

**Partnership Agreement of
Portland Parks & Recreation and The Forest Park Conservancy
July 1, 2010**

I. Introduction

Forest Park is a critical part of the City of Portland and the entire region. Portland Parks & Recreation (PPR) has been entrusted with the stewardship of the park on behalf of the citizens of Portland. Forest Park Conservancy (FPC), a non-profit organization, was created to work cooperatively with PPR to care for this 5,000+ acre park with over 70 miles of trails. Together, they will preserve and enhance the park to ensure that this legacy is passed on to future generations to protect and enjoy.

This partnership agreement outlines some key assumptions to a successful partnership. It will be a living document that will be revisited and modified as needed by mutual consent of PPR and FPC.

II. Affirmation

- a. We affirm that our mutual goal is a healthy sustainable Forest Park.
- b. We affirm that the health of Forest Park, a regional resource, is at risk. We agree that substantial multi-year investment is required to achieve our mutual goal.
- c. We affirm that we must work cooperatively, with many partners, to restore the park and balance the ecological needs with the recreational demands.
- d. We affirm that we are committed to moving forward with daily maintenance and long term management of the park and will seek resources to achieve the desired outcomes initiated in the 1995 Forest Park Natural Resources Management Plan ("FPNRMP").
- e. We affirm that we need to create strategies and dedicate resources to address the research, capital projects, and restoration backlog to move us toward a healthy sustainable Forest Park.

III. Communication

- a. Effective communication and common language in describing Forest Park will strengthen our relationship, and the effectiveness of the information received by the public about Forest Park. As such, we will strive to coordinate our communications with compatible messaging. We will strive to keep each other informed.
- b. We agree that many parts of Forest Park are "at risk" or "threatened", and as such, we will ensure that this is a dominant message and that we are working toward improving the Park.

- c. We will develop, seek input from each other and communicate complementary work plans to ensure progress toward the FPNRMP, its updates, and action plans developed to realize the long-term vision of Forest Park. Any plan to seek funding for a specific project in the park will be discussed before the 'ask' is made.
- d. We will strengthen our communication channels and are committed to meet regularly and engage one another at various levels of our organizations as needed to continually improve relations and our effectiveness.
- e. We will share scientific information and aspire to have a mutually accepted interpretation and communication of scientific data.
- f. The primary contact for the FPC will be the Executive Director. The primary contact for PPR will be the City Nature West Zone Manager. If either of the two primary contacts is unavailable for one week or more, they shall appoint another person to fill in as liaison. Also, in respect of each other's work load, regular meetings may be set to ensure weekly dialog. Note: Primary contact does not mean only contact. By way of example, FPC and PPR expect to further develop management relationships between the organizations, including the City Nature Manager, the PPR Director and Assistant Director, the Commissioner's office and the FPC Board.

IV. Leveraging each other's strengths

- a. FPC is a separate, sovereign organization. We recognize that it is in our mutual interest for the Forest Park Conservancy to grow stronger and to assume increasingly responsible roles in serving Forest Park and sharing information about Forest Park.
- b. We agree to leverage each other's strengths and on-the-ground experience in Forest Park to the maximum extent possible. We determined that the strengths of each organization, in regard to Forest Park, are as follows:
 - √ PPR's strengths are overall park management including recreational use, maintenance, and ecology, forestry, restoration, policy development, day-to-day and capital project management.
 - √ FPC's strengths are fundraising, marketing, outreach, conservation education, advocacy, volunteer coordination, and trail work.
- c. The Forest Park Conservancy will produce and distribute an annual report that will measure and report our progress to improve the conditions in the park. PPR will support – with information and limited resources – this effort.

V. Working for the betterment of Forest Park

- a. We believe that the 1995 FPNRMP continues to be an important blueprint for much of the work that needs to be done in Forest Park. We also acknowledge that portions of the FPNRMP need to be updated and that PP&R's current efforts to complete Forest Park's "Desired Future Condition" document with support from FPC is considered part of the FPNRMP.
- b. PP&R fully supports FPC's efforts to develop and publish a Forest Park action plan. PPR will collaborate with FPC on the action plan which is designed to express a call to action by focusing on the threats to Forest Park, and how to improve its ecological health and creating a strong and measurable case for donors, partners and volunteers.
- c. FPC fully supports PPR efforts to a future update the 1995 FPNRMP. FPC will collaborate with PPR to incorporate the many studies and scientific reports regarding Forest Park's ecological, recreational, and capital needs into a Strategic Direction document that will guide the future update to the 1995 FPNRMP.
- d. We will work together to secure more funding for Forest Park.
- e. We will strive to identify, fund and execute a set of priority projects for the betterment of Forest Park. We will strive to undertake some of these projects collaboratively (including other partners), where we work closely as partners from project inception to project completion, each sharing some responsibility and "ownership" of the project and each contributing according to ability and resources. We acknowledge that funding for the development of management tools called for in the FPNRMP is among the top priorities.

This agreement is not a binding legal document. Rather, this agreement provides a framework for how both parties will work together to achieve mutually agreed upon goals and objectives.

In witness whereof, the parties have executed this agreement to be effective on July 1, 2010.

Portland Parks & Recreation

By: _____

Title: _____

Date: _____

Forest Park Conservancy

By: _____

Title: _____

Date: _____



PORTLAND PARKS
& RECREATION

**Memorandum of Understanding
Forest Park Conservancy and Portland Parks & Recreation**

Recitals:

The City of Portland (City), a municipality of the State of Oregon, through its Bureau of Parks and Recreation (Parks or PP&R) is the owner of certain real property known as Forest Park located within Multnomah County, State of Oregon (Park).

Forest Park Conservancy (FPC) requires access to the Park to aid in the restoration and maintenance of the Park, and provide services and amenities to enhance the visitor experience in the Park.

Agreed:

- 1) **Grant of Permit of Entry.** FPC is hereby granted a Permit to enter the Park for the purposes described in Section 4 of this Permit. The specific work areas within the Park identified in FPC's annual trail and restoration work plan submitted to the City, and mutually accepted by both parties, or otherwise identified as a Special Project Area pursuant to Section 4 below shall be referred to as "Premises" or "Project Area".
- 2) **Term.** The term of this permit shall be five (5) years, to be automatically renewed for an additional five (5) year term unless terminated in writing by either party at least 180 days prior to the renewal date. Authorized uses shall commence upon the execution of this Permit. Special Projects beyond the scope of this Permit shall commence when FPC receives a Notice to Proceed from Parks' Project Manager.
- 3) **Acceptance of Premises.** FPC accepts the Park and any Project Area in an "as is" condition. City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Premises. City shall have no liability to FPC for any damage or injury caused by the condition of the Park. Furthermore, FPC accepts the Park and Premises subject to any and all valid rights or interests, including, but not limited to: rights of access by the public; existing permits; licenses; leases; easements; franchise agreements; railroad facilities; pipelines, telephone, telegraph, communication, power and signal lines; or any similar facilities, together with any future installations thereof.
- 4) **Scope of Work or Use.** Work under this Permit consists of activities including restoration and park maintenance, and providing other services and amenities to enhance the visitor experience in the park. All work performed under this Permit will be conducted in a first class professional manner with the highest and best work and safety standards and practices.

On an annual basis FPC will submit a trail and restoration work plan to the City, and this plan will be considered incorporated into the Permit upon approval by the City. Prior to conducting any other Special Projects in the Park, the FPC will provide specific project plans to the City for such Special Projects, which, upon approval by the City, will be considered

incorporated into the Permit by reference. The scope of work or use defined herein or attached constitutes the entirety of the expected use or scope of work. No changes to the scope of work or use is authorized without the prior written approval of PP&R.

Except for work set forth in FPC's annual work plan submitted to PP&R, FPC will not conduct any other work, restoration efforts or capital improvements in the Park without the prior approval of PP&R. City authorization will require review and approval of plans prepared by FPC. All restoration work, or minor or temporary improvements not included in the FPC annual work plan shall require the written approval of the City Nature West Natural Area Supervisor, or other designated representative. 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 FPC. Parks shall respond in writing to any FPC project plans, including the FPC annual work plan, with approval or reasons for not approving the plans within 14 days of delivery of the plans by FPC to Parks.

- 5) **As-Builts.** FPC shall keep accurate maps and records, including the approved as-built construction plans and specifications of its facilities and improvements located in the Park. FPC shall provide to Parks within sixty (60) days of the project being complete copies of such maps, records and as-builts, in a form (digital and paper) that is to the complete satisfaction of Parks.
- 6) **Park or Trail Closures.** Permitted work will not result in a Project Area or Premises being closed at any time without PP&R approval. FPC will take reasonable precautions to avoid conflicts between the permitted work and the public's use of the Park.
- 7) **Project Manager.** FPC shall coordinate work under this Permit with Parks Project Manager, City Nature West Natural Area Supervisor. The Parks Project Manager or other designated representative will be provided at least 1 week notice prior to commencement of work under this Permit.
- 8) **Locates.** FPC shall not begin any excavation or other subsurface activity in the Park without first contacting the One-Call Locates number and shall explicitly indicate the property is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344. FPC shall also contact Parks Locates, at (503) 823-1611 at least 72 hours before commencing excavation or other subsurface activities on the Park.
- 9) **Trees and Urban Forestry.** For projects where there are potential tree impacts either above or below ground, FPC shall include Parks Tree Inspector from Urban Forestry, in the Pre-Construction meeting and any other meetings. Parks Tree Inspector can be reached at (503) 823-1691 or by cell at (503) 823-8194. FPC shall strictly manage construction limits to ensure the minimum disruption to existing vegetation.
- 10) **Equipment and/or Materials to be used on site.** FPC assumes all risk for any damage to their equipment while working under the authority of this Permit. FPC shall keep all equipment within the confined approved work zone.

- 11) **Maintenance, Repair and Restoration.** FPC, at its cost, shall maintain the Project Areas in a neat condition, free of trash and debris, in good or better than existing condition, order and repair. FPC shall repair, at its cost and with prior written approval by Parks, any damage to the Park or surrounding City of Portland property caused by the work project and/or its entry or occupancy of the Park under this Permit. Restoration shall be made to conditions equal to or better than those pre-existing the FPC work.
- 12) **Security.** FPC is responsible for providing, to Parks' satisfaction, signage, coning, and/or fencing to keep people away from equipment and Project Areas and to warn Park users of any hazards. FPC shall give Parks prompt notice of any condition, disturbance, accident or occurrence on the Park related to their use or occupancy of the Park which might create a hazard to users of the Park property.
- 13) **Indemnification.** FPC shall indemnify and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) any failure of FPC to comply with the terms of this Permit of Entry or any violation of law or ordinance, and (ii) the negligent acts or omissions or willful misconduct of FPC, its officers, directors, agents and employees or invitees; provided, however, the FPC shall not have liability for claims caused by the sole negligence or willful misconduct of the City, Parks, their officers, directors, agents, and employees. FPC shall, at its own cost and expense, defend any and all suits which may be brought against FPC or City, their respective officers, directors, agents and employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City, Parks or FPC, their officers, directors, agents, and employees in any such action or actions, including any appeals, in which they may be party defendants.

City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of FPC or to any person in or upon the Park including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever unless caused by or due to the sole negligence or willful misconduct of City, Parks, their respective officers, directors, agents, and employees

City or its officers, directors, agents and employees shall not be liable for any latent defect at the Park. In addition to the indemnity provided above, FPC agrees to indemnify, defend and hold harmless City, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time, within the Park by FPC, its employees, volunteers or contractors while performing work in the Park under this Permit. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

FPC, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons in, upon or about the Park arising from FPC's actions or activities in the Park, including those arising from its employees, volunteers, or contractors, and FPC waives all claims in respect thereof against City except as may be solely caused by the negligence or willful misconduct of the City, Parks, its officers, directors, agents, and employees.

- 14) **Insurance.** FPC shall maintain public liability and property damage insurance that protects the FPC 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 FPC's work under this Permit. 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 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 canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled or terminated prior to completion of the Permit, the FPC shall provide a new policy with the same terms. The FPC shall maintain continuous, uninterrupted coverage for the duration of the Permit. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the FPC.

FPC shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance certifying the coverage required under this Permit. 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 Permit by the City.

FPC and all employers working under this Permit of Entry shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The FPC shall maintain workers' compensation insurance coverage for the duration of this Permit. In the event the FPC's workers compensation insurance coverage is due to expire during the term of this Permit, the FPC shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the FPC shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

FPC shall require all contractors or subcontractors working pursuant to this Permit to meet the same indemnification and insurance requirements (Sections 13 and 14 of this Permit) that are required of FPC. All required Certificates of Insurance are attached to this Permit.

- 15) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Park or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Park or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Park or surrounding Park property which constitutes a health hazard, as defined by the rules of the Health Division.
- 16) **Compliance with Laws.** In connection with its activities under this Permit, FPC shall comply with all applicable federal, state and local laws and regulations. FPC shall correct at FPC's own expense any failure of compliance created by the fault or use of FPC or their agents, employees or invitees. FPC is responsible for determining and acquiring all other permits, licenses and approvals that may be required for this project. This Permit does not bind the City to take any particular course of action in regard to adjudicating other permit applications which are necessary to make the intended use of the Premises.
- 17) **Notice.** All notices under this Permit shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:

To PARKS: City of Portland
Parks and Recreation – Property Manager
1120 SW 5th Avenue, Room 1302
Portland, OR 97204-1933

To FPC:
Forest Park Conservancy
Executive Director
1505 Northwest 23rd Ave.
Portland, OR 97210

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

- 18) **Entry by City.** Parks reserves the right to enter upon the Park for any purposes, including inspection. City inspections are for the sole benefit of the City and do not constitute or imply acceptance of any work as conforming with the requirements of this Permit. The presence or absence of a City inspector does not relieve FPC from any requirement of this Permit, nor is the inspector authorized to change any term or requirement of this Permit without the written authorization of the Parks' Property Manager.
- 19) **Oregon Law and Forum.** This Permit of Entry shall be governed by the laws of the State of Oregon. Any suit or action arising under this Permit 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.
- 20) **Waiver of Breach.** The waiver by the City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the FPC shall in no way impair the right of the City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.
- 21) **Performance Guarantee.** If required at the sole but reasonable discretion of PP&R in conjunction with approval of a Special Project for which FPC requests approval from Parks pursuant to Section 4 above, FPC shall guarantee performance hereunder in one of the following forms as approved by the City Attorney: surety bond executed by a company authorized to transact business in the State of Oregon; irrevocable letter of credit; set-aside account; cash bond; or another form acceptable to the City Attorney. FPC shall maintain said guarantee(s) in place throughout the term of the Special Project, except that FPC may reduce the penal amount of such guarantee(s) from time to time with the prior written consent of PP&R Property Manager, which consent shall not unreasonably be withheld or denied. At no time during the term of the Special Project shall the amount of the Guarantee(s) under this Section be reduced to below 20% of the original guarantee(s).
- 22) **No Liens.** FPC shall keep the Premises and adjacent City property used in connection with this Permit free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of FPC.
- 23) **Entire Agreement.** This Permit contains the entire agreement between PP&R and the FPC and supersedes all prior written or oral discussions or agreements.
- 24) **Illegality.** If any provision of this Permit 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 Permit, and this Permit shall remain in full force and effect without such invalid, illegal, or unenforceable provision.
- 25) **Assignability.** This Permit is not assignable.
- 26) **Reporting and Fiscal Matters.**

- A. FPC will provide PPR with copies of reports and documents provided to the Oregon Department of Justice and/or Secretary of State, with such documents to include FPC's annual Oregon 990 Form and revised Articles of Incorporation.
 - B. FPC shall pay or arrange for payment of all costs that FPC is responsible for under this Permit.
- 27) **Employees.** FPC will hire, train, supervise and regularly evaluate all employees and provide volunteer management and supervision required to carry out FPC's responsibilities provided for herein. All employees and volunteers supervised by FPC shall be employees or volunteers of FPC and not the City.
- 28) **Red Book.** 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 Red Book is available on line at http://www.parks.city/wca/employee_orientation/redbook/default.asp, or can be obtained by contacting the PPR Property Manager. FPC shall cooperate fully with City in the investigation of any damage to persons or property occurring on or near Forest Park.
- 29) **Records and Inspection.** FPC will maintain a set of all financial, vendor, employee and operating records relating to its activities under this Permit. At any time during the Term, City shall have the right, after reasonable notice to FPC, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of FPC at reasonable times and during normal business hours; provided, however, City shall use its best efforts to not cause any unreasonable disruptions in the operations of FPC in connection with such inspections.
- 30) **Signage.** FPC may not display or erect any signs or banners, whether temporary or permanent, on the Premises or other PPR property used in connection with this permit without the advanced written approval from PP&R.
- 31) **Board Membership.** The City Nature Manager or manager's designee, will serve as an ex-officio, non-voting member of the Conservancy's Board and will attend meetings as he/she is able.
- 32) **Fundraising.** Prior to holding a fundraising activity on the Premises, FPC will get approval for the event from PPR's City Nature West Manager.
- 33) **PP&R and FPC recognition.** PP&R and FPC shall use best efforts to agree in writing how recognition of each other's roles and responsibilities shall be provided in print and electronic publications, presentations, signage or other communication materials.
- 34) **Termination.** Prior to the termination date provided for herein, or upon the Permit being revoked by PP&R, FPC shall restore Project Areas as provided for herein and shall cease all activities on the Premises. Improvements authorized hereunder shall not remain in the Park without written authorization from PP&R, which may be in the form of a written extension to this Permit or a separate agreement between PP&R and FPC.

- A. Voluntary Termination. Either Party may voluntarily terminate the Permit with no less than three (3) months written notice to the other party.
- B. Termination Process. Upon expiration of the Permit term or early termination, all FPC personal property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such personal property. Should FPC fail to effect the removals or make repairs that are required of it, City may do so and charge the actual and reasonable cost to FPC together with reasonable late charges as provided by this Permit from the date of the expenditure. FPC shall be responsible for all direct costs and damages to City as a result of FPC's failure to surrender the Premises in accordance with this Permit, and this clause shall survive the termination of the Permit.
- C. Ownership upon Termination or Expiration. Any money and financial assets held expressly and exclusively for the benefit of the Park and remaining in FPC's possession or accounts shall remain in the possession of FPC and be used by FPC for operating, programming, maintaining, repairing and improving the Park and in accordance with any or all donor or grantor restrictions. If FPC plans to dissolve as an organization, prior to dissolution, FPC will distribute all money and financial assets remaining in FPC's possession or accounts to either PP&R or a tax exempt organization dedicated to a tax exempt purpose, within the meaning of Internal Revenue Code section 501(c)(3), or corresponding provisions of any future federal tax code, to be held and used by such entity exclusively for operating, programming, maintaining, repairing and improving the Park and in accordance with any or all donor or granting organization restrictions.
- 35) **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; mediation and/or non-binding arbitration and administrative appeals.

IN WITNESS WHEREOF, the parties have caused this Permit of Entry to be executed in triplicate on the dates shown below.

Forest Park Conservancy

Print Name

Title

Signature

Date

CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION

Zari Santner
Director of Parks and Recreation

Date

Counterparts. The parties listed above may execute this instrument in two or more counterparts, and when taken together will constitute one in the same instrument.

APPROVED AS TO FORM

Chief Deputy City Attorney