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ORIGINAL

**MAINTENANCE AGREEMENT  
FOR  
EASTMORELAND GARDEN**

This Maintenance Agreement (hereinafter referred to as the "Agreement" is made and entered into by and between the Eastmoreland Neighborhood Association (hereinafter referred to as "ENA"), SE Uplift Neighborhood Coalition, a non-profit coalition of neighborhoods in Southeast and Northeast Portland and the CITY OF PORTLAND (hereinafter referred to as "City"), acting by and through its Bureau of Parks and Recreation (hereinafter referred to as "PPR"), collectively referred to herein as "Parties".

WHEREAS, the City is owner of real property located in South East Portland at 2425 SE Bybee Boulevard, legally described as EASTMORELAND BLOCK 1, LOT 1-4&31&32 TL200 and more commonly known as Eastmoreland Garden (referred to herein as the "Eastmoreland Garden" or the "Garden"; and

WHEREAS, the ENA has worked with the City to plan and design improvements to the Eastmoreland Garden; and

WHEREAS, the ENA will be responsible for construction of the Eastmoreland Garden, according to the design, plans and specifications approved by PPR;

WHEREAS, the Eastmoreland Golf Operations and Maintenance has agreed to maintain the Garden for a period of one year from date of PPR's final acceptance of phase one construction to recognize ENA's postponement of construction plans to meet needs of the Eastmoreland Golf Course tunnel construction project.

WHEREAS the ENA will take responsibility for the long-term maintenance of the Garden, at the end of this one year period;

WHEREAS, the purpose of this Agreement is to define the responsibilities of each party with respect to long-term operation and maintenance of the site;

NOW THEREFORE, the Parties agree as follows:

**ENA'S OBLIGATIONS**

ENA shall maintain the landscaping, turfgrass and irrigation at the Garden in accordance with the following landscape maintenance standards and schedule beginning one year from the PPR's final acceptance of Phase 1 Construction.

## I. TURF MAINTENANCE

### A. Fine mowing.

For all turf areas the ENA shall inspect and police the grounds for litter and debris prior to each mowing, and dispose of it.

All turf is to be mowed every 7 days beginning in April and through the end of September, with two additional mowings in October and March, for a total of 28 mowings in the year. Refer to Schedule A (attached).

Mowing height for all irrigated lawn areas shall be no less than 1-1/2", not to exceed 2-1/2" between mowing operations. The turf shall be cut at a uniform height; scalping and uneven cutting shall be prevented. Mower blades shall be maintained in a good condition for an even cut. Any excess clippings shall be dispersed and/or collected to prevent damage to existing lawn areas or if it causes an unsightly appearance. The ENA shall repair or replace all trees, shrubs, and other plantings and curbs, paving, site furnishings, or other permanent fixtures that are damaged during mowing operations.

### B. Edging.

All sidewalks, curb lines, concrete slabs, and bed edges shall be mechanically edged as needed to maintain a neat, clean appearance, typically twice per month.

### C. Hand Clipping and Weed Eating.

Trimming shall be performed around all road signs, guard posts, trees, shrubs, utility poles and other obstacles. The grass to be trimmed shall not be trimmed less than the desired height of cut determined by the mowing operation. Trimming shall be performed with each mowing operation.

### D. Turf Fertilization.

Application of fertilizers shall be carried out by the ENA to maintain proper nutrient levels and provide a consistent dark green lush appearance throughout the year. Schedule and application rate shall be determined by weather conditions, but shall be performed at least 2 times annually in fall and spring seasons. (Refer to Schedule A).

#### E. Weed and Pest Control of Turf Areas, Shrub Beds and Gravel Path.

The ENA is only responsible for general turf health and using appropriate cultural turf methods of care. Control of broadleaf weeds or weed grasses in turf through the application of herbicides should not be performed by ENA unless contracted for on a separate basis and approved through the PP&R Pest Management Program and its coordinator.

ENA shall provide surveillance for detection of all weed and/or pest infestations and shall notify John Reed of Horticultural Services (503-823-1636) if a problem arises. However, PPR does not attempt to maintain weed free lawns nor does PPR apply insect control products to lawns except in very sizable infestations.

The ENA is responsible for weed control outside of turf areas, including shrub bed and pathways. Use of post and pre-emergent herbicides may be included in these weed control activities as part of an integrated pest management approach. PP&R approval of any herbicide materials must be obtained prior to their use through the standard approval process outlined under policy in the PP&R Pest Management Program. Once approved, the ENA may use these materials on an ongoing basis unless otherwise noted in the approval.

#### F. Sweep/Blow Walks.

At the conclusion of each visit, walks adjacent to work areas are to be swept or blown clean. Equipment and techniques used shall meet any applicable City noise or other ordinance, standard or rule.

#### G. Waste Disposal

All debris generated by any maintenance or repair on site shall be disposed of off site in a legal and environmentally friendly manner.

## II. TREE AND SHRUB MAINTENANCE

#### A. Pruning.

Pruning shall be done to enhance natural growth. The ENA will remove dead, damaged and diseased portions of the plant. All cuts shall be flush and clean, leaving no stubs or tearing of bark. All major pruning shall be done following flowering or during plant's dormant season. Emergency or minor pruning shall be done when needed.

1. Tree pruning shall be to the standards of the City of Portland Urban Forester. All major pruning, or that required beyond removal of dead wood and weak branching, shall require issuance of an Urban Forestry permit. Please contact Urban Forestry @ (503) 823-4489 to obtain this free permit.
2. Shearing of plantings shall not be permitted, except where previous practice has been to shear.
3. Provide remedial attention and repair to shrubs and trees as appropriate by season or in response to incidental damage.
4. Maintain tree alignment for the first year, provided by guying or staking, in sound condition; periodically check all ties to ensure against injury to the cambium layer. After one year, remove tree stakes and guys.
5. Prune shrubbery to maintain proper size in relationship to adjacent plantings and intended function. Examples of specific practices include: pruning spring-blooming shrubs in June.
6. Prune trees and shrubs as required to remove weak branching patterns and maintain balance of head growth development. Remove lower limbs of trees when obstruction vehicular or pedestrian clearances.

### III. RODENT CONTROL

The ENA shall take the necessary action to prevent damage to the lawn areas by rodents and moles. Such damage that does occur shall be repaired by the ENA. Cost will be the responsibility of Eastmoreland Neighborhood Association (ENA) and work will be approved by ENA and PP&R prior to ENA proceeding with the work. Methods of killing, trapping or capture vary and the liability for any injuries or damages associated with this activity shall be the responsibility of the ENA or ENA. Use of rodenticides to control rodents shall not be performed by the ENA unless contracted for on a separate basis and approved through the PP&R Pest Management Program and its coordinator.

### IV. LEAF REMOVAL

Removal of leaves from all lawns, planter beds and walkways will be completed throughout the year as needed to maintain a clean appearance throughout the project. Main entries, high traffic area, and walkways shall

be cleaned in accordance with Schedule A. All mowed or collected materials shall be disposed of off site in a legal manner. Do not blow leaves (or lawn clippings) into the street.

#### V. IRRIGATION EQUIPMENT AND OPERATION – TIME AND MATERIALS

- A. PPR shall be responsible for the spring activation of the irrigation system. Activation of the system typically occurs in April. PPR shall operate and observe all portions of the system and perform necessary re-balancing, cleaning or other work required to re-establish proper irrigation functions.
- B. PPR shall be responsible for the fall winterization of the irrigation system. The complete system shall be drained no later than November 1. Winterization will include: Turning off all main supply valves; opening all manual drain valves; air drain and bleed valves on back flow prevention devices. Winterization shall be performed prior to specified dates in the event of earlier freezing weather.
- C. ENA is responsible for establishing time settings and intervals of irrigation water application for each valve of all irrigation zones. Make changes when necessary to correspond to variable watering requirements for all planting areas.
- D. ENA is responsible for observing operation of all irrigating heads at least twice each operating month. Check for coverage and plugged heads; balance system and clean head as required to maintain the system in proper working order.
- E. ENA shall perform necessary site visits and observations to maintain the proper amounts of moisture in soils to promote healthy and vigorous plant growth. Correct conditions of over or under-watering as may be determined by weekly observations during the irrigation season.
- F. Repair and/or replacement of any work, damaged or otherwise affected by causes beyond ENA's control, is the responsibility of PPR.

#### VI. GENERAL

- A. ENA shall repair and/or replace any item damaged or otherwise affected by vandalism including clean up required by graffiti at the Garden.
- B. ENA shall check daily for graffiti and remove within 48 hours

## VII. EXCLUSIONS

- A. The parties expressly agree that the following work will not be performed by ENA unless contracted for on a separate basis:
1. Cleaning and/or repairing from natural disorders or acts of God. (Example: freeze, wind, fire, etc.)
  2. Treatment for disease or pests on lawns, trees and shrubs, except as specified. Trees and shrubs will be monitored for diseases and pest problems and recommendations made to owner.
  3. Yard debris compost will be applied at a cost per unit when ordered. This includes materials and labor.

## PPR'S OBLIGATIONS

PPR shall maintain the Eastmoreland Garden for a period of one (1) year commencing on PPR's final acceptance of phase 1 construction of the improvements. PPR shall maintain the garden generally in accordance with the landscape maintenance standards and schedules outlined in this Agreement.

## GENERAL PROVISIONS

### 1. Premises

The City exclusively owns real property known as Eastmoreland Garden in South East Portland and within the Park there is an area of approximately 17,800 square feet located at 2425 SE Bybee Blvd., legally described as Eastmoreland, Block 1, Lot 1-4&31&32 TL200. The Property is shown on the map attached and incorporated herein as Schedule B.

### 2. Duration of Agreement

The Term of this Agreement shall be in full force and effect on the date on which PPR provides final acceptance of phase 1 construction of the Garden in writing and shall continue in perpetuity. The Parties agree to meet on each 5 year anniversary of this Agreement to discuss capital planning for Capital Improvements.

### 3. Water

ENA will be responsible for all water utility charges for the Garden. Water will be billed directly to the ENA of the term of this Agreement for this purpose.

### 4. Endowment

The ENA will provide an endowment of \$5,000.00 on execution of this Agreement (the "Endowment"). The Endowment shall be set aside for any maintenance and repair of the Improvements as determined to be necessary by PPR during or beyond the term of this Agreement.

It is the intention of the Agreement that the Endowment be maintained at not less than \$5,000.00. Should the Endowment be utilized for maintenance and repair of the Improvements during the term of the Agreement, the ENA will endeavor to replenish this Endowment at the earliest possible date.

### 5. Permitted Use

The property shall remain open to public use and maintained as a neighborhood garden continuously during the term of this agreement. All Improvements are for the benefit of public use

### 6. Assignment

The ENA shall not assign this Agreement, in whole or in part, or any right of obligation hereunder, without the prior written approval of the City, which shall not be unreasonably withheld.

### 7. Improvements

Any Improvements shall be owned by the City once the Eastmoreland Garden is completed by the ENA and accepted by the Director of Portland Parks and Recreation at which time the ENA shall voluntarily transfer all ownership rights, title and interest in the improvements to the City.

Any additional improvements are subject to written approval of the Director of Portland Parks and Recreation

### 8. Attachments and Publicity

The ENA shall not, without PPR's prior written consent which shall not be unreasonably withheld, place any marks, signs, advertisement, notice, or any other device or attachment on the Eastmoreland Garden

On all signage and in any publication, media presentation or other presentation specifically referring to the Eastmoreland Garden, ENA shall use its best efforts to acknowledge its relationship with City, by including the official logo of Portland Parks and Recreation and the slogan "Healthy Parks Healthy Portland" or other slogans as developed from time to time.

#### 9. Indemnification

A. ENA shall defend, hold harmless, and indemnify the City of Portland, its officers, agents and employees against all claims, demands, actions, and suits (including attorney fees and costs at trial and on appeal) brought against any of them, arising from the acts or omissions of the ENA contractor or subcontractors under this Agreement.

B. City agrees that it will look solely to the proceeds of insurance, and not to ENA or its officers, employees or agents, to fulfill ENA's indemnity obligation if ENA or its contractor has general liability insurance throughout the time of the contractor's work that:

1. Protects the City for acts or omissions of ENA's contractor and subcontractors;
2. Is in the minimum amount of \$500,000 per occurrence; and
3. Names the City as an additional insured.

#### 10. Liability

The ENA shall require its contractor and subcontractors to maintain public liability and property damage insurance that protects the ENA and City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from work done under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. 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. The insurance shall provide that coverage shall not terminate or be canceled without thirty (30) days written notice first



being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the term of the Agreement, the ENA shall require its contractor and subcontractors to provide a new policy with the same terms. The ENA's contractor and subcontractors shall maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles used by the ENA's contractor or subcontractors.

#### 11. Insurance

The ENA and its contractor and subcontractors, if any, shall maintain on file with the City Auditor certificates of insurance certifying the coverage required under this Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

#### 12. Workers Compensation Insurance

The ENA shall require its contractor and subcontractors, if any, to obtain worker's compensation insurance for all of their workers and employees either as a carrier-insured employer or as a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before commencing work under this Agreement. If the ENA's contractor or subcontractors or their employees are either defined under that chapter as non-subject workers or are not defined under that Chapter as subject workers, the ENA's contractor and subcontractors shall elect and obtain workers' compensation insurance under ORS 656.039 before commencing work under this Agreement. A certification of insurance, or copy thereof, shall be on file with the City Auditor. The ENA's contractor and subcontractors, if any, shall further agree to maintain their workers' compensation insurance coverage throughout the duration of the work to be performed under this Agreement.

#### 13. Compliance with Laws

In connection with its activities under this Agreement, the ENA shall comply with all applicable federal, state and local laws and regulations. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the City and the ENA arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

The ENA shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force during the term of this Agreement, including, but not limited to, the Americans with Disabilities Act of

1990, which shall impose any duty upon City or the ENA with respect to the use, occupation or alteration of the Garden. The legal and general construction specifications of this project shall conform to the standards currently used by Portland Parks and Recreation.

#### 14. Termination

Except as provided in this section, this Agreement can be terminated at any time by the City of Portland, and no expenditure of funds nor installation of improvements nor any other reliance on this Agreement, nor any lapse of time, nor any other act or thing shall act as an estoppel against the City of Portland, nor shall it alter or diminish the City's right to terminate this Agreement. The failure of the ENA or of the ENA's contractor or subcontractors to comply with the requirements or limitations imposed upon them by this Agreement shall be cause for the termination of the Agreement. Otherwise, the City will terminate the Agreement only upon an express finding by the City Council, after notice to and opportunity for the ENA to be heard, that in good faith it is necessary to the public interest to terminate the Agreement.

#### 15. Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:           Property Manager  
Portland Parks and Recreation  
1120 SW Fifth Avenue, Room 1302  
Portland, OR 97204-1933

If to the ENA:           President, Eastmoreland Neighborhood Association  
C/o SE Uplift  
3534 SE Main  
Portland, OR 97214

#### 16. Severability

Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and all other provisions shall remain in full force and effect.

#### 17. Integration

This Agreement constitutes the complete and final agreement of the parties with respect to matters covered by this Agreement and it supersedes and replaces all prior written and oral agreements.

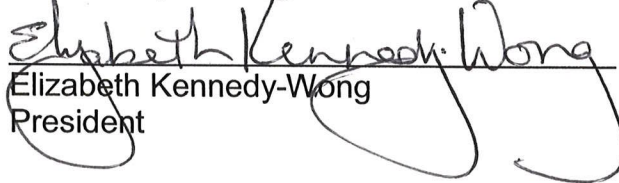
IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate, on the dates shown below, a signature of the ENA being by authority of its Board of Directors and a corporate signature of City being by authority of its City Council.

**For: Eastmoreland Neighborhood Association (ENA)**

  
\_\_\_\_\_  
John Reiersgaard  
President

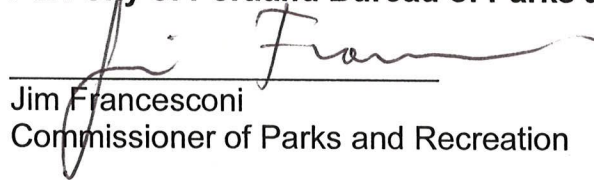
6/19/04  
Date

**For: SE Uplift Neighborhood Association**

  
\_\_\_\_\_  
Elizabeth Kennedy-Wong  
President

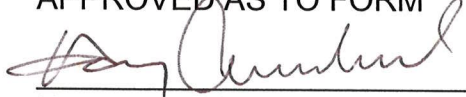
21 June 04  
Date

**For: City of Portland Bureau of Parks and Recreation (PPR)**

  
\_\_\_\_\_  
Jim Francesconi  
Commissioner of Parks and Recreation

7/06/04  
Date

APPROVED AS TO FORM

  
\_\_\_\_\_  
Harry Auerbach  
Senior Deputy City Attorney

*Chief*

BY   
\_\_\_\_\_  
AUDITOR

**SCHEDULE A**  
**Eastmoreland Garden**  
**Annual Maintenance Schedule**

Function	Frequency											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1			3	4	4	4	4	4	4	3		
2				1			1				1	
3	<b>As required</b>											
4	<b>As required</b>											
5	<b>As indicated by test results and authorized</b>											
6	1	1	2	2	2	2	2	2	2	2	1	1
7	<b>Once per year or as needed to maintain appearance, at the discretion of the ENA</b>											
8	1	1								1	1	1
9			1									
10	<b>System On.....monthly check.....System off</b>											

- 1 Turf mowing
- 2 Fertilize turf
- 3 Weed Control Inspections
- 4 Insect control Inspections
- 5 Lime turf
- 6 Litter control, or as needed to maintain a clean park area.
- 7 Prune trees and shrubs
- 8 Leaf removal
- 9 Fertilize trees
- 10 Irrigation