

**AN ORDINANCE OF THE CITY OF OLIVETTE AUTHORIZING EXECUTION OF
COOPERATION AGREEMENT FOR THE DESIGN, CONSTRUCTION, OPERATION
AND MAINTENANCE OF THE CENTENNIAL GREENWAY**

THIS COOPERATION AGREEMENT is made and entered into this ____ day of _____, 2020 by and between the **METROPOLITAN PARK AND RECREATION DISTRICT, d/b/a THE GREAT RIVERS GREENWAY DISTRICT** (hereinafter "**DISTRICT**") and **CITY OF OLIVETTE, MISSOURI** (hereinafter the "**CITY**").

WHEREAS, the **DISTRICT** is engaged in developing and constructing a series of parks, trails and greenways in the City of St. Louis, St. Louis County and St. Charles County, Missouri; and

WHEREAS, the **DISTRICT** and **CITY** agreed to cooperate in design, construction and maintenance of the trail to be developed as part of the Centennial Greenway to be utilized as a public hiking, biking and recreational trail within Warson Park (the "**GREENWAY**"); and

WHEREAS, Section 67.1742(2) RSMo. provides that a metropolitan park and recreation district shall have the power to "Contract with public and private entities or individuals both within and without the state ... in furtherance of any of the purposes of the district;" and

WHEREAS, the **DISTRICT** and the **CITY** wish to enter into an agreement by which the **DISTRICT** and the **CITY** will cooperate to design, construct the trail and other infrastructure on land owned or under the control of the **CITY**; and,

WHEREAS, the **CITY** will be the owner of the **GREENWAY** and shall be responsible for ordinary operations and maintenance of the **GREENWAY** during the term of this **COOPERATION AGREEMENT**.

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **DISTRICT** and the **CITY** agree as follows:

1. **Purpose.** This **COOPERATION AGREEMENT** is entered into by the parties for the design and construction of the **GREENWAY**, as more fully described in Exhibit A, attached hereto and incorporated herein.
2. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **CITY** as follows:
 - a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Missouri.
 - b. The **DISTRICT** has full power and authority to enter into this **COOPERATION AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
 - c. Neither the execution and delivery of this **COOPERATION AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.
3. **Representations of the CITY.** The **CITY** represents, warrants and covenants to the **DISTRICT** as follows:
 - a. The **CITY** is a constitutionally-created city of the State of Missouri.

- b. The **CITY** has power to enter into this **COOPERATION AGREEMENT** and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
- c. The execution and delivery of this **COOPERATION AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **CITY**, or any contract, agreement or lease to which the **CITY** is a party or by which it is bound.

4. **DESIGNATED REPRESENTATIVES.**

- a. For purposes of this **SECTION 4** through **SECTION 6**, the “**DISTRICT’S DESIGNATED REPRESENTATIVE**” is:

Angelica Gutierrez
Project Manager
The Great Rivers Greenway District
3745 Foundry Way, Ste 253
St. Louis, MO 63110
Telephone: (314)-932-4907
Email: agutierrez@grgstl.org

The “**CITY’S DESIGNATED REPRESENTATIVE**” is:

Barbara Sondag
City Manager
1140 Dielman Road
Olivette MO 63132
Telephone: 314-983-5200
Email: BSondag@OlivetteMO.com

5. **DESIGN OF GREENWAY.**

- a. Subject to the terms of this **COOPERATION AGREEMENT** and approval by the **DISTRICT’s** Board of Directors, the **DISTRICT** shall fund the preparation of documents (the “**GREENWAY DESIGN DOCUMENTS**”) for the development of the **GREENWAY**, subject to reimbursement by the

DISTRICT as set forth in **SECTION 6**, the **CITY** shall construct the **GREENWAY** in accordance with the **DISTRICT'S** plans and **SECTION 6** below. Notwithstanding the foregoing, the **DISTRICT** and the **CITY** acknowledge and agree that the design and construction of the **GREENWAY** is dependent upon securing funding and there is no obligation for either party to complete the design or construction of the **GREENWAY**.

- b. Subject to the terms of this **COOPERATION AGREEMENT** and approval by the **DISTRICT's** Board of Directors, including without limitation the termination rights contained herein, the parties agree that the **DISTRICT** will engage WSP USA, Inc. to prepare the **GREENWAY DESIGN DOCUMENTS** for the proposed development of the **GREENWAY**.
- c. While the **DISTRICT** is working with the design professionals in the development of the **GREENWAY DESIGN DOCUMENTS**, the **DISTRICT** and the **CITY** shall cooperate through an informal meeting or meetings so that the **CITY'S DESIGNATED REPRESENTATIVE**, and the **DISTRICT'S DESIGNATED REPRESENTATIVE** and the **DISTRICT'S DESIGNATED REPRESENTATIVE'S** designees may review the **GREENWAY DESIGN DOCUMENTS** and discuss initial reactions and/or comments thereto with the **DISTRICT** in an effort to address issues so that the formal review process is expedited to the greatest extent possible. Thereafter, the **DISTRICT** may, but shall not be obligated to, cause its design firm to revise the **GREENWAY DESIGN DOCUMENTS** before the **DISTRICT** submits the **GREENWAY DESIGN DOCUMENTS** to the **CITY** for formal approval pursuant to **SECTION 5(D)** below.

d. After the informal preliminary review contemplated in **SECTION 5(C)** above and upon the **DISTRICT'S** approval of any revisions to the **GREENWAY DESIGN DOCUMENTS**, the **DISTRICT** shall submit an electronically complete set of the **GREENWAY DESIGN DOCUMENTS** to the **CITY** for review and approval as provided in this **SECTION 5**. The **DISTRICT** shall deliver the **GREENWAY DESIGN DOCUMENTS** to the **CITY'S DESIGNATED REPRESENTATIVE**. Within thirty (30) days after their receipt of the **GREENWAY DESIGN DOCUMENTS**, the **CITY'S DESIGNATED REPRESENTATIVE** shall notify the **DISTRICT** in writing as to whether or not the **CITY** has approved the **GREENWAY DESIGN DOCUMENTS**. If the **CITY** has not approved the **GREENWAY DESIGN DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor, in which event the **DISTRICT** may, but shall not be obligated to, revise the **GREENWAY DESIGN DOCUMENTS** and re-submit the same to the **CITY** for review and approval. If the **DISTRICT** re-submits the **GREENWAY DESIGN DOCUMENTS** to the **CITY** as provided in the immediately preceding sentence, then within ten (10) days after its receipt of the re-submitted **GREENWAY DESIGN DOCUMENTS**, the **CITY** shall notify the **DISTRICT** in writing as to whether or not it has approved the re-submitted **GREENWAY DESIGN DOCUMENTS**. If the **CITY** has not approved the re-submitted **GREENWAY DESIGN DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor. The foregoing procedure shall be repeated until either the **CITY** or the **DISTRICT** ceases its efforts to obtain approval of the **GREENWAY DESIGN**

DOCUMENTS or until the **GREENWAY DESIGN DOCUMENTS** have been finally approved.

- e. Notwithstanding the ten- and thirty-day periods of time referenced in the foregoing provisions, the **DISTRICT** and the **CITY** shall use their best efforts to expedite their review and approval processes.

6. **CONSTRUCTION OF GREENWAY.**

- a. As of the date of this **COOPERATION AGREEMENT**, the total cost of the construction of the **GREENWAY** is estimated to be approximately \$1,000,000 (the "**DISTRICT CONTRIBUTION**").
- b. Upon the **DISTRICT'S** completion of the design of the **GREENWAY**, the parties agree that the **DISTRICT** will prepare plans and specifications for the construction of the **GREENWAY** (the "**GREENWAY CONSTRUCTION DOCUMENTS**").
- c. Upon completion of the **GREENWAY CONSTRUCTION DOCUMENTS**, the **DISTRICT** shall submit an electronically complete set of the same to the **CITY'S DESIGNATED REPRESENTATIVE** for review and approval of the same by the **CITY** as provided in this **SECTION 6**. Within fifteen (15) days after receipt of the **GREENWAY CONSTRUCTION DOCUMENTS**, the **CITY'S DESIGNATED REPRESENTATIVE** shall notify the **DISTRICT** in writing as to whether or not the **CITY** has approved the **GREENWAY CONSTRUCTION DOCUMENTS**. If the **CITY** does not approve the **GREENWAY CONSTRUCTION DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor, in which event the **DISTRICT** shall revise the **GREENWAY CONSTRUCTION DOCUMENTS**

and re-submit the same to the **CITY** for review and approval. If the **DISTRICT** re-submits the **GREENWAY CONSTRUCTION DOCUMENTS** to the **CITY** as provided in the immediately preceding sentence, then within ten (10) days after its receipt of the re-submitted **GREENWAY CONSTRUCTION DOCUMENTS**, the **CITY** shall notify the **DISTRICT** in writing as to whether or not it has approved the re-submitted **GREENWAY CONSTRUCTION DOCUMENTS**. If the **CITY** has not approved the re-submitted **GREENWAY CONSTRUCTION DOCUMENTS**, then its written notification to the **DISTRICT** shall specify the reasons therefor. The foregoing procedure shall be repeated until either the **DISTRICT** or the **CITY** ceases its efforts to obtain approval of the **GREENWAY CONSTRUCTION DOCUMENTS** have been finally approved by the **CITY**.

- d. If, after the **CITY'S** approval of the **GREENWAY CONSTRUCTION DOCUMENTS** as provided above and prior to the commencement of construction, the **DISTRICT** desires to make a material change to the **GREENWAY CONSTRUCTION DOCUMENTS**, then such change shall be subject to the approval of the **CITY** as required above. As used in this **SECTION 6**, a "material change" means a change that would affect the types or location of the **GREENWAY** within Warson Park.
- e. The **DISTRICT** shall provide to the **CITY** any required conditions to be included by the **CONSTRUCTION MANAGER** (defined below) in the front end documents issued for bidding for the **GREENWAY** (the "**CONDITIONS**"). **CITY** shall procure and deliver to **DISTRICT** bids based on the **GREENWAY CONSTRUCTION DOCUMENTS**, including the

CONDITIONS, from all contractors and subcontractors for the construction of the **GREENWAY** for the **DISTRICT's** review and approval prior to the commencement of construction the **GREENWAY** by **CITY**. **DISTRICT** will review the bids and deliver to **CITY** written notice either approving or disapproving the bids (any approved bids selected by **DISTRICT**, the "**APPROVED BIDS**") within five (5) days following the date upon which **CITY** delivered the bids to **DISTRICT**, which approval cannot be unreasonably withheld, conditioned, or delayed. If **DISTRICT** disapproves of the submitted bids, then **DISTRICT** shall notify **CITY** thereof specifying in reasonable detail the reasons for such disapproval, in which case **CITY** shall deliver updated bids in accordance with **DISTRICT's** objections and submit to **DISTRICT** for its review and approval. **DISTRICT** shall notify **CITY** in writing whether it approves of the resubmitted bids within three (3) business days after its receipt thereof. This process shall be repeated until the bids have finally been approved by **CITY** and **DISTRICT**. It shall be reasonable for **DISTRICT** to withhold its consent to any proposed bids if (i) the proposed bids do not conform to the **DISTRICT's CONDITIONS** or (ii) the **GREENWAY** costs exceed the **DISTRICT CONTRIBUTION**. The foregoing shall not exclude any other reasonable basis for **DISTRICT** to withhold its consent.

- f. **CITY** will submit to **DISTRICT** the projected costs of construction of the **GREENWAY** based on the **APPROVED BIDS** and the **GREENWAY CONSTRUCTION DOCUMENTS** (the "**COST PROPOSAL**"), which **COST PROPOSAL** may include up to a 10% contingency for potential cost

deviations. **DISTRICT** will either approve or disapprove the **COST PROPOSAL** or disapprove specific items and submit to **CITY** revisions to the **GREENWAY CONSTRUCTION DOCUMENTS** to reflect deletions of and/or substitutions for such disapproved items. Upon **DISTRICT's** approval of the **COST PROPOSAL** (the "**APPROVED COSTS**"), **CITY** shall have the right to commence the construction of the **GREENWAY** pursuant to the terms of this **COOPERATION AGREEMENT**. Subject to appropriation by the **DISTRICT's** Board of Directors, the **DISTRICT** shall reimburse the **CITY** for the **APPROVED COSTS** in accordance with the following terms and conditions, in a total amount not to exceed the **DISTRICT CONTRIBUTION**:

- i. **DISTRICT** shall reimburse and pay the **CITY** the actual costs incurred or paid by or on behalf of the **CITY** for work in furtherance of construction of the **GREENWAY** including, but not limited to material testing and geotechnical services, provided that all costs and expenses incurred or paid by or on behalf of the **CITY** for which the **CITY** seeks payment from **DISTRICT** (i) must be directly applicable to the preconstruction or construction of the **GREENWAY** and (ii) must be **APPROVED COSTS**.
- ii. The **CITY** shall present written invoices, construction pay applications, and other reasonable written supporting materials to **DISTRICT** of all costs incurred or paid by the **CITY**. The request shall include a certification from the **CONSTRUCTION MANAGER** and **CITY**, that costs submitted: (1) have not previously been

submitted to **DISTRICT**, (2) have actually been incurred or paid by or on behalf of the **CITY**, and (3) are related to the construction of the **GREENWAY** and are **APPROVED COSTS**.

- iii. Upon receipt of the certification and accompanying invoices and/or other supporting materials, **DISTRICT** shall review the certification and materials and determine within fifteen (15) days of receipt of said certification if the submitted costs are eligible **APPROVED COSTS**. If **DISTRICT** determines that any costs identified as **APPROVED COSTS** by the **CITY** are not **APPROVED COSTS** as contemplated hereunder, **DISTRICT** shall notify the **CITY** in writing within five (5) days after reviewing the certification and invoice, identifying the ineligible costs and the basis for determining the costs to be ineligible, whereupon the **CITY** shall have the right to provide additional or supplemental information regarding the submitted **APPROVED COSTS** along with a supplemental certificate for payment. If **DISTRICT** fails to approve or disapprove of any submitted certificate for payment within fifteen (15) days after receipt thereof, the certificate for payment shall be deemed approved; provided, however, in no event shall the **CITY** submit a request for payment to **DISTRICT** more frequently than once per thirty day period. Once the **APPROVED COSTS** have been approved by **DISTRICT** as set forth in this **Section 6**, **DISTRICT** shall pay the **CITY** within thirty (30) days after such costs have been approved.

- iv. Notwithstanding anything contained in this **COOPERATION AGREEMENT** to the contrary, it is expressly understood and agreed by the parties that under no circumstances, and in no event, shall **DISTRICT** be required to contribute more than the **DISTRICT CONTRIBUTION**. The **CITY** shall be responsible for all costs paid or incurred in connection with construction of the **GREENWAY** in excess of the **DISTRICT CONTRIBUTION**.
- g. **CITY** has engaged Navigate Building Solutions, LLC (the “**CONSTRUCTION MANAGER**”) to implement construction or separate construction contract(s) with the successful bidder(s), all of which shall be in a form acceptable to the **CITY** (other than provisions required to be included in said contracts pursuant to the terms of this **COOPERATION AGREEMENT**) for the construction of the **GREENWAY** and the **CITY**’s construction of other improvements in Warson Park.
- h. Subject to reimbursement by the **DISTRICT** as set forth in **Section 6(f)**, the **CONSTRUCTION MANAGER** shall facilitate and oversee the construction of the **GREENWAY** according to the **APPROVED BIDS**.
- i. The **CITY** shall, in its construction contracts, require each contractor to agree that no labor performed or materials furnished and incorporated in the **GREENWAY** shall be the basis for filing a lien against the **DISTRICT** or the **CITY**. The **CITY** shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien charge, encumbrance or claim on or with respect to the **GREENWAY** or any part thereof other than as provided herein. The **DISTRICT** shall not, in any event, be responsible for

any expense incurred by the **CITY** in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

- j. If any change order would increase the cost of the **GREENWAY** beyond the **APPROVED COSTS**, then such change order shall be subject to the prior approval of the **DISTRICT** and the **CITY**, and the **DISTRICT** and the **CITY** shall endeavor to determine ways to reduce the project costs to cover the change. If the parties determine after their analysis that the cost of a change order makes the completion of the **GREENWAY** financially infeasible, they shall jointly devise a plan to mitigate the impact of the termination or abandonment of the **GREENWAY** to the same condition as such area existed prior to the commencement of construction.
- k. The **CITY** shall retain at its offices copies of all **GREENWAY** invoices, lien waivers and payment records showing the amounts paid and retainage, which shall be available during normal business hours.
- l. Prior to the commencement of construction, the **CITY** shall notify the **DISTRICT** of the dates of commencement and anticipated completion of construction on the **GREENWAY**. The **DISTRICT'S DESIGNATED REPRESENTATIVE**, in conjunction with the **CITY'S DESIGNATED REPRESENTATIVE**, shall determine an inspection schedule and perform inspections at appropriate times during construction solely for the purpose of confirming that the **GREENWAY** are being completed in accordance with the **GREENWAY CONSTRUCTION DOCUMENTS** and applicable laws.
- m. Upon completion of the **GREENWAY** and prior to final payments and release of retainage, the **CITY** shall notify the **DISTRICT** which shall inspect

the **GREENWAY**. If the **GREENWAY** has been completed according to the **GREENWAY CONSTRUCTION DOCUMENTS**, the **CITY** shall then make the final payment to the contractors and suppliers and shall thereafter deliver copies of the “as built” drawings and warranties to the **DISTRICT**.

- n. **DISTRICT’S** wayfinding signage and environmental graphics shall be included in construction of the **GREENWAY**. **DISTRICT** and the **CITY** shall mutually review and approve such signage and environmental graphics and shall incorporate the same into the construction plans and specifications for the **GREENWAY**.

7. **INSURANCE**.

- a. The parties will maintain Workers’ Compensation and appropriate employer’s liability insurance covering any of its own employees engaged in activities relating to the **GREENWAY**.
- b. The parties will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **COOPERATION AGREEMENT**, to provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **GREENWAY**, for personal and property liability, medical benefits, as well as general liability insurance.

- 8. **Operation and Maintenance of the Centennial Greenway**. In consideration of **DISTRICT’S** reimbursement obligations set forth in this **COOPERATION AGREEMENT**, the parties agree to enter into a Cooperation Agreement for the Construction, Operation and Maintenance Agreement of the Centennial

Greenway: Warson Road to Dielman Road substantially in the form attached hereto as Exhibit B.

9. **EASEMENTS.**

a. The **CITY** hereby grants to the **DISTRICT**, and its successors and assigns, a perpetual non-exclusive easement on, over, under, and across, any and all land owned by the **CITY** and located within the **GREENWAY** (the "**CITY EASEMENT AREA**"), for the purposes of the planning, engineering, constructing, maintaining, operating and altering of the **GREENWAY** as contemplated by this **COOPERATION AGREEMENT** (the "**DISTRICT EASEMENT**"). Subject to the terms of this **COOPERATION AGREEMENT**, there is included in this grant of the **DISTRICT EASEMENT** the right of the **DISTRICT**, at any time upon mutual agreement between the **CITY** and the **DISTRICT** and from time to time, to install, place, or construct upon the **CITY EASEMENT AREA** any personal property, asset, or improvement owned by the **DISTRICT** and to be used in connection with the **GREENWAY**.

b. The **CITY** and the **DISTRICT** acknowledge and agree that the **DISTRICT EASEMENT** shall run with the land and shall be binding upon the **CITY'S** successors and assigns.

10. **Publicity.** It is the intent of the parties that the **GREENWAY** shall be and become an integral part of the park system of the **CITY**. As such, the **CITY** will include in any press releases or other publicity about the **GREENWAY**, the words, "This greenway was built in cooperation with the regional parks and trails district, Great Rivers Greenway as part of the overall River Ring system."

Events held on the **GREENWAY** should list Great Rivers Greenway as a co-host along with the **CITY**.

11. **Amendments, Changes and Modifications.** This **COOPERATION AGREEMENT** may be amended, changed, modified, altered or terminated only by written agreement of the **DISTRICT** and the **CITY**.

12. **Notices.** All notices or other communication required or desired to be given hereunder shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

DISTRICT: Metropolitan Park and Recreation District,
d/b/a The Great Rivers Greenway District
3745 Foundry Way, Suite 253
St. Louis, MO 63110
Attention: Susan Trautman, Chief Executive Officer
Telephone: (314) 436-7009
Fax: (314) 436-8004

With a Copy to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: David Richardson
Telephone: (314) 480-1718
Fax: (314) 727-2824

CITY: City of Olivette, Missouri
1140 Dielman Road
Olivette MO 63132
Attention: Barbara Sondag
Telephone: 314-983-5200
Fax: _____

13. **Assignments.** Neither party may mortgage or otherwise assign its right under this **COOPERATION AGREEMENT** without the written consent of the other.

14. **Waiver.** The failure of one party to require performance of any provision of this **COOPERATION AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach

or default of this **COOPERATION AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

15. **Controlling Law/Venue.** This **COOPERATION AGREEMENT** shall be interpreted in accordance with the laws of the State of Missouri. Any action brought hereunder shall be brought in the Circuit Court of City of St. Louis, Missouri or in the event of Federal jurisdiction, in the United States District Court, Eastern District of Missouri.

16. **Integration.** This **COOPERATION AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **CITY**, and supersedes all prior negotiations, representations or agreements, either written or oral.

[Signature page to follow]

WHEREFORE, the parties have set their hands the day and date first above written.

CITY OF OLIVETTE, MISSOURI

**METROPOLITAN PARK AND
RECREATION DISTRICT d/b/a THE
GREAT RIVERS GREENWAY
DISTRICT**

By: 

By: _____
Chief Executive Officer

Approved as to Form:

Husch Blackwell LLP

EXHIBIT A

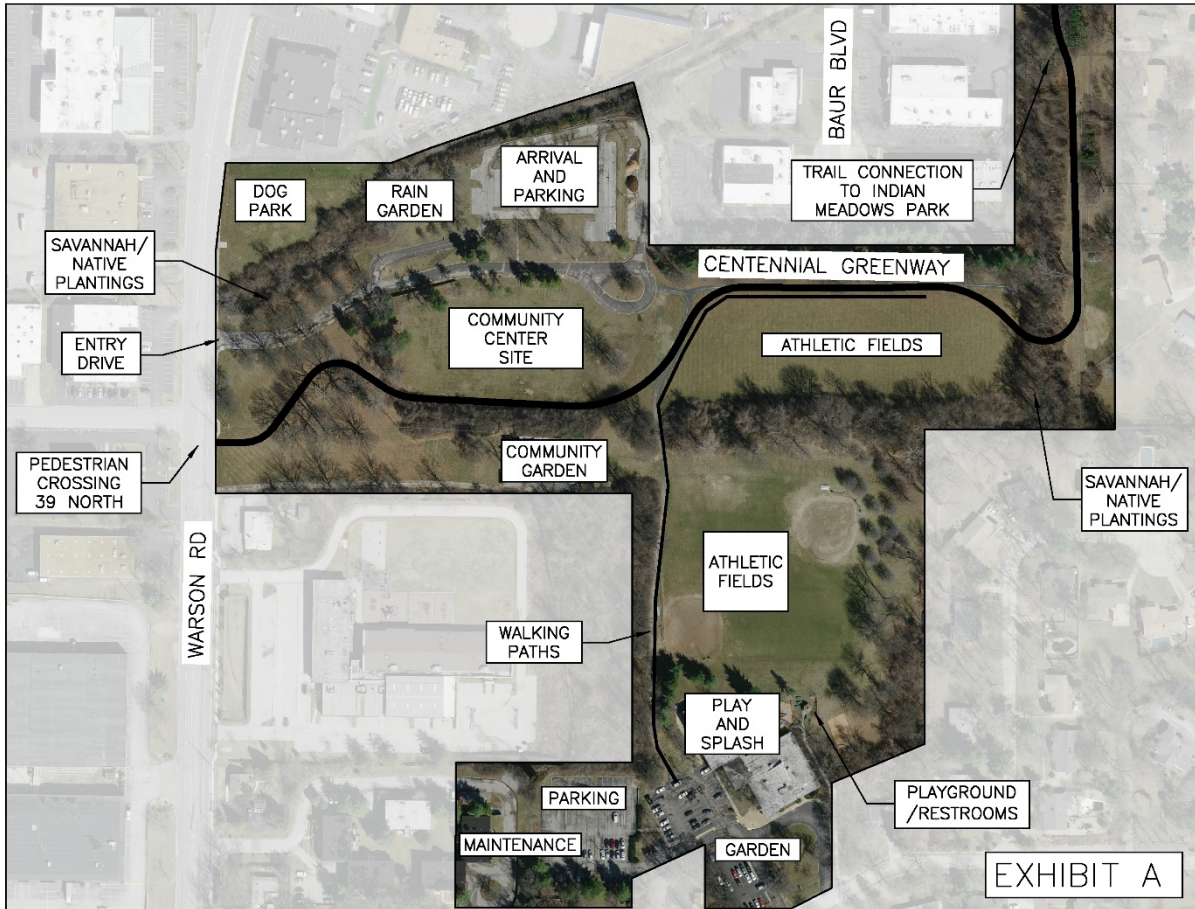


Exhibit B
FORM OF COOPERATION AGREEMENT
FOR THE
CONSTRUCTION, OPERATION AND MAINTENANCE
OF THE CENTENNIAL GREENWAY: WARSON RD TO DIELMAN ROAD

THIS COOPERATION AGREEMENT is made and entered into this ____ day of _____, 20__ by and between the **METROPOLITAN PARK AND RECREATION DISTRICT, d/b/a THE GREAT RIVERS GREENWAY DISTRICT** (hereinafter “**DISTRICT**”) and City of Olivette (hereinafter the “**CITY**”).

WHEREAS, the **DISTRICT** is engaged in developing and constructing a series of parks, trails and greenways in the City of St. Louis, St. Louis County and St. Charles County, Missouri; and

WHEREAS, Sections 70.210 and 70.220 RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with other municipalities and political subdivisions for the planning, development, construction, acquisition or operation of any public improvement or facility; and

WHEREAS, Section 67.1742(2) RSMo. provides that a metropolitan park and recreation district shall have the power to “Contract with public and private entities or individuals both within and without the state ... in furtherance of any of the purposes of the district;” and

WHEREAS, Ordinance Number **2715** [(IF NEEDED PER CITY)] authorizes the **CITY** to enter into this **COOPERATION AGREEMENT** with the **DISTRICT**; and

WHEREAS, the **DISTRICT** and the **CITY** wish to enter into an agreement by which the **DISTRICT** will, at its own expense, construct a trail, trail facilities, and improvements on land owned or under the control of the **DISTRICT** or the **CITY**; and,

WHEREAS, pursuant to the Cooperation Agreement for the Design, Construction, Operation, and Maintenance of the Centennial Greenway between the **DISTRICT** and the **CITY** dated as of [REDACTED], the **CITY** has agreed to be responsible for ordinary operations and maintenance of the **GREENWAY** (hereafter defined) during the term of this **COOPERATION AGREEMENT** subject to the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **DISTRICT** and the **CITY** agree as follows:

1. **Purpose.** This **COOPERATION AGREEMENT** is entered into by the parties for the construction, operation and maintenance of the Centennial Greenway: Warson Road to Dielman Road (the "**GREENWAY**"), as more fully described in Exhibit A, attached hereto and incorporated herein.
2. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **CITY** as follows:
 - a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Missouri.
 - b. The **DISTRICT** has full power and authority to enter into this **COOPERATION AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
 - c. Neither the execution and delivery of this **COOPERATION AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.

3. **Representations of the CITY.** The **CITY** represents, warrants and covenants to the **DISTRICT** as follows:
 - a. The **CITY** is a constitutionally-created City of the State of Missouri.
 - b. The **CITY** has power to enter into this **COOPERATION AGREEMENT** and by proper action has duly authorized the execution and delivery of this **COOPERATION AGREEMENT** by its duly authorized officers.
 - c. The execution and delivery of this **COOPERATION AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **CITY**, its ordinances or any bond, debenture, note or other evidence of indebtedness of the **CITY** or any contract, agreement or lease to which the **CITY** is a party or by which it is bound.
4. **JOINT OBLIGATIONS.** The **CITY** and the **DISTRICT** shall work together to provide or facilitate training related to the **GREENWAY** operations and maintenance for designers, staff, partners and volunteers.
5. **DISTRICT OBLIGATIONS.**
 - a. The **DISTRICT** agrees to plan, engineer and construct the **GREENWAY**, which is more fully described in Exhibit A. The **DISTRICT** shall require any contractor or subcontractors hired to construct improvements on the **GREENWAY** to satisfy the requirements of Section 107.170, RSMo. 1986, by furnishing to **CITY** a bond with good and sufficient sureties, in an amount fixed by **CITY**, and such bond shall be conditioned for the payment of any and all materials, equipment and tools used in connection with the construction of such improvements, and all insurance premiums, both for compensation and for all other kinds of insurance on said work, and for all

labor performed in such work whether by subcontractor or otherwise. In addition, the **DISTRICT** will adhere to the requirements of Section 290.220 *et seq.* RSMo., concerning the payment of prevailing wage on public works projects. The **CITY** will have the opportunity to participate in the planning, design and construction phases of the **GREENWAY** and shall have the right to approve or reasonably modify the plans prior to commencement of construction.

- b. The **DISTRICT** will maintain Workers' Compensation and appropriate employer's liability insurance covering any of its own employees engaged in activities relating to the **GREENWAY**.
- c. The parties will require that any outside contractor, equipment provider or other third party with which it enters into any agreements under this **COOPERATION AGREEMENT**, to provide it with a certificate of insurance demonstrating insurance coverage in connection with the activities to be performed by such contractor in connection with the **GREENWAY**, for personal and property liability, medical benefits, as well as general liability insurance.
- d. The **DISTRICT** shall provide all signage in the **GREENWAY** area during construction. Any additional future signage within the **GREENWAY** area shall be approved by the **DISTRICT**.
- e. After the **GREENWAY** construction is substantially completed, the **DISTRICT** will notify the **CITY** of their obligation to begin operation and maintenance of the **GREENWAY**. The **DISTRICT** shall issue a Certificate of Substantial Completion, in the form attached hereto as Exhibit B and

incorporated herein, to the **CITY**. The form shall be signed by the **DISTRICT** and the **CITY** representative. The Certificate shall represent all signing parties' determination that the **GREENWAY** substantially conforms to the terms of this **COOPERATION AGREEMENT**.

- f. After the **GREENWAY** construction is substantially completed, the **DISTRICT** will notify the **CITY**, in writing, of their obligation to begin operation and maintenance of the **GREENWAY**.
 - g. The **DISTRICT** will be responsible for the establishment of the landscape vegetation (excluding turfgrass) and stormwater Best Management Practices (BMP) installed during the construction and development of the **GREENWAY** as set forth in Exhibit C for a period of two years following substantial completion.
 - h. The **DISTRICT** will be responsible for the Metropolitan St. Louis Sewer District (MSD) required Best Management Practices (BMP) inspections beginning at substantial completion of the **GREENWAY** through the end of the landscape warranty period. After this period is over, the **DISTRICT** will require the **CITY** to continue inspections as set forth in **Section 7. CITY Obligations**. The **DISTRICT** shall provide all inspection reports with the **CITY** for submission to MSD per the Maintenance Agreement with MSD.
6. **EASEMENTS**. The **CITY** hereby grants to the **DISTRICT**, and its successors and assigns, a non-exclusive easement on, over, under, and across, any and all land owned by the **CITY** and located within the **GREENWAY** (the "**CITY EASEMENT AREA**"), for the purposes of the planning, engineering, constructing, and altering of the **GREENWAY** as contemplated by this

COOPERATION AGREEMENT (the “**CITY EASEMENT**”). The **CITY EASEMENT** shall be in effect and enforceable during the term of this **COOPERATION AGREEMENT**, including any extension hereof. Subject to the terms of this **COOPERATION AGREEMENT**, there is included in this grant of the **CITY EASEMENT** the right of the **DISTRICT**, at any time upon mutual agreement between the **CITY** and the **DISTRICT** and from time to time, to install, place, or construct upon the **CITY EASEMENT AREA** any personal property, asset, or improvement owned by the **DISTRICT** and to be used in connection with the **GREENWAY**.

7. **CITY OBLIGATIONS.**

- a. After acceptance of the Certificate of Substantial Completion by the **CITY**, the **CITY** will assume administrative responsibility for operation and maintenance of the **GREENWAY** to allow safe and convenient public access, enjoyment and use (the “**GREENWAY**”).
- b. By executing this **COOPERATION AGREEMENT**, the **CITY** approves the project concept and agrees to accept maintenance of the **GREENWAY**, as indicated in Exhibit A. Within thirty (30) days after the date of this **COOPERATION AGREEMENT**, the **CITY** will designate, through the City Manager in writing, an individual with final authority to make all approvals described in this paragraph.
- c. The **CITY** will have full control regarding hours of usage, closing the **GREENWAY** for maintenance or other activities and use of the **GREENWAY** for special events. If the **CITY** wishes to change any of the operational hours or other guidelines, they must do so in partnership with

the **DISTRICT** and give at least thirty 30 days written notice, so the **DISTRICT** can modify messaging appropriately. The **CITY** shall notify the **DISTRICT**, as soon as reasonably possible, when the **GREENWAY** is closed for any reason including maintenance, hazardous conditions or special events.

- d. The **CITY** shall be responsible for routine, non-routine maintenance, inspections (including reporting) and notifications as listed in detail here and outlined in Exhibit D.

- i. Routine Maintenance Activities

This work consists of basic upkeep of the trail and **GREENWAY** amenities on a regular basis.

1. Trail surface: Debris, including rocks, sticks, litter, pet waste, lawn clippings, leaves, etc., shall be kept clear of the pathway as often as necessary to maintain a safe surface for trail users. Following storm events, trails should be inspected within 48 hours to ensure the pathway is clear of obstructions and/or hazards.
 2. Vegetation along trails: Low growing vegetation, i.e. turf, shall be trimmed to a height as to ensure the vegetation is not obstructing the path of the trail. This should be conducted on a weekly or biweekly basis as needed to maintain a 3 foot buffer on either side of the paved pathway. Adjacent trees and brush, both naturally occurring and planted, shall be trimmed to a height of 8' and to a distance of at least 3' on either side of the pathway.

3. Planted vegetation: Landscaping along the **GREENWAY** shall be maintained in good health, free of weeds, dead or diseased vegetation removed and replaced according to the landscape design. If replacement is substantially different from the original design installed by the **DISTRICT**, the **DISTRICT** shall be consulted prior to work being conducted.
4. Greenway amenities: Amenities such as benches, trash cans, signage, bike racks, playgrounds, lighting, bollards, fencing, etc. shall be maintained in safe, working condition and free of graffiti. Non-capital repairs due to vandalism, accidents and natural wear shall be made as soon as possible. The **DISTRICT** will be made aware of needed repairs, when repairs are completed and if repairs are intended to be deferred to another time. The **CITY** will be responsible for the installation of replacement signage provided by the **DISTRICT** as referenced in this document under Section 5 District Obligations.
5. Retaining Walls: Trim grass/vegetation along wall, keep free of debris and trash, remove and replace damaged components and graffiti monthly. Annual check for cracks to segmental units and caps and repair as needed.
6. Stabilizing slopes including re-grading erosion rills and gullies, re-planting bare soil areas, repairing any damaged or degraded erosion and sediment control devices which are still in use or necessary to ensure vegetation establishment.

7. Stormwater Best Management Practices (“BMP”) maintenance including clearing sediment, debris and litter from swales, riprap, culverts and raingardens; removal of invasive or undesirable vegetation from bioswales, raingardens and retention/detention ponds in accordance with the executed Maintenance Agreement with Metropolitan St. Louis Sewer District (MSD). Any corrective action required that will modify the storm water facilities or BMPs shall be approved by an appropriate licensed professional. In the event the **CITY** shall fail to conduct BMP maintenance in accordance with MSD requirements, MSD shall be permitted to enter onto the **GREENWAY** property, make such repairs and perform such maintenance as deemed necessary, and bill the **CITY** for services performed. MSD shall be a third-party beneficiary of this **COOPERATION AGREEMENT** for purposes of this Section.

ii. Non-Routine Maintenance Activities

Non-routine maintenance activities include:

1. Capital repair and replacement of **GREENWAY** assets including, but not limited to, trail surface removal and replacement, retaining wall repair or replacement, catastrophic events due to unforeseen circumstances or natural disaster, capital asset repair or replacement. In the case of the greenway trail or greenway assets damaged during catastrophic events.

- iii. Inspections: Inspection of the **GREENWAY** by **CITY** staff or firm contracted by the **CITY** shall take place on a regular basis to be able to assign and complete regular and non-regular maintenance activities. A more detailed inspection of stormwater management facilities (including but not limited to swales/channels, drains, turf reinforcement mats, culverts, riprap and vegetated slopes) shall be inspected by a qualified individual familiar with the operation of said facilities.
- iv. Reporting: To help the **DISTRICT** and its partners build and sustain an effective greenway network, reporting is necessary to track maintenance (routine, non-routine and specialized) to assist in planning, design and development of greenways moving forward. The **CITY** shall keep a record detailing all routine and non-routine maintenance activities completed including frequency, corrective actions taken and those deferred. The stormwater BMP report required by **MSD** shall be included in this document as a separate section. These should be compiled as an annual report to the **DISTRICT**. The Annual Report template will be made available by the **DISTRICT**. The Annual Report should be submitted electronically to the **DISTRICT** no later than March 31st of each year following the previous calendar year ending December 31st after substantial completion, i.e. 2021 Annual Report is due March 31, 2022. A copy of the report is included in Exhibit E, however a digital copy will be made available to the **CITY** upon request.

v. Modifications:

The **CITY** shall notify the **DISTRICT** in writing when there is a desire to add, modify or eliminate amenities or assets included in the **GREENWAY** thirty (30) days prior to said actions being taken. The **CITY** and the **DISTRICT** shall work together to accommodate reasonable requests and come to a mutually agreed upon course of action.

9. Publicity. It is the intent of the parties that the **GREENWAY** shall be and become an integral part of the park system of the **CITY**. As such, the **CITY** will include in any press releases or other publicity about the **GREENWAY**, the words, "This greenway was built in cooperation with the regional parks and trails district, Great Rivers Greenway as part of the overall River Ring system." Events held on this **GREENWAY** should list Great Rivers Greenway as a co-host along with the **CITY**.

10. Amendments, Changes and Modifications. This **COOPERATION AGREEMENT** may be amended, changed, modified, altered or terminated only by written agreement of the **DISTRICT** and the **CITY**.

11. Notices. All notices or other communication required or desired to be given hereunder shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

DISTRICT: Metropolitan Park and Recreation District,
d/b/a The Great Rivers Greenway District
3745 Foundry Way, Suite 253,
St. Louis, MO 63110.

Attention: Susan Trautman, Chief Executive Officer

Telephone: (314) 436-7009
Fax: (314) 436-8004

With a Copy to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: David Richardson
Telephone: (314) 480-1718
Fax: (314) 727-2824

CITY: City of Olivette,
1140 Dielman Olivette, MO 63132
Attention: Barbara Sondag
Telephone: 314-983-5200
Fax:

12. **Assignments.** Neither party may mortgage or otherwise assign its right under this **COOPERATION AGREEMENT** without the written consent of the other.
13. **Waiver.** The failure of one party to require performance of any provision of this **COOPERATION AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this **COOPERATION AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
14. **Controlling Law/Venue.** This **COOPERATION AGREEMENT** shall be interpreted in accordance with the laws of the State of Missouri. Any action brought hereunder shall be brought in the Circuit Court of St. Louis City, Missouri or in the event of Federal jurisdiction, in the United States District Court, Eastern District of Missouri.
15. **Integration.** This **COOPERATION AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **CITY**, and supersedes all prior negotiations, representations or agreements, either written or oral.

[Signature page to follow]

WHEREFORE, the parties have set their hands the day and date first above written.

CITY OF OLIVETTE, MISSOURI

**METROPOLITAN PARK AND
RECREATION DISTRICT d/b/a THE
GREAT RIVERS GREENWAY
DISTRICT**

By: _____
CITY Executive

By: _____
Chief Executive Officer

ATTEST:

CITY Clerk

Approved as to Form: _____ Husch Blackwell LLP
--

APPROVED:

Director of Parks and Recreation

APPROVED AS TO LEGAL FORM:

CITY Counselor

EXHIBIT B-1

Description of Greenway

[To be Inserted]

EXHIBIT B-2

Form of Certificate of Substantial Completion

The undersigned, _____, the Metropolitan Park and Recreation District d/b/a the Great Rivers Greenway District (the "District"), pursuant to that certain Cooperation Agreement dated _____, 20____, (the "Agreement") by and between the District and the CITY of _____ (the "CITY"), hereby certifies to the CITY as follows:

1. That as of _____, 20____, the Greenway (the "Work") (as defined in the Agreement in Exhibit A) has been substantially completed in a workmanlike manner and in accordance with the Agreement.
2. Lien waivers for applicable portions of the Work have been obtained.
3. This Certificate of Substantial Completion is accompanied by the project architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), certifying that the Work has been substantially completed in accordance with the Agreement.
4. This Certificate of Substantial Completion is being issued by the District to the CITY in accordance with the Agreement to evidence the District's satisfaction of all obligations and covenants with respect to the Work and the development of the Greenway.
5. The CITY's acceptance (below) or its failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to the CITY (which written objection, if any, must be delivered to the District prior to the end of such 30-day period), and the recordation of this Certificate with the _____ Recorder of Deeds, shall evidence the satisfaction of the District's agreements and covenants to perform the Work.
6. This Certificate shall be recorded in the office of the _____ Recorder of Deeds by the District. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ___ day of _____, 20____ .

By: _____

Name: _____

Title: _____

CITY of _____

By: _____

Name: _____

Title: _____

DISTRICT'S NOTARY BLOCK

STATE OF MISSOURI)
SS.)
CITY OF _____)

On this ___ day of _____, 20___, before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that she is the Executive Director of the Metropolitan Park and Recreation District d/b/a the Great Rivers Greenway District, a Missouri political subdivision,, authorized to execute this instrument on behalf of the District, and said instrument was signed and sealed in behalf of said District, by authority of its Executive Director and acknowledged said instrument to be the free act and deed of the District.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

**EXHIBIT B-3
STORMWATER BMP**

[To be Inserted]

EXHIBIT B-4

Task/Responsibility	Partner
Trail surface cleaning	CITY
Trail surface repair/replacement	CITY
Landscape maintenance and replacement	CITY
Flood cleanup	CITY
Fencing repair/replacement	CITY
Trailhead and trailhead amenities maintenance	CITY
Trailhead and trailhead amenities replacement	CITY
MSD BMP maintenance and reporting	CITY
Turf mowing and care	CITY
Native grass plantings	CITY
Retaining walls maintenance, repair and replacement	CITY
Greenway signage (including repair and replacement)	GRG

CITY – Olivette City Government

GRG – Great Rivers Greenway District

EXHIBIT B-5



Annual Greenway Reporting

Reporting to be completed annually. Please submit to Great Rivers Greenway Operations Manager by April of the following calendar year. Reporting is not intended to be cumbersome but act as a record of general activity along the greenway and an opportunity to report ongoing maintenance issues to be addressed by both agencies. Please fill in all yellow boxes, once filled, they will change color to indicate all information has been entered.

Greenway:

Segment: Miles:

Year:

Agency:

Contact: Title:

In general, please describe your annual/seasonal maintenance activities on the greenway:

Routine Maintenance Activities

On average, how many hours per season do you spend on the following greenway maintenance activities. Enter 0 for those activities not applicable to your greenway or that you were not engaged in. *Example: If you mow along the greenway weekly for four hours each week during spring, summer and fall, enter 0 in Winter and 48 each in Spring, Summer and Fall (4 hrs x 4 weeks x 3 months).*

Activity	Winter	Spring	Summer	Fall	Total
Mowing:	0	0	0	0	0
Tree trimming/brush clearing:	0	0	0	0	0
Trash/litter removal:	0	0	0	0	0
Maint. to site furnishings: (hardscape, lights, trash cans, tables, benches, bike racks, signs, etc.)	0	0	0	0	0
Landscape maintenance:	0	0	0	0	0
Facilities: (shelters, restrooms, parking lots, etc.)	0	0	0	0	0
Trail surface cleaning:	0	0	0	0	0
Erosion control: (regrading, installing erosion blankets, sediment logs, etc.)	0	0	0	0	0
Graffiti/vandalism remediation:	0	0	0	0	0
Stormwater BMP maintenance: (raingardens, detention/retention basins, inlets, etc.)	0	0	0	0	0
Natural area management: (prairie mgmt, invasive plant mgmt, honeysuckle control, etc.)	0	0	0	0	0
Other: _____	0	0	0	0	0
Total	0	0	0	0	0

Non-routine Maintenance Activities

Describe any non-routine maintenance activities conducted on the greenway during the last calendar year including capital repair and replacement and damage caused by natural disasters. Please include costs associated with these activities and their sources (general revenue, grant, etc.)



Please list and/or describe any modifications made to the greenway in the last calendar year. Include amenities, construction, re-routing, closures, etc. and if GRG was notified.



General Comments:

Please include any additional comments or remarks you wish to share with Great Rivers Greenway.



Programming:

Please list and/or describe any programming or special events that were held on the Greenway.

