

**LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT FOR A
LOCATION WITHIN A. PERRY PHILIPS PARK**

THIS AGREEMENT ("Agreement"), is made and entered into by and between **P1316 LLC**, a Missouri limited liability company ("P1316") and the **City of Columbia, Missouri**, a municipal corporation of the State of Missouri ("City") and will be effective the date of signature by the Party last executing this Agreement ("Effective Date"). The City and P1316 may be collectively referred to as the Parties and individually as a Party.

WITNESSETH:

WHEREAS, City is the owner of A. Perry Philips Park within the corporate city limits of Columbia, Missouri with an official address of 5050 Bristol Lake Parkway ("Park"); and

WHEREAS, P1316 seeks to beautify the Park by designing, installing, and maintaining certain landscape in a location indicated in Exhibit A;

WHEREAS, P1316 has designated the Park as a supplemental environmental project as part of an agreement with the Missouri Department of Natural Resources; and

WHEREAS, the Parties seek to have P1316, at the P1316's cost and expense, provide the Park improvements and maintenance services as shown on Exhibit A, pursuant to the applicable Codes and Regulations of the City;

NOW, THEREFORE, in consideration of the mutual covenants, promises, declarations and conditions herein provided the Parties agree as follows.

1. Non-exclusive right to access Park. Subject to the issuance of all necessary permits required by City Code, City hereby grants P1316 the non-exclusive right to access those portions of the Park fully described in Exhibit A for the limited purpose of designing, installing, and maintaining certain landscape and hardscape in accordance with the approved Landscape Plan, contained in Exhibit A. This Agreement does not grant P1316 any property interest in the Park. Nothing herein shall interfere with the City's rights to restrict the time, place, and manner of work within the Park.
2. Donation of Landscaping, hardscaping and labor. P1316 agrees to construct and maintain the Improvements set forth in Exhibit A at its sole cost and expense. P1316 hereby donates to the City of Columbia all landscaping and hardscaping installed pursuant to this Agreement. In addition, P1316 hereby donates its labor for the installation and maintenance of the Improvements. P1316 hereby agrees to donate any additional landscaping needed for maintenance of the Improvements.
3. Changes to approved Landscaping Plan. The City's Director of Parks and

Recreation may approve minor changes to the approved Landscaping Plan, such as changing the types of landscaping. Major changes in the approved Landscaping Plan shall require Council authorization. Major changes include, but are not limited to: a change in location, and/or the addition of an irrigation system.

4. Deficiencies.
 - a. Notice of Deficiency. If P1316 fails to construct or maintain the Improvements in accordance with Exhibit A or any law, the City may provide written notice to P1316 describing the deficiency.
 - b. Corrective Action at P1316s Cost. P1316 at its sole cost and expense shall take corrective action to repair or cure any listed deficiencies within twenty (20) business days following receipt of any notice under section 4(a).
 - c. Emergency Repairs. In the event damage to, or failure to maintain the Improvements results in a risk to public safety, health, or welfare, P1316 shall make the repairs at its sole cost and expense within twenty-four (24) hours of receipt of City's written notice or City may choose to make repairs to the Improvements with giving prior notice to P1316 and will promptly invoice P1316 for all actual costs incurred in making the repairs. P1316 shall reimburse City for such costs within thirty days (30) of receipt of City's invoice or receipts. Nothing herein shall prohibit the City from taking emergency action, without notice to P1316, to remedy a risk to public safety, health, or welfare at the City's own expense.
5. Removal of Improvements. City reserves the right to remove Improvements at any time.
6. Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of ten years.
7. Termination. Either Party may terminate this Agreement with thirty days written notice.
8. Hold Harmless Agreement. To the fullest extent not prohibited by law, P1316, and its assigns, 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 P1316, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with P1316 or its subcontractor for part of the services), of anyone directly or indirectly employed by P1316 or by any subcontractor, or of anyone for whose acts the P1316 or its subcontractor may be liable, in connection with providing these

services. This provision does not, however, require P1316 to indemnify, hold harmless, or defend the City of Columbia from the City's own negligence. This Hold Harmless Agreement shall survive termination of the Agreement.

9. 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.

10. Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. P1316 may assign this Agreement to an affiliated company with written notice to the City.

11. 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 Parks and Recreation Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director

If to P1316:

P1316 LLC
4240 Philips Farm Road, Suite 109
Columbia, MO 65201
ATTN: Registered Agent: Adam K. Patchett

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, by courier or U.S. mail.

12. Insurance. P1316, or its assigns, shall provide, at its sole expense, and maintain during construction of any improvements related to this Agreement, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri. The insuring company, unless otherwise approved by the City, must have a rating of not less than "A," and it must protect the insured party, the City, and the City's officials, officers, and employees from claims which may arise from the construction operations, whether such operations are by the insured party, its officers, directors, employees and agents, or any of its

subcontractors. This liability insurance must include, but will not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all P1316's operations, products, services or use of automobiles, or construction equipment. The amount of insurance for required herein must be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., for political subdivisions; provided that nothing herein will be deemed to waive the City's sovereign immunity. An endorsement must be provided which states that the City is named as an additional insured and stating that the policy will not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without 30 days advance written notice of such event being given to the City.

13. No Waiver of Sovereign Immunity. 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.
14. No Third Party Beneficiaries. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.
15. Compliance with Laws. P1316 shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
16. Governing Law and Venue. This contract 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 the Circuit Court of Boone County, 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.
17. Electronic Signature. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.
18. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit	Description
A	Landscape Plan

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

19. Entire Agreement. This Agreement represents the entire and integrated Agreement between P1316 and City relative to the donation and services described herein. All previous or contemporaneous agreements, representations, promises and conditions relating to P1316's donation and services described herein are superseded.

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

[Signatures on following page]

CITY OF COLUMBIA, MISSOURI



By: _____
De'Carlton Seewood, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

P1316 LLC

By:  _____

Name: Adam Paschett

Title: Authorized Agent : Attorney

Date: 3-10-22

ATTEST:

Name: _____

Title: _____

