

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 214

Approving a License, Right-Of-Entry, and Joint Management Agreement between the First Congregational Church of Portland, and the City of Portland and the Metropolitan Exposition-Recreation Commission.

The Metropolitan Exposition-Recreation Commission finds:

1. On November 1, 1984, the First Congregational Church and the City of Portland entered into a Ground Lease whereby the First Congregational Church leased and demised to the City of Portland certain real property adjoining the alleyway.

2. The parties each use the alleyway for the purpose of ingress and egress, utilities, construction, maintenance and repair of improvements on property adjoining the alleyway.

3. The alleyway was excluded from the property leased to the City, although its use for the purposes set forth under the attached Agreement by the City and MERC has been approved by FCC.


4. The City's and MERC's use of the alleyway at all times prior to the execution of the Agreement has been at all times without any claim of ownership or control therefore to the exclusion of FCC, but rather has only been and is with the expressed permission of FCC.

5. The City has by Agreement dated December 19, 1989, assigned, transferred and conferred to MERC all authority and responsibility for the operation and management of the of the premises and facilities subject to the Ground Lease.

BE IT THEREFORE RESOLVED that the Commission approves the attached License, Right-Of-Entry, and Joint Management Agreement and authorizes the Commission's Chairman and Secretary/Treasurer to sign the Agreement on behalf of the Metropolitan Exposition-Recreation Commission.


Passed by the Commission on February 10, 1993.


Chair


Secretary/Treasurer

APPROVED AS TO FORM
Daniel B. Cooper, General Counsel

BY:



Mark B. Williams
Senior Assistant Counsel

LICENSE, RIGHT-OF-ENTRY, AND
JOINT MANAGEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of February, 1993, by and between FIRST CONGREGATIONAL CHURCH OF PORTLAND (hereinafter referred to as "FCC"), an Oregon nonprofit corporation, and the CITY OF PORTLAND, an Oregon municipal corporation (hereinafter referred to as "CITY"), and the METROPOLITAN EXPOSITION-RECREATION COMMISSION, an Oregon municipal commission, (hereinafter referred to as "MERC") organized pursuant to ORS chapter 268 and the Metropolitan Service District Code Chapter 6.01;

WITNESSETH:

WHEREAS, FCC and CITY have entered into a Ground Lease dated November 1, 1984, a Memorandum of which was recorded in the Deed Records of Multnomah County, Oregon, in Book 1817, Page 1605, and an Amended Memorandum of Lease and Amendment of Lease was recorded on August 12, 1986, in Book 1928, Page 992, of the Deed Records of Multnomah County, Oregon, whereby FCC leased and demised to CITY certain real property adjoining the alleyway (hereinafter "the Ground Lease"); and

WHEREAS, the parties hereto each use the alleyway for the purpose of ingress and egress, utilities, construction, maintenance and repair of improvements on property adjoining the alleyway;

WHEREAS, the alleyway was excluded from the property leased to the CITY, although its use for the purposes set forth herein by the CITY and MERC has been approved by FCC;

WHEREAS, the CITY's and MERC's use of the alleyway at all times prior to the execution of this Agreement has been at all times without any claim of ownership or control thereof to the exclusion of FCC, but rather has only been and is with the express permission of FCC; and

WHEREAS, the CITY has by Agreement dated December 19, 1989, assigned, transferred and conferred to MERC all authority and responsibility for the operation and management of the premises and facilities subject to the Ground Lease;

NOW, THEREFORE, in consideration of the premises and the performance by the parties of the terms and conditions of the Ground Lease, and other valuable consideration, the parties agree as follows:

FCC will and hereby does grant to the CITY and MERC a license to use the alleyway during the term of the Ground Lease upon the following conditions:

1. The license hereby granted is not exclusive to the CITY and MERC, but shall entitle FCC to access to and free and unrestricted use of the alleyway at its convenience;
2. CITY and MERC shall be responsible for maintenance and repair of the alleyway, and of any gate(s) and paved areas therein;
3. FCC and CITY and MERC each agree not to use the alleyway in a manner disruptive to the other's use thereof;
4. CITY and MERC specifically and not by way of limitation agree to refrain from any use of the alleyway for any purposes other than ingress and egress, utilities, construction, maintenance, or repair of the improvements adjoining the alleyway;
5. CITY and MERC shall be responsible for and shall cause to be paid any and all taxes, assessments, insurance, or any other charge or cost associated with the use or possessory rights of the alley by the CITY and MERC;
6. CITY and MERC shall hold harmless and indemnify FCC from any and all claims of third parties arising from the use or possession of the alleyway by the CITY or MERC. FCC shall hold harmless and indemnify CITY and MERC from any and all claims of third parties arising from the use or possession of the alleyway by FCC.

The license and right-of-way described above shall continue until the termination of said Ground Lease (as defined in Sections 2 and 4 of the Ground Lease) or any extension of the term thereof. Any default of this Agreement by the CITY and MERC shall be governed by Section 14.1.2 of the Ground Lease, and shall entitle FCC only to the remedies set forth for such a default in section 14.2.1 of the Ground Lease. Any default of this Agreement by FCC shall be governed by section 15.12.2 of the Ground Lease, and shall entitle the CITY and MERC only to the remedies set forth for such a default in section 15.13.1 of the Ground Lease.

It is acknowledged by the CITY, MERC and FCC that execution of this Agreement by the CITY is an accomodation to and at the request of FCC, as the CITY no longer operates or manages the property and facilities subject to the Ground Lease. It is the intent of this Agreement to acknowledge MERC's control of the property and facilities, but not to release the CITY from any of its obligations or deprive it of any of its rights, presently existing under the Ground Lease.

This Agreement shall bind and inure to the benefit of the immediate parties hereto, and their respective successors in interest, and may not be assigned by any party without the express written consent of FCC, which consent will not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this instrument on the year and day first written above; if by a corporate party, such party has caused its name to be signed and seal affixed by its officers, duly authorized thereto by resolution of its Board of Directors or other governing body.

CITY OF PORTLAND

FIRST CONGREGATIONAL CHURCH
OF PORTLAND

By: Vera Katz
Vera Katz, Mayor

By: [Signature]
Chairman of the Board of
Trustees

By: Barbara Clark
Barbara Clark, Auditor

By: [Signature]
Church Clerk

APPROVED AS TO FORM:

By: Frank Hudson, Deputy
JEFFREY L. ROGERS
City Attorney

METROPOLITAN EXPOSITION-RECREATION COMMISSION

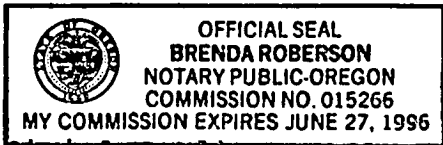
By: [Signature]
Chairman

By: [Signature]
Secretary/Treasurer

STATE OF OREGON)
) ss.
County of Multnomah)

On _____, 1993, personally appeared Vera Katz and Barbara Clark who being duly sworn, each for him or her and not one for the other, did say that the former is the Mayor and that the latter is the Auditor of the City of Portland, a municipal corporation, and the seal affixed to the foregoing instrument (if any) is the corporate seal of said municipal corporation, and that said instrument was signed and sealed in behalf of the City of Portland by authority of its City Council, and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:



(Official Seal)

Brenda Roberson
Notary Public for Oregon
My Commission Expires: 6/27/96

STATE OF OREGON)
) ss.
County of Multnomah)

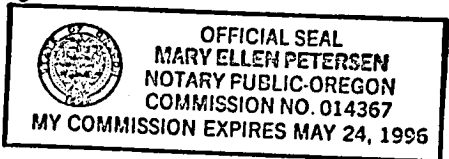
On 1-22, 1993, personally appeared Ted Miller and Jay Formick, who being duly sworn, each for him or her and not one for the other, did say that the former is the Chairman of the Board of Trustees and that the latter is the Church Clerk of the First Congregational Church of Portland, a corporation, and that the seal affixed to the foregoing instrument (if any) is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

Mary Ellen Petersen
Notary Public for Oregon
My Commission Expires: 5/24/96

(Official Seal)

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STATE OF OREGON)
) ss.
County of Multnomah)

On _____, 1993, personally appeared _____
and _____, who being duly sworn, each for him or her
and not one for the other, did say that the former is the Chair
of the Metropolitan Exposition-Recreation Commission and that the
latter is the Secretary/Treasurer of the Metropolitan Exposition-
Recreation Commission, a municipal commission, and that the seal
affixed to the foregoing instrument (if any) is the corporate
seal of said commission, and that said instrument was signed and
sealed in behalf of said commission by authority of its governing
body, and each of them acknowledged said instrument to be its
voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: / /

(Official Seal)




METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: February 5, 1993

To: Jeff Blosser, Acting General Manager, Metro ERC

From: Mark B. Williams, Senior Assistant Counsel 

Regarding: **FIRST CONGREGATIONAL CHURCH ALLEY - RIGHT OF ENTRY AGREEMENT**
Our file: 5.§8.C

As you may recall, I have been negotiating with the First Congregational Church for some time regarding a Right of Entry Agreement for the alleyway between the Church and the PCPA.

The alleyway, while not expressly mentioned in the ground lease, is used by both the PCPA and the Church. The Church's lawyers' became concerned that continued use by the PCPA of the alleyway without an agreement to do so might result in the PCPA claiming ownership of the alleyway by adverse possession. At one point, in what seemed to be an overreaction, the Church threatened to lock the PCPA out of the alleyway, when the City balked at becoming a party to a right-of-entry agreement.

Following subsequent negotiations, the FCC, the City, and I have agreed on the terms of a right-of-entry agreement for the alleyway. The principle features of the agreement are as follows:

1. Metro ERC and the City disclaim any intent at acquiring fee ownership of the alley;
2. Metro ERC is responsible for any maintenance of the alley; (no extensive maintenance is expected);
3. The Church and Metro ERC each agree not to use the alleyway in a manner disruptive to the other's use of it; and
4. The right-of-entry is tied to, and subject to the terms of, the existing ground lease between the City and FCC that governs the PCPA property.

Jeff Blosser
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The Commission needs to formally approve this agreement for it to become effective. I recommend that it be approved. This should be placed on the Commission's agenda for approval or disapproval by resolution.

Please feel free to contact me if you have any questions.

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cc: Dominic Buffetta
Robert Freedman