

**Memorandum of Understanding
for the
Programming and Improvement
of the
Blue River Parkway, a Jackson County Park
between the
Heartland Conservation Alliance and Jackson County Parks + Rec**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 16th day of November, 2023, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and the Heartland Conservation Alliance (HCA), a tax-exempt Missouri non-profit corporation.

WHEREAS, the County owns approximately 2,200 acres of park property, known as the Blue River Parkway (Property), dedicated to recreation and open space preservation; and

WHEREAS, the HCA is a community based non-profit organization, focused on the protection and restoration of the natural environments along the Blue River and community engagement with the citizens of the County on the importance of protecting our most valuable natural resources through outdoor education, stewardship, and recreational programming; and

WHEREAS, both the County and HCA recognize the recreational, natural resource, and historical value of the Property, and wish to continue to manage, protect, restore, and welcome the community to engage, experience, and enjoy the lands that make up the Property, exclusively to preserve and promote these attributes; and,

WHEREAS, the County and the HCA previously entered into a Renew the Blue Memorandum of Understanding on July 17, 2017; and,

WHEREAS, the County and the HCA wish to outline responsibilities through this new Memorandum for mutual public benefit for the programming 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. **HCA Rights and Responsibilities of Access.** HCA shall be authorized to enter onto the Property and perform the following activities:

A.) Programming. As outlined in the attached Exhibit A, HCA shall develop and implement a comprehensive *Outdoor Recreation and Inclusion Plan* for the Blue River Parkway. Programming shall be focused on outdoor recreation for a wide variety of audiences, with special emphasis on historically underserved populations. Programming may include educational, health and wellness, and historical programs that offer intentional opportunities for citizens of Jackson County to explore, experience and enjoy the Property. Generally, Property shall remain open to the public for general use during all program activities, unless permission is otherwise granted by County for major events.

1. Program Outreach. When developing the Plan and programming, HCA shall engage historically underserved communities for all aspects of program development, including needs assessments, marketing, and program recruitment. HCA shall strive to engage with new communities and

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organizations that may have not previously had access to or knowledge of the Property and outdoor recreation programs and events.

2. **Staffing.** HCA may hire staff, instructors, lecturers, and program leaders, and recruit volunteers, to develop, market and offer programs and events at the Property. HCA shall be responsible for all compensation, background checks, recruitment, training, supervision, and management of persons performing duties and services.
3. **Program Scheduling.** HCA 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, HCA shall reschedule or cancel event and immediately notify the County when program schedule changes have occurred. HCA programming is subject to County closures which may preempt HCA scheduling. HCA programming shall not compete with any existing County-offered or authorized programs, I.E., athletic programs or leagues.
4. **Sponsorships.** HCA may secure sponsors for programs or special events on the Property. Sponsors shall be permitted to display appropriate advertising, subject to County review and approval, during programs and special events. All sponsor advertising shall be removed at the conclusion of each program or special event.
5. **Program/Admission Fees.** While the goal of this MOU is to increase accessibility and inclusion, the HCA may charge reasonable admission fees to offset the cost of program supplies or equipment, or a group user's fee for selected programs and events 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 HCA, and be utilized by the HCA exclusively for the ongoing programming and improvements at the Property.

B.) **Improvements.** HCA may, at its sole expense and fundraising, including grant writing, plan, design and make improvements to the Property for recreational use by the public. Improvements may include anti-dumping and anti-litter campaigns and cleanups, projects to remove invasive plant species from the Property, tree planting, native grass and wildflower planting and other riparian restoration efforts, the development of educational exhibits, and other capital recreational amenities/improvement projects.

HCA shall coordinate all improvement projects with Parks + Rec staff. Prior to construction of any capital improvements on the Property, HCA 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 **Exhibit B**.

1. After approval of plans and design by the Director, HCA shall obtain the Director's written approval for any modifications to improvement plans.
2. Following completion of all work, HCA shall be responsible for the daily and capital maintenance and repairs of all improvements made, unless otherwise agreed to by the County.
3. HCA shall ensure that all volunteers, employees and/or contractors utilized to fulfill any of HCA's obligations hereunder shall also comply with the terms of this Memorandum, the conditions set forth in **Exhibit 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 design requirements of Section 1, Paragraph B shall not apply to small projects that do not involve infrastructure construction or modifications, such as the placement of 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. **Grounds Care.** County shall mow and trim turf areas at the Property, around parking areas, around buildings and other structures, and along adjacent road-right-of-way. County shall provide weekly trash removal as needed.
2. **Paved Surfaces.** County shall maintain drives, entrances, and parking areas at the Property as needed to maintain safe and navigable public access.
3. **Signage.** County shall approve all signage prior to public display and may provide and install selected signs on Property.
4. **Capital Repairs.** Unless otherwise stated herein, County shall provide for the capital maintenance of Property infrastructure, subject to HCA fundraising and County appropriation, and other available funding.
5. **County-Authorized Recreational Programming.** County shall continue to retain all rights and responsibilities to continue current recreational programs on the Property, and to develop new opportunities, independent of the HCA.
6. 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.

3. Title. Title to the Property shall always 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 five (5) 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, HCA shall remove all personal items from Property, unless such removal requirement is waived in writing by the County.

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

7. **Insurance.** HCA shall procure and maintain in effect throughout the duration of this Agreement general comprehensive liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 general 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 HCA 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. HCA 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 HCA to see the required insurance coverage is always in force; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of HCA's failure to assure the required insurance in effect, County may order HCA to immediately stop all activities.

8. **Annual Operations Report.** By March 31st of each year, HCA 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 programming and improvement activities performed, including listing of all programs and events offered during the past calendar year, total attendance, listing of all community groups engaged with, and summary of expenditures and revenues.
- Summary of general maintenance of improvement areas completed, including chemicals used, I.E. date, area applied, type, and amount.
- Roster of all paid staff employed by the HCA working under this Agreement, with their position titles and hours worked per week.
- Total volunteer service hours performed, and type of work completed by volunteers.
- The Annual Report shall also include a summary of the future anticipated programs and projects HCA 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.

JACKSON COUNTY PARKS+REC
C/O Director of Parks + Rec
22807 Woods Chapel Road
Blue Springs, MO 64015

Heartland Conservation Alliance
C/O Executive Director
6601 E. 93rd Street
Kansas City, MO 64138

10. Assignability or Subcontracting. HCA shall not subcontract, assign, or transfer any part or all of HCA's obligations under this Agreement without County's prior written approval. If HCA shall subcontract, assign, or transfer any part of HCA'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. HCA is an independent contractor with respect to all services performed under this Agreement. HCA accepts full and exclusive liability for the payment of 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 HCA on work performed under the terms of this Agreement. HCA shall defend, indemnify, and hold harmless County from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of County, or HCA, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. HCA is not County's agent and HCA has no authority to take any action or execute any documents on behalf of County.

12. Financial Responsibilities. HCA shall be solely responsible for all costs associated with programming and improvements undertaken through this Agreement during the term of this Agreement and any extensions thereof.

a. Financial Support from County to HCA. Subject to appropriation, the County agrees to pay the HCA the total amount of \$30,000 for fiscal year 2024, in one installment upon execution of this Agreement, and an additional \$30,000 per year for the remaining four years of the agreement, subject to the performance of all terms and conditions by the Association.

b. Conditions for Payments. Funding for 2024, and any future years, shall be subject to annual budget approval by County.

To be eligible for any payments, HCA shall submit a written proposal setting out in detail the intended use of the County's funding, including the target populations to be served. HCA's proposal must be received by March 31st for requested funding in any calendar year. Any funds provided by the County, shall only be utilized for HCA's expenses to improve the Property and help cover any program expenses.

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 HCA. No future payments shall be made under this Agreement unless HCA shall have submitted to the Parks + Rec Department an Annual Financial Report by March 31st of each year, including:

- i. Association's IRS Form 990 from the previous fiscal year;
- ii. Statement of HCA'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 HCA has previously received funding from the County, to be eligible for future payments, HCA must submit either an audited financial statement for HCA'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 HCA is out of compliance with any other County contract or has not paid county taxes on all properties owned by Organization and assessed by the County.

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

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

HCA and HCA'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, HCA 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, HCA 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. HCA 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 HCA and its selected volunteers, employees, agents, or subcontractors, or caused by others for whom they or HCA 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 regarding 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. HCA shall comply with all federal, state, and local laws, ordinances and regulations, including Missouri Prevailing Wage laws applicable to any improvements to Property. HCA 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 HCA with respect to this subject matter, and supersedes all prior agreements between County and HCA, 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 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 HCA 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.

Heartland Conservation Alliance

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

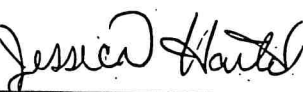


Signature, Executive Director


Logan Heley

Printed Name

Date: 11/13/2023

ATTEST: 

JACKSON COUNTY




Michele Newman, Director, Jackson County Parks + Rec

Date: 11/14/23

ATTEST: Brian Nowotny

Approved as to Form: 

Bryan O. Covinsky, County Counselor

ATTEST:


Clerk of the County Legislature

Exhibit A

Outdoor Recreation & Inclusion Plan Outline

Vision & Purpose

In December 2022 Jackson County adopted a new master plan for the Blue River Parkway. From early in the master planning process, a great deal of input was received from the public for the County to consider developing a program to encourage more visitation and connection with the park, with particular emphasis on outreach to historically underserved populations to make the park and programs more equitable and inclusive. This would include an intentional effort to engage people in the many benefits of the outdoors, and to give them a chance to take more ownership in the park through volunteerism, and the advocacy that comes from connections with neighbors and the outdoors.

The Outdoor Recreation and Inclusion Plan shall outline the County's partnership with the Heartland Conservation Alliance (HCA), who share the same goals, to increase access to open spaces and natural areas for the entire community, with emphasis on historically underserved populations, through a diverse variety of programs and initiatives.

Implementation Concept

The guiding implementation concept is to create a dedicated program, building off of the existing resources and initiatives of Jackson County Parks and the HCA, with HCA staff support to lead the effort, with funding from grants and other sources. Program implementation shall be scalable, depending on funding, from part time to full time, with minimum commitments as outlined in this Exhibit. Primary work would be conducted in the field, in the park and in the community, with virtual and in-person staff office time planned as needed to organize the program and track outcomes. The HCA's *Outdoor Education Coordinator & Blue River Nature Guide*, would be the logical leader of this program, with support from the HCA Executive Director and staff team.

General Scope of Work:

- The HCA will develop and coordinate intentional outreach and marketing programs to the community, with special emphasis on historically underserved populations such as low-income neighborhoods, environmental justice communities, seniors, and patrons with development, mobility or accessibility challenges. The HCA shall:
 - Create annual marketing and outreach programs and budgets.
 - Engage, through in-person contacts, with local organizations such as schools, health care organizations, community non-profit organizations, places of worship, recreational providers, and others.
 - Coordinate program, education, and outreach messaging with Parks + Rec's Special Events Coordinator, HCA's Environmental Justice Program Manager, Conservation Program Manager, and other partners.
- The HCA will establish regular bi-weekly/monthly recreational engagement opportunities on or near the Blue River Parkway, such as guided hikes, bicycle trips, or kayak trips (as weather appropriate), nature based educational programs, and other community wellness programs.
- The HCA will establish regular volunteer events and opportunities for individuals, families, small groups, and organizations to engage in improvements along the Blue River. Activities shall be wide ranging, depending on size and capabilities of the group, from trash and invasive species removal to native tree and wildflower plantings and small capital improvement projects (I.E. Eagle Scout or Gold Award projects).

- The HCA will establish self-guided programs for recreational and wellness (hiking, biking, or kayaking) and nature-based education (tree identification, wildlife habitat awareness) on or near the Blue River Parkway and develop marketing for such programs.
- The HCA's program coordinator will spend intentional time at the Blue River Parkway, setting up "pop up" engagements or walking the trails and connecting with the public to provide information about the park, natural environments, programs, and upcoming events.
- The HCA's program coordinator will support County, HCA and other partner events that promote equity and inclusion in recreational and educational programs along the Blue River corridor.
- The HCA's program coordinator will coordinate appropriate staffing and volunteers for all programs and activities, including County staff, HCA staff, subcontractors and/or partners.
- The HCA's program coordinator will manage budgets for this program and seek alternative sources of funding for program sustainability.

HCA Specific Partnership Programming Support Opportunities:

- Promote and execute existing HCA outdoor education programming to Plan audiences, including:
 - February: Martin Luther King Jr. Nature Walk
 - April: Heartland Nature Celebration
 - May-September: Exploring Roots Summer Adventure
- Support education and outreach programs at the Blue River, including coordination and promotion with existing HCA education and outreach programming:
 - Green Guard Stewardship Program
 - Renew the Blue Initiatives
 - Education & Outreach Work Group Initiatives

Sample 20 hours/week program engagement and implementation (minimum):

- 8 hours: outreach activities and community engagement; promoting programs and the Blue River Parkway with new audiences; and supporting existing County, HCA, and other program opportunities.
- 8 hours: leading hike, bike, and kayak programs, events, programs, and other on-site engagement opportunities
- 4 hours: coordinating subcontractors and partners for additional events; administrative duties.
- First Year Deliverables and Outcomes:
 - Lead 250 visitors on Blue River Parkway hikes, bikes, or kayak trips or other recreational programs.
 - Educate 200 people about the Blue River Parkway at on-site events and programs.
 - Host five new volunteer project opportunities.
 - Connect with twenty-five new community organizations who have not traditionally engaged with the Blue River, with the majority of them from the watershed and its environmental justice neighborhoods.

EXHIBIT B

SCOPE OF DUTIES AND SERVICES TO BE PROVIDED BY HCA FOR ANY PROPOSED PROPERTY CAPITAL 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 HCA's volunteers, HCA will construct the Improvements in conformity with the design as approved by the County.
 - HCA 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. HCA is expressly authorized to employ volunteer labor on projects of a cost less than \$75,000.
 - HCA will not utilize herbicides or other chemicals without prior written approval from the Director. Use and storage of explosives shall not be allowed.
 - HCA will train, supervise, and insure, and is solely responsible for the contractors, employees and/or volunteers utilized and their safety. HCA 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 HCA shall be entirely at HCA's own risk. Volunteer hours shall be reported annually to County.
 - In the event excavation is conducted in connection with improvements, HCA 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.

- HCA 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, HCA 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. All damages or claims resulting from the improper or insufficient notification of the affected utility agency and others shall be the responsibility of HCA.

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 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, HCA 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 HCA and shall be subject to 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. HCA 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 HCA as County may require before final acceptance. The cost of all such repairs and replacements shall be borne by HCA.

4. Maintenance.

Following completion of construction, HCA 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, unless otherwise agreed to by the County.