

Memorandum of Understanding
for the
Maintenance, Operation, and Improvement
of the
Burroughs Audubon Library and Site at Lake Jacomo
Between the

Burroughs Audubon Society of Greater Kansas City and Jackson County Parks + Rec

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 17th day of March, 2021, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and the Burroughs Audubon Society of Greater Kansas City (Society), a Missouri not-for-profit corporation.

WHEREAS, the County owns approximately 4,434 acres of property, known as Lake Jacomo at Fleming Park, and a portion of this property is dedicated for educational and recreational facilities known as the Burroughs Audubon Library and Site (Property); further described in **Attachment A**, attached hereto and incorporated herein by reference; and

WHEREAS, the County and the Society previously entered into a Cooperative Agreement on April 3rd, 1973; and,

WHEREAS, Society has assisted in the development of the Property as an improved natural area and educational site, including development of the indoor and outdoor exhibits which contain natural resource and wildlife information; and,

WHEREAS, the County and Society recognize the recreational, natural resource, and historical value of the Property, and wish to manage all of the lands and improvements that make up the Property exclusively to preserve and promote these attributes; and,

WHEREAS, the County and the Society wish to outline responsibilities through this new Memorandum for mutual public benefit for the maintenance, operation and improvement of the Property; and,

WHEREAS, the Director of Jackson County Parks+Rec is authorized and empowered by the County to execute Memorandums of Understanding (Agreement) on behalf of the County;

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

1. Society Rights and Responsibilities of Access. Society shall be authorized to enter onto the Property and shall perform the following activities:

A) Maintenance. Society shall be responsible for all daily maintenance of Property, including but not limited to regular cleaning of the building and grounds, removing trash and debris from Property, and general building maintenance, as the Society is reasonably able to perform to keep all facilities in a good and safe condition. Society shall notify County of any required maintenance it is unable to perform.

1. Inspections of Property shall be conducted as requested by the County, no less than annually, by representatives of both parties.
2. Society shall assist with funding for Capital Repairs of property, by seeking donations, securing grants, and raising funds for any needed capital repair or replacement needs on Property.
3. Society may hire its own employees or subcontract work to volunteer groups for the maintenance and improvement of the Property, subject to the terms and conditions herein. Society shall conduct background checks for employees, and keep the County informed of all paid staff

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MARY JO SPINO
COUNTY CLERK

employed by the Society. Society shall maintain a roster that includes up-to-date contact information for all volunteers that work onsite. Roster shall be updated regularly and made available upon request to the County. Society shall be responsible for all employee and volunteer recruitment, training, compensation, supervision, and management.

4. County reserves the right to access any portion of the Property to inspect the Property and address any issue that requires immediate attention, in the sole discretion of the County, without advance notification to Society. Society shall have up to five (5) business days to respond to County with a plan for remedying any issue identified by County. County shall notify Society of planned maintenance work prior to starting such work, whenever possible, and keep the Society updated should a project required more than a day of work to complete.

B) Operations and Programming. Society shall provide for all daily operations of the Property including providing its own telephone/internet/data service, opening and closing of facilities, educational programming, and special events. Society shall limit programs and activities to those providing public recreational, wildlife, natural resource, and historical benefit. No other use of the Property is permitted unless expressly provided for herein. Generally, Property shall remain open to the public for general use during program activities, unless permission is otherwise granted by County for major events.

1. Operating Hours. Generally, Property shall be open to the public year-round with daily and weekly operating hours set by the Society, subject to approval by the County. Property may occasionally be close to the public during normal operating hours for special meetings and training sessions.
2. Staffing. Society may hire staff, instructors, lecturers, or program leaders to perform maintenance activities and offer programs and events at the Property. Society shall be responsible for all compensation, background checks, recruitment, training, supervision, and management of persons performing duties and services.
3. Program Scheduling. Society shall have the responsibility to schedule, cancel, postpone, or terminate any user program or activity on the Property. In the event of inclement weather, or other conditions in which the scheduled activity is reasonably likely to cause damage to the Property or danger to patrons, Society shall reschedule or cancel event and notify County when program schedule changes have occurred. Society programming is subject to County and/or Parks closures which may preempt Society scheduling.
4. Sponsorships. Society may secure sponsors for special events or projects on the Property. Sponsors shall be permitted to display appropriate advertising during special events. All sponsor advertising shall be removed at conclusion of each special event.
5. Advertising. Society may allow paid commercial advertising on the Property with the express written approval of the County. Advertising displays shall be limited to interior of Property. County shall have the right to approve all advertising and signs and displays. No paid advertising displays shall be placed along perimeter of property. No political advertising of any kind may be displayed on Property. All revenues from any advertising shall be kept by the Society, and be utilized strictly for the ongoing maintenance, improvement, and programming at the Property.
6. Facility Rentals. Society may allow for groups or parties to rent facilities at Property. All rental policies and fees shall be subject to review and approval by County.
7. Other Leases/Agreements. Society may operate, or enter into leases for the operation of concessions within the Property for the convenience of visitors. The Society may also enter into agreements with private individuals or corporations for the purposes of adding value to the recreational, natural resource, and historical experiences of visitors. Said leases or agreements shall be secured at the discretion of the Society, subject to approval by County.

8. Admission Fees. Society may charge an admission fee or a group user's fee in an amount that is consistent with other admission fees charged for similar programs. All fees and charges shall be subject to review and approval by County. All revenue derived from admissions or any other sources shall be kept by the Society, and be utilized by the Society exclusively for the ongoing maintenance, facility improvements, and programming at the Property.

C) Improvements. Society may, at its sole expense, design and construct infrastructure improvements for recreational use by the public. Improvements may include trails, picnic areas, interpretive areas and facilities, educational exhibits, and other recreational amenities.

D) Prior to construction of any improvements on the Property, Society shall submit a written layout and design plans of all proposed improvements, including engineering drawings for any infrastructure, including, but not limited to, buildings, bridges, decks, retaining walls, or fencing, to the Parks+Rec Director for approval. No Work may proceed until plans have been approved by the Director, in writing. Construction of all improvements shall conform to the conditions set forth in **Attachment B**.

1. After approval of plans and design by the Director, Society shall obtain the Director's written approval for any modifications to improvement plans.
2. Following completion of all work, Society shall be solely responsible for the daily and capital maintenance and repairs of all improvements made.
3. Society shall ensure that all volunteers, employees and/or contractors utilized to fulfill any of Society's obligations hereunder shall also comply with the terms of this Memorandum, the conditions set forth in **Attachment B**, and the Jackson County Code of Ordinances Chapters 10 and 19 related to the employment and payment of prevailing wages of contractors for construction work on County property to the extent required under the law.
4. Upon completion, all improvements upon County owned lands shall become property of the County, unless otherwise agreed to in writing by both parties.
5. The requirements of Section 1, Paragraph 3 shall not apply to small projects that do not involve infrastructure construction or modifications, such as the placement of park benches, bird houses, or other small volunteer or scout projects.

2. County Responsibilities. County shall perform the following duties at the discretion of the County, subject to appropriation.

1. Turf Care. County shall mow and trim turf areas at entrance to Property, around parking areas, around buildings and other structures, and along adjacent road-right-of-way.
2. Driveway. County shall maintain driveway entrance to Property as needed to maintain a safe and navigable roadway.
3. Snow Removal. County shall remove snow from Property roadway entrance, parking areas, and sidewalks leading to main building entrance as may be needed, after primary snow removal throughout the park system has been performed.
3. Signage. County shall approve all signage prior to public display and may provide and install selected signs on Property. This shall include signage posted and maintained by the County related to Ordinance 5534.4, prohibiting firearms in County Buildings.
4. Capital Repairs. Unless otherwise stated herein, County shall provide for the capital maintenance of Property infrastructure, subject to Society fundraising and County appropriation, and other available funding.

5. County shall provide weekly trash removal as needed.
6. County will assist with large tree removal and other reasonable maintenance as requested.
7. Through its Park Ranger Division, County shall provide for routine security patrols of the Property and respond to requests for park safety services as needed.
8. **Utilities.** County shall provide reasonable utility services, including water, electric, and propane services, to the Property.

3. Title. Title to the lands owned by the County shall at all times remain with the County. This Agreement conveys no property rights, grants no exclusive license, and in no way restricts the general public's privilege of using the Property for recreational purposes.

4. Term. Unless terminated by either party in conformity with the termination provisions contained herein, the term of this Agreement shall be three (3) years from date of execution.

5. Modification and Termination.

This Agreement may be extended, modified or amended with the written consent of both parties. Verbal representations and extra-contractual writings shall not be construed or relied upon as modifications, amendments or waivers of any term of this Agreement.

This Agreement may be terminated with a 120-day written notice by either party. Upon such termination, Society shall remove all personal items from Property, unless such removal requirement is waived in writing by the County.

6. Indemnification. Society agrees to indemnify and hold harmless County from any and all damage, loss, or liability of any kind whatsoever, occasioned by or because of any act or omission, negligence, or wrongdoing of Society or any of its agents, representatives, assignees, or employees in the execution of this Agreement, and Society, at its own cost and expense, will defend and protect County against any and all such claims and demands.

7. Insurance. Society shall procure and maintain in effect throughout the duration of this Agreement general liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate (both general and products-completed operations), written on an "occurrence" basis, for any claims, damages liability, losses, costs and expenses, court costs and reasonable attorney fees incurred by the County for enforcement of this section and for any accidents, injuries, including death, damage to property, or other claims arising as a result of or in connection with the performance by Society and its volunteers, employees, agents or subcontractors, under this Agreement. The County, its officers, employees and agents shall be named as additional insureds under such policy. Society shall also carry a \$1,000,000 umbrella policy. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Insured Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, an aggregate limit of \$2,000,000.
- d. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to County, ten (10) days in the event of nonpayment of premium. Upon signing of this Agreement, Contractor shall provide to County a certificate of insurance showing all required endorsements and additional insureds.

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.

Regardless of any approval by County, it is the responsibility of Society to see the required insurance coverage is in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Society's failure to assure the required insurance in effect, County may order Society to immediately stop all activities.

8. Annual Operations Report. By January 31st of each year, Society shall provide a written Annual Operations Report to County summarizing activities on the Property for the previous year, including the following. Reports may be submitted to the County via email to an agreed upon address.

- Summary of all maintenance activities performed;
- Roster of all paid staff employed by the Society with their position titles and hours worked per week;
- List of all capital improvements completed, to include location in the park, cost, date of completion, and description of the improvement;
- Programs/events offered, and total public participation at all programs and events;
- Total volunteer service hours performed and type of work completed by volunteers;
- Annual Report shall also include a summary of the future anticipated programs and projects Society plans to offer for the coming year.

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

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| JACKSON COUNTY PARKS+REC C/O: Director of Parks+Rec 22807 Woods Chapel Road Blue Springs, Missouri 64015 (816) 503-4821 | Burroughs Audubon Society C/O President 7300 SW West Park Road Blue Springs, MO 64015 (816) 795-8177 |
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10. Assignability or Subcontracting. Society shall not subcontract, assign or transfer any part or all of Society's obligations under this Agreement without County's prior written approval. If Society shall subcontract, assign, or transfer any part of Society's interests or obligations under this Agreement without the prior written approval of County, it shall constitute a material breach of this Agreement.

11. Independent Contractor. Society is an independent contractor with respect to all services performed under this Agreement. Society 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 Society on work performed under the terms of this Agreement. Society shall defend, indemnify and save harmless County from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of County, or Society, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. Society is not County's agent and Society has no authority to take any action or execute any documents on behalf of County.

12. Financial Responsibility. Society shall be solely responsible for all costs associated with daily maintenance, operation, staffing and programming of the Property during the term of this Agreement and any extensions thereof.

13. Equal Opportunity. Society shall maintain policies of employment as follows.

Society and Society's subcontractor(s) shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Society shall take affirmative action as set forth to ensure that applicants for employment and employees are treated without regard to their race, religion, color, sex, age, disability, or national origin. Such action shall include, but not be limited, to the following: recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Society agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

Society and Society's subcontractor(s) shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, disability, or national origin.

14. Hiring Practices. Pursuant to §285.530.1, RSMo, Society assures that it does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri and/or Jackson County, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, Society shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with any services.

15. Hold Harmless. Society shall hold harmless County and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by Society and its selected volunteers, employees, agents, or subcontractors, or caused by others for whom they or Society are liable, regardless of whether or not caused in part by any act or omission, including negligence, of County, its agencies, officials, officers, or employees.

16. Governing Law. This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action in regard to the Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within Jackson County, Missouri, and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

17. Compliance with Laws. Society shall comply with all federal, state and local laws, ordinances and regulations, including Missouri Prevailing Wage laws applicable to any improvements to Property. Society shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of obligations under this Agreement. All references to "Code" shall mean County's Code of Ordinances, including any amendments thereto or recodification thereof.

18. Waiver. Waiver of any provisions of this Agreement or any breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, or of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights.

19. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to County herein and any other rights and remedies which County may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that County may have exercised any remedy without terminating this Agreement shall not impair County's rights thereafter to terminate or to exercise any other remedy herein granted or to which County may be otherwise entitled.

20. **Merger.** This Agreement, including any referenced Attachments, constitutes the entire agreement between County and Society with respect to this subject matter, and supersedes all prior agreements between County and Society, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement.

21. **Severability of Provisions.** Except as specifically provided herein, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

22. **Representations and Warranties.** County and Society each certify that it has the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

IN WITNESS WHEREOF, the parties, by their authorized representatives, have caused this Agreement to be executed as of the date first written above.

Burroughs Audubon Society of Greater Kansas City

I certify that I am authorized to execute this Memorandum of Understanding on behalf of **Society**:

Elizabeth D. Stoakes

Signature, President

ELIZABETH D. STOAKES

Printed Name

Date: 3/12/2021

ATTEST: Mary Spino

JACKSON COUNTY

Michele Newman

Michele Newman, Director of Jackson County Parks+Rec

Date: 3-1-21

ATTEST: [Signature]

APPROVED AS TO FORM

Greg P. Helm
County Counselor

ATTEST:

Mary Spino
Clerk of the County Legislature

ATTACHMENT A

Burroughs Audubon Library and Site Area Map
7300 SW West Park Road ~ Blue Springs, MO 64015



ATTACHMENT B

SCOPE OF DUTIES AND SERVICES TO BE PROVIDED BY Society FOR ANY PROPOSED PROPERTY IMPROVEMENTS

1. Design/Work Plan. Provide a design and plan of Work to County (Director of Parks+Rec) for proposed improvements, for the Director's approval. The Design and Work Plan shall:
 - Show all infrastructure components for construction of non-natural materials such as buildings, playgrounds, dams, bridges, decking, and fencing, etc...
 - Comply with applicable local construction codes.
 - Minimize impact on natural areas to the extent feasible and utilize best management practices to control storm water flow and prevent erosion, including full-bench-cut construction for hillsides.
 - Provide a Missouri professional engineer's signed and sealed drawings for any structural components.
 - For any projects proposed to utilize a combination of paid prevailing wage contractors and volunteer labor, provide a list of all volunteer workman proposed to be engaged in the construction of all improvements and the specific tasks they will perform. Any volunteer work shall be documented in accordance with the Missouri Prevailing Wage law, sections 290.210 et seq., RSMo.
 - For construction services to be performed by paid contractors or employees, provide a list of all workers and the specific tasks they perform. All paid contractors shall be compensated per Missouri Prevailing Wage laws and Jackson County Code Chapters 10 and 19 to the extent required under the law.
 - Provide an estimated anticipated schedule for all construction activities including when work will commence, when work will take place on Premises, and anticipated completion date(s).

2. Construction.
 - Through the use of paid contractors and/or Society's volunteers, Society will construct the improvements in conformity with the design as approved by the County.
 - Society will provide all labor, tools, and materials necessary for the construction of related improvements, temporary signage and safety features, except as otherwise stated in this Agreement.
 - Society will not utilize herbicides or other chemicals without prior written approval from the Director. Use and storage of explosives shall not be allowed.
 - Society will train, supervise and insure, and is solely responsible for the contractors, employees and/or volunteers utilized and their safety. Society will comply with all federal, state and local safety requirements in connection with the performance of the Agreement, including the provisions of the Federal Occupational Safety and Health Act of 1970 ("OSHA") and to the rules and regulations promulgated pursuant to this Act. All work conducted by and for Society shall be entirely at Society's own risk. Volunteer hours shall be reported annually to County.
 - In the event excavation is conducted in connection with improvements, Society assumes the risk associated therewith, and will take all reasonable and necessary safety precautions, including but not limited to installation of protective coverings on or fencing around open and unattended excavations. Coverings shall be sufficient to sustain the weight of any persons and/or objects placed upon them, fixed to the ground so they cannot be moved, have no opening(s) or protuberance(s) of sufficient size to cause a fall and/or injury, and be accompanied by advance warning devices as necessary. Fencing around open excavations shall be installed such that it surrounds the entire area under excavation so as to prevent entry by any persons, be a minimum of 42" in height and be constructed in such a manner that it is adequately secured and will remain upright at all times under normal site conditions. All protective coverings and/or fences on excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as

necessary. All excavations shall be restored to the level of the adjacent surfaces as soon as practicable. No excavations may be made in, upon, under, through or adjoining any area other than the Premises identified in Attachment A.

- Society shall be responsible for and in charge of the site and the installation of the Work thereon from the time work on the site commences until final approval by County. If installation requires, Society shall notify all utilities, municipal departments, adjacent property management, and others affected by their operations and shall properly coordinate and expedite their work in such a manner as to cause the least amount of conflict and interference between their operation and those of any other contractor or agency. Notification shall be made sufficiently ahead of time to provide proper rerouting of traffic and erecting of signs before the work is to begin. Any and all damages or claims resulting from the improper or insufficient notification of the affected utility agency and others shall be the responsibility of Society.

3. Inspection of Installation and Materials.

- During installation of the Work, the County shall have the right to inspect the Work thereon to determine whether or not the Work is being installed in accordance with the County approved plans. If, at any time during the progress of such installation, it is determined that such improvements are not being installed in accordance with the County approved plans, upon receipt of written notice thereof from County, Society shall make such alterations as may be required to cause such improvements to conform to the specifications.
- All material of whatever nature, required in the performance of the Work embraced in this Agreement, shall be furnished by Society and shall be subject to the inspection and/or test by County or its authorized representative before being placed in the Work. All rejected or unsuitable materials shall be removed at once from the site of the Work.
- As soon as practical after completion, the entire work will be examined thoroughly by the County. Society will be notified when the examination is to be made so that a representative may be present. If the inspection reveals any defective or unsatisfactory work, it shall be remedied by Society as County may require before final acceptance. The cost of all such repairs and replacements shall be borne by Society.

4. Maintenance.

Following completion of construction, Society shall maintain all improvements, including removing litter, trash, limbs, and other obstructions from improved areas, and repair and replacing other infrastructure as needed for the continuous and safe enjoyment of patrons.