

After recording return to:

### NON-EXCLUSIVE UTILITY TUNNEL FACILITY EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Portland, a municipal corporation of the State of Oregon, acting through its Bureau of Parks and Recreation, Grantor, in consideration of the sum of ONE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED AND Fifty (\$118,650.00) and no/100 Dollars, and other good and valuable consideration to it paid by the State of Oregon, acting by and through Portland State University, Grantee, does hereby grant unto Grantee, subject to the terms recited herein, nonexclusive perpetual easement rights (the Easement) to a strip of land lying within the Southeast quarter of Section 4, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at the centerline intersection of S.W. 9th Avenue and S.W. Hall Street; thence North 00°00'00" East, along the centerline of S.W. 9th Avenue a distance of 7.50 feet; thence South 90°00'00" East, parallel to the centerline of S.W. Hall Street a distance of 140.00 feet to the centerline of S.W. Park Avenue; thence South 00°00'00" West, along the centerline of S.W. Park Avenue a distance of 15.00 feet; thence North 90°00'00" West, parallel to the centerline of S.W. Hall Street a distance of 140.00 feet to the centerline of S.W. 9th Avenue; thence North 00°00'00" East, along the centerline of S.W. 9th Avenue a distance of 7.50 feet to the POINT OF BEGINNING.

This strip of land contains 2,100 square feet more or less, as shown on "Exhibit A" attached hereto and by this reference made a part hereof.

#### TERMS, CONDITIONS and COVENANTS

1. The Easement is granted to Grantee and its successors in title, agents, contractors, licensees, tenants and other invitees, in accordance with authority provided by City Council Ordinance No. \_\_\_\_\_ for all purposes necessary or incidental to Grantee's construction, operation, maintenance, use, modification, repair, or replacement of tunnel facilities for Grantee's utilities, including but not limited to the right to construct, operate, maintain, modify, repair, replace, improve and use said tunnel, tunnel supports, roof, floor, roadway, sidewalks, access ways, entrances and exists and all utility lines or wires within said tunnel (the Facilities), together with the right to operate equipment within said Facilities, and for any related uses as Grantee may now or hereafter deem appropriate. The Grantee shall have the sole duty to maintain the Facilities and associated access systems and appurtenances. All other rights are reserved to Grantor, its successors or assigns.
2. In consideration of the granting of this Easement, Grantee will pay Grantor the one-time fee of ONE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS

(\$118,650.00), to be delivered to Grantor along with easement documents executed by Grantee.

3. This Easement is subject to all prior existing rights or interests within the Easement area, as of the date of this Easement. Grantor makes no representations or warranties, express or implied, as to suitability, title, access, or quiet enjoyment of the Easement area, or any portion thereof.
4. The Easement shall run with the Grantor's land for the benefit of the public in perpetuity unless terminated or relocated as provided for herein. In the event of an abandonment of this Easement by Grantee or upon termination, Grantee shall promptly execute and deliver to Grantor documents sufficient to record and remove this Easement as an encumbrance against the property.
5. Grantee hereby acknowledges the paramount use of the South Park Blocks (Park) is for the public's use and enjoyment and hereby agrees to conduct all activities approved under this easement in strict accordance with the administrative rules adopted by the City of Portland for the Park, as those rules may change over time.
6. All initial construction work will be completed in strict accordance with the Bureau of Parks and Recreation (PPR) permit number 2009-29 (the Permit) and all other applicable provisions of law and regulation. In the event that the Permit is terminated in accordance with Section 18 of the Permit, this Easement will terminate and Grantee, in addition to other requirements under the Easement, will take all actions necessary to fully comply with Section 15 of this Easement.
7. The Facilities used by or under the control of the Grantee, shall be operated and maintained in accordance with all applicable federal, state, municipal and county laws, orders, rules, and regulations existing on the date of this Easement or enacted thereafter and shall assume all costs, expense, and responsibility in connection therewith. Grantee shall perform maintenance in a manner and at such frequency as necessary to keep the Grantee's Easement area in good order and safe condition.
8. In the event that Grantee should be found in breach of this Easement Agreement and said breach is not remedied by Grantee, after providing Grantee with reasonable notice in the case of an emergency, or thirty (30) days written notice in the case of a non-emergency, Grantor may make reasonable and necessary repairs to the Facilities used by or under the control of the Grantee and charge Grantee for the actual costs incurred. Notwithstanding the foregoing, if any such breach or failure (not of an emergency nature) is of a nature that cannot reasonably be corrected within thirty (30) days, such thirty day period shall be extended for a period reasonably necessary to complete performance if, within said thirty day period, performance has commenced and completion is diligently being pursued. In the event that Grantor is required to complete repairs to the Facilities used by or under its control, Grantee, its successors and assigns hereby indemnify, defend and hold harmless the Grantor, its 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 Grantor's repairs to the Facilities.

9. Except in the case of emergency repairs, maintenance work will be completed in accordance with the written approval of Grantor, which will not be unreasonably withheld. Requests to complete maintenance work will be submitted to Grantor in writing not less than Thirty (30) calendar days prior to the planned maintenance. At a minimum, written requests will address timing, public use impacts, access routes and other matters relevant to the goal of minimizing impacts to Grantor's property and the public's use and enjoyment of the park. Grantee, at its sole cost, will take reasonable measures to address Grantor's concerns, if any, and, if requested, will reimburse Grantor for reasonable administrative costs incurred in association with the maintenance work, including time spent reviewing the request for permission to conduct maintenance.
10. Unless otherwise agreed in writing, all areas affected by maintenance work will be restored to equivalent condition(s) as existed prior to the commencement of said maintenance work, with the restoration to be finished within seven (7) days of the maintenance work being completed. At the sole discretion of the Grantor, the Grantor may determine that it should do the restoration work, for which the Grantee shall reimburse the Grantor.

Grantee, its contractors and its subcontractors, if any, shall maintain public liability and property damage insurance that protects the Grantor 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 work under this Easement. 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 Grantor 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 Grantee and its contractors shall maintain continuous, uninterrupted coverage during any periods of construction, maintenance or repair of the Facilities in the Easement Area. 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 any work being performed, the Grantee or its contractors, if any, shall provide a new policy with the same coverage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Grantee and its contractors, if any.

11. Grantor acknowledges that Grantee is self insured and that currently such self insurance meets the requirements of this Section. Grantee's contractors may still be required to provide proof of insurance, acceptable to the City Attorney.

Required levels of insurance are subject to increase at the sole discretion of the City.

12. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, Grantee shall indemnify, defend and hold harmless the Grantor, its 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 Grantee's use or occupancy of the easement. In addition to the indemnity provided above, Grantee agrees to indemnify, defend and hold harmless Grantor, 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, by or on behalf of Grantee on or about the easement. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency. All indemnification provided for herein shall not include indemnification for negligence of Grantor Indemnities or for actions of Grantor Indemnities which would otherwise made the indemnification void pursuant to Oregon State Statutes, Oregon law or any other applicable law. Grantor shall indemnify, defend and hold Grantee harmless from and against any liability or expense, including reasonable attorneys' fees, incurred by Grantee in connection with the failure of Grantor to maintain or repair the Easement area as required by this Easement.
13. Grantee's privileges issued under this Easement shall not limit the Grantor's authority to grant additional rights, privileges or interests within the Easement area. Should the Grantor grant additional rights, privileges or interests within the Easement area to some other individual or entity, the Grantor will require any interference with Grantee's privileges to be minimized, and if damaged, will require that Grantee's Facilities be restored, at no expense to Grantee, to as good or better condition as they were in before any permitted construction occurred.
14. Grantee shall fully pay for all materials joined or affixed to and labor performed upon the Easement area, and shall pay all taxes, if any, including but not limited to leasehold interest taxes, assessments, use and occupancy taxes, charges for public utilities, excesses and levies, levied on the Easement area that arise out of easement rights granted herein.
15. Neither party shall be deemed to have waived any breach of this Easement except by an express waiver in writing. Waiver of any one breach of any provision of this Easement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Easement.
16. Upon abandonment or termination of this Easement for cause, Grantee shall, at Grantee's sole expense, remove the Facilities from the Easement area and restore the Easement area to equivalent condition(s) as they were in at the time of the construction of the Facilities and, if the Grantee fails to do so within a reasonable time after receipt of written notice, Grantor may do such work of removal and restoration at a reasonable cost and expense to the Grantee. In the event of the removal by the Grantor of the property of the Grantee and of the restoration of the Easement area as herein provided, the Grantor shall in no manner be liable to the Grantee for any reasonable damage sustained by the Grantee for or on account thereof and such removal and restoration shall in no manner prejudice or impair any right of action

for damages, or otherwise, that the Grantor may have against the Grantee. Grantor shall use reasonable and proper precautions to avoid damage to either the Easement area or Facilities. Grantor may, at its sole discretion, allow the Facilities to remain on the Easement area, in which event Grantee shall be deemed to have relinquished all right, title, and interest thereto and the Facilities shall be and become the property of Grantor.

17. Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, however, this consideration does not include damages resulting from any act or omission by the Grantee, its officers, agents and employees beyond or outside of those uses expressed herein, or damages arising from any negligence, and does not include damages, if any, to Grantor's remaining property, which may result from the acquisition or use of said property or property rights.
18. 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:

GRANTOR

Portland Parks and Recreation  
1120 SW 5<sup>th</sup> Ave, Suite 1302  
Portland, OR 97204-1933  
Attention: Property Manager

GRANTEE

Portland State University

IN WITNESS WHEREOF, the parties hereto execute this easement.

GRANTEE: STATE OF OREGON, PORTLAND STATE UNIVERSITY

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

Printed Name & Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ 2009, by  
\_\_\_\_\_(name), \_\_\_\_\_(title) of  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_ (state)

My Commission expires \_\_\_\_\_

GRANTOR: CITY OF PORTLAND, PARKS AND RECREATION BUREAU

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nick Fish, Commissioner in Charge

STATE OF OREGON  
County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_ 2010, by Nick  
Fish, Commissioner in Charge, City of Portland Bureau of Parks and Recreation.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

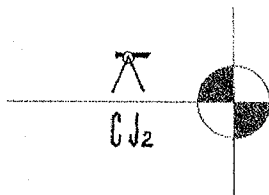
Approved as to form:

APPROVED AS TO FORM

City Attorney

*Julia Krueger*  
CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL



**CHASE, JONES & ASSOCIATES INC.**

FORMERLY BOOTH & WRIGHT

*Land Surveyors & Engineers Since 1885*

716 S.E. 11<sup>TH</sup> AVE PORTLAND, OR 97214  
TEL: 503-228-9844

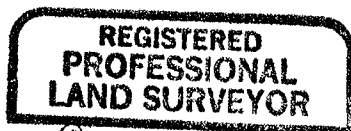
July 14, 2009  
#12655

### SOUTH TUNNEL EASEMENT

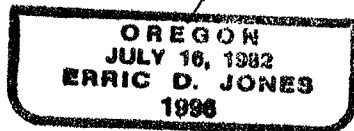
A strip of land lying within the Southeast quarter of Section 4, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at the centerline intersection of S.W. 9th Avenue and S.W. Hall Street; thence North 00°00'00" East, along the centerline of S.W. 9th Avenue a distance of 7.50 feet; thence South 90°00'00" East, parallel to the centerline of S.W. Hall Street a distance of 140.00 feet to the centerline of S.W. Park Avenue; thence South 00°00'00" West, along the centerline of S.W. Park Avenue a distance of 15.00 feet; thence North 90°00'00" West, parallel to the centerline of S.W. Hall Street a distance of 140.00 feet to the centerline of S.W. 9th Avenue; thence North 00°00'00" East, along the centerline of S.W. 9th Avenue a distance of 7.50 feet to the POINT OF BEGINNING.

This strip of land contains 2,100 square feet more or less.



*Eric D. Jones*



EF. 6-30-11

N 00°00'00" E SW 9TH AVENUE

(VACATED)

30.00'

N 00°00'00" E

BLOCK 16

N 90°00'00" W 80.00'

N 00°00'00" E

30.00'

SW PARK AVE

30.00'

S 90°00'00" E 140.00'

7.50' P.O.B.

SW HALL STREET

(VACATED)

7.50'

N 90°00'00" W 140.00'

(VACATED)

S 00°00'00" W

15.00'

30.00'

30.00'

30.00'

S 00°00'00" E

N 90°00'00" W 80.00'

BLOCK 17

N 00°00'00" E

30.00'

30.00'

REGISTERED PROFESSIONAL LAND SURVEYOR

*Eric D. Jones*

OREGON  
JULY 16, 1982  
ERRIC D. JONES  
1996

EXPIRES: 6-30-11



**PORTLAND STATE UNIVERSITY**

FOR  
SOUTH TUNNEL EASEMENT

SITUATED IN THE

S.E. 1/4 OF SECTION 4, T. 1 S., R. 1 E., W.M.  
CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON

BY:  
**CHASE, JONES & ASSOCIATES INC.**  
716 S. E. 11TH AVE. PORTLAND, OREGON 97214  
PHONE (503) 228-9844

PROJECT NO.: 12655  
1/4 SECTION: 3228

DATE: JULY 14, 2009  
SCALE: 1"=20'

183701