



183668

PORTLAND PARKS
& RECREATION

PERMIT OF ENTRY FOR PARK PROPERTY – PERMIT #2010-05

Recitals:

The City of Portland (City), a municipality of the State of Oregon, through its Bureau of Parks and Recreation (Parks or PP&R) is the manager of certain real property known as *Brooklyn School Park* located within Multnomah County, State of Oregon.

Portland Public School (PPS) and Precision Recreation Contractors, its Contractor, (collectively "Permittees") require access to the Park to *install playground equipment*.

Agreed:

- 1) **Grant of Permit of Entry.** Permittees are hereby granted a Permit to enter the Park for the purposes described in Section 4 of this Permit. The location of the work is illustrated on Attachment A hereto ("Premises").
- 2) **Term.** The term of this permit is approximately Seven (7) months. Authorized uses shall not commence until Permittees receive a Notice to Proceed from Parks' Project Manager. The Permit will expire at midnight on September 30, 2010, unless otherwise agreed in writing. Permittee will notify the PP&R Project Manager when the work has been completed.
- 3) **Acceptance of Premises.** Permittees have examined the Premises and accept them in an "as is" condition. City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Premises. City shall have no liability to Permittees for any damage or injury caused by the condition of the Premises. Furthermore, Permittees accept the Premises subject to any and all valid rights or interests, including, but not limited to: rights of access by the public; existing permits; licenses; leases; easements; franchise agreements; railroad facilities; pipelines, telephone, telegraph, communication, power and signal lines; or any similar facilities, together with any future installations thereof.
- 4) **Scope of Work or Use.** Work under this Permit consists of installation of playground equipment. Equipment will be purchased and stored until time of installation by PPS, and PP&R will contribute \$10,000 towards installation, construction management, and review related to installation.

PPS will install the equipment per the following standards:

- Locate all utilities, providing PP&R site plan that includes such utilities prior to construction.
- Insure proper drainage systems are in place prior to construction.
- Install temporary fencing around all construction areas and staging areas during all phases of construction with appropriate safety signage.
- Contract only with a certified installer, certified for the brand and make of equipment installed.

- Provide a construction manager who will review plans to ensure proper installation by contractor, and coordinate with PP&R playgrounds project manager.
- Ensure proper age appropriate signage is installed with the playground equipment.
- FIBAR chips are installed to a standard of 12 inches deep within the fall zone.
- Once PPS installation is complete, Parks staff reserve the right to fully inspect equipment for compliance with PP&R standards and PPS will be responsible for all cost associated with any PP&R required correction.
- Underground injection control register with BEW/DEQ is completed, and appropriate water quality steps are taken.
- Ensure prior to construction that plans for footings have been reviewed by a professional architect, receiving an architects' stamp, certifying the proper method of installation.

All work associated with the project will be conducted in a first class professional manner with the highest and best work and safety standards, best and PP&R practices.

If deemed necessary by PP&R, specific project plans will be attached to this Permit and, if attached, will be considered incorporated into the Permit by reference. The scope of work or use defined herein or attached constitutes the entirety of the expected use or scope of work. No changes to the scope of work or use are authorized without the prior written approval of PP&R.

- 5) **As-Builts.** Permittees shall keep accurate maps and records, including the approved as-built construction plans and specifications of its facilities and improvements located in the Park. Permittees shall provide to Parks within sixty (60) days of the project being complete copies of such maps, records and as-builts, in a form (digital and paper) that is to the complete satisfaction of Parks. As-built specifications are included as Attachment B.
- 6) **Park or Trail Closures.** Permitted work will not result in the Park being closed at any time without PP&R approval. Permittee will take reasonable precautions to avoid conflicts between the permitted work and the public's use of the Park. Temporary fencing and appropriate safety signage will be installed by PPS around all construction areas and staging areas during all phases of construction.
- 7) **Project Manager.** Permittees shall coordinate with Parks Project Manager (*Travis Ruybal*, who may be reached at his office phone: (503) 823-5487 or by cell phone at (503) 823-██████████ Don Huld PPS Project Manager (503) 916-3915 or cell (503) 341-1793. Parks Project Manager will be provided at least forty-eight (48) hours notice prior to commencement of work under this Permit.
- 8) **Locates.** Permittees shall not begin any excavation or other subsurface activity in the Park without first contacting the One-Call Locates number and shall explicitly indicate the property is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344. Permittees shall also contact Mike VanYserloo, Parks Locates, at (503) 823-1611 at least 72 hours before commencing excavation or other subsurface activities on the Park.

- 9) **Trees and Urban Forestry.** For projects where there are potential tree impacts either above or below ground, Permittees shall include Dave Kahler from Urban Forestry in the Pre-Construction meeting and any other meetings. Mr. Kahler can be reached at (503) 823-1691 or by cell at (503) 823-8194. Permittees shall strictly manage construction limits to ensure the minimum disruption to existing vegetation.
- 10) **Equipment and/or Materials to be used on site.** Equipment to be used includes what is on the attached list. Permittees assume all risk for any damage to their equipment while working under the authority of this Permit. Permittees shall keep all equipment within the confined work zone. All vehicles brought into the Park must be marked as corporate vehicles belonging to the Permittees, or its subcontractors, if any. Personal vehicles belonging to Permittees' employees shall not be parked in the Park.
- 11) **Maintenance, Repair and Restoration.** Permittees, at their cost, shall maintain the Premises in a neat condition, free of trash and debris, in good and substantial condition, order and repair. Permittees shall repair, at their cost and with prior written approval by Parks, any damage to the Park or surrounding City of Portland property caused by the work project and/or their entry or occupancy of the Park under this Permit. Restoration shall be made to conditions equal to or better than those pre-existing the Permittees' work. PP&R, at its sole discretion, may elect to complete necessary repairs. Permittees agree to pay reasonable costs of repairs performed by the City.
- 12) **Security.** Permittees are responsible for providing, to Parks' satisfaction, signage, coning, and/or fencing to keep people away from equipment and work areas and to warn Park users of any hazards. Permittees shall give Parks prompt notice of any condition, disturbance, accident or occurrence on the Park related to their use or occupancy of the Park which might create a hazard to users of the Park property.
- 13) **Indemnification.** Permittees shall indemnify and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) Permittee's entry, use or occupancy of the Park, (ii) any failure of Permittees to comply with the terms of this Permit of Entry or any violation of law or ordinance, and (iii) the acts or omissions of Permittees, their officers, directors, agents and employees or invitees; provided, however, the Permittees shall not be liable for claims caused by the sole negligence of the City, its officers, directors, agents and employees. Permittees shall, at their own cost and expense, defend any and all suits which may be brought against Permittees or City, their officers, directors, agents and employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City or Permittees, their officers, directors, agents and employees in any such action or actions, including any appeals, in which they may be party defendants.
- City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of Permittees or to any person in or upon the Park including

but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

City or its officers, directors, agents and employees shall not be liable for any latent defect at the Park. In addition to the indemnity provided above, Permittees agree to indemnify, defend and hold harmless City, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.

Permittees, as a material part of the consideration to the City, hereby assume all risk of damage to property or injury to persons in, upon or about the Park from any cause other than the City's sole negligence, and Permittees waive all claims in respect thereof against City.

In the event that a Permittee is another bureau of the City, then Sections 13 and 14 of this Permit shall not apply as to that Permittee only, but shall still apply to any other Permittees or subcontractors.

- 14) **Insurance.** Permittees shall maintain public liability and property damage insurance that protects the Permittees 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 Permittees' work under this Permit. 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. 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 must apply as to claims between insureds on the policy.

The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled or terminated prior to completion of the Permit, the Permittees shall provide a new policy with the same terms. The Permittees shall maintain continuous, uninterrupted coverage for the duration of the Permit. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Permittees.

Permittees shall maintain on file with the Property Manager, Parks and Recreation, a

certificate of insurance certifying the coverage required under this Permit. 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 Permit by the City.

Permittees and all employers working under this Permit of Entry shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The Permittees shall maintain workers' compensation insurance coverage for the duration of this Permit. In the event the Permittees' workers compensation insurance coverage is due to expire during the term of this Permit, the Permittees shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Permittees shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

Permittees shall require all subcontractors working pursuant to this Permit to meet the same indemnification and insurance requirements (Sections 13 and 14 of this Permit) that are required of Permittees. All required Certificates of Insurance are attached to this Permit.

- 15) **Risk Management.** If a Permittee is a bureau of the City, then Sections 13 and 14 shall not apply to that Permittee since Parks and Permittee are both City of Portland bureaus and therefore covered by Risk Management. If there are any claims or damages arising from this project involving a Bureau Permittee or Parks, all responsibility for the damages shall be assigned by Risk Management to the Permittee. Any Permittees that are not City bureaus are not covered by Risk Management and are subject to Section 13: Indemnification and Section 14: Insurance.
- 16) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Park or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Park or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Park or surrounding Park property which constitutes a health hazard, as defined by the rules of the Health Division.
- 17) **Compliance with Laws.** In connection with its activities under this Permit, Permittees shall comply with all applicable federal, state and local laws and regulations. Permittees shall correct at Permittees' own expense any failure of compliance created by the fault or use of Permittees or their agents, employees or invitees. Permittees are responsible for determining and acquiring all other permits, licenses and approvals that may be required for this project. This Permit does not bind the City to take any particular course of action in regard to adjudicating other permit applications which are necessary to make the intended use of the Premises.

- 18) **Notice.** All notices under this Permit shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:

To PARKS: City of Portland
Parks and Recreation – Property Manager
1120 SW 5th Avenue, Room 1302
Portland, OR 97204-1933

To PERMITTEES:

Portland Public Schools
Attn: Tony Magliano
501 N Dixon Street
Portland Oregon 97227

CONTRACTOR
Precision Recreation Contractors
Attn: Ed Davis
6400 SE 101st Ave, Suite 204
Portland, Oregon 97266

- 19) **Entry by City.** Parks reserves the right to enter upon the Park for any purposes, including inspection. City inspections are for the sole benefit of the City and do not constitute or imply acceptance of any work as conforming with the requirements of this Permit. The presence or absence of a City inspector does not relieve Permittees from any requirement of this Permit, nor is the inspector authorized to change any term or requirement of this Permit without the written authorization of the Parks' Property Manager.
- 20) **Oregon Law and Forum.** This Permit of Entry shall be governed by the laws of the State of Oregon. Any suit or action arising under this Permit 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.
- 21) **Revocable Permit.** This Permit is revocable by PP&R at any time for any reason, including failure of Permittee to comply with the terms and conditions of this Permit. No expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against PP&R or the City, or be held to give the Permittees any vested or other right. In the event that the Permit is revoked, PP&R's obligation is limited to refund of prepaid use fees, if any, prorated for the remainder of the Permit term.
- 22) **Waiver of Breach.** The waiver by the City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the Permittees shall in no

way impair the right of the City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.

- 23) **Performance Guarantee.** If required at the sole discretion of PP&R, Permittees shall guarantee performance hereunder in one of the following forms as approved by the City Attorney: surety bond executed by a company authorized to transact business in the State of Oregon; irrevocable letter of credit; set-aside account; cash bond; or another form acceptable to the City Attorney. Permittees shall maintain said guarantee(s) in place throughout the term of the Permit, except that Permittees may reduce the penal amount of such guarantee(s) from time to time with the prior written consent of PP&R Property Manager, which consent shall not unreasonably be withheld or denied. At no time during the term of the Permit shall the amount of the Guarantee(s) under this Section be reduced to below 20% of the original guarantee(s).
- 24) **Termination.** Prior to the termination date provided for herein, or upon the Permit being revoked by PP&R, Permittees shall restore the Premises as provided for herein and shall cease all activities on the Premises. Improvements authorized hereunder shall not remain in the Park without written authorization from PP&R, which may be in the form of a written extension to this Permit or a separate agreement between PP&R and Permittees.
- 25) **No Liens.** Permittees shall keep the Premises and adjacent City property used in connection with this Permit free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Permittees.
- 26) **Entire Agreement.** This Permit contains the entire agreement between PP&R and the Permittees and supersedes all prior written or oral discussions or agreements.
- 27) **Illegality.** If any provision of this Permit 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 Permit, and this Permit shall remain in full force and effect without such invalid, illegal, or unenforceable provision.
- 28) **Assignability.** This Permit is not assignable.
- 29) **Fees.** There is a \$1000 application fee for a permit from Portland Parks & Recreation. This fee was waived due to in-kind value of services and equipment received.
- 30) **PP&R payment.** PP&R will pay \$10,000 to PPS upon the signature of both parties of this permit and approval by the Portland City Council to offset the cost of this project.

IN WITNESS WHEREOF, the parties have caused this Permit of Entry to be executed in triplicate on the dates shown below.

PERMITTEES

Portland Public Schools

Samuel A Magliano
 Print Name
[Signature]
 Signature

Director, Facilities
 Title
3/17/2010
 Date

Contractor

 Print Name

 Signature

 Title

 Date

Counterparts. The parties listed above may execute this instrument in two or more counterparts, and when taken together will constitute one in the same instrument.

CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION

 Zari Santner
 Director of Parks and Recreation

 Date

APPROVED AS TO FORM

 Chief Deputy City Attorney