

**License Agreement**  
**Walker Stadium at Lents Park**

This License Agreement (this “Agreement”) is entered into this \_\_\_\_\_ day of March, 2015 (the “Effective Date”), by and between Rose City Baseball, LLC, an Oregon limited liability company (“Rose City Baseball” or “Licensee”) and the City of Portland, a municipal corporation duly organized and existing under the laws of the State of Oregon acting by and through its Bureau of Parks & Recreation (“PP&R” or the “City”). Rose City Baseball and PP&R may be referred to herein jointly as the “Parties” or individually as a “Party”.

**RECITALS**

A. The City is the owner of certain real property known as Walker Stadium at Lents Park (the “Stadium”) as further depicted on the site plan attached hereto as Exhibit A (together, the “Premises”).

B. Rose City Baseball and the City will enter into a Non-Park Use Permit, or permit of entry, under which Rose City Baseball will design, permit and construct at least Four Hundred Thousand Dollars (\$400,000) (the “Rose City Baseball Funding”) worth of capital improvements to renovate Walker Stadium.

C. In consideration of the Rose City Baseball Funding and on the terms and conditions set forth herein, PP&R agrees to grant Rose City Baseball a license to use the Stadium in its entirety; provided, however that there will be public access to Stadium when the facility is not in use by Rose City Baseball as described herein.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**I. LICENSE GENERALLY**

- 1. License to Use the Premises.** No property rights are being conveyed by the City under this Agreement. Subject to the terms and conditions set forth in this Agreement, PP&R hereby grants Rose City Baseball a license to use: (i) the Stadium during the hours set forth in the

schedule attached hereto as Exhibit C (the “Schedule”) for summer college wood bat baseball games and special events; (ii) the Stadium during games and special events by food concession stands and carts, including the sale of baseball tickets, merchandise, food and beverage (including wine and beer); (iii) Rose City Baseball to provide City with schedule of regular season games by November 1 of the preceding year of scheduled play; (iv) exclusive use of a storage, office and concession space in the Stadium depicted in Exhibit B; and, (v) exclusive concession sales in the Stadium during events in the stadium. PP&R or its permittees may conduct concessions services only if Rose City Baseball refuses to provide concession services during non-Rose City Baseball events. The Schedule will be assessed on an annual basis by the Parties to ensure that the public has adequate access, and ensure public play and Rose City Baseball play is appropriately accommodated. The City and permitted public users may use and access the Stadium during times outside of the Schedule.

2. **Acceptance of the Premises.** Rose City Baseball hereby 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, Rose City Baseball 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.
3. **Game Use Fee for the Premises.** Rose City Baseball shall pay \$200 per game rental fee. Double-headers shall be considered to be one game. Rose City Baseball shall pay \$17 per hour for use of stadium lights, use fee to be assessed by City. Each year during this Agreement, Rose City Baseball’s payment of game fees shall be made on June 30 (for use during the month of June), July 31 (for use during the month of July) and August 31 (for use during the month of August). Rose City Baseball shall pay City for use of stadium lights August 31. Game rental fees and electric fee shall increase 3.5% each year.

In consideration of the Rose City Baseball Funding, Rose City Baseball is not obligated to pay a use fee for use of the storage and office in the Stadium.

4. **Special Event Permits Fee.** Rose City Baseball is allowed to use the stadium for up to five one day events each year, not including PP&R Movies In The Park events held in conjunction with the Lents Neighborhood Association and PP&R, notifying the City at least 120 days prior to such events. Noise permits, turf restoration charges and other special use permit conditions may apply. If the use is a baseball game, use fee per Section 3 above will apply, however all other uses will be assessed \$1,000 special use park permit fee per day of use. For specific defined special events alcohol service may be permitted. Rose City Baseball will be required to follow all City permitting and usage rules. Payment of the special use permit fee defined herein will be due 14 days prior to the event day. All other requests to use the stadium by Rose City Baseball shall be submitted to the PP&R Property Manager.
5. **Percentage Rent.** Beginning September 1, 2019, Game Use Fee and Special Event Fees described in Section 3 and Section 4 of this Agreement will be replaced with a Percentage Rent described in this Section of the Agreement for use of the Stadium for baseball games and special events, use of the office, storage and concession area. Rose City Baseball shall

pay the City five-percent (5%) of Rose City Baseball's, its licensee(s), sub-tenant(s) and sub-licensee(s) gross revenue (all sales and all revenue sources) from September 1 through August 31 each year. If a subcontractor (or sub-tenant or sub-licensee) is used, the "gross revenue" amounts used to calculate the City's compensation per this Section will be the gross revenue received by the subcontractor, not what the subcontractor pays to Rose City Baseball. At the end of each month, Rose City Baseball will total the gross receipts from **all sales and revenue sources**, including but not limited to, ticket sales, merchandise sales, food and beverage sales, promotions, and all other sales and revenues sources for that month, and will pay to the City the amount due within ten (10) working days after the end of the month. Percentage Rent as described in this Section of the Agreement will not include revenue derived solely from sponsorship recognition and signage.

6. **Late Fee.** In addition to other remedies, if any Rent or Use Fee is not received by City within ten (10) days after it is due or demanded, City may impose a late fee equal to five percent (5%) of the amount of the delinquent Rent for the month in which the Rent or Use Fee is delinquent or a minimum of \$50.00, whichever is greater. Rose City Baseball shall pay any late fee immediately upon request by the City. The imposition by the City and/or the payment by Rose City Baseball of any late fee shall not waive or cure Rose City Baseball's default. Failure to impose a late fee on one occasion does not affect a waiver of the City's right to impose a late fee on subsequent delinquencies.
7. **PP&R's Permitting of the Premises.** The City reserves the right to enter into other use agreements or permits so long as such agreements and permits do not conflict with the Schedule or Rose City Baseball's use of storage, office and concession spaces as defined in this Agreement.
8. Should City and or Lents community have events that might conflict with the Licensee's use, including the use of the stadium, the City shall make best efforts to provide the dates of such events to the team by August 1 of the previous year.
9. **Term.** This Agreement will commence on the Effective Date and terminate September 1, 2017, ("Expiration Date"), and remain in effect unless extended or sooner terminated under the provisions of this License Agreement. The Agreement will have two automatic five (5) year renewal terms if Licensee is not in default under the Agreement at the time of renewal. If Rose City Baseball wishes to terminate the Agreement effective on the expiration of the initial or second term, then Rose City Baseball shall give the City ninety (90) days written notice of its intent to terminate.

## II. **ROSE CITY BASEBALL'S AFFIRMATIVE COVENANTS**

Rose City Baseball agrees and covenants as follows:

1. **Employees.** Rose City Baseball will hire, train, supervise and regularly evaluate all employees and volunteers required to carry out Rose City Baseball's responsibilities provided for herein. All employees and volunteers supervised by Rose City Baseball shall be employees or volunteers of Rose City Baseball and not of the City.
2. **Sponsorship Signage and Field Naming.** To the extent that Rose City Baseball conducts sponsorship activities on the Premises, Rose City Baseball will conduct all such activities in accordance with City policies for the Premises. All onsite sponsorship recognition and signage require PP&R approval prior to installation. PP&R will be entitled to receive fifty percent (50%) of gross revenue derived from sponsorship related to field naming and its sponsorship recognition and signage. Rose City Baseball will be allowed to retain all revenue from all other sponsorship signage in the facility, except for sponsorship revenues related to field naming. All signage to be compliant with City code. While signage proposal(s) for field naming will be drafted by Rose City Baseball, and they will pay any costs associated with that proposal, City signage approval application fees associated with field naming shall be cost shared equally by Rose City Baseball and the City.
3. **Taxes and Assessments.** Rose City Baseball shall pay any and all applicable federal, state or local taxes assessed against the Premises as a result of Rose City Baseball's activities or this Agreement.
4. **Reporting and Other Fiscal Matters.** Rose City Baseball will:
  - a) maintain a set of all financial, vendor, employee and operating records relating to its activities under this Agreement. At any time during the Term and up to three (3) years after the termination date, City shall have the right, after reasonable notice to Rose City Baseball, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of Rose City Baseball 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 Rose City Baseball in connection with such inspections. In the event that said audit identifies material deficiencies in record keeping practices, said practices will be corrected as recommended by the audit. If an audit discloses that payments to the City from Rose City Baseball were less than the amount to which the City was entitled then Rose City Baseball shall repay the amount of the excess or deficiency to the City;
  - b) submit an annual report in a form approved by the City. The report must include attendance for games and events at the Stadium and the days and hours the Stadium was used. Reports shall be submitted to the City by the 1<sup>st</sup> of January each year. PPR will forward the final report to PDC for review;
  - c) meet with PP&R and PDC staff on an annual basis to discuss programming coordination and opportunities for joint efforts;
  - d) provide PP&R with copies of reports and documents provided to the Oregon Department of Justice and/or Secretary of State;
  - e) Rose City Baseball shall pay for (i) the cost of lighting the Stadiums during the times set forth in the Schedule; (ii) game-day field maintenance prior to and following each game and to clean the stadium and surrounding park grounds after each game and

- provide garbage removal, including all security and janitorial services needed for games or events; (iii) all repairs not attributable to normal wear and tear of the Stadium and all repairs in the concession area and storage and office space used by Rose City Baseball; and (iv) repair and replacement of spectator viewing facilities in foul ball areas beyond the bleachers; and,
- f) pay or arrange for payment of all costs that Rose City Baseball is responsible for under this Agreement.

**5. Repairs and Maintenance.** During the Term, Rose City Baseball's shall be responsible, at its sole cost, for all maintenance and repair, other than those expressly assumed by the City herein:

- a) Rose City Baseball's shall provide game-day field maintenance prior to and at the conclusion of each game, including, but not limited to, raking infield and chalking lines;
- b) Rose City Baseball's shall clean the stadium, and surrounding park grounds after each game, including adequate provision of restroom supplies and cleaning of restrooms;
- c) Rose City Baseball's shall provide all security and janitorial services needed for games or events;
- d) Rose City Baseball's shall maintain, and as necessary replace, all improvements of any kind within the Rose City Baseball storage and office area, concession area, and spectator viewing facilities in foul ball areas beyond the bleachers, in good and substantial condition, order and repair, including among other things, pest control; and maintain and repair of interior floors, walls, doors and windows; exposed electrical and plumbing; fixtures; glass replacement; gutters; and appliances;
- e) Rose City Baseball's shall responsible for costs to repair any and all damage in the Stadium, not attributable to normal wear and tear, that may result from its use, its visitors' use or its permittees use;
- f) Rose City Baseball shall remove all garbage, recycling, litter and debris created by its use and remove from Lents Park at the conclusion of its games or events. PP&R may charge Rose City Baseball for garbage left in Walker Stadium or Lents Park;
- g) Rose City Baseball shall be responsible for all costs associated with its security alarm system on the Premises. In the event that the alarm system is on PP&R's alarm contract, Rose City Baseball will reimburse PP&R annually for the amount charged by the security company for monitoring the security system. Additionally, Rose City Baseball will pay any costs that PP&R incurs due to Rose City Baseball's improper use of the system or false alarms;
- h) Rose City Baseball shall be responsible for installation cost, repair and maintenance of any signage in and around the stadium;
- i) Rose City Baseball shall maintain the Premises during its time of use to a standard comparable to other PP&R properties where public and private events are held;
- j) Promptly, after becoming aware of unsafe conditions or practices, Rose City Baseball shall correct any unsafe condition at the Premises for which Rose City Baseball is responsible, as well as any unsafe practices by persons reasonably under Rose City Baseball's control;

- k) City responsibilities for the Premises: Subject to available funding and after the completion Rose City Baseball's stadium improvements, City shall be responsible for: maintenance of the baseball field; stadium lights; irrigation; stadium seating; fencing; bathrooms; major maintenance and repair of the structural elements of the Premises, which include the roof, exterior walls and doors, masonry, concealed plumbing and electrical. City, in its sole discretion will make decisions regarding repairs in accordance with its standards. City shall be responsible for all maintenance and repairs needed to keep the Property in a clean and safe condition, similar to other Park facilities, excluding the Rose City Baseball concession area, office and storage area, and spectator viewing facilities in foul ball areas beyond the bleachers.
- l) City will have no liability to Rose City Baseball for City's failure to make any repair required of City so long as such repair is completed within a reasonable time following Rose City Baseball notice.
- m) In accordance with the responsibilities described in this Agreement, City reserves the right, in its sole discretion, to make emergency repairs to the Premises when such repairs are necessary to address immediate health and safety concerns. Rose City Baseball shall reimburse City for all reasonable costs of emergency repairs if such repairs were the responsibility of Rose City Baseball. To the extent that it is reasonable to do so, City will make a good faith effort to coordinate with Rose City Baseball as to such repairs.

#### **6. Capital Improvements.**

- a) Rose City Baseball shall invest at minimum \$400,000 worth of capital improvements to the stadium, with construction to occur between July 15, 2015 and May 1, 2016, and specifications of such improvements approved by the City. Capital improvements shall at a minimum include improvements to: replacing seating behind home plate, improvements to ADA seating, improved concession, rebuilt dugouts, new scoreboard, concession area and fencing. If Rose City Baseball fails to complete these improvements by May 1, 2016, Rose City Baseball will be in default of this Agreement. As they apply, it is the expectation that Rose City Baseball will require the General Contractor to follow Oregon's Prevailing Wage Laws. Rose City Baseball may either competitively bid all or portions of the Project or sole source contracts to contractors it deems to be uniquely qualified to perform Rose City Baseball's capital improvements. Rose City Baseball will use all reasonable good faith efforts to contract with minorities, women & emerging small businesses ("MWESB"), but will not be required to meet specific participation levels. Portland Parks & Recreation will issue a Notice to Proceed for Rose City Baseball's Capital Improvements, only upon receipt of evidence from Rose City Baseball, in a form reasonably satisfactory to Portland Parks & Recreation that it has actually collected, or otherwise secured the collection of funds sufficient to complete the aforementioned Capital Improvements.
- b) City to remove wooden grandstand, press box and existing chain link batting screen, beginning demolition July 15, 2015.
- c) City to provide all normal and necessary field equipment, including but not limited to, a batting cage and four field screens, as well as small tarps for home plate and pitchers' mound areas by June 1, 2016.

- d) City to provide new irrigated natural grass playing surface by June 1, 2016, with Rose City Baseball agreeing to assist City in minimizing such cost through possible sponsorship trade opportunities.
- e) Rose City Baseball shall consult with the PP&R 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 installation of new fixtures at the Premises without the written authorization of the PP&R Property Manager. City authorization will require review and approval of plans prepared at Rose City Baseball's cost by licensed engineers or contractors. "Capital improvements" means any permanent structural change or addition to the Premises. Minor or temporary improvements will require the approval of the PP&R Property Manager, or her designee. Rose City Baseball 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 PP&R unless otherwise agreed in writing between both Parties.
- f) Rose City Baseball shall not make any alterations or improvements to the Property, including the Premises, without first obtaining the written consent of PP&R's Property Manager. All alterations or improvements, including, but not limited to, wall covering, paneling, built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to PP&R and shall be surrendered with the Premises. Any authorized alterations, additions or improvements by Rose City Baseball shall be made by Rose City Baseball at its own expense in an expeditious and good workmanlike manner. Upon expiration or termination of this License, and at Rose City Baseball's own expense, Rose City Baseball shall remove all alterations, additions or improvements made by Licensee and designated by PP&R to be removed by written notice given not less than thirty (30) days prior to such expiration, and shall repair any damages caused by the removal.
- g) All work performed shall be done in strict compliance with all applicable laws, including permitting requirements. Prior to the commencement of any work, Rose City Baseball shall submit to PP&R's Property Manager and obtain PP&R's written consent to all of the following: detailed plans signed by a licensed architect or engineer; Rose City Baseball's estimated costs; and, the names of Rose City Baseball's general contractors and major subcontractors, along with copies of all permits and contractors/subcontractors' certificates of insurance and bonding. Rose City Baseball shall provide PP&R all construction drawings (inclusive of architectural, structural, mechanical, and electrical drawings) on computer disks in format readable by AutoCAD 2010 (or the appropriate version utilized by the City), at completion of construction.

- h) PP&R's written consent and approval of proposed or constructed improvement shall create no responsibility or liability on the part of the City for design completeness, sufficiency, or compliance with all laws, rules and regulations of governmental agencies or authorities, and shall not be construed as City's warranty or approval of the adequacy, competence, experience, bonding or licensure of any contractors/subcontractors or the quality of the work that may be performed by these persons. Rose City Baseball remains liable to the City for non-compliance and defects in any work performed by Rose City Baseball's contractors/subcontractors.
- 7. Damage to Premises.** If the Premises are damaged as a result of the acts or omissions of Rose City Baseball or its officers, employees, agents, contractors, licensees, permittees, invitees, or others acting under the direction and/or control of Rose City Baseball, Rose City Baseball will promptly notify PP&R and shall, at PP&R's option and in cooperation with Rose City Baseball's insurance carrier, if a claim is involved, either repair or replace the affected property at Rose City Baseball's sole expense or shall reimburse PP&R for its reasonable costs of repairing or replacing the affected property.
- 8. Utilities.** City shall furnish and pay for electricity, water and sewage disposal services to the Premises. Except for services that may be provided by City, Rose City Baseball is responsible for arranging any other utility services required at Premises and shall promptly pay all charges when due to the utility service providers. Rose City Baseball shall arrange for and pay for telecommunication services to the Premises, including but not limited to telephone, cable television, internet or wireless networking technology (such as Wi-Fi). City shall have no obligation to permit the new installation of equipment by any telecommunications provider whose equipment is not then suitable for servicing the stadium or park.
- 9. Security.** Rose City Baseball shall adhere to applicable emergency procedures, including, but not limited to, timely reporting of damage or injury incidents on a PP&R incident report form. Rose City Baseball shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Premises. Rose City Baseball shall keep the Premises secured during its authorized time of use. Rose City Baseball will provide an adequate level of security or crowd control personnel for protection of the Premises' assets and the general public. PP&R may, but shall have no obligation to, provide security service or to adopt security measures regarding the Premises. Any security measures or services provided to the Premises by PP&R may be modified at any time without prior notice to Rose City Baseball. Rose City Baseball shall cooperate with all security measures adopted by PP&R.
- 10. Transportation Management.** Rose City Baseball will have a traffic management plan for each game or event at the Stadium, and shall make best efforts to notice adjacent neighbors and conduct regular outreach to adjacent neighborhood and business district associations to manage parking demand and manage traffic to and from games. Rose City Baseball is encouraged to work with TriMet, PBOT, and PPR to reduce demand for parking by providing viable transportation alternatives.



- 11. Hazardous Materials.** Rose City Baseball 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. Rose City Baseball, 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.
- 12. No Liens.** Rose City Baseball shall keep the Premises, and all City property used in connection with this Agreement, if any, free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Rose City Baseball. 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 Rose City Baseball, or of Rose City Baseball's employees, agents, or contractors, Rose City Baseball shall discharge, bond or otherwise secure the same to the City's reasonable satisfaction within thirty (30) days after Rose City Baseball has notice that a lien has been filed. If Rose City Baseball fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of the City, the City may, at its election, upon five (5) days' prior written notice to Rose City Baseball, 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. Rose City Baseball shall pay on demand any amount so paid by the City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of the City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.
- 13. Consultation.** In addition to specific consultation requirements provided for elsewhere herein, Rose City Baseball will consult with the City on other matters related to the Premises, when reasonably necessary to do so. All issues concerning Rose City Baseball's interest in the Premises or this Agreement should be directed to PP&R's Property Manager.
- 14. Media and Publications.** Rose City Baseball will consult with PP&R's Property Manager and PDC prior to using PP&R or PDC's logo or name in media releases or publications. Rose City Baseball shall use its best efforts to acknowledge its relationship with the City, by including the official logo of PP&R and PDC and its slogans "Healthy Parks Healthy Portland" or other slogans as developed from time to time on signage and in publications, media presentations or other presentations that specifically refer to Walker Stadium, Lents Park or the Premises. Rose City Baseball shall acknowledge Portland Development Commission in its relationship and the role providing funding to the renovation of the baseball stadium.

**15. Community Outreach.** Rose City Baseball shall make best efforts to conduct outreach and partnerships with local baseball groups, school sports teams from Lents and Portland to provide fundraising opportunities for their clubs and teams. Rose City Baseball shall also make best efforts to partner with non-profit organizations and local business associations providing them a special night and the opportunity to have a presence at the ball park each game.

**16. Compliance with Laws.** Rose City Baseball shall at all times comply with all applicable federal, state and local laws, rules, regulations, ordinances, statutes, decisions, licensing and permitting requirements, and agreements pertaining to the Premises or this Agreement. Rose City Baseball is required to acquire and comply with all applicable liquor laws.

**III. CITY RETAINED RIGHTS AND AUTHORITIES.** The City hereby reserves to itself all rights and authorities not specifically granted to Rose City Baseball under this Agreement, including, but not limited to the right of entry described below.

- 1. Right of Entry.** The City reserves the right to enter the Premises for any purpose with the understanding that when exercising such right, the City will make a reasonable effort to minimize disturbances to Rose City Baseball's activities and to provide reasonable notice under the circumstances before entering. Rose City Baseball acknowledges and agrees that, whether or not the City conducts visits or inspections, the City assumes no responsibility for the quality, adequacy or safety of any of Rose City Baseball's activities.
- 2. Volunteers.** PP&R 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 Rose City Baseball at the Premises are volunteers of Rose City Baseball for insurance and liability purposes. Rose City Baseball will report the hours of all volunteers working at the Premises to PP&R's Volunteer Coordinator on an annual basis.

#### **IV. INDEMNIFICATION AND INSURANCE**

- 1. Indemnification by Rose City Baseball.** Rose City Baseball 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, Rose City Baseball, 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:
  - a)** 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 Rose City Baseball or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

- b) The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the portion of the Premises occupied and maintained by Rose City Baseball or any part thereof, or of the Rose City Baseball improvements or any component thereof to the extent arising from the acts or omissions of Rose City Baseball or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;
  - c) 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 Rose City Baseball;
  - d) Any negligent or tortuous act on the part of Rose City Baseball or any of its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;
  - e) 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 Rose City Baseball or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees; or
  - f) Failure or apparent failure of Rose City Baseball to comply with any contract or agreement, including this Agreement, to which Rose City Baseball is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Premise, or Rose City Baseball use thereof, or Rose City Baseball occupancy, use, possession, operation, repair, maintenance or management of or any portion of the Premise pursuant hereto.
2. **Exclusion.** There is hereby expressly excluded from the scope of the foregoing indemnity any matter to the extent that such matter results from the negligence or willful misconduct of City (or its directors, employees, agents, contractors or licensees).
3. **Contractors and Other Authorized Users.** Rose City Baseball 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.
4. **Defense of Claims.** If any action or proceeding is brought against the City, its directors, officers, employees or agents, which action or proceeding is based upon a claim for which Rose City Baseball is obligated to indemnify the City hereunder, Rose City Baseball shall, upon notice from the City, at Rose City Baseball's expense, defend such action or proceeding through counsel reasonably acceptable to the City.
5. **Insurance Requirements.** During the Term, Rose City Baseball shall maintain insurance that satisfies the City's standard insurance requirements for permit and license holders. A copy of the City's current requirements is attached hereto as Exhibit D ("Insurance Requirements"). The City may notify Rose City Baseball, from time to time, of changes in the Insurance Requirements. Furthermore, Rose City Baseball shall require all of its contractors and subcontractors to maintain the same insurance coverage that is required of Rose City Baseball.

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

## **V. DEFAULT; REMEDIES; FORCE MAJEURE**

- 1. Events of Default.** The following events shall constitute events of default (each, an "Event of Default") by Rose City Baseball:
- a) If Rose City Baseball fails to perform any covenant in this Agreement within thirty (30) days after written notice from PP&R specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, Rose City Baseball shall not be deemed to be in default if Rose City Baseball begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;
  - b) The bankruptcy or insolvency of Rose City Baseball or if a receiver or trustee is appointed to take charge of any of the assets of Rose City Baseball 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;
  - c) If Rose City Baseball is dissolved or fails to maintain its status as an Oregon limited liability company in good standing; or
  - d) If Rose City Baseball fails to make timely payments on any debt where the City is a party to the agreement.
- 2. Remedies for Default.** Upon the occurrence of an Event of Default, in addition to any other remedies available at law or in equity, the City has, without limitation, the following rights and remedies:
- a) the right to suspend Rose City Baseball's use of the Premises until an Event of Default is cured; and
  - b) If the Event of Default is not cured, the City shall have the right to terminate this Agreement by written notice to Rose City Baseball. Such termination will be effective immediately if public health, safety or welfare is at risk. Otherwise, such termination will be effective thirty (30) days after written notice by PP&R.
- 3. 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 IV.

#### 4. Force Majeure

- a) Neither the City nor Rose City Baseball will 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.
- b) Notwithstanding anything 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 the City notifies Rose City Baseball that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either the City or Rose City Baseball may terminate this Agreement by written notice to the other Party.

#### 5. Termination

- a) **Voluntary Termination.** Upon mutual agreement between the Parties, the Parties may voluntarily terminate this Agreement at any time.
- b) **Rose City Baseball Voluntary Termination.** Rose City Baseball may terminate the Agreement effective on the expiration of the initial or second term of this Agreement by giving the City ninety (90) days written notice of its intent to terminate.
- c) **Termination Process.** On the Termination Date, Rose City Baseball shall deliver all keys to the City and shall surrender the Premises. All repairs and improvements for which Rose City Baseball is responsible must be completed prior to such surrender. All Rose City Baseball's personal property must be removed immediately upon termination, and a failure to do so will be considered abandonment of such personal property. In the event that Rose City Baseball fails to surrender the Premises or remove its personal property or make repairs, the City may charge any costs related to such failure to Rose City Baseball. This clause shall survive any termination of this Agreement.

- 6. **Ownership upon Termination Date.** On the Termination Date, all improvements and personal property located on or associated with the operation of the Premises shall become the property of the City.

## VI. MISCELLANEOUS

1. **City Consent.** Unless otherwise stated, whenever consent, approval or direction by the City is required under this Agreement, all such consent, approval or direction must be in writing from the Director of PP&R or a person designated in writing by the Director.
2. **Signage.** Rose City Baseball may not display or erect any temporary or permanent signs at the Premises without the advanced, written approval of PP&R. Rose City Baseball will be responsible for obtaining any other required City approvals. While signage proposal(s) for field naming will be drafted by Rose City Baseball, and Rose City Baseball will pay any costs associated with that proposal, City signage approval application fees associated with field naming shall be cost shared equally by Rose City Baseball and the City. PP&R will not unreasonably withhold permission for Rose City Baseball to display permanent signage at the Premises if such request is in compliance with PP&R policies and standards.
3. **No smoking.** The Premises include “no smoking” buildings, pursuant to ORS 433.835 et. seq., and/or Portland City Code 8.65.010 et seq. Licensee shall not permit smoking of cigars, cigarettes, pipes, or other smoking instruments within its buildings. If the buildings may be accessed directly from exterior doors, no smoking shall be permitted within at least ten (10) feet from entrances, exits, windows that open and ventilation intakes that served the enclosed area, or fifty (50) feet of such openings if public employees utilize the buildings as their workplace. Licensee shall ensure that its agents, invitees and permittees comply with all provision of the State’s and City’s smoking prohibition.
4. **Prohibitions of use.** In addition to any other prohibitions or limitations on Rose City Baseball’s use of the buildings, structures and the Premises, Rose City Baseball shall not; i) use or permit the Premises to be used in any illegal manner; ii) create or permit to be created any damage, nuisance or waste to the Premises including the buildings, or structures, including any objectionable noise, vibration or odor to be emitted or escape from the Premises, or cause defacement or injury of the buildings or structures, including impairment of their strength or durability; iii) disturb, interfere or obstruct the rights of the City, users, or visitors of Lents Park; iv) cause damage or injury to nearby properties or property owners; v) create or permit to be created any condition which would constitute a fire or environmental hazard, or be dangerous to persons or property; vi) injure the reputation of the buildings or structures; vii) permit the Premises to be used for lodging or sleeping purposes; viii) sell or permit to be sold any controlled substances on or about the Premises; ix) permit the sale of any pornographic material on the Premises; x) permit any gambling or social gaming without the prior written consent of PP&R; or xi) permit the use of the Premises for a second-hand store, pawnshop, or for conducting auction (other than charity fund-raising auctions), distress or fire sale, or bankruptcy or a going-out-of-business sale or the like.
5. **Assignment**
  - a) PP&R may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PP&R 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 PP&R.

- b) The rights granted under this Agreement are personal to Rose City Baseball, and may not be assigned, transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of PP&R and consent may not be unreasonably withheld.

6. **Notices.** All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving Party of which notice was not previously given to the sending Party or due to a refusal to accept by the receiving Party, such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows:

<u>PP&amp;R:</u>	Portland Parks and Recreation Bureau 1120 SW 5 <sup>th</sup> Ave, Suite 1302 Portland, OR 97024 Attention: Property Manager Telephone: (503) 823-5229 Facsimile: (503) 823-5570
	<u>With a copy to:</u> Portland City Attorney's Office 1221 SW 4 <sup>th</sup> Ave, Room 430 Portland, OR 97204 Attention: Lisa Gramp Telephone: (503) 823-4047 Facsimile: (503) 823-3089
<u>Rose City Baseball:</u>	1915 S.W. Elizabeth Street Portland, OR 97201 Attention: Kenneth H. Wilson Telephone: (503) 764-9439 E-Mail: wilsonk027@comcast.net

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

7. **Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

- 8. 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.
- 9. City's Inability to Perform.** City shall not be deemed in default for the non-performance or for any interruption or delay in performance of any of the terms, covenants and conditions of this Agreement if due to any labor dispute, strike, lockout, civil commotion or operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through act of God or other causes beyond the reasonable control of the City, providing such cause is not due to the willful act or neglect of the City.
- 10. Construction and Interpretation of this 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.
- 11. Further Documents.** Each Party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- 12. Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 13. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 14. Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PP&R or Rose City Baseball of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.
- 15. Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually



incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

- 16. Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 17. Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 18. Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 19. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Park. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 20. Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties. The Director of Parks and Recreation is authorized to sign any amendment to this Agreement. A copy of all amendments to this agreement shall be shared with the Portland Development Commission's Property Manager by Portland Parks & Recreation Property Manager.
- 21. Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 22. No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 23. Time of Essence.** Time is of the essence of this Agreement.
- 24. No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

- 25. The Rights to Gather and Be Heard.** Rose City Baseball 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.
- 26. Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

(signatures appear on the following page)

IN WITNESS WHEREOF, PP&R and Rose City Baseball have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

**PORTLAND PARK AND RECREATION      ROSE CITY BASEBALL SPORTS, LLC:**

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

Name: Mike Abbaté

Title: Director

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

Name: Kenneth H. Wilson

Title: President – Rose City Baseball, LLC

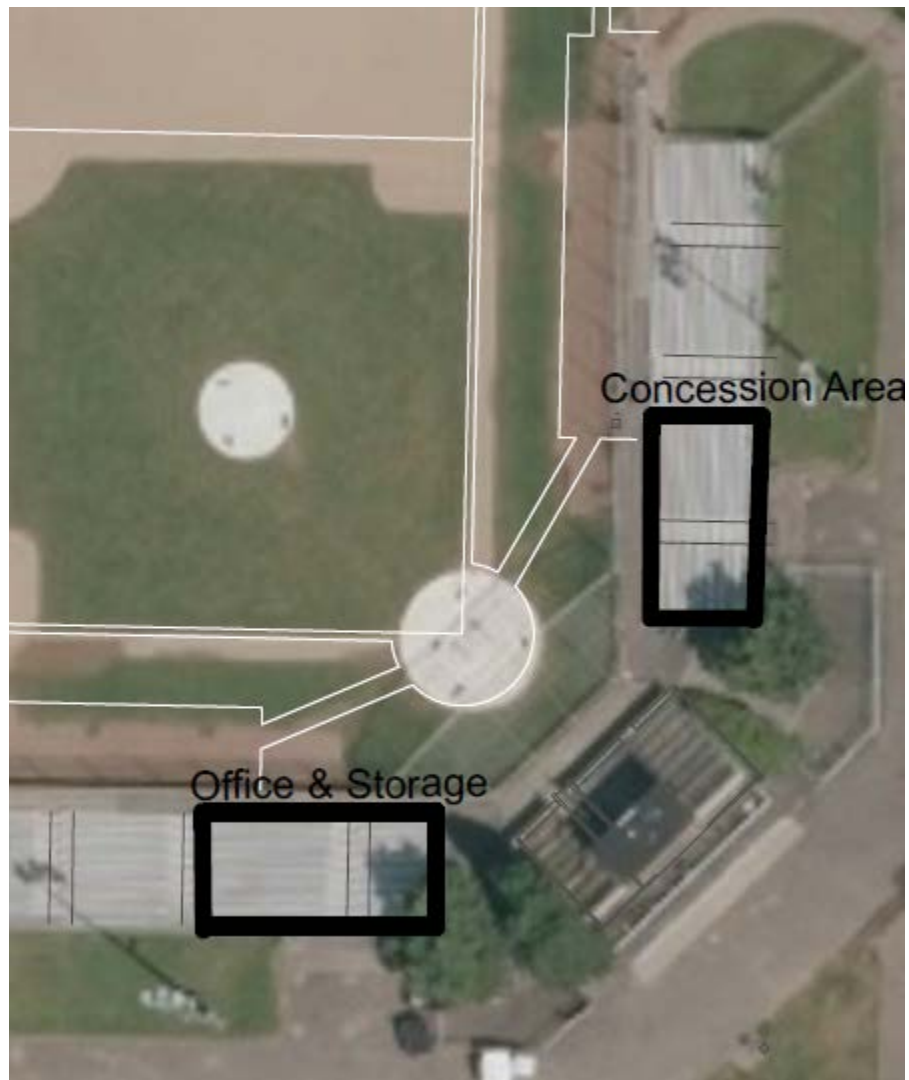
APPROVED AS TO FORM

\_\_\_\_\_

**Exhibit A**  
**The Premises**  
**Walker Stadium**



**Exhibit B**  
**Office, Storage and Concession Areas**



**EXHIBIT C**  
**Schedule**

1. Rose City Baseball to play up to 30 regular season games and up to four post-season games. The regular season begins on or about June 1 and the regular season concludes on or about August 10, with playoffs lasting up to an additional ten days.
2. Rose City Baseball shall have first priority to use the stadium, with the City allowed to schedule events on days and times Rose City Baseball is not playing, and/or until 4:00 pm on days Rose City Baseball is playing.
3. Rose City Baseball to provide City with schedule of regular season games by November 1 of preceding year.
4. Rose City Baseball to be allowed to use the stadium for up to five additional events, notifying the City at least 120 days prior to such events.

## EXHIBIT D

**INSURANCE REQUIREMENTS**

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

1. Evidence Required  
Rose City Baseball and its contractors or subcontractors, if any, shall maintain on file with the PP&R Property Manager, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to PP&R at or before execution of this Agreement and then annually for the duration of this 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 PP&R's Manager, Strategy, Finance and Business Development, 1120 SW 5<sup>th</sup> Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the Rose City Baseball or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. Rose City Baseball and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.
3. Insurance Required
  - A. Rose City Baseball and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the Rose City Baseball 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 Rose City Baseball'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 Rose City Baseball 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 \$2,000,000 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.** Rose City Baseball, 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. Rose City Baseball and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with the City at all times during the term of this Agreement.
- D. **Commercial Liquor Liability.** Rose City Baseball shall carry commercial liquor liability including coverage for damages arising out of the selling, serving, or furnishing of any alcoholic beverage with a limit of \$1,000,000 per occurrence/\$2,000,000 aggregate limit or the minimum limits required by statute if higher.

3. **Special Provisions**

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Rose City Baseball, and any approval of such insurance by the City is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Rose City Baseball pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- B. PP&R reserves the right to terminate or suspend this Agreement in the event of non-compliance with the Insurance Requirements. In no event shall any suspension entitle Rose City Baseball to an extension of the term of this Agreement.

\* **(Note: General liability limits may be increased, at the discretion of the City's Risk Manager, relative to risk involved).**



## EXHIBIT “B”

### FACTUAL FINDINGS FOR A PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

#### **I. BACKGROUND**

These factual findings concern the proposed exemption from competitive bidding for development of stadium improvements at Walker Stadium at Lents Park (collectively, the “Project”). The City of Portland (the “City”), by and through PP&R, owns Walker Stadium at Lents Park and has a proposed Agreement (the “Agreement”) with Rose City Baseball LLC (“Rose City Baseball”), to have Rose City Baseball fundraise, permit, design and construct stadium improvements at Walker Stadium at Lents Park (collectively, the “Project”). Capitalized terms used herein shall have the meaning ascribed to them in the Ordinance.

Under the Agreement, Rose City Baseball shall: (i) pay all permitting, design and construction costs (estimated at \$400,000) associated with the Project. The Project could not be undertaken without the in-kind and cash contributions (collectively, the “Contributions”) by Rose City Baseball.

The City will own the Project and will have approval rights over the specifications used to implement the Project (the “Specifications”). Based on the Findings (as hereinafter defined), the City desires to allow Rose City Baseball to contract for the design and construction of the Project in accordance with the Specifications and the Agreement. Portland City Council (“Council”), with the present action, will exempt the Project from the competitive bidding requirements of ORS 279C and approve the Agreement and future amendments thereto to complete the Project.

Ordinarily, the City is required to use competitive sealed bidding as the process to award a construction contract for the public improvements and the services contemplated under the Agreement with Rose City Baseball for the proposed Project. Nonetheless, state law permits the City to exempt such contracts if Council is able to approve certain findings justifying an alternative approach. The factual bases to support the required findings, including the Additional Findings (as hereinafter defined) are set forth below (collectively, the “Findings”).

#### **II. NO FAVORITISM OR DIMINISHED COMPETITION**

ORS 279C.335 (2) requires that Council make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires Council to make a finding that, “[i]t is unlikely that such an exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.” This finding is appropriate for the Project and is supported by the following facts.

Rose City Baseball is likely the only entity willing to provide the Contributions necessary to make the Project financially viable. Under the Agreement, Rose City Baseball is required to

select its architect and engineering team, construction manager and general contractor in accordance with the Specifications, including the requirement to use reasonable efforts to contract with firms certified as a Minority Business Enterprise, Women Business Enterprise or an Emerging Small Business with the State of Oregon and to construct the Project in accordance with Oregon Prevailing Wage Law. Rose City Baseball may bid the Project to contractors it deems to be qualified to perform the work.

Due to the unique structure of the Project, including the Contributions, Rose City Baseball is uniquely situated. Another contractor or entity selected through a competitive bidding process would be unlikely to provide the Contributions provided by Rose City Baseball. As a practical matter, the City knows of no other entity that would assume such risk or contribute to the extent that Rose City Baseball has agreed.

Based on the foregoing and the Additional Findings, there is no favoritism or diminished competition because, there is likely no other entity that, like Rose City Baseball, is willing to provide the Contributions or assume the financial risk all necessary to bring the Project to fruition.

### **III. SUBSTANTIAL COST SAVINGS**

ORS 279C.335 (2) requires that Council make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires Council to find that “[t]he awarding of public improvement contracts under the exemption will result in substantial cost savings to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

The estimated cost of the Project is \$400,000. Rose City Baseball will contribute \$400,000 comprised of cash and in-kind donations to the Project. The City is unaware of any other person or entity that is willing to contribute similar amount of funds to the Project.

In addition to the cost savings realized by the inclusion of the Contributions from Rose City Baseball, the Agreement creates an opportunity for significant cost and time savings because a single point of responsibility for the design and construction fosters innovation, allows for concurrent design, and construction functions, and takes advantage of the ability to acquire materials and order fabrication incrementally if advisable. It also provides incentives to the contractor to engineer and stage the Project in order to optimize efficiencies in construction. These all contribute to a reduced project duration and cost savings.

Based on the foregoing and the Additional Findings, there will be substantial cost savings to the City in exempting the Project from the competitive bid requirements of ORS 279C.

### **IV. THE FACTUAL BASES TO SUPPORT THE ADDITIONAL FINDINGS**

In order to declare the exemption, Council must approve additional findings in the areas set forth below (the “Additional Findings”).

A. How Many Persons are Available to Bid

Under the proposed Agreement, Rose City Baseball will contract for all design, engineering, construction management and construction services for the Project. Such an arrangement will provide the City the advantage of a single point of responsibility, clear definition of the construction outcome, cost containment, reduced change orders, fast-track design and construction, and private financial participation in construction. None of these outcomes are likely or possible if the City were to competitively bid the Project. The City is unaware of any other person or entity that is willing to make the Contributions to the Project.

B. The Construction Budget and the Projected Operating Costs for the Project

The estimated cost of the Project is \$400,000 which will be covered by the Contributions from Rose City Baseball. Without the Contributions provided by Rose City Baseball, the proposed Project simply would not be financially possible for the City to undertake. City Baseball shall pay all design and construction costs associated with the Stadium Improvement Project, contingent on its ability to receive the exception requested herein. Based on the foregoing, there will be substantial cost savings to the City in executing the Agreement with Rose City Baseball to secure the Contributions over any competitively bid contract under which a contractor would be unlikely to contribute a similar amount of funds to the Project's costs.

C. Public Benefits That May Result from Granting the Exemption

The Contributions by Rose City Baseball is a significant public benefit. It is not likely, or even possible, that the Project could go forward without the Contributions. With the completion of the Project, a restored Walker Stadium will be open to the public. Community users will greatly benefit from the restored stadium and positive activities at Walker Stadium at Lents Park. The Lents neighborhood, and nearby businesses, will benefit from new events at Walker Stadium.

D. Whether Value Engineering Techniques May Decrease the Cost of the Project

Value engineering is defined as a process by which multiple subject experts evaluate and propose the most cost effective ways to deliver a project without reducing project quality and functionality. Value engineering will be enhanced on the Project as it is on other projects where the contractor can be selected before the design is completed. In that way, the contractor's suggestions can be incorporated into the schematic design and design development stages, rather than have the proposals come after the design is already completed, which may limit the amount of change that can be accomplished to the Project and still meet schedule requirements. Changes after a project are competitively bid can result in higher costs for the City. A traditional competitive bid process cannot take value engineering into account during the design stage because the design is usually complete before bids are received.

Value engineering is also achieved by having a single point of responsibility that involves an integrated team of designers and contractors. This team structure provides the opportunity to evaluate project parameters from the very start of a project and provide constructability reviews throughout. Rose City Baseball will serve as that single point of contact for the Project's design,

permitting and construction. The potential for value engineering is also enhanced by this arrangement because Rose City Baseball is required to cover any and all cost overruns in connection with the Project.

E. The Cost and Availability of Specialized Expertise Required for the Project

Baseball stadium design and development requires unique expertise. Rose City Baseball has unique knowledge of the desires of the baseball community for the renovation of the Project based on the knowledge that its staff has in its role in operating baseball stadiums. Furthermore, Rose City Baseball's initial work in preparing its proposal to the City for the Project has established access to leading contractors for the Project that would be brought onto the Project team.

F. Likely Increases in Public Safety

Given the Project's tight schedule, the design, permitting and construction must be coordinated to establish plans for public safety during construction at a public park. For example, the phases for construction, the design of temporary facilities, construction staging areas, park closure plans, coordination with utilities and neighbors, and potentially, demolition procedures, will evolve as the design and construction needs are identified. Moreover, some of the construction at the Park will occur during time periods when in it is operation for other events at the Park. The construction and operations will be efficiently coordinated by Rose City Baseball, as the single point of contact for the Stadium Improvement Project, to ensure the safety of all park visitors or adjacent neighbors. Having a single point of responsibility for public safety can only enhance it.

G. Whether Granting the Exemption May Reduce Risks to the City related to the Project

The proposed Project would never have come about without the Contributions and associated risk to be undertaken by Rose City Baseball for the Project cost overruns. Because this is a unique Project, market conditions and the awarding of future contracts will not be negatively impacted by the exemption sought from the competitive bidding requirements of ORS 279C. With appropriate flexibility to allow sound and responsible business decisions that promote the Project's success, the City will retain design review over the Project.

H. Whether Granting the Exemption will affect the Funding Sources for the Project

The proposed Project would never have come about without the Contributions and associated risk to be undertaken by Rose City Baseball for the Project cost overruns. Because this is a unique Project, market conditions and the awarding of future contracts will not be negatively impacted by the exemption sought from the competitive bidding requirements of ORS 279C.

I. Whether Granting the Exemption will Better Enable the City to Control the Impact That Market Conditions May Have on the Cost of and Time Necessary to Complete the Project

As described above, without the Contributions from Rose City Baseball, the City would have insufficient funds to complete the Project. The parties have an interest in mitigating Project costs and overruns and expediting delivery of the Project. The Project includes features that are technically complex, including the design and construction of stadium improvements and visitor amenities. Because responsibility for design, permitting and construction will be placed with a single entity, Rose City Baseball will be in a better position to manage the technical complexities of the Project.

J. Whether Granting the Exemption Will Better Enable the City to Address the Size and Technical Complexity of the Project

The Project includes features that are technically complex, including the design and construction of improvements in close proximity to a public park without disruption of the programming of the park. Because responsibility for design, permitting and construction will be placed with a single entity, Rose City Baseball will be in a better position to manage the technical complexities of the Project.

K. Whether the Project Involves New Construction or Renovates an Existing Structure

The Stadium Improvement Project is mostly renovation of an existing Walker Stadium, however a few visitor amenities, such as new spectator viewing and stadium amenities will be added.

L. Whether the Project Will be Occupied or Unoccupied During Construction

The field will not be in use during construction, however the public restrooms and surrounding park will continue to be in use during construction.

M. Whether the Project Will Require a Single Phase or Multiple Phases of Construction Work to Address Specific Project Conditions.

The natural grass field renovation to be completed by the City will be completed first due to the need to plant the grass seed by September 1, 2015, while the Stadium Improvement Project to be completed by Rose City Baseball will be completed second to be completed by June 1, 2016.

N. Whether the City Has or Will Retain Personnel, Consultants and Legal Counsel that Have Necessary Expertise and Substantial Experience in Alternative Contracting Methods to Assist in Developing the Alternative Contracting Method and to Help Negotiate, Administer and Enforce the Terms of the Project Contract

City personnel have the expertise and experience necessary to effectively implement the proposed contracting method and Agreement with Rose City Baseball.

## V. FINDINGS TO AWARD SOLE SOURCE PROCUREMENT

ORS 279B.075 (1) provides that Council may award a contract for goods or services without competition if it determines that such goods or services are available from only one source. Such determination of sole source may be based on, among other things, a finding that supports the conclusion that the goods or services are available from only one source. This finding is appropriate for the award of the Agreement to Rose City Baseball and is supported by the Findings set forth above and the additional information below.

Rose City Baseball is the only entity that is willing to provide the Contributions that are necessary to make the Project financially viable. Due to the unique structure of the Project, including the Contributions and interest of the parties not only as ultimate users of both the Project, but also for the financial risk it is assuming for cost overruns under the Agreement, no other source is willing to provide such goods or services. As a practical matter, the City knows of no other entity willing to provide such Contributions, but also for the unique qualifications of Rose City Baseball as the developer of the Project. Rose City Baseball has unique knowledge and experience of designing and developing baseball stadium facilities.

Based on the foregoing and the Findings, including the Additional Findings, the goods and services necessary for the Project are available from only one source. As a result, the Agreement with Rose City Baseball should be awarded as a sole source procurement under ORS 279B.075.