

## SPACE USE AGREEMENT

The City of Portland ("City"), a municipal corporation of the State of Oregon, by and through its Office of Management and Finance ("OMF") – Facilities Services, is the owner of the property located at SE 3<sup>rd</sup> & SE Harrison, Portland, Oregon ("Property"). The Property is identified in Exhibit A, incorporated and attached hereto.

Right 2 Dream Too, an Oregon nonprofit corporation, ("User"), wishes to use the Property for the purposes described in this Space Use Agreement ("Agreement").

For the purposes of this Agreement, OMF shall represent "City" in exercise of proprietary interests, rights and perform obligations as the property owner under this Agreement unless other specific bureau or office or agent is denoted. City bureaus or agencies such as Bureau of Development Services (BDS), Portland Police Bureau (PPB), Bureau of Transportation (PBOT), will be considered separate regulating or permitting bodies.

In consideration of the mutual promises, conditions and covenants contained herein, the Parties hereby incorporate the above and agree as follows:

### Agreed:

- 1) **Grant of Use.** User is allowed to enter and use the Property and those City-owned structures, as shown in "Site Plan" Exhibit B, for the sole purpose of operating a permitted campground (hereinafter "rest area"), in conformance to the requirements of OAR 918-650 and OAR 333-031, copies of current versions are attached as Exhibit C, the terms and conditions of this Agreement, applicable zoning and property use regulations, and the property deed restrictions identified in Exhibit D. The intended individuals at the rest area will be people experiencing houselessness or other issues which put them in need of services offered by User. Notwithstanding State regulations that may allow a greater number of individuals at a permitted campground, User shall not have more than 100 individuals at the Property at any one time. User may have more than 100 persons at the Property for day meetings, conferences, tours or activities that do not involve overnight stays, resting, sleeping or camping. User is encouraged to communicate with City to confirm whether a specific activity or event would or would not violate the Agreement.

This Agreement may not be assigned in whole or in part, except after notice to and consent from City. No construction, alteration, installation or improvement to the Property is allowed without the prior written consent of City and full compliance with land use, zoning and building codes. No expenditure of money hereunder, lapse of time or other act or thing shall operate as an estoppel against City, or be held to give User any vested or other right in the Property.

- 2) **Term.** This Agreement commences on \_\_\_\_\_ (the "Effective Date") for a term of 10 years, unless sooner terminated herein. This Agreement may be extended for additional terms upon approval by the City Council, provided that User is not in default at time of request for extension. Request for extension of additional terms shall be provided in writing no less than six months prior to the expiration date of the then present term. During any period of active negotiations between User and City, this Agreement shall continue under the same terms and conditions subject to City's right to terminate such extensions upon 90 days written notice to User.
- 3) **Fees.** Except for identified property expenses identified, no initial or annual fee is required for this Agreement.

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- 4) **Termination/Noncompliance Protocol** This Agreement may be terminated upon mutual written agreement. City may also terminate this Agreement upon written notice, if User fails to comply with the terms and conditions of this Agreement. In case of termination based on cause or other claims that User is not in compliance with, or is in violation of this Agreement, User will have:
- i) Opportunity to cure. City shall give written notice of alleged noncompliance and User will have an opportunity to promptly commence remedy of the noncompliance. User is allowed a reasonable period to substantially remedy the noncompliance and will communicate to City regarding User's remedy action, progress and the estimated time for substantial and final completion. Unless the alleged noncompliance raises an immediate and substantial health or safety concern, such reasonable remedy period shall be not less than 30 days. City, in its notice, will include City's suggestion on how the noncompliance may be remedied and the period for implementing the suggested remedy.
  - ii) Opportunity to dispute. User may contest the noncompliance notice in writing, by contesting the basis for the alleged noncompliance and/or stating how it complied and performed, and other basis to refuse the noncompliance notice. In such case, City and User shall confer to seek to resolve the issue. If conference fails, then at either party's request, City and User shall mediate such issue. Conference and mediation shall occur within 45 days of City's notice of noncompliance. Mediation shall occur through a mutually agreed upon mediator to be selected from list of up to five available and willing mediators provided by Resolution Northwest, or another similar source for mediation services, with expenses for mediation to be shared by the parties equally (50/50%). If consultation and mediation fails, City may proceed to terminate this Agreement. For those noncompliance areas where User does not contest, User will be required to undertake steps to cure the remedy as provided in the subsection above.

If User fails to move to cure or dispute the notice as provided above, then City may proceed with the termination.

Upon expiration or termination of the Agreement, User must promptly: surrender possession of the Property in a clean and sanitary condition and in as good condition as or better condition as when the Agreement commenced, normal wear and tear excepted; remove all personal property and trash generated due to User's use; and deliver any property access keys to City.

- 5) **Benchmarks for Evaluating the Success of the Agreement.** User will give City summary information in an annual written report to Council. The User report will include number of people sheltered, number of people turned away from shelter, and such other information as the parties may mutually agree upon. Within 30 days of the effective date of this agreement, City and User will confer to further define the contents of the report, how information is to be gathered and resources needed to gather and provide the information. The Hosford-Abemethy Neighborhood Development board and the Central Eastside Industrial Council board will be invited to submit written comments for the User report and the annual reporting to Council.
- 6) **Compliance with Law.** In connection with its activities under this Agreement, User, its officers, employees, agents and invitees shall comply with all applicable federal, state and local laws and regulations, including but not limited to American with Disabilities Act requirements and civil rights nondiscrimination laws. User is responsible for determining and acquiring all regulatory permits, licenses and approvals that may be required for its activities at the Property. User shall require its officers, employees, agents and invitees to comply with all applicable laws and the terms and conditions of this Agreement. City will in good faith work with User to identify, apply for and seek approval for permits, licenses, approvals, subject to compliance with applicable regulation and code.



- 7) **General Conditions of Agreement.** Access to and use of the Property is in its "AS IS" condition. City has no liability to User, its officers, employees, agents or invitees for any damage or injury caused by the condition of the Property. User, its officers, employees, agents and invitees must comply with User's current Code of Conduct attached as Exhibit E, to which User will notify and consult City prior to amending. User is required to keep the Property in clean, sanitary and neat condition. To minimize impacts to surrounding properties, User will pick up trash and debris on the sidewalk or the public right of way that surrounds the Property. User will keep sidewalk surrounding the Property and all access paths on the Property clear of obstruction, ice and snow. No signage, equipment or device may be adhered or affixed to any structure or improvement City placed at the Property, (exterior or interior walls, doors, windows or roof), fence or landscape at the Property, without the written consent of City, provided however that City shall not unreasonably withhold such consent for signage that identifies Right to Dream Too at the Property. Smoking is permitted only in User-designated Smoking Area. Open flame and fires are not allowed. All food services at the Property must comply with Multnomah County health regulations. No consumption, possession or sale of alcoholic beverage or marijuana is permitted. No illegal controlled substances shall be possessed, used or sold at the Property, and no medical or recreational marijuana cultivation or dispensary is permitted. Activities that constitute public or private nuisance under state and local laws (including but not limited to Oregon Revised Statutes Chapter 105, Multnomah County Code Sections 15.225 et seq, or Portland City Code) are prohibited. User must not overload the electrical circuits with appliances or equipment. User must refrain from overloading the floors of structures beyond the point considered safe by a competent and licensed engineer or architect approved by City. No motor vehicle (such as mobile homes, RV, car, truck, motorcycle, moped) repair, maintenance, parking or storage is permitted, except with written consent of City; vehicles in active use for delivery or service are permitted at the Property only during the period of such delivery or service. Subject to code requirements or limitations, User may relocate painted recycled doors or replace or refurbish the same ("art doors") from its NW 4th and Burnside location to the Property for placement at a location to be approved by City, but City will not unreasonably withhold its approval from placement of such doors at the Property.
- 8) **City Buildings.** The Property will have City-owned structures that will serve as facilities for toileting, shower and laundry ("TSL Facilities"). User is responsible to ensure use by User, its officers, employees, agents and invitees will be in accordance with the TSL Facilities' intended uses and provide any necessary toileting or bathing and provide for any hygiene or cleaning item (such as toilet paper, soap, detergent, sponges, etc). User is responsible, at its sole expense, for arranging for routine servicing of on-site TSL Facilities, including but not limited to cleaning and sanitizing, professional plumbing services to remove clogs.

Any personal property acquired by, paid for or brought onto the Property by User or its invitees remains the personal property of User or its invitees. Any personal property acquired by, or paid for or brought onto the Property by City remains City's property. Trailers or other items that City acquires and makes available for use at the Property must be kept at the Property for the duration of the Agreement unless City allows for removal from the Property in writing. At the termination of the Agreement, the parties will discuss options for reasonable disposition of used City property, with the intention of serving houseless persons or persons in danger of becoming houseless.

[ADD AS NEEDED LANGUAGE PERTAINING TO PROPERTY STORAGE (MOBILE TRAILER, CONTAINERS or MODULAR BUILDINGS) AND ASSOCIATED RESPONSIBILITY.]

- 9) **Property Maintenance and Expenses.** During the term of the Agreement, User is solely responsible for routine property care, maintenance and repair for health, safe, cleanliness, and

prudent property preservation. User will be responsible for arranging and paying for these general property maintenance services, which will include but are not limited to clean-up, janitorial or waste removal and site security. User must dispose of garbage and other refuse at appropriate waste disposal sites or arrange for weekly garbage collection service. User, its officers, agents, employees and invitees may not dispose of trash and debris generated at the Property in trash receptacles located in the right of way. User understands that if it fails to voluntarily arrange for services that may be required to maintain the health, safety and cleanliness of the Property, City is authorized to arrange for the service in User's name, but absent a health or safety emergency, City will employ the noncompliance protocol referenced in this Agreement prior to arranging for services in User's name. City will provide major property maintenance and repairs as may be requested by User in writing and deemed reasonable. Disputes about what is reasonable and the scope of City's responsibility for maintenance and repairs shall also be subject to the noncompliance protocol.

City will provide pay for reasonable water, sewer and electricity services ("utilities") and garbage collection service for the first year of this Agreement. City will work with User regarding paying for utilities and/or garbage collection service for subsequent years, in the City Budget process.

In order to promote self-sustainability of User's programs, User is encouraged to apply for grants or to seek non-City funding to assist User in offsetting any property expenses that it may incurred under the Agreement. User will consult with City and Commissioner Fritz's Office, to ensure terms of any potential grants will not impact the Property or the Agreement, or otherwise require action or performance by User or City that conflicts with the terms of the Agreement. City is not required to modify this Agreement to conform to User's grants.

- 10) **Transportation.** City will provide Streetcar tickets to User at no charge, in amounts to allow campers to access services outside of Property.
- 11) **Good Neighbor Agreement.** Subject to the qualifications referenced below in this paragraph, User shall enter into a "Good Neighbor Agreement(s)" (GNA) process with the applicable local neighborhood and/or business association(s) to address community livability issues as soon as practically possible prior to or after the Effective Date of the Agreement. The Commissioner in Charge of the Office of Neighborhood Involvement shall set up the GNA process. At minimum, the Good Neighbor Agreement process must address the following areas: crime prevention and awareness including but not limited to security measures and patrols at or around the Property; litter, graffiti, loitering and noise control and prevention in and around the Property; participation in community problem solving as requested by City or local neighborhood and/or business association(s); and participation in mediation to resolve any conflicts that may arise. It is understood that reaching a Good Neighbor Agreement is dependent on consensus between all parties, and therefore the outcome of the process is beyond the control of the User. User agrees to participate in the Good Neighbor Agreement process in good faith, and seek to reach consensus. A copy of any executed Good Neighbor Agreements must be provided to City.

Notwithstanding the Good Neighbor Agreement process, User shall work in good faith with the owner and users of the adjacent commercial property at 310 SE Stephens (currently owned by East Side Plating Inc.) to resolve promptly livability issues or concerns.

- 12) **Entry by City; Damages.** City reserves the right to enter the Property\* for any purpose consistent with the terms and conditions of this Agreement. Except for cases of emergency, 24-hour written notice will be given to User's representative at the front entrance of the Property, prior to entry by City when City is exercising its rights as the property owner under this Agreement. City may enter the Property at any time in case of emergency. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to



cause serious damage to the Property or immediate risk to public safety. City's right to enter relates to the common areas and permanent structures and not to the sleeping tents or private enclosed sleeping areas.

User shall give City prompt notice of any condition, disturbance, accident or occurrence at the Property, which might create a hazard to any persons or to surrounding properties. User shall be responsible for reimbursing City for costs incurred for property damages or claims caused by User, excluding reasonable wear and tear or normal and expected decay or depreciation. If repairs are done by City, City may take any or all of the following actions: i) invoice User for the costs for restoring, repairing or altering the Property that may be necessitated by User's activities; ii) seek recovery from User's insurance carrier; and iii) pursue any legal or equitable remedy under the law. The "notice" and "cost" provisions of this paragraph shall be subject to the noncompliance protocol established in this Agreement.

- 13) **Indemnification.** User shall indemnify and hold harmless the City of Portland, its officers, agents and employees from liability, damages, expenses, attorneys' fees, causes of action, suits, claims or judgments, proportionate to and arising out of or connected with (i) User's and its officers, agents, employees or invitees' entry, use or occupancy of the Property or surrounding City property, (ii) any failure of User or its officers, agents, employees or invitees' to comply with the terms of this Agreement or any violation of law or ordinance, and (iii) the acts or omissions of User, its officers, directors, agents and employees or invitees; provided, however, the User shall not be liable for claims caused by the sole negligence of City, its officers, directors, agents and employees or for third parties not associated with or authorized or permitted by User. User shall, at its own cost and expense, defend any and all suits which may be brought against User upon any such above mentioned cause or claim, and to satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City or User, their officers, directors, agents and employees in any such action or actions, including any appeals, in which they may be party defendants proportionate to and arising out of or connected with User's liability as determined by a court or arbitrator. , Provided however that this provision does not bar claims against the City of Portland for damages that are caused by City's entry onto the property.

City, its officers, agents and employees shall not be liable for any damage to equipment of User, or to any person in or upon the Property, including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain or any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

City or its officers, agents and employees shall not be liable for any latent defect at the Property. In addition to the indemnity provided above, User agrees to indemnify, defend and hold harmless City, its officers, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency

User hereby assumes all risk of damage to personal property or injury to persons in, upon or about the Property from any cause other than the City of Portland's sole negligence, and User waives all claims in respect thereof against the City of Portland.

**User's obligations for indemnification in this Section survives the termination of this Agreement.**

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- 14) **Insurance.** User must obtain and maintain commercial general liability and property damage insurance that protects the User and City, its officers, agents and employees, from any and all claims, demands, actions and suits for property damage or personal injury, including death, arising under this Agreement. The insurance shall provide coverage for not less \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City of Portland 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 must apply as to claims between insureds on the policy. User's coverage shall be primary and non-contributory with any other insurance and self-insurance.

User must maintain its insurance coverage continuously and without interruption for the duration of the Agreement. User's insurance must not terminate or be canceled without thirty (30) days written notice first being given to City.

User must provide City with certificate(s) of insurance, with relevant endorsements, certifying the coverage required under this Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure of User to maintain the required insurance shall be cause for immediate termination of this Agreement by City. City reserves the right to modify the coverage amounts and requirements per statutory change and per any change in City policy and/or recommendations by City Attorney and/or Risk Management, during the term of the Agreement.

City does not insure any loss of User's personal property. User is encouraged to obtain personal property insurance to cover damage or loss against theft, fire or other casualty of User's personal property that may be brought onto the Property.

If any workers are employed at the Property, User must comply with the Oregon workers' compensation law, ORS Chapter 656, and as it may be amended from time to time, and maintain coverage for all subject workers for the duration of the Agreement and provide to City proof of valid worker's compensation insurance, unless User demonstrates to the satisfaction of City that User is exempted from workers' compensation insurance requirement.

Any contractor User may employ for property maintenance services at the Property must have insurance coverage in coverage scope and amount that are prudent to insured against potential claims. User may use unpaid volunteers to perform miscellaneous maintenance or repairs required under this Agreements. Volunteers will not be required to provide separate insurance coverage, but User remains liable for deficiency in work or performance of volunteers and any claims related to its volunteers.

- 15) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Property or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Property or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Property or surrounding Property which constitutes a health hazard, as defined by the rules of the Health Division. User shall be solely responsible for reporting, cleanup and other regulatory compliance associated with

hazardous substance discharge caused by User, its employees, agents and invitees. User's obligations and liabilities under this Seton shall survive the expiration of the Agreement

- 16) **Taxes.** User shall be solely responsible for payment of any taxes or fees assessed during the term of this Agreement against any personal property of any kind owned by or placed upon or about the Property. As used herein, the term "taxes or fees" shall include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed or assessed by any city, county, state or federal government or any special district or agency, and those other taxes and fees remain the responsibility of User. City will assist User in applying to Multnomah County for property tax exemption or waivers as a non-profit, and User is liable for any property taxes assessed if the exemption or waiver is not granted.
- 17) **Nonprofit and Tax Exempt Status.** User shall maintain active and valid its Oregon nonprofit corporation status, including timely payment of all fees and filing of applicable documentation required by the Oregon Secretary of State. User shall maintain its tax exempt status as an IRC 501(c)(3) entity throughout the Agreement.
- 18) **Notice.** All notices under this Agreement shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:

For the City of Portland:

Office of Management & Finance  
Director – Bureau of Internal Business Services  
1120 SW 5th Avenue, Room 1250  
Portland, Oregon 97204

Office of Commissioner Amanda Fritz  
1211 SW 4<sup>th</sup> Avenue, Room 220  
Portland, Oregon 97204

With Copy to:  
City Attorney's Office  
1221 SW 4<sup>th</sup> Avenue, Room 430  
Portland, Oregon 972014

For User:

Right 2 Dream Too

Board Members To Be Inserted Here

- 19) **Agreement Manager.** User shall coordinate with the Director for Bureau of Internal Business Services, Bryant Enge, at 503-823-6962, on all issues related to property maintenance. User shall communicate with Commissioner Amanda Fritz, at 503-823-3008, on all other issues pertaining to this Agreement. User's point of contact shall be Ibrahim Mubarak at 503.839.9992.
- 20) **Oregon Law and Forum.** This Agreement shall be governed by the laws of the State of Oregon. Any litigation arising under this Agreement shall be in Multnomah County Circuit Court. User shall conform to all applicable laws and regulations of any public authority affecting the Property and shall correct at User's own expense any failure of compliance created by the fault or use of User or its officers, agents, employees or invitees.
- 21) **Waiver of Breach.** The waiver by City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the User shall in no way impair the right



of City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.

22) **Entire Agreement.** This Agreement contains the entire agreement between City and the User and supersedes all prior written or oral discussions or agreements. No amendment or modification of this Agreement is valid unless in writing and signed by the parties. If any portion of this Agreement is ruled invalid, void or illegal by an order of the court, the remainder of the Agreement shall remain in full force and effect. This Agreement will be construed with equal weight for the rights of both parties, the terms and conditions of this Agreement having been determined by fair negotiation with due consideration of the rights and requirements of both parties, and any ambiguities shall not be construed for or against either party.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. This transaction, including any amendments or extension, may be conducted by electronic means including the use of electronic signatures and facsimiles.

The signatories below represent that they are authorized to execute and bind their respective entities to this Agreement.

**CITY OF PORTLAND**, a municipal corporation

**Right 2 Dream Too**, an Oregon nonprofit corporation


By: \_\_\_\_\_  
Bryant Enge, Director  
Bureau of Internal Business Services  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: 4635 NE Garfield  
Portland, OR 97211  
Phone: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Amanda Fritz, Commissioner  
Date: \_\_\_\_\_

Add Signature Blocks for other Board Members

APPROVED AS TO FORM  
  
\_\_\_\_\_  
City Attorney

1/26/15



**Exhibit A  
Property**

[Insert property legal description, along with map for visual]

**Exhibit B  
Site Plan**

**[to be included at later time]**

Placement of tents or tent-like objects must conform to the land use and building code restrictions pertaining to the Property.



SUBSTITUTE  
EXHIBIT B

371 93

# CONCEPT SITE PLAN



date: 1.21.2016

scale: 1" = 20"

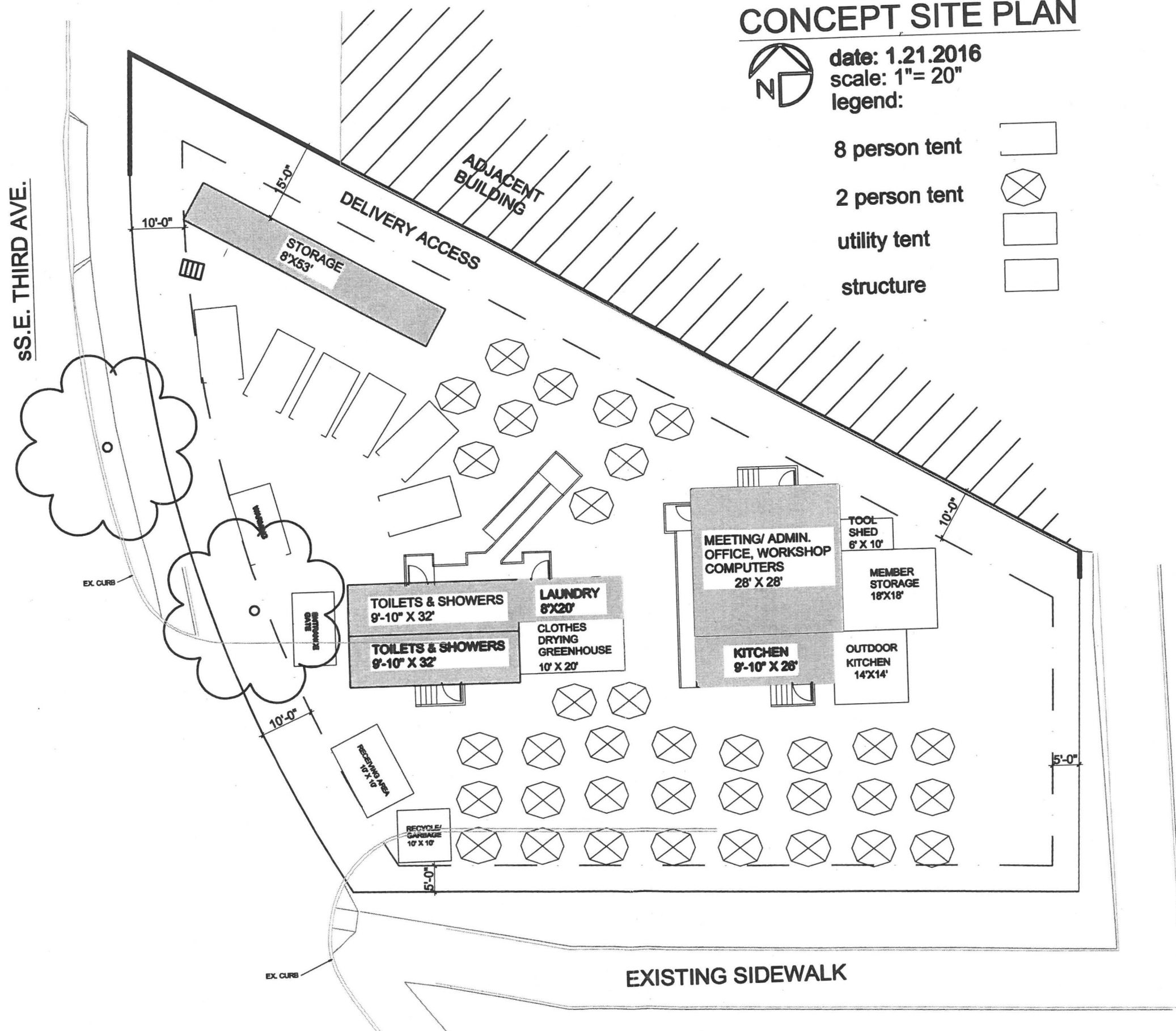
legend:

8 person tent 

2 person tent 

utility tent 

structure 



EXISTING SIDEWALK

**Exhibit C**

Oregon Administrative Rule (OAR) 918-650 Recreational Parks & Organizational Camps

Oregon Administrative Rule (OAR) 333-031 Construction, Operation & Maintenance of Recreation  
Parks



**Exhibit D**  
**Deed Restrictions and Reservations**

The Property is subject to the following deed restrictions:

- The Property must not be used for placing or maintaining of any advertising sign, display, or device.
- No junk, scrap, junked motor vehicles, or parts thereof, debris, trash, waste, or other such material shall be placed on the Property in any manner as to be visible from a state highway or any public right-of-way
- The Property may not be used for the operation of any garbage dump or sanitary landfill.

Use of the Property is subject to the right of the State of Oregon Department of Transportation, predecessor in interest to the City of Portland, to enter onto the Property to remediate deed restriction noncompliance as provided by the deed.

**Exhibit E**  
**User's Code of Conduct for Property**  
**Effective at Commencement of Agreement**

[User must consult with City on proposed amendments to User's Code of Conduct]