

Hoyt Arboretum Agreement

This Agreement (the "Agreement") is made and executed as of the ____ day of _____ 2012, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PP&R"), and Hoyt Arboretum Friends Foundation (hereinafter "HAF"), collectively referred to as "the Parties."

RECITALS

WHEREAS, Hoyt Park was obtained from Multnomah County in 1922, and in 1928 was renamed Hoyt Arboretum and dedicated to the "educational and recreational benefit of future generations;

WHEREAS, Hoyt Arboretum is a 183 acre public park located in Southwest Portland owned and managed by PP&R for the public's education and enjoyment;

WHEREAS, The City desires to maintain a vital and exceptional park and recreation system that enriches the lives of our citizens and celebrates the beauty and heritage of our city;

WHEREAS, Hoyt Arboretum has been managed by PP&R for over 80 years and now features an outstanding collection of trees from all over the world and education programs for all ages;

WHEREAS, HAF is a non-profit corporation formed in 1986 and formally recognized by Council Resolution 34188 on October 15, 1986. The purpose of HAF is to support and enhance Arboretum facilities, collections, and educational programs.

WHEREAS, Since 1996, HAF has provided educational programs, special events, and capital improvements for Hoyt Arboretum;

WHEREAS, the purpose of this Agreement is to define the relationship between City and HAF in regard to their respective purposes, responsibilities, and accountability as to Hoyt Arboretum as depicted on Exhibit A hereto;

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, City and HAF agree as follows:

AGREEMENT

1. **Purpose.** The purpose of the Agreement is to provide for the ongoing management and programming of Hoyt Arboretum in accordance with the terms and conditions of this Agreement.
2. **Appointment.** City hereby retains, engages, and appoints HAF as City's agent to perform certain management services at Hoyt Arboretum on its behalf, with said management to be:

- (i) consistent with the intent of the Master Plan; (ii) generally in accordance with principles and practices applicable to management of a public asset; and (iii) specifically in accordance with the terms and conditions of this Agreement. This appointment grants no right or interest in the Property, other than the right of use in accordance with this Agreement.
3. **Premises.** Unless otherwise agreed to in writing, the rights and responsibilities of HAF under this Agreement apply to the portions of the visitor center at Hoyt Arboretum described as "Shared Space" or "Hoyt Arboretum Friends' Space" (Premises) as depicted on Exhibit B hereto.
 4. **Term.** The Agreement will have an initial term of five (5) years. So long as HAF is not in default at the expiration of the initial term, the Agreement will automatically renew for one additional five (5) year term, unless either party gives sixty (60) days notice to the other party of its intent not to renew. Notwithstanding said term, the intent of PP&R is a long term relationship with HAF as to Hoyt Arboretum, with this intent to be to negotiate successor agreements for continuing management and operation of the Hoyt Arboretum.
 5. **License to Use the Property.** City hereby grants HAF a non-exclusive license to use and occupy Hoyt Arboretum to the extent necessary to fulfill its responsibilities under this Agreement, with the understanding that said rights are contractual only, with no property rights being conveyed hereunder. Unless consistent with City policies and regulations pertaining to Hoyt Arboretum, HAF shall not restrict access of the public to Hoyt Arboretum, without the written consent of PP&R. The public does not have the right to use or access the HAF offices and indoor classrooms, without the consent of HAF.
 6. **Acceptance of the Premises.** Except as otherwise provided herein, HAF accepts Hoyt Arboretum on an "as-is" basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees. Furthermore, HAF accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including, but not limited to, existing permits, licenses, and easements.
 7. **Consideration.**
 - (a) On a periodic basis and subject to conditions herein, the City shall pay HAF an amount equal to the park use permit fees paid to the City for use of Hoyt Arboretum facilities. Up to four times a year and upon HAF's request, the City shall provide HAF with records indicating the types and amounts of park use fees paid to the City for permitted use of Hoyt Arboretum facilities. Up to four times a year the HAF may present an invoice to the City for the amount of permit fees paid to the City, including amounts collected by HAF as permit application processing fees, but not including amounts collected by the City as permit application processing fees. At the City's sole option, the City may reject invoices received from HAF after July 31st seeking compensation for fees paid to the City prior to the preceding July 1st. The City may also compensate HAF with funds from the adopted Parks and Recreation budget not to exceed \$13,000 each fiscal year and subject to budget approval each fiscal year. No other compensation shall be paid by the City to HAF for services under this Agreement without the written approval of Director of PP&R.

b) HAF may compensate the City by supplementing the City's budget for the Arboretum for personnel, materials and services, equipment, and/or capital improvements. All such City budget supplements are subject to the approvals of the City's Natural Resource Supervisor.

8. **Existing Management Obligations.** The Parties acknowledge the existence of agreements and contracts entered into by HAF in its own name. HAF hereby represents that existing transactions are in good standing. All agreements, permits and contracts entered into in the name of HAF will remain solely the obligation of HAF.
9. **Scope of Services.** HAF will manage Hoyt Arboretum in a professional and fully accountable manner, with management services to include the following, at a minimum:
 - A. **Employees.** HAF will hire, train, supervise and regularly evaluate all employees and volunteers required to carry out HAF's responsibilities provided for herein. All employees and volunteers supervised by HAF shall be employees or volunteers of HAF and not the City.
 - B. **Board Membership.** The City Nature West Zone Manager or manager's designee will be a non-voting ex-officio board member of HAF.
 - C. **Programming Guidelines.** Within three months of execution of the agreement and at least once annually HAF will submit its annual programming plan to PP&R for its review and approval.
 - D. **Fund Raising.** HAF is authorized to conduct fund raising activities on the Premises with the understanding that said fund raising activities shall be conducted in accordance with use policies for the Premises and that funds raised will either directly or indirectly benefit Hoyt Arboretum or further the goals of HAF and PP&R. To prevent conflicting uses of Hoyt Arboretum, HAF will obtain a permit, free of charge, from PPR's Customer Service Center prior to holding any events in Hoyt Arboretum. HAF shall engage in fund raising activities, including but not limited to soliciting donations, membership fees and fees for educational classes.
 - E. **Reporting and Fiscal Matters.** HAF will:
 1. Develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of this Agreement, such controls to be consistent (in all material respects) with generally accepted accounting principles;
 2. Prepare and approve an annual budget for management activities under this Agreement, with a copy of this budget to be provided to PP&R;
 3. Provide PP&R with regular reports prepared for the Board and its committees related to the Premises with reports to include, but not be limited to, regular year-end financial statements.
 4. Provide PP&R with copies of reports and documents provided to the Oregon Department of Justice and/or Secretary of State, with such documents to include HAF's annual Oregon 990 Form and revised Articles of Incorporation.
 5. Pay or arrange for payment of all costs that HAF is responsible for under the Agreement; and
 6. Assist City in efforts to secure City Council appropriations to address operating, maintenance and capital improvement needs of Hoyt Arboretum.

- F. General Maintenance, Restoration, Repair, Safety and Capital Improvements. HAF will:
1. Janitorial maintenance: HAF staff are responsible for maintaining the cleanliness and order of the HAF areas and the Shared Space (as shown on Exhibit B) when they use these areas. The Premises will be cleaned by PP&R staff on a weekly basis. PP&R's janitorial maintenance of HAF's office area and the Shared Space is limited to sweeping and removal of recycling and garbage. HAF is expected to keep their own work areas clean. PP&R staff will not dust or mop in HAF office areas, this will be a responsibility of HAF staff.
 2. HAF shall use its best efforts to safely use the Hoyt Arboretum facilities and will only be responsible for improvements or repair of Hoyt Arboretum facilities if HAF requests an improvement or repair that exceeds PP&R standards or if the repair is made necessary by negligent or inappropriate uses by HAF.
 3. Promptly, after becoming aware of such conditions or practices, correct any unsafe condition at the Premises for which HAF is responsible, as well as any unsafe practices by persons reasonably under HAF's control thereon.
 4. Adhere to applicable provisions of the PP&R Red Book, including, but not limited to, timely reporting of damage or injury incidents on a PP&R incident report form. The Red Book is available on line at http://www.parks.city/wca/employee_orientation/redbook/default.asp, or can be obtained by contacting the PP&R Property Manager. HAF shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Hoyt Arboretum;
 5. Consult with PP&R City Nature West Zone Manager as to safety or maintenance concerns associated with the grounds and structural components of Hoyt Arboretum; and
 6. Not make any capital improvements at Hoyt Arboretum without the written authorization of Parks' Property Manager. City authorization will require review and approval of plans prepared at HAF's cost by licensed engineers or contractors. "Capital improvements" shall mean any permanent structural change or addition to Hoyt Arboretum. Minor or temporary improvements shall require the approval of the City Nature West Zone Manager, or her designee.
 7. Not make any temporary structural changes nor make any significant changes to the grounds without the written consent of the City Nature West Zone Manager.
 8. To the extent that funds are available, HAF may contribute to the cost of repairs and capital improvements deemed necessary by PP&R.
- G. Security. HAF shall keep the Premises secured, which includes, but is not limited to, locking the gate, doors and windows of buildings, as well as engaging the alarm system, if installed, when HAF staff is not present. HAF will provide an adequate level of security or crowd control personnel for protection of the Premises and portions of Hoyt Arboretum when HAF is hosting events at Hoyt Arboretum.

- H. Contracting. HAF may enter into agreements in its own name for purpose of fulfilling its responsibilities under this Agreement, with contracts to provide for, but not be limited to, services related to the operation, use, security and maintenance of Hoyt Arboretum. HAF shall use reasonable efforts to make purchases from various suppliers of materials or services of adequate quality and utility. All contractors are to be properly insured and will be required to indemnify HAF and the City as to claims related to the contracted work.
- I. Hazardous Materials. HAF shall not dispose at, on or about Hoyt Arboretum any Hazardous Substance (as defined in ORS 465.200 or as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous Substances in a manner that protects Hoyt Arboretum and the environment from accidental spills and releases. HAF, or any of its directors, officers, employees, agents, contractors, subcontractors, servants, successors, assigns, lessees, permittees, licensees, or invitees shall not cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about Hoyt Arboretum, whether affecting surface water or groundwater, air, the land or the subsurface environment.
- J. Records and Inspection. HAF will maintain a set of all financial, vendor, employee and operating records relating to its activities under this Agreement. At any time during the Term, City shall have the right, after reasonable notice to HAF, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of HAF at reasonable times and during normal business hours; provided, however, City shall use its best efforts to not cause any unreasonable disruptions in the operations of HAF in connection with such inspections.
- K. Consultation. In addition to specific consultation requirements provided for elsewhere herein, HAF will consult with City on other matters related to Hoyt Arboretum, when reasonably necessary to do so. All issues concerning HAF's interest in the property or this Agreement should be directed to PP&R's Property Manager.
- L. Media and Publications. HAF will consult with PP&R's Community Relations Manager prior to providing to the media any press releases or information that directly concerns Hoyt Arboretum or PP&R. HAF shall use its best efforts to acknowledge its relationship with the City, by including the official logo of PP&R and its slogan "Healthy Parks Healthy Portland" or other slogans as developed from time to time, on all signage and in any publications, media presentations or other presentations that specifically refer to Hoyt Arboretum.
- M. Taxes and Assessments. HAF will pay any and all applicable federal, state or local taxes assessed against the Premises or as a result of HAF's use of Hoyt Arboretum, or against distributions to HAF under this Agreement. If HAF is a tax exempt entity, it is responsible for taking all measures necessary, including submitting the appropriate applications to taxing authorities, to receive an exemption.
- N. Compliance with Law. HAF shall at all times comply with all applicable federal, state and local laws, rules, regulations, ordinances, statutes, decisions, licensing and permitting requirements, and agreements.

- O. Volunteers. PP&R is willing to provide assistance and advice regarding volunteers, but, unless otherwise agreed to in writing, all volunteers working at the request or direction of HAF at Hoyt Arboretum are volunteers of HAF for insurance and liability purposes. HAF will report the hours of all volunteers working at Hoyt Arboretum to PP&R's City Nature Stewardship Coordinator on an annual basis.
10. City Retained Responsibilities, Rights and Authorities. City hereby reserves to itself all rights and authorities not specifically granted to HAF under this Agreement. At a minimum, the City retains the following responsibilities, rights and authorities:
- A. Right of Entry. The Parties will share the use of the Premises, including the Parties will share use of the office and meeting spaces similar to the floor plan in Exhibit B. City reserves the right to enter the Premises for any purpose, at any time, including evaluation of HAF services, with the understanding that when exercising said right City will make a reasonable effort to minimize disturbances to HAF activities. It is expressly understood by the Parties that City, whether or not it conducts visits or inspections, assumes no responsibility for the quality, adequacy or safety of any work that is done by or for HAF.
 - B. Use of Premises. The City shall have the right to use the Premises with the understanding that said use will not unreasonably conflict with HAF activities. In an effort to avoid unreasonable conflicts, PP&R will provide HAF with reasonable notice of intended uses of the Premises, including reasonable use of classroom space or other facilities on the Premises when said space or facility is not being used by HAF.
 - C. General Maintenance. Subject to available funding and with the exception of maintenance and repair responsibilities expressly assumed by HAF or made necessary by negligent or inappropriate uses of the Hoyt Arboretum by HAF, City will provide all maintenance and repairs required to maintain the Premises and Hoyt Arboretum in a condition similar to other PP&R facilities and natural areas. In most cases, upgrades or improvements of the Premises will be made during larger facility upgrades.
 - D. Emergency Repairs. PP&R reserves the right, in its sole discretion, to make emergency repairs when said repairs are necessary to address immediate health and safety concerns. To the extent that it is reasonable to do so, PP&R will make a good faith effort to coordinate with HAF as to these repairs.
 - E. All permitting of Hoyt Arboretum will be conducted by PP&R's Customer Service Center.
 - F. Utilities. PP&R shall pay all utilities associated with the Premises and Hoyt Arboretum.
11. Joint PP&R and HAF Efforts. To the extent resources allow, the Parties will cooperate on planning, programming, fund raising and development activities necessary to achieve the long-term intentions of the Master Plan for Hoyt Arboretum.
12. Damage to Premises. If the Premises or Hoyt Arboretum is damaged as a result of the acts or omissions of HAF or its officers, employees, agents, contractors, licensees, permittees, invitees, or others acting under the direction and/or control of HAF, HAF will promptly

notify PP&R and shall, at PP&R's option and in cooperation with HAF's insurance carrier, if a claim is involved, either repair or replace the affected property at HAF's expense or shall reimburse PP&R for its reasonable costs of repairing or replacing the affected property.

13. **No Liens.** HAF shall keep Hoyt Arboretum, and all City property used in connection with this agreement, free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of HAF. If any lien is filed against any portion of Hoyt Arboretum or other City property used in connection with this Agreement, as a result of the acts or omissions of HAF, or of HAF's employees, agents, or contractors, HAF shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after HAF has notice that the lien has been filed. If HAF fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of City, City may, at its election, upon five (5) days' prior written notice to HAF, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. HAF shall pay on demand any amount so paid by City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

14. **INDEMNIFICATION**

- A. HAF shall indemnify and defend City, its directors, officers, employees and agents, against, and hold City, its directors, officers, employees and agents, harmless from any and all liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, charges, judgments, costs and expenses (including all reasonable attorneys' fees and court costs) (collectively, "Losses") of any nature whatsoever that may be imposed upon, incurred or paid by, or asserted against City, its directors, officers, employees and agents, that are caused solely by the negligence or willful misconduct of HAF or its officers, employees, agents or invitees.
- B. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall indemnify, defend and hold harmless HAF and its officers, employees and agents from any Losses that are caused solely by the negligence or willful misconduct of City (or its directors, employees, agents, contractors or licensees).
- C. As long as HAF has and maintains insurance complying with the requirements of Section 15 of this Agreement, HAF's obligation to defend and indemnify the City under this Section 14 shall be limited to the amounts of that insurance.

- D. Contractors and Other Authorized Users. HAF will include sufficient indemnification language in its contracts and other written authorizations indemnifying City from any and all claims related to the contract work or authorized uses.
- E. Defense of Claims. If any action or proceeding is brought against the City, its directors, officers, employees or agents, which action or proceeding is based upon a claim for which HAF is obligated to indemnify the City hereunder, HAF shall, upon notice from the City, at HAF's expense, defend such action or proceeding through counsel reasonably acceptable to City.

15. Insurance

- A. Insurance Requirements. During the term of this Agreement, HAF shall maintain insurance that satisfies City's standard insurance requirements for permit and license holders. A copy of City's current requirements is attached hereto as Exhibit C. City reserves the right to change standard insurance requirements from time to time. Furthermore, HAF will include insurance requirements, which are satisfactory to City, in its contracts and other written authorizations.
- B. Waiver of Subrogation. HAF and City each agree to waive claims arising in any manner in favor of either City and HAF and against the other for loss or damage to their property located within or constituting a part or all of the Premises or for loss due to bodily injury to the extent the loss or damage is covered by property or liability insurance the party is required to carry under this Agreement. The waiver also applies to HAF's directors, officers, employees, shareholders and agents and to City's officers, agents and employees. The waiver does not apply to claims arising from the willful misconduct of HAF or City.

16. DEFAULT; REMEDIES; FORCE MAJEURE

- A. Events of Default. The following events shall constitute events of default by HAF:
 - 1. If HAF fails to perform any covenant in this Agreement within thirty (30) days after written notice from PP&R specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, HAF shall not be deemed to be in default if HAF begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;
 - 2. The bankruptcy or insolvency of HAF or if a receiver or trustee is appointed to take charge of any of the assets of HAF in or on the Hoyt Arboretum and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against agreements thereunder; or
 - 3. If HAF is dissolved or fails to maintain its status as an Oregon non-profit corporation in good standing or its qualification as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.
- B. Remedies for Default. Upon the occurrence of an event of default under this Section 16, City shall have the following rights and remedies, as well as any other remedies available at law or in equity.
 - 1. City shall have the right to suspend HAF's use of the Premises and Hoyt Arboretum until the default is cured.

2. If the default is not cured, City shall have the right to terminate this Agreement by written notice to HAF. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.
- C. Exclusion of Certain Damages. Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 14.

D. Force Majeure

1. Neither City nor HAF shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors.
 2. Notwithstanding to the contrary herein, if the Premises or Hoyt Arboretum are rendered unusable by an event described in this Section and if such condition continues for more than sixty (60) consecutive days, or if City notifies HAF that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either City or HAF may terminate this Agreement by written notice to the other party.
17. Termination.
- A. Voluntary Termination. Either Party may voluntarily terminate the Agreement with no less than six (6) months written notice to the other party.
 - B. Termination Process. Upon expiration of the Agreement term or early termination, HAF shall deliver all keys to City and shall surrender the Premises to City in first class condition. All repairs for which HAF is responsible shall be completed prior to such surrender. All HAF property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should HAF fail to effect the removals or make repairs, City may do so and charge the cost to HAF together with late charges as provided by this Agreement from the date of the expenditure. HAF shall be responsible for all costs and damages to City as a result of HAF's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.
 - C. Ownership upon Termination or Expiration. Upon the expiration or termination of this Agreement, all fixtures, improvements and personal property located on or associated with the operation of Hoyt Arboretum and the Premises shall become the property of the City. After satisfaction of HAF's obligations outstanding as of the date of expiration or termination, all money remaining in HAF's possession or accounts received as donations or sponsorships specifically for Hoyt Arboretum, shall become the property of the City, to be used exclusively for operating, programming, maintaining, repairing and improving the Hoyt Arboretum and in accordance with any or all donor or granting organization

restrictions.

18. MISCELLANEOUS

- A. City Consent. Unless otherwise stated, whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PP&R or a person designated in writing by the Director.
- B. HAF/City Coordination and Cooperation. HAF and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement. Additionally, PP&R and HAF will meet at least once annually to discuss management and budget issues related to the Property.
- C. Third-Party Rights. Except as provided for in this Agreement, HAF may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Premises by third parties. It is understood and agreed that, notwithstanding any such arrangements, no such third party shall have any rights under this Agreement, either as a party hereto or a third-party beneficiary.
- D. Signage: HAF may not display or erect any permanent signs at the Premises or Hoyt Arboretum without the advanced, written approval of PP&R, PP&R signage requirements may include the official logo of PP&R and its slogan "Healthy Parks Healthy Portland" or other slogans as developed from time to time.
- E. Assignment
 - 1. PP&R may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PP&R management and/or operation of Hoyt Arboretum; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PP&R.
 - 2. Rights granted under this Agreement are personal to HAF, and may not be assigned, transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of PP&R, which consent may be granted or denied in its sole discretion.
- F. Notices. All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows, except that HAF's communications to City concerning insurance coverage should be sent to the addresses described in Exhibit C:

<u>PP&R:</u>	Portland Parks and Recreation Bureau 1120 SW 5 th Ave, Suite 1302 Portland, OR 97024 Attention: Property Manager Telephone: (503) 823-5229 Facsimile: (503) 823-5570
	<u>With a copy to:</u> City of Portland 1221 SW 4 th Ave, Room 430

	Portland, OR 97204 Attention: Harry Auerbach Telephone: (503) 823-4047 Facsimile: (503) 823-3089
<u>HAF:</u>	Hoyt Arboretum Friends Foundation 4000 SW Fairview Blvd. Portland, OR 97221 Attention: Executive Director Telephone: (503) 865-8733 Facsimile: (503)

Any party may change the designated recipient of notices by so notifying the other party in writing.

- G. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- H. Forum. Any litigation between the City and HAF arising under this Agreement, or out of work performed under this, shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
- I. Disputes. The Parties will make a good faith effort to resolve disputes in a reasonable manner and will proceed through the following courses of action prior to resorting to litigation: party to party negotiations; administrative appeals; and mediation and/or non-binding arbitration.
- J. Construction and Interpretation of Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who prepared it. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that each party had adequate opportunity to consult with legal counsel before the execution of this Agreement.
- K. Entire Agreement. This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

- L. Further Documents. Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- M. Illegality. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.
- N. Waiver in Writing. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
- O. The Rights to Gather and Be Heard. HAF will not take any action which would be considered a denial of the public's constitutional right to gather and be heard in the common areas of Hoyt Arboretum.
- P. No Partnership. Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between PP&R and HAF.
- Q. Exhibits; Successors; Time of Essence; Counterparts; Amendments. The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind PP&R and HAF and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by PP&R and HAF. The Director of Parks is authorized to execute amendments to this Agreement, so long as such amendments do not result in unbudgeted financial obligations for the City.

IN WITNESS WHEREOF, PP&R and HAF have caused their duly authorized representatives to execute this Agreement in triplicate.

PORTLAND PARK AND RECREATION
BUREAU

HOYT ABORETUM FRIENDS
FOUNDATION:

By: _____

Name: _____

Title: _____

Date: _____

By: Peggie Schwarz

Name: Peggie Schwarz

Title: Executive Director

Date: 12-28-61

APPROVED AS TO FORM
APPROVED AS TO FORM

Paula Mergel
CITY ATTORNEY

EXHIBIT C

STANDARD INSURANCE
REQUIREMENTSINSURANCE

At all times during the life of this Agreement, or as may further be required by this Agreement, HAF at its own cost and expense, shall provide the insurance specified as follows:

1. Evidence Required

HAF and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, PP&R, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to PP&R at or before execution of this Agreement and then annually for the duration of the Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

2. Notice of Cancellation, Renewal, Reduction or Material Change in Coverage.

The insurance policy shall provide that the insurance shall not terminate or be materially changed without thirty (30) days written notice first being given to PP&R. Notices shall be sent to the PP&R's Manager, Strategy, Finance and Business Development, 1120 SW 5th Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the HAF or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The HAF and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. Insurance Required

A. HAF and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the HAF and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the HAF's work under this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the HAF and its contractor or subcontractors, if any. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence.

B. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer

would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insureds on the policy.

- C. Workers Compensation Insurance. HAF, its contractors or subcontractors, if any, and all employers on its behalf are subject employers under Oregon Workers Compensation Law for this Agreement and shall comply with ORS Chapter 656 which requires them to provide Oregon workers compensation coverage in accordance with Oregon law for all of their subject workers. HAF and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with the City at all times during the term of this agreement.

3. Special Provisions

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by HAF, and any approval of said insurance by the CITY is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by HAF pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- B. PP&R reserves the right to terminate or suspend the Agreement in the event of non-compliance with the insurance requirements of this Article. In no event shall any suspension entitle HAF to an extension of the term of the Agreement specified in this Article.

* (Note: General liability limits may be increased, at the discretion of the CITY's Risk Manager, relative to risk involved).

Exhibit A

Hoyt Arboretum Trail System



185184

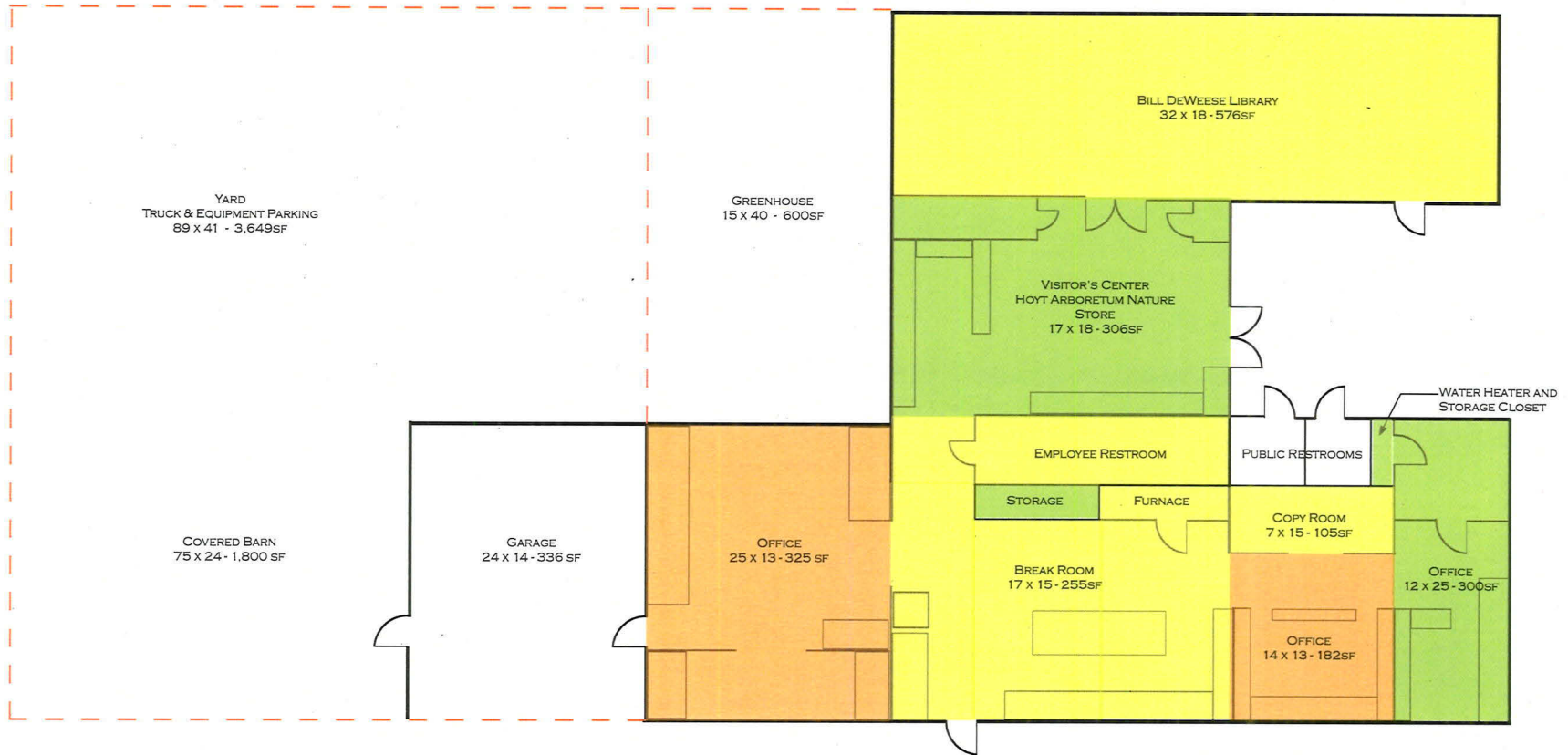
0 200 400 600 800
Feet

Contour Intervals are 10 Feet



PORTLAND PARKS & RECREATION
Healthy Parks. Healthy Portland





- SHARED SPACE _____ TOTAL : 936 SQUARE FEET
- PORTLAND PARKS & REC _____ TOTAL : 6,892 SQUARE FEET
- HOYT ARBORETUM FRIENDS _____ TOTAL : 606 SQUARE FEET



THIS FLOORPLAN IS NOT TO SCALE.
IT IS INTENDED FOR DIAGRAMMATICAL PURPOSES ONLY
ALL SQUARE FOOTAGE NUMBERS ARE ESTIMATES.

