

**GRANT AGREEMENT NO.**

This GRANT AGREEMENT RELATED TO IMPROVEMENTS TO ROOSEVELT HIGH SCHOOL SPORTS FIELDS AND ALLOCATION OF FUNDS TO ASSIST IN THIS INITIATIVE ("Agreement"), effective August 11, 2010 ("Effective Date") is between **THE CITY OF PORTLAND, OREGON**, a municipal corporation ("CITY" OR "GRANTOR"), and the THEODORE ROOSEVELT ATHLETICS COMPLEX (TRAC) PROJECT OF ROOSEVELT HIGH SCHOOL BOOSTER CLUB ("TRAC" OR "GRANTEE").

**RECITALS:**

- A. The City of Portland recognizes that the city's future economic and social well-being are dependent upon ensuring a strong educational foundation for all of our city's youth.
- B. Research shows that sports are a powerful tool in preventing obesity, crime and drug use, and promoting academic achievement and pro-social behavior among youth.
- C. The City has made previous contributions to TRAC Great Fields initiative as well as recreational and open spaces in East Portland school districts.
- D. The City and TRAC recognize that providing access to suitable sports fields for Portland residents is a valuable component of overall neighborhood livability.
- E. The St. Johns TRAC is designed to accommodate significantly more user hours than available on the current facility which will allow a broad array of recreational and competitive sports programs and activities from throughout the geographic area.
- F. The City Council appropriated funds for this purpose in the Fiscal Year 2010-11 Adopted Budget Special Appropriations.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

**AGREED:****I. ACTIONS TO BE TAKEN BY GRANTEE**

In consideration of the grant funds provided by CITY, GRANTEE agrees to perform the following actions and/or spend grant funds in the following way:

To spend said funds in support of the TRAC project to establish and upgrade participant and spectator facilities for competitive and recreational sports and activities for use by local and regional schools, organizations and clubs serving school-age youth and adults at Roosevelt High School. TRAC agrees to use the funding grant exclusively for costs of programs and activities for public purposes on which the City is authorized to expend funds pursuant to its charter and state law.

## II. SPECIFIC CONDITIONS OF THE AGREEMENT

- A. Records: TRAC will maintain all records for the program. All records regarding the program, as well as general organizational, administrative information, sub/contractors worker's compensation, and sub/contractors liability insurance information, will be made available to the Grant Manager, or other designated persons, upon request.
- B. Grant Manager: The Grant Manager for this Agreement is Reese Lord.
- C. Amendment: The Grant Manager is authorized to amend the terms and conditions of the grant provided such changes do not increase the City's financial risk. If approved, such changes shall be incorporated into a formal Agreement amendment and signed by TRAC and the Grant Manager before such changes are effective. Any change to the amount of the Agreement must be approved by the City Council unless the City Council delegated authority to amend the amount of the Agreement to a specific individual in the ordinance authorizing the Agreement.
- D. Billings/invoices/Payment: The CITY Grant Manager is authorized to approve work and billings and invoices submitted pursuant to this Agreement and to carry out all other CITY actions referred to herein in accordance with this Agreement.
- E. Reports: TRAC will provide a memorandum to the CITY confirming the work has been performed as per this Agreement prior to the termination date of this Agreement.

## III. PAYMENTS

- A. The City agrees to disburse TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00) in non-property tax generated General Fund City revenues, within 30 days of the effective date of this agreement, to TRAC for sport field improvements. No invoice is required to make this payment
- B. If for any reason TRAC receives an Agreement payment under this Agreement and does not use Agreement funds, provide required services, or take any actions required by the Agreement, the CITY may, at its option terminate, reduce or suspend any Agreement funds that have not been paid and may, at its option, require TRAC to immediately refund to the CITY the amount improperly expended or received by TRAC.
- C. Payments under this Agreement may be used only to provide the services or take the actions listed previously in this Agreement and shall not be used for any other purpose.
- D. [If applicable] TRAC will keep vendor receipts and evidence of payment for materials and services and time records and evidence of payment for program wages, salaries, and benefits, and TRAC services. All such receipts and evidence of payments will promptly be made available to the Grant Manager or other

designated persons, upon request. At a minimum, such records shall be made available and will be reviewed as part of the annual monitoring process.

- E. If, for any reason, TRAC's anticipated services or actions are terminated, discontinued or interrupted, the CITY's payment of funds under this Agreement may be terminated, suspended or reduced.

#### IV. GENERAL GRANT PROVISIONS

- A. **TERMINATION FOR CAUSE.** If, through any cause, TRAC shall fail to fulfill in timely and proper manner his/her obligations under this Agreement, or if TRAC shall violate any of the covenants, agreements, or stipulations of this Agreement, the CITY shall have the right to terminate this Agreement by giving written notice to TRAC of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.

1. During the 30 day period CITY is under no obligation to continue providing Agreement Funds and TRAC is not authorized to perform services or take actions that would require the City to pay additional grant funds to Grantee.

2. During the 30 day period, TRAC shall not spend unused Agreement funds.

3. In the event of a termination for cause, all finished or unfinished documents, data, studies, and reports prepared by TRAC under this Agreement shall, at the option of the CITY, become the property of the CITY and TRAC shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination.

- B. **TERMINATION BY AGREEMENT OR FOR CONVENIENCE.** The CITY and TRAC may terminate this Agreement at any time by mutual written agreement. Alternatively, the CITY may, upon thirty (30) days written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion. If the Agreement is terminated as provided in this paragraph TRAC shall return any Agreement funds that would have been used to provide services after the effective date of termination.
- C. **CHANGES.** The CITY may request changes in the scope of the services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of TRAC's award, shall be incorporated in written amendments to this Agreement before they become effective.
- D. **NON-DISCRIMINATION.** In carrying out activities under this Agreement, TRAC shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. TRAC shall take actions to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. TRAC shall

post in conspicuous places, available to employees and applicants for employment, all required notices of nondiscrimination. TRAC shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. TRAC shall incorporate the foregoing requirements of this paragraph in all of its Grant and Agreements for work funded under this Agreement, except Grant or Agreements governed by Section 104 of Executive Order 11246.

- E. ACCESS TO RECORDS. TRAC shall provide the CITY, or its duly authorized representatives, prompt access to any and all books, general organizational and administrative information, documents, papers, and records of TRAC that are related to this Agreement or TRAC's performance of services, for the purpose of making audit examination, copies, excerpts, and transcriptions. All required records must be maintained by TRAC for four years after the CITY makes final payment and all other pending matters are closed.
- F. MAINTENANCE OF RECORDS. TRAC shall maintain records on a current basis to support any billings or invoices submitted by TRAC to CITY. The CITY, or its authorized representative, shall have the authority to inspect, audit, and copy on reasonable notice, and from time to time may examine any records of TRAC regarding its billings or its work hereunder. TRAC shall retain these records for inspection, audit, and copying for four years from the date of completion or termination of this Agreement.
- G. AUDIT. The CITY, either directly or through a designated representative, may audit the records of TRAC at any time during the four year period established by Section F above. If an audit discloses that payments to TRAC were in excess of the amount to which TRAC was entitled, then TRAC shall repay the amount of the excess to the CITY.
- H. INDEMNIFICATION. TRAC shall hold harmless, defend, and indemnify the CITY and the CITY's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from TRAC's work or any of TRAC's contractors work under this Agreement.
- I. WORKERS' COMPENSATION INSURANCE.
  - 1. TRAC's contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Worker's Compensation law and TRAC shall require them to comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. TRAC further agrees to require its contractors to maintain worker's compensation insurance coverage for the duration of this Agreement.
  - 2. In the event TRAC's contractor's worker's compensation insurance coverage is due to expire during the term of this Agreement, TRAC agrees to require timely renewal of that insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and TRAC agrees to provide the CITY such further certification of worker's compensation insurance as renewals of said insurance occur.

J. LIABILITY INSURANCE.

1. TRAC shall require its contractors to maintain public liability and property damage insurance that protects TRAC and the CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from TRAC's work under this Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the CITY and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the CITY Auditor. If the insurance is canceled or terminated prior to completion of the Agreement, TRAC shall require its contractors to provide a new policy with the same terms. TRAC agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. TRAC, either itself or through its members and volunteers shall maintain insurance coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by TRAC, its members and/or volunteers.
2. The adequacy of the insurance shall be subject to the approval of the CITY Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the CITY.

K. TRAC'S CONTRACTORS AND ASSIGNMENT. If TRAC utilizes contractors to complete its work under this Agreement, in whole or in part, TRAC shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Agreement as specified in this Agreement. However, TRAC shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to TRAC hereunder. TRAC agrees that if TRAC's contractors are employed in the performance of this Agreement, TRAC and its contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. TRAC shall not assign this Agreement in whole or in part or any right or obligation hereunder, without prior written approval of the CITY. TRAC's contractors shall be responsible for adhering to all local, state and federal laws and regulations.

L. INDEPENDENT STATUS OF TRAC. TRAC is independent of the CITY and TRAC and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. TRAC and its contractors and employees are not employees of the CITY and are not eligible for any benefits through the CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

- M. CONFLICTS OF INTEREST. No CITY officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No CITY officer or employees who participated in the award of this Agreement shall be employed by TRAC during the period of the Agreement.
- N. OREGON LAWS AND FORUM. This Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between the CITY and TRAC arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- O. COMPLIANCE WITH LAWS. In connection with its activities under this Agreement, TRAC shall comply with all applicable federal, state, and local laws and regulations. TRAC shall be EEO certified by the City of Portland in order to be eligible to receive Agreement funds.
- P. INDEPENDENT FINANCIAL AUDITS/REVIEWS. Any Grantee receiving \$300,000 or more in CITY funding, in any program year, is required to obtain an independent audit of the CITY-funded program(s). Any Grantee receiving between \$25,000 and \$300,000 in CITY funds, in any program year, is required to obtain an independent financial review. Two copies of all required financial audits or reviews shall be submitted to the Grant Manager within thirty days of their completion.
- Q. SEVERABILITY. If any provision of this agreement is found to be illegal or unenforceable, this agreement nevertheless shall remain in full force and effect and the provision shall be stricken
- R. INTEGRATION. This agreement contains the entire agreement between the CITY and TRAC and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Agreement that are not contained herein.
- S. PROGRAM AND FISCAL MONITORING. The CITY shall monitor on an as needed basis to assure Agreement compliance. Such monitoring may include, but are not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the Agreement. The frequency and level of monitoring will be determined by the Program Manager. Notwithstanding such monitoring or lack thereof, TRAC remains fully responsible for performing the services required by this Agreement in accordance with its terms and conditions.
- T. THIRD PARTY BENEFICIARIES: There are no third party beneficiaries to this Agreement. The agreement may only be enforced by the parties.
- U. ASSIGNMENT: This agreement cannot be assigned or transferred by TRAC without the prior written permission of CITY.
- V. ELECTRONIC MEANS: The parties agree the City and Contractor may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

**V. TERM OF AGREEMENT**

The terms of this Agreement shall be effective when an ordinance is passed by City Council and the Agreement is executed by all the parties, as shown by their signatures below, and shall remain in effect during any period for which TRAC has received CITY funds. Work by TRAC shall terminate as of December 31, 2012.

Dated this Eleventh day of August 2010.

**CITY OF PORTLAND**

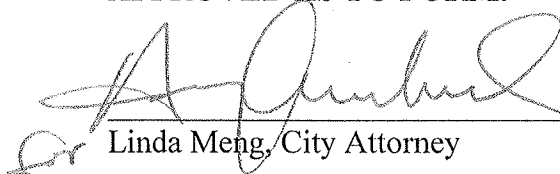
**TRAC**

\_\_\_\_\_  
Name: Sam Adams  
Title: Mayor

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Name: Laura Day  
Title: Treasurer

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Name: Richard Recker  
Title: TRAC Committee Member

**APPROVED AS TO FORM:**

  
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Linda Meng, City Attorney