

AGREEMENT NO. 30005536

This Agreement (“Agreement”) is between the CITY OF PORTLAND, OREGON (“CITY”), a municipal corporation of the State of Oregon, and Oregon Sports Authority (“OSA” or “CONTRACTOR”), an Oregon non-profit organization in an amount not to exceed two hundred fifty thousand dollars (\$250,000). This Agreement may refer to the CITY and OSA individually as a “Party” or jointly as the “Parties.”

RECITALS:

- A. The Oregon Sports Authority has worked both formally and informally with City of Portland during the past two decades to achieve its mission of enhancing Portland’s economic development by securing sports events and facilitating sports franchise acquisitions.
- B. During this time period, the City of Portland has been supportive of the Oregon Sports Authority mission by providing administrative support on numerous sports events, and through specific funding for events and general funding of the organization’s work through payment of membership dues.
- C. OSA’s record of successful sports events and franchise facilitation has contributed more than \$200 million in economic activity over the last 20 years in Oregon, the majority of which has directly benefited the City of Portland.
- D. Notable OSA events achieved in partnership with the City of Portland include eight Women’s World Cup Soccer matches; a men’s soccer World Cup Qualifier and preparation match; the US Figure Skating Championships; U.S. Synchronized Skating Sectional Championships; four NCAA Basketball Tournaments; eight Dew Tour action-sports events; world championship fencing events; two championship boxing events; USA Gymnastics Junior Olympics; two Davis Cup tennis events; a Track & Field Indoor World Championship; the Gay & Lesbian Soccer International World Championship; 22 consecutive Little League Softball World Series; plus a facilitation role in establishing an MLS franchise in Portland and bringing the MLS All-Star Game to Portland.
- E. The National Association of Sports Commissions reports that the sports event industry will grow to be a \$10 billion industry in 2017. The sports event industry has also become increasingly competitive and more financially demanding, making it more challenging to continue building on the success of this effective economic development partnership.
- F. Advancing the nature of the partnership between the City of Portland and OSA to a multi-year formal Agreement and increasing the City’s annual financial support to the organization enhances OSA’s ability to make competitive bids for sports events and supports their efforts to capture a larger share of the valuable sports event industry to bring greater economic development to the City.

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

Pursuant to the above Recitals which are fully incorporated into this Agreement and in consideration of the funds provided by CITY, OSA agrees to perform the following actions and/or spend City funds as follows:

1. Identify sports events that Portland has the capacity to host and that will enhance the City of Portland's economy;
2. Prepare sports bids and presentations to host new and returning sports events in Portland;
3. Provide support to specified Portland sports events necessary to ensure their annual return;
4. Conduct site visits to secure new sports events;
5. Market the City of Portland to the sports event industry placing the City in a favorable position to secure and maintain economically valuable sports events;
6. Provide support to the City in efforts related to improving sports-related facilities and facilitating the attraction of new sports franchises;
7. Work with City personnel in partnership with Rose Quarter personnel, Providence Park personnel, Travel Portland personnel, Oregon Convention Center personnel, and other related entities to transform and position Portland into a world-class sports destination; and
8. Provide a report and presentation to City Council on the prior year's achievements and goals for the next year's efforts.

II. SPECIFIC CONDITIONS OF THE AGREEMENT

- A. Effective Date and Duration: This Agreement shall be in effect on December 1, 2016, or when the Agreement is executed by all the Parties, whichever comes first, and shall expire, unless otherwise terminated or extended, on June 30, 2021.
- B. Consideration: CITY agrees to pay OSA a sum not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) for accomplishment of the work described in Section I. Payments shall be made consistent with Section III below.
- C. OSA Representative: OSA's authorized representative for this Agreement is Drew Mahalic, Executive Director, or such other person as may be designated by OSA Board of Directors in writing.
- D. City Program Manager: The Program Manager for this Agreement is Susan Hartnett, Spectator Facilities and Development Manager, or such other person as may be designated by CITY's Chief Administrative Officer in writing.

- E. Oversight: The City's Chief Administrative Officer shall have administrative oversight responsibility for this Agreement and may initiate or implement, directly or through his/her designee, any CITY action or approval described herein unless otherwise noted. Approval of this Agreement and specific actions under this Agreement, as noted, require City Council action.
- F. Approval of Work and Invoices: The CITY Program Manager is authorized to approve work and invoices submitted pursuant to this Agreement.
- G. Reports: During the first quarter of each Fiscal Year this agreement is in effect, OSA will submit to the CITY Program Manager a report covering the progress and outcomes from the actions required of OSA under this Agreement during the prior Fiscal Year. The Annual Report will include:
1. Detailed descriptions of all sports events pursued and supported during the prior Fiscal Year as well as partnerships created to secure and support such sports events,
 2. A description of each event's magnitude in terms of the number of Portland tourists and hospitality impact,
 3. An assessment of the national and international visibility brought to Portland from each of the events pursued and secured,
 4. A summary of the successes of each event secured or supported,
 5. A summary of progress made on sports franchise pursuits and sports facility development in Portland, and
 6. The results of marketing efforts and successful sports event hosting for the future of sports in Portland.

CITY reserves the right to request additional documentation to confirm that OSA's expenditure of CITY funds complied with the Agreement and/or interim reports or information on the progress of work, services or actions required from OSA.

- H. Publicity: Where appropriate, OSA may mention CITY funding in event bids and related materials. OSA shall acknowledge CITY funding in its annual report. Nothing in this Agreement implies CITY's endorsement or support of the viewpoints expressed by OSA. CITY reserves the right to request OSA clarify CITY's disassociation or non-endorsement of OSA's viewpoints.

III. PAYMENTS

- A. Payments to OSA: During the second quarter of each Fiscal Year this agreement is in effect, OSA will submit an invoice, consistent with CITY invoice requirements, for one fifth of the Agreement's total consideration (i.e. \$50,000 for each Fiscal Year).
- B. All CITY payments under this Agreement shall be made on a net 30-day basis. Payments under this Agreement may be used only to provide the services or take

the actions described in this Agreement and shall not be used for any other purpose.

- C. If for any reason OSA receives a payment under this Agreement and does not use CITY funds to provide required work or services or perform as required by the Agreement, then CITY may, at its option, terminate this Agreement, reduce or suspend any further payments, require OSA to immediately refund to CITY the amount improperly expended, return to CITY any unexpended funds received by OSA, require OSA to fully refund any or all funds received, or any combination thereof.

IV. GENERAL PROVISIONS

- A. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if OSA uses funds outside of the scope of this Agreement, or if OSA fails to comply with any other term or condition or to perform any obligations under this Agreement within thirty (30) days after written notice from CITY. If the breach is of such nature that it cannot be completely remedied within the thirty (30) day cure period, OSA shall commence cure within the thirty (30) days, notify CITY of OSA's steps for cure and estimate time table for full correction and compliance, proceed with diligence and good faith to correct any failure or noncompliance, and obtain written consent from CITY for a reasonable extension of the cure period.
- B. No Payment or Further Services Authorized During Cure Period. During the cure period, CITY is under no obligation to continue providing additional funds notwithstanding any payment schedule indicated in this Agreement. OSA shall not perform services or take actions that would require CITY to pay additional funds to OSA. OSA shall not spend unused funds and such unused funds shall be deemed held in trust for CITY. OSA shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.
- C. Termination for Cause. Termination for cause based on OSA's misuse of funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30-day period unless a written extension of cure period is granted by CITY. OSA shall return all funds that had not been expended as of the date of the termination notice. All finished or unfinished work products prepared by OSA under this Agreement shall, at the option of CITY, become the property of CITY; and OSA may be entitled to receive just and equitable compensation for any satisfactory work completed on such work products up until the time of notice of termination, in a sum not to exceed the funds already expended.
- D. Penalty for Termination for Cause. If this Agreement is terminated for cause, CITY, at its sole discretion, may seek repayment of any or all funds tendered under this Agreement, and decline to approve or award future funding requests to OSA.

- E. Termination by Agreement or for Convenience of City. CITY and OSA may terminate this Agreement at any time by mutual written agreement. Alternatively, 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, OSA shall return any funds that would have been used to provide services after the effective date of termination. Unless the Parties agree otherwise, OSA shall finish any work and services covered by any funds already paid and shall not commence any new work or services which would require payment from any unused funds.
- F. Changes in Anticipated Services. If, for any reason, OSA's anticipated services or actions are terminated, discontinued or interrupted, CITY's payment of funds may be terminated, suspended or reduced. OSA shall immediately refund to CITY any unexpended funds received by OSA.
- G. Amendment. The City's Chief Administrative Officer is authorized to execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase CITY's financial obligations. Approval of this Agreement and increases to the annual payment amount or total Agreement amount must be authorized by the City Council. Amendments to this Agreement must be in writing and executed by the authorized representatives of the Parties and approved as to form by the City Attorney.
- H. Non-discrimination; Civil Rights. OSA shall comply with nondiscrimination, civil rights and equal employment opportunity and rehabilitation provisions under applicable federal, state and local laws, including but not limited to: Civil Rights Act of 1964; Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008; Age Discrimination in Employment Act; the American with Disabilities Act and amendments thereof; ORS Chapters 659 and 659A; and Portland City Code Title 23. OSA shall not discriminate in the provision of its services to the public or in its employment practices because of race, color, religion, sex, age, disability, familial status, sexual orientation, national origin or other protected status. Employment practices include but are not be limited to: hiring, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. OSA shall incorporate the requirements of this paragraph in all of other agreements for work related to this Agreement, except agreements governed by Section 104 of Executive Order 11246 shall comply with the requirements of the Executive Order and relevant federal regulations.
- I. Maintenance of and Access to Records. OSA shall maintain all books, general organizational and administrative information, documents, papers, and records of OSA that are related to this Agreement or OSA's performance of work or services, for four (4) years after CITY makes final payment or the termination date of this Agreement, whichever is later. OSA shall provide CITY prompt access to these records upon request and permit copying as CITY may require.

- J. Audit. CITY may conduct financial or performance audit of the billings and services under this Agreement or OSA records at any time in the course of this Agreement and during the four (4) year period established above. As applicable, audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit discloses that payments to OSA exceeded the amount to which OSA was entitled, then OSA shall repay the amount of the excess to CITY.
- K. Indemnification. OSA shall hold harmless, defend, and indemnify CITY, and its officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from actions or omissions of OSA and/or its contractors in the performance of this Agreement. This duty shall survive the expiration or termination of this Agreement.
- L. Insurance. OSA shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. CITY reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.
1. Workers' Compensation Insurance. OSA, its contractors and all employers working under this Agreement shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, OSA, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers.
 2. Commercial General Liability Insurance: OSA shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed operations, in a per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.
 3. Automobile Liability Insurance: OSA shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.
 4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the OSA's or its contractor's activities to be performed or services to be provided. Coverage shall be primary and non-contributory with any other

insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional 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.

5. Continuous Coverage; Notice of Cancellation: OSA shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) days written notice from OSA to CITY. If the insurance is canceled or terminated prior to termination of the Agreement, OSA shall immediately notify CITY and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.
 6. Certificate(s) of Insurance: OSA shall provide proof of insurance through acceptable certificate(s) of insurance, along with applicable endorsements, to CITY at execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of funds. The certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to CITY. OSA shall pay for all deductibles and premium from its non-grant funds. CITY reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required. In lieu of filing the certificate of insurance required herein, if OSA is a public body, OSA may furnish a declaration that OSA is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.270.
- M. OSA's Contractor; Non-Assignment. If OSA utilizes contractors to complete its work under this Agreement, in whole or in part, OSA 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, OSA shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to OSA hereunder. This Agreement shall not be assigned or transferred in whole or in part or any right or obligation hereunder, without prior written approval of CITY.
- N. Independent Contractor Status. OSA, and its contractors and employees are not employees of CITY and are not eligible for any benefits through CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

- O. Conflict of Interest. No CITY officer or employee, during his or her tenure or for two (2) year thereafter, shall have any interest, direct or indirect, in Agreement or the proceeds thereof. CITY officer or employee who selected OSA, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from OSA or be employed by OSA during the term of the Agreement, unless waiver is obtained from CITY in writing.
- P. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to principles of conflicts of law. Any litigation between the Parties arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County Circuit Court or the United States District Court for the State of Oregon.
- Q. Compliance with Law. OSA and all persons performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. OSA shall maintain its nonprofit and tax exempt status during this Agreement. OSA shall be EEO certified by CITY in order to be eligible to receive funds.
- R. Independent Financial Audits/Reviews. OSA shall provide an annual accounting from an independent accounting firm of its profit and loss for the year, its balance sheet, and an itemization of all the organization's expenses for the year. Two copies of the required financial review shall be submitted to the CITY Program Manager within thirty days of audit completion or upon request by the Program Manager.
- S. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- T. Merger. This Agreement contains the entire agreement between the Parties 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.
- U. Program and Fiscal Monitoring. CITY Program Manager shall monitor on an as-needed basis to assure Agreement compliance. Monitoring may include, but is 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, OSA remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- V. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement and may only be enforced by the Parties.

W. Electronic Transaction; Counterparts. The Parties agree that they may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures. This Agreement, and any amendment, may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

CITY OF PORTLAND

OREGON SPORTS AUTHORITY

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Approved as to Form

City Attorney