

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** authorizing the Director of Parks + Rec to execute a Memorandum of Understanding with the Cave Spring Association for the daily management, operation, maintenance, programming and improvement of the William M. Klein Park, also known as the Cave Spring Park and Historic Site, at an actual cost to the County in the amount of \$25,000.00.

**RESOLUTION NO. 20388**, March 30, 2020

**INTRODUCED BY** Tony Miller, County Legislator

WHEREAS, the Director of Parks + Rec recommends the execution of the attached Memorandum of Understanding (MOU) with the Cave Spring Association to provide for the daily management, operation, maintenance, programming, and improvement of the William M. Klein Park, also known as the Cave Spring Park and Historic Site; and,

WHEREAS, the Cave Spring Association is a non-profit organization that has managed the Cave Spring Park and Historic Site since 1981 through an agreement with the County; and,

WHEREAS, the attached MOU further outlines and clarifies the responsibilities of the Association and the County; and,

WHEREAS, this MOU creates no employment relationship between Cave Spring Association and the County,

WHEREAS, the execution of the attached MOU is in the best interests of the health, safety, and welfare of the citizens of Jackson County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the Director of Parks + Rec be and hereby is authorized to execute, on the behalf of the County, the attached MOU with the Cave Spring Association; and,

BE IT FURTHER RESOLVED that the Director of Finance and Purchasing be and hereby is authorized to make all payments including final payment on the MOU.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

  
Chief Deputy County Counselor

  
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 20388 of March 30, 2020, was duly passed on April 6, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 1

4-6-2020  
Date

  
Mary Jo Spino, Clerk of Legislature

There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

ACCOUNT NUMBER: 003 1601 56790  
ACCOUNT TITLE: Park Fund  
Director of Parks  
Other Contractual Services  
NOT TO EXCEED: \$25,000.00

3/23/2020  
Date

  
Chief Administrative Officer

**Memorandum of Understanding**  
for the  
**Maintenance, Operation, and Improvement**  
of the  
**William M. Klein Park, also known as Cave Spring Park and Historic Site,**  
**Between the Cave Spring Association and Jackson County Parks + Rec**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and the Cave Spring Association (Association), a Missouri not-for-profit corporation.

WHEREAS, the County owns approximately 37.46 acres of property, and the Association owns approximately .66 acres of property, which are collectively known as William M. Klein Park, also known as Cave Spring Park and Historic Site (Property); further described in **Attachment A**, attached hereto and incorporated herein by reference; and

WHEREAS, the County and the Cave Spring Association previously entered into a Cooperative Agreement on September 21, 1981; and,

WHEREAS, Association has assisted in the development of the Property as a park, including construction of the indoor Interpretive Center which contains historical and natural resource information and exhibits; and,

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

WHEREAS, the County and the Association 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:

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

1. Maintenance. Association shall be responsible for all daily maintenance of Property, including but not limited to daily cleaning of the buildings and grounds, removing trash and debris from Property, clearing obstructions such as downed trees and limbs, and general building maintenance, as the Association is reasonably able to perform, to keep all facilities in a good and safe condition. Association shall notify County of any required maintenance it is unable to perform.
  - a. Inspections of Property shall be conducted as requested by the County, no less than annually, by representatives of both parties.
  - b. Association shall seek donations, secure grants, and raise funds for any needed capital repair or replacement needs on Property.
  - c. Association 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. Association shall conduct background checks for employees, and keep the County

informed of all paid staff employed by the Association. Association shall be responsible for all employee and volunteer recruitment, training, supervision, and management.

- d. County reserves the right to access any portion of the Property and address any issue that requires immediate attention, in the sole discretion of the County, without advance notification to Association. County shall notify Association of any issues addressed by County.
2. Operations and Programming. Association shall provide for all daily operations of the Property including providing all utility services, opening and closing of facilities, educational programming, and special events. Association shall limit programs and activities to those providing public recreational, 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.
- a. Operating Hours. Generally, Property shall be open to the public year-round with operating hours from dawn to dusk.
  - b. Staffing. Association may hire staff, instructors, lecturers, or program leaders to perform maintenance activities and offer programs and events at the Property. Association shall be responsible for all background checks, recruitment, training, supervision, and management of persons performing duties and services.
  - c. Program Scheduling. Association 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, Association shall reschedule or cancel event and notify County when program schedule changes have occurred.
  - d. Sponsorships. Association 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.
  - e. Advertising. Association 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 and on Association's video display board at the corner of Gregory and Blue Ridge Boulevard. County shall have the right to approval 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 the property of the Association, and be utilized strictly for the ongoing maintenance, improvement, and programming at the Property.
  - f. Facility Rentals. Association may allow for groups or parties to rent facilities at Property, such as the outdoor shelter or indoor meeting room. All rental policies and fees shall be subject to review and approval by County.
  - g. Subleases. Association may operate, or enter into leases for the operation of concessions within the Property for the convenience of visitors. The Association may also enter in to leases with private individuals or corporations for the purposes of adding value to the recreational, natural resource, and historical experiences of visitors. Said leases shall be secured at the discretion of the Association, subject to approval by County.
  - h. Admission Fees. Association may charge an admission fee or a group user's fee in an amount that it 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 the property of the Association, and be utilized by the Association exclusively for the ongoing maintenance, improvement, and programming at the Property.

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

Prior to construction of any improvements on the Property, Association shall submit a written layout and design plans of all proposed improvements, including engineering drawings for any infrastructure, including, but not limited to, buildings, playgrounds, 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**.

- a. After approval of plans and design by the Director, Association shall obtain the Director's written approval for any modifications to improvement plans.
- b. Following completion of all work, Association shall be solely responsible for the daily and capital maintenance and repairs of all improvements made.
- c. Association shall ensure that all volunteers, employees and/or contractors utilized to fulfill any of Association'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.
- d. Upon completion, all improvements upon County owned lands shall become property of the County, and improvements upon Association owned lands shall become the property of the Association, unless otherwise agreed to in writing by both parties.
- e. 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.

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

- a. 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.
- b. Snow Removal. County shall remove snow from Property roadway entrance, parking areas, and sidewalks leading to shelter and main building entrance as may be needed.
- c. Signage. County shall approve all signage prior to public display and may provide and install selected signs on Property.
- d. Capital Repairs. Unless otherwise stated herein, County shall provide for the capital maintenance of Property infrastructure, subject to Association fundraising, County appropriation, and other available funding.
- e. County shall provide weekly trash removal. Trash to be picked up must be either in the barrels located adjacent to the parking lot and/or in bags at the curb of the parking lot.
- f. County will assist with large tree removal and maintenance as needed.

**Sec. 3. Title.** Title to the lands owned by the County shall at all times remain with the County. Title to lands owned by the Association shall at all times remain with the Association. 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.

**Sec. 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.

**Sec. 5. Modification and Termination.**

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

**Sec. 6. Indemnification.** Association 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 Association or any of its agents, representatives, assignees, or employees in the execution of this Agreement, and Association, at its own cost and expense, will defend and protect County against any and all such claims and demands.

**Sec. 7. Insurance.** Association 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 Association 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. Association 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 Association 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 Association's failure to assure the required insurance in effect, County may order Association to immediately stop all activities.

**Sec. 8. Annual Operations Report.** By January 31<sup>st</sup> of each year, Association 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.

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

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

**JACKSON COUNTY PARKS+REC**  
C/O: Director of Parks+Rec  
22807 Woods Chapel Road  
Blue Springs, Missouri 64015  
(816) 503-4821 Fax (816) 795-1234

**Cave Spring Association**  
C/O President  
8701 East Gregory Boulevard  
Kansas City, MO 64133  
(816) 659-1945

**Sec. 10. Assignability or Subcontracting.** Association shall not subcontract, assign or transfer any part or all of Association's obligations under this Agreement without County's prior written approval. If Association shall subcontract, assign, or transfer any part of Association's interests or obligations under this Agreement without the prior written approval of County, it shall constitute a material breach of this Agreement.

**Sec. 11. Independent Contractor.** Association is an independent contractor with respect to all services performed under this Agreement. Association 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 Association on work performed under the terms of this Agreement. Association 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 Association, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. Association is not County's agent and Association has no authority to take any action or execute any documents on behalf of County.

**Sec. 12. Financial Responsibility.** Association 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.

- a. **Payments by County to Association.** Subject to appropriation, the County agrees to pay Association the total amount of \$25,000 for fiscal year 2020, in one installment upon execution of this Agreement.



**b. Conditions for Payments.** Funding for 2020, and any future years, shall be subject to annual budget and appropriation by County.

To be eligible for any payments, Association shall submit a written proposal setting out in detail the intended use of the County's funding, including the target population to be served. Association's proposal must be received by August 1<sup>st</sup> for requested funding in any future year. Any funds provided by the County shall only be utilized for Association expenses to maintain the Property and provide staffing, programming and insurance.

Any future payments by County shall be made within the first quarter of each year, provided all requirements for payment have been satisfied by the Association. No future payments shall be made under this Agreement unless Association shall have submitted to the Parks + Rec Department an Annual Financial Report by January 31<sup>st</sup> of each year, including:

- i. Association's IRS Form 990 from the previous fiscal year;
- ii. Statement of Association's total budget for its most recent fiscal year; and
- iii. Detailed explanation and documentation of actual past expenditures of the County's funds (pertains to final payments and payments on contracts for future years). If Association has previously received funding from the County, to be eligible for future payments, Association must submit either an audited financial statement for Association's most-recent fiscal or calendar year, or a certified public accountant's program audit of the County's funds.

No payment shall be made if Association is out of compliance on any other County contract, or has not paid county taxes on all properties owned by Organization and assessed by the County.

**c. Equal Opportunity.** Association shall maintain policies of employment as follows to be eligible for funding from County.

- i. Association and Association's subcontractor(s) shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. Association 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. Association agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
- ii. Association and Association'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.

**d. Hiring Practices.** Pursuant to §285.530.1, RSMo, and in order to remain eligible for County funding, Association 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, Association shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with any services.

e. **Audit.** The parties agree that the County may, for any reason and at any given time, examine and audit the books and records of Association pertaining to this Agreement. Further, Association agrees to establish and adopt such accounting standards and forms as recommended by the County prior to receipt of the County's first distribution of funds under the terms of this Agreement. The forms used to document expenditure of these funds may be changed from time to time by the County.

**Sec. 13. Hold Harmless.** Association 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 Association and its selected volunteers, employees, agents, or subcontractors, or caused by others for whom they or Association 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.

**Sec. 14. 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.

**Sec. 15. Compliance with Laws.** Association shall comply with all federal, state and local laws, ordinances and regulations, including Missouri Prevailing Wage laws applicable to any improvements to Property. Association 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.

**Sec. 16. 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.

**Sec. 17. 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.

**Sec. 18. Merger.** This Agreement, including any referenced Attachments, constitutes the entire agreement between County and Association with respect to this subject matter, and supersedes all prior agreements between County and Association, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement.

**Sec. 19. 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.

**Sec. 20. Representations and Warranties.** County and Association 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.

**Cave Spring Association**

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

\_\_\_\_\_  
Signature, President

\_\_\_\_\_  
Printed Name

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

ATTEST:

\_\_\_\_\_

**JACKSON COUNTY**

\_\_\_\_\_  
Michele Newman, Director of Jackson County Parks+Rec

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

ATTEST: \_\_\_\_\_

## REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$25,000.00 which is hereby authorized.

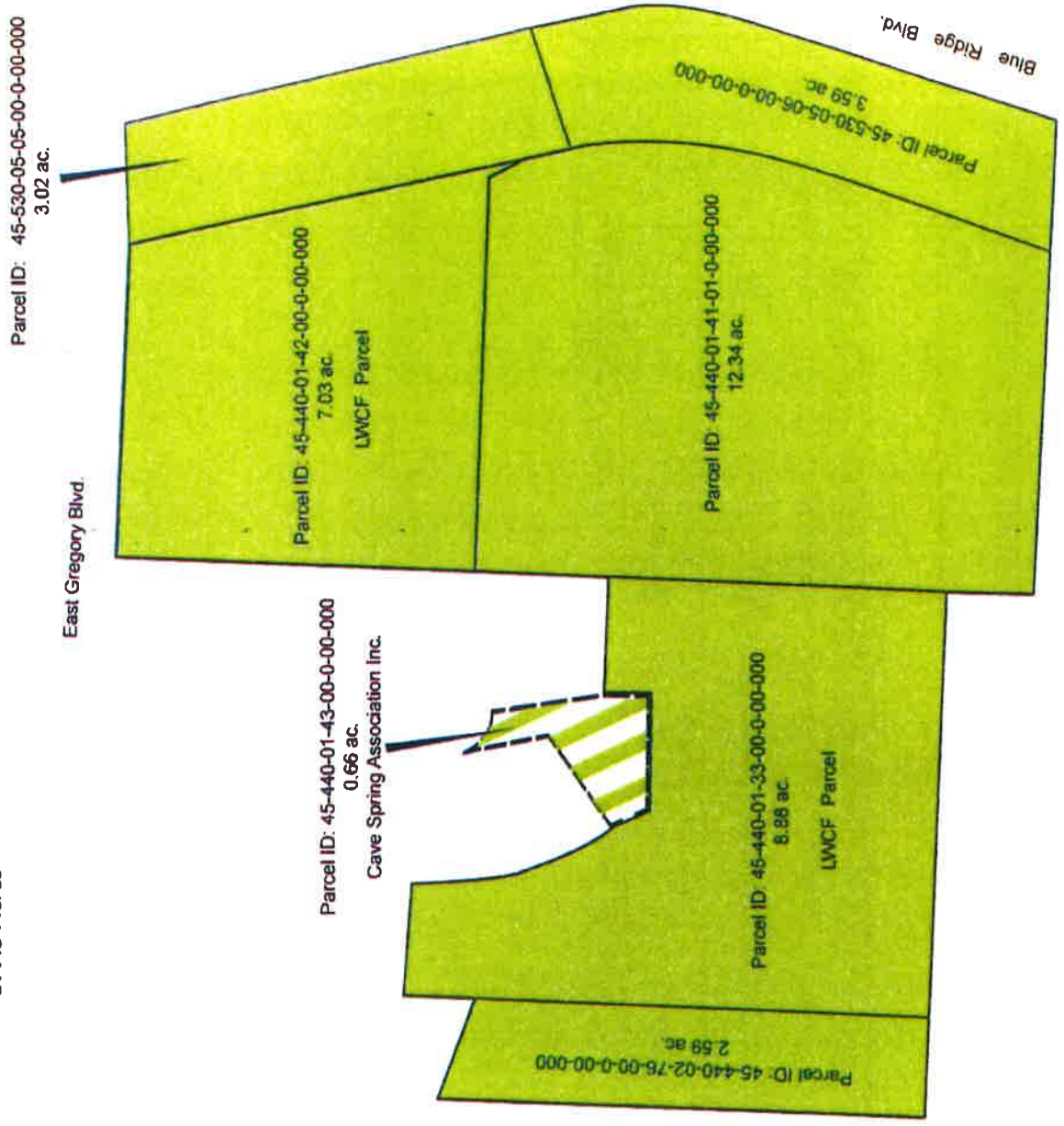
\_\_\_\_\_  
Date

\_\_\_\_\_  
Director of Finance and Purchasing  
Account No. 003-1601-56790

# Attachment A

## Cave Spring Park Property Ownership Map

37.45 Acres



## ATTACHMENT B

### SCOPE OF DUTIES AND SERVICES TO BE PROVIDED BY ASSOCIATION 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:
  - a. Show all infrastructure components for construction of non-natural materials such as buildings, playgrounds, dams, bridges, decking, and fencing, etc...
  - b. Comply with applicable local construction codes.
  - c. 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.
  - d. Provide a Missouri professional engineer signed and sealed drawings for any structural components.
  - e. 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.
  - f. 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.
  - g. 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.
  - a. Through the use of paid contractors and/or Association's volunteers, Association will construct the improvements in conformity with the design as approved by the County.
  - b. Association 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.
  - c. Association will not utilize herbicides or other chemicals without prior written approval from the Director. Use and storage of explosives shall not be allowed.
  - d. Association will train, supervise and insure, and is solely responsible for the contractors, employees and/or volunteers utilized and their safety. Association 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 Association shall be entirely at Association's own risk. Volunteer hours shall be reported annually to County.
  - e. In the event excavation is conducted in connection with improvements, Association 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.

- f. Association 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, Association 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 Association.

3. Inspection of Installation and Materials.

- a. 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, Association shall make such alterations as may be required to cause such improvements to conform to the specifications.
- b. All material of whatever nature, required in the performance of the Work embraced in this Agreement, shall be furnished by Association 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.
- c. As soon as practical after completion, the entire work will be examined thoroughly by the County. Association 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 Association as County may require before final acceptance. The cost of all such repairs and replacements shall be borne by Association.

4. Maintenance.

Following completion of construction, Association 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.