

Portland, Oregon  
**FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT**  
**For Council Action Items**

(Deliver original to City Budget Office. Retain copy.)

1. Name of Initiator Susan Hartnett		2. Telephone No. 823-6958	3. Bureau/Office/Dept. OMF
4a. To be filed (hearing date):  March 16, 2014	4b. Calendar (Check One)  <div style="display: flex; justify-content: space-around;"> <span>Regular <input type="checkbox"/></span> <span>Consent <input checked="" type="checkbox"/></span> <span>4/5ths <input type="checkbox"/></span> </div>		5. Date Submitted to Commissioner's office and CBO Budget Analyst: Feb 26, 2014
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

**1) Legislation Title:**

\*Approve a License Agreement with Soccer United Marketing for use of the Official Flag of Portland including specifications for variations to City Code Chapter 1.06. (Ordinance)

**2) Purpose of the Proposed Legislation:**

Approve a license agreement with Soccer United Marketing for use of Portland's Official Flag on merchandise with specified variations to City Code Chapter 1.06.

**3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?**

- |  |                                    |                                    |                                |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast             | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East  |
| <input type="checkbox"/> Central City                  |                                    |                                    |                                |

**FINANCIAL IMPACT**

**4) Revenue:** Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

The only revenue generated by this Agreement is the annual \$100 Administrative Fee paid by Soccer United Marketing.

**5) Expense:** What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in

future year, including Operations & Maintenance (O&M) costs, if known, and estimates, if not known. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the **level of confidence**.)

The City has incurred expense in the form of staff time to negotiate the Agreement. No ongoing expenses are anticipated.

**6) Staffing Requirements:**

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** (If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)

No

- **Will positions be created or eliminated in future years as a result of this legislation?**

No

*(Complete the following section only if an amendment to the budget is proposed.)*

**7) Change in Appropriations** (If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)

None

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

**[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]**

## PUBLIC INVOLVEMENT

**8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:**

- ☐ **YES:** Please proceed to Question #9.  
☒ **NO:** Please, explain why below; and proceed to Question #10.

Public involvement was not needed because the proposed agreement has no impact on the community and there would have been little or no community interest. The proposal is primarily internal to city government processes and was very low cost to implement.

**9) If "YES," please answer the following questions:**

**a) What impacts are anticipated in the community from this proposed Council item?**

**b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?**

**c) How did public involvement shape the outcome of this Council item?**

**d) Who designed and implemented the public involvement related to this Council item?**

**e) Primary contact for more information on this public involvement process (name, title, phone, email):**

**10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.**

No

Fred Miller, Interim CAO



APPROPRIATION UNIT HEAD (Typed name and signature)

LICENSE AGREEMENT FOR USE OF THE CITY OF PORTLAND OFFICIAL FLAG WITH  
MODIFICATIONS ON MAJOR LEAGUE SOCCER LICENSED MERCHANDISE

This License Agreement ("License") is made between the City of Portland, Oregon (the "City"), a municipal corporation of the State of Oregon and Soccer United Marketing, LLC ("SUM"), a Delaware limited liability company, each individually a "Party" and collectively the "Parties", and shall be effective from the latest date of signature (the "Effective Date").

RECITALS

- A. Whereas the Parties desire to promote a positive image of the City; and
- B. Whereas, the Parties desire to promote goodwill for the general benefit of the City; and
- C. Whereas, the Official Flag of Portland, Oregon (the "Flag") is a visible and publically recognized symbol with specifications for its appearance and use defined in Portland City Code Chapter 1.06; and
- D. Whereas, SUM desires to use the Flag in conjunction with its officially licensed merchandise bearing trademarks, trade names, logo symbols and mascots of the Major League Soccer, L.L.C. ("MLS") team currently known as the Portland Timbers (the "Merchandise"), which is produced by its Licensees.

LICENSE

The Parties agree as follows:

- 1. Permission to Use Flag: The City hereby gives, grants and assigns to SUM and Licensees consent, permission and limited license to use the Flag in connection with the Authorized Use, as described in Section 4.
- 2. Term: The "Term" of this License shall commence on the Effective Date and continue thereafter until the earlier of an Early Termination Date (as described in Section 3), or at midnight on the day proceeding the fifth (5<sup>th</sup>) anniversary of the Effective Date. The Parties may agree to renew this License via a written addendum, signed by all Parties for an additional five (5) year term. After termination of this License, SUM and its Licensees have one hundred twenty (120) days to liquidate any remaining Merchandise bearing the Flag, and SUM and its Licensees agrees to not use any other mark which is confusingly similar to the Flag.
- 3. Early Termination:
  - 3.1. Termination by Mutual Agreement. The City and SUM, by mutual agreement, may terminate this License at any time.



3.2. Termination by City or SUM, Discretionary. Either the City or SUM, on 90 days written notice to the other, may terminate this License for any reason deemed appropriate in its sole discretion.

3.3. Termination by City for Breach. City may terminate this License in the event of a breach of the License by SUM or its Licensees.

4. Authorized Use: SUM is authorized to license the use of the Flag to its respective MLS affiliated companies, successors, licensees and assigns (each individually a “Licensee” and collectively “Licensees”), in connection with the creation, development, design, manufacturing, display, exhibition, sales and distribution of the Merchandise subject to the following limitations (the “Authorized Use”):

4.1. Authorized Use of the Flag is limited to the specifications approved by the City, in its sole discretion as depicted in **Attachment 1**.

4.2. Licensees may sell Merchandise bearing the Flag in the United States and Canada and their respective territories and possessions.

4.3. SUM may grant use of the Flag to a Licensee provided that such Licensee abides by the terms contained in this License.

4.4. Except as described in Section 4.3 above, SUM shall not grant any license or sublicense of the Flag and shall not otherwise assign or transfer any rights granted by the City pursuant to this License. It is understood by the Parties that the manufacture of the Merchandise may be performed by a third party manufacturer designated by SUM or a Licensee but such third party manufacturer shall not gain any rights to the Flag.

4.5. City shall not be held accountable for any design, production, or marketing cost involved with this License.

4.6. SUM and its Licensees may not alter approved Flag designs, as shown in **Attachment 1**, without the express written approval of the City.

4.7. City agrees that it shall cooperate in or, at its sole discretion and subject to City Council authorization, join in the defense of any threatened or actual third party claims of any kind based upon any theory of law or liability whatsoever, and all losses, damages, settlements, judgments, investigations, liabilities, charges, costs and expenses (including, without limitation, reasonable legal fees and expenses) as and when incurred arising out of, incident to or in relation to any infringing use, or allegation of such use, by SUM, MLS or MLS teams of the Flag (provided that the use of the Flag is in accordance with and as permitted under the terms of this License); all such defense shall be at SUM’s expense, including reasonable attorneys’ fees.

5. Goodwill in Flag: SUM agrees that the essence of this License is founded on the goodwill associated with the Flag and the value of that goodwill in the minds of the citizens of the City.

SUM agrees that it is critical that such goodwill be protected and enhanced. Towards this end, during the Term, and any renewal term thereafter, SUM shall not or allow a Licensee to:

- 5.1. Apply to register or maintain any application or registration of the Flag (modified or otherwise) or any other mark confusingly similar thereto;
  - 5.2. Use any colorable imitation of the Flag, or any variant form (including variant design forms, logos, colors, or type styles) of the Flag not specifically approved by City;
  - 5.3. Misuse the Flag;
  - 5.4. Take any action that would bring the Flag or City into public disrepute;
  - 5.5. Take any action that would tend to destroy or diminish the goodwill in the Flag; or
  - 5.6. Use the Flag for any purpose that is unlawful, prohibited by or outside the terms of this License.
6. Limit to Authorized Use: City is not granting any rights to produce any items for sale or distribution that incorporates any intellectual property, including, but not limited to trademarked or copyrighted material provided by City, other than the Authorized Use as specifically defined in Section 4.
7. Quality of Merchandise: Before selling or distributing any of the Merchandise, Licensees shall submit such Merchandise for SUM's written approval in accordance with the Authorized Use. SUM shall have sole control and ownership over any and all designs, proposals, alterations, and other similar materials submitted for approval by Licensees (whether approved or not) in connection with the Merchandise. Further, SUM shall have sole control and ownership over any and all Merchandise.
8. No Endorsement: The City's grant of this License does not imply endorsement of the Merchandise.
9. Remedies: The City shall have all legal remedies available for any unauthorized, unlicensed use of the Flag, or breach of this License.
10. Payment for Use: SUM will pay to the City a "fee for use" of One Hundred U.S. Dollars (U.S. \$100.00) per year of the Term of this License.
11. Indemnification:
- 11.1. SUM and its Licensees agree to indemnify, hold harmless and defend City, its officers, employees and agents from and against third party claims, suits, actions, of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney fees, resulting from or arising out of the acts of SUM, its officers, employees, agents, contractors and Licensees under this License.

11.2. The indemnification obligations under this Section shall survive the termination of this License.

12. Adherence to Law: SUM and its Licensees shall comply with all federal, state and local laws and ordinances applicable to this License.

13. Non-Discrimination: SUM and its Licensees shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

14. Entire Agreement, Waiver and Amendment: This License constitutes the entire agreement between the parties. There are no understandings, agreements or representations, oral or written, not specified herein regarding this License. No waiver, consent, modification, amendment or change of terms of this License shall bind either party unless in writing and signed by all parties and unless all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this License shall not constitute a waiver by either party of that or any other provision.

15. Venue and Choice of Law: This License shall be governed by the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

16. Interpretation of License: This License shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this License are for ease of reference only and shall not be used in construing or interpreting this License.

17. Notices and Communications: All communications between the Parties regarding this License shall be directed to the Party's respective contact persons as indicated below:

Soccer United Marketing, LLC  
420 Fifth Avenue, 7<sup>th</sup> Floor  
New York, NY 10018  
ATTN: Kathryn Carter, President

City of Portland  
Office of Management and Finance  
1120 SW Fifth Ave, Room 1250  
Portland, OR 97204  
ATTN: Chief Administrative Officer

And to:

City of Portland  
City Attorney's Office  
1121 SW Fourth Ave, Room 430  
Portland, OR 97204

Official communications regarding this License shall be in writing and delivered by mail or hand delivery to the above-named persons or their successors in office or designated representatives. Notice of appointment of a designated representative shall be made in writing. Designated representatives may be changed only upon written notice to the other party.

IN WITNESS WHEREOF, the City and SUM have executed this License.

LICENSEE: Soccer United Marketing, LLC

CITY of Portland:

\_\_\_\_\_  
Kathryn Carter, President

\_\_\_\_\_  
Mayor Charlie Hales

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Office of the City Attorney



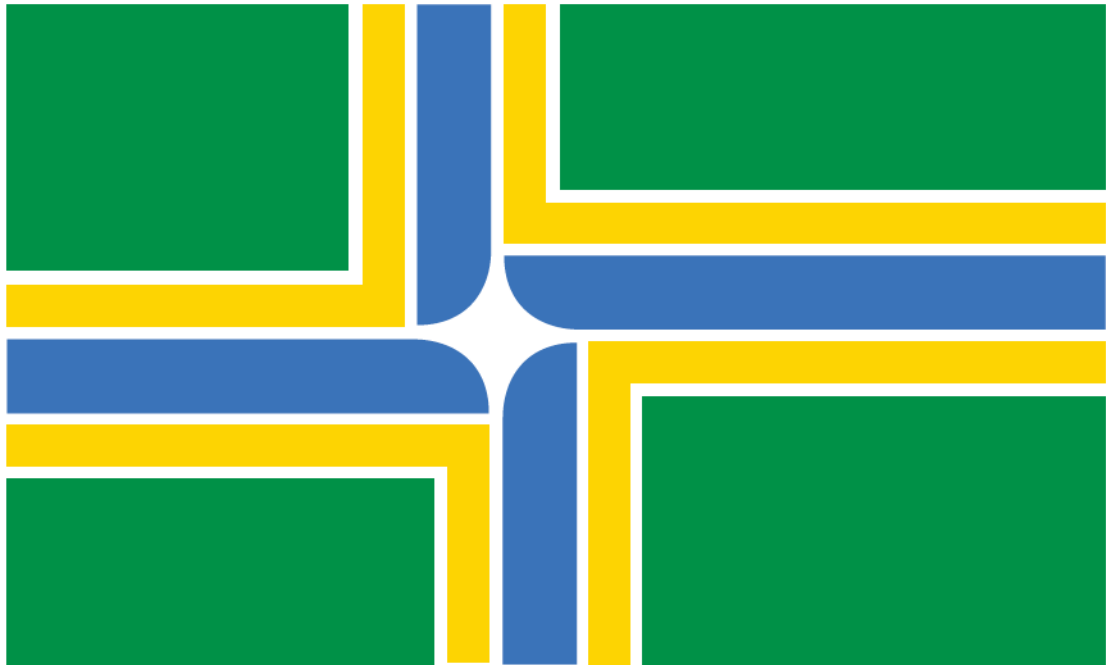
## Attachment 1



Image #1 - City Flag utilizing a two color option:

- Two color flag incorporates the Portland Timbers colorway. Flag colors are: PMS 350c (Green); PMS 396u (Yellow) on a white background or with PMS 11-0601 TCX (Bright White)
- Addition of Portland Timbers wordmark surrounding City flag

# PORTLAND



# TIMBERS™

Image #2 - City Flag connection with Portland Timbers:

- Addition of Portland Timbers wordmark surrounding City flag
- Flag colors are: PMS 279 (Blue); PMS 349 (Green); PMS 1235 (Yellow)  
on a white background or with PMS 11-0601 TCX (Bright White)

Image #3 - City Flag in stylized manner:

- Features four color City Flag graphics shaped within Oregon state borders. Flag colors are: PMS 279 (Blue); PMS 349 (Green); PMS 1235 (Yellow); PMS 11-0601 (Bright White)
- Addition of "Soccer City, USA" within flag designs (popular Portland Timbers slogan)



Image on dark background



Image on white background

**ORDINANCE No.      REFERRED TO COMMISSIONER OF  
FINANCE AND ADMINISTRATION**

\*Approve a License Agreement with Soccer United Marketing, LLC for use of the Official Flag of Portland including specifications for variations to City Code Chapter 1.06 (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City desires to promote a positive image of the City;
2. The City desires to promote good will for the general benefit of the City;
3. The official flag of Portland, Oregon is a visible and publically recognized symbol with specifications for its appearance and use defined in Portland City Code Chapter 1.06;
4. On September 4, 2002, the City Council amended City Code Chapter 1.06 to restore the original design of the flag in part to make it possible for vendors to more easily include reproductions of the city flag on their Portland-related goods; and
5. Soccer United Marketing, LLC, desires to use the flag, with modifications to the specifications in City Code Chapter 1.06, in conjunction with its officially licensed merchandise bearing trademarks, trade names, logo symbols and mascots of the Portland Timbers and produced by its licensees.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized to execute the *License Agreement for Use of the City of Portland Official Flag with Modifications on Major League Soccer Licensed Merchandise* in a form substantially similar to that attached hereto as Exhibit A
- b. The modifications, shown in Attachment 1 to Exhibit A, to the specifications for the City of Portland Official Flag contained in City Code Chapter 1.06 are approved.

Section 2. The Council declares an emergency exists because SUM wishes to include the Portland flag in their approved merchandise graphics with sufficient time for it to be used on merchandise sold during the 2014 MLS season. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Mayor Charlie Hales

Prepared by: Susan Hartnett

Date Prepared: February 24, 2014

**LaVonne Griffin-Valade**

Auditor of the City of Portland

By

Deputy



Agenda No.  
**ORDINANCE NO.**  
 Title uc

\*Approve a License Agreement with Soccer United Marketing for use of the Official Flag of Portland including specifications for variations to City Code Chapter 1.06. (Ordinance)

<b>INTRODUCED BY</b> Commissioner/Auditor: <u>Moyor Hales</u>	CLERK USE: DATE FILED <u>MAR 07 2014</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Hales <u>[Signature]</u> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u>[Signature]</u> Deputy
<b>BUREAU APPROVAL</b> Bureau: OMF Bureau Head: <u>Fred Miller</u> Fred Miller, Interim CAO  Prepared by: Susan Hartnett Date Prepared: February 24, 2014  Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>  Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>  <b>City Auditor Office Approval:</b> required for Code Ordinances  <b>City Attorney Approval:</b> required for contract, code, easement, franchise, comp plan, charter <u>[Signature]</u>  Council Meeting Date <b>March 12, 2014</b>	<b>ACTION TAKEN:</b> <b>MAR 12 2014 REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION</b>

<b>AGENDA</b>  <b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____  Total amount of time needed: _____ (for presentation, testimony and discussion)  <b>CONSENT</b> <input checked="" type="checkbox"/> <u>Pulled</u>  <b>REGULAR</b> <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)
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FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Novick	4. Novick		
Hales	Hales		