

GRANT AGREEMENT NO.

This Grant Agreement is between the CITY OF PORTLAND, OREGON ("GRANTOR") and Rose Festival Foundation, an Oregon non-profit organization, ("GRANTEE") in an amount not to exceed \$100,000 for fiscal year 2017-2018.

RECITALS:

1. The Portland Rose Festival Foundation is a non-profit organization that serves families and individuals with programs and events that promote the arts, education and volunteerism. The Foundation values environmental responsibility, diversity, patriotism, and its historic and floral heritage.
2. The Portland Rose Festival Foundation was founded in 1907 and has provided the gift of community celebration for Portland-metro area residents for 110 years.
3. The Portland Rose Festival is the official festival of the City of Portland, as designated by Council Resolution 36759, adopted on January 13, 2010.
4. Attended by over a million people, the Rose Festival is one of the world's top civic celebrations.
5. The Portland Rose Festival promotes civic pride, draws local and international visitors to Portland, and provides significant regional economic stimulus estimated to be over \$70 million annually.
6. In accordance with the FY 2017-18 Budget, the City now desires to make a grant to GRANTEE in an amount not to exceed \$100,000.

THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE I – SCOPE OF WORK/OUTCOME MEASURES

GRANTEE agrees to enhance the safety and security at all Rose Festival events in 2017 and enhance the experience at the Northwest's largest single-day special event, the Grand Floral Parade as described in ATTACHMENT A: Scope of Work, Output Measures, and Budget hereto, which by this reference are incorporated herein and made a part hereof.

ARTICLE II – AGREEMENT PERIOD

This agreement shall become effective on the date of last signature and will terminate on June 30, 2018 unless extended in conformance with Article III, Section E or terminated in conformance with Article V, Sections A-E. Expenses incurred starting July 1, 2017 are eligible expenses for the grant funds reimbursement.

ARTICLE III – SPECIFIC CONDITIONS OF THE GRANT

- A. **Publicity:** During the term of this grant agreement, GRANTEE shall use its best efforts to mention the City's grant funding in publicity regarding the Rose Festival that will be supported by the grant funds.
- B. **Records:** GRANTEE shall maintain all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Agreement or GRANTEE's performance of work or services, for ten (10) years after CITY makes final grant payment, GRANTEE has made final report, or the termination date of this Agreement, whichever is later. GRANTEE shall provide CITY prompt access to these records upon request and permit copying as CITY may require.
- C. **CITY Grant Manager:** CITY hereby appoints Antoinette Toku to act as its Project Manager with regard to this Agreement. CITY may, from time to time, designate another person to act as the City Project Manager and will inform GRANTEE in writing of any change in Project Manager.

Antoinette Toku
 City of Portland, OMF/Grants Management Division
 1120 SW 5th Ave., Suite 1250
 phone: 503-823-6819
 email: antoinette.toku@portlandoregon.gov

- D. **GRANTEE Project Manager:** GRANTEE hereby appoints Jeff Curtisto act as its Project Manager with regard to this Agreement. GRANTEE may, from time to time, designate another person to act as the GRANTEE Project Manager and will inform CITY in writing of any change in Project Manager

Jeff Curtis, CEO
 Portland Rose Festival Foundation
 1020 SW Naito Parkway
 Portland, OR 97204
 Phone: 503-227-2681
 Email: JeffC@rosefestival.org

- E. **Billings/Invoices/Payment:** The CITY Grant Manager is authorized to approve work, billings, and invoices submitted pursuant to this grant and to carry out all other CITY actions referred to herein in accordance with this Agreement.
- F. **Report:** GRANTEE will complete and submit to the CITY Grant Manager the signed **Final Special Appropriation Reporting Form**, included as Attachment C, no later than thirty (30) days after the completion of the project.

ARTICLE IV -- PAYMENTS

- A. GRANTEE will receive its funding as follows: After the Grant Agreement becomes effective, GRANTEE will submit an invoice using CITY'S template included as Attachment D for \$100,000 of the grant award to the CITY Grant

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Manager for approval. The City of Portland will pay GRANTEE the amount of the invoice within thirty (30) days of the approval date. This will be a direct payment, not an advance, to the GRANTEE. GRANTEE will complete and submit to the CITY Grant Manager the signed Final Special Appropriation Reporting Form, included as Attachment C, no later than thirty (30) days after the completion of the project.

- B. If for any reason, GRANTEE receives a grant payment under this Grant Agreement and does not use grant funds, provide required services or take any actions required by the Grant Agreement the CITY may, at its option terminate, reduce or suspend any grant funds that have not been paid and may, at its option, require GRANTEE to immediately refund to the CITY the amount improperly expended or received by GRANTEE.
- C. Grant payments under this Agreement may be used only to provide the services or take the actions listed previously in this Grant Agreement and shall not be used for any other purpose.
- D. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, the CITY's payment of funds under this grant may be terminated, suspended or reduced.
- E. GRANTEE 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 GRANTEE 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. See Article III B. Records for retention period.
- F. Prevailing wages. State of Oregon, Bureau of Labor and Industries (BOLI) wage rates are required for certain contracts that total \$50,000 and above. If GRANTEE's project is subject to the prevailing wage requirements, GRANTEE will comply with the prevailing wage requirements of ORS 279C.800 through 279C.870 and any other applicable prevailing wage requirements contained in ORS 279C, Oregon administrative rules, or city code.
- G. Prevailing wage indemnity. GRANTEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, ITS EMPLOYEES, OFFICERS, AND AGENTS, FROM AND AGAINST ANY CLAIM, SUIT, OR ACTION, INCLUDING ADMINISTRATIVE ACTIONS, THAT ARISE OUT OF GRANTEE'S FAILURE TO COMPLY WITH ORS 279C.800 TO 279C.870 AND ANY APPLICABLE ADMINISTRATIVE RULES OR POLICIES.

ARTICLE V -- GENERAL GRANT PROVISIONS

- A. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if GRANTEE uses grant funds outside of the scope of this Agreement, or if GRANTEE 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, GRANTEE shall

commence cure within the thirty (30) days, notify CITY of GRANTEE's steps for cure and estimated 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 grant funds notwithstanding any payment schedule indicated in this Agreement. GRANTEE shall not perform services or take actions that would require CITY to pay additional grant funds to GRANTEE. GRANTEE shall not spend unused grant funds and such unused funds shall be deemed held in trust for CITY. GRANTEE 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 GRANTEE's misuse of grant 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. GRANTEE shall return all grant funds that had not been expended as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Agreement shall, at the option of CITY, become the property of CITY; and GRANTEE may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination, in a sum not to exceed the grant 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 grant funds tendered under this Agreement, and decline to approve or award future grant funding requests to GRANTEE.
- E. Termination by Agreement or for Convenience of City. CITY and GRANTEE 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, GRANTEE shall return any grant funds that would have been used to provide services after the effective date of termination. Unless the Parties agree otherwise, GRANTEE shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds.
- F. Changes in Anticipated Services. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, CITY's payment of grant funds may be terminated, suspended or reduced. GRANTEE shall immediately refund to CITY any unexpended grant funds received by GRANTEE.
- G. Amendment. The Grant Manager 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 risk. Increases to the grant amount must be approved by the City Council unless the City Council delegated authority to amend the grant amount in the ordinance authorizing this Agreement. Amendments to this Agreement, including any increase or decrease in the grant

amount, must be in writing and executed by the authorized representatives of the Parties and approved to form by the City Attorney.

- H. Non-discrimination; Civil Rights. In carrying out activities under this Agreement, GRANTEE 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. GRANTEE 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. Actions 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.

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

- I. Audit. CITY, either directly or through a designated representative, may conduct financial or performance audit of the billings and services under this Agreement or GRANTEE records at any time in the course of this Agreement and during the ten(10) year period established above in Article III.B. 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 GRANTEE exceeded the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to CITY.
- J. Indemnification. GRANTEE shall hold harmless, defend, and indemnify CITY, and its officers, agents and employees against all claims, demands, actions, and suits (including all costs) brought against any of them arising from actions or omissions of GRANTEE and/or its contractors in the performance of this Agreement.
- K. Insurance. GRANTEE 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. GRANTEE, 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, GRANTEE, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers for the duration of this Agreement.

In the event worker's compensation insurance coverage is due to expire during the term of this Agreement for any employers working under this agreement, GRANTEE 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 GRANTEE agrees to provide the CITY such further certification of worker's compensation insurance as renewals of said insurance occur.

2. Commercial General Liability Insurance: GRANTEE shall maintain commercial general liability and property damage insurance that protects GRANTEE 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 GRANTEE's work under this Grant Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence.
3. Automobile Liability Insurance: GRANTEE 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 GRANTEE's or its contractor's activities to be performed or services to be provided. Grantee shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. 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: GRANTEE 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 GRANTEE to CITY. If the insurance is canceled or terminated prior to termination of the Agreement, GRANTEE 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: GRANTEE shall provide proof of insurance through acceptable certificates of insurance and a CG 2026 additional insured endorsement form (or an equivalent blanket additional insured form) to CITY on or before execution of the Agreement and prior to any commencement of work or delivery of goods or services under the

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Agreement or initial payment of grant 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. GRANTEE 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 GRANTEE is a public body, GRANTEE may furnish a declaration that GRANTEE is self-insured for public liability and property damage for a minimum of the amounts set forth in the Oregon Tort Claims Act (ORS 30.260 to 30.300).

- L. Grantee's Contractor; Non-Assignment. If GRANTEE utilizes contractors to complete its work under this Agreement, in whole or in part, GRANTEE 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, GRANTEE shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to GRANTEE 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.
- M. Independent Contractor Status. GRANTEE, 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. GRANTEE will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder.
- N. Conflict of Interest. No CITY officer or employee, during his or her tenure or for two (2) years thereafter, shall have any interest, direct or indirect, in Grant Agreement or the proceeds thereof. CITY officer or employee who selected GRANTEE, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from GRANTEE or be employed by GRANTEE during the term of the Agreement, unless waiver is obtained from CITY in writing.
- O. Oregon Laws and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to its provisions regarding conflicts of law. Any litigation between CITY and GRANTEE arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- P. Compliance with Law. GRANTEE 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. If GRANTEE is a 501(c)(3) organization, GRANTEE shall maintain its nonprofit and tax exempt status during this Agreement. GRANTEE shall be EEO certified by CITY in order to be eligible to receive grant funds.
- Q. 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. One copy of all required financial audits or reviews shall be submitted to the Grant Manager within thirty days of audit completion or upon request by the Grant Manager.

- R. Severability. CITY and GRANTEE 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.
- S. Merger. This Agreement contains the entire agreement between CITY and GRANTEE 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.
- T. Program and Fiscal Monitoring. CITY shall monitor on an as-needed basis to assure Agreement compliance. 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 Grant Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- U. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement and may only be enforced by the Parties.
- V. 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.
- W. NOTICE: All notices under this Grant Agreement shall be sent to GRANTEE at the following address:

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CITY OF PORTLAND

GRANTEE

Name: Ted Wheeler
Title: Mayor
City of Portland, Oregon

Name: *[Handwritten Signature]*
Title: CEO

Date: _____

Date: 10-3-17

APPROVED AS TO FORM:

APPROVED AS TO FORM

[Handwritten Signature]
City Attorney, City of Portland
CITY ATTORNEY 10/10/17