

### Limited Management Agreement

This agreement ( "Agreement") is made and executed as of the \_\_\_\_ day of \_\_\_\_\_ 2010, by and between the CITY OF PORTLAND, acting by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PPR"), the STATE OF OREGON, acting by and through the State Board of Higher Education on behalf of Portland State University (hereinafter "PSU"), collectively referred to as "the Parties."

### RECITALS

- A. The City is owner of certain property between SW Jackson Street and SW Market Street along SW Park Avenue, with said property commonly referred to as the South Park Blocks.
- B. PSU is an institution of higher learning, through the State of Oregon, with its campus situated in the South Park Blocks neighborhood.
- C. The City and PSU have a long history of coordinated use and/or management of South Park Blocks, with said management benefiting the respective interests of the City and PSU.
- D. It is in the best interest of both the City and PSU that the coordinated management activities be set out more formally in agreement form, with the agreement to supersede previous agreements and understandings between the Parties.

### AGREEMENT

- 1. **Purpose.** The purpose of the Agreement is to establish the framework, terms and conditions whereby PSU will accept certain management responsibilities for the South Park Blocks in return for being provided the authority to program the non-commercial use of the South Park Blocks by PSU faculty, staff, and students.
- 2. **Premises.** Unless otherwise agreed, authorities and responsibilities of PSU under this Agreement apply only to that portion of the South Park Blocks depicted on **Exhibit A** hereto (the "Premises").
- 3. **Term.** The Agreement will have an initial term of five (5) years, with an automatic five (5) year renewal term unless PSU is in default under Section 17 of this Agreement at the time of renewal. Notwithstanding anything to the contrary herein, the Parties reserves the right to terminate this Agreement early as provided for elsewhere in this Agreement.

4. **Acceptance of the Premises.** Except as otherwise provided herein, PSU accepts the Premises on an "as-is" basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees. Furthermore, PSU accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including, but not limited to, existing permits, licenses and easements. In accordance with this acceptance, PSU specifically acknowledges the rights and privileges of the Portland Farmers Market to use a portion of the Premises on an ongoing basis and the likelihood that the authorized use area and times may expand over time. PSU reserves the right to hold summer commencement in August of each year and Party in the Park each year.
  
5. **Consideration.** Use rights granted to PSU hereunder are provided in consideration of PSU operating and maintaining the Premises on behalf of the City as specifically provided for in **Section 6** of this Agreement.
  
6. **Rights and Obligations of PSU.** PSU, at its cost, will use and manage the Premises in a professional and fully accountable manner with said rights and obligations to include the following at a minimum:
  - A. **Permitting.** PSU will permit non-commercial PSU faculty and student activities on the Premises in accordance with permitting procedures used by PSU for PSU property. PSU faculty and student activities are generally defined as activities which are internal to PSU and are not intended to primarily attract people who are not associated with PSU, its faculty or its students to the activity. Commercial and non-PSU use applications will be referred to PPR for permitting. PSU is responsible for enforcing the terms of its permits, including, but not limited to the permittee's obligation to leave the permitted area in as good a condition as it was found.
  - B. **Parking Enforcement.** PSU will enforce PSU parking policies on the Premises in accordance with applicable City code and PSU policies. PSU's parking enforcement activities will honor permits issued by the City.
  - C. **Incidental Vendors.** Notwithstanding anything to the contrary herein, PSU will be allowed to permit incidental vendors on the Premises.. Examples of incidental vendors would include a bake sale benefiting a PSU student group, an arts and crafts vendor or other single- day non-food vendors in the area between buildings (between Lincoln Hall and Cramer Hall, between Cramer Hall and Smith Memorial Student Union, between Smith Memorial Student Union and Neuberger Hall, and between Neuberger Hall and Shattuck Hall). PSU may also permit for the cobb oven structure on the corner of SW Harrison & Park for non-commercial PSU purposes.
  - D. **Revenues and Fees.** PSU is authorized to retain all revenues it receives pursuant to this Agreement, including parking fines, with the understanding that said revenues will be used exclusively for the administrative costs associated with this Agreement or maintenance and repair obligations required under the Agreement.

- E. **Maintenance and Repair.** Except for tree maintenance, PSU will be responsible for performing all routine maintenance and repairs necessary to keep the Premises in a clean, neat, safe and repaired condition, in compliance with all applicable federal, state and local laws, rules, and regulations. Said responsibility includes, but is not limited to: mowing; operation, maintenance and repair of the irrigation and lighting systems; maintenance and repair of benches, sidewalks and other improvements on the Premises, except the Littman water fountain; and general cleaning, recycling and trash removal. PSU will consult with PPR before commencing significant repairs to the Premises and provide PPR with reports on completed repairs.
- F. **Compliance with Law.** PSU will comply with all applicable federal, state and local laws, rules, regulations, ordinances, statutes, decisions, licensing and permitting requirements, and agreements, including, but not limited to City code applicable to Portland Parks uses, as said code may change over time. Furthermore, PSU will remain in full compliance with *Gathwright* injunction (free speech rights), with a copy of said injunction attached as **Exhibit D** hereto.
- G. **Public Access.** Except in the case of reasonable restrictions associated with permitted events, the public's right to use and pass through the Premises will not be unreasonably impaired.
- H. **Utilities.** PSU will pay utility costs associated with the PSU uses authorized under this Agreement, with said costs to include those associated with irrigation and lighting of the Premises.
- I. **Safety.** After becoming aware of such conditions or practices, PSU will promptly correct any unsafe condition of the Premises for which PSU, its agents or invitees, is responsible, as well as any unsafe practices by persons using the Premises, permitted or otherwise. PSU will adhere to applicable provisions of the PPR Red Book, including but not limited to, the timely reporting of damage or injury incidents on a PPR incident report form. The Red Book is available on line at [http://www.parks.city/wca/employee\\_orientation/redbook/default.asp](http://www.parks.city/wca/employee_orientation/redbook/default.asp), or can be obtained by contacting the PPR Property Manager. PSU shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Premises.
- J. **Security.** PSU will provide an adequate level of security for protection of the Premises, PSU-authorized users and the general public, including, but not limited to sufficient security or crowd control personnel during significant PSU-authorized events at the Premises. In accordance with this responsibility, PSU shall require that its permittees provide appropriate security as necessary to their particular operations on the Premises.
- K. **Capital Improvements and Major Maintenance.** PSU will not make any capital improvements or perform any major maintenance on the Premises without the written authorization of City as provided for under **Section 8** of this Agreement.

- L. **Hazardous Materials.** PSU shall not dispose at, on or about the Premises any Hazardous Substance (as defined in ORS 465.200 or as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous Substances in a manner that protects the Premises and the environment from accidental spills and releases. PSU, or any of its directors, officers, employees, agents, contractors, subcontractors, servants, successors, assigns, lessees, permittees, licensees, or invitees shall not cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the Premises, whether affecting surface water or groundwater, air, the land or the subsurface environment.
  - M. **Reporting.** On or before the 15<sup>th</sup> day of each month PSU will provide PPR with a concise written report regarding significant activities under the Agreement for the previous month, with the report to include information on the number of permits issued and significant enforcement issues.
  - N. **Taxes and Assessments.** PSU will pay any and all applicable federal, state or local taxes assessed against the Premises as a result of this Agreement.
  - O. **Law Enforcement:** The PSU Public Safety Department, whose officers are authorized under ORS 352.385, shall coordinate law enforcement activities with Portland Police Bureau. On the premises defined in Attachment A, any public safety employee of Portland State University is designated as a "Park Officer" under Portland City Code 20.04.010 (G) and is authorized to enforce park rules and issue park exclusions under PCC 20.12.260.
7. **City Retained Responsibilities, Rights and Authorities.** City hereby reserves all rights and authorities to itself not specifically granted to PSU under this Agreement. At a minimum, the City retains the following responsibilities, rights and authorities:
- A. **Right of Entry.** PPR reserves the right to enter the Premises for any purpose, including evaluation of PSU services, with the understanding that when exercising said right City will make a reasonable effort to minimize disturbances to activities being managed by PSU. It is expressly understood by the parties that City, whether or not it conducts visits or inspections, assumes no responsibility for the quality, adequacy or safety of any work that is done by or for PSU.
  - B. **Permitting.**
    - 1. PPR reserves the right to permit activities and events on the Premises, including food vendors, but will coordinate said permitting actions with PSU so as to not unreasonably interfere with PSU permitting rights granted hereunder. Said permits will be issued in full accordance with PPR permitting procedures, as they may change over time, with said procedures to include the requirement that the permitted area be left in a condition that is as good or better than existed prior to the permitted activity. Furthermore, the permittee or PPR will be responsible for all costs associated with permitted events, including security, trash disposal and utilities.
    - 2. PPR will make a good faith effort to provide PSU with advanced notice of permitted activities which may be disruptive to adjacent campus activities.
    - 3. PPR's reserved permitting rights include the right to cancel a PSU-permitted event with reasonable notice to accommodate a PPR-permitted event.

- C. **Major Maintenance and Repair.** Subject to the availability of funds, the City will be responsible for major maintenance within the Premises, including, but not limited to tree maintenance and repairs to the Littman Fountain. In the event that public funds are not available and the major maintenance or repair need affects PSU's ability to operate under this Agreement, PSU, without recourse against the City, can either terminate the Agreement or arrange with PPR to have the maintenance or repair completed at PSU's cost.
  - D. **Trees.** Unless otherwise agreed, the management and maintenance of urban forest resources on the Premises will remain the responsibility of the City
  - E. **Emergency Repairs.** PPR reserves the right, in its sole discretion, to make emergency repairs to the Premises when said repairs are necessary to address immediate health and safety concerns. To the extent that it is reasonable to do so, PPR will make a good faith effort to coordinate with PSU as to said repairs.
8. **PSU Capital Improvements.** The Parties acknowledge that PSU may desire to make certain capital improvements to the Premises which are specific to the needs of PSU, or, alternatively, to use the Premises in association to capital improvements being made to PSU facilities. PPR will reasonably consider said requests, which will be made through the Non-Park Use of Parks process, with PPR approval, if given, subject to review and approval of plans prepared at PSU's cost by licensed engineers or contractors. PSU will submit capital improvement applications to PPR at least one hundred and twenty (120) days before PSU intends to proceed with project permitting. To ensure compliance with the intent of this Agreement, PSU will assign permit application responsibilities to one person or office at PSU and provide appropriate contact information to PPR. PSU will pay PPR's standard Non-Park Use Permit application fee, but will not be charged temporary use fees, such as construction staging fees. In the event that PSU requires long term property rights, such as an utility easement, from PPR, PSU will pay PPR's standard fees for the rights being granted. .
  9. **Permitting Conflicts.** The Parties will make a good faith effort to resolve permitting conflicts, if any. Consistent with the intent of this provision, PPR and PSU will provide each other with reasonable notice of permitted activities and events. Notwithstanding anything to the contrary in this provision, PPR authorizations will not conflict with PSU's Summer Commencement activities in August of each year or with Party in the Park in September of each year. For PP&R scheduling purposes PSU will provide the PP&R Customer Service Center with the dates of these events before October 1 of the year prior to these events.
  10. **Parking.** The Parties will cooperate on efforts to minimize parking impacts associated with PSU or PPR permitted activities.
  11. **Permitted Activity Cost Recovery.** In the event that a permit issued by one party results in the other party incurring a cost it would not otherwise have incurred, the matter will be resolved by the Parties in a manner that is consistent with the intent of this Agreement, including, but not limited to one party invoicing the other party for said costs.

12. **Transfer and Assignment.** Rights granted under this Agreement are personal to PSU, and may not be transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of City, which consent may be granted or denied in its sole discretion.
13. **Damage to the Premises.** If the Premises are damaged as a result of the acts or omissions of PSU or its officers, employees, agents, contractors, licensees, permittees, or others acting under the direction and/or control of PSU, PSU will promptly notify PPR and shall, at PPR's option and in cooperation with PSU's insurance carrier, if a claim is involved, either repair or replace the affected property at PSU's expense or shall reimburse PPR for its reasonable costs of repairing or replacing the affected property.
14. **No Liens.** PSU shall keep the Premises, and all City property used in connection with this agreement, free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of PSU. If any lien is filed against any portion of the Premises or other City property used in connection with this Agreement, as a result of the acts or omissions of PSU, or of PSU's employees, agents, or contractors, PSU shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after PSU has notice that the lien has been filed. If PSU fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of City, City may, at its election, upon five (5) days' prior written notice to PSU, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. Subject to the conditions and limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, PSU shall pay on demand any amount so paid by City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.
15. **INDEMNIFICATION**
- A. **Indemnification by PSU.** Subject to the conditions and limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, PSU shall indemnify and defend the City, its directors, officers, employees and agents, against, and hold the City, its directors, officers, employees and agents, harmless from any and all liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, charges, judgments, costs and expenses (including all reasonable attorneys' fees and court costs) (collectively, "Losses") of any nature whatsoever that may be imposed upon, incurred or paid by, or asserted against the City, its directors, officers, employees and agents, PSU, the Premises or any interest therein to the extent that such Losses are the result of, arise from, or are in connection with any of the following:
- 1) Any injury to or death of any person or any damage to property occurring from any use of or cause in, on or about the Premises to the extent arising from the acts or omissions of PSU or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

- 2) The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the portion of the Premises occupied and maintained by PSU or any part thereof, or of the PSU improvements or any component thereof to the extent arising from the acts or omissions of PSU or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;
- 3) Any construction, reconstruction, repairs, changes or alterations on or to, or any work done in, on or about, the Premises or any part thereof by or at the direction of PSU;
- 4) Any negligent or tortuous act on the part of PSU or any of its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;
- 5) The release of any Hazardous Substance on the Premises or the migration of any Hazardous Substances to other properties or released into the environment, caused by or resulting from the negligence or willful misconduct of PSU or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees.
- 6) Failure or apparent failure of PSU to comply with any contract or agreement, including this Agreement, to which PSU is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Premises, or PSU's use thereof, or PSU's occupancy, use, possession, operation, repair, maintenance or management of or any portion of the Premises pursuant hereto.

- B. **Exclusion.** There is hereby expressly excluded from the scope of the foregoing indemnity any matter to the extent that such matter results from the acts or omissions of City (or its directors, employees, agents, contractors or licensees). Additionally, to the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall indemnify and hold PSU and its directors, officers, agents and employees harmless against any Losses, to the extent such Losses arise from the design or construction of the Premises or are the result of or arise from the wrongful acts or omissions of City (or its directors, employees, agents, contractors or licensees).
- C. **Contractors and Other Authorized Users.** PSU will include sufficient indemnification language in its contracts and other written authorizations indemnifying City from any and all claims related to the contract work or authorized uses.

## 16. Insurance

- A. **Insurance Requirements.** Attached hereto as **Exhibit B** is a Memo of Understanding and Agreement between City and State to waive the requirement to provide proof of insurance. City acknowledges that the referenced Memo of Understanding and Agreement satisfies the City's insurance requirements. This Memo of Understanding and Agreement between City and State is a pre-existing document between the City and State, is not exclusive to this contract, and will survive beyond the termination of this contract. Furthermore, PSU will include insurance requirements, which are satisfactory to City, in its contracts and other

written authorizations. City's insurance requirements are attached hereto as **Exhibit C**.

- B. Waiver of Subrogation.** PSU and City each agree to waive claims arising in any manner in favor of either City and PSU and against the other for loss or damage to their property located within or constituting a part or all of the Premises or for loss due to bodily injury to the extent the loss or damage is covered by property or liability insurance the party is required to carry under this Agreement. The waiver also applies to PSU's officers, agent and employees and to City's officers, agents and employees. The waiver does not apply to claims arising from the willful misconduct of PSU or City. Notwithstanding anything to the contrary herein, the waiver of subrogation does not apply to deductible amounts that the Parties are responsible for under their respective insurance policies.

#### **17. DEFAULT; REMEDIES; FORCE MAJEURE**

- A. Events of Default.** If PSU fails to perform any covenant in this Agreement within thirty (30) days after written notice from PPR specifying the failure PSU shall be deemed to be in default; provided that, if such failure cannot, with due diligence, be cured within a period of thirty (30) days, PSU shall not be deemed to be in default if PSU begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- B. Remedies for Default.** Upon the occurrence of an event of default under this **Section 17**, City shall have the following rights and remedies, as well as any other remedies available at law or in equity.
- 1) City shall have the right to suspend PSU's use of the Premises until the default is cured.
  - 2) If the default is not cured, City shall have the right to terminate this Agreement by written notice to PSU. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.
- C. Exclusion of Certain Damages.** Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under **Section 15**.
- D. Force Majeure**
- Neither City nor PSU shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors. However, nothing in this Section \_\_\_ shall excuse either party from the prompt payment of any amount required under this Agreement. Notwithstanding anything to the contrary herein, if the Premises are rendered unusable by an event described in this



Section and if such condition continues for more than sixty (60) consecutive days, or if City notifies PSU that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either City or PSU may terminate this Agreement by written notice to the other party.

#### 18. **Termination.**

- A. **Voluntary Termination.** Either Party may voluntarily terminate the Agreement with no less than six (6) months written notice to the other party.
- B. **Termination Process.** Upon expiration of the Agreement term or early termination, PSU shall deliver all keys to City and shall surrender the Premises to City in first class condition. All repairs for which PSU is responsible shall be completed prior to such surrender. All PSU property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should PSU fail to effect the removals or make repairs, City may do so and charge the cost to PSU together with late charges as provided by this Agreement from the date of the expenditure. Subject to the conditions and limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, PSU shall be responsible for all costs and damages to City as a result of PSU's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.
- C. **Existing Contracts at Time of Termination.** Any contracts, leases or permits of PSU, which remain valid as of the termination date of this Agreement, will, upon request of PPR, be terminated or transferred to PPR for ongoing administration, with the associated third parties notified of said transfer in writing by PSU.
- D. **Ownership upon Termination or Expiration.** Upon the expiration or termination of this Agreement, all fixtures, improvements and personal property located on or associated with the operation of the Premises shall become the property of the City.

#### 19. **MISCELLANEOUS**

- A. **City Consent.** Unless otherwise stated, whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director.
- B. **PSU/City Coordination and Cooperation.** PSU and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement, with said actions to include annual meetings at a minimum. Additionally, PPR and PSU will meet at least once annually to discuss management and budget issues related to the Premises.
- C. **PSU Consent.** Unless otherwise stated, whenever consent, approval or direction by PSU is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of Auxiliary Services, or a person designated in writing by the Director.
- D. **Third-Party Use of the Premises.** Except as provided for in this Agreement, PSU may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Premises by third parties. It is understood and agreed that,

notwithstanding any such arrangements, no such third party shall have any rights under this Agreement, either as a party hereto or a third-party beneficiary.

E. **Signage:** With the exception of PSU signs currently in place on the Premises, PSU may not display or erect any permanent signs at the Premises without the advanced, written approval of City or unless such display is in conformance with City's approved sign plan for the Premises.

F. **Assignment**

1) PPR may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PPR management and/or operation of the Premises; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PPR.

2) PSU shall not assign this Agreement without the prior written consent of City, which consent may be withheld at City's sole discretion, and any purported assignment without such consent shall be void.

G. **Notices.** All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows:

<u>PPR:</u>	Portland Parks and Recreation Bureau 1120 SW 5 <sup>th</sup> Ave, Suite 1302 Portland, Or 97024 Attention: Property Manager Telephone: (503) 823- Facsimile: (503) 823-5570
<u>PSU:</u>	Portland State University Mail Code: PUR P.O. Box 751 Portland, OR 97207 Attention: Purchasing and Contracting Telephone: (503) 725-3441 Facsimile: (503) 725-5594

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

- H. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- I. **Forum.** Any litigation between the City and PSU 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.
- J. **Disputes.** The Parties will make a good faith effort to resolve disputes in a reasonable manner and will proceed through the following courses of action prior to resorting to litigation: party to party negotiations; administrative appeals; and mediation and/or non-binding arbitration.
- K. **Construction and Interpretation of Agreement.** Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.
- L. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.
- M. **Further Documents.** Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- N. **Illegality.** If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.
- O. **Waiver in Writing.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
- P. **The Rights to Gather and Be Heard.** PSU will not take any action which would be considered a denial of the public's constitutional right to gather and be heard in the common areas of the Premises.
- Q. **No Partnership.** Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between PPR and PSU.
- R. **Exhibits; Successors; Time of Essence; Counterparts; Amendments.** The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind PPR and PSU and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by PPR and PSU. To the extent amendments are consistent with the general intent

of the Parties, the Director of PPR is authorized to execute amendments to this Agreement.

IN WITNESS WHEREOF, PPR and PSU have caused their duly authorized representatives to execute this Agreement in triplicate.

**PORTLAND PARK AND RECREATION  
BUREAU**

**State of Oregon, acting by and through the  
State Board of Higher Education, on behalf  
of Portland State University:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

APPROVED AS TO FORM

APPROVED AS TO FORM

  
Harry Auerbach  
Chief Deputy City Attorney



**EXHIBIT A**

**PREMISES**

**EXHIBIT B****MEMO OF UNDERSTANDING AND AGREEMENT**

This Memo of Understanding and Agreement is between the State of Oregon, its departments, boards and commissions, hereinafter referred to as the State, and the City of Portland, hereinafter referred to as the City.

It applies only to situations in which the State or one of its agencies is using a City facility for a State event or in which the City or one of its agencies is using a State facility for a City event.

It is understood that when either the State or the City has occasion to do business on state or city property, each will waive the requirement to provide proof of insurance. Both the State and the City are covered by the Oregon Tort Claims Act, ORS 30.260 to 30.300, and have a dedicated risk management program and maintain an insurance fund for the purposes of paying claims and legal expenses.

The State and City each shall be responsible, to the extent required by the Oregon Tort Claims Act, only for the acts, omissions or negligence of its own officers, employees or agents. A specific intergovernmental agreement may provide for one or the other of the parties to assume the responsibility for public liability.

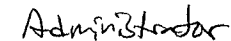
In the event any State entity or City entity require proof of insurance from the other, this document can be used. In any situation in which the City or State is using a contractor to perform work on or in the premises or facilities of the other, the contractor shall be required to obtain insurance coverage naming both the State and the City as additional insureds up to the limits of the Tort Claims Act.

State of Oregon

City of Portland

Acting by and through the  
Department of Administrative  
Services, Risk Management  
Division

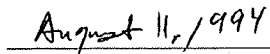
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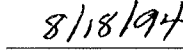
Title



Title



Date



Date

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## EXHIBIT C

### INSURANCE REQUIREMENTS

#### INSURANCE

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

1. PSU Evidence Required

It is understood that when either the State or the City has occasion to do business on state or city property, each will waive the requirement to provide proof of insurance. Both the State and the City are covered by the Oregon Tort Claims Act, ORS 30.260 to 30.300, and have a dedicated risk management program and maintain an insurance fund for the purposes of paying claims and legal expenses. See **Exhibit B**, Memo of Understanding and Agreement.

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

If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the contractor or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. PSU's contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. Contractor or Subcontractor Insurance Required

A. Contractors and subcontractors shall secure at its own expense and keep in effect during the term of this agreement either comprehensive general liability insurance with broad form CGL endorsement or commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability insurance with a minimum limit of \$1,000,000 per occurrence. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The State of Oregon acting by and through the Oregon State Board of Higher Education on behalf of Portland State University, and their officers and employees, shall be included as additional insureds in said insurance policy(ies). If any of the liability insurance is arranged on a "claims made" basis, tail coverage will be required at the completion of this agreement for duration of twenty-four (24) months.

B. Workers Compensation Insurance. PSU, its contractors or subcontractors, if any, and all employers providing work, labor or materials under this agreement are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017 which requires

Contractor to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

- C. Fidelity Bond or Fidelity Insurance at \$250,000 per occurrence, covering all employees who have access to or responsibility for or who handle funds under this Agreement.

3. Special Provisions

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by PSU, and any approval of said insurance by the CITY is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by PSU pursuant to this Agreement, including but not limited to the provisions concerning indemnification as set forth in Section 15, Indemnification.
- B. PPR reserves the right to terminate or suspend the Agreement in the event of non-compliance with the insurance requirements of this Article. In no event shall any suspension entitle PSU to an extension of the term of the Agreement specified in this Article.

\* **(Note: General liability limits for Contractors and Subcontractors may be increased upon mutual agreement of PSU and City, relative to risk involved).**



**EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

EDWARD GATHRIGHT,

Civil No. 03-130-HA

Plaintiff,

v.

CITY OF PORTLAND  
and PIONEER COURTHOUSE  
SQUARE OF PORTLAND, INC.

ORDER

Defendants.

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HAGGERTY, Chief Judge:

On April 25, 2005, the court heard oral argument on plaintiff's Motion for Order to Show Cause (Doc. #64). At that time, the court had not reviewed Exhibit 11 to Paul DeParrie's Affidavit (video footage from The Bite filmed on August 14, 2004). The court has now seen the video and finds that Exhibit 11 does not support the City of Portland's

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argument. The court grants plaintiff's motion and modifies the permanent injunction as set forth in the April 6, 2004 Opinion and Order as follows:

The City of Portland (the City) is ordered to:

- delete from its event permits the "Rules of Conduct" section and language authorizing "Persons in Charge" to evict or exclude persons from permitted areas – such persons may only be excluded based on probable cause to believe that they have violated a duly enacted statute or ordinance;
- notify all event permit holders that they may not deny entry to plaintiff or any other person similarly situated to any permitted event unless those persons have been previously lawfully excluded from the permit holder's event;
- add a section to the event permits that notifies future permit holders of the court's injunction and the limitations on their ability to exclude persons from their events; and
- notify all Portland police officers of the court's injunction and that the officers may not exclude persons based solely on the direction of the permit holder. The officers need probable cause to believe that such a person has violated a duly enacted statute or ordinance.

In addition, the City and all permit holders are ordered to not place unreasonable time, place, and manner restrictions on plaintiff's speech, or that of others similarly situated to plaintiff. For example, neither the City nor any permit holder shall remove or exclude plaintiff or others similarly situated from an area within a permitted event unless plaintiff or others are causing an insurmountable impediment to pedestrian or vehicular traffic, such that a serious traffic safety concern is present. Neither the City nor any permit holder shall prevent plaintiff or others similarly situated from wearing signs or passing out pamphlets. If the City or the permit holder has created a "free speech zone," or other

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similar area, such an area shall not be the only place where plaintiff or others similarly situated are allowed to exercise their free speech rights, but shall be simply an option.

IT IS SO ORDERED.

DATED this 2 day of May 2005.

\_\_\_\_\_/s/Ancer L. Haggerty\_\_\_\_\_  
Ancer L. Haggerty  
United States District Judge

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