

License Agreement

This Agreement ("Agreement") is made and executed as of the ____ day of _____ 2011, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PPR"), and SELLWOOD-MORELAND IMPROVEMENT LEAGUE, INC. (hereinafter SMILE), a nonprofit Oregon corporation, collectively referred to as "the Parties."

RECITALS

WHEREAS, City is the owner and/or manager of the real property, including but not limited to structures Oaks Pioneer Church and its surrounding gardens (the "Premises"), describe in **Exhibit A**, located at 455 SE Spokane Street in Multnomah County, Oregon;

WHEREAS, SMILE is a tax exempt, non-profit Oregon corporation who has a long history is fostering action to protect, enhance, restore and revitalize the Oaks Pioneer Church and its surrounding gardens;

WHEREAS, the purpose of this Agreement is to define the relationship between City and SMILE 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, City and SMILE agree as follows:

AGREEMENT

1. **Purpose.** The purpose of the Agreement is to define the ongoing management, programming and maintenance of the Premises in accordance with the terms and conditions of this Agreement.
2. **Appointment.** City hereby retains, engages, and appoints SMILE as City's agent to perform certain management services at Oaks Pioneer Church and its surrounding gardens on its behalf, with said management to be 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.
3. **Premises.** Unless otherwise agreed to in writing, the rights and responsibilities of SMILE under this Agreement apply to the whole of Oaks Pioneer Church and its surrounding gardens as depicted on Exhibit A hereto.

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4. **Term.** The Agreement will have an initial term of five (5) years. So long as SMILE is not in default at the expiration of the initial term, the Agreement will automatically renew for one additional five (5) year term, unless either party gives sixty (60) days notice to the other party of its intent not to renew. Notwithstanding said term, the intent of PPR is a long term relationship with SMILE as to the Premises, with this intent to be achieved through new agreements at the end of each ten-year interval. New agreements will require City Council approval.
 5. **License to Use the Property.** City hereby grants SMILE a non-exclusive license to use and occupy the Premises to the extent necessary to fulfill its responsibilities under this Agreement, with the understanding that said rights are contractual only, with no property rights being conveyed hereunder. Unless consistent with City policies and regulations pertaining to the Premises, SMILE shall not restrict access of the public to the Premises, without the written consent of PPR. The public does not have the right to use or access the indoor building spaces, without the consent of SMILE.
 6. **Acceptance of the Premises.** Except as otherwise provided herein, SMILE accepts the Premises on an "as-is" basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees. Furthermore, SMILE accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including, but not limited to, existing permits, licenses, and easements.
 7. **Consideration.**
In consideration of services provided by SMILE under this Agreement, SMILE shall be authorized to use Premises as provided for under this agreement without compensation to PPR. This authorization shall include using the Premises for public meetings and private event rentals.
 8. **Scope of Services.** SMILE will manage the Premises in a professional and fully accountable manner, with management services to include the following, at a minimum:
 - A. **Employees.** SMILE will hire, train, supervise and regularly evaluate all employees and volunteers required to carry out SMILE's responsibilities provided for herein. All employees and volunteers supervised by SMILE shall be employees or volunteers of SMILE and not the City.
 - B. **Fund Raising.** SMILE is authorized to conduct fund raising activities on the Premises with the understanding that said fund raising activities shall be conducted in accordance with use policies for the Premises and that funds raised will either directly or indirectly benefit the management or maintenance of the Premises. Prior to holding a fund raising activity on the Premises, SMILE will get approval for the event from PPR's Property Manager.

- C. Event rental revenue. SMILE is provided the privilege of retaining 100% of the fees collected for event rentals at the Premises subject to the conditions of this Agreement. SMILE's use of fees and charges collected in connection to the Premises shall be primarily used for operations and maintenance of the Premises, with excess revenues to be used for supporting community events. It is the intent of both parties, to work together to build revenues at the Premises over time to enable SMILE to be able to cover all costs associated with managing, maintaining and repairing the Premises.
- D. Reporting and Fiscal Matters. SMILE will:
1. develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of this Agreement, such controls to be consistent (in all material respects) with generally accepted accounting principles;
 2. prepare and approve an annual budget for management activities under this Agreement, with a copy of this budget to be provided to PPR;
 3. provide PPR with regular reports prepared for the SMILE Board and its committees related to the Premises with reports to include, but not be limited to, regular year-end financial statements for operation and maintenance of the site;
 4. 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 SMILE's annual Oregon 990 Form and revised Articles of Incorporation;
 5. pay or arrange for payment of all costs that SMILE is responsible for under the Agreement, including, but not limited to utility (cable, electricity, gas, phone, and trash removal), personnel, contracting and SMILE's share of maintenance costs associated with the Premises; and,
 6. assist PPR in efforts to secure City Council appropriations to address maintenance and capital improvement needs of the Premises.
- E. Maintenance, Repair and Capital Improvements
1. Except for repairs which are PPR's responsibility, pursuant to subsection 2 of this Section, SMILE shall at all times maintain the Premises and all improvements of any kind, which may be erected, installed or made thereon by PPR or Tenant in neat condition, free of trash and debris, in good and substantial condition, order and repair. SMILE's responsibility to the Premises shall include, without limitation, the following:
 - i) performance of all necessary maintenance and repair consistent with the historic character of the church upon the electrical fixtures, switches and wiring from the service panel, doors, windows, hardware, exposed plumbing, indoor ceilings, walls, floors, irrigation equipment and landscaping at the Premises;
 - ii) SMILE is also responsible for the routine cleaning and maintenance of the roof, gutters and downspouts, exterior walls, heating and air conditioning equipment and hot water heater in the Premises;
 - iii) SMILE is solely responsible for installation, cleaning, repair and maintenance of all installed equipment in the church; and,
 - iv) SMILE shall notify Landlord if Premises becomes infested with insects or vermin. SMILE shall promptly eradicate insects or vermin

and contract with an approved extermination service to prevent further infestation. If SMILE does not comply with eradication of insects or vermin, PPR, at SMILE's expense, will arrange for extermination service or perform such extermination service directly.

2. Subject to the limitations in subsection 3 of this Section, PPR shall conduct an annual maintenance visit to the site to maintain in serviceable condition the roof, gutters and downspouts, exterior walls, concealed plumbing, heating and air conditioning equipment, fire suppression system and hot water heater in the Premises and church, unless maintenance and repair are caused by SMILE's or its agent's, employee's or invitee's negligence, misuse or failure to comply with any provision of this agreement, or by breaking and entering, in which case SMILE shall pay PPR the actual cost of the maintenance and repairs. PPR is responsible for all tree maintenance on the property. SMILE shall have no right to reimbursement or any claim against PPR for any inconvenience or disturbance when maintenance, repairs or replacement of the roof, gutters and downspouts, exterior walls, concealed plumbing, heating and air conditioning equipment, fire suppression system and hot water heater are being performed by PPR or its agents.
3. PPR shall have no duty to make any repairs under this agreement until SMILE has given written notice to PPR Property Manager of the repairs to be made or condition to be corrected. PPR shall have no liability to SMILE for failure to make any repair required of PPR if the repair is completed within a reasonable time following SMILE's notice. SMILE waives the right to make repairs or maintain at PPR's expense under any law, statute or ordinance now or hereafter in effect.
4. After execution of the contract, PPR shall pay SMILE a sum of \$10,000 to cover part of the cost of cleaning and painting of the flag pole, painting the exterior of the Church, cleaning of the roof, and reinforce the window protection system. SMILE shall be fully responsible for completion of the work to PPR's satisfaction and SMILE will invoice PPR upon completion of the work for payment. PPR will pay the invoice within 20 days of receipt.
5. To aid in the City's maintenance and landscaping goals at the Premises, SMILE shall maintain the Premises in to standard comparable to other PPR properties where public and private events are held. No new garden beds or landscaping features shall be constructed without the written approval of the PPR Property Manager.
6. Promptly, after becoming aware of such conditions or practices, correct any unsafe condition at the Premises for which SMILE is responsible, as well as any unsafe practices by persons reasonably under SMILE's control thereon.
7. 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. SMILE shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Premises;
8. Consult with PPR Property Manager as to safety or maintenance concerns associated with the grounds and structural components of the Premises; and

not make any capital improvements or significant changes to the gardens or irrigation equipment at the Premises without the written authorization of the PPR Property Manager. City authorization will require review and approval of plans prepared at SMILE's cost by licensed engineers or contractors. "Capital improvements" shall mean any permanent structural change or addition to the Premises. Minor or temporary improvements shall require the approval of the PPR Property Manager, or his designee. SMILE shall be responsible for obtaining all permits required to make any proposed improvement, and for managing all contractors needed to make the improvements. Any alterations and improvements that attach to the realty shall become the property of PPR.

- F. Security. SMILE shall keep the Premises secured. SMILE will provide an adequate level of security or crowd control personnel for protection of the Premises' assets and the general public. PPR may, but shall have no obligation to, provide security service or to adopt security measures regarding the Premises or the building. Any security measures or services provided to the building or the Premises by PPR may be modified at any time without prior notice to SMILE. SMILE shall cooperate with all security measures adopted by PPR. PPR, at its sole cost, may install a security system within the Premises. PPR shall provide SMILE with an access code or key to any security system at the time of installation. PPR shall not have any liability for accidentally setting off security system. SMILE will be responsible for paying the monthly security monitoring fee.
- G. Fire Prevention. PPR shall conduct an annual inspection and make any repairs of the sprinkler system and fire extinguishers to ensure they are in operable condition. SMILE shall not use the Premises in any manner that causes the fire insurance rate on the building in which the Premises is located to be increased or that would prevent PPR from taking advantage of any ruling of the Insurance Services Offices of Oregon, or its successors, which could allow PPR to obtain reduced premium rates for long term fire insurance policies. SMILE shall prevent and control fire on the Premises and comply with any rules and regulations set forth by the Fire Marshal. If due to the result of SMILE's action or inaction, SMILE shall promptly pay for any fire inspection or re-inspection fee assessed to the Premises and make all corrections as ordered by the Fire Marshal. All paints oils and other flammable materials shall be stored in suitably protected outbuildings or compartments in accordance with rules and regulations as set forth by the Fire Marshal. SMILE shall comply with any building emergency or safety plan that may be implemented.
- H. Hazardous Materials. SMILE shall not dispose at, on or about the Premises any Hazardous Substance (as defined in ORS 465.200 or as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous Substances in a manner that protects the Premises and the environment from accidental spills and releases. SMILE, or any of its directors, officers, employees, agents, contractors, subcontractors, servants, successors, assigns, lessees, permittees, licensees, or invitees shall not cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the Premises, whether affecting surface water or groundwater, air, the land or the subsurface environment.
- I. Records and Inspection. SMILE will maintain a set of all financial, vendor, employee and operating records relating to its activities under this Agreement. At any time during the Term, City shall have the right, after reasonable notice to SMILE, to inspect and audit the

- books, records, invoices, deposits, canceled checks, or other financial data or transactions of SMILE 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 SMILE in connection with such inspections.
- J. Consultation. In addition to specific consultation requirements provided for elsewhere herein, SMILE will consult with City on other matters related to the Premises, when reasonably necessary to do so. All issues concerning SMILE's interest in the property or this Agreement should be directed to PPR's Property Manager.
- K. Media and Publications. SMILE will consult with PPR's Property Manager prior to providing to the media any press releases or information that directly concerns the Premises or PPR. SMILE shall use its best efforts to acknowledge its relationship with the City, by including the official logo of PPR and its slogan "Healthy Parks Healthy Portland" or other slogans as developed from time to time, on all signage and in any publications, media presentations or other presentations that specifically refer to Oaks Pioneer Church and the Premises.
- L. Taxes and Assessments. SMILE will pay any and all applicable federal, state or local taxes assessed against the Premises or against distributions to SMILE under this Agreement.
- M. Compliance with Law. The acts of SMILE 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.
- N. Volunteers. PPR is willing to provide assistance and advice regarding volunteers, but, unless otherwise agreed to in writing, all volunteers working at the request or direction of SMILE at the Premises are volunteers of SMILE for insurance and liability purposes. SMILE will report the hours of all volunteers working at the Premises to PPR's Volunteer Coordinator on an annual basis.
- O. Utilities. SMILE will maintain all utility accounts, except water and sewer, related to the Premises and pay, when due, utility bills, including cable, electricity, gas, phone, and trash removal. SMILE will be only responsible for trash related to their events and any trash inside the church. PPR shall be responsible for the water and sewer bill for the Premises, and continue pick-up of non-event related trash from PPR trash cans on the Premises.
- P. Flag raising/lowering. PPR will provide and maintain flag lowering and raising in accordance with policies and protocols for other City of Portland owned facilities.
9. City Retained Responsibilities, Rights and Authorities. City hereby reserves to itself all rights and authorities not specifically granted to SMILE under this Agreement. At a minimum, the City retains the following responsibilities, rights and authorities:
- A. Right of Entry. City reserves the right to enter the Premises, including the church, for any purpose, including evaluation of SMILE services, with the understanding that when exercising said right City will make a reasonable effort to minimize disturbances to SMILE activities and to provide reasonable notice under the circumstances before entering. 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 SMILE.

- B. Use of Premises. The City shall have the right to use the Premises with the understanding that said use will not unreasonably conflict with SMILE activities on the Premises. In an effort to avoid unreasonable conflicts, PPR will provide SMILE with reasonable notice of intended uses of the Premises, including reasonable use of the church on the Premises when said space is not being used by SMILE.
- C. Emergency Repairs. PPR reserves the right, in its sole discretion, to make emergency repairs to the church when said repairs are necessary to address immediate health and safety concerns. SMILE shall reimburse PPR for all reasonable costs of emergency repairs. To the extent that it is reasonable to do so, PPR will make a good faith effort to coordinate with SMILE as to these repairs.
10. Joint PPR and SMILE Efforts. To the extent resources allow, the Parties will cooperate on planning, fund raising and development activities necessary to achieve the long-term intention of SMILE taking over all operations and maintenance responsibilities of the church and the Premises.
11. Damage to Premises. If the Premises is damaged as a result of the acts or omissions of SMILE or its officers, employees, agents, contractors, licensees, permittees, invitees, or others acting under the direction and/or control of SMILE, SMILE will promptly notify PPR and shall, at PPR's option and in cooperation with SMILE's insurance carrier, if a claim is involved, either repair or replace the affected property at SMILE's expense or shall reimburse PPR for its reasonable costs of repairing or replacing the affected property.
12. No Liens. SMILE shall keep the Premises, and all City property used in connection with this agreement, free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of SMILE. If any lien is filed against any portion of the Premises or other City property used in connection with this Agreement, as a result of the acts or omissions of SMILE, or of SMILE's employees, agents, or contractors, SMILE shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after SMILE has notice that the lien has been filed. If SMILE fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of City, City may, at its election, upon five (5) days' prior written notice to SMILE, 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. SMILE shall pay on demand any amount so paid by City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.
13. INDEMNIFICATION
- A. Indemnification by SMILE. SMILE 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,

SMILE, the Premises or any interest therein to the extent that such Losses are the result of, arise from, or are in connection with any of the following:

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

- B. Exclusion. There is hereby expressly excluded from the scope of the foregoing indemnity any matter to the extent that such matter results from the negligence or willful misconduct of City (or its directors, employees, agents, contractors or licensees).
- C. Contractors and Other Authorized Users. SMILE will include sufficient indemnification language in its contracts and other written authorizations indemnifying City from any and all claims related to the contract work or authorized uses.
- D. 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 SMILE is obligated to indemnify the City hereunder, SMILE shall, upon notice from the City, at SMILE's expense, defend such action or proceeding through counsel reasonably acceptable to City.

14. Insurance

- A. Insurance Requirements. During the term of this Agreement, SMILE shall maintain insurance that satisfies City's standard insurance requirements for permit and license holders. A copy of City's current requirements is attached hereto as **Exhibit B**. City may notify SMILE, from time to time, of changes in City's standard insurance requirements. Furthermore, SMILE will require all its contractors to maintain the same insurance coverage that is required of SMILE.
- B. Waiver of Subrogation. SMILE and City each agree to waive claims arising in any manner in favor of either City and SMILE 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 SMILE'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 SMILE 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.

15. DEFAULT; REMEDIES; FORCE MAJEURE

- A. Events of Default. The following events shall constitute events of default by SMILE:
 1. If SMILE 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, SMILE shall not be deemed to be in default if SMILE begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;
 2. The bankruptcy or insolvency of SMILE or if a receiver or trustee is appointed to take charge of any of the assets of SMILE in or on the Premises 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
 3. If SMILE 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.

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B. Remedies for Default. Upon the occurrence of an event of default under this **Section 15**, City shall have the following rights and remedies, as well as any other remedies available at law or in equity.

1. City shall have the right to suspend SMILE's use of the Premises until the default is cured.
2. If the default is not cured, City shall have the right to terminate this Agreement by written notice to SMILE. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.

C. Exclusion of Certain Damages. Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 14.

D. Force Majeure

1. Neither City nor SMILE 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.
2. Notwithstanding to the contrary herein, if the Premises are rendered unusable by an event described in this Section and if such condition continues for more than sixty (60) consecutive days, or if City notifies SMILE that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either City or SMILE may terminate this Agreement by written notice to the other party.

16. Termination.

- A. Voluntary Termination. Either Party may voluntarily terminate the Agreement with no less than three (3) months written notice to the other party.
- B. Termination Process. Upon expiration of the Agreement term or early termination, SMILE shall deliver all keys to City and shall surrender the Premises to City in first class condition. All repairs for which SMILE is responsible shall be completed prior to such surrender. All SMILE property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should SMILE fail to effect the removals or make repairs, City may do so and charge the cost to SMILE together with late charges as provided by this Agreement from the date of the expenditure. SMILE shall be responsible for all costs and damages to City as a result of SMILE's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.
- C. Ownership upon Termination or Expiration. Upon the expiration or termination of this Agreement, all fixtures, improvements and personal property located on or associated

with the operation of the Premises shall become the property of the City. After satisfaction of SMILE's obligations outstanding as of the date of expiration or termination, all money remaining in SMILE's possession or accounts received as donations or sponsorships specifically for Oaks Pioneer Church, shall become the property of the City, to be used exclusively for operating, programming, maintaining, repairing and improving the Oaks Pioneer Church and the surrounding gardens and in accordance with any or all donor or granting organization restrictions.

17. MISCELLANEOUS

- A. City Consent. Unless otherwise stated, whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director.
- B. SMILE/City Coordination and Cooperation. SMILE and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement.
- C. Third-Party Rights. Except as provided for in this Agreement, SMILE 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.
- D. Signage: SMILE may not display or erect any permanent signs at the Premises without the advanced, written approval of PPR.
- E. Assignment
 - 1. PPR may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PPR management and/or operation of the Premises; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PPR.
 - 2. Rights granted under this Agreement are personal to SMILE, and may not be assigned, transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of PPR, which consent may be granted or denied in its sole discretion.
- F. Notices. All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows:

<u>PPR:</u>	Portland Parks and Recreation Bureau 1120 SW 5 th Ave, Suite 1302 Portland, OR 97024 Attention: Property Manager Telephone: (503) 823- Facsimile: (503) 823-5570
	<u>With a copy to:</u> City of Portland

	1221 SW 4 th Ave, Room 430 Portland, OR 97204 Attention: Harry Auerbach Telephone: (503) 823-4047 Facsimile: (503) 823-3089
<u>SMILE:</u>	Sellwood-Moreland Improvement League, Inc. 8210 SE 13th Portland, OR 97202 Attention: Telephone: (503) 234-3570 Facsimile: (503)

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

- G. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- H. Forum. Any litigation between the City and SMILE 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.
- I. Disputes. The Parties will make a good faith effort to resolve disputes in a reasonable manner and will proceed through the following courses of action prior to resorting to litigation: party to party negotiations; administrative appeals; and mediation and/or non-binding arbitration.
- J. 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 prepared it. 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.
- K. 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.

- L. Further Documents. Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- M. 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.
- N. 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.
- O. The Rights to Gather and Be Heard. SMILE will not take any action which would be considered a denial of the public's constitutional right to gather and be heard in the common areas of the Premises.
- P. 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 SMILE.
- Q. 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 SMILE and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by PPR and SMILE. The Director of Parks and Recreation is authorized to sign any amendment to this Agreement that does not have a significant financial impact on the City.

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

**PORTLAND PARK AND RECREATION
BUREAU**

**SELLWOOD-MORELAND
IMPROVEMENT LEAGUE, INC.:**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

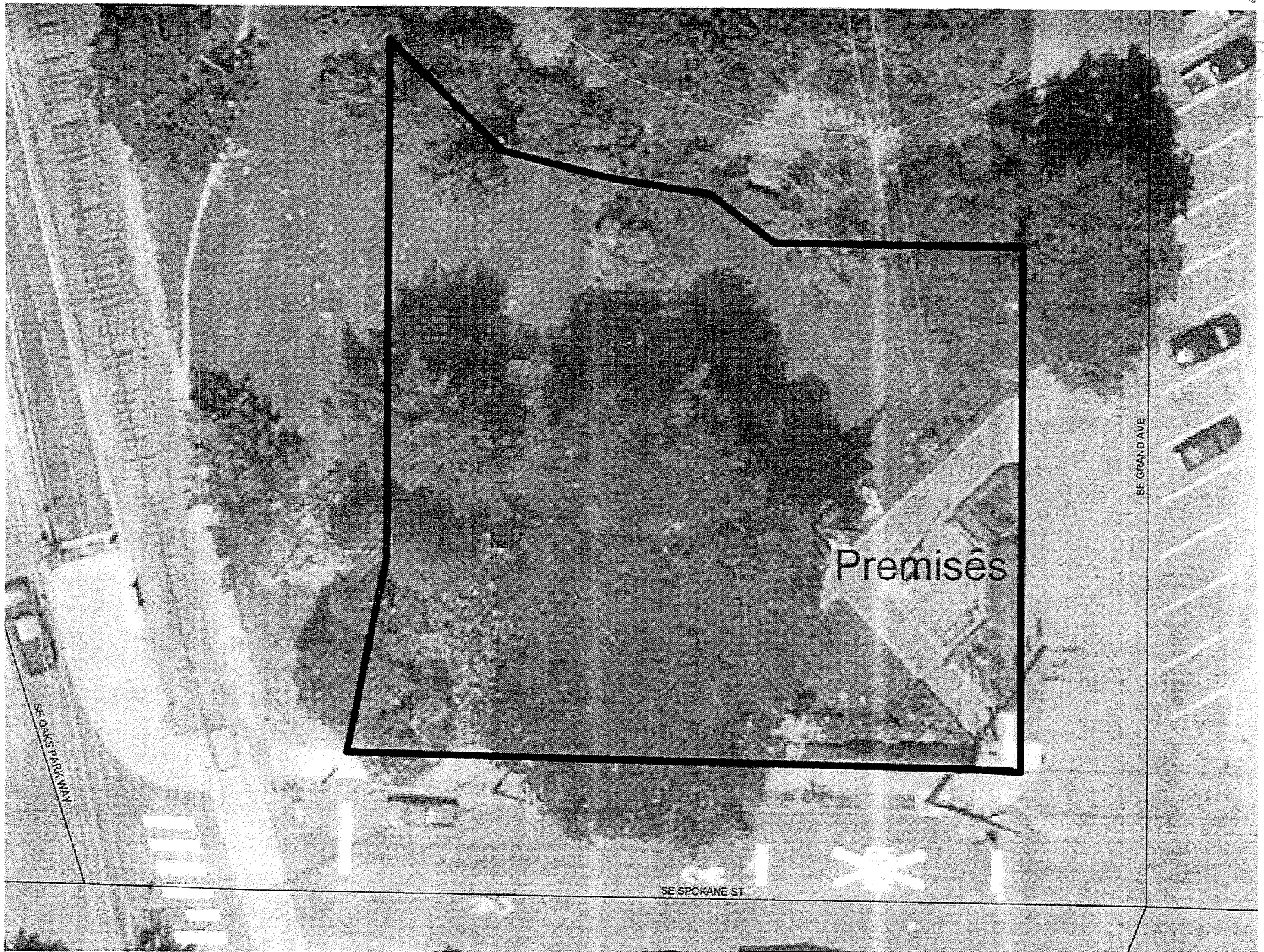
Date: _____

APPROVED AS TO FORM



Harry Auerbach
Chief Deputy City Attorney

Exhibit A - Premises



184913

EXHIBIT B**STANDARD INSURANCE
REQUIREMENTS****INSURANCE**

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

1. **Evidence Required**

SMILE 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 5th Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the SMILE or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The SMILE and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. **Insurance Required**

- A. SMILE and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the SMILE 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 SMILE'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 SMILE and its contractor or subcontractors, if any. 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.
- 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. SMILE, 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. SMILE 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.

3. Special Provisions

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by SMILE, 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 SMILE 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 SMILE 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).