

Memorandum of Understanding

THIS Memorandum of Understanding (“MOU”) dated this ____ day of _____, 2023, by and between THE CITY OF HYATTSVILLE, a municipal corporation of the State of Maryland, hereinafter referred to as the “City,” and THE HEURICH PARK COMMUNITY GARDEN ASSOCIATION, hereinafter referred to as “ASSOCIATION.”

RECITALS

WHEREAS, the City desires to permit ASSOCIATION reasonable use of Heurich Park for a community garden lot; and

WHEREAS, ASSOCIATION is a local community organization which desires to have access to Heurich Park for the purpose of organizing and encouraging members of the public to cultivate garden plots within the parks as specified by the City; and

WHEREAS, the City has attached as exhibits hereto the ASSOCIATION bylaws, community garden job descriptions, overview, community garden sample application, community garden rules which contain the organizational mission and goals, description of officers, members and their responsibilities, membership requirements, process by which plots are allocated and the duration of the allocation, requirements for maintaining plots and removal of plots.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants, benefits and obligations contained herein and other good and valuable consideration, the receipt and

sufficiency of which is hereby mutually acknowledged, the City and ASSOCIATION agree to the MOU as follows:

ARTICLE 1. GENERAL PROVISIONS

- A. The above Recitals are hereby incorporated into this MOU; and
- B. The City by this MOU grants ASSOCIATION non-exclusive and reasonable access and use of the community garden lot at Heurich Park, as further specified by the City and this MOU so as to provide for the residents of Hyattsville garden plots for nutritional, recreational, educational, cultural and community development values and for no other purpose.

ARTICLE 2. ASSOCIATION'S RESPONSIBILITY

- 1. ASSOCIATION will submit to the City prior to commencing any assignment of garden plots the following and shall do so every two (2) years thereafter:
 - A. Organizational mission and goals.
 - B. Organizational description of officers, members and their responsibilities.
 - C. Membership requirements.
 - D. Process by which plots are allocated and the duration of allocation.
 - E. Requirements for maintaining plots and removal of plots.
 - F. Budget of operational costs and sources of financing.
 - G. A plan to address responsibilities for year-round maintenance and upkeep of the garden area.
 - H. The process for the City to review the community garden use every two (2) years.

2. ASSOCIATION will assume all liability and responsibility, at ASSOCIATION's cost, for the maintenance and repair of the Community Garden lot at Heurich Park and any storage structure.
3. If ASSOCIATION wishes to establish a storage structure on or near the site, this must be done in conformance with any and all applicable City, County or State Codes and Regulations, and with the further proviso that any such plan must be approved by the City Administrator or their designee as outlined below.
4. ASSOCIATION will submit to the City a scale site plan locating all of the existing features including trees, hardscape garden plots, water service and other associated elements; photographs with views of all the adjacent properties from the garden site as well as photographs from each of the properties adjacent to the garden site (a key indicating the location of each of the photographs shall be included with the site plan); a fencing and screening plan for the garden and possible accessory structures in order to accommodate surrounding properties; a soil sampling protocol in plan for the whole site indicating locations to ensure that the soil is not contaminated with heavy metals or other hazardous materials that could affect food stuffs grown in the garden; a schedule of project activities for the garden by City staff and ASSOCIATION. This above scale site plan and accompanying documents shall be presented along with this MOU to the Mayor and Council for approval before there can be any development of the garden plots. All installations shall be coordinated so that the City can provide water services

and so that Maryland National Capital Park and Planning Commission can provide and install an irrigation system on the site upon installation of water service by the City.

5. ASSOCIATION will hold harmless and indemnify the City from any causes, from any and all damages and costs except as provided herein in this MOU, expenses and fees caused by ASSOCIATION's use of the community garden lot at Heurich Park.
6. ASSOCIATION is responsible to ensure that no hazardous or combustible material shall be stored at or near the site. ASSOCIATION will ensure that its members, staff, employees, contractors or licensees will not drive or allow to be driven any motorized vehicle on the park property and that they will conduct themselves and their operations in a responsible and workmanlike manner when present at the community garden.
7. ASSOCIATION acknowledges that the City has no responsibility for any damage suffered by any of the gardeners or by ASSOCIATION as to theft or damage to the gardens by third parties or by the City.
8. ASSOCIATION shall not discriminate on the basis of race, sex, national origin, creed, disability or any other unlawful basis for such discrimination, and will take all reasonable steps to accommodate those with disabilities.

ARTICLE 3. THE CITY'S RESPONSIBILITY

The City will:

1. Provide oversight inspection and review quarterly to ensure the grounds are being adequately maintained and that all guidelines contained within this MOU are being followed.
2. Provide water service to the site, in partnership with Maryland Capital Park and Planning Commission.
3. Keep on file and update every two (2) years with the assistance of ASSOCIATION the documentation as provided in Article 2.
4. The City reserves the right in its discretion to allow the use of portions of Heurich Park to other parties at any time.

ARTICLE 4. LENGTH OF MOU

This MOU shall remain in effect from year to year until terminated pursuant to the terms herein or revised upon such terms as may be agreed upon in writing and signed by the parties.

ARTICLE 5. RIGHT OF ACCESS

The ASSOCIATION will provide to the City a useable key to any storage facility or locked facility on the premises and the City will have the right of access to such facility.

ARTICLE 6. TERMINATION

This MOU may be terminated by either party upon not less than thirty (30) days written notice to the other party. ASSOCIATION waives any claim for damages if the City terminates the Agreement as to produce in the ground and will hold harmless and defend the City from any liability if any of its members/participants attempt to seek damages from the City for such termination.

ARTICLE 7. APPLICABLE LAW

This MOU shall be governed by the laws of the State of Maryland. Any suit to enforce the terms hereof and for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Prince George's County and the parties expressly consent to the jurisdiction thereof and waive any right which they have or may have to bring any such suit elsewhere.

ARTICLE 8. SUCCESSORS AND ASSIGNS

Each of the parties binds itself, its partners, successors, assigns and legal representatives to this MOU and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this MOU. Neither party shall assign, sublet or transfer its interest in this MOU without the written consent of the other party. The ASSOCIATION specifically agrees that any of the gardeners that are allowed to cultivate the plots are members of the ASSOCIATION and as such are governed by the terms of this Agreement.

ARTICLE 9. INDEMNIFICATION AND RELEASE

ASSOCIATION shall be responsible for any loss, personal injury, death, and any other damages that may be done or suffered by reason of ASSOCIATION's negligence or failure to perform any obligations under this Agreement. ASSOCIATION shall indemnify and save harmless the City from and against all losses, liabilities, claims, demands, damages, costs and expenses of any kind, including attorneys' fees and litigation expenses, suffered or incurred due to ASSOCIATION's negligent acts or omissions, or breach of or failure to perform any of its obligations under this

Agreement. For purposes of this Section, "City" includes its agencies, departments, officers, agents, elected and appointed officials, and employees. This Section shall survive the termination of this MOU.

ARTICLE 10. MISCELLANEOUS

1. The person executing this MOU on behalf of ASSOCIATION hereby covenants, represents and warrants that he/she is duly authorized to execute and deliver this MOU on behalf of ASSOCIATION.
2. Any modification or revision of this MOU shall be in writing and signed by both parties.

The parties hereby agree and covenant by their signatures below that they have read and agree with the terms and conditions of this MOU in its entirety.

The City of Hyattsville

**Heurich Park Community Garden
Association**

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name