

**AGREEMENT**  
**Between**  
**City of Portland, by and through Portland Parks & Recreation**  
**And**  
**Portland Rose Society**  
**For**  
**Donation of Improvements to the**  
**Washington Park International Test Garden**  
**Gold Medal Award Garden Pathway Improvement**

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Portland Rose Society ("PRS"), an Oregon nonprofit corporation, and the City of Portland, ("City"), a municipal corporation duly organized and existing under the laws of the State of Oregon by and through its bureau, Portland Parks & Recreation ("PP&R"). The purpose of this agreement is to establish the terms and understanding PRS donating the Pathway Improvements ("Project" or "Work") at the Gold Medal Award Garden ("Garden" or "GMAG") in Washington Park's International Test Rose Garden ("Rose Garden" or "Park"), and to establish the various roles and responsibilities pertaining to the Project. Throughout this Agreement, PRS and the City may individually be referred to as "the Party" and collectively as "the Parties"

**RECITALS:**

1. The Rose Garden in Washington Park receives an estimated 500,000-600,000 (and growing) number of visitors per year.
2. One of the Rose Garden's feature gardens, the Gold Medal Award Garden, has a high degree of visitation, as it features the winning roses from the past 50+ years that PRS has been honoring such roses.
3. The interior of the GMAG has a combination of concrete pavement with brick edging, brick edged rose beds, and unpaved lawn pathways around the garden's perimeter. Other features of the GMAG include a fountain, a pavilion, a non-accessible bench that lacks companion seating, and a retaining seat wall with plaques honoring the past PRS presidents.

4. Due to high number of visitors, the GMAG's pathways take an abundance of foot traffic. As a result, the GMAG lawn areas are worn down to dirt by mid-summer each year, which at times makes them muddy, uneven, and even less accessible. The lawn pathways require significant staff time to try to keep them safe for public passage and to restore the lawn the following season.
5. The Garden, like the neighboring Shakespeare and Royal Rosarian Gardens, is frequently booked for receptions, parties and weddings. However, the GMAG is less useable by the public for events due to its lawn pathways that turn into dirt and mud during various seasons of the year.
6. Installing features for improved accessibility wherever possible is an important goal of PP&R.
7. The City is dedicated to improving the City's park system with increased access, safety, and visitor experience for people of all abilities.
8. Portland Rose Society is a domestic Oregon non-profit corporation founded in 1889 as the first Rose society in the United States.
9. PRS has been a financial and physical supporting organization of the Washington Park International Test Rose Garden for decades.
10. Portland Rose Society has been instrumental in many aspects of the Gold Medal Award Garden. In 1962 they financed and donated design and planting of the GMAG. In 1992 they financed and had the Pavilion that graces the garden built to make it the only covered place to view the garden in rainy weather. In 2009, they further enhanced the stability of the GMAG with the retaining brick seat wall. Further developments included the finishing of the feature fountain that was completed in 2013.
11. Portland Rose Society has received a generous donation of \$92,000 to use, at their discretion, toward improving the GMAG, including paving the pathways that are currently lawn and dirt to improve the accessibility and experience for the garden's visitors, while preserving the garden's layout and design framework. If funding allows, PRS may also add handrails at the pavilion steps, correct the non-conforming concrete ramp south of the pavilion, correct two locations of non-conforming surface level changes, renovate brick rose bed edging beyond what is required to accommodate the new paths, and refurbish or replace the pavilion seat wall.

## AGREEMENT:

Now therefore, the Parties agree as follows:

1. Funding. Portland Rose Society has received a private donation of \$92,00 designated for funding the design and construction of the Project (the “Project Budget”). Should additional costs arise during the Project beyond this Projected Budget, PRS will provide additional funding to pay for all costs associated with the Project. Portland Rose Society must incorporate appropriate contingencies to manage the Project Budget to ensure the Project stays within the total funding amount.

1.1 Grant Funding. Although not anticipated, should PRS decide to pursue any grant funding to fulfill any part of its funding obligation to meet the terms of this agreement, to ensure successful grant funding and the implementation of improvement projects on PP&R property, grant requests must be coordinated with the PP&R Development Manager. Coordination includes the review of the grant application prior to submission, letters of support and the provision of supplemental grant requirements. PP&R commits to a two-week target of responding to requests for review by PRS. Timing of responses may depend on various factors, such as completeness of documentation, available staff and the priorities of other workload. PP&R shall notify PRS if the target time period will be exceeded.

1.2 Donor Recognition. Donor recognition is not required or anticipated at this time by PRS for this Project. Should that change, PRS and PP&R will jointly determine the Project design, placement and integration of the donor recognition into the predesign, consistent with the sponsorship and donation policies adopted for PP&R by the City Council. The donor recognition will be integrated into the overall Garden design and will enhance the setting by being appropriate in scale, placement, color and materials. PP&R expressly retains final approval for any specific element that PRS would like to incorporate into the design. PRS and its donors, if desired by PRS or its donor, will be recognized prominently in a way that is suitable to the design of the Garden.

1.3 Expenses. PRS’s funding will pay for the entire Project Budget, including all associated soft costs they expend. The City will be responsible for the costs of the PP&R

Project Manager in overseeing the Project, as well as access and use of the Garden. PRS shall otherwise reimburse PP&R within the Project Budget for any PP&R staff time and materials to assist with the construction work itself, including but not limited to, irrigation system design and seat wall top refurbishments.

2. Project Summary of Work.

2.1 Mandatory Project Elements. PRS shall ensure that the Project includes all of the following elements, all of which must comply with the Americans With Disabilities Act (“ADA”) requirements:

(a) Paved paths to match existing exposed aggregate paths with brick edging in locations generally indicated in Exhibit A. The work may also include relocation of fountain electrical conduit, drain line, and water supply line if necessary, all to be performed by PRS through its Contractor.

(b) Grading of adjacent areas and associated repairs, adjustments or replacement of adjacent pavement panels and brick edging as necessary in order to provide ADA-compliant paths and smooth transitions where achievable, including finish grading of adjacent landscape areas, will be performed by PRS through its Contractor.

(c) New bench pad at east side of the Garden with added ADA companion seating at one or both ends, including re-setting existing bronze plaque and adjustment of most easterly rose bed on garden’s central axis to accommodate new path and bench pad, will be performed by PRS through its Contractor. The free-standing bench will be removed, refurbished and reinstalled by PP&R’s Carpentry shop at no cost to PRS.

(d) Renovated irrigation system design to accommodate new paving, rose bed, shrub bed, and lawn area changes, will be designed by PP&R’s Irrigation Services Group at an estimated not to exceed cost of \$1,930 for design services, including irrigation plan, details and specification section to be paid by PRS. PRS through its Contractor shall install the irrigation system in accordance with the PP&R’s plans, details and specifications.

(e) Rose and shrub pruning, removals, and relocations as necessary to accommodate PRS's Contractor's work, will be performed by PP&R at no cost to PRS. Sod stripping and topsoil stockpiling shall be performed by PRS's Contractor at PRS's cost.

(f) Lawn repair and reseeding after project completion will be performed by PP&R at no cost to PRS.

2.2 Optional Project Elements. In addition to the Mandatory Project Elements under Section 2.1, the following Optional Project Elements will be included in the design as bid alternates, all of which must comply with ADA requirements. If the bid price for the Mandatory Project Elements is below the Project Budget allocated for the total of the Mandatory Project Elements, PRS may also undertake to include some or all the following Optional Project Elements within the Project, in any priority order chosen by PRS with PP&R's written approval to the Optional Elements proposed to be included in the Project:

(a) Providing handrails at pavilion stairs will be performed by PRS through its Contractor.

(b) Rose bed brick edging repairs or replacements to correct where it has deteriorated or is out of alignment beyond locations necessary to accommodate new pavement and smooth transitions will be performed by PRS through its Contractor.

(c) Pavilion seat wall redesign to eliminate its issues of trash and debris getting trapped underneath will be performed by PRS through its Contractor. Alternatively, PP&R Carpentry Shop can replace the wood seat top planks with cedar for \$1,900 including materials and labor at PRS's expense, or another longer lasting wood at a higher cost for materials.

(d) Correct non-conforming concrete ramp south of pavilion where the running slope is 5.5% to 9.4% for 20 linear feet (5.0% max is allowed), and cross slope is 3.3% to 4.5% for 10 linear feet (2.0% max is allowed), including new trench drain cover and channel, all to be performed by PRS through its Contractor.

(e) Correct non-conforming surface level change at fountain where there is a 5/8" level change at transition from brick to exposed aggregate concrete will be performed by PRS through its Contractor. (1/4" inch max, or up to 1/2" with a bevel is allowed.)

(f) Correct non-conforming surface level change at concrete path north of gazebo where it meets the asphalt of the main east-west walkway connecting the gardens and there is a 7/8" level change for 7'-9" (1/4" inch max, or up to 1/2" with a bevel is allowed) will be performed by PRS through its Contractor.

(g) Other GMAG features with PP&R's written approval.

2.3 Contingency. Costs are subject to change due to changes in scope, site conditions, inflation, and market factors. Therefore, PRS shall include a minimum 20% contingency on all estimated Project costs in the Project Budget and required Project funding. Any amounts not spent on the project, once it is closed out, shall remain with PRS for use at its discretion on subsequent PRS projects or programs.

### 3. Project Management.

#### 3.1 Project Managers.

(a) Katherine Johnson – PRS Project Manager – will represent PRS's interest involving this agreement and will oversee the day to day design and construction operations associated with the Project. Design and construction operations include coordination and administration, public outreach, design and construction management and oversight, permitting, scope, schedule, budget, invoicing, management of consultants and contractors, and contract management.

(b) Sandra Burtzos – PP&R Project Manager – will serve as PP&R's representative involving this agreement and will coordinate PP&R staff plan reviews, Accessibility Advisory Committee review, and PP&R staff work and inspections during construction. The PP&R Project Manager shall monitor the performance of the terms and conditions of this Agreement on an as-needed basis to assure compliance. Monitoring may include, but are not limited to, on-site visits, telephone interviews and review of required plans, specifications and reports and will cover both programmatic and fiscal aspects of the Agreement.

The frequency and level of monitoring will be determined by the PP&R Project Manager. Notwithstanding such monitoring or lack thereof, PRS shall remain fully responsible for performing the Project in accordance with the terms and conditions of this Agreement.

3.2 Project Management Communication Protocols. The respective Project Managers will be the primary point of communication between the Parties. The Director of PP&R or the President of Portland Rose Society may designate a different Project Manager for that Party by giving notice in writing to the other Party.

3.3 PRS and PP&R Project Managers shall invite each other to attend all regular or significant Project meetings and to participate in steering, management, or any advisory committees organized for the Project.

(a) During the Design Phase, PRS will include PP&R in all critical coordination meetings, and PP&R will be provided a meaningful opportunity to review and comment in a timely manner on all key Project documents, design features, proposed products and materials, issues, schedule, funding, Project scheduling and other significant design issues.

(b) During the Construction Phase, PRS will include PP&R in all critical coordination meetings and all construction related meetings, in addition to weekly construction meetings, and will be provided a meaningful opportunity to review and comment in a timely manner on all changes in work, submittals, substitution requests, requests for information, sequencing of construction, closures, and other significant construction related issues. The roles and responsibilities, approved project schedule, frequency of meetings, and PP&R inspections will be formalized in writing between PP&R and PRS. The Parks Project Manager will be provided at least 10 days' notice prior to commencement of onsite construction work under this Agreement.

#### 4. Acceptance of Premises and PP&R Plans.

4.1 PRS has examined the site of the Project and accepts the Garden in an "as is" condition. The City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Project site. PRS waives any

claims against the City for liability for any damage or injury suffered by PRS resulting or arising from conditions at the Garden or the Park. Furthermore, PRS accepts the Property subject to any and all valid rights or interests, including without limitation, rights of access by the public, existing permits, licenses, leases, easements, franchise agreements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines, or any similar facilities, together with any future installations.

4.2 PRS understands that plans provided by PP&R can be used for informational purposes only, and should contract for its own survey and verification of all Project site conditions.

5. Project Design, Review, Changes, Permits, Construction, Ownership, and Operation & Maintenance.

5.1 Project Design. PRS is prepared to enter into a design contract with Huntington + Kiest Landscape Architects (“Project Architect” or “Design Consultant”) to prepare survey, drawings and specifications for the Project necessary for PP&R plan reviews, building permits, bidding, and construction.

5.2 Drawings and specifications.

(a) PRS shall require drawings provided by its Project Architect to be completed in accordance with PP&R’s CAD drawings standards. PP&R’s Final Deliverable Construction CAD Documents Standards document shall be incorporated into this Agreement as Exhibit B.

(b) Technical Specifications. PRS shall require its Project Architect to provide technical specifications. Technical specifications will be in CSI Master-, Section- and Page-format. Some master specification sections will be provided to PRS for its Project Architect to edit for the project. PRS shall require its Project Architect to provide specification sections for any necessary sections that PP&R does not have a master developed.

5.3 Review.

(a) PP&R review will occur at a minimum of two submittals, Design Development and 90% Construction Documents. Each review by PP&R will take up to three weeks. Plans, details and specifications will be reviewed by PP&R for



the Project's design and aesthetics, and for conformity with adopted master plans and PP&R's maintainability, longevity, appearance and accessibility requirements. PP&R may approve the Construction Documents, or require PRS to make changes as directed by PP&R to comply with PP&R's standards.

(b) All comments provided will be responded by PRS through its Project Architect, and any differences of opinion will be resolved between the PRS and PP&R.

(c) Notwithstanding City approval of the drawings and specifications, responsibility for the adequacy of the drawings and specifications shall remain with PRS.

#### 5.4 Changes in approved drawings.

(a) PRS shall submit to PP&R for review any substantial changes to any previously approved drawings and specifications. A substantial change shall mean any change that will have a material impact on the function, appearance, performance, maintainability or operation of the Project.

(b) PRS acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PP&R has approved the changes.

#### 5.5 Permits.

(a) The drawings and specifications will be reviewed and approved by PP&R prior to PRS construction contractor(s) submitting any permit application, not limited to building permits, land-use permits, or public works permits.

(b) PRS's construction contractor(s) will be responsible for all required permit review and permit fees paid to the applicable permitting agencies.

(c) All changes made due to permit requirements will be reviewed and approved by PP&R, prior to resubmitting to permitting authorities.

(d) PRS's construction contractor(s) shall be required to obtain a Permit of Entry from PP&R prior to the start of construction, and fulfill on all Permit of Entry requirements.

#### 5.6 Project Construction.

- (a) PRS will contract with a general contractor, licensed with the State of Oregon Construction Contractors Board and possessing a current business license with the City of Portland, to construct the Project in accordance with the approved drawings and specifications.
- (b) The intent of the Parties is that the Project is being given as a donation to PP&R as a gift. To the extent the construction costs are being paid for by private contributions, it is the intent and expectation of the parties that PRS will not be subject to any public contracting requirements.
- (c) As they apply, PRS will follow Bureau of Labor and Industry Prevailing Wage rules and regulations. State of Oregon, Bureau of Labor and Industries (BOLI) prevailing wage rates are required to be paid to workers in each trade or occupation that the Contractor or their subcontractors use in performing all or part of the work on the Project for the construction of improvements totaling \$50,000 or more value. Prior to bidding, PRS will provide the City with its cost estimates for the Project, and the City will determine whether prevailing wage requirements are necessary to be included in their bid documents.
- (d) PRS may either competitively bid all or portions of the work or may issue sole source contracts to contractors it deems to be uniquely qualified to perform the work.
- (e) PRS agrees not to contract with any contractor who is disqualified from bidding on similar City projects.
- (f) PRS will use reasonable efforts to contract with Minorities, Women & Emerging Small Businesses (“MWESB”), but will not be required to meet any participation levels.
- (g) The City will issue a Notice to Proceed with construction to PRS only upon issuance of the Permit of Entry to PRS’s construction contractor(s) and receipt of evidence from PRS, in a form reasonably satisfactory to the City, that it has funds sufficient to complete the Project, including an adequate construction contingency fund, as determined by the City, per the requirements of section 2.3. Should additional costs arise during the Project beyond this contingency fund,

PRS will provide additional funding to its Project Budget pay for all costs associated with the Project.

(h) PRS shall maintain accurate books and records of its expenditures for the Project, and shall make the same available for inspection by such person or persons designated by the City, upon reasonable notice.

(i) PRS will be responsible for any Special Inspections performed by an independent inspection/testing agency. PRS shall be responsible for geotechnical testing. Quality Control Testing and Inspections during construction, as required by PP&R and as set forth in the City-provided Specifications or as otherwise required by PP&R through its plan reviews, will be contracted by PRS.

(j) PP&R staff, as determined by the PP&R Project Manager, will participate in construction meetings and inspections by its staff.

5.7 Ownership of Project. Once the Project is completed, all punchlist items have been addressed, and all permits have been closed out, PRS will notify PP&R, and PP&R will review the Project work. If PP&R determines the Project to be fully complete and acceptable, PP&R will provide PRS a notification of final acceptance, at which point all improvements and work product shall become the property of the City. Within 30 days of receiving the notification of final acceptance from PP&R, PRS shall provide to the City any requested documentation establishing the transfer of ownership of the Project and all of its elements, including all PRS's Independent Contractor representations and warranties as to the Project materials and workmanship and Record Drawings.

5.8 Operations and Maintenance. Except as provided in Section 6.6 of this Agreement, following the City's final acceptance of the Project, the City will be solely responsible for operation and maintenance of the Project, and PRS will be released from any further maintenance responsibilities for the Project.

## 6. Indemnification, Insurance, Payment, Regulatory Requirements, Bonds, and Warranty.

### 6.1 Indemnification.

(a) Indemnification by PRS's consultants and contractors. Subject to the limits of the Oregon Tort Claims Act and to the fullest extent allowed by law, PRS and its contractors, design professionals, and consultants ("PRS's

Independent Contractors") shall hold harmless, defend, and indemnify the City and its officers, agents and employees against all claims, demands, actions, lawsuits and appeals (including all attorney fees and costs, whether at trial or on appeal) brought against any of them arising from any actions, errors or omissions of PRS's Independent Contractors in the performance of any work associated with the Project. The terms of this indemnification shall be included by PRS as a contractual provision in any contract for design or construction related to the Project. PRS's liability shall be limited to the liability coverage provided under Section 6.2 of this Agreement.

(b) Indemnification by Portland Rose Society. This Agreement identifies various requirements, standards and specifications that PRS is required to include in its contracts for the Project design and construction with contractors, design professionals and consultants ("Contractor Requirements".) and shall provide a copy of its contract with the construction contractor to PP&R for review of these terms. PRS shall hold harmless, defend, and indemnify the City and its officers, agents and employees against all claims, demands, actions, and suits (including attorney fees and costs) brought against any of them arising or resulting from any failure by PRS to include the Contractor Requirements in its contracts with PRS's Independent Contractors.

6.2 Contractors', Design Professionals' and Consultants' Insurance. Portland Rose Society will require its contractors, design professionals, and consultants ("PRS's Independent Contractors") to obtain and maintain in full force throughout the duration of **this Agreement** and any extension periods, the required insurances identified below. The 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**.

(a) Types of required insurance.

(1) Workers' Compensation Insurance. PRS's Independent Contractors shall comply with the ORS Chapter 656, as it may be amended from time to time. Unless exempt under ORS Chapter 656,

PRS's Independent Contractors shall maintain coverage for all subject workers for the duration **of this Agreement**.

(2) Commercial General Liability Insurance. PRS's Independent Contractors shall maintain commercial general liability and property damage insurance that protects PRS and the City, 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 PRS's Independent Contractors' work on the Project under this Agreement. The insurance shall provide coverage of not less than \$2,000,000 per occurrence.

(3) Automobile Liability Insurance. PRS's Independent Contractors shall maintain automobile liability insurance with coverage of not less than \$2,000,000 for each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned autos. 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 design or professional services, and related to the performance of their duties and responsibilities for work on the Project. The insurance shall provide coverage of 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 three (3) years following the completion of the Project.

(b) Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and

its bureaus/divisions, officers, agents and employees, as well as Portland Rose Society, as Additional Insureds, with respect to the PRS's Independent Contractors' activities to be performed, or products or services to be provided. PRS'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 the 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 in this Agreement 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.

(c) Continuous Coverage; Notice of Cancellation. PRS's Independent Contractors shall maintain continuous, uninterrupted coverage for the duration of **this 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 PRS's Independent Contractors to the City. If the insurance is canceled or terminated prior to completion of **this Agreement**, PRS's Independent Contractors shall immediately notify PRS and the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by the City.

(d) Certificate(s) of Insurance. PRS's Independent Contractors shall provide proof of insurance through acceptable certificate(s) of insurance and a CG 2026 additional insured endorsement forms (or an equivalent blanket insured form) to the City prior to any commencement of work or delivery of goods or services on the Project on behalf of the Portland Rose Society. The certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverage required under this Agreement shall be obtained from insurance companies acceptable to the City. The City reserves the right to

require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage required.

6.3 Payment.

(a) PRS and PRS's Independent Contractors will pay timely all suppliers, lessors, and contractors providing them services, materials or equipment for carrying out work on this Project. For services rendered by the City for the Project that are not specifically designated in this Agreement as being provided by the City at no cost to PRS, PP&R will invoice PRS for its materials and staff time (including overhead). Payments by PRS will be due within 30 days of the invoice date.

(b) Neither PRS nor any of its Independent Contractors allow any material or supplier liens to be asserted against the City or its property as a result of PRS undertaking this Agreement.

6.4 Regulatory Requirements.

(a) In connection with its activities on this project, PRS will require its contractors and subcontractors to comply with all applicable federal, state and local laws and regulations.

(b) PRS shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. PRS shall maintain its nonprofit and tax-exempt status throughout the Term of this Agreement.

(c) The design and specifications for the Project and the constructed improvements shall comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), including Title II of that Act, with ORS 659.425, and with all regulations and administrative rules established pursuant to those laws.

(d) PRS will be required to present the proposed Project design and specifications to, and obtain approval of the Project design and specifications, through Portland Parks & Recreation's Accessibility Advisory Committee at any point(s) in time as recommended by the PP&R Project Manager during the design process but prior to submitting for building permits.

6.5

6.5 Two-Year Warranty.

- (a) PRS shall require its Contractor to fully warrant all work for at least two (2) full years from PPR's notification of final acceptance of the Project, regardless of the length of manufacturers' or installers' warranties.
- (b) In addition to any other warranties that are required, PRS shall require its Contractor to make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of notification of final acceptance due to faulty or inadequate materials or workmanship. Such repairs and replacements shall conform to the Contract Specifications under which the Contractor originally performed the work.
- (c) In the event of a dispute regarding any portion of the Work, PRS or its Contractor shall nonetheless provide any warranty service, repairs or replacements as described above, for that portion of the Work that is not in dispute. In the event that a dispute delays Acceptance of the Work, the warranty for portions of the Work not in dispute shall run from the date of final acceptance of the remaining portions of the Work.
- (d) PRS shall require its Contractor to also repair any damage or remedy any disturbance to the Park or other publicly owned property or improvements thereon if caused by the Contractor's work and if the damage or remedy occurs during the warranty period.
- (e) If the Contractor performs warranty work, the warranty work also shall have a two (2) year warranty period from the date of its completion and acceptance by the City.
- (f) The City shall provide PRS with written Notice of the need to perform warranty work unless it is determined that an emergency exists, that delay would cause serious additional loss or damage, or if any delay in performing the work might cause injury to any member of the public. If PRS, after written Notice, fails within ten days to comply with the City's request, the City has the right to perform the warranty work either by hiring another Contractor or by using its own forces. In that event, PRS, PRS's Contractor and its Surety shall be liable to the City for the cost of the work performed and any additional damage suffered by the Owner.



7. As-Builts and Record Drawings.

7.1 PRS shall require its Contractor to keep accurate maps and records, including the approved as-built construction plans and specifications of its facilities and improvements located in the Park.

7.2 Within thirty (30) days of the the City issuing a notification of final acceptance to PRS, PRS will provide to PP&R copies of such maps, records and as-builts, in a form (digital and paper) that is to the complete satisfaction of PP&R. PP&R As-Built and Record Drawings Requirements document is attached as Exhibit C.

8. Public Information.

8.1 Public Information. PRS and PP&R will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the Project that are intended for public distribution and will provide three business days minimum for review and discussion prior to distribution. PRS and PP&R will work together to develop information and signage informing the public of any construction closures or detours in the Rose Garden due to the construction work.

8.2 Media. PRS and PP&R will inform the other of inquiry from a media or press representative and make reasonable efforts to consult with each other prior to any verbal or written information on the Project being provided to such a representative; if unable to make a prior consultation, notice will be provided as soon as possible afterwards, or within a maximum of 24 hours.

9. Term. The term of this Agreement will be one (1) year from the date it is entered into, unless earlier terminated as provided in Section 10 of this Agreement. This Agreement may be renewed for an additional term of one (1) year, in writing, signed by the parties. The Director of Parks and Recreation is authorized to execute such renewal on behalf of the City.

10. Early Termination.

10.1 Termination. PP&R and PRS by mutual agreement, may terminate this Agreement at any time.

10.2 Notice. PP&R, on thirty (30) days written notice, may terminate this Agreement upon a determination by the City Council that termination is required in the public interest. PRS, on thirty (30) days written notice, may terminate this Agreement upon a determination by its Board that termination is required to ensure PRS is adhering to their bylaws and serving its mission.

10.3 Termination Rights. Either PP&R or PRS may terminate this Agreement in the event of a material breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within fifteen (15) days after such notice, then the party giving notice may terminate the Agreement at any time thereafter by giving a written notice of termination. If the breach is not reasonably capable of being completely cured within fifteen (15) days, then the party giving notice shall not terminate the Agreement so long as the breaching party commences the cure within fifteen (15) days, diligently pursues completion of the cure, and completely cures the breach within a reasonable time.

11. Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement and may only be enforced by the Parties.

12. Non-Assignment. PRS shall not assign, subcontract or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of PP&R, which consent may be granted or withheld in the sole discretion of the Director of Portland Parks & Recreation. The provisions of this Agreement will be binding upon, and shall inure to the benefit of, the Parties and their respective successors and approved assigns.

13. Severability. 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 will be

construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. Merger. This Agreement contains the entire agreement between the City and PRS 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.

15. Waiver. The failure of either party to enforce any provision of this Agreement will not constitute a waiver of that or any other provision.

16. Governing Law. This Agreement will be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suit involving any question arising under this Agreement must be brought in the appropriate court in Multnomah County, Oregon.

17. Amendments. The PP&R Project 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 any financial risks to the City must be approved by the City Council by ordinance. Any amendments to this Agreement must be in writing and executed by the authorized representatives of the Parties, and be subject to approval to form by the City Attorney's Office.

18. 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.

IN WITNESS WHEREOF, PP&R and PRS have caused their duly authorized representatives to execute this Agreement in duplicate.

[Signature page to follow.]

**City of Portland  
Bureau of Parks & Recreation:**

**Portland Rose Society:**

By: \_\_\_\_\_

Name: Mike Abbaté

Title: Director

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

## Exhibit A - Gold Medal Award Garden Scope of Work

Optional - Seat Wall Top  
Refurbishment or Replacement

Optional - Improvement of  
Out of Compliance Ramp  
and Trench Drain Adjacent  
to Maintenance Rd

Refurbished Garden  
Irrigation System

Optional - Addition of ADA Compliant  
Handrails at Pavilion Steps

Optional - Correction of 2 ADA  
Surface Level Change Issues

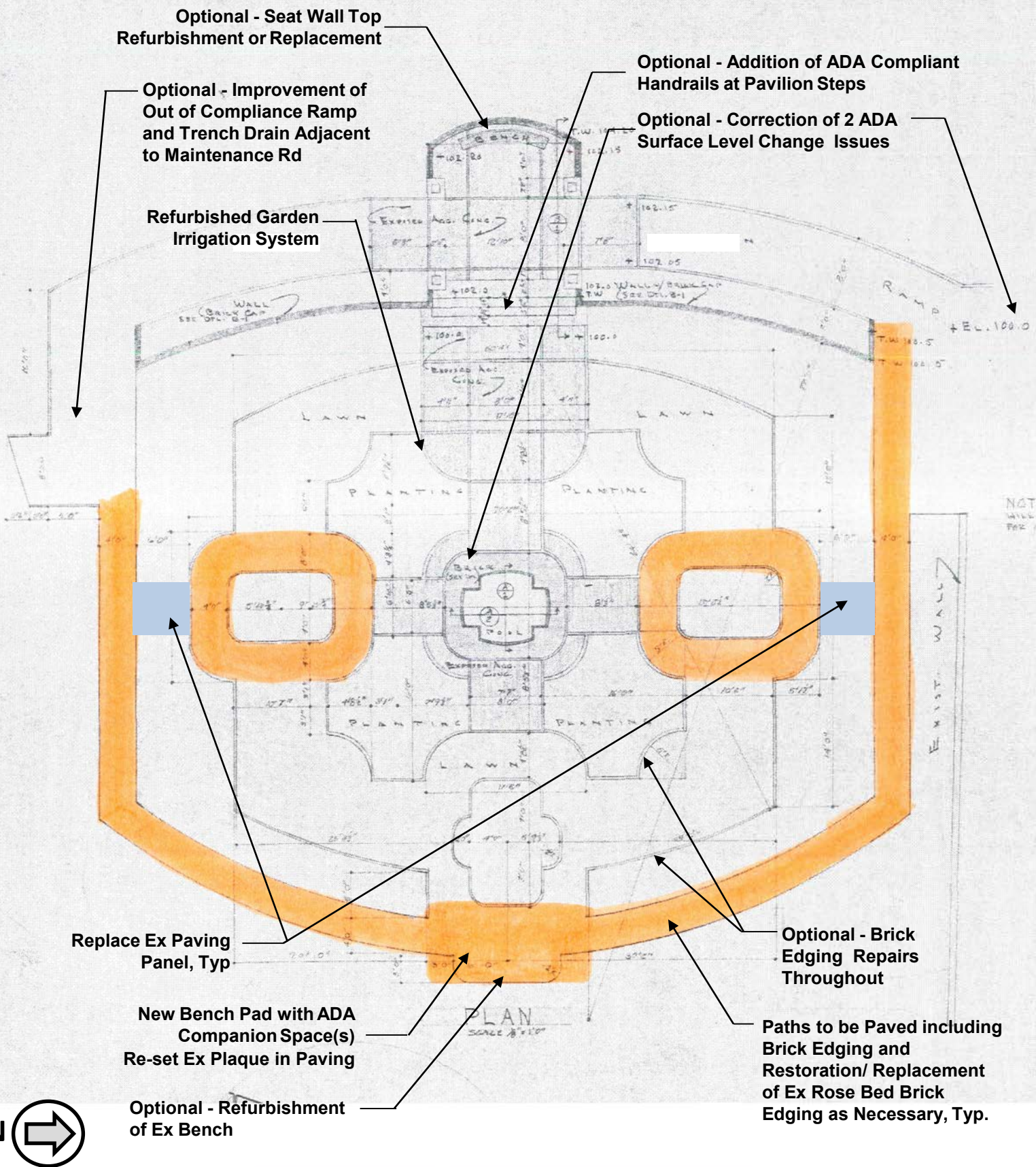
Replace Ex Paving  
Panel, Typ

New Bench Pad with ADA  
Companion Space(s)  
Re-set Ex Plaque in Paving

Optional - Refurbishment  
of Ex Bench

Optional - Brick  
Edging Repairs  
Throughout

Paths to be Paved including  
Brick Edging and  
Restoration/ Replacement  
of Ex Rose Bed Brick  
Edging as Necessary, Typ.







# PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland

## Exhibit B

### Requirements of the Work Final deliverable Construction CAD Documents

1. Each drawing sheet shall be individual document files. This also includes separate base (existing condition) and design (proposed condition) files.
2. The final format for each map shall be either Microstation's ".dgn" format, Version 7 or later or AutoCAD ".dwg" format, Release 2012 or earlier.
3. Each drawing border shall be scaled according to the scale shown on the drawings so that the final digital product is at a 1:1 scale (i.e. 1' in drawing = 1' in real world).
4. Information on each drawing shall be separated into distinct 'levels' according to the level standards provided. Level tables, Seed (proto type) files, Font library and color table will be provided in electronic format.
  - a. Information on each drawing will be separated into distinct DGN/DWG files according to the Level Standards provided; bm-facil.dgn, bm-site.dgn, and, bm-util.dgn. Level tables are provided for each of the required files.
  - b. These files shall be separated into distinct directories that indicate the category of information being stored. For example all existing condition information shall be in a directory called **base**. All proposed design information should be in a directory called **design**. And all construction documents should be in a directory called **sheets**.
  - c. Contour elements, fence lines, retaining walls, tree and shrub lines, etc. must be connected strings or chains and not individual lines. Buildings must be closed shapes and not individual lines. Patterns must be 'associated' with closed shapes. All cell libraries or custom line styles created for this work shall be submitted with final drawing files.
5. Symbols shall be either cells (MicroStation) or blocks (Autocad). No shape files will be accepted for symbol representation. No proxy entities (3<sup>rd</sup> Party Software) should be present in final deliverables.
6. Acceptable fonts for Autocad shall either be **archstyle.shx** for text contained within the drawing, and **helv.shx**, **optima1s.shx** or **romant.shx** for border text. For MicroStation users; fonts **19** for drawing text, and font **58/65** for border text. These fonts are included with our standards for your use.
7. Final products are to be delivered via e-mail/FTP/CD-Rom or DVD. Each CAD document should be delivered in a ZIP file including all xref, fonts, symbols, and other supporting documents used to create each sheet. Also include all supporting documents used during the project design, and also include full size PDF documents of permitted construction document. No third party dependent or proxy elements are to be delivered in the final set of drawings.
8. For questions regarding format, content, standards or other requirements call Greg McGowan at 823-5458.

#### Administration

1120 S.W. 5th Ave., Suite 1302  
Portland, OR 97204  
Tel: (503) 823-7529 Fax: (503) 823-6007

[www.PortlandParks.org](http://www.PortlandParks.org)  
Nick Fish, Commissioner  
Zari Santner, Director



*Sustaining a healthy park and recreation system to make Portland a great place to live, work and play.*



# PORTLAND PARKS & RECREATION

Healthy Parks, Healthy Portland

September 26, 2017  
Exhibit C

## **Requirements of the Work As-Built and Record Drawings**

1. The Construction Contractor shall mark up all changes from the Bid Set or Construction Set, whichever set was issued by the PPR (Portland Parks & Recreation) Project Manager as the drawing set to construct from. The Contractor shall use red to indicate any element that was removed from the drawing, green to indicate any elements that were added to the drawing, and any element requiring changes or editing in blue. No White-Out or black ink shall be used. Contractor shall include all ASIs (Architect's Supplemental Instructions), FCDs (Field Change Directives), approved substitutions, and all other changes to the drawings during the course of the project, by attaching the most current version of changes issued to the drawing. Contractor who is documenting as-built information shall mark in the lower right corner of each drawing with the words "As Built", the date, signature, and company name who provided the as-built information. (Further instructions to contractor provided in PPR Division One specifications.)
2. Once the construction contractor has submitted their complete set of as-builts for review, the PPR Project Manager (PM) and/or Construction Manager (CM) will distribute them to the design consultants and PPR staff as necessary for review for completeness and accuracy. Design consultants and PPR staff shall submit to the PPR PM or CM their comments regarding anything not indicated correctly or that they are aware is missing from the contractor's mark ups.
3. The PPR PM or CM will return the review comments and as-builts to the construction contractor for correction, as necessary. Once an acceptable set of As-Builts has been received by PPR from the contractor, the design consultant shall color scan each sheet that has color mark ups and black & white scan each sheet with no color mark ups, resulting in one .pdf per sheet for the entire set. This scan will serve as the As-Builts for the project records showing what changed during the course of the construction project.
4. The design consultants shall draft the as-built changes into CAD from the contractor mark ups and any other changes the design team is aware of that may not have been reflected by the contractor, including all ASIs, FDCs, approved substitutions, etc. All bubbles and deltas should come off the Record Drawings and in the titleblocks, and the drawings should only show the final condition, not what changed. Nothing should be crossed out to show the difference between the

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bid or construction set and what was built. Only show the final condition. Also include all measurements the contractor has provided to indicate the actual location of underground improvements from a known point of reference. If the underground improvements were built within reasonable proximity, dimensions will suffice to show the actual location is over a few feet. If underground improvements were installed in significantly different locations, redraw the elements to the correct location on the drawings, and also include the dimensions.

5. Label in an appropriate location in the title block "Record Drawings" and the date. Also label "Record Drawings" in larger letters outside the title block in the lower right corner of each sheet.
6. Design consultant shall submit draft Record Drawings set(s) (hard copy or electronic in .pdf format, as directed by PPR PM) to PPR PM for review, along with the contractor As-Built mark-up set(s). Make corrections if necessary and resubmit for PPR PM approval.
7. Each drawing sheet shall be individual document files in both .pdf and CAD formats. See CAD Delivery document for specifications.
8. Final products are to be delivered via e-mail/FTP/CD-Rom or DVD.