BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-07-30-07

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO ENTER INTO A NEW 50-YEAR LEASE AGREEMENT WITH MOUNT PISGAH ARBORETUM REGARDING A LONG-TERM LEASE FOR THE DEVELOPMENT, OPERATION, MAINTENANCE, AND SECURITY OF THE EXISTING LEASED AREA WITHIN HOWARD BUFORD RECREATION AREA.

WHEREAS, COUNTY owns and manages the HOWARD BUFORD RECREATION AREA, hereinafter referred to as “HBRA”; and

WHEREAS, LESSEE began development in 1975 of a public arboretum within a tract of HBRA under a temporary license granted by COUNTY on July 2, 1975, and a thirty year lease executed on April 3, 1979; and

WHEREAS, the HBRA Master Plan (“HBRA Plan”), adopted as a Refinement on June 15, 1994 provides for the continuation and expansion of a public arboretum; and

WHEREAS, in 1996 COUNTY and LESSEE entered into a new 50 year lease agreement extending from July 1, 1996 to July 1, 2046 for the development, operation and management of a public arboretum within the boundaries of HBRA (the “1996 Lease”); and

WHEREAS, since 1975, LESSEE has made substantial improvements to the Properties, including: removal of derelict buildings, and rehabilitation and maintenance of other buildings; major restoration of natural habitats; construction and maintenance of more than seven miles of trails; construction and maintenance of a large parking lot, public restrooms, a potable water system, and a picnic area; construction and maintenance of on-site offices and a large events facility; and development and installation of large scale educational exhibits; and

WHEREAS, LESSEE has kept the arboretum site open to the public, free of charge, since 1975 and developed nature education programs which have served over 75,000 local school children and over 12,000 adults; and

WHEREAS, LESSEE engages approximately 500 community volunteers each year to help care for the site and teach others about local ecology; and

WHEREAS, LESSEE has served the constituents of Lane County, the Pacific Northwest and the general public since 1975, and currently has an estimated annual attendance of 400,000; and

WHEREAS, LESSEE has expended approximately $10,000,000, including over $1,000,000 for capital improvements at the arboretum site, and has secured an endowment fund of over $800,000; and
WHEREAS, LESSEE has stated in its Articles of Incorporation as amended on March 13, 2017 that “The primary purpose of this organization shall be to engage people with nature through interactive learning and stewardship;” and

WHEREAS, successful fund raising, including securing grants and donations, for capital improvements to the arboretum is dependent on LESSEE’S ability to document a long-term commitment for occupancy of the site; and

WHEREAS, LESSEE has performed its assigned work diligently over the entire term of the lease to-date, and without an increase in caretaker payments since 2010; and

WHEREAS, the Lane County Board of County Commissioners unanimously passed a resolution on October 31, 2017 recognizing the value of COUNTY’S partnership with LESSEE; and

WHEREAS, the working relationship between COUNTY and LESSEE has evolved over time, with the result that some provisions of the 1996 Lease have become obsolete.

NOW, THEREFORE, COUNTY agrees to lease to LESSEE the Original Lease Area and the Proposed Expanded Lease Area within HBRA as delineated in Exhibit “A” (hereinafter the “Properties”) attached hereto, under the following terms and conditions. Upon execution, this Agreement terminates and replaces the 1996 Lease as of the day and year herein first written above. NOW THEREFORE IT IS

ORDERED that Lane County enter into the lease in substantially the form as presented in Exhibit “A”; and it is further

ORDERED that the County Administrator be delegated authority to sign the lease.

ADOPTED this 30th day of July, 2019

Pete Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date: ________________________

LANE COUNTY OFFICE OF LEGAL COUNSEL
LEASE AGREEMENT

LANE COUNTY / MOUNT PISGAH ARBORETUM

THIS AGREEMENT entered into the 1st day of July, 2019 by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY", and MOUNT PISGAH ARBORETUM, an Oregon nonprofit corporation, hereinafter referred to as "LESSEE".

RECITALS

WHEREAS, COUNTY owns and manages the HOWARD BUFORD RECREATION AREA, hereinafter referred to as "HBRA"; and

WHEREAS, LESSEE began development in 1975 of a public arboretum within a tract of HBRA under a temporary license granted by COUNTY on July 2, 1975, and a thirty year lease executed on April 3, 1979; and

WHEREAS, the HBRA Master Plan ("HBRA Plan"), adopted as a Refinement on June 15, 1994 provides for the continuation and expansion of a public arboretum; and

WHEREAS, in 1996 COUNTY and LESSEE entered into a new 50 year lease agreement extending from July 1, 1996 to July 1, 2046 for the development, operation and management of a public arboretum within the boundaries of HBRA (the "1996 Lease"); and

WHEREAS, since 1975, LESSEE has made substantial improvements to the Properties, including: removal of derelict buildings, and rehabilitation and maintenance of other buildings; major restoration of natural habitats; construction and maintenance of more than seven miles of trails; construction and maintenance of a large parking lot, public restrooms, a potable water system, and a picnic area; construction and maintenance of on-site offices and a large events facility; and development and installation of large scale educational exhibits; and

WHEREAS, LESSEE has kept the arboretum site open to the public, free of charge, since 1975 and developed nature education programs which have served over 75,000 local school children and over 12,000 adults; and

WHEREAS, LESSEE engages approximately 500 community volunteers each year to help care for the site and teach others about local ecology; and

WHEREAS, LESSEE has served the constituents of Lane County, the Pacific Northwest and the general public since 1975, and currently has an estimated annual attendance of 400,000; and

WHEREAS, LESSEE has expended approximately $10,000,000, including over $1,000,000 for capital improvements at the arboretum site, and has secured an endowment fund of over $800,000; and
WHEREAS, LESSEE has stated in its Articles of Incorporation as amended on March 13, 2017 that "The primary purpose of this organization shall be to engage people with nature through interactive learning and stewardship;" and

WHEREAS, successful fund raising, including securing grants and donations, for capital improvements to the arboretum is dependent on LESSEE'S ability to document a long-term commitment for occupancy of the site; and

WHEREAS, LESSEE has performed its assigned work diligently over the entire term of the lease to-date, and without an increase in caretaker payments since 2010; and

WHEREAS, the Lane County Board of County Commissioners unanimously passed a resolution on October 31, 2017 recognizing the value of COUNTY’s partnership with LESSEE; and

WHEREAS, the working relationship between COUNTY and LESSEE has evolved over time, with the result that some provisions of the 1996 Lease have become obsolete.

NOW, THEREFORE, COUNTY agrees to lease to LESSEE the Original Lease Area and the Proposed Expanded Lease Area within HBRA as delineated in Exhibit “A” (hereinafter the “Properties”) attached hereto, under the following terms and conditions. Upon execution, this Agreement terminates and replaces the 1996 Lease as of the day and year herein first written above.

1. LESSEE shall bear the financial burden and responsibility for all development, operation, and maintenance costs arising from use of the Properties. However, nothing in this clause precludes cooperative and cost-sharing arrangements between LESSEE and COUNTY departments which are determined by separate agreement to be of mutual benefit.

2. LESSEE agrees that no new development or capital improvement may occur or be accomplished on the Properties unless expressly approved by COUNTY in writing.

3. LESSEE agrees to submit to COUNTY every five years, for its review and approval, a proposed plan detailing development, operation, and maintenance plans for the Properties for the next five-year period, to be submitted by March 30 of every fifth year. LESSEE shall update COUNTY if this plan changes within the five-year period.

4. LESSEE agrees that any and all fees and charges collected for entrance to the Properties shall be subject to prior approval by COUNTY, with the exception of LESSEE’s regular spring and fall festivals, and COUNTY may require that a portion of said fees be appropriated to the County Parks Division. The amount of the fees appropriated to the Parks Division shall be negotiated through a separate agreement or an amendment to this Agreement.

5. LESSEE agrees to maintain the Properties in a clean condition during the period of lease. LESSEE shall exercise diligence in protecting from damage the land and Properties, and shall reimburse COUNTY for any damage resulting from negligence or violation of the terms of this Agreement by LESSEE or by any member, agent, employee, or permittee of LESSEE acting within the scope of their agency, employment or permission.
6. LESSEE agrees to provide caretaker services within HBRA as described in Exhibit ‘B’ under the following conditions:

A. RESIDENCE: LESSEE shall establish and maintain permanent residence and on-going occupancy in the caretaker’s quarters provided by COUNTY during the term of this Agreement. Such occupancy shall be maintained by one or more LESSEE representative(s) trained and capable of performing all caretaker duties. For the purposes of this Agreement, the “caretaker’s quarters” are defined as the residence, adjacent grounds, and the shed to the west of the residence located within the Properties.

LESSEE shall maintain the caretaker’s quarters and the surrounding area in a neat and orderly fashion as acceptable to COUNTY. LESSEE shall be responsible for minor, routine repairs to the caretaker’s quarters. No major repairs, alterations, or improvements may be made without prior approval of COUNTY, which shall not be unreasonably withheld.

LESSEE may not erect storage sheds nor store personal property such as construction materials, recreational vehicles, boats, etc., without prior approval of COUNTY, which shall not be unreasonably withheld.

All utilities, including potable water for the Properties and caretaker’s quarters shall be the responsibility of LESSEE. Sewage for the caretaker’s quarters shall be the responsibility of the COUNTY.

B. CARETAKING AND MAINTENANCE DUTIES: LESSEE is responsible for providing the specific caretaking and maintenance duties described in Exhibit ‘B’. LESSEE shall at all times perform such duties in a safe manner. Disregard for standard safety practices shall constitute inadequate contract performance and be subject to the provisions of Section D.

C. PARK WATCH PROGRAM: LESSEE is responsible for providing the Park Watch Program duties described in Exhibit ‘C’. LESSEE shall at all times perform such duties in a safe manner. LESSEE’s disregard for standard safety practices shall constitute inadequate contract performance and be subject to the provisions of Section D.

D. PERFORMANCE OF DUTIES: COUNTY may take the following measures to ensure adequate performance of LESSEE’S duties and responsibilities.

1) COUNTY shall regularly inspect caretaker’s quarters and surrounding area to ensure performance of duties and compliance with standards and shall inform LESSEE of any deficiencies that shall be immediately corrected by LESSEE.

2) Serious or repeated performance deficiencies may result in reductions of the amount due LESSEE under the terms of this agreement.

3) Consistent failure to abide by the terms of this section may result in its termination as provided in Paragraph (6) (F).

E. DAMAGES: All damages, other than ordinary wear and tear, to COUNTY property caused by LESSEE shall be fully repaired in a manner satisfactory to COUNTY.
F. GENERAL PROVISIONS: In the performance of this agreement, it is understood and agreed that:

1) LESSEE and its employees are not currently employed by COUNTY and shall not be under the direct control of COUNTY;

2) LESSEE is engaged as an independent contractor and shall be responsible for any Federal or State taxes applicable to this payment. LESSEE and its employees shall not be eligible for any Federal Social Security, State Worker’s Compensation, unemployment insurance, or Public Employees Retirement System benefits through COUNTY from this contract payment;

3) LESSEE shall be responsible for any taxes, worker’s compensation insurance, unemployment insurance, social security, or any other requirements of Federal, State, and local laws for LESSEE’S employees;

4) COUNTY shall report the total amount of all payments to LESSEE in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue obligations;

5) LESSEE and its employees are not members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System;

6) The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 20.590 and 20.595), and any amendments thereof, as applicable, are hereby incorporated by reference as if fully set forth herein.

G. TERMINATION: Section 6 of this Agreement (Caretaker Services within HBRA) may be terminated by either party within thirty (30) days with written notice to the other party. In addition, COUNTY may terminate Section 6 of this Agreement immediately upon written notice to LESSEE if COUNTY determines that LESSEE has failed to abide by the terms of Section 6. Within thirty (30) days after such written notice of termination, LESSEE shall yield up the caretaker’s quarters in as good an order and condition as when the same was first entered by LESSEE, ordinary wear and tear exempted. LESSEE shall remove all personal property. If LESSEE fails to remove all such property within the aforementioned period, such property shall become the property of COUNTY; however, LESSEE shall remain liable for the cost of removal and for any necessary site renovation. In additions, all COUNTY property must be returned to COUNTY during this period.

All requirements of Section 6 must be met before COUNTY shall release any final payments due LESSEE.

H. PAYMENT FOR CARETAKER SERVICES: In consideration of the rights and responsibilities granted herein, COUNTY shall make payment to LESSEE on a monthly basis, or pro-rated portion thereof as follows: $1,125 per month beginning July 1, 2019. Payment shall be subject to annual budget appropriation by the Lane County Board of Commissioners. Caretaker payments shall be increased pursuant to the schedule described in paragraph 17.
7. COUNTY does not warrant that the premises of the HBRA are safe, sanitary, or healthful.

8. LESSEE agrees that any and all exercising of its use under this Agreement shall be at LESSEE’S sole risk.

9. LESSEE agrees to defend, indemnify, and hold COUNTY harmless from all liability from damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with the operation or use of said premises by LESSEE or its members, invitees, or guests, or from the failure on the part of LESSEE to perform fully all of LESSEE’S promises herein.

10. LESSEE agrees that prior to commencement of the use, LESSEE shall obtain and maintain at its own expense, comprehensive liability insurance, including bodily injury, property damage, contractual, personal injury, products, and automobile. The minimum limit of the general liability insurance shall be $2,000,000 per occurrence and $4,000,000 aggregate, and must include an Additional Insured Endorsement that includes completed operations, and which is primary and non-contributory with any other insurance and self-insurance. The minimum limit of the automobile insurance shall be $2,000,000.

11. LESSEE agrees that this Agreement shall not be assigned, except with COUNTY’s prior written consent.

12. LESSEE agrees that use of the Properties shall conform to such rules and regulations as may be prescribed by COUNTY to govern and provide for public use of HBRA outside of the Properties. Furthermore, LESSEE shall insure that public access shall be maintained along the West Summit Trail, and other HBRA trails and public parking lots that exist within or adjacent to the Properties. COUNTY and LESSEE shall jointly be responsible for the management, control, and maintenance of such COUNTY-created trails, and shall jointly maintain and manage the parking lots with LESSEE. COUNTY shall coordinate all third party uses of HBRA access trails and public parking lots that exist within the Properties with the LESSEE. LESSEE may develop, manage, control, and maintain additional trails within the Properties. COUNTY may, at its option, assist in the maintenance of those trails.

13. COUNTY agrees that LESSEE shall be able to conduct fundraising and to raise revenues on site when the moneys raised shall be used solely for the maintenance and improvement of the arboretum or the advancement of its non-profit mission. To substantiate this, LESSEE agrees to provide COUNTY with a copy of LESSEE’s annual, independent financial review.

14. LESSEE agrees that COUNTY shall at all times have the right to make inspections concerning the development, operation, and maintenance of HBRA.

15. LESSEE agrees that it shall not discriminate against any person on the basis of race, color, religion, gender, sexual orientation, age, marital status, national origin, mental or physical disability, or any other legally protected status in the conduct of its development, operations, and maintenance of the premises. Additionally, LESSEE agrees that it shall
comply with TITLE VI of the Civil Rights Act of 1964 (78 Stat 241), and any amendments thereof, as well as any relevant State or local statutes, rules, and regulations in this area.

16. LESSEE agrees that it shall not use the premises for any exclusively commercial scheme or enterprise, nor shall LESSEE permit any individual to use the premises for such activities, excepting those activities carried out by LESSEE in the course and scope of furthering its mission and provided that the activity does not affect the operation of LESSEE as a non-profit corporation and further provided that the activity does not affect the health or the appearance of the premises. However, this does not mean that the LESSEE cannot utilize the services of commercial vendors if the commercial activity is incidental to the overall operation and management of the arboretum or the advancement of LESSEE’s mission. COUNTY shall grant exceptions to these provisions based upon the location of the vendors, frequency of commercial activity, size of the commercial operation, and the purpose of the commercial activity. Such exceptions must be granted in writing.

17. COUNTY agrees to lease said property to LESSEE for a period of fifty (50) years from July 1, 2019 to July 1, 2069, at $1.00 per year, payable on January 30 of each year.

The parties intend that this lease Agreement shall renew every five years, beginning July 1, 2024, and continuing on July 1 every five years thereafter. With each renewal, COUNTY shall add an additional five years to the term of the Agreement, such that the term of the Agreement shall always be fifty years from the date of the lease renewal. Upon the same five-year renewal schedule, the parties intend that COUNTY shall increase its monthly payment to LESSEE for caretaker services, pursuant to paragraph 6 H, at a rate of $125 per month, or otherwise as the parties may agree, and also that the parties shall renegotiate the caretaker duties described in Exhibit B. If these renegotiates have not begun by March 1 of the renewal year, there shall be an automatic increase of $125 per month for the caretaker services payment, beginning on the renewal date, and Exhibit B shall remain unchanged from its last prior version.

18. LESSEE agrees that should LESSEE fail to make conscientious efforts towards its objectives for a period of one or more years, or if LESSEE fails to maintain its status as an Oregon nonprofit corporation in good standing, COUNTY may terminate this Agreement upon 90 days’ written notice, if LESSEE fails to comply with this provision during that period. In addition, if LESSEE fails to make good progress towards its objectives, despite conscientious efforts, COUNTY may terminate this Agreement after a public hearing in which it determines that this Agreement is no longer in the best interest of the public. Upon termination of this Agreement for whatever reason, all improvements arising from development of the Properties shall remain in HBRA and become the property of COUNTY.

19. This Agreement may not be modified orally and any modification must be accomplished with the same formalities as are required for the execution of this Agreement.

20. This Agreement is not intended to convey any interest in the lands herein to the LESSEE. Further, this Agreement is subordinate to that deed dated April 20, 1982 between the State of Oregon and Lane County attached as Exhibit ‘D’, and the project agreement (41-00348) dated January 13, 1972 between the State of Oregon and the United States.
21. In the event of litigation involving the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, costs, and expenses from the losing party, including all such fees, costs, and expenses on appeal.

22. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

This Agreement may be executed in one or more identical counterparts, including facsimile counterparts, each of which shall be deemed an original. All counterparts shall constitute one Agreement, binding on all of the parties, notwithstanding that all of the parties have not signed the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first herein above written.

MOUNT PISGAH ARBORETUM

By: [Signature]
Brad van Appel
Executive Director

Date: 7/11/19

LANE COUNTY

By: [Signature]
Steve Morkovinsky
County Administrator

Date: [Blank]