

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2013-163

Approving Request for Temporary Use Permit for a Portion of Multnomah County's Wapato Facility.

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County owns the Wapato Facility located at 14355 N. Bybee Lake Court, Portland, Oregon.
- b. Portland Police Bureau (PPB) has made a request for a five month use permit for a portion of the Wapato Facility for Tuesday and Wednesday classroom and tactical training.
- c. The County Facilities and Property management program (FPM) finds that the requested three (3) rooms to be used as classrooms and secured corridors and stairwells to be used for tactical training within a portion of the Wapato Facility is suitable for this use and is not needed for County use and thus surplus for the time frame of this permit.
- d. Under county Administrative procedure FAC-3, Section V, Board approval is necessary for any property use permits of County owned real property for which the term is longer than 90-days.
- e. A temporary permit has been negotiated with the City of Portland, on behalf of the PPB, the Permittee, for a term to commence January 7, 2014 through May 28, 2014; a copy of said permit is attached and identified as Exhibit 1.
- f. The public interest is best served by the approval of the short term use permit of the Wapato Facility.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the Permit, a copy of which is attached to this Resolution as Exhibit 1. The County Chair is authorized to execute the permit substantially in the form set forth in Exhibit 1.
2. The County Chair is further authorized to execute any amendments to the permit without further Board action.

ADOPTED this 5th day of December, 2013.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Marissa Madrigal, Acting Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Attorney

**MULTNOMAH COUNTY TEMPORARY PERMIT
FOR USE OF PROPERTY**

RECITALS

- A. Multnomah County, a political subdivision of the State of Oregon ("County") is the owner of certain real property requested for use by the **City of Portland Police Bureau** ("Permittee")
- B. The Permittee is requesting the right to use certain areas located within a County owned security facility known as the **Wapato Facility** located at **14355 N. Bybee Lake Court, Portland, Oregon 97203**; such areas are more particularly identified below and shall be collectively referred to as the "Permit Property".
- C. Permittee is to use the Permit Property for **Tuesday and Wednesday daytime classroom training and tactical training conducted by Portland Police Bureau of Police officers and parking during such use.**
- D. The parties stipulate that the Permit Property is made available under this permit "AS IS, WHERE IS"; with no representations, warranties, guarantees of any kind (express or otherwise) that the Permit Property is useable, suitable or appropriate for any use or specifically for any of the proposed uses under this Permit.
- E. Permittee or its authorized representatives have examined the Permit Property and are satisfied and accept the Permit Property "AS IS, WHERE IS" and assume full responsibility for the use of the Permit Property and conducting the proposed activities at the site. County or its officers, directors, agents and employees shall not be liable for any latent defect at the Permit Property.
- F. The County finds the public interest is best served by granting Permittee a Permit to use the Permit Property on a nonexclusive basis on the terms and conditions state herein.

THE PARTIES AGREE AS FOLLOWS:

- 1. Recitals Are Contractual. The above listed Recitals are contractual and are incorporated by this reference.
- 2. Grant of Permit. Permittee is granted authority to use the Permit Property on an **exclusive** basis during the period of time that begins on Tuesday at 7AM and continues through to Wednesday at 6PM, every week during the term of this Permit. This grant is for the purposes described in this Permit, and for no other purposes and no other days and times. Permittee shall not be allowed to store clothing, materials, gear, equipment, vehicles or items of any kind on the Permit Property or at the Wapato Facility, except for the daytime parking use during the Tuesday-Wednesday period. The Permit Property shall consist of the following areas within the Wapato Facility:
 - a. **Staff Entrance and Vestibule on North Side of building – first floor**
 - b. **Roll Call Room 1203 – first floor**
 - c. **Secure Meeting Room 1320 – first floor**
 - d. **East/West Secure Corridor – first floor**
 - e. **North/South Secure Corridor – first floor**
 - f. **Stairwells S101 & S102 – first floor to third floor**
 - g. **Conference Room 2202 – second floor**
 - h. **East/West Secure Corridor – second floor**
 - i. **East/West Secure Corridor – third floor**

3. Term. The term of this Permit shall commence **January 7, 2014 and shall continue through May 28, 2014.** Either party may unilaterally terminate this Permit by providing the other a written notice Fifteen (15) days before the proposed date.
4. Scope of Permit. This Permit authorizes the nonexclusive use of the Permit Property for that purpose identified in Recital C and no other. **Permittee must comply with all of the following:**
- a. Access by County personnel shall always be allowed with twenty-four (24) hour notice to Permittee.
 - b. Permittee shall be solely responsible for all maintenance and operational costs that result from Permittee's use of the Permit Property.
 - c. Permittee shall comply with all applicable federal, state and local laws and regulations.
 - d. Notwithstanding any other provision herein, the County may immediately enter the Permit Property in a fire, earthquake or other emergency situation; without prior notice to Permittee.
5. Maintenance/Restoration of County's Property on Termination; Taxes and Permits. Permittee shall be solely responsible, at its cost, for the maintenance of the Permit Property as may be reasonably necessary due to Permittee's use of the property to maintain the same in a safe and suitable condition for the purpose set forth herein. The County shall be under no obligation to maintain or repair the Permit Property should damage occur during the term of this permit that is not attributable to Permittee's use, e.g. from other causes or third party's actions, any decision to do such maintenance or repair shall be in the County's sole discretion. During the term of this Permit, Permittee shall be solely responsible for all taxes, fees, or other assessments levied against county's Property due to Permittee's use. Permittee shall be solely responsible for obtaining any approvals necessary prior to use the Permit Property for the uses allowed herein.
6. Damage to County's Property. Any damage to County's Property resulting from the use of the Permit Property by Permittee shall be immediately reported to County in writing. The County shall review the report and may direct the repairs be completed by Permittee at Permittee's sole expense and to County's sole satisfaction which shall not be unreasonably withheld. County reserves the right to undertake the repairs through its own or a contractor's services, Permittee shall be responsible for the costs of any such repairs.
7. Indemnity and Insurance. a. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Permittee agrees to indemnify, to defend and to hold harmless County, its officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, and costs of any nature whatsoever arising from or relating to the use of the Permit Property at their own expense.
- b Permittee is self-insured for liability, Permittee shall provide a letter to County stating that fact.
- c. In addition to the indemnity provided above, subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Permittee agrees to indemnify, to defend and to hold harmless County, 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 substances or hazardous materials as those terms are defined in Section 8. Damage, cost liabilities and expenses shall include any amounts claimed to be owned by any regulating and administering agency.

8. Hazardous Substances or Hazardous Materials.

a. No hazardous substances or hazardous materials shall be stored, used, manufactured or disposed of within the Permit Property except in compliance with all federal, state and local laws applicable thereto. Upon the expiration or termination of this Permit, Permittee shall remove immediately all materials from the Permit Property.

b. For purposes of this Permit, the terms *Hazardous Substances* or *Hazardous Materials* means and includes all hazardous and toxic substances, waste, or materials, any pollutant or contaminant, including, without limitation, lead, solvents, petroleum or petroleum products, PCBs, asbestos, asbestos-containing materials, and raw materials that are included under or regulated by any Environmental Laws. The terms *Hazardous Substances* or *Hazardous Materials* includes without limitation, any material or substance that is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material," or "waste" under any federal, state, or local law. For purposes of this Permit, the term *Environmental Laws* means and includes all federal, state, and local statutes, ordinances, regulations, and rules presently in force or hereafter enacted relating to environmental quality, contamination, and clean-up of Hazardous Substances. References in this Permit to *Laws* are deemed to include Environmental Laws.

c. Permittee may use on the Permit Property only those hazardous substances or hazardous materials typically used in the prudent and safe operation of the activities allowed under Section 4 of this Permit, provided Permittee's use of such substances or materials is done in a manner in compliance with all applicable federal, state and local laws thereto. Upon the expiration or termination of this Permit, Permittee shall remove immediately all hazardous substances or hazardous materials from the Permit Property.

9. Miscellaneous. All exhibits referenced in this Permit are incorporated herein. Any amendment or alteration to this Permit shall only be in writing and shall be signed by each party to the Permit. This Permit shall be governed by and construed in accordance with the laws and decisions of the State of Oregon. In the event of litigation, exclusive venue shall be in Multnomah County, Oregon. If any term or provision of this permit or application thereof to any person or circumstance shall to any extend be invalid or unenforceable, the remainder of this Permit and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Permit shall be valid and enforceable to the fullest extent permitted by law.

10. No recordation. This Permit shall not be recorded.

11. Notice. Notices under this Permit shall be deemed to be properly served if delivered in writing via facsimile, e-mail, or by certified mail with return receipt requested to the following addresses or such other places as the parties reasonably designate:

To COUNTY:

Carla Bangert
Multnomah County Facilities
401 N. Dixon Street
Portland, OR 97229
503.988.4128
carla.j.bangert@multco.us

To PERMITTEE: Ann Krohn
Portland Police Bureau
Management Services Division
1111 SW 2nd Avenue
Portland, OR 97204
503.793-8642
ann.krohn@portlandoregon.gov

With copy to: Janene Edgerton
City of Portland Facilities Services
1120 SW 5th Avenue, Room 1204
Portland, OR 97204
503.823.6018
janene.edgerton@portlandoregon.gov

12. Emergency Contact. Emergency contact for Permittee is SGT. MATTHEW STIMMEL, who can be contacted by phone at 503.545-3573. County emergency contact is MARK GUSTAFSON, 503.209.3205.
13. Oregon Law and Forum. The laws of the State of Oregon shall govern this Permit. Any litigation arising under this Permit shall be in Multnomah County Circuit Court. Permittee shall conform to all applicable laws and regulations of any public authority affecting the Permit property and shall correct at Permittee's own expense any failure of compliance created by the fault or use of Permittee or its agents, employees or invitees.
14. Default.
 - a. Each of the following is an Event of Default by Permittee under this Permit:
 1. Failure by Permittee to pay the Fee or any other charge due under this Permit within five (5) days after receipt of written notice from County that the same is then due.
 2. Failure by Permittee to comply with any other obligation of this Permit within ten (10) days following written notice from County specifying the failure (except in the case of emergency, in which event County will be required to give only such notice as is reasonable under the circumstances); however, if the nature of Permittee's default requires more than ten (10) days to correct, Permittee will not be deemed in default of this Permit as long as Permittee commences the cure of the failure within the ten (10) day period and thereafter proceeds in good faith and with all diligence to complete the cure as soon as possible but in no event later than thirty (30) days after the date of County's notice of default.
 3. Permittee's abandonment of the Permit Property.

15. Remedies for Default.

- a. Upon the occurrence of an Event of Default described in Section 14, County may exercise the following remedies as well as any other remedies at law or in equity, by statute or as set forth in this Permit:
 1. County may terminate this Permit, reserving all rights to damages resulting from Permittee's breach. Whether or not County terminates this Permit, County may retake possession of the Permit Property by any legal means including self-help and will not be deemed a surrender or waiver of County's right to damages.

2. Permittee will be liable to County for all damages caused by Permittee's default.

16. Fees. The fee for use of the Permit Property as set forth herein shall be **THIRTY-TWO HUNDRED (\$3,200.00) DOLLARS PER MONTH**, payable in advance on or before the 1st of each month for which the Permit Property is so used the duration of the Permit, unless terminated early as provided under Section 3.

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

Permittee: City of Portland

By: 

Bryant Enge, Director
Internal Business Services

Date: 11/26/13

Reviewed:

By: 

CITY ATTORNEY

Board of County Commissioners for
Multnomah County, Oregon

By: _____

Marissa Madrigal, Acting Chair

Date: _____

Reviewed: _____

Matthew O. Ryan
Assistant County Attorney