

**DRAFT**

**MANAGEMENT AGREEMENT**

This agreement (this "Agreement") is made and executed as of the \_\_\_\_ day of \_\_\_\_\_ 2008, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PPR"), and PIONEER COURTHOUSE SQUARE, INC. (hereinafter "PCS"), collectively referred to as "the Parties."

**RECITALS**

**WHEREAS**, City is owner of Block 179 Portland, commonly referred to as Pioneer Courthouse Square ("the Square"), being a full City Block bounded by S.W. Sixth Avenue, SW Broadway, SW Yamhill Street and SW Morrison Street;

**WHEREAS**, City determined that it was in the best interest of the public that the Square be managed by a non-profit corporation having representatives from the downtown business community and the general public on its board of trustees, and experiences to date have confirmed that this approach to the management of the Square continues to be in the public's best interest. The trustees have given many hours of quality volunteer service to PCS in its successful management of the Square.

**WHEREAS**, PCS is a tax exempt, non-profit Oregon corporation originally organized primarily to: encourage and assist the City in the operation and programming of the Square; encourage local business and volunteer involvement in Square activities; and protect and enhance the asset values of the Square over time. PCS carries out its functions through its independent Board of Trustees (the "Board").

**WHEREAS**, PCS has successfully managed the Premises on behalf of the City on a continuous basis for approximately 25 years, and City desires PCS to continue PCS' management activities on behalf of the City.

**WHEREAS**, the purpose of this Agreement is to define the relationship between the City and PCS in regard to their respective purposes, responsibilities, and accountability as to the Premises;

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, the City and PCS agree as follows:

**AGREEMENT**

1. **Purpose**. The purpose of the Agreement is to provide for the ongoing management and programming of the Square in accordance with the terms and conditions of this Agreement.
  
2. **Appointment**. The City hereby retains, engages, and appoints PCS as the City's agent to manage the Square on its behalf, with management to be completed generally in accordance with principles and practices applicable to management of a public asset and specifically in accordance with the terms and conditions of this Agreement. This appointment grants no right or interest in the Square, other than the right of use in accordance with this Agreement.
  
3. **Premises**. Unless otherwise agreed, the authorities and responsibilities of PCS under this Agreement apply only to the Square, as depicted on attached **Exhibit A**. Notwithstanding this limitation, the Parties acknowledge the possibility that a small area adjacent to the federal Pioneer Courthouse (the "Kiosk Area" also depicted on Exhibit A) may be incorporated into this Agreement by separate letter agreement. Subject to the letter agreement being approved as to form by the City Attorney, no further approvals of City Council will be required for the addition of the Kiosk Area to this Agreement.
  
4. **Term**. This Agreement will have an initial term of five (5) years, with one five (5) year renewal term if PCS is not in default under this Agreement at the time of renewal. The Parties

acknowledge an intention to negotiate in order to enter into a new agreement at the end of the renewal term, with said agreement being subject to City Council approval.

5. **License to Use the Property.** The City hereby grants PCS a license to use and occupy the Square to the extent necessary to fulfill its management responsibilities under this Agreement, with the understanding that such license is contractual only, with no property rights being conveyed hereunder.

6. **Acceptance of the Premises.** Except as otherwise provided herein, PCS accepts the Square on an "as-is" basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees. Furthermore, PCS accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including, but not limited to, existing permits, licenses, easements and that certain agreement between the City and the Heritage Conservation Recreation Service, dated July 11, 1975 and attached hereto as **Exhibit B.**

7. **Consideration.**

7.1 **Retained Revenues.** In consideration of services provided by PCS under this Agreement, PCS shall be entitled to keep all revenues it derives from operation of or for the benefit of the Square, including, but not limited to, revenues from donations, sponsorships, memberships, grants, fees, leases, concessions and sales. PCS shall use all such revenue solely for operating, programming, maintaining, repairing and improving the Square, or for investment purposes, with such investments, or interest therefrom to be used solely for the aforementioned purposes.

7.2 **City Funding.** Consistent with past practices, and subject to available funding, the City will fund a base level of reasonable security, operating and maintenance costs ("Base Funding") incurred by PCS. For Fiscal Year 2008/2009 Base Funding will be equal to \$84,525

for operations and maintenance and \$ \_\_\_\_\_ for security services. Subsequent Base Funding amounts will be determined through an annual budgeting process, to be conducted jointly by PCS and PPR. Among other things, the budgeting process will consider inflation, general permitting fees incurred by PCS (e.g. noise variance permits, etc.), operating efficiencies and new revenues or resources that may become available to PCS and/or PPR. Final Base Funding amounts will be equal to that amount jointly requested by PPR and PCS and approved by City Council. PCS and PPR will submit a joint funding request by no later than \_\_\_\_\_ of each year. In the event that approved City funding is insufficient to meet mutually identified needs, PPR and PCS will meet and mutually agree on how best to address identified funding deficiencies.

8. **Existing Management Obligations.** The Parties acknowledge the existence of specific leases, agreements, and contracts entered into by PCS either in its own name or on behalf of the City. All existing and pending leases, agreements, permits, and contracts related to the Square are listed on the attached **Exhibit C**. PCS hereby represents that existing transactions are in good standing. All leases or agreements in the City's name will remain the obligation of the City, except for the KGW lease dated January 29, 2008 which will remain the obligation of PCS in accordance with that certain Assumption of Landlord Responsibilities, dated January 14, 2008, approved by the City and attached as **Exhibit D**. In addition to the KGW lease, all leases, agreements, permits and contracts entered into in the name of PCS will remain solely the obligation of PCS.

9. **Scope of Services.** PCS will manage the Square and authorized uses of the Square in a professional and fully accountable manner, with management services to include the following, at a minimum:

9.1 Employees. PCS will hire, train, supervise and regularly evaluate all employees required to carry out PCS's responsibilities provided for herein. All employees supervised by PCS shall be employees of PCS and not the City.

9.2 Board Membership. The Commissioner in Charge of PPR, or the Commissioner's designee, will be an ongoing Board member of PCS and will be a member of the Board's executive committee.

9.3 Operating and Programming Guidelines. PCS will operate and program the Square in a manner that promotes an image of quality and safety, consistent with use policies (Use Policies) for the Square, attached as **Exhibit E**

9.4 Use Authorizations.

9.4.1 PCS will authorize short and long-term uses of the Square in accordance with the Purpose Statement, the adopted Use Policies and other applicable provisions of law, including Title 20 of the City of Portland Code. All authorized users are to be properly insured and will be required to indemnify PCS and the City as to claims related to authorized uses

9.4.2 All long-term use authorizations (one year or more) shall be made in the name of the City, but PCS, as the City's agent, may execute such authorizations on behalf of the City, subject to the written consent of the City, which can be withheld for any reason.

9.4.3 Use fees will be sufficient to pay the authorized user's proportionate share of utility costs, if any, and to pay all other costs reasonably attributable to the permitted use, including, but not limited to permitting, cleaning, recycling and trash disposal.

9.5 Fiscal Matters. PCS will:

9.5.1 Develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Square's operations,

such controls to be consistent (in all material respects) with generally accepted accounting principles;

9.5.2 Prepare and approve an annual budget for management activities under this Agreement, with that portion of the budget funded through Base Funding to be developed jointly by PCS and PPR for submittal to City Council for approval in accordance with Section 7.2 herein...

9.5.3 Pay or arrange for payment of all costs that PCS is responsible for under the Agreement, including, but not limited to utility, personnel, contracting and PCS's share of maintenance costs associated with the Square.

9.5.4 Make efforts to raise funds for Square purposes through special events, grants, gifts and bequests;

9.5.5 Assist City in efforts to secure City Council appropriations to address operating, maintenance and capital improvement needs of the Square; and

9.5.6 Deposit any revenues in excess of the annual operating and capital improvement costs and the establishment of appropriate reserves into the Pioneer Courthouse Square endowment fund, currently held and managed by the Oregon Community Foundation.

9.6 Maintenance, Repair, Safety and Capital Improvements. PCS will:

9.6.1 Maintain the Square in a clean, neat, safe and functioning condition and in compliance with all federal, state and local laws, regulations and rules and as required by this Agreement.

9.6.2 Promptly correct any unsafe condition of the Premises for which PCS is responsible, after becoming aware of any such unsafe condition as well as any unsafe practices by persons reasonably under PCS's control thereon

9.6.3 Adhere to applicable provisions of the PPR Red Book, including, but not limited to, timely reporting of damage or injury incidents on a PPR incident report form. The PPR Property Manager will be responsible for providing a copy of the Red Book to PCS both in hard copy and electronically, along with updates over time. PCS shall cooperate fully with the City in the investigation of any damage to persons or property occurring on or about the Square;

9.6.4 Consult with PPR as to safety or maintenance concerns associated with structural components of the Square; and

9.6.5 Not make any Capital Improvements to the Square without the written authorization of City. City authorization will require concept approval by PPR, to be followed by review and approval of plans prepared at PCS's cost by licensed engineers or contractors. "Capital improvements" shall mean any permanent structural change or addition to the Square.

9.6.6 To the extent that funds are available, contribute to the cost of maintenance, significant repairs and Capital Improvements deemed necessary by PPR.

9.7 Special City-Sponsored Events. PCS will manage City-sponsored events, such as Flicks on the Bricks, in accordance with written agreements between the City and PCS, with such agreements to be signed by the applicable City Bureau director or director's designee and approved as to form by the City Attorney, without the need for City Council approval of said agreements. To the extent that the costs of such events are approved by City Council in its approved budget, or otherwise, the applicable City Bureau is authorized to pay PCS as provided for in the written agreement.

9.8 Security. Subject to the availability of City funding as provided in Section 7.2, PCS will manage security for protection of the Square, its tenants and the general public, including, but not limited to security or crowd control personnel during significant public events at the Square. In accordance with this responsibility, PCS shall require that lessees, permittees

and concessionaires provide appropriate security as necessary to their particular operations within the Square.

9.9 Contracting. PCS may enter into agreements in its own name for purpose of fulfilling its responsibilities under this Agreement, with contracts to provide for, but not be limited to, services related to the operation, use, security and maintenance of the Square. PCS shall use reasonable efforts to make purchases from various suppliers of materials or services of adequate quality and utility. In a manner that is generally consistent with City practices, PCS shall obtain competitive bids or proposals for significant purchases, except when impractical due to an emergency. All contractors are to be properly insured and will be required to indemnify PCS and the City as to claims related to the contracted work.

9.10 Hazardous Materials. PCS shall not dispose at, on or about the Square 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 Square and the environment from accidental spills and releases. PCS, 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 Square, whether affecting surface water or groundwater, air, the land or the subsurface environment.

9.11 Records and Inspection. PCS will maintain a set of all financial, vendor, employee and operating records relating to the Square. At any time during the Term, the City shall have the right, after reasonable notice to PCS, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of PCS at reasonable times and during normal business hours; provided, however, the City shall use its best efforts to not cause any unreasonable disruptions in the operations of PCS in connection with such inspections.

9.12 Reporting. PCS will provide PPR with annual reports provided to regulatory entities, including copies of Oregon 990 Forms annual reports and revised Articles of Incorporation submitted to the Oregon Secretary of State and/or the Oregon Department of Justice as part of their non-profit requirements. Additionally, PCS will provide PPR with regular reports prepared for the Board and its committees, including its Executive Committee, with such reports to include, but not be limited to, regular year-end CPA-reviewed financial statements. All materials and communications to be provided by PCS will be submitted to PPR, care of its Property Manager.

9.13 Taxes and Assessments. PCS will pay, or arrange for tenants to pay, any and all applicable federal, state or local taxes assessed against the Square or against distributions to PCS under this Agreement.

9.14 Compliance with Law. The acts of PCS and others under PCS's reasonable control under this Agreement shall at all times 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 provisions of law applicable to the employment and real property management practices of PCS

9.15 Park Recognition. PCS will use its best efforts to acknowledge the Square as a City park, with said efforts to include incorporation of the official logo of PPR, as it may change over time, on new signage, into PCS's web page, and in publications, media presentations or other presentations that specifically refer to the Square.

10. City Retained Responsibilities, Rights and Authorities. City hereby reserves to itself all rights and authorities not specifically granted to PCS under this Agreement. At a minimum, the City retains the following responsibilities, rights and authorities:

10.1 Right of Entry. City reserves the right to enter the Square, subject to the rights of existing tenants, for any purpose, including evaluation of PCS services, with the understanding that when exercising said right City will make a reasonable effort to minimize disturbances to activities and tenants being managed by PCS. It is expressly understood by the parties that the 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 PCS.

10.2 General Maintenance. Subject to available funds, the City will provide the following maintenance services at the Square: (i) initial cleaning and trash pick up each day, excluding cleaning and trash pick up demands resulting from tenant and permittee activities; (ii) maintain the current trash and recycling pickup contract with PCS and/or permitted event organizers responsible for such activities throughout the remainder of the day; (iii) care of fountains; (iv) the cleaning of tile and bronze items; (v) maintenance of artworks; (vi) providing vehicles, tools and other equipment necessary to fulfill its obligations hereunder; (vii) caring for plants and trees; (viii) repairing all broken glass; (ix) replacing chairs, benches, tables, and small amphitheater covers as they become worn or broken; (x) a base level of daily restroom cleaning maintenance and repair, with PCS and permittees responsible for additional cleaning needs resulting from scheduled events; (xi) paying for water, gas, electricity and garbage services in excess of amounts paid by permittees and tenants; (xii) maintain the annual trash and recycling contract; and (xiii) other general maintenance tasks as agreed to in writing by PCS and PPR.

10.3 Maintenance and Repairs of Structural Components. With the exception of maintenance and repairs of tenant improvements, or maintenance and repairs made necessary by negligent or inappropriate uses of the Square by PCS or tenants of the Square, and subject to available funds, the City will remain responsible for maintaining and repairing the major structural components of the Square, including but not limited to roofs, doors, windows, exterior and interior walls, interior and exterior common walking surfaces, exterior vertical surfaces and finishes, interior and exterior electrical and plumbing systems and components, the waterproof

membrane and any associated water damage. Notwithstanding this responsibility, the City's obligation to maintain and make repairs to structural components will be subject to available funding.

10.4 Security. City, through its Bureau of Police, shall provide a reasonable level of police protection consistent with police services provided for other comparable public facilities.

10.5 Emergency Repairs. PPR reserves the right, in its sole discretion, to make emergency repairs to the Square when 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 PCS as to such repairs.

11. Transfer and Assignment. Rights granted under this Agreement are personal to PCS, 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.

12. Damage to the Square. If the Square is damaged as a result of the acts or omissions of PCS or its officers, employees, agents and other PCS authorized users, PCS will promptly notify PPR and shall, at PPR's option and in cooperation with PCS's or and/or a PCS authorized user's insurance carrier, if a claim is involved, either repair or replace the affected property at PCS's expense or shall reimburse PPR for its reasonable costs of repairing or replacing the affected property.

13. No Liens. PCS shall keep the Square, 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 PCS. If any lien is filed against any portion of the Square or other City property used in connection with this Agreement, as a result of the acts or omissions of PCS, or of PCS's employees, agents, or contractors, PCS shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after PCS has

notice that the lien has been filed. If PCS fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of the City, the City may, at its election, upon five (5) days' prior written notice to PCS, 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. PCS shall pay on demand any amount so paid by the City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of the City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.

#### 14. INDEMNIFICATION

14.1 Indemnification by PCS. PCS shall indemnify, protect 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, PCS, the Square 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:

14.1.1 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 Square to the extent arising from the acts or omissions of PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.2 The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the portion of the Square occupied and maintained by PCS or any part thereof, or of the PCS improvements or any component thereof to the extent arising

from the acts or omissions of PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.3 Any construction, reconstruction, repairs, changes or alterations on or to, or any work done in, on or about, the Square or any part thereof by or at the direction of PCS.;

14.1.4 Any negligent or tortious act on the part of PCS or any of its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.5 The release of any Hazardous Substance on the Square 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 PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees.

14.1.6 Failure of PCS to comply with any contract or agreement, including this Agreement, to which PCS is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Square, or PCS's use thereof, or PCS's occupancy, use, possession, operation, repair, maintenance or management of or any portion of the Square pursuant hereto.

14.2 Exclusion. There is hereby expressly excluded from the scope of the foregoing indemnity any matter to the extent that such matter results from the negligence or willful misconduct 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, defend and hold harmless PCS and its directors, officers, agents and employees against any claim, demand, suit or action (including attorney fees through trial and on appeal), to the extent such claim, demand, suit or action arises solely from the design or construction of the Square.

14.3 Contractors and Other Authorized Users. PCS will include City-approved indemnification language in its contracts and other written authorizations with third parties indemnifying the City from any and all claims related to the contract work or authorized uses.

14.4 Defense of Claims. If any action or proceeding is brought against the City, its directors, officers, employees or agents, which action or proceeding is based upon a claim for which PCS is obligated to indemnify the City hereunder, PCS shall, upon notice from the City, defend such action or proceeding through counsel reasonably acceptable to City.

14.5 Indemnification Limited to Insurance. As long as PCS has and maintains insurance complying with the requirements of Section 15 of this Agreement, PCS's obligation to defend and indemnify the City under this Section 14 shall be limited to the amounts of that insurance.

14.6 No Personal Liability For Officers and Trustees. Except in cases of malfeasance or intentional wrongdoing, the City agrees that the Officers and Trustees of PCS shall have no personal liability under this Agreement.

15. Insurance.

15.1 Insurance Requirements. During the term of this Agreement, PCS shall maintain insurance that satisfies the City's standard insurance requirements for permit and license holders. A copy of City's current requirements is attached as **Exhibit F**. City may notify PCS, from time to time, of changes in City's standard insurance requirements PCS agrees that the limits of liability under such insurance shall increase to match any increase in the City's liability limits under the Oregon Tort Claims Act, ORS 30.260 to 30.300. In the event that such liability limits are eliminated or invalidated, the City may impose reasonable increases in the required limits of liability, to protect PCS and the City from reasonably foreseeable exposure. Furthermore, PCS

will include insurance requirements, which are satisfactory to the City, in its contracts and other written authorizations.

15.2 Waiver of Subrogation. PCS and City each agree to waive claims arising in any manner in favor of either City and PCS 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 PCS's directors, officers, employees, shareholders and agents and to City's officers, agents and employees. The waiver does not apply to claims arising from the willful misconduct of PCS 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.

16. Default; Remedies; Force Majeure

16.1 Events of Default. The following events shall constitute events of default by PCS:

16.1.1 If PCS fails to perform any covenant in this Agreement within thirty (30) days after written notice from PPR specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, PCS shall not be deemed to be in default if PCS begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.2 The bankruptcy or insolvency of PCS or if a receiver or trustee is appointed to take charge of any of the assets of PCS in or on the Square and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against agreements thereunder; or

16.1.3 If PCS is dissolved or fails to maintain its status as an Oregon non-profit corporation in good standing or its qualification as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

16.2 Remedies for Default. Upon the occurrence of an event of default under this **Section 16**, the City shall have the following rights and remedies, as well as any other remedies available at law or in equity.

16.2.1 The City shall have the right to suspend PCS's use of the Premises until the default is cured.

16.2.2 If the default is not cured, the City shall have the right to terminate this Agreement by written notice to PCS. 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.

16.3 Default by the City.

16.3.1 The following shall constitute an event of default by the City: the failure of the City to perform any covenant in this Agreement within thirty (30) days after written notice from PCS specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, the City shall not be deemed to be in default if the City begins to cure the failure within such thirty (30) days period and thereafter diligently prosecutes such cure to completion.

16.3.2 In the event of a City event of default, PCS shall have all rights and remedies allowed at law or in equity.

16.4 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 14.

16.5 Force Majeure.

16.5.1 Neither the City nor PCS 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.

16.5.2 Notwithstanding to the contrary herein, if the Square is rendered unusable by an event described in this Section 16.5.1, and if such condition continues for more than sixty (60) consecutive days, or if the City notifies PCS that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, then either the City or PCS may terminate this Agreement by written notice to the other party.

17. Termination.

17.1 Voluntary Termination. Either Party may voluntarily terminate the Agreement with no less than six (6) months written notice to the other party.

17.2 Termination Process. Upon expiration of the Agreement term or early termination, PCS shall deliver all keys to the City and shall surrender the Square to the City in its condition as of the effective date of this Agreement, subject to reasonable wear and tear. All repairs for which PCS is responsible shall be completed prior to such surrender. All PCS

property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should PCS fail to effect the removals or make repairs, City may do so and charge the cost to PCS. PCS shall be responsible for all costs and damages to City as a result of PCS's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.

17.3 Existing Contracts at Time of Termination. Any contracts, leases or permits of PCS, which remain valid as of the termination date of this Agreement, will be transferred to PPR for ongoing administration, with the associated third parties notified of said transfer in writing by PCS.

17.4 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 Square shall become the property of the City. After satisfaction of PCS's obligations outstanding as of the date of expiration or termination, all money remaining in PCS's possession or accounts arising from the operation of the Square, including, but not limited to, donations, sponsorships, memberships, fees, leases, concessions and sales, and any income derived therefrom, shall become the property of the City, to be used exclusively for operating, programming, maintaining, repairing and improving the Square and in accordance with any or all donor or granting organization restrictions.

## 18. MISCELLANEOUS

18.1 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 and not unreasonably withheld. If the Director of PPR or its designee does not respond to PCS' request for an approval or consent under this Agreement within fifteen (15) business day after receiving PCS' written request, City approval shall be deemed granted.

18.2 PCS/City Coordination and Cooperation. PCS and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement. To ensure effective coordination and cooperation, a PPR staff member will serve on the PCS Facilities Committee. Additionally, PPR and PCS will meet at least once annually to discuss general agreement administration matters and complete a joint budget request for submittal to City Council.

18.3 Third-Party Use of the Premises. Except as provided for in this Agreement, PCS 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.

18.4 Signage. PCS may not display or erect any permanent signs at the Square without the advanced, written approval of City, which will not be unreasonably withheld.

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

18.6 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, except that PCS's communications to City concerning insurance coverage should be sent to the addresses described in **Exhibit F**:

PPR: Portland Parks and Recreation Bureau  
1120 SW 5<sup>th</sup> Ave, Suite 1302

Portland, Or 97024  
Attention: Property Manager  
Telephone: (503) 823-5229  
Facsimile: (503) 823-5570

With a copy to:  
City of Portland  
1221 SW 4<sup>th</sup> Ave, Room 430  
Portland, OR 97204  
Attention: City Attorney  
Telephone: (503) 823-4047  
Facsimile: (503) 823-3089

PCS: Pioneer Court House Square, Inc.  
715 SW Morrison, Suite 702  
Portland, OR 97205  
Attention: Executive Director  
Telephone: (503) 223-1613  
Facsimile: (503) 222-7425

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

Emergency notices regarding emergency maintenance or repairs needed at the Square are to be directed to

18.7 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.

18.8 Forum. Any litigation between the City and PCS arising under this Agreement, or out of work performed under this, 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.

18.9 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 each party had the opportunity to consult legal counsel before the execution of this Agreement.

18.10 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.

18.11 Further Documents. Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.

18.12 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.

18.13 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.

18.14 The Rights to Gather and Be Heard. PCS will not take any action which would be a denial of the public's constitutional right to gather and be heard in the common areas of the Square.

18.15 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 PCS.

18.16 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 PCS and their respective successors in interest 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 PCS.

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

**PORTLAND PARK AND RECREATION  
BUREAU**

**PCS:**

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

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

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

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

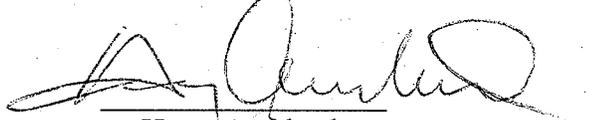
Title: \_\_\_\_\_

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

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

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

APPROVED AS TO FORM



Harry Auerbach  
Chief Deputy City Attorney

**EXHIBIT A**  
**PREMISES**

**EXHIBIT B**

**HERITAGE CONSERVATION AND RECREATION SERVICES AGREEMENT**



**EXHIBIT D**  
**KGW LEASE INDEMNIFICATION**

**EXHIBIT E**  
**USE POLICIES**



## EXHIBIT F

### STANDARD INSURANCE REQUIREMENTS

#### INSURANCE

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

1. Evidence Required

PCS and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, Portland Parks and Recreation, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to PPR at or before execution of this Agreement and then annually for the duration of the 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.

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

The insurance policy shall provide that the insurance shall not terminate or be materially changed without thirty (30) days written notice first being given to Portland Parks and Recreation. Notices shall be sent to the PPR's Manager, Strategy, Finance and Business Development, 1120 SW 5<sup>th</sup> Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the PCS or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The PCS and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. Insurance Required

A. PCS and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the PCS and the 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 the PCS's work under this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the PCS and its contractor or subcontractors, if any. The insurance shall provide coverage for not less

than \$500,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence.

- B. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City 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 shall apply as to claims between insureds on the policy.
- C. Workers Compensation Insurance. PCS, its contractors or subcontractors, if any, and all employers on its behalf are subject employers under Oregon Workers Compensation Law for this Agreement and shall comply with ORS Chapter 656 which requires them to provide Oregon workers compensation coverage in accordance with Oregon law for all of their subject workers. PCS and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with the City at all times during the term of this agreement.
- D. 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 PCS, 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 PCS pursuant to this Agreement, including but not limited to the provisions concerning 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 PCS to an extension of the term of the Agreement specified in this Article.

\* (Note: General liability limits may be increased, at the discretion of the CITY's Risk Manager, relative to risk involved), and will be increased in accordance with any increase in the limitations of liability applicable to the CITY under the Oregon Tort Claims Act, ORS 30.260 to 30.300).