

## AGREEMENT re YAKIMA ARBORETUM

THIS AGREEMENT is made and entered into by and between the City of Yakima, a Washington municipal corporation (hereinafter the “City”) and Yakima Area Arboretum, a Washington nonprofit corporation (hereinafter “YAA”). In consideration of the mutual covenants contained herein, the parties agree to the terms and conditions herein.

### 1. Arboretum Property

The Arboretum is a public park currently used in part (a) for the planting, growing and observation of trees and woody plants, shrubs, and display gardens that are hardy to the inland Pacific Northwest for the aesthetic and educational benefit of those it serves, that being largely the people living in Yakima and the Central Washington Area, (b) for nature-based educational purposes, and (c) as an event space for fundraising events, weddings, and other community gatherings.

City owns the approximate 47.3 acres of Yakima County, Washington, land located within the City of Yakima at 1401 Arboretum Drive, Yakima, Washington, 98901 and generally depicted and labeled as Parcels A through G in the drawing attached Exhibit A, which land comprises a portion of Yakima County Assessor Parcel No. 191329-11005 (the “Arboretum Land”).

### 2. Possession of Real Property and Improvements

2.1 City hereby grants to YAA the exclusive possession and enjoyment of the Arboretum Land together with all appurtenances thereto (the “Arboretum Property”) upon the terms and conditions set forth in this Agreement. For clarity, it is expressly acknowledged that the Arboretum Property includes, without limitation, Yakima County Assessor Parcel No. 191329-14901, which is a financially segregated parcel for the Jewett Interpretive Center building improvement.

2.2 Further, the City grants to YAA the exclusive possession and enjoyment of Arboretum all buildings, facilities, and other improvements located on the Arboretum Property (sometimes collectively referred to as “Arboretum Facilities” or “Buildings” or “Facilities”) upon the terms and conditions set forth in this Agreement.

2.3 The Arboretum Property and Arboretum Facilities are collectively referred to as the “Arboretum” in this Agreement.

2.4 Notwithstanding any other provision of this Agreement, it is expressly acknowledged that YAA has no responsibility for the repair, maintenance, operation, or any other matters with regard to the portion of the Greenway path that runs through any portion of the Arboretum Land.

### 3. Term

3.1 Unless terminated in accordance with this Agreement, the term of this Agreement shall be for a period of approximately ten (10) years, commencing on the date both parties have signed this Agreement, and terminating at midnight, May 31, 2033 (the “Initial Term”); provided, however, that this Agreement will automatically renew for up to two (2) additional ten (10) year terms (each a “Renewal Term”), unless YAA or the City (the “Notifying Party”) gives the other party to this Agreement written notice of the Notifying Party’s desire to renegotiate one or more of this Agreement’s provisions (a “Renegotiation Notice”) no later than two (2) years prior to the end of the current Initial Term or Renewal Term, as the case may be, in which event (a) YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement,

will promptly work together in good faith to discuss, explore, and attempt to mutually agree in writing on renegotiated provisions of this Agreement for the upcoming Renewal Term(s); provided, however, if mutually agreeable renegotiated provisions of this Agreement are not agreed to in writing by and between YAA and the City within one hundred twenty (120) days after the Renegotiation Notice is given by the Notifying Party to the other party, (i) YAA and the City will participate in a mediation process within one hundred eighty (180) days after the Renegotiation Notice is given by the Notifying Party to the other party in accordance with the provisions set forth in Section 18.10 below for the purpose of further attempting to reach written mutual agreement on any open and unresolved matters that are preventing YAA and the City from settling on renegotiated provisions for the upcoming Renewal Term(s) (the "Mediation Process"). However, if the Mediation Process under the preceding sentence does not result in mutually acceptable written renegotiated provisions of this Agreement for the upcoming Renewal Term(s), this Agreement will terminate at the end of the then current Initial Term or Renewal Term, as the case may be.

Notwithstanding any other provision of this Agreement, in the event YAA wishes to make one or more large capital improvements to the Arboretum ("Capital Project(s)") during the Initial Term or any Renewal Term under this Agreement, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will promptly work together in good faith to discuss, explore, and attempt to mutually agree on an extended term for this Agreement and/or other amended provisions for this Agreement that would (a) go into effect when and if the Capital Project(s) are completed and (b) help support and promote the YAA's fundraising and volunteer efforts with regard to the completion of the Capital Project(s).

3.2 If YAA is voluntarily dissolved or administratively dissolved (and not reinstated within thirty (30) days' after the City gives YAA written notice of the administrative dissolution), this Agreement shall automatically terminate and YAA shall have no continuing rights or responsibilities hereunder.

3.3 All real property improvements made to the Arboretum, whether in existence upon the date of this Agreement or thereafter placed or constructed upon the property by YAA, shall inure to and belong to City.

#### 4. Consideration

No cash payment shall be paid by either of the undersigned parties to the other for YAA's possession and use of the Arboretum under the Agreement. The development and maintenance of the Arboretum Property, the Arboretum Buildings and Facilities and the compliance with YAA's obligations contained herein shall constitute full consideration for YAA's possession and use of the Arboretum under this Agreement.

#### 5. General Management and Responsibilities of Arboretum

YAA shall manage, operate, and maintain the Arboretum in accordance with the requirements of this Agreement and consistent with the general concept of an Arboretum as defined in Section 1.

5.1 At a minimum, the YAA shall keep the grounds open to serve the general public from dawn to dusk every day unless closure is reasonably needed or advisable to protect the plant collection or for public safety measures.

5.2 YAA shall make such use of the land and plantings in a manner consistent with the definition of an Arboretum as defined in Section 1. YAA shall not authorize or allow any use of the property inconsistent with that definition without first obtaining the written consent of the City; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section.

5.3 YAA shall perform this Agreement related to the land and plantings in conformity with all applicable laws.

5.4 It is intended that the Arboretum will be used primarily by members of the YAA, its guests, invitees and members of the general public. In the event YAA wishes to allow the use of the Arboretum for purposes other than for uses as defined in Section 1, such use shall be upon the following terms and conditions:

5.4.1 YAA shall be responsible for maintaining a calendar scheduling the use of the grounds to insure no conflict of dates.

5.4.2 YAA shall be responsible for providing adequate security for the grounds while used by others and shall be responsible for any damage caused to the grounds by such groups or individuals.

5.4.3 YAA shall have the right to charge a fee for the use of the Arboretum by groups or individuals. Any such fee shall not be waived or applied in a discriminatory manner. Such fees will be used to provide for the care and maintenance of the Arboretum's grounds and facilities.

5.5 YAA agrees that it will not construct any fences upon the perimeters of the Arboretum Land without City approval; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section.

5.6 YAA and the City will continue to work together to ensure that the property is maintained for public use and enjoyment.

## 6. Care and Maintenance of Land, Facilities, Plantings and Sprinkler System

6.1 YAA shall be responsible, at its own expense, for:

6.1.1. Pruning;

6.1.2. Overseeing, maintenance and repair of irrigation systems;

6.1.3. Replacing, maintaining and labeling plant specimens to the extent deemed advisable in YAA's discretion;

6.1.4. Spraying for plant disease and pest control, provided such spraying shall be performed only in compliance with all existing laws, ordinances, and regulations and the label on such pesticides or other chemicals;

6.1.5. Fertilizing and localized weed control applications;

6.1.6. Snow and ice removal from sidewalks on walkways leading to and from structures, as well as adjacent sidewalks, and keeping the sidewalks clear of obstructions;

6.1.7. Maintenance of the water meter on the well-used for irrigation; and

6.1.8 Report annual irrigation water use data from the well as required by the Washington State Department of Ecology to the City by November 1<sup>st</sup> of each year.

6.1.9 Electrical charges associated with any pumps serving existing wells and other existing irrigation water systems on the property.

6.2. City shall be responsible for:

6.2.1. Grass mowing in a manner consistent with the maintenance level at City parks through December 31, 2026. Beginning on January 1, 2027, YAA shall be responsible for ensuring that the grass is mowed in a manner consistent with prior mowing of the Arboretum.

6.2.2 City will remove snow from the roads leading into and the parking areas of the Arboretum in accordance with the City's Snow & Ice Control Plan.

## 7. Use and Development of Arboretum Facilities

7.1 YAA shall have the right to use all Buildings and Facilities as permitted under this Agreement and in connection with Arboretum activities on the property and other activities in accordance with the YAA's charitable purpose. Such use shall be in accordance with, and subject to, all applicable laws, ordinances and regulations.

7.2 Subject to the City's obligations under Section 15.2 below, YAA shall be responsible for the general maintenance and repair of all buildings and facilities on the Arboretum. YAA shall not be responsible for effecting any repairs if such repairs would not be economically feasible or reasonable in light of the circumstances.]

7.3 YAA shall pay the cost of all utilities incurred in connection with the use and occupancy of the Buildings or connected with the Facilities.

7.4 YAA shall be responsible for all plumbing and electrical repairs and maintenance relating to the Buildings and Facilities on the Arboretum Property.

7.5 It is intended that the Jewett Interpretive Center will be used primarily by YAA; provided, however, YAA may allow the use of the Jewett Interpretive Center by other groups. Such use shall be upon the following terms and conditions:

7.5.1 YAA shall use said building in conformity with all applicable laws.

7.5.2 YAA shall have the first right to use the building to the exclusion of all other groups.

7.5.3 YAA shall be responsible for maintaining a calendar scheduling the use of the building to insure no conflict of dates.

7.5.4 YAA shall have the right to charge a fee for use of the Jewett Interpretive Center by groups other than YAA. Any such fee shall not be waived or applied in an arbitrary manner. Such fees shall be used for the care and maintenance of the Arboretum property, buildings and facilities.

7.5.5 No construction or work shall commence without City's prior written approval by Director of Public Works or the Parks and Recreation Manager; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section. All such construction and remodeling shall comply with all fire and building codes in effect at that time. All such work shall be done at no cost to City for labor or materials.

7.6 All permanent improvements to real property shall become a portion thereof and shall belong to City during the term of this Agreement and at its termination.

#### 8. Development of Land and Plantings

8.1 YAA shall, at its sole cost and expense and in YAA's sole discretion, prepare all future landscape design plans, or any other plans relating to the Arboretum Property, which plans, with respect to any hardscape or other permanent improvements (but expressly excluding plantings) shall be submitted to the City for approval prior to work being done; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section. YAA shall make no substantial changes to the Arboretum grounds' hardscape or other permanent improvements (but expressly excluding plantings) without prior City approval; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section.

8.2 YAA shall, at its sole cost and expense and in YAA's sole discretion, select, procure, plant and replant all trees and plants that are located on the Arboretum Property.

8.3 YAA shall, at its sole cost and expense, label all specimen trees and plants YAA, in YAA's discretion, deems advisable.

8.4 YAA may construct greenhouses, lath houses and utility buildings upon the property constituting the Arboretum. All plans for such construction shall be submitted to the City and such work shall be done only after written approval of said plans by the City; provided, however, if the City withholds such consent, YAA and the City, in the interest of promoting a positive and

collaborative relationship under this Agreement, will work together in good faith to discuss, explore, and attempt to mutually agree on an alternative course of action in lieu of the course of action initially proposed by YAA that was not consented to by the City under this Section. All such construction shall comply with all applicable laws, including but not limited to City zoning, fire and building codes in effect at the time, and shall be at no cost to the City. YAA is solely responsible for obtaining all necessary permits for any approved projects.

#### 9. Utilities and Permits

9.1 YAA shall pay all charges for water, sewer, heat, lights, power, telephone, and internet, and any other utilities that may be required or used by YAA in the use or operation of the Arboretum, and agrees to pay the same in a timely fashion and agrees to pay the same to prevent any lien or shutoff of service from occurring. Any deposits or other charges required by any entity furnishing such utilities shall be paid by YAA.

9.2 YAA shall pay any necessary permit or inspection fees associated with maintenance or agreed upon work at the Arboretum for which permits or inspections are necessary, including but not limited to fire inspection fees and any other capital projects.

#### 10. Taxes and Assessments

YAA shall be solely responsible for compensating its employees and for paying all related taxes, deductions and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement before delinquency. In the event the City is assessed a tax or assessment as a result of this Agreement, YAA shall pay the same before it becomes due.

#### 11. Liability and Indemnification

11.1 YAA will release, defend, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, administrative and other proceedings and all judgments, awards, losses, liabilities, damages (including punitive, exemplary or consequential damages), penalties, fines, costs and expenses (including attorneys' fees and disbursements) for, arising out of, or related to any actual or alleged death, injury, damage or destruction to any person or any property (including but not limited to any actual or alleged violations of civil rights), or claims regarding public records, to the extent caused by, arising out of, or relating to any act and/or omission (whether intentional, willful, reckless, negligent, inadvertent or otherwise) resulting from, arising out of, or related to YAA's, its officers', employees', agents', volunteers', tenants', contractees', and/or subcontractors' actions, services, work or materials pursuant to this Agreement.

11.2 The City will release, defend, indemnify, and hold harmless YAA, its directors, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, administrative and other proceedings and all judgments, awards, losses, liabilities, damages (including punitive, exemplary or consequential damages), penalties, fines, costs and expenses (including attorneys' fees and disbursements) for, arising out of, or related to any actual or alleged death, injury, damage or destruction to any person or any property (including but not limited to any actual or alleged violations of civil rights) to the extent caused by, arising out of, or relating to any act and/or omission (whether intentional, willful,

reckless, negligent, inadvertent or otherwise) resulting from, arising out of, or related to the City's, its elected and appointed officials', officers', employees', agents', volunteers' and/or subcontractors' actions, services, work or materials pursuant to this Agreement.

11.3 YAA specifically and expressly waives its immunity under industrial insurance, pursuant to Title 51 RCW, or immunity under any other provision of law to the extent of the obligations assumed by the parties protected hereunder. YAA and the City acknowledge and agree that this waiver was mutually negotiated and is strictly for the City's benefit and not for the benefit of or enforceable by any YAA employee or other third party.

11.4 All services / programs rendered or performed under this Agreement will be performed or rendered entirely at YAA's own risk and YAA expressly agrees to defend, indemnify and hold harmless the City and all of its officers, agents, employees and elected and appointed officials from any and all liability, loss, fines, penalties or damages, including reasonable cost of defense, that the City may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the City which result from, arise out of, or are in any way connected with the services to be performed by YAA under this Agreement.

11.5 Nothing contained in this section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

## 12. Maintenance and Retention of Records

12.1 YAA shall maintain and manage (in a businesslike and consistent manner) books, accounts, records, documents, and other materials related directly or indirectly to the costs, expenses, and revenues of the management, operation, and maintenance of the Arboretum under this Agreement (the "YAA Records"). The YAA Records shall be subject to inspection and audit at reasonable times by representatives of the City. YAA shall make the YAA Records available and afford the proper facilities for such inspection and/or audit within seven (7) days of inspection/audit notification from the City. The YAA Records may be copied by representatives of the City as part of such inspection/audit. However, the making of (or failure or delay in making) such inspection or approval shall not relieve YAA of responsibility for performance of this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery.

12.2 YAA shall promptly furnish the City with YAA Records as may be reasonably requested. Subject to the state of Washington Secretary of State's State Government General Records Retention Schedule, until the expiration of six (6) years after termination of this Agreement, or for a longer period if required by law or by the state of Washington Secretary of State's State Government General Records Retention Schedule, YAA shall provide the City access to (and the City shall have the right to examine, audit and copy) the YAA Records. During the term of this Agreement, YAA shall manage and retain the YAA Records pursuant to the Washington Secretary of State's State Government General Records Retention Schedule and law, and any changes and amendments thereto.

12.3 The City is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All YAA Records pertaining to this Agreement must be made available to the City, and then made available to third parties, if required, pursuant to the PRA or other applicable law. Upon a Public Records Act request for YAA documents, the City will notify YAA and YAA shall search its records for responsive documents and provide them to the City, or obtain an injunction, within thirty (30) days, or a date agreed upon by the City. All determinations

of YAA Records subject to release under the PRA, or otherwise required by law, shall be at the sole discretion of the City. This Agreement and the YAA Records shall be available to the City for inspection and copying by the public as required under PRA or other applicable law, to the extent that public records in the custody of YAA are needed for the City to respond to a request under the PRA. The City has, and by this section assumes, no obligation on behalf of YAA to claim any exemption for disclosure under the PRA. The City shall not be liable to YAA for releasing records not clearly identified by YAA as confidential or proprietary. The City shall not be liable to YAA for any records that the City releases in compliance with the PRA, this section, or compliance with an order of a court of competent jurisdiction.

### 13. Security

13.1 YAA shall, at its sole expense and cost, provide the following security for the Jewett Interpretive Center: an automatic intruder detection system, secure door, and window locks.

13.2 City and YAA shall engage in quarterly meetings associated with security of the grounds, buildings and facilities of the Arboretum to discuss and determine whether any additional mutually agreeable security measures should be implemented and when and how said additional security measures should be implemented, as well as any other issues that may arise which should be discussed by the parties. These quarterly meetings may also include other community stakeholders or members, including, but not limited to, Greenway representatives, the Yakima Police Department or other City departments, and leadership from Camp Hope.

13.3 YAA shall provide or by written agreement require third parties to provide additional adequate security and an onsite supervisor at all events held at the Arboretum with an anticipated attendance of one hundred fifty (150) or more persons to monitor activities of the event, as well as to ensure that facilities are properly maintained and kept, that there is not excessive noise, that patrons are respectfully utilizing the property, and uninvited trespassers are not entering the grounds or event. Such security may include a minimum of one (1) uniformed security guard, licensed in accordance with RCW 18.170, as now or hereafter amended, for each one hundred fifty (150) persons in attendance, and YAA may require more security as determined necessary. Security measures taken shall include monitoring of the Jewett Interpretive Center entrances, premises and parking lots, the Arboretum Residence and other buildings, and the Arboretum to immediately report any criminal activity to YPD and to ensure that persons who possess dangerous items, who are uninvited and/or trespassing, who display disruptive behavior and/or who are obviously under the influence of drugs or alcohol, do not enter or remain at the ARBORETRUM or its surrounding property as legally described herein.

13.4 For all special events with an anticipated attendance of three hundred (300) or more persons, YAA shall provide the City Police Chief with notice of the event, and if the event no later than fifteen (15) days prior to the event. Notification can be made by email to Evelyn Delgado at [evelyn.delgado@yakimawa.gov](mailto:evelyn.delgado@yakimawa.gov) (or the successor thereto), with a copy to the Police Chief, Matthew Murray at [matt.murray@yakimawa.gov](mailto:matt.murray@yakimawa.gov) (or the successor thereto). Alternatively, notice can be made in writing by mailing the information to the Yakima Police Department at 200 South 3<sup>rd</sup> Street, Yakima, Washington, 98901.

13.5 For all events where alcohol will be served or provided, the following requirements also apply:

13.5.1 A Private Party Rental Contract, provided by the YAA shall be completed prior to hosting an event at the Arboretum.



13.5.2 All events of one hundred (100) attendees or more where alcohol is allowed are required to obtain either Special Event Insurance in an amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate combined single limit liability bodily injury and property damage, or provide written proof from their insurance company/agent that the event organizer's current insurance provides coverage for the event involving alcohol. The policy shall clearly state who the provider is and shall be in effect during the duration of the contracted period of use of the Arboretum, including set-up and clean-up/take-down. In all cases the City of Yakima, its elected and appointed officials, officers, agents, employees and volunteers shall be named as additional insureds on the policy and endorsement and copies of those documents shall be provided to the City upon demand.

13.5.3 YAA shall provide an onsite supervisor at all events where alcohol is present, regardless of anticipated attendance.

13.5.4 For events greater than 150 expected guests, YAA shall require the event organizer to hire at least one licensed uniformed security officer and at least one additional licensed uniformed security officer for each additional 100 attendees.

13.5.5 A YAA board meeting or activity solely consisting of YAA members and invited guests is not subject to the provisions in 13.5; however, such meetings or activities must still obtain any specific liquor license, or other licenses necessary for the meeting or activity being held by YAA. YAA shall ensure that all meetings and activities held by YAA are covered under the YAA insurance policies issued pursuant to this Agreement.

13.6 YAA indemnifies, releases, defends, and holds harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitrations, actions, investigations, and regulatory or other governmental proceedings arising from or in connection with the rental of the Arboretum and/or any and all events held at the Arboretum, or any acts or omissions associated with those events or rentals, except for claims caused by the City's sole negligence. This section shall be in addition to and supplement the indemnification provisions found in Section 11 of this Agreement.

#### 14. Nondiscrimination Provision

14.1 During the performance of this Agreement, YAA shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, political affiliation, or the presence of any sensory, mental or physical disability. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of the services contemplated under this Agreement. This non-discrimination provision shall include but not be limited to the following:

14.1.1 The benefits or services provided by YAA at the Arboretum;

14.1.2 The rules, regulations, and/or practices established by YAA for use of the Arboretum;

14.1.3 All lease and license agreements entered into by YAA with respect to space at the Arboretum; and

14.1.4 The employment practices of the YAA at the Arboretum.

14.2 YAA shall not enter into any lease or license agreement respecting space in the Jewett Interpretive Center and/or the Arboretum without incorporation into such lease or license agreement the provisions which will ensure that the use or occupancy of, in the provision of neighborhood services and other benefits, will be available without regard to race, age, creed, color, national origin, religion, sex, marital status, or the presence of any sensory, mental or physical disability. YAA shall also furnish information, evidence, documents and reports required by the City to substantiate compliance with this non-discrimination provision, upon request.

## 15. Insurance

15.1 At all times during performance of the services in this Agreement, YAA shall secure and maintain in effect liability insurance to protect the City and YAA from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Agreement. YAA shall provide and maintain in force liability insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should the City reasonably determine higher limits are reasonably necessary to protect the City's and public's interests in connection with the YAA's possession and use of the Arboretum under this Agreement.

### 15.2 Insurance for Buildings

15.2.1 City agrees to maintain "special form" perils property insurance upon the Jewett Interpretive Center, Harold Jones Nursery Center, Arboretum Residence, and all other real estate improvements now and in the future maintained on the Arboretum Property at City's sole cost and expense. Such buildings shall be insured to their full insurable value; provided, however, City shall have the right to choose the deductible amount applicable to all City buildings.

15.2.2 YAA shall have the right, but not the obligation, to insure all, or any portion, of the deductible amount applicable to City's insurance on the Jewett Interpretive Center, Harold Jones Nursery Center, and Arboretum Residence. If such policy is procured by YAA, City shall be named as the primary insured with loss payable to YAA as its interest may appear.

15.2.3 Where policies of insurance permit, each party hereby agrees to waive any and all rights of subrogation against the other party.

15.2.4 In the event the Jewett Interpretive Center, Harold Jones Nursery Center, Arboretum Residence, or any other real estate improvements now and in the future maintained on the Arboretum Property is destroyed or partially destroyed by fire or natural disaster, City, at City's expense, shall rebuild the same in the condition in which the improvement existed prior to such loss or if the parties agree, pursuant to such design as may be mutually agreed upon between the City and YAA; provided, however, City shall not be required to expend for such purposes any amount in excess of the sum of the insurance proceeds received by City (or that would have been received by the City had the City maintained the insurance coverage required under Section 15.2.1 above) plus the

underlying insurance deductible. All such work should be performed in an expeditious and workmanlike manner.

15.3 Commercial Liability Insurance. Before this Agreement is fully executed by the parties, YAA shall provide the City with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total minimum liability limit of One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect during the duration of this Agreement. The policy shall name the City, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

15.4 Commercial Automobile Liability Insurance. Before this Agreement is fully executed by the parties, YAA shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a total minimum liability limit of One Million Dollars (\$1,000,000) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000) general aggregate per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and include, but not be limited to, owned, non-owned and hired vehicles, and be shown on the certificate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

15.5 Directors and Officers Liability Insurance. Before this Agreement is fully executed by the parties, YAA shall provide the City with a certificate of insurance as evidence of Directors and Officers Liability Insurance with coverage of at least One Million Dollars (\$1,000,000). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The policy shall name the City, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company rated A-VII or higher in Best's Guide. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of this Agreement, or shall provide for prior acts. The insurance coverage shall remain in effect during the term of this Agreement and for a minimum of three (3) years following the termination of this Agreement.

15.6 Personal Property Insurance. YAA shall have the responsibility of procuring "special form" perils property insurance on personal property and tenants' improvements and betterments owned by, or in the care, custody or control of YAA. YAA and the City hereby release and discharge each other from and against all liability arising either from fire loss or damage caused by any of the "special form" perils covered by their respective insurance policies under this Section or Section 15.2.1 above which are in force and effect at the time of such loss or damage, even though such loss or damage may be due to negligence, act, or neglect of either YAA or the City

or agents or employees of either party. It is expressly understood and agreed that it is in the intention of the parties that this provision constitutes a waiver and release of any and all subrogation rights which the insurance companies might have under such insurance policies.

15.7 Workers' Compensation. YAA agrees to pay all premiums provided for by the Workman's Compensation Act of the State of Washington. Evidence of YAA's workers' compensation coverage will be furnished to the City. YAA holds the City harmless for any injury or death to YAA's employees while performing under this Agreement.

15.8 Umbrella Policy. YAA shall maintain an umbrella insurance policy with limits of no less than One Million Dollars (\$1,000,000); however, if YAA operates, or contracts with another person or entity to operate, any preschool, child care, day care, or other similar facility or program (for purposes of this agreement each of which is referred to as a "Childcare Facility"), and that facility is approved for the location, YAA shall obtain an umbrella insurance policy with limits of no less than Five Million Dollars (\$5,000,000.00) prior to allowing the facility to operate, and maintain said insurance during the entire term of operation of the Childcare Facility at the Arboretum. Notwithstanding the foregoing provisions of this paragraph, YAA's day camp programs do not constitute Childcare Facilities under this paragraph.

A required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

15.9 Insurance Provided by Subcontractors. YAA shall ensure that all subcontractors it utilizes for work and/or services rendered under this Agreement shall comply with all of the above insurance requirements.

15.10 City Does Not Provide Insurance for YAA. It is understood that the City does not maintain any form of insurance for YAA, its officers, employees, agents, instructors, volunteers, and/or subcontractors, other than as specifically provided for herein.

15.11 YAA's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Agreement, and any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of YAA's insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by YAA's insurance. All additional insured endorsements required by this Section 15 shall include an explicit waiver of Subrogation.

## 16. Termination.

16.1 The City may, by giving YAA ninety (90) calendar days written notice, terminate this Agreement as to all or any portion of the services or work not then performed, due to YAA's breach or default. Upon receipt of any such notice of termination, YAA shall have the ninety (90) calendar day period to remedy or cure said breach or default to this Agreement and bring YAA's actions into compliance with the terms of this Agreement.

16.2 This Agreement may also be terminated in whole or in part by mutual written agreement of the parties.

#### 17. Conflict of Interest

YAA covenants that neither it, nor its officers, have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. YAA further covenants that it will use reasonable efforts to not recruit anyone or any entity having such a conflict of interest during the performance of this Agreement. Furthermore and more specifically, but subject to the provisions of Section 18.13 below, YAA will not allow any City employee to serve as a voting member of YAA's board of directors.

#### 18. Miscellaneous Provisions

18.1 Compliance with Applicable Laws. YAA shall operate, maintain and manage the Jewett Interpretive Center and surrounding property in accordance with all applicable statutes, laws, regulations and ordinances. YAA shall obtain all necessary permits required by law. YAA shall not allow the use of the Jewett Interpretive Center and surrounding property for any unlawful purposes, nor shall it commit any waste on Arboretum property or damage the same, nor permit waste or damage by others.

18.2 Assignment. This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by YAA to any other person or entity without the prior written consent of the City, which may be withheld for any reason or no reason at all. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations and liabilities of YAA stated herein.

18.3 Modification. Either party may request changes in this Agreement, however, no change, modification, or alteration to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.

18.4 Integration. This written document constitutes the entire agreement between the City and YAA. There are no other oral or written Agreements between the parties as to the subjects covered herein. This Agreement supersedes all prior written and oral agreements between the parties with regard to the subject matter of this Agreement, including, without limitation, the Agreement dated May 23, 1991, by and between YAA and the City (as amended).

18.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Agreement, and to this end the provisions of this Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement.

18.6 Non-Waiver of Breach. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

18.7 Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18.8 Attorneys' Fees; Venue. In the event of any dispute arising out of or relating to this Agreement, whether or not suit or other proceedings is commenced, and whether in mediation, in arbitration, at trial, on appeal, in administrative proceedings, or in bankruptcy (including, without limitation, any adversary proceeding or contested matter in any bankruptcy case), the prevailing party will be entitled to its costs and expenses incurred, including reasonable attorneys' fees.

18.9 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington in Yakima County.

18.10 Mediation. In the event of a dispute between YAA and the City with respect to the interpretation, implementation, or performance of any obligation under this Agreement, YAA and the City will attempt to resolve the dispute through a mediation process. The mediator for any such mediation must be mutually agreed upon and jointly appointed by YAA and the City, with the mediator's cost to be shared equally by the two parties. The mediation will be held in Yakima, Washington, and conducted as soon as reasonably possible after mediation is requested by one part, with attention given to the time-sensitive nature of the dispute. In the event the parties are unable to agree upon a mediator, a mediator will be appointed by the Presiding Judge for the Superior Court of Yakima County. If mediation is not successful then any dispute relating to this Agreement shall be decided in the Yakima Superior Court in accordance with the laws of Washington. If both parties consent in writing, other available means of dispute resolution may be implemented, including, but not limited to, final and binding arbitration.

18.11 No Joint Venture. Nothing contained in this Agreement creates the relationship of principal and agent or of joint venture between the parties hereto.

18.12 Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent to the parties at their addresses as follows:

TO THE City: Bob Harrison, City Manager  
City of Yakima  
Yakima City Hall  
129 North Second Street  
Yakima, WA 98901  
Phone: 509-575-6000  
Email: bob.harrison@yakimawa.gov &  
cally.price@yakimawa.gov

TO Arboretum: Colleen Adams-Schuppe, Executive Director  
Yakima Area Arboretum  
1401 Arboretum Drive  
Yakima, WA 98901  
Phone: 509-248-7337  
Email: info@ahtrees.org

or to such other addresses as the parties may hereafter designate in writing.

Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when hand delivered at the addresses specified above, or three (3) days after the date of mailing to the addresses specified above.

18.13 To facilitate communication between YAA and City and to eliminate misunderstandings between the parties, YAA shall create and maintain an ex officio director position on its Board of Directors, which position shall be filled by a representative of the Parks and Recreation Division of the City, or another City staff person as designated by the City Manager. The person so appointed shall represent the City's interests and report to the City on YAA activities.

18.14 This agreement shall be binding upon the parties hereto as well as their successors and assigns.

[Signatures and Notary Acknowledgements on Following Page]

EXECUTED as of the below acknowledged dates.

**City OF YAKIMA**

**YAKIMA AREA Arboretum**

\_\_\_\_\_  
Robert Harrison, City Manager

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

\_\_\_\_\_  
Colleen Adams-Schuppe, Executive Director

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

ATTEST:

\_\_\_\_\_  
Sonya Claar-Tee, City Clerk

City Agreement No.: \_\_\_\_\_

Resolution No.: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
County of Yakima                )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, I certify that I know or have satisfactory evidence that Colleen Adams-Schuppe, is the Executive Director of the Yakima Area Arboretum, LLC. (YAA) and acknowledged that they are authorized to execute the foregoing instrument for and on behalf of YAA and said person acknowledged that they signed this instrument and acknowledged it on behalf of YAA for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
County of Yakima                )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, I certify that I know or have satisfactory evidence that Robert Harrison, City Manager of the City of Yakima (City) and acknowledged that they are authorized to execute the foregoing instrument for and on behalf of the City and said person acknowledged that they signed this instrument and acknowledged it on behalf of the City for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



## EXHIBIT A

### Depiction of the Arboretum Land

