

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A SHARED MAINTENANCE AGREEMENT WITH WINDSOR CREST HOMEOWNERS' ASSOCIATION EXCHANGING SNOW REMOVAL SERVICES FOR LANDSCAPING SERVICES.**

**WHEREAS**, under §§ 70.210 to 70.320, RSMo., the City of Wildwood “may contract and cooperate ... with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service”; and

**WHEREAS**, pursuant to a Municipal Agreement entered between the City and the Missouri Highways and Transportation Commission, the City is required to “inspect and maintain the sidewalks, bicycle/pedestrian trails, tunnel and bridge, and associated tunnel lighting, tunnel drainage, retaining walls, fencing, landscaping, irrigation lines, bio-retention basins and retention basins” located along Missouri Route 109 and adjacent to Windsor Crest (the “Subdivision”); and

**WHEREAS**, within any “easements, licenses and other occupancy or use rights which the Association may have ... in other land or properties adjacent [to the Subdivision],” the Association is authorized to “exercise control over the easements ... trail systems, walkways and rights-of-way ... as is necessary to maintain, repair, supervise and insure the proper use of said easements ... trail systems, walkways and rights-of-way ...”; and

**WHEREAS**, the City currently provides snow removal services to the public streets within the Subdivision; and

**WHEREAS**, the Association currently provides snow removal services to the private alleys within the Subdivision; and

**WHEREAS**, the City can provide snow removal services to the alleys within the Subdivision at a lower cost than the Association currently pays for such services; and

**WHEREAS**, the Association can more efficiently provide landscaping, irrigation, and lawn mowing services along the sidewalks, bicycle/pedestrian trails, and bridge located along Missouri Route 109 and adjacent to the Subdivision; and

**WHEREAS**, in exchange for the City providing snow removal services to the alleys within the Subdivision, the Association will provide landscaping, irrigation, and lawn mowing services along the sidewalks, bicycle/pedestrian trails, and bridge located along Missouri Route 109 and adjacent to the Subdivision;

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**Section One.** That the form, terms, and provisions of the Shared Maintenance Agreement between the City of Wildwood, Missouri, and Windsor Crest Homeowners' Association, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the "Agreement"), be and they hereby are approved and the Mayor of the City of Wildwood, Missouri, is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

**Section Two.** The total aggregate costs, expenses and liability of the City under the Agreement authorized herein with Windsor Crest Homeowners' Association shall not exceed the sum of \$5,000.00 annually.

**Section Three.** Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

**Section Four.** Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

**Section Five.** This Ordinance shall be in full force and effect from and after its passage and approval.

[The remainder of this page is intentionally left blank.]

This Bill was passed and approved this \_\_\_ day of \_\_\_\_\_, 2017, by the Council of the City of Wildwood, Missouri, after having been read by title, or in full, two (2) times prior to passage.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
James R. Bowlin, Mayor

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

**Exhibit A**

**SHARED MAINTENANCE AGREEMENT**

This Shared Maintenance Agreement (the “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”), by and between the City of Wildwood, Missouri, a charter city and municipal corporation (the “City”), and the Windsor Crest Homeowners’ Association, a Missouri nonprofit corporation (the “Association”) (each, a “Party”; collectively, referred to as the “Parties”).

WHEREAS, under §§ 70.210 to 70.320, RSMo., the City “may contract and cooperate ... with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service”; and

WHEREAS, pursuant to a Municipal Agreement entered between the City and the Missouri Highways and Transportation Commission (the “Commission”), the City is required to “inspect and maintain the sidewalks, bicycle/pedestrian trails, tunnel and bridge, and associated tunnel lighting, tunnel drainage, retaining walls, fencing, landscaping, irrigation lines, bio-retention basins and retention basins” located along Missouri Route 109 and adjacent to Windsor Crest (the “Subdivision”); and

WHEREAS, within any “easements, licenses and other occupancy or use rights which the Association may have ... in other land or properties adjacent [to the Subdivision],” the Association is authorized to “exercise control over the easements ... trail systems, walkways and rights-of-way ... as is necessary to maintain, repair, supervise and insure the proper use of said easements ... trail systems, walkways and rights-of-way ....”; and

WHEREAS, the City currently provides snow removal services to the public streets within the Subdivision; and

WHEREAS, the Association currently provides snow removal services to the private alleys within the Subdivision; and

WHEREAS, the City can provide snow removal services to the alleys within the Subdivision at a lower cost than the Association currently pays for such services; and

WHEREAS, the Association can more efficiently provide landscaping, irrigation, and lawn mowing services along the sidewalks, bicycle/pedestrian trails, and bridge located along Missouri Route 109 and adjacent to the Subdivision; and

WHEREAS, in exchange for the City providing snow removal services to the alleys within the Subdivision, the Association will provide landscaping, irrigation, and lawn mowing services along the sidewalks, bicycle/pedestrian trails, and bridge located along Missouri Route 109 and adjacent to the Subdivision;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. Snow Removal. From and after the Effective Date, the City shall be responsible for the removal of snow and ice from the private alleys designated as “Alley” on the map

attached hereto (the “Alleys”), marked as **Exhibit A**, and incorporated by reference herein. At present, the City provides snow and ice removal services on Windsor Crest Blvd and Windsor Meadow Blvd in the Subdivision. The City shall remove snow and ice from the Alleys concurrently with, in the same manner and using the same methods as the City removes snow and ice from Windsor Crest Blvd and Windsor Meadow Blvd (the “Snow Removal Services”). Nothing in this Agreement shall obligate the City to remove snow and ice from the Alleys if the City is not undertaking snow and ice removal activities on Windsor Crest Blvd and Windsor Meadow Blvd, pursuant to the City’s regular snow and ice removal practices.

2. Landscaping and Maintenance. From and after the Effective Date, the Association shall be responsible for landscaping, irrigation and lawn mowing (the “Landscape Work”) on the trail and bridge area outlined in red on the map attached hereto (the “Landscape Area”), marked as **Exhibit B**, and incorporated by reference herein. The Landscape Work shall include the following:

- A. Grass mowing, to be performed weekly during the growing season, estimated at 31 mowings per year.
- B. Fertilizing, to be performed 5 times per year.
- C. Treatment for weeds within landscaped beds, to be performed 8 times per year.
- D. Cleanup of debris and leaves from landscaped beds, to be performed 2 times per year.
- E. Leaf Removal from grass areas, to be performed 2 times per year.
- F. Shovel edging around landscaped beds and trees, to be performed 1 time per year.
- G. Mulching of landscaped beds and trees, to be performed 1 time per year.
- H. Trimming and pruning of trees, shrubs and ornamental grasses, to be performed 1 time per year.
- I. Aeration and overseeding of grass areas, to be performed 1 time per year.
- J. Irrigation of all areas established with an in-ground system at the time of this agreement, to be performed during approximately 6 months of the year.

The Landscape Work does not include maintenance, repairs or replacement of the trails or pedestrian bridge adjacent to the Subdivision. The Landscape Work must be performed in a workmanlike manner. If the Landscape Work damages the trails or pedestrian bridge beyond normal wear and tear, the Association shall repair the trails or pedestrian bridge to the condition it was in prior to such damage. The costs of such repair shall be borne entirely by the Association.

3. Snow Removal License Grant. The Association hereby grants the City, its contractors and agents, a revocable license to perform the Snow Removal Services on the Alleys. The City acknowledges and agrees that the Association may revoke this license at any time. Such a determination shall be made at the sole discretion of the Association. The City further acknowledges and agrees that this license is a mere privilege to perform the Snow Removal Services, and that it does not operate to convey any easement rights to the City. The City further acknowledges and agrees that this license is not coupled with an interest, that this license is not

supported by valuable consideration, and that this license is not necessary to the City's possession or enjoyment of any right or privilege as a result of this license.

4. Commission Permit. The Parties agree that the Landscape Area is within right-of-way owned and controlled by the Commission, and, therefore, the City is without authority to grant the Association rights to enter into and upon the Landscape Area. Within thirty (30) days after the Effective Date, the Association shall submit to the Commission a completed St. Louis District Request for Permit in substantially the form attached hereto as **Exhibit C** and incorporated by reference herein, or such other form as may be required by the Commission (the "Request for Permit"), to perform the Landscape Work for the calendar year 2017. If this Agreement is renewed, the Association shall submit a completed Request for Permit to the Commission within thirty (30) days of each renewal. The City's performance of the Snow Removal Services is contingent upon the Commission's issuance of the Missouri Highway and Transportation Commission Permit to Work on Right of Way Non-Local Government Projects, or such other similar permit as may be issued by the Commission (the "Permit"). The Association's failure to submit the Request for Permit within said thirty (30) day time frame, or the Commission's failure to issue or denial of the Permit, shall result in the termination of this Agreement.

5. Obstruction. While performing the Landscape Work, the Association, its contractors or agents shall not partially or completely obstruct access to the trails and pedestrian bridge for use by the general public.

6. Mechanic's Liens. The Association shall not permit to be placed against the Landscape Area any mechanics', materialmens', design professionals', contractors' or subcontractors' liens arising out of the Landscape Work.

7. Termination. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party, provided that such terminating Party shall pay to the other Party the reasonable value of services rendered by such non-terminating Party under this Agreement during the calendar year in which such notice of termination is delivered.

8. Authorized Employees. The Association acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. The Association therefore covenants that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform the Landscape Work. The Association must provide the City with a completed and executed affidavit in substantially the form attached hereto as **Exhibit D**, and incorporated by reference herein. Such affidavit must be submitted to the City at least annually.

9. Indemnification. The Association hereby agrees to defend, indemnify, and hold harmless the City, its assigns, employees, contractors, officials, agents and representatives, from and against any and all claims, demands, damages, liabilities, costs, expenses, actions and causes of action for loss of or damage to any property, or injury to or death of any persons in any way arising out of or resulting from the Landscape Work, except for such claims, demands, damages, liabilities, costs, expenses, actions or causes of action which are caused by the negligence or willful misconduct of the City.

10. Insurance. Any contractor procured by the Association to perform the Landscape Work shall carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the City as an additional named insured in the amount of \$500,000 per claimant and \$3,000,000 per occurrence. The insurance coverage and protection required by this Agreement shall be and remain in force continuously until this Agreement is terminated, through original and any necessary successor policies of insurance. Upon request, the Association shall provide the City with a copy of a certificate of insurance, showing that such insurance is in effect. And if any claim or suit is brought against the City, or its assigns, employees, contractors, officials, agents and representatives, the City the Association to provide a full and complete copy of all applicable policies of insurance, appropriately endorsed.

11. Default; Remedies. A failure by either Party to perform, or cause to be performed, any obligation under this Agreement is a default. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or condition of this Agreement by any Party the defaulting or breaching Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within thirty (30) days after receipt of such notice, commence to cure or remedy such default. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable period of time, after receipt of notice, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings for injunctive relief or proceedings to compel specific performance by the defaulting or breaching Party.

12. Force Majeure. Neither Party shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including, without limitation, for purposes of this Agreement, strikes, lockouts, labor disputes, labor shortages, riots, acts of God, epidemics, landslides, lightning, earthquake, fire or other casualties, breakage, explosions, tornadoes, cyclones, floods, war, terrorism, invasion or acts of a public enemy, serious accidents, or other like causes beyond the responsible Party's reasonable control. The Party claiming any extension caused by force majeure shall, within three (3) days after the event of force majeure, notify the other Party in writing of the occurrence of such event and shall have the burden of proof in establishing such cause.

13. Notices. Any notice, demand, or other communication required by this Agreement to be given by either Party, to the other Party, shall be in writing and shall be sufficiently given or delivered if dispatched by (a) hand delivery; (b) United States certified mail, postage prepaid; (c) facsimile; or (d) a nationally recognized overnight delivery service to the following addresses:

**THE CITY:**

City of Wildwood  
Attn: City Administrator  
16860 Main Street  
Wildwood, MO 63040

**THE ASSOCIATION:**

Windsor Crest Homeowners' Association  
Attn: President  
14323 S. Outer 40 Rd., Ste 301N  
Chesterfield, MO 63017

or to such other address with respect to any Party as that Party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

14. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Missouri, excluding that State's choice-of-law principles.

15. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties and that no other agreements or representations, written or oral, other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by all of the Parties or their authorized representatives.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

17. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

18. Attorneys' Fees. In the event that any Party hereto brings an action or proceeding for a declaration of the rights of the Parties under this Agreement or for any alleged breach or default hereof, or for any other acts arising out of this Agreement, the prevailing Party to such action shall be entitled to an award of all of its costs, including reasonable attorneys' fees and expenses, and any court costs incurred in said action or proceeding in addition to other damages or relief awarded, regardless of whether final judgment is entered in such action or proceeding.

19. Authorization and Capacity. Association and City each represent to the other that it has the full right, power and authority to enter into this Agreement and to fully perform its obligations. Each person executing this Agreement warrants and represents that each has the authority to execute this Agreement in the capacity stated and to bind the Association and City, respectively, except as otherwise specifically set forth herein. Each person will furnish to the other copies of such corporate resolutions, certificates and agreements as the other shall reasonably require in order to confirm such authority and capacity of Association and City and of the persons who are to execute documents in connection herewith.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY**

**ASSOCIATION**

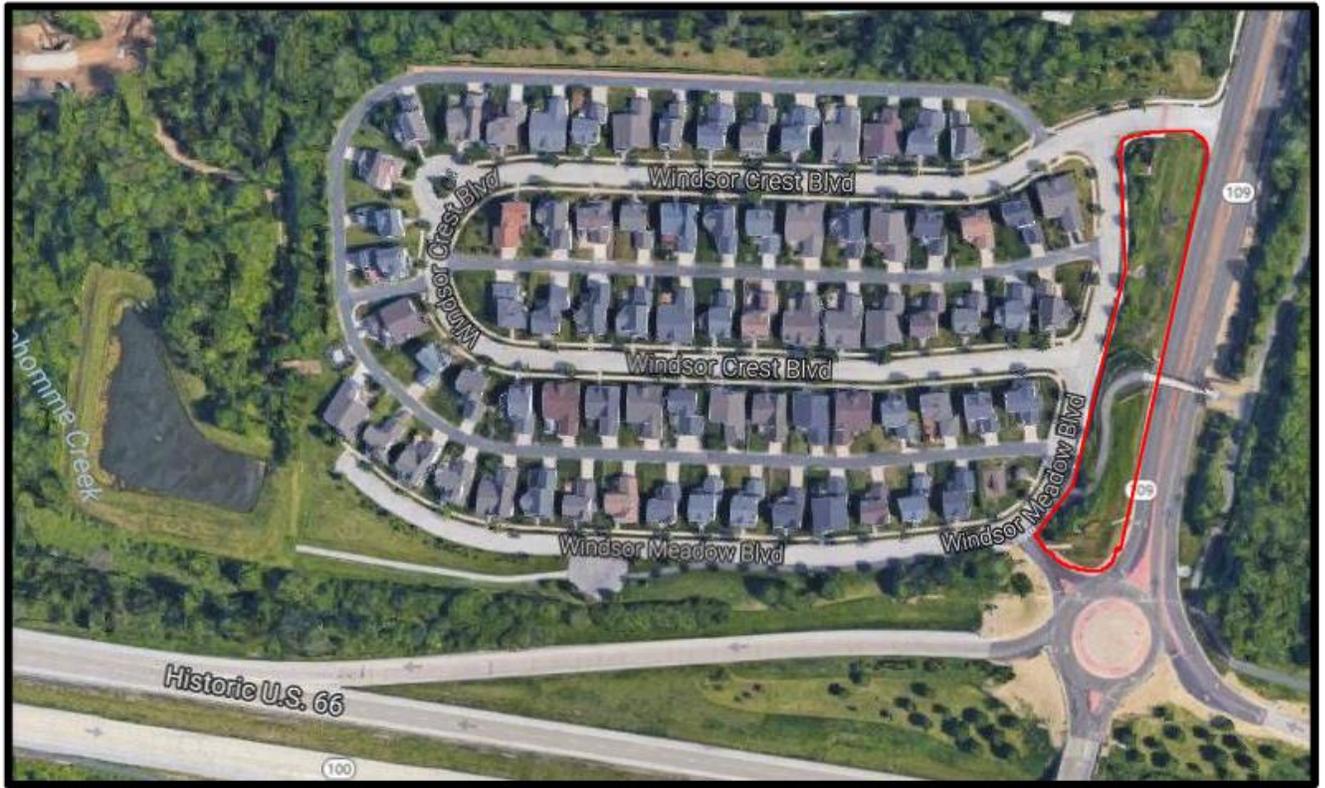
By: \_\_\_\_\_  
James Bowlin, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

**EXHIBIT A**



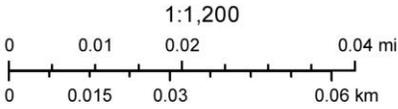
**EXHIBIT B**





January 18, 2017

- User drawn polygons
- Sales (Last 2 Years)





**EXHIBIT D**  
**AFFIDAVIT of COMPLIANCE**

**Section 285.530.2**

**State of Missouri** ) **ss**

**County of \_\_\_\_\_** )

**Now this \_\_\_ day of \_\_\_\_\_, 20\_\_ , the undersigned,  
being first duly sworn, deposes and says:**

- 1. I am more than 18 years of age.**
- 2. I make this affidavit from my personal knowledge of the facts stated herein or upon information and facts available to me as a duly authorized owner, partner, corporate or LLC officer or Human Relations Director of \_\_\_\_\_**  
(name of Corporation, LLC, sole proprietorship or partnership)
- 3. I am authorized to make this affidavit on behalf of \_\_\_\_\_.**  
(name of business entity, same as above)
- 4. I state and affirm that \_\_\_\_\_ is enrolled and is**  
(name of business entity, same as above)  
**currently participating in E-Verify, a federal work authorization program or another equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986.**
- 5. Further, \_\_\_\_\_ does not knowingly employ**  
(name of business entity, same as above)

**any person who is an unauthorized alien.**

**6. Further, \_\_\_\_\_ has performed an electronic**  
(name of business entity, same as above)  
**verification check as described above on all workers hired since**  
**January 1, 2009 or obtained documents required for completion of a**  
**federal I-9 form before it began participating in e-verify.**

**7. Attached to this affidavit is a true and accurate copy of this**  
**company's Memorandum of Understanding with the United States**  
**concerning the use of e-verify.**

**I certify under penalty of perjury that the statements above are**  
**complete, true and accurate to the best of my knowledge and belief.**

\_\_\_\_\_  
Authorized Agent, Partner, Owner or Officer

*If business has a Human Relations Director or equivalent that person  
must sign as an affiant as well.*

**I certify under penalty of perjury that the statements above**  
**are complete, true and accurate to the best of my knowledge and**  
**belief.**

\_\_\_\_\_  
Human Relations Director

*This form is promulgated pursuant to 15CSR 60-15-.020. Use of this form  
is not required but the Attorney General has deemed this affidavit  
sufficient in form to satisfy the requirements of section 285.540, RSMo.,  
Supp. 2008.*

FURTHER THE AFFIANT SAYETH NOT

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(Signature)

On this \_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_, before me, \_\_\_\_\_ a Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the person who executed the within affidavit, and acknowledged to me that he/she executed the same for the purposes therein stated.

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

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Notary Public

My Commission Expires: