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LOCOMOTIVE MANAGEMENT AGREEMENT

This agreement (this "Agreement") is made and executed as of the ____ day of _____ 2009, by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU (hereinafter "City" or "PPR"), and OREGON RAIL HERITAGE FOUNDATION (hereinafter "ORHF"), collectively referred to as "the Parties."

RECITALS

WHEREAS, through a series of donations in 1958, the City of Portland received ownership of three historic steam locomotives, collectively referred to as "the Locomotives;"

WHEREAS, the Locomotives are under the management jurisdiction of Parks;

WHEREAS, ORHF and its member organizations have, among other things, dedicated themselves for the past 30 years to the restoration and preservation of the Locomotives, in cooperation with Parks and other individuals and groups that share this goal;

WHEREAS, ORHF is a tax exempt, non-profit Oregon corporation organized to ensure the long-term restoration and maintenance of the three locomotives in operating condition so that they can be enjoyed by the public in the future;

WHEREAS, the City desires ORHF to continue restoration, maintenance and management activities of the Locomotives on behalf of the City;

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

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 ORHF agree as follows:

AGREEMENT

1. **Purpose.** The purpose of the Agreement is to provide for the ongoing maintenance, programming and management of the Locomotives in accordance with the terms and conditions of this Agreement.

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2. **Appointment.** The City hereby retains, engages, and appoints ORHF as the City's agent to oversee and manage the preservation, restoration and operation of the Locomotives 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 Locomotives, other than the right of use in accordance with this Agreement.
3. **Locomotives.** Unless otherwise agreed, the authorities and responsibilities of ORHF under this Agreement apply only to the Locomotives, as described on attached **Exhibit A**.
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 ORHF 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, ORHF 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 Locomotives.** The City hereby grants ORHF a license to restore, maintain and use the Locomotives to the extent necessary to fulfill its management responsibilities under this Agreement, with the understanding that such license is contractual only.
6. **Acceptance of the Locomotives.** Except as otherwise provided herein, ORHF accepts the Locomotives on an "as-is" basis, with no representations or warranties, express or implied, being made by the City, its officers, agents or employees.

DRAFT**7. Consideration.**

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

7.2 Trust Fund Distribution. Upon signing of this agreement, PP&R will transfer the remaining funds in the City held Trust Fund accounts of the Friends groups of the Locomotives of Oregon Railroad & Navigation #197, Spokane, Portland & Seattle #700, and Southern Pacific #4449, to ORHF on behalf of its member organizations.

8. **Existing Management Obligations.** The Parties acknowledge the existence of specific agreements, and contracts entered into by ORHF either in its own name or on behalf of the City. All existing and pending agreements, permits, and contracts related to the Locomotives are listed on the attached **Exhibit B**. ORHF hereby represents that existing transactions are in good standing. All agreements in the City's name will remain the obligation of the City. All agreements, permits and contracts entered into in the name of ORHF will remain solely the obligation of ORHF.

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

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

9.2 Board Membership. The Director of PPR or the Director's designee will be an ongoing non-voting Board member of ORHF, and the Director of PPR or the Director's designee will be a member of the Board's executive committee.

9.3 Operating and Programming Guidelines. ORHF will operate and program the Locomotives in a manner that promotes an image of quality, safety, public access, the heritage of these locomotives and the influence of railroading on the City of Portland.

9.4 Appointment of Locomotive Operators.

9.4.1 ORHF is granted authority to select specific operators for each of the three Locomotives and to appoint those operators to be the exclusive parties who maintain, restore and operate each of the Locomotives. ORHF shall notify the City at all times as to which operator has been appointed for each of the Locomotives. Upon request, ORHF will provide to the City all information requested by the City concerning the experience and expertise of any operator selected by ORHF to maintain, restore and operate any of the Locomotives.

9.4.2 ORHF will, in turn, retain the right to change operators when, in the discretion of ORHF, such a change is in the best interest of each of the Locomotives. Should a change in operators be necessary, ORHF will promptly notify the City of the change, the reasons for the change and will provide all information to the City concerning the new operator selected for the Locomotive.

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9.4.3 ORHF has the authority to charge any operator a use fee for the operation of any of the Locomotives, said use fee to be utilized by ORHF for the continued maintenance, restoration and operation of the Locomotives.

9.5 Fiscal Matters. ORHF will:

9.5.1 Develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of ORHF's operations, such controls to be consistent (in all material respects) with generally accepted accounting principles;

9.5.2 Pay or arrange for payment of all costs that ORHF is responsible for under the Agreement, including, but not limited to personnel, contracting and maintenance and operation costs associated with the Locomotives.

9.5.3 Make efforts to raise funds for the Locomotives purposes through special events, grants, gifts and bequests, tied to the locomotives themselves and/or to the facility supporting the maintenance and display of the locomotives.

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

9.6.1 Maintain the Locomotives in a clean, neat and safe condition, in compliance with all federal, state and locals laws, regulations and rules and as required by this Agreement. Additionally, ORHF will make good faith efforts to keep each of the Locomotives in an operable condition in accordance with federal railway laws provided ORHF has sufficient funds to continue the Locomotives in an operable condition. ORHF's obligation to maintain the Locomotives in an operable condition is dependent on ORHF's ability to fund the restoration and maintenance of such Locomotives in an operable condition. PPR recognizes that the restoration

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and operation of these Locomotives may be limited by ORHF's ability to fund the restoration and maintenance of the Locomotives and, for periods of time, such Locomotives may not be in operable condition for this reason.

9.6.2 Promptly correct any unsafe condition of the Locomotives, after becoming aware of any such unsafe condition as well as any unsafe practices by persons reasonably under ORHF'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 ORHF both in hard copy and electronically, along with updates over time. ORHF shall cooperate fully with the City in the investigation of any damage to persons or property occurring on or about the Locomotives;

9.6.4 Consult with PPR as to safety or maintenance concerns associated with the Locomotives; and

9.6.5 To the extent that funds are available, contribute to the cost of maintenance and significant repairs of the Locomotives.

9.7 Special City-Sponsored Events. ORHF will manage City-sponsored events, in accordance with written agreements between the City and ORHF, 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.

9.8 Security. ORHF will manage security at ORHF-sponsored events for protection of the Locomotives, its tenants and the general public.

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9.9 Contracting. ORHF 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 Locomotives. ORHF shall use reasonable efforts to make purchases from various suppliers of materials or services of adequate quality and utility. ORHF 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 ORHF and the City as to claims related to the contracted work.

9.10 Hazardous Materials. ORHF shall handle all Hazardous Substances (as defined in ORS 465.200 or as it may hereafter be amended, and any implementing regulations) in a manner that protects the Locomotives and the environment from accidental spills and releases. ORHF, or any of its directors, officers, employees, agents, contractors, subcontractors, servants, successors, assigns, 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, whether affecting surface water or groundwater, air, the land or the subsurface environment.

9.11 Records and Inspection. ORHF will maintain a set of all financial, vendor, employee and operating records relating to the Locomotives. At any time during the Term, the City shall have the right, after reasonable notice to ORHF, to inspect and audit the books, records, invoices, deposits, canceled checks, or other financial data or transactions of ORHF 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 ORHF in connection with such inspections.

9.12 Reporting. ORHF will provide PPR with annual reports provided to regulatory entities, including copies of Oregon 990 Forms annual reports and revised Articles of

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Incorporation submitted to the Oregon Secretary of State and/or the Oregon Department of Justice as part of their non-profit requirements. Additionally, ORHF 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 ORHF will be submitted to PPR, care of its Property Manager.

9.13 Taxes and Assessments. ORHF will pay any and all applicable federal, state or local taxes assessed against the Locomotives or against distributions to ORHF under this Agreement.

9.14 Compliance with Law. The acts of ORHF and others under ORHF'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 management practices of ORHF.

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

10. City Retained Responsibilities, Rights and Authorities. City hereby reserves to itself all rights and authorities not specifically granted to ORHF 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 inspect the Locomotives, for any purpose, including evaluation of ORHF services, with the understanding that when exercising

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said right City will make a reasonable effort to minimize disturbances to activities being managed by ORHF. 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 ORHF.

11. **Transfer and Assignment.** Rights granted under this Agreement are personal to ORHF, 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 Locomotives.** If the Locomotives are damaged as a result of an act or omission of ORHF or its officers or any designated operator of the Locomotives, ORHF will promptly notify PPR and take all steps reasonably necessary to either repair or replace the affected, damaged property. This provision shall not apply to ordinary wear and tear and maintenance required as a result.

13. **No Liens.** ORHF shall keep the Locomotives, 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 ORHF. If any lien is filed against any of the Locomotives or other City property used in connection with this Agreement, as a result of the acts or omissions of ORHF, or of ORHF's employees, agents, or contractors, ORHF shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after ORHF has notice that the lien has been filed. If ORHF 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 ORHF, 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. ORHF shall pay on demand any amount so paid by the City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees

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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 ORHF. ORHF 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, ORHF, the Locomotives 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 Locomotives to the extent arising from the acts or omissions of ORHF 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 Locomotives operated and maintained by ORHF or any part thereof, or of any component thereof to the extent arising from the acts or omissions of ORHF or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees;

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14.1.3 Any repairs, changes or alterations on or to, or any work done on the Locomotives or any part thereof by or at the direction of ORHF, except as to work required by Parks and completed properly by ORHF, or others on behalf of ORHF;

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

14.1.5 The release of any Hazardous Substance into the environment, caused by or resulting from the negligence or willful misconduct of ORHF or its agents, representatives, employees, contractors, subcontractors, successors, assigns or invitees.

14.1.6 Failure of ORHF to comply with any contract or agreement, including this Agreement, to which ORHF is a party or any law, regulation, rule, ordinance, statute or decision, in each case affecting the Locomotives, or ORHF's use thereof, or ORHF's use, possession, operation, repair, maintenance or management of or any portion of the Locomotives 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 ORHF and its directors, officers, agents and employees against any claim, demand, suit or action (including attorney fees through trial and on appeal) arising solely from the negligent or intentional acts or omissions of the City or its officers, employees or agents other than ORHF.

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14.3 Contractors and Other Authorized Users. ORHF 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 ORHF is obligated to indemnify the City hereunder, ORHF 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 ORHF has and maintains insurance complying with the requirements of Section 15 of this Agreement, ORHF'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 ORHF shall have no personal liability under this Agreement.

15. Insurance.

15.1 Insurance Requirements. During the term of this Agreement, ORHF 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 C**. City may notify ORHF, from time to time, of changes in City's standard insurance requirements ORHF 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 ORHF and the City from reasonably foreseeable exposure.

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

15.2 Waiver of Subrogation. ORHF and City each agree to waive claims arising in any manner in favor of either City and ORHF and against the other for loss or damage to their property located within or constituting a part or all of the Locomotives 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 ORHF'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 ORHF 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 ORHF:

16.1.1 If ORHF 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, ORHF shall not be deemed to be in default if ORHF 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 ORHF or if a receiver or trustee is appointed to take charge of any of the assets of ORHF 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 upon judgment against agreements thereunder; or

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16.1.3 If ORHF 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 ORHF's use of the Locomotives 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 ORHF. 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 ORHF 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, ORHF shall have all rights and remedies allowed at law or in equity.

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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 ORHF 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 Locomotives are 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 ORHF that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, then either the City or ORHF 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.

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17.2 Termination Process. Upon expiration of the Agreement term or early termination, ORHF shall deliver all keys to the City and shall surrender the Locomotives to the City in its condition as of the effective date of this Agreement, subject to reasonable wear and tear. All ORHF property shall be removed immediately upon termination, and a failure to do so shall be considered abandonment of such property. ORHF shall be responsible for all costs and damages to City as a result of ORHF's failure to surrender the Locomotives 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 or agreements of ORHF, 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 ORHF.

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

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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 ORHF's request for an approval or consent under this Agreement within fifteen (15) business day after receiving ORHF's written request, City approval shall be deemed granted.

18.2 ORHF/City Coordination and Cooperation. ORHF and the City will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement. PPR and ORHF will meet at least once annually to discuss general agreement administration.

18.3 Signage. ORHF may not display or erect any permanent signs on the Locomotives without the advanced, written approval of City, which will not be unreasonably withheld.

18.4 Assignment. ORHF 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.

18.5 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 ORHF's communications to City concerning insurance coverage should be sent to the addresses described in **Exhibit C**:

PPR: Portland Parks and Recreation Bureau
 1120 SW 5th Ave, Suite 1302
 Portland, Or 97024
 Attention: Property Manager

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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

ORHF:

Oregon Rail Heritage Foundation

Portland, OR

Attention:

Telephone:

Facsimile:

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

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

18.7 Forum. Any litigation between the City and ORHF 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.

18.8 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

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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.

18.9 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.

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

18.11 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.

18.12 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.

18.13 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 ORHF.

18.14 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 ORHF 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

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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 ORHF.

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

**PORTLAND PARK AND RECREATION
BUREAU**

ORHF:

By: _____

By: _____

Name: _____

Name: _____

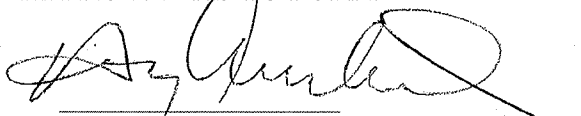
Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM



Harry Auerbach
Chief Deputy City Attorney

DRAFT EXHIBIT A

LOCOMOTIVES

Oregon Railroad & Navigation #197

Built in 1905 by Baldwin Locomotive Works as a 4-6-2 "Pacific" type locomotive for the E. H. Harriman rail empire that later merged into the Union Pacific, she's 79' long and, with 200 psi boiler pressure and 76" diameter drivers, is capable of sustained speeds of 80 mph.

This treasure of the early 20th Century era of steam locomotives arrived in Portland just in time for the 1905 Lewis & Clark Centennial Exposition, just 17 months before the Wright Brothers first flew at 9.8 mph, when Teddy Roosevelt was President and 3 years before Henry Ford rolled out his first Model T. She then went on to serve Portland commerce for over 50 years before retirement in the 1950s. Residing as only a display piece in Oaks Park like her sisters since 1958, in 1996 she was moved to the Brooklyn Roundhouse where she is undergoing restoration.

Spokane, Portland & Seattle #700

Built in 1938 as a 4-8-4 Northern Pacific Class A design, she is close to 111' long, 10' wide and almost 17' tall. With locomotive and tender weighing almost 440 tons and a boiler pressure of 260 psi, her 77" diameter drivers can apply 5,000 horsepower to the rails and exceed 80 mph. It's oil fired, and features design specified roller bearings throughout which was quite advanced for the era.

This beautiful example of the latter years of steam locomotive development pulled the famous Empire Builder until that train was dieselized in 1947. She continued to faithfully provide passenger service from Portland up the Columbia River Gorge to Spokane until 1954. In 1945 she was honored to pull a "special" of United Nation Delegates. One of the largest steam locomotives still operable today.

Southern Pacific #4449

Built in 1941 as a 4-8-4 GS-4 "Northern" type locomotive, she is 110' long, 10' wide and 16' tall. With locomotive and tender weighing 433 tons and a boiler pressure of 300 psi, her eight 80" diameter drivers and unique firebox truck booster can apply 5,500 horsepower to the rails and exceed 100 mph. Retired to Oaks Park in 1958 for display only, in 1974 she was completely restored specifically to pull the 1976 Bicentennial Freedom Train throughout the United States to the delight of over 30 million people.

The only remaining operable "streamlined" steam locomotive of the Art Deco era, this grand Lady of the High Iron pulled Southern Pacific "Daylight" coaches from Los Angeles to San Francisco over the scenic Coast Route and then on to Portland until 1955. She is arguably one of the most beautiful locomotives ever built.

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EXHIBIT B
EXISTING and PENDING LEASES, PERMITS, CONTRACTS AND
AGREEMENTS AS OF
_____, 2009

Transaction	Responsible Parties	Expiration Date	Compensation	Comments

DRAFT**EXHIBIT C
STANDARD INSURANCE
REQUIREMENTS****INSURANCE**

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

1. Evidence Required

ORHF 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 Property Manager 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 ORHF or its contractors or subcontractors, if any, shall provide a new policy with the coverage required under this Agreement. The ORHF and its contractors shall maintain continuous, uninterrupted coverage for the duration of the permit.

3. Insurance Required (need to update insurance)

- A. ORHF and its contractors and subcontractors, if any, shall maintain public liability and property damage insurance that protects the ORHF 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 ORHF'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 ORHF and its contractor or subcontractors, if any. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving

property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence.

- B. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage shall apply as to claims between insureds on the policy.
- C. Workers Compensation Insurance. ORHF, its contractors or subcontractors, if any, and all employers on its behalf are subject employers under Oregon Workers Compensation Law for this Agreement and shall comply with ORS Chapter 656 which requires them to provide Oregon workers compensation coverage in accordance with Oregon law for all of their subject workers. ORHF and its contractors and subcontractors shall provide and maintain a certificate of current and effective coverage with the City at all times during the term of this agreement.

3. Special Provisions

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

* (Note: General liability limits may be increased, at the discretion of the City's Risk Manager, relative to risk involved), and will be increased in accordance with any increase in the limitations of liability applicable to the City under the Oregon Tort Claims Act, ORS 30.260 to 30.300).