

**AGREEMENT BETWEEN THE TRUSTEES OF TRUST FUNDS OF THE CITY OF
PORTSMOUTH AND THE PRESCOTT PARK ARTS FESTIVAL**

This agreement is entered into between the Trustees of Trust Funds (hereinafter "Trustees") of the City of Portsmouth, with a principal place of business at Water Street, Portsmouth, New Hampshire and a mailing address at P.O. Box 1103, Portsmouth New Hampshire 03802-1103 and the Prescott Park Arts Festival (hereinafter "PPAF") with a principal place of business at Portsmouth, New Hampshire and a mailing address at P.O. Box 4370, Portsmouth New Hampshire 03802-4370.

WHEREAS, the Trustees, operating under the authority of the Portsmouth City Council, administer the operation of Prescott Park (hereinafter "the Park") located on Marcy Street in the City of Portsmouth; and

WHEREAS the Trustees desire to have PPAF direct artistic and cultural events in the Park on behalf of the Trustees and the City; and

WHEREAS, the Trustees desire to engage the services of PPAF for the purposes contained herein; and

WHEREAS, PPAF desires to perform the services described herein;

NOW THEN the Trustees and PPAF agree as follows:

PERFORMANCES

1. During the term of this agreement PPAF shall be the sole entity provided with authority from the Trustees to schedule performances or cultural events within the Park and on the stage located within the Park.
2. At least 14 (fourteen) days prior to the scheduling of any performance or cultural event in the Park or on the stage, PPAF shall provide the Trustees and the Park Supervisor with written notice of the event to be scheduled, and the Trustees and the Park Supervisor shall have the complete authority to determine whether or not such performance shall occur. PPAF shall provide one (1) notice of the combined series of events collectively called "The Prescott Park Arts Festival", which notice shall be provided to the Trustees and the Park

Supervisor at least ninety (90) days before the commencement of the first event. PPAF shall not advertise for any event until that event has been approved by the Trustees and the Park Supervisor .

3. It is anticipated by this agreement that PPAF shall schedule the following types of performances and cultural events:
 - a. Musical concerts
 - b. Theater performances
 - c. Dance performances
 - d. Theater classes
 - e. Up to three food festivals located within the Park as approved by the Trustees and the Park Supervisor
 - f. Movies
 - g. Such other performances or uses of the stage as may be authorized by the Trustees and the Park Supervisor.

THE STAGE

4. PPAF understands that the stage located in the Park is not a forum for public expression, but rather is strictly limited in use to artistic performances and cultural presentations as authorized by the Trustees and the Park Supervisor.
5. As such the stage may not be used by any party for any purpose other than as expressly authorized by the Trustees and the Park Supervisor.
6. No advertising or signage of any kind shall be placed on or near the stage, or the outside perimeter of the Park (lawns, fences et cetera) without specific authorization by the Trustees and the Park Supervisor.
7. All stage set construction shall be done in accordance with applicable municipal codes (e.g., electrical) and be subject to inspection by municipal inspectors.
8. At all times PPAF shall maintain the stage site in a clean and safe condition and subsequent to the end of "The Prescott Park Arts Festival", PPAF shall remove all site construction, remove all trailers, tents and leave the stage site in a clean and safe condition, and all the foregoing to be done all in a timely manner.
9. All vehicle loading and unloading, including materials, equipment, costumes, musicians instruments et cetera will be done to the rear of the stage from the parking lot, unless specific approval is given by the Park Superintendent.
10. PPAF shall maintain clear access in the vicinity of the stage during all performances sufficient for police vehicle or ambulance use.

THE PARK

11. PPAF recognizes the policy that the Park is to be maintained at all times as a place where members of the public may enjoy its use without charge. Except as expressly authorized by the Trustees and the Park Supervisor no money may be collected from anyone for any purpose within the Park.
12. Notwithstanding the foregoing, the Trustees authorize PPAF to solicit donations from the public. However, such donations must be collected in a manner, by signage or otherwise, which clearly informs the donors that their contribution is voluntary. Public access to and through the Park should not be hindered or restricted by gates, ropes or obstructions of any kind which prevent the public from utilizing the normal pathways through the Park or the fenced perimeter of the Park.
13. PPAF is not authorized to allow the placement of any signs or advertising anywhere within the Park without the prior express written approval of the Trustees and the Park Supervisor.
14. PPAF shall use best efforts to assist Park personnel in enforcing the rules of the Park, (e.g., no alcohol, no dogs, no outside vendors or soliciting, and no public expression outside of the public forum areas).

CONCESSION STAND

15. The Trustees authorize PPAF to operate the concession stand within the Park and to sell food and merchandise at that location. PPAF shall have the authority to determine what items are to be sold at that concession stand and what amount is to be charged for the sale of such items. All concession stand revenues shall remain with PPAF.
16. PPAF shall at all times during its events maintain the concession stand and the area surrounding it in a clean and safe condition and shall keep the bathrooms in a clean condition with bathroom items stocked. The concession stand and bathrooms shall be secured when not in use. The obligations under this provision shall apply whenever the concession stand is utilized by either PPAF or any entity operating under the authority of PPAF.
17. The concession stand shall be operated under such terms and conditions as may be established by the City Council, City Manager or the Trustees.

PROPERTY TO BE USED AND OCCUPIED BY PPAF

18. In the performance of its responsibilities under this agreement, PPAF shall have the right, in conjunction with the Trustees, to use and occupy the following properties;
- a. The Concession Stand
 - b. The Stage (as limited by this agreement)
 - c. The third floor of the Shaw Building, which may be used for the storage of items related to artistic performances.
 - d. The second floor offices located in the Shaw Building used by PPAF at the time that this agreement is entered.
 - e. Four trailers behind the main stage for storage purposes in support of artistic performances which might occur on the stage.
 - f. Temporary structures in the vicinity of the stage in order to accommodate dressing rooms, the storage of materials and storage of equipment related to performances which may occur on stage.
 - g. A trailer behind the concession stand for food storage purposes.
 - h. The first and second floor of the Sheafe Warehouse.
 - i. The sound building.
 - j. The newly constructed support building scheduled for occupancy in June 2012 (see building permit #: 2011-00820).
 - k. The 4' x 4' storage building.
 - l. The existing deck of approximately 20' x 100' located next to the merchandise which may be used by PPAF for paid reserved seating purposes.

All property used or occupied by PPAF shall be kept in a clean, neat and sanitary condition at all times.

19. Each year the Trustees and PPAF shall conduct good faith negotiations to address shared park operating costs. For purposes of this provision the term park operating costs shall mean:
- a. Direct occupancy costs paid by Trustees, such as utilities, repairs and maintenance attributable to PPAF.
 - b. Indirect costs paid by Trustees as a result of crowds brought to the park by PPAF, such as consumable supplies, repairs and maintenance to park property and utility consumption.
 - c. Park staff time required to support PPAF activities.

OTHER PPAF ACTIVITIES

20. Beyond artistic performance, PPAF is specifically authorized to perform the following functions at such dates, times and place as may be approved by the Trustees and the Park Supervisor:
- a. PPAF may conduct a juried art show on the ground floor of the Sheafe Warehouse in conjunction with the New Hampshire Art Association.
 - b. PPAF may conduct a one day art exhibit outdoors in the Park.
 - c. PPAF may conduct a Chili Festival, which may include a participation fee.
 - d. PPAF may conduct a Chowder Festival, which may include a participation fee.
 - e. In conjunction with the Friends of the South End (FOSE) PPAF may conduct the so-called "Fairy House Tours".

TERM

21. The term of this agreement shall commence upon its completed execution and be automatically renewed, on a year to year basis, unless amended by the parties. Either party may terminate this agreement without cause by providing sixty (60) days notice to the other party.

INSURANCE AND FINANCES

22. PPAF shall maintain at all times during the term of this agreement general liability insurance in a coverage amount of at least \$2,000,000.00 per occurrence naming the City of Portsmouth and the Trustees of Trust Funds as additional insureds, certificates indicating the existence of such insurance shall be kept on file at all times in the office of the City Attorney of the City of Portsmouth.
23. Financial Books and records of PPAF shall be open for review at all times by the Trustees upon reasonable notice to PPAF.
24. At any time during the term of this agreement on request of the Trustees PPAF shall provide the Trustees with a full accounting of all income and expense, including donations, sponsorships, and income of any form received by PPAF for the prior calendar year.
25. PPAF shall adopt a cash handling policy meeting the approval of the Trustees, which policy shall be in place prior to the commencement of the summer of 2009 performances, and which policy shall not be modified or amended without the written approval of the Trustees.

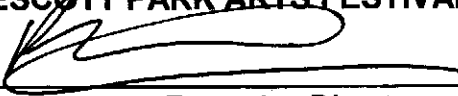
26. At the close of the performance season, PPAF shall provide the Trustees with complete annual financial statements reflecting all financial activities of PPAF.

MISCELLANEOUS

27. PPAF recognizes that the Trustees and Park management schedule use of the Park for weddings, dock reservations, public forum area events and Four Tree Island events and PPAF shall make whatever reasonable accommodations are necessary to allow those scheduled items to occur without interference.
28. Neither this agreement nor any of the authority granted under it shall be transferrable or assignable in any way by PPAF.
29. This agreement may be terminated by the Trustees at any time it is determined by the Trustees in the exercise of reasonable judgment that PPAF has operated in breach of its terms.
30. This agreement describes the entire relationship between the Trustees, the Park Supervisor and PPAF. PPAF shall have no authority to conduct any activity not specifically authorized herein.
31. In interpretation of this agreement the parties recognize that the Trustees and the Park Supervisor authorize PPAF to operate during the currently scheduled season in a manner generally consistent with the operation of PPAF in past seasons.
32. PPAF understands that the Park Supervisor represents the Trustees in all matters connected with the Park and with the administration of this agreement and that he/she speaks with the authority of the Trustees on these matters. To facilitate communication the Executive Director or his/her designee of PPAF and the Park Supervisor shall hold weekly meetings during the summer season of PPAF and other meetings to be scheduled on the call of the Park Supervisor for the purpose of addressing any issues of concern to either PPAF or the Park Supervisor.
33. Every year, prior to the commencement of summer activities by PPAF, there shall be a meeting held between the full Board of Directors of PPAF and the Trustees of Trust Funds for the purpose of considering all matters of mutual concern.

PRESCOTT PARK ARTS FESTIVAL

Dated: 07/23/12



Ben Anderson, Executive Director

Dated: 07/23/12

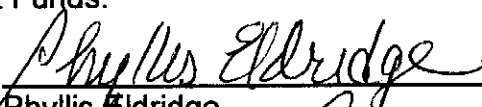


Sandi Hennequin, President

As authorized by the PPAF Board of Directors on
June 19, 2012.

Accepted by the Trustees of Trust Funds.

Dated: 8-7-12



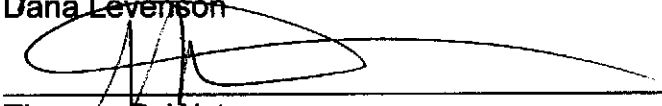
Phyllis Eldridge

Dated: 8/8/12



Dana Levenson

Dated: 8/8/2012



Thomas R. Watson

Approved by vote of the City Council on
9/4/12, 2012.