

AGREEMENT

This Agreement is between the City of Portland, Oregon ("City") and Community Music Center, Inc., an Oregon non-profit corporation ("CMC").

RECITALS:

1. CMC is a non-profit corporation whose purpose and function is to promote music in general, the opportunity for teaching and learning of music, and the establishment of music facilities for the general public.
2. The City owns a facility at 3350 SE Francis known as the "Community Music Center" (the "Center"), which the parties have been using for those purposes set forth above, and which they desire to continue to use for those purposes.

AGREEMENT:

1. SCOPE OF CMC SERVICES

(a) CMC shall provide musical instruments, scores and recordings through the Center's library, shall maintain all instruments it owns, shall provide funding to supplement the wages of instructors as described in Section 4 below, shall engage in fundraising and promotional activities for the purposes described in the Recitals to this Agreement, and shall pay any expenses of the Center not specifically delegated to the City by this Agreement.

(b) CMC shall advise and support the curriculum and programs of the Center and music programs at other City facilities, as determined by CMC's Board of Directors, provided that the Executive Director described in Section 2(s) shall direct the curriculum and programs so as to conform in any material respect to general policies of the Bureau of Parks and Recreation. The Executive Director described in Section 2(a) shall be an ex officio member of CMC's Board of Directors, and shall be entitled to receive copies of all financial statements, reports and other information made available to the Board of Directors.

2. SCOPE OF CITY SERVICES

(a) The City shall provide, subject to continued funding by the Portland City Council through the normal budget process, a Music Programs Supervisor (Executive Director), a Recreation Coordinator II – Music Specialty (Associate Director), and a full-time Recreation Leader – Music Specialty (Office Assistant). These Directors and Office Assistant shall be qualified Music Specialists as defined by City Bureau of Human Resources job classification structure. The City Project Manager will request that at least one representative designated by CMC be included in one or more phases of recruitment selection for the Executive Director,

Associate Director, or Office Assistant position. The City will be responsible for all wage compensation and for all payroll taxes, benefits, workers' compensation and other insurance for the Executive Director, Associate Director, and Office Assistant in accordance with federal and state law and the City's personnel rules and practices.

(b) The Executive Director will hire instructors, who shall be considered to be employees of the City, and who shall be paid as set forth in Section 4 below.

(c) Subject to continued funding by the Portland City Council, the City shall provide necessary heat and air conditioning, water, electricity, telephone service (limited to the business of the Center and CMC), building and grounds maintenance, custodial and refuse services, printing and distribution services, computer network connectivity, and maintenance of City-owned music instruments, if any. The City shall have no responsibility for maintenance of the musical instruments other than those instruments owned by the City. An inventory of those instruments currently owned by CMC is attached as Exhibit A hereto.

(d) The City shall, to the extent budgeted by the Council, provide office and operating supplies, office computers and computer software, furniture and furnishings necessary to carry out a satisfactory music program and administration thereof. The City shall own all such supplies, computers, software, furniture and furnishings that it provides. An inventory of furnishings currently owned by CMC is attached as Exhibit B hereto.

(e) The City may, in its sole discretion, provide personnel in addition to the Executive Director, Associate Director, and Office Assistant. The City shall be responsible for paying all personnel costs from City funds. CMC shall partially reimburse the City, as provided in Section 4, for music instructor wages.

(f) The City shall perform the daily management and operation of the Center and its programs.

3. ESTABLISHMENT OF PROGRAM FEES

CMC and the Executive Director, subject to the approval of the City Project Manager, shall jointly establish fees for classes, lessons and other Center programs.

4. FUNDS

The City shall collect and retain the following fees:

- a) Fees for music classes and lessons sponsored by the City at the Center ("Music Instruction Fees"),
- b) Fees for educational materials purchased by City funds for use in classes or lessons at the Center ("Materials Fees"),
- c) Fees for items purchased by City funds for resale in a concession at the Center

- (“Concession Fees”),
- d) Upon the mutual written agreement of the Executive Director and CMC’s Board of Directors, the City will retain other agreed upon fees collected (“Other Fees”).

All income other than the Music Instruction Fees, Material Fees, Concession Fees, and Other Fees shall be CMC funds. The City shall pay the wages of the instructors; provided, however, that to the extent the annual wages of the instructors, in the aggregate, exceed 50% of the Music Instruction Fees collected in such year, CMC shall reimburse the City for such excess amounts, not to exceed the amounts in Table 1. If, however, the instructors’ annual wages are less than 50% of the Music Instruction Fees collected in such year, the City shall pay CMC the difference between total instructor annual wages and 50% of Music Instruction Fees.

The City shall invoice CMC in July of each year for net funds payable or receivable for the prior 12 months.

Table 1: CMC Instructor Reimbursement Limits

2009-10	\$89,500
2010-11	\$92,185
2011-12	\$94,950
2012-13	\$97,800
2013-14	\$100,700

See Exhibit C attached hereto for examples of CMC and City reimbursements under this Agreement.

5. EFFECTIVE AND TERMINATION DATES

This Agreement shall be effective as of July 1, 2009, and shall terminate as of June 30, 2014. In the event that CMC is not in default of any of its obligations under this Agreement, CMC may renew this Agreement for one period of five years, by giving written notice of the exercise of such renewal to the City not less than ninety (90), nor more than 180 days prior to the termination date set forth above. Within 30 days of such notice, the parties will meet to establish the Instructor Reimbursement Limits of Table 1 for the new term.

6. EARLY TERMINATION OF AGREEMENT

(a) The City and the CMC, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on ninety (90) days written notice to the CMC, may terminate this Agreement if it determines in its reasonable discretion that the public interest requires such termination.

(c) Either the City or the CMC may terminate this Agreement in the event of a breach of the Agreement by the other as described in Section 23 hereof. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. If, however, the breach may not reasonably be cured completely within 15 days, then the agreement may not be terminated so long as the breaching party is diligently pursuing cure and entirely cures the breach within a reasonable period of time.

7. PAYMENT ON EARLY TERMINATION

In the event of termination under section 6 hereof for any reason other than a breach by the City of this Agreement, CMC shall pay the City any amounts by which instructor wages, as of the date of termination, exceed 50% of Music Instruction Fees collected, as of the date of termination.

8. REMEDIES

(a) In the event of termination under subsection 6(c) hereof by the City due to a breach by the CMC, then the City may continue operating the Center either itself, by agreement with another contractor or by a combination thereof.

(b) The remedies provided in this Agreement to each party for a breach by the other party shall not be exclusive. The non-breaching party shall also be entitled to any other equitable and legal remedies that are available under law.

9. CITY PROJECT MANAGER

(a) The City Project Manager shall be Michelle Harper or such other person as shall be designated in writing by the Director of Parks and Recreation.

(b) The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein and to carry out any other City actions referred to herein.

10. COMPLIANCE WITH LAWS

(a) In connection with its activities under this Agreement, the CMC shall comply with all applicable federal, state and local laws and regulations.

(b) In the event the CMC hires its own personnel, the CMC agrees it will be certified with the City's Equal Employment Opportunity certification process, and that CMC will actively outreach for diversity development.

11. OREGON LAW AND FORUM

(a) This Agreement shall be construed according to the laws of the State of Oregon.

(b) Any litigation between the City and the CMC 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.

12. INDEMNIFICATION

Each party shall hold harmless, defend and indemnify the other party and such party's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from the indemnifying party's (or any subcontractor's) work under this Agreement.

13. WORKERS' COMPENSATION INSURANCE

Currently, CMC has no employees or subcontractors. If CMC hires employees or subcontractors during the term of this Agreement, then CMC and such subcontractors would be subject employers under the Oregon workers' compensation law. In such event, CMC shall comply with ORS 656.017, which requires it to provide workers' compensation coverage for all its subject employees.

14. SUBCONTRACTING

The CMC shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City, which approval shall not be unreasonably withheld. The CMC shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CMC as specified in this Agreement. Notwithstanding City approval of a subcontractor, CMC shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the CMC hereunder. All subcontractors are subject to the insurance requirements stated herein.

15. ASSIGNMENT

Neither party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.

16. INDEPENDENT CONTRACTOR STATUS

Any director, officer, board member (other than non-voting), subcontractor or employee of CMC shall not be an employee of the City and shall not be eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

17. 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:

Michelle Harper
Bureau of Parks and Recreation
1120 SW Fifth Ave., Room 1302
Portland, Oregon 97204

If to the CMC:

Judy Seubert, President (or current president)
Community Music Center, Inc.
3350 SE Francis
Portland, Oregon 97202

18. SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

19. INTEGRATION

This Agreement contains the entire agreement between the City and the CMC and supercedes all prior written or oral discussions or agreements.

20. FUNDS

The City certifies that sufficient funds are available for FY2009-10 and authorized for expenditure to finance the cost of this Agreement. If in a future year the City determines that it no longer has sufficient funds to continue the music program at the Center, CMC will be given the option to take over full responsibility for the program and Center in accordance with a new agreement to be mutually agreed to at that time.

21. OWNERSHIP OF ASSETS UPON DISSOLUTION

Upon dissolution of CMC, all CMC improvements and personal property located on or associated with the operation of the Center shall become the property of the City, unless otherwise agreed in writing. After satisfaction of CMC's obligations outstanding as of the date of expiration or termination, all money remaining in CMC's possession or accounts arising from the operation of the Center and its programs, including, but not limited to, donations, sponsorships, memberships, fees, 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 Center and its music program and in accordance with any or all donor or granting organization restrictions.

22. LIABILITY INSURANCE

(a) CMC shall maintain public liability and property damage insurance that protects the CMC 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 CMC's work under this Agreement. The insurance shall provide coverage for not less than \$1,000,000 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. 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 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 the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. If the insurance is cancelled or terminated prior to completion of the Agreement, the CMC shall provide a new policy with the same terms. The CMC agrees to 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 by CMC.

(b) CMC shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). Adequacy of the insurance shall be subject to the approval of the City Attorney. If CMC fails to maintain liability insurance as required hereunder, the City may terminate this Agreement after providing the notice and 15-day cure period set forth in Section 6(c) hereof.

23. BREACH OF AGREEMENT

(a) The City or CMC shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.

(b) Neither the City nor the CMC shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually

severe weather. Should either the City or the CMC fail to perform because of a cause described in this subsection, the City and the CMC shall make a mutually acceptable revision in section 1, SCOPE OF CMC SERVICES, section 2, SCOPE OF CITY SERVICES, or section 3, COMPENSATION.

24. AMENDMENTS

The City and CMC may amend this Agreement, including any change in the Scope of CMC Services (as set forth in Section 1 hereof), at any time only by written amendment executed by the City and the CMC. Unless otherwise provided, any amendment that increases the amount of compensation payable to the CMC must be approved by ordinance of the City Council. The Director of Parks may agree to and execute any other amendment on behalf of the City.

25. NON-WAIVER

The City and CMC shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

26. PROHIBITED INTEREST

(a) To the extent required by law or City policy, no City officer or employee who participated in the award of this Agreement shall be employed by the CMC during the period of the Agreement.

27. PAYMENTS TO VENDORS AND SUBCONTRACTORS

The CMC shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The CMC shall not take or fail to take any action in a manner that causes the City or any materials that the CMC provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

IN WITNESS HEREOF, the parties have executed this Agreement.

CMC: Community Music Center, Inc.

By: Judy Seubert

Title: President

Date: October 7, 2009

Business License No. 440378Tax I.D. No. 93-0493441

CITY OF PORTLAND

By: _____

Title: _____

Date: _____

Approved as to Form

~~APPROVED AS TO FORM~~
Chief Deputy City Attorney*Amela Menezes* ^{DIA}
CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

Exhibit A – CMC Inc. instruments and educational equipment – to be completed

Exhibit B – CMC Inc. owned furnishings – to be completed

Exhibit C – payment examples – to be completed

Other Fees Agreement

- 1) money received for use of City photocopy machine goes to City
- 2) 'lesson application fee': 3% of all program fees for private or semi-private lessons is deducted prior to 50% calculation.