

## License Agreement

This License Agreement ("Agreement"), effective August 1, 2013, is between the City of Portland ("City"), by and through its Parks and Recreation Bureau ("PPR"), and Washington Park Transportation Management Association ("TMA"). The parties are collectively referred to as the "Parties" and individually as a "Party".

### Recitals

Whereas, PPR is the owner of Washington Park ("Park"), located in Portland, Oregon.

Whereas, TMA is the new nonprofit entity organized to implement the Washington Park Transportation Management Plan. TMA will provide coherent, coordinated, and professional management of access, transportation, and parking for the Park.

Whereas, TMA will establish new transportation management tools and programs to maximize safe, convenient access to and through the Park.

Whereas, TMA wishes to have use and access to the Park in addition to performing certain management responsibilities for the Park.

Whereas, the purpose of this Agreement, entered into pursuant to City Ordinance No. 185799 dated December 5, 2012 (the "Ordinance"), is to define the relationship between the Parties in regard to their respective purposes, responsibilities, and accountability as to the Park;

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 Parties agree as follows:

### Agreement

1. **Purpose.** PPR engages TMA to provide for the ongoing transportation related management and programming of the Park in accordance with the terms and conditions of this Agreement and the recitals above (the "Purpose").
2. **Appointment.** PPR hereby retains, engages, and appoints TMA as PPR's agent to perform certain management services related to the Purpose at the Park on its behalf, with said 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 Park, other than the right of use in accordance with this Agreement.
3. **Term.** This Agreement will have an initial term of five (5) years, with an automatic five (5) year renewal term if TMA is not in default under this Agreement at the time of renewal. If either Party wishes to terminate this Agreement effective on the expiration of the initial term, then that Party shall give the other Party 90 days' prior written notice of its intent to terminate.
4. **License to Use the Park.** PPR hereby grants TMA a non-exclusive license to use the Park to the extent necessary to fulfill its management responsibilities under this Agreement, with the understanding that said rights are contractual only, with no property rights being conveyed hereunder. Unless consistent with PPR policies and regulations pertaining to the Park, TMA shall not restrict access of the public to the Park, without the written consent of PPR.
5. **Acceptance of the Park.** Except as otherwise provided herein, TMA accepts the Park on an "as-is" basis, with no representations or warranties, express or implied, being made by PPR, its officers, agents or employees. Furthermore, TMA accepts its responsibilities under this Agreement subject to the valid existing agreements and rights of others, including existing permits, licenses, leases and easements.
6. **PPR Contributions to TMA.** PPR shall annually contribute \$375,000 ("Funding") to TMA for transportation-related services, programs and incentives in support of the Purpose pursuant to this Agreement and the Ordinance, provided that sufficient revenue is available from a pay-to-park system in the Park. PPR shall annually increase such Funding by the Consumer Price Index ("CPI").
  - 6.1 **Payment Schedule.** TMA will be paid in advance on or before the first day of each quarter, July 1, October 1, January 1, and April 1, with quarterly invoice from TMA. Payments will be sent to the TMA Executive Director, 4033 SW Canyon Road, Portland, OR 97221, or at such other address as TMA may notify PPR of in writing from time to time. TMA shall provide PPR all requested documents in a timely manner to facilitate payment.
7. **Revenue and Funding.** In consideration of services provided by TMA under this Agreement, TMA is authorized to use the Park and keep all revenues it derives from operation of or for the benefit of the Park, including revenues from donations, sponsorships, memberships, grants, fees, and sales. TMA shall use all such revenue

solely for transportation-related programs in and around The Park and improving the Park, or for investment purposes, with said investments, or interest therefrom to be used solely for the aforementioned purposes.

8. **TMA Rights and Obligations.** Pursuant to the Purpose, TMA will manage the Park and authorized uses of the Park in a professional and fully accountable manner, with transportation-related programs and services to include the following, at a minimum:

8.1 Scope of Services. In addition to the obligations stated elsewhere in this Agreement, TMA will perform the following services:

- a. Cooperate with PPR to initiate new pay-to-park system in the Park.
- b. Establish mutual and measureable goals for increasing employee, volunteer, and visitor use of non-private motor vehicle, alternative transportation mode options (i.e., transit, bike, walk, and rideshare).
- c. Optimize parking occupancy and measure performance of the parking supply, "triggering" specific management strategies, especially those that transition parking demand into alternative modes.
- d. Implement a routine program of meeting, coordination, and communication with surrounding neighborhoods.
- e. Initiate an enhanced Park shuttle or equivalent that services Hoyt Arboretum, Japanese Garden, Oregon Zoo, Portland Children's Museum and World Forestry Center (collectively, the "Venues"), the Park and nearby areas.
- f. Promote transit access programs and linkages between Park & Rides and the Park through light rail and public transportation options.
- g. Develop and conduct a coordinated transportation demand management ("TDM") survey and/or focus groups with members and visitors of the Venues to gauge perception of alternative modes use and viability and potential of alternative modes incentives and programs.
- h. Coordinate an Employee Commute Options Survey for the Venue's employees. The survey will evaluate each Venue and also provide data for a combined report.
- i. Conduct a visitor survey of visitors to the Venues and Park. Information collected will target mode choice, vehicle occupancy, and duration of stay.
- j. Develop and maintain a shared database to support the overall monitoring and reporting process for parking utilization, alternative mode use, visits/admissions to each Venue and membership totals. Database information will be translated into an annual access/parking and TDM progress report.
- k. Develop and launch a comprehensive TMA access webpage that is provided as a link in all partner websites.
- l. Coordinate all Park marketing, communications and planning related to access under a common brand that unifies strategies outlined above and is delivered, managed and coordinated through the TMA.
- m. Leverage new alternative funding resources to achieve Park program goals and objectives that support the Purpose.

8.2 Employees and Volunteers. TMA will hire, train, supervise and regularly evaluate all employees and volunteers required to carry out TMA's responsibilities provided for herein. PPR is willing to provide assistance and advice regarding volunteers, but, unless otherwise agreed in writing, all volunteers and employees working at the request or direction of TMA at the Park are volunteers or employees of TMA for insurance and liability purposes. In the event that PPR agrees in writing that volunteers are volunteers of PPR, then volunteers will sign PPR's waiver form for volunteers, participate in any required volunteer training, and be subject to all PPR rules and policies regarding volunteers, including submitting to a background check when applicable and required by PPR's Volunteer Coordinator. In all cases, TMA will report volunteer hours to PPR's Volunteer Coordinator upon request from PPR.

8.3 Board Membership. PPR's Director or his designee will be an ongoing director on TMA's Board of Directors ("Board").

8.4 Annual Plan. By September 15 of each year of this Agreement, TMA will provide PPR will a written annual plan describing the services and programs it intends to undertake on the Park in the following year. Such plan will not be implemented until it has been approved by PPR's Property Manager.

- 8.5 Operating and Programming Guidelines. As related to and in support of the Purpose, TMA operations in the Park will promote an image of quality and safety.
- 8.6 Third Party Users. TMA shall not rent out space in the Park to third parties.
- 8.7 Fiscal Matters. As related to and in support of the Purpose, TMA will:
- a. Develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of this Agreement, such controls to be consistent (in all material respects) with generally accepted accounting principles;
  - b. Prepare and approve an annual budget for management activities under this Agreement, with a copy of said budget to be provided to PPR;
  - c. Pay or arrange for payment of all costs that TMA is responsible for under this Agreement, including office rent, personnel, and contracting.
  - d. Make best efforts to raise funds for the benefit of the Park through special events, sponsorships, grants, gifts, bequests, and any and all other legal means available to TMA;
  - e. Provide PPR with regular reports prepared for TMA's Board and its committees related to the Park with reports to include, but not be limited to, regular year end financial statements.
  - f. Provide PPR with copies or reports and documents provided to the Oregon Department of Justice and/or Secretary of State, with such documents to include TMA's annual 990 form and Articles of Incorporation.
  - g. Assist PPR in efforts to secure City Council appropriations to address operating, maintenance and capital improvement needs of in and around the Park.
- 8.8 Capital Improvements. As related to and in support of the Purpose, TMA will:
- a. Make all improvements or alterations to the Park's structures or grounds in accordance with Section 12 below, which among other things requires the written authorization of PPR's Property Manager and PPR's review and approval of plans prepared at TMA's cost by licensed engineers or contractors.
  - b. Not make any temporary structural changes without the written consent of PPR's Zone Manager.
  - c. To the extent that funds are available, contribute to the cost of significant repairs and capital improvements deemed necessary by the Parties.
- 8.9 Safety and Security. TMA will:
- a. Provide an adequate level of security for protection of the Park and the general public during TMA's public events at the Park, including sufficient security or crowd control.
  - b. Promptly, after becoming aware of such conditions or practices, correct any unsafe condition of the Park for which TMA is responsible, as well as any unsafe practices by persons reasonably under TMA's control thereon.
  - c. Adhere to applicable provisions of the PPR Red Book, including timely reporting of damage or injury incidents on a PPR incident report form. The Red Book can be obtained by contacting the PPR Property Manager. TMA shall cooperate fully with PPR in the investigation of any damage to persons or property occurring on or about the Park;
  - d. As appropriate, consult with PPR as to safety or maintenance concerns associated with structural components or the grounds of the Park.
- 8.10 Contracting. TMA 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 programming, operation, use, security and maintenance of the Park. TMA shall use reasonable efforts to make purchases from various suppliers of materials or services of adequate quality and utility. TMA shall obtain competitive bids for purchases over \$5,000, except when impractical due to an emergency. All contractors must meet all PPR insurance requirements and will be required to indemnify the Parties as to claims related to the contracted work.
- 8.11 Hazardous Materials. TMA shall not dispose at, on or about the Park 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 Park and the environment from accidental spills and releases. TMA, 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 Park, whether affecting surface water or groundwater, air, the land or the subsurface environment.

- 8.12 Records and Inspection. As related to and in support of the Purpose, TMA will maintain a set of all financial, vendor, employee and operating records (collectively, the "Records"). At any time during the Term, PPR may, after reasonable prior written notice to TMA, to inspect and audit the Records at reasonable times and during normal business hours; provided, however, PPR shall use its best efforts to not cause any unreasonable disruptions in TMA operations in connection with such inspections.
- 8.13 Media and Publications. In addition to specific consultation requirements provided for elsewhere herein, TMA will consult with PPR on other matters concerning the Park, when reasonably necessary to do so. This consultation includes consulting with PPR regarding press releases or information that directly concerns the Park. As appropriate, TMA will acknowledge its relationship with PPR, by including the official logo of PPR and its slogan "Healthy Parks Healthy Portland", or other slogans as developed from time to time, on signage and in publications, media presentations or other presentations that specifically refer to the Park. All materials and communications to be provided by TMA will be submitted to PPR's Property Manager.
- 8.14 Taxes and Assessments. TMA will pay any and all applicable federal, state or local taxes assessed against TMA or against distributions to TMA under this Agreement. If Licensee is a tax exempt entity, it is responsible for taking all measures necessary to receive an exemption. If applicable, TMA will provide evidence of its City of Portland Business License, which can be obtained online at <http://www.portlandonline.com/omf/index.cfm?c=29320>.
- 8.15 Compliance with Law. TMA shall at all times comply with all applicable federal, state and local laws, rules, regulations, ordinances, statutes, decisions, licensing and permitting requirements, and agreements.
9. **PPR Retained Responsibilities, Rights and Authorities**. PPR hereby reserves all rights and authorities to itself not specifically granted to TMA under this Agreement. At a minimum, PPR retains the following responsibilities, rights and authorities:
- a. Right of Entry. PPR may enter the Park for any purpose, including evaluation of TMA services, with the understanding that when exercising said right PPR will make a reasonable effort to minimize disturbances to activities being managed by TMA. It is expressly understood by the Parties that PPR, 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 TMA.
  - b. PPR Use of the Park. PPR may use the Park at any time. TMA activities may use the Park so long as it does not unreasonably conflict with PPR's activities.
  - c. Third Party Uses. All third party requests to use the Park will be directed to PPR's Property Manager. PPR retains the right to authorize any uses that do not unreasonably interfere with TMA's use of the Park and all revenue generated by such uses will be retained by PPR. TMA may not permit any third party use of the Park without the written consent of PPR's Property Manager.
  - d. PPR Responsibilities for the Park. Subject to available funding, PPR shall be responsible for all maintenance and repair of the Park. PPR, in its sole discretion will make decisions regarding repairs in accordance with its standards. PPR will not be responsible for any repairs or maintenance made necessary by negligent or inappropriate uses of the Park by TMA or others reasonably under TMA's control. Unless mutually agreed upon in writing, PPR will have no responsibility whatsoever for TMA's improvements made to the Park.
10. **TMA Responsibilities for the Park during TMA Events**. During TMA's events and/or use of the Park, TMA shall be responsible, at its sole cost, to keep the area of the Park it uses in a clean and safe condition in compliance with all applicable federal, state, or local laws, rule, and regulations. All furniture, equipment and signage owned by TMA shall be maintained by TMA.
11. **Transfer and Assignment**. Rights granted under this Agreement are personal to TMA, and may not be transferred, sold, conveyed, or otherwise hypothecated without the prior express written consent of PPR, which consent may be granted or denied in its sole discretion.
12. **Damage to the Park**. If the Park is damaged as a result of the acts or omissions of TMA or its officers, employees, agents or contractors acting under TMA's direction and/or control, TMA will promptly notify PPR and shall, at PPR's option and in cooperation with TMA's insurance carrier, if a claim is involved, either repair or replace the affected property at TMA's expense or shall reimburse PPR for its reasonable costs of repairing or

replacing the affected property.

13. **TMA Improvements.** TMA shall not make any alterations or improvements to the Park without first obtaining the written consent of PPR's Property Manager. Any authorized alterations, additions or improvements by TMA shall be made by TMA at TMA's own expense in an expeditious and good workmanlike manner, and shall be maintained by TMA. Upon expiration or termination of this License, and at TMA's own expense, TMA shall remove all alterations, additions or improvements made by TMA and designated by PPR to be removed by written notice given not less than 30 days prior to such expiration, and shall repair any damages caused by the removal.
14. **No Liens.** TMA shall keep the Park, and all PPR 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 TMA. If any lien is filed against any portion of the Park or other PPR property used in connection with this Agreement, as a result of the acts or omissions of TMA, or of TMA's employees, agents, or contractors, TMA shall discharge, bond or otherwise secure the same to PPR's reasonable satisfaction on or before 30 days after TMA has notice that the lien has been filed. If TMA fails to discharge, bond or secure any lien before expiration of such 30-day period, then, in addition to any other right or remedy of PPR, PPR may, at its election, upon five (5) days' prior written notice to TMA, 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. TMA shall pay on demand any amount so paid by PPR for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of PPR incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith.
15. **Indemnification.**
  - 15.1 Indemnification. TMA shall indemnify, defend, and hold harmless PPR, its directors, officers and employees 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 PPR, its directors, officers and/or employees, and/or the Park to the extent that such Losses are the result of, arise from, or are in connection with any act or omission related to TMA's or its officer's, employee's and/or agent's use, improvement or management of the Park or its performance under this Agreement.
  - 15.2 Exclusion. There is hereby expressly excluded from the scope of the foregoing indemnity any matter that results from the negligence or willful misconduct of PPR and/or its directors, employees, agents, or contractors.
  - 15.3 Contractors and Other Authorized Users. TMA shall include sufficient indemnification language in its contracts and other written authorizations indemnifying PPR from any and all claims related to the contract work or authorized uses.
  - 15.4 Defense of Claims. If any action or proceeding is brought against PPR, its directors, officers or employees, which action or proceeding is based upon a claim for which TMA is obligated to indemnify PPR hereunder, TMA shall, upon notice from PPR, at TMA's expense, defend such action or proceeding through counsel reasonably acceptable to PPR.
16. **Insurance.** TMA shall maintain public liability and property damage insurance that protects TMA and PPR and its officers and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from TMA's work under this Agreement. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$2,000,000 for each occurrence, and \$2,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by TMA. Upon 60 days written notice, City may increase required coverage limits as required by the City's Office of Risk Management. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds PPR and its officers 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 will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer will be liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

TMA and all employers working under this Agreement 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. TMA shall maintain workers' compensation insurance coverage for the duration of this Agreement.

The insurance shall provide that the insurance shall not terminate or be canceled without 30 days written notice first being given to PPR's Property Manager. TMA shall maintain continuous, uninterrupted coverage for the duration of this Agreement. TMA shall maintain on file with PPR's Property Manager a certificate of insurance and additional insured endorsement certifying the coverage required under this Agreement. The adequacy of the insurance will be subject to the approval of the City Attorney. Failure to maintain liability insurance will be cause for immediate termination of this Agreement by PPR.

## **17. Default; Remedies; Force Majeure.**

17.1 Events of Default. The following events will constitute events of default by TMA:

- a. If TMA fails to perform any covenant in this Agreement on or before 30 days after receipt of written notice from PPR specifying the failure, provided that if such failure cannot, with due diligence, be cured within the 30-day period, TMA will not be deemed to be in default if TMA begins to cure the failure within such 30-day period and thereafter diligently prosecutes such cure to completion;
- b. The bankruptcy or insolvency of TMA or if a receiver or trustee is appointed to take charge of any of the assets of TMA in or on the Park and such receiver or trustee is not removed on or before 30 days after the date of appointment, or in the event of judicial sale of the personal property in or on the Park upon judgment against agreements thereunder; or
- c. If TMA 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.

17.2 Remedies for Default. Upon the occurrence of an event of default under this Section 17, PPR will have the following rights and remedies, as well as any other remedies available at law or in equity:

- a. PPR may suspend TMA's use of the Park until the default is cured.
- b. If the default is not cured, PPR may terminate this Agreement by written notice to TMA. Such termination will be effective immediately if public health, safety or welfare is at risk. Otherwise such termination will be effective 30 days after the date of the written notice.

17.3 Exclusion of Certain Damages. Neither Party will 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 15 above.

17.4 Force Majeure.

- a. Neither Party will be in default hereunder if the performance of any act required of it hereunder is prevented or delayed by reason of events, contingencies or causes beyond its reasonable control and without its fault, including fire, flood, earthquakes, lightning, unusually severe weather, acts of God, acts of any governmental authority, war, riot, accidents, embargoes, strikes, labor disputes, shortage of labor, fuel, raw materials, or machinery, or technical or yield failure, affecting such Party or its suppliers or subcontractors.
- b. Notwithstanding to the contrary herein, if the Park is rendered unusable by an event described in this Section 17.4 and if such condition continues for more than 60 consecutive days, or if PPR notifies TMA that it is impractical or uneconomic to restore any physical damage that is responsible for the interruption of service, either Party may terminate this Agreement by written notice to the other Party.

## **18. Termination.**

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

18.2 Termination Process. Upon expiration of this Agreement term or early termination, TMA shall deliver all Park related keys to PPR. All repairs for which TMA is responsible shall be completed prior to such surrender. All TMA property shall be removed immediately upon termination, and a failure to do so will be considered abandonment of such property. Should TMA fail to effect the removals or make repairs, PPR may do so and charge the cost to TMA together with late charges as provided by this Agreement from the date of the expenditure. TMA will be responsible for all costs and damages to PPR as a result of TMA's failure to surrender the Park in accordance with this Agreement, and this subsection will survive the termination of this Agreement.

18.3 Existing Contracts at Time of Termination. Any contracts, leases or permits of TMA, which remain valid as

of the termination date of this Agreement, will, upon PPR's written request, be transferred to PPR for ongoing administration, with the associated third parties notified of said transfer in writing by TMA.

18.4 Ownership upon Termination or Expiration. Upon the expiration or termination of this Agreement, all fixtures and improvements left on the Park will become the property of PPR. After satisfaction of Licensee's obligations outstanding as of the date of expiration or termination, TMA shall return all money remaining in TMA's possession or accounts received from PPR to PPR and such monies shall be used exclusively for operating, programming, maintaining, repairing and improving the Park.

## 19. Miscellaneous.

19.1 PPR Consent. Unless otherwise stated, whenever consent, approval or direction by PPR 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.

19.2 Coordination and Cooperation. The Parties will take cooperative actions, as reasonably necessary, to fulfill the intent of this Agreement. Additionally, the Parties will meet at least once annually to discuss management and budget issues related to the Park.

19.3 Third-Party Use of the Park. Except as provided for in this Agreement, TMA may not lease, license, transfer to, or swap, exchange with, or otherwise allow the use of the Park by third parties. Notwithstanding any such arrangements, no such third party will have any rights under this Agreement, either as a party hereto or a third party beneficiary.

19.4 Signage. TMA may not display or erect any temporary or permanent signs at the Park without the advanced, written approval of PPR's Property Manager.

19.5 Assignment.

- a. PPR may assign, at its sole discretion, this Agreement to any successor entity having responsibility for PPR management and/or operation of the Park; and the assignee shall be responsible for the performance of all terms and conditions of this Agreement applicable to PPR.
- b. TMA shall not assign this Agreement without the prior written consent of PPR, which consent may be withheld at PPR's sole discretion, and any purported assignment without such consent will be void.

19.6 Notices. All notices under this Agreement shall be in writing and will be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and will 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 will be effective on the date delivery is attempted. Until such time as a Party notifies the other in writing of a change of address, notices should be addressed as follows:

To PPR: Portland Parks and Recreation Bureau  
1120 SW 5<sup>th</sup> Avenue, Suite 1302  
Portland, OR 97024  
Attn: Property Manager

Telephone: (503) 823-5229  
Facsimile: (503) 823-5570

With a copy to:

City of Portland  
1221 SW 4<sup>th</sup> Avenue, Room 430  
Portland, OR 97204  
Attn: Harry Auerbach

Telephone: (503) 823-4047  
Facsimile: (503) 823-3089

To TMA: Washington Park Transportation Management Association  
4033 SW Canyon Road  
Portland, OR 97221  
Attn: Executive Director

Telephone: (503)  
Facsimile: (503)

- 19.7 Governing Law. This Agreement is governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- 19.8 Forum. Any litigation between the Parties arising under this Agreement, or out of work performed under this Agreement, will 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.
- 19.9 Disputes. The Parties will make a good faith effort to resolve disputes in a reasonable manner and will proceed through the following courses of action prior to resorting to litigation: Party to Party negotiations; administrative appeals; and mediation and/or non-binding arbitration.
- 19.10 Construction and Interpretation of Agreement. Should any provision of this Agreement require judicial interpretation, the court interpreting or considering same shall not apply the presumption that the terms hereof will 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. The Parties equally participated in the preparation of this Agreement and each Party had adequate opportunity to consult with legal counsel before the execution of this Agreement.
- 19.11 Entire Agreement. This Agreement constitutes the Parties' entire agreement and supersedes any prior or contemporaneous agreements or negotiations, whether written or oral, between the Parties, regarding the subject matter herein.
- 19.12 Further Documents. The Parties will reasonably cooperate in the execution of any documents necessary to protect a Party's rights under this Agreement.
- 19.13 Illegality. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement and this Agreement will remain in full force and effect without such invalid, illegal or unenforceable provision.
- 19.14 Waiver. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by the Parties. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made on one occasion is effective only in that instance and only for the purpose stated. A waiver once given will not be construed as a waiver on any future occasion or against any other person.
- 19.15 The Rights to Gather and Be Heard. TMA will not take any action which will be considered a denial of the public's constitutional right to gather and be heard in the common areas of the Park.
- 19.16 Independent Contractors. The Parties' relationship under this Agreement is that of independent contractors. Neither Party will be deemed to be an employee, agent, partner nor legal representative of the other for any purpose. Neither party has any right, power or authority to create any obligation or responsibility on behalf of the other party.
- 19.17 Successors; Time of Essence; Counterparts; Amendments. This Agreement will benefit and bind the Parties and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which will be an original, but all of which will constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by the Parties. The Director of Parks is authorized to execute amendments to this Agreement, so long as such amendments do not result in significant, unbudgeted financial obligations for PPR.

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19.18 Interpretation. The descriptive headings of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation. In this Agreement, where appropriate, any reference to the singular includes the plural, and plural the singular, and to any particular gender includes the feminine, masculine and neuter genders. The term "including" means "including without limitation". As used herein, "and/or" is defined to be inclusive and not exclusive. Accordingly, "A, B and/or C" means any and all of: A; B; C; A and B; A and C; B and C; and A, B and C.

In witness whereof, the Parties have caused their duly authorized representatives to execute this Agreement in triplicate.

**Portland Park and Recreation Bureau**

By: *Mike Abbate*  
Name: MIKE ABBATE  
Title: DIRECTOR  
Date: 8-7-13

**Washington Park Transportation Management Association**

By: *David J. Malcolm*  
Name: David J. Malcolm  
Title: Director  
Date: 8/7/13

APPROVED AS TO FORM  
Approved as to form  
By: *Janeen H. Van Dyke*  
Name: JANEEN H. VAN DYKE  
Title: City Attorney  
Date: 8/6/13

