

GRANT AGREEMENT NO. 3200XXXX

This Grant Agreement ("Grant Agreement" or "Agreement") is between the CITY OF PORTLAND, OREGON by and through Portland Parks and Recreation ("PP&R," "CITY," or "GRANTOR") and Portland Parks Foundation ("GRANTEE").

RECITALS:

1. PP&R owns and has responsibility for the operation and maintenance of Washington Park identified in the attached Exhibit B (the "Park");
2. Metro, an Oregon municipal corporation organized under the laws of the state of Oregon and the Metro Charter ("Metro"), owns the Natural Area identified in the attached Exhibit B (the "Natural Area");
3. The Natural Area is managed and maintained by PP&R based on the Metro/City of Portland Natural Areas Management IGA dated October 27, 2009;
4. Wildwood Trail is a federally recognized trail facility that traverses both properties with an at-grade crossing at NW Burnside shown on the attached Exhibit B (the "Trail");
5. The City recognizes the significance of the Trail as a regional facility, contributing to the vitality of the community and economy. Over the years, the Park has experienced increasing demand for its use by users;
6. Formed in 2001, Portland Parks Foundation's mission is to mobilize financial and popular support to ensure a thriving and accessible parks system for a healthy Portland;
7. Portland Parks Foundation has committed, in part by itself and in part by contracting with other licensed contractors and design professionals, to fund, project manage, design, permit and construct a pedestrian bridge facility connecting the Park to the Natural Area as a pedestrian crossing independent of NW Burnside St. ("Bridge") (collectively, the "Bridge Project"). The Bridge Project is more specifically described in the Scope of Work in Exhibit A attached hereto.
8. The City's total contribution to the Bridge Project's hard construction costs will be \$500,000.00 as "last in" funds ("Grant Award"). On November 23, 2016, Portland City Council authorized the transfer of an amount not-to-exceed \$500,000.00 to the Portland Parks Foundation upon evidence that the Portland Parks Foundation has raised the remaining funds estimated at \$2,000,000. Ordinance No. 188111.
9. The City's funds will be used to fill the gap in the Bridge Project's financing plan as

“last in” funds. “Last in” is defined as completing the funds needed for the bridge's physical construction according to construction contracts and budget documents prepared by Portland Parks Foundation and reviewed by Portland Bureau of Transportation (“PBOT”). Portland Parks Foundation will provide evidence of other public and private gifts sufficient to complete the Bridge Project. Per Ordinance No. 188111, the Commissioner in Charge of Transportation will authorize PBOT to transfer the \$500,000 to Portland Parks Foundation upon evidence that the Parks Foundation has raised the remaining funds estimated at \$2,000,000.

10. PP&R will serve as Grant Manager for PBOT and will perform the following tasks:
 - (a) reviewing evidence provided by Portland Parks Foundation that the remaining funds estimated at \$2,000,000 have been raised;
 - (b) overseeing performance of Portland Parks Foundation’s services under the Grant Agreement and Exhibits A – I; and
 - (c) ensuring compliance with the Grant Agreement and Exhibits A – I.
11. The completion of the Bridge Project according to the terms of this Grant Agreement, including the Project Description in Exhibit A and the Project Goals in Exhibit G attached hereto, is a material inducement to PP&R and Portland Parks Foundation to enter into this Grant Agreement; and
12. In accordance with the FY 2017-18 Budget and Ordinance No. 188111, the City now desires to make a grant to GRANTEE in an amount not to exceed \$500,000.00 pursuant to the terms of the Grant Agreement.

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 implement the development of the “Bridge Project” described in the Grant Agreement and Exhibits A - I which by this reference are incorporated herein and made a part hereof.

ARTICLE II – AGREEMENT PERIOD

GRANTEE agrees to implement the development of the “Bridge Project” described in the Grant Agreement and Exhibits A –I.

ARTICLE III – COMMUNICATIONS REGARDING THE GRANT

- A. CITY Grant Manager with regard to this Agreement. CITY hereby appoints:

Robin Johnson Craig
City of Portland, Portland Parks and Recreation
1001 SW 5th Ave., Suite 2200, Portland, Oregon 97204
phone: (503) 823-4182
email: robin.johnsoncraig@portlandoregon.gov

CITY may, from time to time, designate another person to act as the Grant Manager and will inform GRANTEE in writing of any change in Grant Manager.

B. GRANTEE Project Manager: GRANTEE hereby appoints:

Kim Knox
Shiels Obletz Johnsen
1140 SW 11th Avenue, Suite 500, Portland, Oregon 97205
phone: (503) 242-0084
email: knox@sojpdex.com

C. Report: GRANTEE will complete and submit to the CITY Grant Manager the signed Exhibit I - Final Special Appropriation Reporting Form, no later than thirty (30) days after the completion of the Bridge Project.

ARTICLE IV -- PAYMENTS

- A. GRANTEE will receive its funding as follows: The CITY's funds will be used to fill the gap in the Bridge Project's financing plan. The funds will be "last in." "Last in" is defined as completing the funds needed for the bridge's physical construction according to construction contracts and budget documents prepared by Portland Parks Foundation and reviewed by PP&R for PBOT. Portland Parks Foundation will provide evidence of other public and private gifts sufficient to complete the Bridge Project. The Commissioner in Charge of Transportation will authorize PBOT to transfer an amount not-to-exceed \$500,000 to the Portland Parks Foundation upon evidence that the Portland Parks Foundation has raised the remaining funds estimated at \$2,000,000.
- B. After the Grant Agreement becomes effective and GRANTEE believes it has met the requirements from City Council-approved Ordinance No. 188111, GRANTEE will submit an invoice using CITY'S template included as Exhibit E for the total Grant Award amount of \$500,000, along with evidence that it has raised the remaining \$2,000,000, to the CITY Grant Manager for review. Sufficient evidence of the remaining funds estimated at \$2,000,000 shall be in the form of (1) a list of each gift and grant in Portland Parks Foundation's database restricted to the Footbridge Over Burnside, (2) a list of formal, written pledges to the Bridge Project that are conditional only on completion of the balance of fundraising, with such balance excluding Grant Funds, or on securing permits. Upon a determination by the Commissioner in Charge of Transportation, with assistance from the Grant Manager, that the evidence described herein has been submitted, the Commissioner in Charge of Transportation will authorize PBOT to pay GRANTEE the amount of the invoice up to \$500,000 within thirty (30) days of the approval date. This will be a direct payment, not an advance, to the GRANTEE. If for any reason, GRANTEE does not use the Grant Award for services under this Grant Agreement, does not provide required services, or fails to take any actions required by the Grant Agreement, the CITY may, at its option, terminate the Grant Agreement, and may, at its option, require GRANTEE to immediately refund to the CITY the amount improperly received by GRANTEE or improperly expended by GRANTEE.

- C. The Grant Award payment under this Grant Agreement may be used only to provide the services or take the actions listed in this Grant Agreement and Exhibits A – I and shall not be used for any other purpose.
- D. If, for any reason, GRANTEE's services or actions are terminated, discontinued or interrupted due to the fault of GRANTEE, the CITY may require refund of part or all of the Grant Award.
- 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, METRO, 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. Exhibits Incorporated as Terms of the Grant Agreement. Exhibits A, B, C, D, E, F, G, H, and I are hereby incorporated by reference as materials terms of this Grant Agreement.
- B. Grant of Easement. Following completion of the Bridge Project and subject to the CITY's determination of compliance with all terms and conditions of the Grant Agreement and Exhibits A - I, GRANTEE shall grant to the CITY for the substantial benefit of the public a perpetual, irrevocable, nonexclusive, affirmative easement to use the surface of the Bridge for a public recreational trail. The easement area is depicted in Exhibit B. GRANTEE shall deliver to the CITY a recordable instrument conveying an easement as described herein, subject to approval as to form by the City Attorney's Office. In lieu of delivering a recordable easement upon completion of the Bridge Project, the Parties may negotiate an agreement in which GRANTEE conveys ownership of the Bridge to the City.
- C. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if GRANTEE misuses grant funds including expenditures for anything outside of the scope of this Agreement. Termination for cause based on GRANTEE's misuse of grant funds shall be effective upon

notice of termination. It shall also be a material breach and cause for termination of this Agreement if GRANTEE fails to comply with any other term or condition or fails 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. If GRANTEE fails to remove or otherwise cure the material failure within thirty (30) days of the written notice of termination, or if GRANTEE does not undertake and continue reasonable efforts to remedy the failure, then the CITY may, at its sole discretion, terminate the Agreement and require GRANTEE to refund to the CITY any amounts expended by GRANTEE in violation of material terms or conditions of this Agreement, and any unexpended amounts. GRANTEE shall be entitled to receive reasonable compensation as provided for under this Agreement for any satisfactory work completed up until the time of notice of termination, in a sum not to exceed the grant funds already expended. 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.

- D. Termination by Agreement or for Convenience of Parties. CITY and GRANTEE may terminate this Agreement at any time by mutual written agreement. 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.
- E. Suspension of Work. The Grant Manager may at any time give notice in writing to GRANTEE to suspend work and expenditure of funds provided under this Agreement, related to any failure to comply with any material term or condition of this Agreement. The notice of suspension shall specify the date of suspension, the reason for suspension with sufficient information for GRANTEE to respond to the same, and the estimated duration of the suspension. GRANTEE shall immediately suspend work and expenditure of funds to the extent specified. During the period of the suspension GRANTEE shall properly care for and protect all including materials, supplies, and equipment that are on hand for performance of the Grant. The Grant Manager may, at any time, withdraw the suspension of work as to all or part of the suspension in written, by electronic mail, notice to GRANTEE specifying the effective date and scope of withdrawal. GRANTEE shall then resume diligent performance of the work. In no event shall GRANTEE be entitled to any incidental or consequential damages because of suspension.
- F. 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.

- G. 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 and that employees are treated in accordance with the applicable law without regard to their race, ethnicity, color, religion, sex, age, mental or physical disability, marital status, familial status, sexual orientation, gender identity, 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, ethnicity, color, religion, sex, age, mental or physical disability, marital status, familial status, sexual orientation, gender identity, 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.

- H. 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.

- I. Indemnification. Subject to the limits of The Oregon Tort Claims Act and to the fullest extent allowed by law, GRANTEE and its contractors shall hold harmless, defend, and indemnify CITY, METRO and its officers, agents and employees against all claims, demands, actions, lawsuits and appeals (including all costs) brought against any of them arising from actions or errors or omissions of GRANTEE and/or its contractors in the performance of this Agreement. The terms of such indemnification as set forth above shall be included as a contractual provision in any contract for design or construction related to the Bridge Project. Only GRANTEE's liability shall be limited to \$2,000,000.

- J. GRANTEE'S Insurance. GRANTEE shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, Errors and Omissions Insurance to cover damages caused by negligent acts, errors or omissions related to the performance of their duties and responsibilities with respect to work performed on or for the Bridge Project. The insurance shall provide coverage for not less than \$2,000,000 per occurrence. In lieu of an occurrence based policy, a claims-made policy in an amount not less than \$2,000,000 per claim may be maintained, if an extended reporting period or tail coverage is acquired or if the insurance is extended through subsequent renewals for not less than ten (10) years following the completion of the Bridge Project.

- K. Contractors,' Design Professionals,' and Consultants' Insurance. GRANTEE shall ensure that its contractors, design professionals, and consultants ("GRANTEE's Independent Contractors") 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's Independent Contractors shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, GRANTEE's Independent Contractors shall maintain coverage for all subject workers for the duration of this Agreement.
 2. Commercial General Liability Insurance: GRANTEE's Independent Contractors 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 Independent Contractors' work under this Grant Agreement. The insurance shall provide coverage for not less than \$2,000,000 per occurrence.
 3. Automobile Liability Insurance: GRANTEE's Independent Contractors shall have automobile liability insurance with coverage of not less than \$2,000,000 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. Professional Liability/Errors & Omissions Insurance. Design professionals, their subconsultants and any Contractors or Subcontractors providing design services for the Project shall maintain Professional Liability and/or Errors & Omissions insurance to cover damages caused by negligent acts, errors or omissions related to the design or professional services, and related to the performance of their duties and responsibilities for work on the Project. The insurance shall provide coverage for not less than \$2,000,000 per occurrence. In lieu of an occurrence based policy, a claims-made policy in an amount not less than \$2,000,000 per claim may be maintained, if an extended reporting period or tail coverage is acquired or if the insurance is extended through subsequent renewals for not less than ten (10) years following the completion of the Project.
 5. 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 Independent Contractors' activities to be performed or services to be provided. GRANTEE's Independent Contractors 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.
6. Continuous Coverage; Notice of Cancellation: GRANTEE's Independent Contractors 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's Independent Contractors to CITY. If the insurance is canceled or terminated prior to termination of the Agreement, GRANTEE's Independent Contractors 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.
7. Certificate(s) of Insurance: GRANTEE's Independent Contractors 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 prior to any commencement of work or delivery of goods or services under the 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. 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. Non-Assignment. 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.
- 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:

Jeff Anderson, Executive Director
Portland Parks Foundation
1500 SW First Avenue, Suite 760
Portland, OR 97201
503.445.0994
email: janderson@portlandpf.org

II. TERM OF GRANT:

The terms of this Grant Agreement shall be effective when an ordinance is passed by CITY Council and the Grant Agreement is executed by all the parties, as shown by their signatures below, and shall remain in effect through June 30, 2019 unless subsequent time extension, supplement, addition, continuation, or renewal is mutually agreed upon in writing between the parties, or terminated earlier in accordance with the provisions hereof.

CITY OF PORTLAND

GRANTEE

Name: Mike Abbate
Title: Director of Portland Parks
and Recreation
City of Portland, Oregon

Name: Jeff Anderson
Title: Executive Director, Portland
Parks Foundation

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney, City of Portland

