the Leased Premises cannot reasonably be occupied by CCUA, this Agreement shall terminate. If the Leased Premises is damaged by any of the above causes, but not to the extent that it cannot reasonably be occupied by CCUA, the Parties shall negotiate on repair of the Leased Premises. If the Parties are unable to agree on the terms of repair of

the Leased Premises, either Party may terminate the lease by giving written notice to the other Party.

18. Termination. All leasehold improvements which are permanently attached to the Leased Premises will, at the end of the lease term, become the sole and separate property of the City, and CCUA shall have no further claim thereon. Furthermore, CCUA agrees that CCUA will not mortgage, grant a security interest in, or pledge in any manner any such improvements. CCUA shall, on the last day of the lease term, peaceably and quietly surrender and deliver the Leased Premises to the City, including all improvements and fixtures constructed or placed thereon by CCUA, except movable personal property and trade fixtures, all in good condition and repair. Any such movable personal property and trade fixtures belonging to CCUA, if not removed at the end of the lease term, shall, if the City so elects, be deemed abandoned and become the property of the City without any payment or offset; therefore, if the City shall not so elect, the City may remove such abandoned personal property from the Leased Premises at the risk and expense of CCUA. CCUA shall repair and restore all damage to the Leased Premises caused by the removal of any such personal property.
19. Compliance with Special Funding Requirements. The Parties agree that grant funds, sponsorships, and restricted donations may be used for the development of the Clary-Shy Park including the agriculture park features. The Parties shall comply with all conditions and requirements of the grant(s), sponsorship agreement(s), and restricted donation(s) that are accepted by the Parties to be used for the development and improvement of Clary-Shy Park (collectively "Special Funding Requirements"). Nothing in this Agreement replaces or supersedes the agreement between the Curators of the University of Missouri and the City of Columbia as outlined in ordinance number 023222, dated June 19, 2017.
20. Nondiscrimination. During the performance of this Agreement, CCUA shall not discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin.
21. Americans with Disabilities Act. CCUA shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. CCUA shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations.
22. General Independent Contractor. This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the CCUA will be an independent contractor/tenant and not the City's employee for all purposes.
23. Assignments and Subletting. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior

written consent of the other Party. CCUA shall not assign its interest in the lease or sublease any portion of the Leased Premises without the prior written consent of the City.

24. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

**If to City:**

City of Columbia, Missouri  
Parks Department  
ATTN: Director  
P.O. Box 6015  
Columbia, MO 65205-6015

**If to CCUA:**

Columbia Center for Urban Agriculture  
ATTN: Executive Director  
P.O. Box 1742  
Columbia, Missouri 65205

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending Party if delivered by courier or U.S. mail.

25. No Third-Party Beneficiary. This lease is for the sole benefit of the Parties and nothing in this lease shall be construed to give any benefits or rights to any third party.
26. Authority to Execute the Lease. The persons executing this lease personally represent and warrant that they have been duly authorized to execute this lease on behalf of their respective entities.
27. Nature of City's Obligations. All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.
28. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
29. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

30. General Laws. CCUA shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
31. Hold Harmless Agreement. To the fullest extent not prohibited by law, CCUA shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of CCUA, of any subcontractors (meaning anyone, including but not limited to consultants having a contract with CCUA or a subcontractors for part of the services), of anyone directly or indirectly employed by CCUA or by any subcontractors, or of anyone for whose acts the CCUA or its subcontractors may be liable, in connection with CCUA's activities. This provision does not, however, require CCUA to indemnify, hold harmless, or defend the City of Columbia from its own negligence.
32. Accommodation. CCUA understands and agrees that City owns and maintains the Clary-Shy Community Park as a public park and uses the site for other City governmental purposes as needed. CCUA agrees that the lease of space on this property is done as an accommodation to CCUA and is not an agreement by City to create a transferable business interest in City's property for the benefit of CCUA or to subordinate Columbia's use of the property to CCUA.
33. Cooperation and Scheduling. The Parties recognize that a successful partnership requires cooperation. The Parties shall cooperate, communicate and coordinate scheduling events and activities with each other.
34. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
35. Contract Documents. This Agreement includes the following exhibits or attachments, which are incorporated herein by reference:

<u>Attachment</u>	<u>Description</u>
A	Diagram of Leased Premises
B	Donation Letter

In the event of a conflict between the terms of an attachment and the terms of this Agreement, the terms of this Agreement controls.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
Mike Matthes, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy, Thompson, City Counselor

**COLUMBIA CENTER FOR URBAN AGRICULTURE, INC.**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Date: \_\_\_\_\_

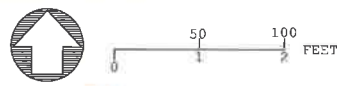
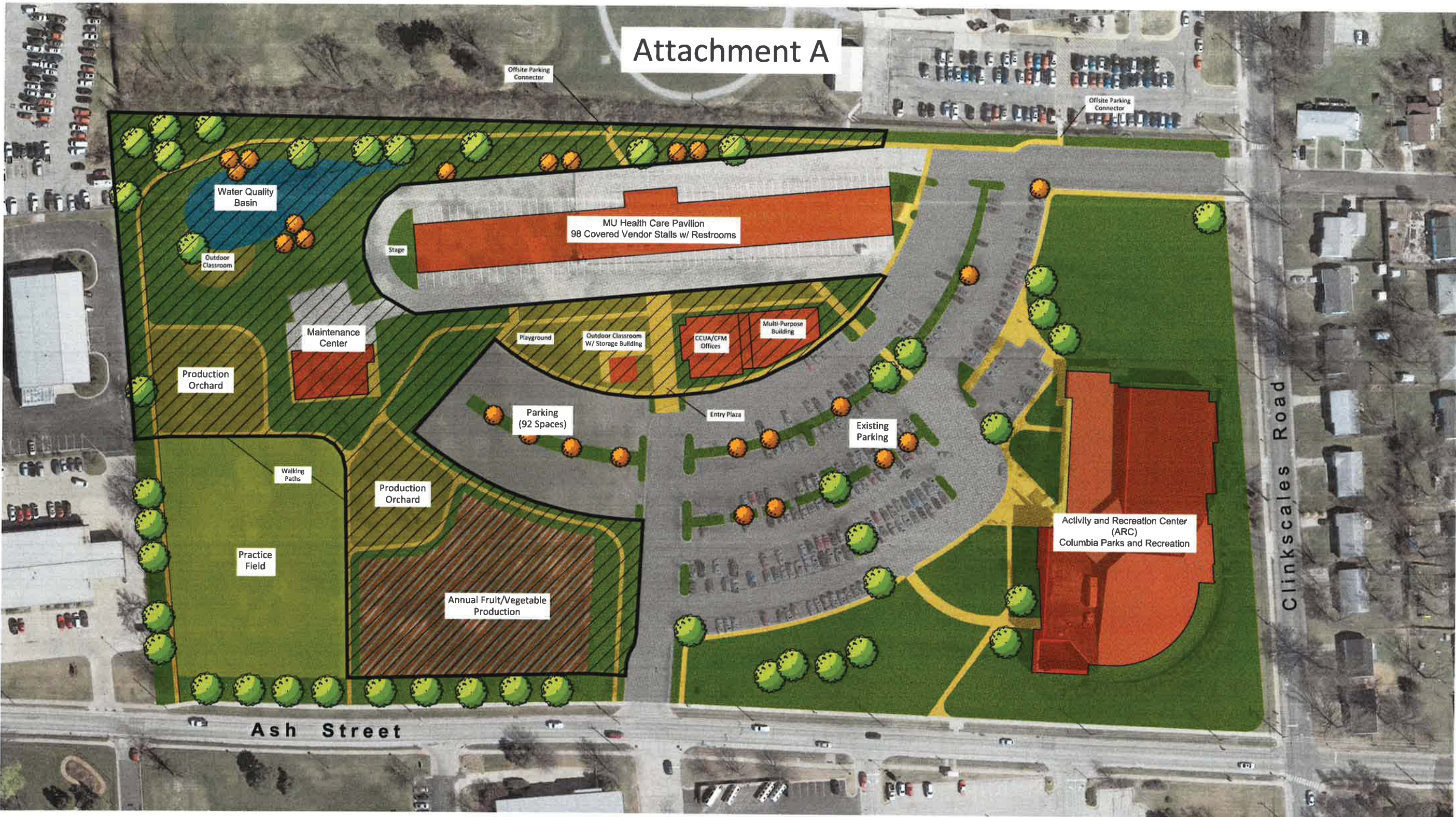
ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title



# Attachment A



## CLARY-SHY COMMUNITY PARK



COLUMBIA CENTER FOR URBAN AGRICULTURE  
 MAINTENANCE RESPONSIBILITIES



ALL OTHER AREAS TO BE MAINTAINED CITY OF COLUMBIA





October 5, 2017

Mike Griggs  
 City of Columbia  
 Department of Parks and Recreation  
 1 S Seventh Street  
 Columbia MO 65201

Mr. Griggs,

I write this letter today on behalf of the Friends of the Farm partnership. Since November 2016, Columbia Center for Urban Agriculture, Columbia Farmers Market, and Sustainable Farms & Communities, together the Friends of the Farm partnership, have been fundraising to pay for capital expenses at a new Agriculture Park at Clary-Shy Park on Ash Street in Columbia, Missouri.

To date, the non-profit partners listed above have paid all expenses for design, architecture, engineering, marketing, and fundraising related to the Agriculture Park. Biddable construction documents for the park are almost complete and the non-profit partners will pay all future invoices for services rendered to create these documents. Upon the completion of these documents, the non-profit partners will gift them to the City. The total estimated value of the construction documents is \$446,840.

As of today, the non-profit partners have:

- \$170,000 in cash on hand for this project. These available funds are being reserved for design fees and campaign operating expenses.
- \$664,840 in pledges which will come available over the next ten years. See the attached Anticipated Pledge Disbursement Schedule.

After operating / lease agreements are signed between both the City and CCUA, and the City and CFM, pledged funds, less anticipated campaign operating expenses for the coming year(s), will be donated to the City by January 1<sup>st</sup> of each year.

To be clear, the dollar amounts above do not include the following donations which have already been donated or pledged to the City of Columbia:

- \$400,000 from City's Park Sales Tax
- \$400,000 from United States Department of Interior
- \$700,000 from Missouri Foundation for Health
- \$495,000 from University of Missouri Health Care

We are actively fundraising to cover the cost of future phases of the project.

Sincerely,

Billy Polansky  
 Executive Director

MAIL  
 PO Box 1742  
 Columbia, Mo  
 65205

PHONE  
 573-514-4174

WEB  
[columbiaurbanag.org](http://columbiaurbanag.org)

E-MAIL  
[billyp@columbiaurbanag.org](mailto:billyp@columbiaurbanag.org)

ANTICIPATED PLEDGE DISBURSEMENT SCHEDULE  
As of 10/05/2017

<b>Year</b>	<b>Pledges Due</b>	<b>Disbursement Date</b>
2018	\$336,008	1/1/2019
2019	\$207,512	1/1/2020
2020	\$31,045	1/1/2021
2021	\$27,425	1/1/2022
2022	\$12,850	1/1/2023
2023	\$12,500	1/1/2024
2024	\$12,500	1/1/2025
2025	\$12,500	1/1/2026
2026	\$12,500	1/1/2027
<b>TOTAL</b>	<b>\$664,840</b>	