

## **LICENSE TO CONSTRUCT IMPROVEMENTS TO SKATEPARK PROPERTY**

This License (this "License") is made and entered into on **October 22, 2019** (the "Commencement Date"), by and between the City of Newport, an Oregon municipal corporation ("City"), and the Dreamland Skateparks LLC, an Oregon limited liability company ("Dreamland").

### **RECITALS**

A. City owns certain real property known as Sam Moore Parkway (the "Park"). The Park includes over 5.7 acres of area and includes public recreational amenities including a natural area, walking trail, play structure, picnic area, and skateboard and bicycle terrain park. The existing skateboard and bicycle terrain park is located adjacent to NW High Street between NW 8<sup>th</sup> Street and NW 6<sup>th</sup> Street (the "Skatepark"). The Skatepark is shown on the attached Exhibit A.

B. Dreamland is in the business of designing and building skateboard terrain parks and has performed work at the Skatepark in the past.

C. City would like to make improvements to the Skatepark but is without the budgetary means to accomplish the improvements in the near future. Dreamland is willing to complete certain improvements to the Skatepark after first obtaining donations from the community. The work that Dreamland is willing to complete, if it obtains the appropriate donations, is set out in Exhibit B (the "Work"). No direct or indirect City funding will be used for the Work.

D. City is willing to grant Dreamland permission to construct the Work at the Skatepark if Dreamland is able to secure the donations for the full price of the Work. If the Dreamland is able to obtain the donations and complete the Work, City will accept the Work and maintain the Work as part of the larger Park property.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, including (without limitation) the terms, conditions and covenants contained herein, the receipt and sufficiency of which are both hereby acknowledged and accepted by the parties hereto, the parties agree as follows:

1. License Granted. City hereby grants to Dreamland access to and authority to occupy the Skatepark property for the purpose of planning and constructing the Work. Dreamland's license is not exclusive, and Dreamland shall work to limit its impact on the Skatepark and surrounding Park during the Term. Any closure of the Skatepark for construction shall be reasonably limited in duration and scope.

2. Term. Starting on the Commencement Date, Dreamland will be authorized to access and occupy the Skatepark for the purpose identified herein. If Dreamland obtains sufficient

donations and proceeds with the Work, the Work shall be carried out with all reasonable and deliberate speed, with the goal of minimizing impacts on the Skatepark's use and minimizing impacts on surrounding Park property. The License Term shall expire **December 31, 2019**, at which time the Work shall either be completed or Dreamland shall have informed City that it was unable to obtain the necessary funding for the Work.

3. Permitted Use and Hazardous Substances. Dreamland will use and occupy the Skatepark during the Term only for the development and construction of the Work in compliance with all applicable laws. Dreamland will not use or store Hazardous Substances on any part of the Skatepark or Park property, except in compliance with all laws, regulations, and requirements of all federal, state, and municipal governments, and then only if required to complete the Work. Dreamland shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of or otherwise released on the Skatepark. The term "Hazardous Substance" as used herein means any hazardous, toxic, or dangerous substance, waste, or material listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302).

4. Maintenance and Repair Obligations. Throughout the Term, Dreamland shall maintain its use of the Skatepark and construction of the Work in a neat condition, free of trash and debris. City will be responsible for maintenance of the Skatepark outside the parameters of the Work.

5. Improvements and Alterations by Dreamland. Dreamland, subject to City's written approval, may construct any improvement, install any equipment, and make any alterations, additions or improvements to the Skatepark which Dreamland considers appropriate and necessary to locating and constructing the Work thereupon. Should Dreamland wish to proceed with the Work, prior to any construction, alteration, or changes upon the Skatepark, Dreamland shall submit to City final plans and specifications, and shall not begin any construction until Dreamland has received City's written approval with respect to the same. City agrees to cooperate and work in good faith with Dreamland in accomplishing all phases of the Work.

6. Indemnity. Throughout the Term, and thereafter relating to the Work, Dreamland shall indemnify, defend and hold City harmless from and against any and all claims, actions, liability, costs, expenses and damages of every kind and nature, including reasonable attorney's fees, arising from: (i) Dreamland's use and occupancy of the Skatepark; (ii) any breach or default by Dreamland under the provisions of the License; or (iii) from any act, omission, or negligence on or about the Skatepark by Dreamland, its agents, contractors, employees, licensees, customers or business invitees (collectively, the "Dreamland Parties"); provided, however that this indemnity shall not cover any act, omission or negligence on or about the Skatepark by any party that is not Dreamland or another of the Dreamland Parties, including (without limitation) the City or its agents, contractors, employees, licensees, customers or business invitees. In case of any action or proceeding brought against City by reason of such claim, Dreamland, at City's option, shall defend such action or proceeding by counsel reasonably satisfactory to City.

7. Insurance.

7.1 General Liability Insurance. Throughout the Term, Dreamland shall continuously maintain at its expense commercial general liability and property damage insurance with

the combined single limit of not less than two million dollars (\$2,000,000). Such insurance shall provide coverage for bodily injury, death or property damage in connection with Dreamland's use or occupancy of the Skatepark and the Work contemplated by this License.

7.2 **Personal Property Insurance.** Throughout the Term, Dreamland shall insure its personal property, equipment and trade fixtures located at the Skatepark.

8. **Prohibition of Transfer.** Dreamland shall not assign or transfer its rights or obligations under this License, encumber the Skatepark, or allow use of the Skatepark by a third party for any purpose other than otherwise allowed hereunder, without the prior written consent of City.

9. **Title to the Work.** This License does not evidence a transfer of any property rights from City to Dreamland related to the Skatepark or Park property. On the expiration or earlier termination of this License, title to the Work and all improvements associated with the Work will pass to, vest in, and belong to City without further action of either party and without cost or charge to City.

10. **Default.** Failure of either City or Dreamland to comply with any term or condition or fulfill any obligation of this License within thirty (30) days after written notice by the complaining party specifying the nature of the default with reasonable particularity, shall be deemed a default. If the default is in such a nature that it cannot be completely remedied within the thirty (30) day period, the responsible party shall be considered to be in compliance with this agreement if it begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11. **Remedies on Default.** In the event of a default, this License may be terminated at the option of either party by notice in writing to the other party. The notice may be given at any time after the grace period for default given under Paragraph 10, entitled "Default." The foregoing remedies shall be in addition to, and shall not exclude, any other remedy available to City or Dreamland under applicable law.

12. **Notices.** Any notice regarding this License by Dreamland to City or by City to Dreamland must be served by certified or registered mail, postage prepaid, addressed to the other at the address given below or at such other address as either may designate by written notice.

Dreamland:  
Dreamland Skateparks LLC  
2150 SE Hwy 101  
Lincoln City, OR 97367

CITY:  
City of Newport  
~~P.O. Box 83~~ 169 SW COAST HIGHWAY  
Newport, OR 97365

13. **Termination.** Upon termination of this License for any reason, Dreamland shall surrender its occupancy of the Skatepark in good condition. Alterations constructed by Dreamland with permission from City shall not be removed or restored to the original condition, unless the terms of permission for alterations so require. All maintenance for which Dreamland is responsible shall be completed prior to surrender of the Skatepark.

14. Non-Waiver. Waiver by either party of strict performance of any provision of this License shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. Acceptance by either party of performance following a default will not be deemed a waiver of such default. No waiver by either party of a default will constitute a waiver of any other default.


15. Entire Agreement: Counterparts. This License contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Dreamland and City mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this License. This License may be executed in any number of counterparts, including by electronic signatures, each of which will constitute an original, but all of which will constitute one License.

16. Inspection. City shall have the right to enter upon Skatepark for the purpose of inspecting Dreamland' compliance with this License or to inspect the condition of the Skatepark.

17. Arbitration. All claims, counter-claims, disputes or other matters, including the interpretation, enforcement, rescission or reformation of this License shall be subject to binding arbitration in conformance with ORS Chapter 36, at the request of either party. If the parties cannot agree upon the selection of an arbitrator within ten (10) days of receipt of notice from the other party that a claim or dispute cannot be resolved, and arbitration is elected, then either party may apply to the presiding judge of the Circuit Court of Lincoln County for appointment of an arbitrator who is familiar with the types of issues under dispute. Any procedural rules that are not provided by the ORS Chapter 36 shall be as determined by mutual agreement of the parties, or by the arbitrator if the parties cannot agree.

18. Applicable Law. This License will be governed by, and construed in accordance with, the laws of the state of Oregon.

Dreamland Skateparks LLC:

By: 

Name: Mark A. Scott

Title: Manager

City of Newport:

By:   
Name: ~~Sponcer R. Nebel~~ MARGARET M HAWKER  
Title: City Manager  
ACTING

**EXHIBIT A**  
**Skatepark Map**

# Skatepark



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**Exhibit B**  
**The Work**



**PARK ENHANCEMENT DESCRIPTION**

- Pool Block Extension
- Mini Ramp
- Pocket behind Small Bowl
- Street Features
- “Doorway” at Entrance
- Manual Pad

**FUTURE ADDITIONS**

- Park Benches
- Walking Path





