

The Commons Park Block Usage Agreement

This agreement is made this _____ day of _____, 2013, by and between the City of Medford, an Oregon municipal corporation, hereinafter known as “CITY” and Rogue Valley Growers and Crafters Market, an Oregon not-for-profit organization, hereinafter known as “RVGCM”.

The agreement outlines the terms and conditions of park usage of CITY-owned or maintained properties by RVGCM. A rendering of park usage areas is set forth in Exhibit A.

1. TERM AND TERMINATION

- A. This agreement will run for a five-year period from May 1, 2013 through Nov. 30, 2017.
- B. This agreement may be terminated by the CITY with 30 days written notice if RVGCM ceases to exist, fails to pay usage fees, or for cause. “Cause” means any failure to perform or fulfill obligations or requirements of this agreement, or violation of terms. RVGCM may terminate the agreement with 30 days written notice.
- C. Upon conclusion of each RVGCM operating season, the parties will review and possibly revise the agreement. The CITY reserves the right to amend the contract, with 14 days written notice.

2. INTERESTS OF PARTIES

- A. RVGCM receives priority usage of The Commons Park Block No. 1 on Saturdays, 7 a.m. a.m.-2 p.m., May 1 through November 30.
- B. This agreement shall not be construed to create any leasehold interest in or by any entity. All vending areas shall be and at all times remain a public park and recreation facility for the CITY, and any benefits to RVGCM shall be incidental to this primary purpose. Park Block amenities shall be available for public use or for CITY allocation when not scheduled with operations sanctioned by RVGCM.
- C. Indemnity. RVGCM agrees that it will be responsible for any damage or trespass by its members to or upon adjacent property or injury thereto and any and all other liability or damages resulting from, in connection with, or otherwise arising out of RVGCM operations. RVGCM will defend, indemnify, and hold harmless CITY, its officers, agents, and employees from and against any and all liability, including but not limited to claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and costs of actions including, but not limited to, attorneys’ fees for trial and on appeal, and for preparation of same arising out of RVGCM’s operations and actions associated with this agreement. Provided, however, that RVGCM shall not be required to indemnify CITY against liability for damages arising out of death or bodily injury to persons or damage to property caused solely by the negligence of CITY.

D. RVGCM will abide by CITY park use policies, including regulations stipulated in the Park Block User Guide (Exhibit C).

3. USAGE FEES

A. CITY shall assess RVGCM an \$85 weekly park usage fee to reimburse the direct costs incurred by the CITY related to RVGCM operations and park impact, including staff time, utilities and supplies.

1. Fees for the preceding month are due in full on the first business day of the month.
2. Usage fees may be prorated if a market day is canceled due to weather or unanticipated circumstances.
3. The CITY may adjust the weekly fee with 14 days written notice to ensure the CITY is fully reimbursed for direct costs associated with RVGCM operations.
4. RVGCM may request an itemized breakdown of cost assessments with 14 days written notice.

4. INSURANCE

A. RVGCM is responsible for meeting CITY insurance requirements on an annual basis at levels prescribed by CITY's Risk Manager. RVGCM shall obtain at its own expense and maintain continuously in effect during the term of this Agreement the following minimum insurance:

1. Commercial General Liability Insurance on an "occurrence" policy form covering Bodily Injury and Property Damage, Products/Completed Operations, Personal & Advertising Injury, and blanket Contractual Liability. Such insurance shall be primary and non-contributory, and provide limits of at least \$1,000,000 per Occurrence and a General Aggregate of at least \$2,000,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an Additional Insured by endorsement.
2. Commercial Automobile Liability Insurance for Bodily Injury and Property Damage covering owned, non-owned, rented, and hired autos. Such insurance shall provide a combined single limit per accident of at least \$1,000,000.
3. Workers Compensation Insurance meeting statutory requirements of Oregon Workers Compensation Law must be provided by RVGCM for any subject workers, as well as Employers Liability Insurance with limit of at least \$500,000.

If RVGCM is statutorily exempt from the requirement to provide Workers Compensation Insurance, RVGCM shall complete, sign, and submit CITY's form for

“Declaration of Exemption from Oregon Statutory Workers Compensation” in lieu of Workers Compensations Insurance.

- B. RVGCM shall submit to CITY certificate of insurance for all policies listed above at time of this Agreement, and at each subsequent insurance renewal for the life of this Agreement. Certificate must include Additional Insured Endorsement for General Liability Insurance. Certificate Holder (and additional insured for General Liability) shall be shown as: City of Medford, 411 West 8th Street, Medford, OR 97501.
- C. RVGCM is responsible to assure that CITY receives a required thirty (30) days written notice prior to cancellation of, material change to, exhaustion of aggregate limits of, or intent not to renew any insurance policy for coverage required in this Agreement. Ten (10) days will be accepted for cancellation due to non-payment of premium. RVGCM shall itself provide the written notice in the event that its insurance companies will not or do not provide such notice. Failure to maintain proper insurance and/or provide timely notification of a change in coverage is grounds for potential immediate termination of this contract.
- D. Notwithstanding insurance requirements stated or any modifications made thereto, in no case shall the presence or absence of any insurance coverage, or any insurance policy limit, provision, term, or condition reduce the obligations of the RVGCM for liability granted generally by law or specifically in the terms of this Agreement. In no case shall CITY be responsible for any amount of RVGCM self-insurance, or any retention, deductible, or coinsurance amount required by RVGCM’s insurance policies.

5. MEETINGS

- A. CITY and RVGCM representatives shall meet periodically to review usage needs and responsibilities described in this agreement. Proposed meeting dates are April 15, June 15, August 15 and Nov. 15 or within ten (10) days of the prescribed date, at a mutually agreeable time and location.
- B. Upon conclusion of the market season, the CITY and RVGCM shall review the agreement and the RVGCM Park Block vendor information and guidelines handbook (Exhibit B).

6. OPERATIONAL CONSIDERATIONS

- A. RVGCM and its members shall possess all necessary licenses and permits and pay all fees required to operate and shall comply with all federal, state, and local laws and regulations applicable to their respective operations. Licenses include but are not necessarily limited to:
 - City of Medford Business License
 - County Health Permit

- B. All equipment operated by RVGCM members must meet local, state or national safety codes.
- C. RVGCM is responsible for removing and disposing trash related to market operations, including set-up and take-down.
- D. RVGCM shall not allow non-members or other organizations to use designated operational areas depicted in Exhibit A without approval from CITY Parks and Recreation management.
- E. Signage displayed by RVGCM vendors may not be attached to park structures and amenities, trees and poles.
 - 1. Permanent markings or signs are not permitted. Temporary markings or signs require prior CITY approval. RVGCM is responsible for costs associated with installation or removal of temporary markings.
- F. RVGCM is responsible for mitigating trip hazards stemming from the use of extension cords, tools and equipment related to market operations.
- G. CITY is not responsible for lost, stolen or damaged RVGCM property or equipment left on site or in pre-approved storage areas.
- H. Any damage occurring to CITY owned property must be reported immediately via the most reasonable method.
- I. RVGCM and CITY management shall determine mutually agreeable parking, staging, loading and unloading areas and procedures for vendors before, during and after market normal operational hours.
- J. CITY shall perform routine maintenance according to the usual standards of public recreation facilities and subject to budgeted funds.
 - 1. CITY staff is responsible for set-up and removal of traffic control barricades.

7. CORRESPONDENCE

Written notice shall be deemed to have been received by the respective parties when mailed by certified mail to the following addresses:

Medford Parks and Recreation Dept.
701 N. Columbus Ave.
Medford OR 97501

Rogue Valley Growers & Crafters Market
P.O. Box 4041
Medford OR 97501

IN WITNESS WHEREOF, the CITY and RVGCM have caused this agreement to be executed for and on their behalf by their duly authorized officer(s) on the day and year first above written.

CITY OF MEDFORD, OREGON

ROGUE VALLEY
GROWERS & CRAFTERS
MARKET

By: _____

By: _____

Title _____

Title _____