

EXHIBIT A

PIONEER COURTHOUSE SQUARE AND PORTLAND PARKS & RECREATION

Second Amendment to Agreement 30000073

MANAGEMENT AGREEMENT

This Second Amendment to Management Agreement (“Second Amendment”) between CITY OF PORTLAND PARKS and RECREATION BUREAU (the “City” or “PPR”), and PIONEER COURTHOUSE SQUARE, INC. (“PCS”) is made effective as of the ____ day of _____, 2015 (the “Effective Date”). The City and PCS may be referred to jointly in this Amendment as the “Parties” or individually as a “Party”.

RECITALS

- A. The City and Pioneer Courthouse Square entered into that certain Management Agreement dated December 11, 2008 (the “Original Agreement”) to define the relationship between the City and PCS in regard to their respective purposes, responsibilities, and accountability as to Pioneer Courthouse Square (the “Square”);
- B. Subsequently, the Parties entered into that certain First Amendment to Management Agreement (the “First Amendment”) to clarify management responsibilities;
- C. The Original Agreement as modified by the First Amendment is referred to herein as the “Agreement”;
- D. The City has approved a Parks Bond in 2014 (the “Bond”) for the purpose of funding needed repairs and renovations to existing facilities such as the renovation of the Square (the “Project”);
- E. Maintenance of smooth day-to day operations in and around the Square and keeping the public informed regarding the Project is essential to the success of the Square and surrounding businesses; and
- F. Accordingly, the Parties desire to enter into this Second Amendment to define their respective roles and responsibilities and the compensation for additional public involvement services to be provided by PCS for the duration of the Project funded by the Bond.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, City and PCS agree as follows:

1. **Definitions.** Capitalized terms used herein without definition have the meaning ascribed to them in the Agreement.

2. **Appointment.** The following new provision is hereby added to the end of Section 2 (Appointment) of the Agreement:

“This PCS management shall include public involvement and participation work and process whose primary purpose is to:

- A. Educate the public about the purpose of the project;
- B. Engage and inform impacted community members and businesses in a timely manner that allows them to plan for known impacts;
- C. Provide regular updates on the progress and timeline of the construction process; and
- D. Acknowledge and appreciate the support and contribution of the community to making these needed repairs possible.”

3. **Consideration.** The following new provision is hereby added to the end of Section 7.2 (City Funding) of the Agreement:

“Additionally up to \$63,000 shall be paid to Pioneer Courthouse Square, Inc. for the additional public involvement services and goods to be provided for the life of the Pioneer Courthouse Square Renovation Bond Project anticipated to be between 2015 and 2018.”

4. **Scope of Services.** The following new provision 9.16 is hereby added to the end of Section 9 (Scope of Services) of the Agreement:

“9.16 Public Involvement. PCS will provide all Public Involvement related services as outlined in Exhibit A-1 Pioneer Courthouse Square Public Involvement Plan dated May 6, 2015. Any amendments shall be mutually agreed upon by both PCS and PPR. It is the responsibility of Pioneer Courthouse Square Staff, with PPR Staff approval, to inform the surrounding businesses, tenants,

residents and visitors of the Pioneer Courthouse Square Renovation Bond Project’s highlights including the renovation process, the impacts of identified repairs and regular status updates on the milestones accomplished throughout each phase of the renovations. PCS and PPR Staff will work together to efficiently communicate the Project to the public, to establish a public involvement related timeline, process milestones and materials that will successfully serve the Project and the community.”

5. **City Retained Responsibilities, Rights and Authorities.** The following new provision 10.6 is hereby added to the end of Section 10 (City Retained Responsibilities, Rights and Authorities) of the Agreement:

“10.6 Public Involvement. PPR retains the right of approval of the public involvement work to be accomplished by PCS. PCS staff has an existing network of Downtown businesses, residents and visitors that it will maintain communication with throughout the PCS Renovation project. PCS will work with PPR to create an agreement on timeline, process and materials that best serve the project. During the project it will be the role of the PCS staff to inform the surrounding businesses, tenants, residents and visitors of the renovation process and the progress in accomplishing the renovation.”

6. **Notices.** The contact information for notices set forth in Section 18.6 of the Agreement is hereby deleted in its entirety and replaced with the following contact information for notices.

PPR:	<p>Portland Parks and Recreation Bureau 1120 SW 5th Ave, Suite 1302 Portland, Or 97024 Attention: Trang Lam, Property Manager Telephone: (503) 823-5229 Facsimile: (503) 823-5570</p> <p>For public involvement related to the Pioneer Courthouse Square Renovation Bond Project contact:</p> <p>Portland Parks and Recreation Bureau 1120 SW 5th Ave, Suite 1302 Portland, Or 97024 Attention: Lauren McGuire, Capital Projects Team Manager Telephone: (503) 823- 5591 Facsimile: (503) 823-5570</p>
	With a copy to:

	City of Portland 1221 SW 4 th Ave, Room 430 Portland, OR 97204 Attention: Harry Auerbach, City Attorney Telephone: (503) 823-4047 Facsimile: (503) 823-3089
PCS:	Pioneer Courthouse Square, Inc. 715 SW Morrison Street, Ste. 702 Portland, OR 97205 Attention: Executive Director, Jennifer Polver Telephone: (503) 223-1613 Facsimile: (503) 222-7425

7. **Miscellaneous.** Unless expressly modified hereby, all terms and conditions in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, PPR and PCS have caused their duly authorized representatives to execute this Second Amendment on the Effective Date.

PPR:

PCS:

By: _____

By: _____

Name:

Name:

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM

Lisa Gramp

Deputy City Attorney



EXHIBIT A-1

Project Title: Pioneer Courthouse Square

I. Public Involvement Plan

February 2015 revised May 6, 2015 and July 15, 2015

Project Manager: Lauren McGuire
PI Coordinators: Jennifer Polver/Maija Spencer
Meeting Facilitator: Pioneer Courthouse Square with PP&R
PI Start: April 2015
PI Complete: January 2018
PI Plan Approved: _____ Date _____

Project Scope: To inform identified stakeholders and site users about impacts and use changes resulting from the renovation of Pioneer Courthouse Square

II. Project Background

Pioneer Courthouse Square is a 40,006 sq. ft. block in the center of Downtown Portland bounded by SW 6th Ave. (east) SW Broadway Ave. (west), SW Morrison St. (north) and SW Yamhill St. (south). The Square, named after the 1875 Pioneer Courthouse building directly east of the Square, is ranked as the world's fourth-best public square and hosts more than 300 event days each year.

The block has a rich history as the site of the City's first school (1856 Central School), the 1890 Portland Hotel, and a former two-story parking lot in 1951. The historic entry gates work the Portland Hotel are still located on the Square along SW 6th.

Pioneer Courthouse Square's visionary design was the result of a national design competition and received an Architectural Design Citation from Progressive Architecture magazine in 1981. The vision has endured to become Portland's greatest testament to the strength and endurance of its civic will.

The original construction of the Square cost \$7.3 million and was in part funded by "Friends of Pioneer Square" with personalized named bricks. There are several significant art pieces in the Square which include:

- J. Seward Johnson's *Allow Me* (bronze business suited man with an umbrella)
- Weather Machine, designed and constructed by Omen Design Group, Inc. this 33-foot tall metal column topped with a large silver orb installed in 1988 consists of three weather symbols, each representing an element of Portland's typical climate. Each day at noon a musical fanfare initiates a two-minute sequence that displays each of the following symbols:
 - HELIA: A stylized sun, for clear sunny days
 - BLUE HERON: For the days of drizzle, mist and transitional weather

- DRAGON: Stormy days of heavy rain and wind

The final display symbol represents the weather of the day with the multi-colored illuminated bulbs along the bronze column displaying the temperature in 10 degree increments.

More than 10 million people visit the Square each year. In partnership with the non-profit friends group, Pioneer Courthouse Square, Inc. the Square costs an estimated \$1.2 million per year to maintain and is now in need of renovation and repair, particularly with water intrusion issues.

III. Project Direction

This park is located at 701 SW 6th Ave, Portland, OR 97204.

The project will repair and improve Pioneer Courthouse Square, including replacing the waterproof membrane under the bricks, repairing bricks and mortar, repairing structural columns and renovating the restrooms so they are safe and accessible.

The two primary goals for Pioneer Courthouse Square Project are to:

- Maintain and enhance the existing character of the Square to continue to address the needs of the Portland community and guests; and
- Provide needed repairs and renovations to the Square's infrastructure and facilities.

Renovation of the Pioneer Courthouse Square will ensure that residents and visitors of Portland will continue to enjoy Portland's Living Room.

IV. Public Involvement Overview

There is limited opportunity for the public at-large to impact the direction of this work. The primary purpose of the public process is to:

- Educate about the purpose of the project
- Engage and inform impacted community members and businesses in a timely manner that allows them to plan for known impacts
- Provide regular updates on the progress and timeline of the construction process
- Acknowledge and appreciate the support and contribution of the community to make these needed repairs possible

The community will be interested in answers to these essential questions –

1. *What type of contracting process will be utilized with this Project?*
2. *What are the visual impacts of the renovation?*
3. *What is the budget for this project and what are the financial oversight controls?*
4. *How will the renovation impact Square services and daily on-site operations?*
5. *How will the renovation impact transportation services?*
6. *How will the renovation impact surrounding tenants, businesses, residents and visitors?*

Project Advisory Committee - provide advice and direction on communications strategies, work flow, and opportunities to mitigate impacts. Members could include:

- Tri-Met representative (also an on-site tenant)
- Parks Services Supervisor Representative (Zach Daniek or Don Athey)

- Portland Mall Management Inc. representative
- Travel Portland representative (also an on-site tenant)
- Adjacent business representative (Macy's and/or Nordstrom)
- PCS Facilities Committee representative (Hariett Cormack)
- PCS Staff member (Jennifer Polver)
- Square Permittee/ User (TBD)
- Portland Downtown Neighborhood Association representative
- Chair of Project Advisory Committee (PCS Non-profit Volunteer TBD)

Pioneer Courthouse Square

Board of Trustees - This volunteer 31-member Board of Trustees will receive regular updates on the project from the Project Manager and Pioneer Courthouse Square staff at its quarterly meetings.

Facilities Committee – This volunteer committee, made up of members of the Pioneer Courthouse Square Board, will participate as members of the Technical Advisory Committee, working closely with Pioneer Courthouse Square staff, PP&R and the consultant team to provide advice and direction on communications strategies, work flow priorities, as well as have the opportunity to identify and mitigate impacts.

During the project, it will be the role of the Pioneer Courthouse Square Staff, with PP&R's Staff approval, to inform the surrounding businesses, tenants, residents and visitors of the project's highlights including the renovation process, the impacts of identified repairs and regular status updates on the milestones accomplished throughout each phase of the renovation.

Who needs to care about this project?

The stakeholders, and in fact the entire City, will care about this project as this is Portland's *Living Room* located in the heart of the region's business, regional transportation, retail and civic crossroads. The PCS Board will be key participants in the public outreach process. PCS staff and PP&R will work together to establish a unique system of public participation that will allow stakeholders an authentic opportunity to understand the purpose of the renovation and validate how the public investment in the bond was integral to preserving this cherished public asset. Regular updates on the progress and efficiency of the project is an opportunity for us to demonstrate the historic and on-going benefit of an effective public/private partnership and the responsible use of bond funds.

Who is responsible for contacting these individuals/groups?

PCS staff and PP&R will work together to expand its public/private partnership in order to efficiently communicate the project with the public. With PCS's 30-years of management experience communicating the day-to-day operations of the park, and the impact of its more than 300 programmed event days, the organization possesses a comprehensive network of stakeholders in downtown and throughout the region. PCS will bring years of knowledge, relationships and experience that makes them uniquely positioned to lead the public involvement process. PP&R and PCS will work together to create an agreement to include a timeline, process milestones and materials that will successfully serve the project and the community it serves.

V. Stakeholder Outreach

The stakeholders for this project include those who are aware of and already advocates for the development of this park.

Pioneer Courthouse Square Board of Trustees

The Pioneer Courthouse Squares Board of Trustees is made up of 31 volunteer members. The Commissioner in charge of Parks serves as a voting member of Board. The remaining 30 elected members of the Board serve (2) two consecutive (3) three year terms that represent the following categories:

- The Community (10);
- The Region-at-large (10); and
- The Downtown Businesses (10)

Tenants

Pioneer Courthouse Square maintains lease for (10) ten on-site tenants and (2) service providers who will be impacted during the renovation. These entities currently include:

- Starbucks
- Travel Portland
- Tri-Met
- KGW8
- Portland Walking Tours
- (1) Flower Cart
- (3) Food Carts
- (1) Seasonal Grayline Hop On/ Hop Off Portland Tours
- Pacific Patrol Services
- Positive Action Cleaning

Adjacent Businesses

Businesses within a two block area of the Square that will be most directly impacted by construction equipment, street closures etc. (see attached brochure)

Business/Shopping District

The Square is located adjacent in the center of the Downtown business and shopping district. (See attached brochure)

Neighborhood Coalition

The Square is located in the Neighbors West/North-West Coalition Area and is a part of the Portland Downtown Neighborhood Association

VI. Publications/Notifications

It is important to note that this project is paid for through public dollars, all public meeting laws and public records laws will apply. All meetings regarding this project are open to the public. (PP&R will provide information on public meeting laws).

PP&R will develop the Bond Program templates to be used for all Bond communications.

PCS staff will use PP&R bond materials as the basis for all communications and outreach. The PCS logo will be added to communications specific to this project.

PP&R and PCS will review and approve all materials prior to distribution. PP&R PI staff person will have final approval authority.

All outreach activities will be tracked and results will be provided to PP&R including:

- Distribution of promotional materials (lists, locations, messages)
- Attendance sheets
- Comment Form Summaries
- Issues tracking tools

Materials - this is an initial list of project materials:

- FAQ
- Website – PP&R will design a web page to link to the PCS web site
- Construction/ Visitor Impact Signage
- Talking Points - distributed to PAC, PCS Board, PCS Facilities Committee, PP&R staff and Contractor
- PAC Job Description
- PAC Application
- PAC Announcement - distribution list
- Feedback forms

Newsletters/Postcards

Meeting/Event Notices/Fliers

Website

- PCS project website (PP&R Bond Web Page links to this site)
- Neighborhood Association links to project

Signage

- PCS signage to communicate to visitors, transit riders and patrons of on-site tenants about access to the site and project detail

Media

- Press Release Distribution
- For Coffee Events &...

Public Meetings

- Estimating 3 Coffee/Open Houses (Includes Grand Re-opening)

Displays

- Possible printed scrim with public access and project information to surround construction area

VII. PI Schedule

It is anticipated that the project will include a minimum of 6 PAC Meetings, 5 PCS Board Facilities Committee updates, 5 PCS Board Meeting Updates, and 3 public meetings.

April 2015

PCS Executive Committee Meeting #1

The purpose of this meeting was to provide an overview of the currently identified project scope and associated timeline.

PCS Facilities Committee Meeting #1

The purpose of this meeting was to provide an overview of the currently identified project scope and associated timeline.

June 2015 through August 2015

Recruitment for the Project Advisory Committee (PAC).

- Develop PAC Application
- Identified preferred committee composition
- Recruit - distribute application, make phone calls, and send emails
- Review applicants
- Make committee recommendation to Director/Commissioner
- Send response letters to all applicants

Outcomes

- Establish a Project Advisory Group (PAC)
- Build capacity of the identified group to
 - Understand scope of renovation processes
 - Understand scope of renovation and construction language
 - Engage in public participation activities as educators and ambassadors

September 2015

PAC Advisory Committee #1

The purpose of this meeting is to describe the current scope of the Project. This meeting will confirm the project goals, particularly as they relate to the water intrusion issues and provide context for maintaining the original design integrity of the Square and establish the roles and responsibilities of the PAC.

Outcome

- Clarify role of the committee
- Present the Square and Project history
- Develop “Governing Principles” or measures of success
 - Start with goals identified – are they still relevant? Is something missing? Edits?
- Discuss Original Square features and potential Project elements
- Clarify expectations on where PAC (public feedback) is needed and where it is not necessary

October 2015

PAC Advisory Committee #2

The purpose of this meeting is to describe the Project progress prior to the PCS Facilities committee meeting update and the PCS Board update.

Outcome

- Inform PAC of Project status.
- Gather feedback from PAC on effect communication techniques for PCS Facilities committee update and PCS Board update.

PCS Facilities Committee Meeting #2

The purpose of this meeting to describe the Project progress prior to the PCS Board update.

Outcome

- Inform PCS Facilities Committee of Project status.
- Gather feedback from PCS Facilities Committee on effective communication techniques for PCS Board update.

October/November 2015

PCS Board Meeting #1

The purpose of this meeting to describe the Project progress to the PCS Board.

Outcome

- Inform PCS Facilities Committee of Project status.

October/November 2015

Coffee/Open House #1 (two week comment period after open house)

This phase of information gathering may also include additional outreach strategies as identified by initial outreach.

Outcome

- Inform community about park renovation elements, timeline and process.
- Gather feedback on any potential issues.

December 2015

PAC Advisory Committee #3

This purpose of this meeting would review and discuss the investigation findings and the design alternatives.

Outcome

- Review public feedback from Open house.
- Review, discuss and provide feedback on the technical investigation findings and potential designs.

December 2015

PCS Facilities Committee Meeting #3

The purpose of this meeting to would review and discuss the investigation findings and the design alternatives.

Outcome

- Review public feedback from Open house.
- Review, discuss and provide feedback on the technical investigation findings and potential designs.

January 2016

PCS Board Meeting #2

The purpose of this meeting to describe the Project progress to the PCS Board.

Outcome

- Inform PCS Facilities Committee of Project status.

March/April 2016AC Advisory Committee #4

This purpose of this meeting would review and discuss the 60% design development documents.

Outcome

- Review, discuss and provide feedback on the 60% design development documents.

April 2016PCS Facilities Committee Meeting #4

The purpose of this meeting to would review and discuss 60% design development documents.

Outcome

- Review, discuss and provide feedback on the 60% design documents.

July 2016PCS Board Meeting #3

The purpose of this meeting to describe the Project progress to the PCS Board.

Outcome

- Inform PCS Facilities Committee of Project status.

July 2016AC Advisory Committee #5

This purpose of this meeting would review and discuss the 60% construction documents.

Outcome

- Review, discuss and provide feedback on the 60% construction documents.

August 2016PCS Facilities Committee Meeting #5

The purpose of this meeting to would review and discuss 60% construction documents.

Outcome

- Review, discuss and provide feedback on the 60% construction documents.

September 2016Coffee/Open House #2 (two week comment period after open house)

This coffee/outreach will inform the community of the Project status.

Outcome

- Inform community about park renovation elements, timeline and process.
- Gather feedback on any potential issues.

October/November 2016

Possible Groundbreaking Activity

October/November 2016AC Advisory Committee #6

This meeting would review final construction documents and discuss any construction or schedule related issues.

Outcome

- Review final construction documents.
- Provide feedback on any construction or schedule related issues.

October/November 2016

PCS Facilities Committee Meeting #6

The purpose of this meeting to would review final construction documents and discuss any construction or schedule related issues.

Outcome

- Review final construction documents.
- Discuss any construction or schedule related issues.

January 2017

PCS Board Meeting #4

The purpose of this meeting to describe the Project progress to the PCS Board.

Outcome

- Inform PCS Facilities Committee of Project status.

July 2017

PCS Board Meeting #5

The purpose of this meeting to describe the Project progress to the PCS Board.

Outcome

- Inform PCS Facilities Committee of Project status.

October 2016- November 2017

Construction

December/January 2017




Grand Opening Celebration(Open House #3)

This meeting would celebrate the Project close and the Square re-opening.

Outcome

- Inform public of Project progress.
- Gather feedback on any potential issues

Public/Community Contacts

Organization	Name	Phone	Email
Pioneer Courthouse Square Staff	Jennifer Polver Executive Director	715 SW Morrison Street, Ste. 702 Portland, OR 97205 p 503.223.1613 f 503.222.7425 www.thesquarepdx.org 	Jen@thesquarepdx.org
Pioneer Courthouse Square Staff	Ashley Brittner, Administrative Manager	715 SW Morrison Street, Ste. 702 Portland, OR 97205 p 503.223.1613 f 503.222.7425 www.thesquarepdx.org 	Ashley@thesquarepdx.org
Pioneer Courthouse Square Staff	Teresa Vetch-Sandoval, Director of Marketing	715 SW Morrison Street, Ste. 702 Portland, OR 97205 p 503.223.1613 f 503.222.7425 www.thesquarepdx.org 	Tvetsch@thesquarepdx.com

Technical Advisory and Staff (to be completed by Project Manager)

Ad-Mail			
Lasko Printing			
Lucid Design			
Lasko Printing			

Levels of Impact

Assessment Questions	Very Low	Low	Moderate	High	Very High
1. What is the anticipated level of conflict, opportunity, controversy, or concern on this or related issues?				X	
2. How significant are the potential impacts to the public?					X
3. How much do the major stakeholders care about this issue, project, or program?					X
4. What degree of involvement does the public appear to desire or expect?			X		
5. What is the potential for public impact on the proposed decision or project?			X		
6. How significant are the possible benefits of involving the public?					X
7. How serious are the potential ramifications of NOT involving the public?				X	
8. What level of public participation does Council and/or bureau directors desire or expect?				X	
9. What is the possibility of broad public interest?				X	
10. What is the probable level of difficulty in solving the problem or advancing the project?				X	

The outcome of the impact analysis indicates that there are many benefits to cultivating and supporting the participation of the PCS Board, its Committees, its supporters and its successful record of effectively communicating with the community – both locally as well as regionally. This project represents the fulfillment of a commitment Parks made to the community with the passing of the Parks Bond in 2014.

The community has expressed a high level of interest in Pioneer Courthouse Square as it is one of the highest visited locations in the City of Portland. Maintaining smooth day-to-day operations of the Park and keeping the public informed on the project is essential to the success of the renovation.

Agreement between PCS and PP&R regarding public involvement

- I. PCS staff has an existing network with downtown businesses, residents and visitors. They have years of knowledge, relationships and experience that makes them uniquely positioned to lead the public involvement process. PP&R and PCS will work together to create an agreement on timeline, process and materials that serves the project.
- II. During the project, it will be the role of the PCS Staff and PP&R Staff to inform the surrounding businesses, tenants, residents and visitors of the renovation process and the progress in accomplishing the renovation.

- III. It is important to note that this project is paid for through public dollars, all public meeting laws and public records laws will apply. All meetings regarding this project are open to the public. (PP&R will provide information on public meeting laws).
- IV. PP&R will develop the Bond Program templates to be used for all Bond communications
- V. PCS staff will use PP&R bond materials as the basis for all communications and outreach. Their logo will be added to communications specific to this project.
- VI. PP&R and PCS will review and mutually approve all materials prior to distribution. PP&R PI staff person will have final approval authority.
- VII. All outreach activities will be tracked and results will be provided to PP&R including:
 - Distribution of promotional materials (lists, locations, messages).
 - Attendance sheets.
 - Comment Form summaries.
 - Issues tracking tools.
- VIII. PCS will be responsible for:
 - Implementing the PI Plan.
 - Drafting of all materials.
 - Utilizing PP&R bond templates.
 - Gaining approval of PP&R for all materials prior to distribution.
 - Work jointly with PP&R to maintain the PCS Bond web page.

Materials - this is an initial list of project materials:

- FAQ.
 - Web site with PCS Bond Project web page link – (PP&R will design a dedicated webpage for project information).
 - Construction/ Visitor Impact Signage.
 - Talking Points - distributed to PAC, PCS Board, PCS Facilities Committee, PP&R staff and Contractor.
 - PAC Job Description.
 - PAC Application (Applying to PCS with approval by PP&R) – They are participating on an advisory committee that serves PP&R and is staffed by PCS.
 - PAC Announcement – a one-time distribution list - This isn't something we generally, but in this instance - I thought it would help the stakeholders to see who was on it.
 - Feedback forms.
- IX. PP&R will be responsible to:
 - Provide all bond templates to PCS.
 - Approve all PCS Public Involvement materials related to the PCS bond project.
 - Create the PCS Bond Project web page and provide editing access to PCS staff.
 - Work jointly with PCS to maintain the PCS Bond Project web page.

MANAGEMENT AGREEMENT

This agreement (this "Agreement") is made and executed as of the 11th day of December 2008, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PPR"), and PIONEER COURTHOUSE SQUARE, INC. (hereinafter "PCS"), collectively referred to as "the Parties."

RECITALS

WHEREAS, City is owner of Block 179 Portland, commonly referred to as Pioneer Courthouse Square ("the Square"), being a full City Block bounded by S.W. Sixth Avenue, SW Broadway, SW Yamhill Street and SW Morrison Street;

WHEREAS, City determined that it was in the best interest of the public that the Square be managed by a non-profit corporation having representatives from the downtown business community and the general public on its board of trustees, and experiences to date have confirmed that this approach to the management of the Square continues to be in the public's best interest. The trustees have given many hours of quality volunteer service to PCS in its successful management of the Square.

WHEREAS, PCS is a tax exempt, non-profit Oregon corporation originally organized primarily to: encourage and assist the City in the operation and programming of the Square; encourage local business and volunteer involvement in Square activities; and protect and enhance the asset values of the Square over time. PCS carries out its functions through its independent Board of Trustees (the "Board").

WHEREAS, PCS has successfully managed the Premises on behalf of the City on a continuous basis for approximately 25 years, and City desires PCS to continue PCS' management activities on behalf of the City.

WHEREAS, the purpose of this Agreement is to define the relationship between the City and PCS in regard to their respective purposes, responsibilities, and accountability as to the Premises;

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, the City and PCS agree as follows:

AGREEMENT

1. **Purpose.** The purpose of the Agreement is to provide for the ongoing management and programming of the Square in accordance with the terms and conditions of this Agreement.
2. **Appointment.** The City hereby retains, engages, and appoints PCS as the City's agent to manage the Square on its behalf, with management to be completed generally in accordance with principles and practices applicable to management of a public asset and specifically in accordance with the terms and conditions of this Agreement. This appointment grants no right or interest in the Square, other than the right of use in accordance with this Agreement.
3. **Premises.** Unless otherwise agreed, the authorities and responsibilities of PCS under this Agreement apply only to the Square, as depicted on attached **Exhibit A**. Notwithstanding this limitation, the Parties acknowledge the possibility that a small area adjacent to the federal Pioneer Courthouse may be incorporated into this Agreement by separate letter agreement. Subject to the letter agreement being approved as to form by the City Attorney, no further approvals of City Council will be required for the addition of the Kiosk Area to this Agreement.
4. **Term.** This Agreement will have an initial term of five (5) years commencing with the date of City Council approval of this Agreement, with one five (5) year renewal term if PCS is not in default under this Agreement at the time of renewal. If on the fifth (5th) anniversary of the commencement of the term of this Agreement, PCS is not then in default of this Agreement, then

the five (5) year renewal shall occur automatically. The Parties acknowledge an intention to negotiate in order to enter into a new agreement at the end of the renewal term, with said agreement being subject to City Council approval.

5. **License to Use the Property.** The City hereby grants PCS a license to use and occupy the Square to the extent necessary to fulfill its management responsibilities under this Agreement, with the understanding that such license is contractual only, with no property rights being conveyed hereunder.

6. **Acceptance of the Premises.** Except as otherwise provided herein, PCS accepts the Square on an “as-is” basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees. Furthermore, PCS accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including, but not limited to, existing permits, licenses, easements and that certain agreement between the City and the Heritage Conservation Recreation Service, dated July 11, 1975 and attached hereto as **Exhibit B.**

7. **Consideration.**

7.1 **Retained Revenues.** In consideration of services provided by PCS under this Agreement, PCS shall be entitled to keep all revenues it derives from operation of or for the benefit of the Square, including, but not limited to, revenues from donations, sponsorships, memberships, grants, fees, leases, concessions and sales. PCS shall use all such revenue solely for operating, programming, maintaining, repairing and improving the Square, or for investment purposes, with such investments, or interest therefrom to be used solely for the aforementioned purposes.

7.2 **City Funding.** Consistent with past practices, and subject to available funding, the City will fund a base level of reasonable security, operating and maintenance costs (“Base

Funding”) incurred by PCS. For Fiscal Year 2008/2009 Base Funding will be equal to approximately \$84,525 for operations and maintenance and approximately \$295,000 for security services. Subsequent Base Funding amounts will be determined through an annual budgeting process, to be conducted jointly by PCS and PPR. Among other things, the budgeting process will consider inflation, general permitting fees incurred by PCS (e.g. noise variance permits, etc.), operating efficiencies and new revenues or resources that may become available to PCS and/or PPR. Final Base Funding amounts will be equal to that amount jointly requested by PPR and PCS and approved by City Council. PCS and PPR will submit a joint funding request by no later than April 15 of each year. In the event that approved City funding is insufficient to meet mutually identified needs, PPR and PCS will meet and mutually agree on how best to address identified funding deficiencies.

8. **Existing Management Obligations.** The Parties acknowledge the existence of specific leases, agreements, and contracts entered into by PCS either in its own name or on behalf of the City. All existing and pending leases, agreements, permits, and contracts related to the Square are listed on the attached **Exhibit C**. PCS hereby represents that existing transactions are in good standing. All leases or agreements in the City’s name will remain the obligation of the City, except for the KGW lease dated January 29, 2008 which will remain the obligation of PCS in accordance with that certain Assumption of Landlord Responsibilities, dated January 14, 2008, approved by the City and attached as **Exhibit D**. In addition to the KGW lease, all leases, agreements, permits and contracts entered into in the name of PCS will remain solely the obligation of PCS.

9. **Scope of Services.** PCS will manage the Square and authorized uses of the Square in a professional and fully accountable manner, with management services to include the following, at a minimum:

9.1 Employees. PCS will hire, train, supervise and regularly evaluate all employees required to carry out PCS's responsibilities provided for herein. All employees supervised by PCS shall be employees of PCS and not the City.

9.2 Board Membership. The Commissioner in Charge of PPR will be an ongoing Trustee of PCS. The Director of PPR, or the Commissioner's designee, will serve as an ex-officio Trustee and be a member of the Board's executive committee.

9.3 Operating and Programming Guidelines. PCS will operate and program the Square in a manner that promotes an image of quality and safety, consistent with use policies (Use Policies) for the Square, attached as **Exhibit E**

9.4 Use Authorizations.

9.4.1 PCS will authorize short and long-term uses of the Square in accordance with the Purpose Statement, the adopted Use Policies and other applicable provisions of law, including Title 20 of the City of Portland Code. All authorized users are to be properly insured and will be required to indemnify PCS and the City as to claims related to authorized uses

9.4.2 All long-term use authorizations (one year or more) shall be made in the name of the City, but PCS, as the City's agent, may execute such authorizations on behalf of the City, subject to the written consent of the City, which can be withheld for any reason.

9.4.3 Use fees will be sufficient to pay the authorized user's proportionate share of utility costs, if any, and to pay all other costs reasonably attributable to the permitted use, including, but not limited to permitting, cleaning, recycling and trash disposal.

9.5 Fiscal Matters. PCS will:

9.5.1 Develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Square's operations,

such controls to be consistent (in all material respects) with generally accepted accounting principles;

9.5.2 Prepare and approve an annual budget for management activities under this Agreement, with that portion of the budget funded through Base Funding to be developed jointly by PCS and PPR by April 1 of each year for submittal to City Council for approval in accordance with Section 7.2 herein.

9.5.3 Pay or arrange for payment of all costs that PCS is responsible for under the Agreement, including, but not limited to utility, personnel, contracting and PCS's share of maintenance costs associated with the Square.

9.5.4 Make efforts to raise funds for Square purposes through special events, grants, gifts and bequests;

9.5.5 Assist City in efforts to secure City Council appropriations to address operating, maintenance and capital improvement needs of the Square; and

9.5.6 Deposit any revenues in excess of the annual operating and capital improvement costs and the establishment of appropriate reserves into the Pioneer Courthouse Square endowment fund, currently held and managed by the Oregon Community Foundation.

9.6 Maintenance, Repair, Safety and Capital Improvements. PCS will:

9.6.1 Maintain the Square in a clean, neat, safe and functioning condition and in compliance with all federal, state and local laws, regulations and rules and as required by this Agreement.

9.6.2 Promptly correct any unsafe condition of the Premises for which PCS is responsible, after becoming aware of any such unsafe condition as well as any unsafe practices by persons reasonably under PCS's control thereon

9.6.3 Adhere to applicable provisions of the PPR Red Book, including, but not limited to, timely reporting of damage or injury incidents on a PPR incident report form. The PPR Property Manager will be responsible for providing a copy of the Red Book to PCS both in hard copy and electronically, along with updates over time. PCS shall cooperate fully with the City in the investigation of any damage to persons or property occurring on or about the Square;

9.6.4 Consult with PPR as to safety or maintenance concerns associated with structural components of the Square; and

9.6.5 Not make any Capital Improvements to the Square without the written authorization of City. City authorization will require concept approval by the Commissioner in Charge and notice to the PPR Property Manager, to be followed by review and approval of plans prepared at PCS's cost by licensed engineers or contractors by PPR. "Capital improvements" shall mean any permanent structural change or addition to the Square.

9.6.6 To the extent that funds are available, contribute to the cost of maintenance, significant repairs and Capital Improvements deemed necessary by PPR.

9.7 Special City-Sponsored Events. PCS will manage City-sponsored events, such as Flicks on the Bricks, in accordance with written agreements between the City and PCS, with such agreements to be signed by the applicable City Bureau director or director's designee and approved as to form by the City Attorney, without the need for City Council approval of said agreements. To the extent that the costs of such events are approved by City Council in its approved budget, or otherwise, the applicable City Bureau is authorized to pay PCS as provided for in the written agreement.

9.8 Security. Subject to the availability of City funding as provided in Section 7.2, PCS will manage security for protection of the Square, its tenants and the general public, including, but not limited to security or crowd control personnel during significant public events

at the Square. In accordance with this responsibility, PCS shall require that lessees, permittees and concessionaires provide appropriate security as necessary to their particular operations within the Square.

9.9 Contracting. PCS may enter into agreements in its own name for purpose of fulfilling its responsibilities under this Agreement, with contracts to provide for, but not be limited to, services related to the operation, use, security and maintenance of the Square. PCS shall use reasonable efforts to make purchases from various suppliers of materials or services of adequate quality and utility. In a manner that is generally consistent with City practices, PCS shall obtain competitive bids or proposals for significant purchases, except when impractical due to an emergency. All contractors are to be properly insured and will be required to indemnify PCS and the City as to claims related to the contracted work.

9.10 Hazardous Materials. PCS shall not dispose at, on or about the Square 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 Square and the environment from accidental spills and releases. PCS, 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 Square, whether affecting surface water or groundwater, air, the land or the subsurface environment.

9.11 Records and Inspection. PCS will maintain a set of all financial, vendor, employee and operating records relating to the Square. At any time during the Term, the City shall have the right, after reasonable notice to PCS, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of PCS at reasonable times and during normal business hours; provided, however, the City shall use its best efforts to

not cause any unreasonable disruptions in the operations of PCS in connection with such inspections.

9.12 Reporting. PCS will provide PPR with annual reports provided to regulatory entities, including copies of Oregon 990 Forms annual reports and revised Articles of Incorporation submitted to the Oregon Secretary of State and/or the Oregon Department of Justice as part of their non-profit requirements. Additionally, PCS will provide PPR with regular reports prepared for the Board and its Executive Committee, with such reports to include, but not be limited to, regular year-end CPA-reviewed financial statements. All reports to be provided by PCS will be submitted to PPR, care of its Property Manager.

9.13 Taxes and Assessments. PCS will pay, or arrange for tenants to pay, any and all applicable federal, state or local taxes assessed against the Square or against distributions to PCS under this Agreement.

9.14 Compliance with Law. The acts of PCS and others under PCS's reasonable control under this Agreement shall at all times comply with all applicable federal, state and local laws, rules, regulations, ordinances, statutes, decisions, licensing and permitting requirements, and agreements, including, but not limited to provisions of law applicable to the employment and real property management practices of PCS

9.15 Park Recognition. PCS will use its best efforts to acknowledge the Square as a City park, with such efforts to include incorporation of the official logo of PPR, as it may change over time, on new signage, into PCS's web page, and in publications, media presentations or other presentations that specifically refer to the Square.

10. City Retained Responsibilities, Rights and Authorities. City hereby reserves to itself all rights and authorities not specifically granted to PCS under this Agreement. At a minimum, the City retains the following responsibilities, rights and authorities:

10.1 Right of Entry. City reserves the right to enter the Square, subject to the rights of existing tenants, for any purpose, including evaluation of PCS services, with the understanding that when exercising said right City will make a reasonable effort to minimize disturbances to activities and tenants being managed by PCS. It is expressly understood by the parties that the City, whether or not it conducts visits or inspections, assumes no responsibility for the quality, adequacy or safety of any work that is done by or for PCS.

10.2 General Maintenance. Subject to available funds, the City will provide the following maintenance services at the Square: (i) initial cleaning and trash pick up each day, excluding cleaning and trash pick up demands resulting from tenant and permittee activities; (ii) maintain the current trash and recycling pickup contract with PCS and/or permitted event organizers responsible for such activities throughout the remainder of the day; (iii) care of fountains; (iv) the cleaning of tile and bronze items; (v) maintenance of artworks; (vi) providing vehicles, tools and other equipment necessary to fulfill its obligations hereunder; (vii) caring for plants and trees; (viii) repairing all broken glass; (ix) replacing chairs, benches, tables, and small amphitheater covers as they become worn or broken; (x) a base level of daily restroom cleaning maintenance and repair, with PCS and permittees responsible for additional cleaning needs resulting from scheduled events; (xi) paying for water, gas, electricity and garbage services in excess of amounts paid by permittees and tenants; (xii) maintain the annual trash and recycling contract; and (xiii) other general maintenance tasks as agreed to in writing by PCS and PPR.

10.3 Maintenance and Repairs of Structural Components. With the exception of maintenance and repairs of Tenant Improvements, or maintenance and repairs made necessary by negligent or inappropriate uses of the Square by PCS or tenants of the Square, and subject to available funds, the City will remain responsible for maintaining and repairing the major structural components of the Square, including but not limited to roofs, doors, windows, exterior and interior walls, interior and exterior common walking surfaces, exterior vertical surfaces and finishes, interior and exterior electrical and plumbing systems and mechanical components, the

waterproof membrane and any associated water damage. Tenant Improvements are improvements paid for and installed by tenants of PCS, or defined as tenant improvements in applicable leases. Notwithstanding this responsibility, the City's obligation to maintain and make repairs to structural components will be subject to available funding.

10.4 Security. City, through its Bureau of Police, shall provide a reasonable level of police protection consistent with police services provided for other comparable public facilities.

10.5 Emergency Repairs. PPR reserves the right, in its sole discretion, to make emergency repairs to the Square when repairs are necessary to address immediate health and safety concerns. To the extent that it is reasonable to do so, PPR will make a good faith effort to coordinate with PCS as to such repairs.

11. Transfer and Assignment. Rights granted under this Agreement are personal to PCS, and may not be transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of City, which consent may be granted or denied in its sole discretion.

12. Damage to the Square. If the Square is damaged as a result of the acts or omissions of PCS or its officers, employees, agents and other PCS authorized users, PCS will promptly notify PPR and shall, at PPR's option and in cooperation with PCS's or and/or a PCS authorized user's insurance carrier, if a claim is involved, either repair or replace the affected property at PCS's expense or shall reimburse PPR for its reasonable costs of repairing or replacing the affected property.

13. No Liens. PCS shall keep the Square, and all City property used in connection with this agreement, free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of PCS. If any lien is filed against any portion of the Square or other City property used in connection with this Agreement, as a result of the acts or omissions of PCS, or of PCS's employees, agents, or contractors, PCS shall discharge, bond or

otherwise secure the same to City's reasonable satisfaction within thirty (30) days after PCS has notice that the lien has been filed. If PCS 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 PCS, 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. PCS 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.

14. **INDEMNIFICATION**

14.1 Indemnification by PCS. PCS 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, PCS, the Square 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:

14.1.1 Any injury to or death of any person or any damage to property occurring from any use of or cause in, on or about the Square to the extent arising from the acts or omissions of PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.2 The use, non-use, condition, possession, occupation, operation, repair, maintenance or management of the portion of the Square occupied and maintained by PCS or any part thereof, or of the PCS improvements or any component thereof to the extent arising

from the acts or omissions of PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.3 Any construction, reconstruction, repairs, changes or alterations on or to, or any work done in, on or about, the Square or any part thereof by or at the direction of PCS, except as to work required by Parks and completed properly by PCS, or others on behalf of PCS;

14.1.4 Any negligent or tortious act on the part of PCS or any of its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

14.1.5 The release of any Hazardous Substance on the Square 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 PCS or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees.

14.1.6 Failure of PCS to comply with any contract or agreement, including this Agreement, to which PCS is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Square, or PCS's use thereof, or PCS's occupancy, use, possession, operation, repair, maintenance or management of or any portion of the Square pursuant hereto.

14.2 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). Additionally, to the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City shall indemnify, defend and hold harmless PCS and its directors, officers, agents and employees against any claim, demand, suit or action (including attorney fees through trial and on appeal), to the extent such claim, demand, suit or action arises solely from the design or construction of the Square.

14.3 Contractors and Other Authorized Users. PCS will include City-approved indemnification language in its contracts and other written authorizations with third parties indemnifying the City from any and all claims related to the contract work or authorized uses.

14.4 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 PCS is obligated to indemnify the City hereunder, PCS shall, upon notice from the City, defend such action or proceeding through counsel reasonably acceptable to City.

14.5 Indemnification Limited to Insurance. As long as PCS has and maintains insurance complying with the requirements of Section 15 of this Agreement, PCS's obligation to defend and indemnify the City under this Section 14 shall be limited to the amounts of that insurance.

14.6 No Personal Liability For Officers and Trustees. Except in cases of malfeasance or intentional wrongdoing, the City agrees that the Officers and Trustees of PCS shall have no personal liability under this Agreement.

15. Insurance.

15.1 Insurance Requirements. During the term of this Agreement, PCS shall maintain insurance that satisfies the City's standard insurance requirements for permit and license holders. A copy of City's current requirements is attached as **Exhibit F**. City may notify PCS, from time to time, of changes in City's standard insurance requirements PCS agrees that the limits of liability under such insurance shall increase to match any increase in the City's liability limits under the Oregon Tort Claims Act, ORS 30.260 to 30.300. In the event that such liability limits are eliminated or invalidated, the City may impose reasonable increases in the required limits of liability, to protect PCS and the City from reasonably foreseeable exposure. Furthermore, PCS

will include insurance requirements, which are satisfactory to the City, in its contracts and other written authorizations.

15.2 Waiver of Subrogation. PCS and City each agree to waive claims arising in any manner in favor of either City and PCS 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 PCS's directors, officers, employees, shareholders and agents and to City's officers, agents and employees. The waiver does not apply to claims arising from the willful misconduct of PCS or City. Notwithstanding anything to the contrary herein, the waiver of subrogation does not apply to deductible amounts that the Parties are responsible for under their respective insurance policies.

16. Default; Remedies; Force Majeure

16.1 Events of Default. The following events shall constitute events of default by PCS:

16.1.1 If PCS fails to perform any covenant in this Agreement within thirty (30) days after written notice from PPR specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, PCS shall not be deemed to be in default if PCS begins to cure the failure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.2 The bankruptcy or insolvency of PCS or if a receiver or trustee is appointed to take charge of any of the assets of PCS in or on the Square and such receiver or trustee is not removed within thirty (30) days after the date of appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against agreements thereunder; or

16.1.3 If PCS is dissolved or fails to maintain its status as an Oregon non-profit corporation in good standing or its qualification as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

16.2 Remedies for Default. Upon the occurrence of an event of default under this **Section 16**, the City shall have the following rights and remedies, as well as any other remedies available at law or in equity.

16.2.1 The City shall have the right to suspend PCS's use of the Premises until the default is cured.

16.2.2 If the default is not cured, the City shall have the right to terminate this Agreement by written notice to PCS. Such termination shall be effective immediately if public health, safety or welfare is at risk. Otherwise such termination shall be effective thirty (30) days after the written notice.

16.3 Default by the City.

16.3.1 The following shall constitute an event of default by the City: the failure of the City to perform any covenant in this Agreement within thirty (30) days after written notice from PCS specifying the failure, provided that if such failure cannot, with due diligence, be cured within a period of thirty (30) days, the City shall not be deemed to be in default if the City begins to cure the failure within such thirty (30) days period and thereafter diligently prosecutes such cure to completion.

16.3.2 In the event of a City event of default, PCS shall have all rights and remedies allowed at law or in equity.

16.4 Exclusion of Certain Damages. Neither party shall be liable to the other party hereunder or in connection with the transactions contemplated hereunder, whether in contract or

in tort, for indirect, incidental, exemplary, punitive, consequential or other special damages (including lost profits), whether or not such damages are foreseeable or unforeseeable, except to the extent that such damages are included in third-party claims that are covered by the indemnities under Section 14.

16.5 Force Majeure.

16.5.1 Neither the City nor PCS shall be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including, but not limited to, fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such party or its suppliers or subcontractors.

16.5.2 Notwithstanding to the contrary herein, if the Square is rendered unusable by an event described in this Section 16.5.1, and if such condition continues for more than sixty (60) consecutive days, or if the City notifies PCS that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, then either the City or PCS may terminate this Agreement by written notice to the other party.

17. Termination.

17.1 Voluntary Termination. Either Party may voluntarily terminate the Agreement with no less than six (6) months written notice to the other party.

17.2 Termination Process. Upon expiration of the Agreement term or early termination, PCS shall deliver all keys to the City and shall surrender the Square to the City in its condition as of the effective date of this Agreement, subject to reasonable wear and tear. All repairs for which PCS is responsible shall be completed prior to such surrender. All PCS

property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. Should PCS fail to effect the removals or make repairs, City may do so and charge the cost to PCS. PCS shall be responsible for all costs and damages to City as a result of PCS's failure to surrender the Premises in accordance with the Agreement, and this clause shall survive the termination of the Agreement.

17.3 Existing Contracts at Time of Termination. Any contracts, leases or permits of PCS, which remain valid as of the termination date of this Agreement, will be transferred to PPR for ongoing administration, with the associated third parties notified of said transfer in writing by PCS.

17.4 Ownership upon Termination or Expiration. Upon the expiration or termination of this Agreement, all fixtures, improvements and personal property located on or associated with the operation of the Square shall become the property of the City. After satisfaction of PCS's obligations outstanding as of the date of expiration or termination, all money remaining in PCS's possession or accounts arising from the operation of the Square, including, but not limited to, donations, sponsorships, memberships, fees, leases, concessions and sales, and any income derived therefrom, shall become the property of the City, to be used exclusively for operating, programming, maintaining, repairing and improving the Square and in accordance with any or all donor or granting organization restrictions.

18. MISCELLANEOUS

18.1 City Consent. Unless otherwise stated, whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director and not unreasonably withheld. If the Director of PPR or its designee does not respond to PCS' request for an approval or consent under this Agreement within fifteen (15) business day after receiving PCS' written request, City approval shall be deemed granted.

18.2 PCS/City Coordination and Cooperation. PCS and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement. To ensure effective coordination and cooperation, a PPR staff member will serve on the PCS Facilities Committee. Additionally, PPR and PCS will meet at least once annually to discuss general agreement administration matters and complete a joint budget request for submittal to City Council.

18.3 Third-Party Use of the Premises. Except as provided for in this Agreement, PCS may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Premises by third parties. It is understood and agreed that, notwithstanding any such arrangements, no such third party shall have any rights under this Agreement, either as a party hereto or a third-party beneficiary.

18.4 Signage. PCS may not display or erect any permanent signs at the Square without the advanced, written approval of City, which will not be unreasonably withheld.

18.5 Assignment. PCS shall not assign this Agreement without the prior written consent of the City, which consent may be withheld at the City's sole discretion, and any purported assignment without such consent shall be void.

18.6 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, except that PCS's communications to City concerning insurance coverage should be sent to the addresses described in **Exhibit F**:

PPR: Portland Parks and Recreation Bureau
1120 SW 5th Ave, Suite 1302
Portland, Or 97024
Attention: Property Manager
Telephone: (503) 823-5229
Facsimile: (503) 823-5570
With a copy to:
City of Portland
1221 SW 4th Ave, Room 430
Portland, OR 97204
Attention: City Attorney
Telephone: (503) 823-4047
Facsimile: (503) 823-3089

PCS: Pioneer Courthouse Square, Inc.
715 SW Morrison, Suite 702
Portland, OR 97205
Attention: Executive Director
Telephone: (503) 223-1613
Facsimile: (503) 222-7425

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

Emergency notices regarding emergency maintenance or repairs needed at the Square are to be directed to

18.7 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.

18.8 Forum. Any litigation between the City and PCS arising under this Agreement, or out of work performed under this, shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

18.9 Construction and Interpretation of Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed

against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. 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.

18.10 Entire Agreement. This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

18.11 Further Documents. Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.

18.12 Illegality. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

18.13 Waiver in Writing. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

18.14 The Rights to Gather and Be Heard. PCS will not take any action which would be a denial of the public's constitutional right to gather and be heard in the common areas of the Square.

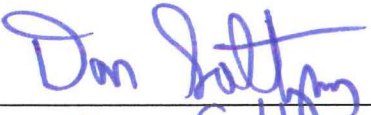
18.15 No Partnership. Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between PPR and PCS.


18.16 Exhibits; Successors; Time of Essence; Counterparts; Amendments. The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind PPR and PCS and their respective successors in interest and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by PPR and PCS.

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

**PORTLAND PARK AND RECREATION
BUREAU**

PCS:

By: 
Name: DAN SALTZMAN
Title: Commissioner
Date: 12/11/08

By: 
Name: Brad Hutton
Title: Board Chair
Date: 12/11/08

APPROVED AS TO FORM

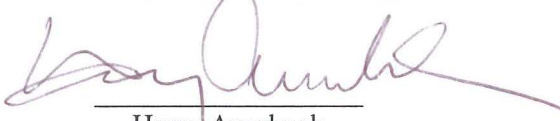
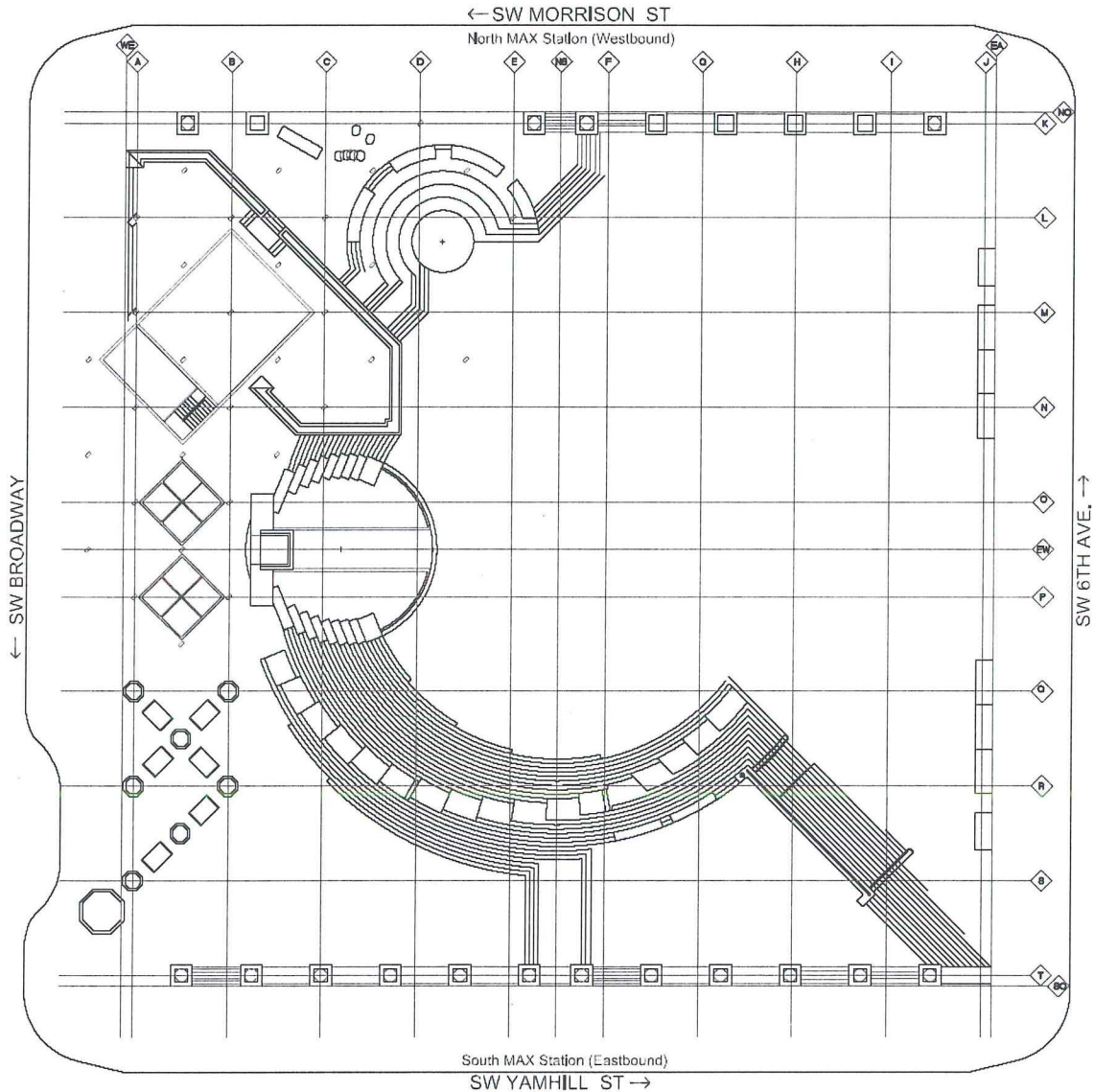

Harry Auerbach
Chief Deputy City Attorney

EXHIBIT A

PREMISES



PIONEER COURTHOUSE SQUARE - PLAZA LEVEL

1" = 30'-0"



EXHIBIT

A

PREMISES

Pioneer Courthouse Square

701 SW Sixth Avenue
Portland, OR 97204

SODERSTROM ARCHITECTS, P.C.

architecture | planning | exterior restoration | interior design

1200 NW Naito Parkway, Suite 410
Portland, Oregon 97209
MAIN 503.228.5617 FAX 503.273.8584
www.sdra.com

EXHIBIT B

HERITAGE CONSERVATION AND RECREATION SERVICES AGREEMENT

AGREEMENT

EXHIBIT "A"

THIS AGREEMENT, made and entered into this 11 day of July, 19 75, by and between the STATE OF OREGON, by and through its Department of Transportation, Highway Division, Parks and Recreation Branch, hereinafter called "State," and the City of Portland a(n) Municipality of the State of Oregon, by and through its City Council, hereinafter called "Sponsor";

WITNESSETH:

WHEREAS, Sponsor proposes to undertake the following outdoor recreation project: Pioneer Courthouse Square Acquisition and Development O.P. 809 in Multnomah County, Oregon, hereinafter called the "project," and, to that end, proposes to perform work and/or acquire land as set out and described in the Land and Water Conservation Fund Project Agreement, attached hereto, marked "Exhibit A," and by this reference made a part hereof; and

WHEREAS, federal matching funds for acquisition and development of outdoor recreation areas are available under the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), as administered by the Bureau of Outdoor Recreation, U. S. Department of the Interior; and

WHEREAS, it is the intent of the parties hereto that Sponsor acquire land and/or perform the development work, as set out in Exhibit A, in accordance with the Land and Water Conservation Fund Act of 1965, other applicable federal and state statutes, and the requirements of the Bureau of Outdoor Recreation; and that State apply to the Bureau of Outdoor Recreation for funds with which to reimburse Sponsor for 50 percent (50%) of its costs in acquiring such land and/or performing such work;

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

1. The State hereby approves the project proposal and authorizes Sponsor to acquire land and/or perform the work of the project in accordance with Exhibit A. As hereinafter used, "work of the project" shall include both acquisition of land for and development work of the project, and "cost of the project" shall include both costs of acquisition of land for and development work of the project, if such is required.

2. The estimated total cost of the project is \$ 3,000,000. Sponsor shall in the first instance, pay all the costs of the project. Upon completion of the project, Sponsor shall submit to State an itemized statement of the actual total cost of the project.

EXHIBIT "A"

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3. Upon receipt from Sponsor of the itemized statement of the actual total cost of the project and completion of the project by Sponsor in accordance with the terms of this agreement, State shall apply to the Bureau of Outdoor Recreation for one-half the estimated total cost of the project or one-half the actual total cost of the project, whichever is the lesser, and upon receipt thereof from the Bureau of Outdoor Recreation, shall remit such amount to Sponsor. It is understood by the parties hereto that where the actual total cost of the project exceeds the estimated total cost of the project, State shall not be obligated to apply to the Bureau of Outdoor Recreation for, or to pay to Sponsor, any amount in excess of one-half such estimated total cost, and that Sponsor shall be solely responsible for any excess of the actual total cost over the estimated total cost. State may, where acceptable to the Bureau of Outdoor Recreation, apply for federal funds prior to completion of the project and remit such amounts from federal funds to Sponsor for completion by Sponsor of such portions of the project as may be agreed upon by Sponsor, State and the Bureau of Outdoor Recreation.

4. Upon completion of the project, Sponsor shall be responsible for the operation and maintenance of said facility for public outdoor recreation in the manner and according to the standards set forth in the Manual.

5. It is understood by the parties hereto that no funds of State are, under this agreement, committed to payment of any costs of the project, and that obligations imposed upon State to apply for federal funds as well as the right of Sponsor to receive any reimbursement for any costs of the project shall extend only to those portions of the project, including the estimated costs thereof, approved by the Bureau of Outdoor Recreation. Furthermore, if Sponsor fails to perform any of the work of the project and such failure, because of commitments made by State to the Bureau of Outdoor Recreation, forces State to perform any work necessary to bring the project to a useful state of completion (as determined by State and the Bureau of Outdoor Recreation), Sponsor shall reimburse State for all State's costs in performing such necessary completion work, less any federal funds received by State for such work.

6. Sponsor hereby agrees to comply at all times with the LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT (the Federal Project Agreement), General Provisions attached hereto, marked "Exhibit B" and by this reference made a part hereof, in accordance with paragraph 5 of part A (Definitions) of Exhibit B. Sponsor hereby undertakes separately to perform its obligations set forth in said Federal Project Agreement for the benefit of State. It is stipulated by the parties hereto that the benefit to be derived from the full compliance by the Sponsor with the terms of this agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money and other assistance furnished under the terms of this agreement, the Sponsor agrees that payment by the Sponsor to the State of an amount equal to the value of any assistance extended under this agreement would

be inadequate compensation to State for any breach by the Sponsor of this agreement. The Sponsor further agrees, therefore, that the appropriate remedy for State in the event of a breach by the Sponsor of this agreement shall be the specific performance of this agreement.

7. Sponsor shall complete the work of the project by June 30, 1977

8. Provisions of State law applicable to this agreement are hereby incorporated.

9. Sponsor shall sign this agreement during a duly authorized session of its
City Council

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals
as of the day and year first above written.

APPROVED AS TO FORM:

Walter Z. Bania
Assistant Attorney General and Counsel

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division, Parks and
Recreation Branch

By

Gay A. Scott
Assistant State Parks Superintendent

Sponsor City of Portland

APPROVED AS TO FORM

ATTEST:

John W. O'Brien
CITY ATTORNEY
CITY ATTORNEY

by and through its City Council

BY Philip Deane
MAYOR

BY George Yarbrough
AUDITOR

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Outdoor Recreation
Land and Water Conservation Fund Project Agreement

State Oregon	(Multnomah County)	Project Number 41-00659	(O.P. 809)
Project Title Pioneer Courthouse Square			
Project Period	Date of Approval to JUN 30 1977		
Project Scope (Description of Project)			

Acquire one full city block in downtown Portland known as the Meier and Frank parking block. Demolish and remove the existing parking structure. Complete first phase development including the following: fill, landscaping, irrigation, brick paving, concrete and granite stairs, retaining walls, and furniture including benches, lights, drinking fountains, and information kiosks. Development under this agreement will only be up to the property line. Sidewalk and transit mall costs are outside the scope of this project.

41-051-1650

OR-Multnomah-Portland

Project Stage Covered by this Agreement

Not Applicable

Project Cost

Total Cost	\$ 3,000,000
Fund Support	50 %
Fund Amount	\$ 1,500,000
Cost of this Stage	\$ 3,000,000
Assistance this Stage	\$ 1,500,000

The following attachments are hereby incorporated into this agreement:

1. General Provisions (December 1965)
2. Project Proposal
3. _____
4. _____

Date _____

POSTED

BOR 8-92

(Rev. April 1974)

The United States of America, represented by the Director, Bureau of Outdoor Recreation, United States Department of the Interior, and the State named above (hereinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances attached hereto and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United States' share of the costs of the above project stage, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto: That this agreement is in accord with the approved project application which is hereby incorporated by reference. The State shall transfer to the City of Portland directly all funds granted hereunto necessary for the undertaking and completion of this project on a reimbursable basis.

This agreement is not subject to the provisions of Section B.2(d) of the attached General Provisions, dated December, 1965.

Reference to \$10,000 in B.2(a), (b), and (c) of the General Provisions is changed to \$2,500.

The State agrees to comply with the terms and intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970) and the applicable regulations and procedures of the Department of the Interior implementing such Act.

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

THE UNITED STATES OF AMERICA

By

G. A. Scott
(Signature)

Director
(Title)

Bureau of Outdoor Recreation
United States Department of
the Interior

Date MARCH 28, 1975

STATE

Oregon
(State)

By

Gary A. Scott
(Signature)

Gary A. Scott
(Name)

State Recreation Director
(Title)

LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT

General Provisions

A. Definitions

1. The term "BOR" as used herein means the Bureau of Outdoor Recreation, United States Department of the Interior.
2. The term "Director" as used herein means the Director of the Bureau of Outdoor Recreation, or any representative lawfully delegated the authority to act for such Director.
3. The term "Manual" as used herein means the Bureau of Outdoor Recreation Manual.
4. The term "project" as used herein means that project or project stage which is the subject of this agreement.
5. The term "State" as used herein means the State which is a party to this agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State.

B. Project Execution

1. The State shall execute and complete the approved project in accordance with the time schedule set forth in the project proposal. Failure to render satisfactory progress or to complete this or any other project which is the subject of Federal assistance under this program to the satisfaction of the Director may be cause for the suspension of all obligations of the United States under this agreement.
2. Construction contracted for by the State shall meet the following requirements:
 - (a) Contracts for construction in excess of \$10,000 shall be awarded through a process of competitive bidding. Copies of all bids and a copy of the contract shall be retained for inspection by the Director.
 - (b) The State shall inform all bidders on contracts for construction in excess of \$10,000 that Federal funds are being used to assist in construction.
 - (c) Written change orders to contracts for construction in excess of \$10,000 shall be issued for all necessary changes in the facility. Such orders shall be made a part of the project file and shall be kept available for audit.
 - (d) The State shall comply with the regulations of the Secretary of Labor contained in 29 CFR 3 (1964), made pursuant to 40 U.S.C. Sec. 276(c) (1964), which require from each contractor or subcontractor a weekly wage payment statement. Such regulations are hereby incorporated into this agreement by reference.
 - (e) The State shall incorporate, or cause to be incorporated, into all construction contracts the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 702 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11746 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11746 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11746 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11746 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 704 of Executive Order No. 11746 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- (f) The State shall (1) comply with the above provisions in construction work carried out by itself, (2) assist and cooperate actively with the BOR and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the above contract provisions and with the rules, regulations, and relevant orders of the Secretary of Labor, (3) obtain and furnish to the BOR and to the Secretary of Labor such information as they may require for the supervision of such compliance, (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations, and orders, (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the BOR pursuant to Part II, Subpart D, of Executive Order No. 11746 of September 24, 1965, and (6) refrain from entering into any contract with a contractor debarred from Government contracts under Part II, Subpart D, of Executive Order No. 11746 of September 24, 1965.

3. The State shall secure completion of the work in accordance with the approved construction plans and specifications, and shall secure compliance with all applicable federal, state, and local laws and regulations.
4. The State shall permit periodic site visits by the Director to insure work progress in accordance with the approved project, including a final inspection upon project completion.
5. In the event funds should not be available for future stages of the project, the State shall bring the project to a point of usefulness agreed upon by the State and the Director.
6. All significant deviations from the project proposal shall be submitted to the Director for prior approval.
7. Development plans and specifications shall be available for review by the Director upon request.
8. The acquisition cost of real property shall be based upon the appraisal of a competent appraiser. The reports of such appraisers shall be available for inspection by the Director.
9. If any tract or parcel of, or interest in, real property subject to being purchased under the provisions of this agreement, but not identified herein, is found by the Director for any reason not to be suitable for federal assistance, all obligations of the United States hereunder shall cease as to such parcel, tract or interest.

C. Project Costs

Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the Manual.

D. Project Administration

1. The State shall promptly submit such reports as the Director may request.
2. Property and facilities acquired or developed pursuant to this agreement shall be available for inspection by the Director upon request.

2. The State may use any generally accepted accounting system, provided such system meets the minimum requirements set forth in the Manual.

I. Use of Facilities

1. The State shall not at any time convert any property acquired or developed pursuant to this agreement to other than the public outdoor recreation uses specified in the project proposal attached hereto without the prior approval of the Director.
2. The State shall operate and maintain, or cause to be operated and maintained, the property or facilities acquired or developed pursuant to this agreement in the manner and according to the standards set forth in the Manual.

J. Nondiscrimination

1. The State shall not discriminate against any person on the basis of race, color, or national origin in the use of any property or facility acquired or developed pursuant to this agreement.
2. The State shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, 78 Stat. 241 (1964), and with the regulations promulgated pursuant to such Act by the Secretary of the Interior and contained in 43 CFR 17 (1964).
3. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence.

K. Compliance

The State shall be responsible for compliance with the terms of this agreement by any political subdivision or public agency to which funds are transferred pursuant to this agreement. Failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.

L. Manual

The State shall comply with the policies and procedures set forth in the Bureau of Outdoor Recreation Manual. Said Manual is hereby incorporated into and made a part of this agreement.

Attachment 1
(Dec. 1963)
to Form BOR 8-92

3. The State shall use any funds received by way of advance payment from the United States under the terms of this agreement solely for the project or project stage herein described.
4. Interest earned on funds granted pursuant to this agreement shall not be available for expenditure by the State, but shall be disposed of according to instructions issued by the Director.
5. Because one of the basic objectives of the Land and Water Conservation Fund Act is to enhance and increase the Nation's outdoor recreation resources, it is the intent of the parties hereto that recipients of assistance will use moneys granted hereunder for the purposes of this program, and that assistance granted from the fund will result in a net increase, commensurate at least with the federal cost-share, in a participant's outdoor recreation. It is intended by both parties hereto that assistance from the fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

E. Project Termination

1. The State may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the State makes any expenditure or incurs any obligation with respect to the project.
2. Failure by the State to comply with the terms of this agreement or any similar agreement may be cause for the suspension of all obligations of the United States hereunder.
3. Failure by the State to comply with the terms of this agreement shall not be cause for the suspension of all obligations of the United States hereunder if, in the judgment of the Director, such failure was due to no fault of the State. In such case, any amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for assistance under this agreement.
4. Because the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement, the State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement. The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement.

F. Conflict of Interests

1. No official or employee of the State who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract.
2. No person performing services for the State in connection with this project shall have a financial or other personal interest other than his employment or retention by the State, in any contract or subcontract in connection with this project. No officer or employee of such person retained by the State shall have any financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the State, and such officer, employee or person has not participated in the acquisition for or on behalf of the State.
3. No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise hereupon, unless such benefit shall be in the form of an agreement made with a corporation for its general benefit.
4. The State shall be responsible for enforcing the above conflict of interest provisions.

G. Hatch Act

No officer or employee of the State whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the political activity proscribed in the Hatch Political Activity Act, 5 U.S.C. Sec. 118a (1964), with the exceptions therein enumerated.

H. Financial Records

1. The State shall maintain satisfactory financial accounts, documents, and records, and shall make them available to the BOA, the Department of the Interior, and to the General Accounting Office for auditing at reasonable times. Such accounts, documents, and records shall be retained by the State for three years following project termination.

EXHIBIT C
EXISTING and PENDING LEASES, PERMITS, CONTRACTS AND
AGREEMENTS AS OF
December 2, 2008

[illegible]


EXHIBIT D
KGW LEASE INDEMNIFICATION

ASSUMPTION OF LANDLORD'S RESPONSIBILITIES

In consideration of execution by the City of Portland of the Retail Lease Between City of Portland (Landlord), and King Broadcasting Company, a Washington corporation (Tenant), Pioneer Courthouse Square of Portland, Inc. ("PCS"), agrees to assume all of Landlord's responsibilities and liabilities under that Lease, including, without limitation, liability for any cost overruns on Landlord's Work required by that Lease, and to hold the City of Portland harmless therefrom. In particular, and in addition to the other responsibilities and liabilities under the Lease, PCS agrees to maintain a contractual indemnity insurance policy with limits of not less than Two Million Dollars (\$2,000,000.00) single limit bodily injury and property damage and in aggregate, naming PCS, the City and their respective directors, officers, employees and agents as insureds for claims for which Landlord may be responsible under Section 5(c) of the Lease.

Dated: 1/14/08

PIONEER COURTHOUSE SQUARE OF PORTLAND, INC.



By: Brad Hutton, President

EXHIBIT E

USE POLICIES

The Square is a public facility and use of it should be for the benefit of the citizens of the City and should include a variety of events and usage taking into consideration the physical characteristics of the Square, the nature of the area, the appropriateness of the usage and other factors such as sound, nature and size of crowd, weather and similar considerations.

The Square will be operated, programmed and have leases let in a manner that promotes an image of quality and safety.

Activities, performances and events on the Square will be regulated by permit, administered by Pioneer Courthouse Square of Portland, Inc. The policies which ensure that these permits are administered in a manner consistent with constitutional freedom of speech as well as the location and quality image of the Square will be drafted by a Board appointed Committee, approved by the City Council and appended to these policies prior to the opening of the Square.

Programming Guidelines

The goals of programming include: attracting new people downtown; enriching the environment of those already downtown; providing an attractive stage for the performing arts, civic and cultural organizations; promoting exhibit opportunities for commercial, civic and advocacy organizations; and supplying a forum for political and civic speeches.

Generalized programming themes will be developed consistent with season, major civic, sporting and cultural events and the image of the Square. Performances and activities consistent with, or supplementary to, these themes will be scheduled.

Scheduling may occur up to twelve months in advance to assure quality and consistency with plans. Multiple activities/ programs will be scheduled when feasible to maximize diversity and attraction. Every effort will be made to emphasize programming during the noon hour and mid-evening hours.

Promotion of events sponsored by the Square will be promoted through normal publicity channels, including all media. Pioneer Courthouse Square will develop a mailing list to augment media efforts.

EXHIBIT F
STANDARD INSURANCE
REQUIREMENTS

INSURANCE

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

1. **Evidence Required**

PCS and its contractors or subcontractors, if any, shall maintain on file with the Property Manager, Portland Parks and Recreation, a certificate of insurance certifying the coverage required under this Agreement. Such certification shall be submitted to PPR at or before execution of this Agreement and then annually for the duration of the Agreement. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

2. **Notice of Cancellation, Renewal, Reduction or Material Change in Coverage**

The insurance policy shall provide that the insurance shall not terminate or be materially changed without thirty (30) days written notice first being given to Portland Parks and Recreation. Notices shall be sent to the PPR's Manager, Strategy, Finance and Business Development, 1120 SW 5th Ave, Suite 1320, Portland, Oregon 97204. If the insurance coverage is canceled, terminated, or reduced prior to completion of the Agreement, the PCS or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The PCS and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. **Insurance Required**

A. PCS and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the PCS 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 PCS'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 PCS and its contractor or subcontractors, if any. The insurance shall provide coverage for not less

EXHIBIT B-1

Amendment One Management Agreement Contract No. 30000073

This Amendment is made effective October 31, 2011, by and between the City of Portland, by and through its Parks and Recreation Bureau (hereinafter PPR) and Pioneer Courthouse Square Inc. (hereinafter "PCS"), collectively referred to as "the Parties,"

Agreed:

1. The following will replace Section 9.6.1 of the Management Agreement: Maintain the Square in a clean, neat, safe and functioning condition and in compliance with all federal, state and local laws, regulations and rules and as required by this Agreement. Beginning October 31, 2011 through June 30th, 2012, PCS will provide the following maintenance services at the Square: (i) janitorial cleaning of the Square, including the regular use of the general public, tenant and permittee activities, including power washing of surfaces as necessary; (ii) manage and pay for all trash, recycling and composting demands of the Square; (iii) provide daily restroom cleaning; (iv) care for the wisteria and hanging baskets in the Square; (v) snow and ice removal, including application of snow-melt on as needed basis. At a minimum PCS will provide on-site janitorial services described in this section during the following times: 7:00 AM to 6:00 PM Monday through Fridays; 9:30 AM to 4:30 PM Saturdays; and, 9:30 AM to 2:30 PM Sundays on May 1st through October 31st. PCS will be required to make available to PPR service usage reports when requested, documenting its trash, recycling and compost volumes for the Square. Report schedule due dates and content will be determined by PPR but will be no more often than quarterly. Usage reports will be delivered as requested by PPR.
2. In addition to the requirements stated above, PCS shall also work collaboratively with PPR and the Bureau of Planning and Sustainability and provide the following Resource Management Services:
 - Work cooperatively and proactively with City staff to identify and implement disposal alternatives at the Square in an effort to reduce the City's waste generation and associated expenses, and improve the City's recovery rate.
 - Work collaboratively with the City to identify opportunities to reach mandated City of Portland recovery goals as stated in the City of Portland's administrative rules for commercial solid waste and recycling, and the Portland-Multnomah Climate Action Plan for the Square. Upon request, PCS shall review existing practices and make recommendations for improvement.
 - Work collaboratively with the City to identify opportunities to implement economical methods to reduce waste and increase recycling and composting at the Square.
 - Instruct all haulers to monitor container utilization levels for trash and recycling so that the City and PCS is getting the maximum use and services of each container. Within the first six months of this Amendment, PCS shall review existing practices at the Square and make recommendations to the City for improvement, including right-

sizing of containers and modifying pick-up schedules to ensure optimum container utilization.

Reporting Requirements include:

- The City desires to know how much material is being land-filled, recycled, composted or otherwise managed on a monthly basis at the Square. Contractor will provide a Monthly Report of containers used (size, type), materials collected by container, recycling commodities, and pick-up schedule (including day and frequency) for Pioneer Courthouse Square to the City for proper tracking of all services provided during the term of this Agreement. The report must be submitted to PPR and Bureau of Planning and Sustainability via Excel spreadsheet template(s) to be provided by the City, on a quarterly basis, unless otherwise requested more frequently by the City.
- 3. With the exception of the new services described in this Amendment to be completed by PCS, PPR will continue to provide all services to the level described in the Management Agreement, including providing snow-melt products to PCS to use at the Square. PPR also will provide snow/ice removal services (at a similar level of service to other downtown plazas) on Sundays, November 1 - April 30, and Saturdays prior to 9:30 AM and after 4:30 PM.
- 4. Per Section 7.2 of the agreement, resources allow PP&R to provide \$340,809.50 to PCS in FY 2011/12 for the operation, maintenance and security services provided under the Management Agreement.
- 5. All other terms and conditions of the Management Agreement will remain unchanged.

CITY OF PORTLAND

Pioneer Courthouse Square Inc.

By: Nia R
Director, Portland Parks and Recreation

By: Philip A. Hallen

Date: 1/7/12

Title: President

By: Erin

Date: 12-15-11

APPROVED AS TO FORM
APPROVED AS TO FORM

Andrea Hengst
CITY ATTORNEY