

**Second Amendment to the Grant Agreement
between Portland Parks and Recreation
and the Portland Parks Foundation**

This Second Amendment to the Grant Agreement (“Second Amendment”) is made as of September __, 2019 (Effective Date”) by and between Portland Parks & Recreation (“PP&R” or “Grantor” or the “City”) and the Portland Parks Foundation (“PPF” or “Grantee”) to clarify ownership, maintenance responsibility and maintenance funding for the Bridge.

PP&R and PPF are parties to an original Grant Agreement # 32001732, attached hereto as Exhibit A, executed on March 13, 2018 pursuant to Ordinance #188668, as previously amended by a First Amendment to the Grant Agreement, attached as Exhibit B, executed on January 7, 2019, pursuant to Ordinance # 189277 (as so amended, the “Agreement”). All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement, unless otherwise provided. “The Bridge”, “Wildwood Trail Bridge Crossing”, and “Wildwood Crossing”, as they are used in the Agreement and this Second Amendment; all refer to the Bridge, as defined in the Agreement.

The parties now wish to amend the Agreement by this Second Amendment to include provisions regarding the following: funding to support maintenance for the project, specifically two grants from PPF to the City- the first in the amount of \$50,000 and the second in an amount up to \$50,000; the transfer of all ownership interest and liability of the Bridge; the naming of the Bridge; the description of responsibilities for operations and maintenance of the Bridge, landscaping and plantings consistent with Public Works Permit (PBOT Job No TB0065) and Land Use Decision LU 18-144362 EN, (recorded with Multnomah County as 2019-009089) (collectively attached as Exhibit C) ; and, the extension of the term of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

Section 1.

Article IV.

Article IV is hereby amended to add the following Section H:

H. Grantee will pay \$50,000 (the “Closeout Payment”) to the City within 30 days of Substantial Completion of the Bridge Project, as defined and set forth below:

1. “Substantial Completion of the Bridge Project” means the occurrence of both of the following:
 - a. The Substantial Completion date of the Bridge Structure, defined as the date upon which PBOT issues a letter confirming that the Project has been built in a manner consistent with the PBOT Public Works Permit process and performance of the Contract has reached a state that is less than full performance of all the work required by the Contract Documents, but is nonetheless sufficiently complete to permit occupancy or use of the Project for its intended purposes, and where the

Exhibit A

omissions and deviations from full performance are inadvertent and unintentional, do not impair the Project as a whole, and can be easily remedied. In addition, the Project site shall be free of all staging, equipment, site fencing, and tree protection, and only minor punch-list items shall remain to be completed at a time of Substantial Completion unless otherwise agreed to by PP&R to accommodate mitigation planting. Foundation/Grantee will confer with and secure PBOT Engineer approval prior to issuance of Certificate of Substantial Completion.

- b. Substantial Completion of the Mitigation Planting required by the land use decision BDS LU18-144362 EN shall occur sometime between October 1, 2019 – March 31, 2020. “Substantial Completion of the Mitigation Planting” is defined as the date upon which the BDS or City inspector reviews and approves the mitigation plantings as consistent with the land use decision BDS LU18-144362 EN.
2. “Construction Completion of the Bridge Project” is defined as the date, following Substantial Completion of the Bridge Structure and Substantial Completion of the Mitigation Planting, when PP&R agrees that the Grantee has satisfied all requirements of the permits attached as Exhibit C and the Project has been completed in compliance with the Contract Documents, with the exception of the two year warranty period under the Public Works Permit (PBOT Job No TB0065) and the two year plant monitoring and maintenance period required by BDS LU18-144362 EN. Construction Completion shall occur when the Grantee has received written acceptance by the City per the PBOT Public Works Permit process and per the requirements set forth in BDS LU18-144362 EN.
3. “Final Completion” is defined as the date upon which PBOT issues its Final Certificate of Completion Letter for the Public Works Permit (PBOT Job No TB0065) upon satisfactory closeout of the last of the two-year warranty periods (Bridge Structure or Mitigation Planting monitoring and maintenance, whichever occurs later).

The Closeout Payment shall be deposited into a separate, dedicated trust account and shall be used solely for the physical maintenance of the Bridge, as reasonably determined by PP&R, and in accordance with this Agreement and all applicable city, state and federal laws, rules, regulations, and standards. In addition, upon the City’s receipt of the Closeout Payment, the City agrees to assume all responsibility for, and funding of, the ongoing insurance, maintenance, monitoring, and inspection of the Bridge in accordance with all applicable city, state and federal laws, rules, regulations, and standards. Notwithstanding the above, however, Grantee agrees to pursue and resolve any warranty claims related to the Bridge or mitigation planting, and to effectuate the closeout of all items necessary for “final completion” and “final payment” pursuant to, and as defined in, that certain AIA104 – 2017 Agreement (the “Construction Contract”) between Grantee and R&H Construction Co (“Contractor”) and all work necessary to achieve Final Completion. Grantee shall

retain the sole right to determine whether an issue is a warranty claim and whether Grantee shall pursue such claim with Contractor, however such determination shall have no impact on whether Grantee has complied with this Agreement or the Public Works Permit (PBOT Job No. TB0065) or BDS LU #18-144362 EN. To ensure that Grantee has sufficient financial resources to monitor, pursue, and resolve warranty claims under the Construction Contract and to effectuate Project closeout and Final Completion, upon Substantial Completion of the Bridge Project, Grantee shall deposit \$50,000 into a separate, dedicated trust account (the "Holdback Funds"). The Holdback Funds shall be used by Grantee, at Grantee's discretion, for the payment or reimbursement of costs or expenses incurred by Grantee related to monitoring, pursuing, and resolving warranty claims under the Construction Contract and the performance of Project closeout and Final Completion, including, but not limited to, fees for attorneys, consultants and experts, administrative costs, and payment to Contractor for work not covered by warranty. Within ninety (90) days of Project closeout and Final Completion, Grantee shall (i) provide the City with an accounting of its use, if any, of the Holdback Funds in a form substantially similar to that set forth in Exhibit I to the Agreement, and (ii) pay to the City the remaining balance, if any, of the Holdback Funds, which shall be deposited by the City into a separate, dedicated trust account and shall be used solely for the physical maintenance of the Bridge, as reasonably determined by PP&R, and in accordance with this Agreement and all applicable city, state and federal laws, rules, regulations, and standards.

Each party's roles and responsibilities during the Warranty Period are as follows:

1. Grantee

- a. Perform Project closeout as required under the Grantee's Design and Construction Contracts.
- b. Perform Project closeout as required under the Grantee's Permits.
- c. Hold Contractor Maintenance/Warranty Bond for Warranty Period.
- d. Receive PP&R warranty notifications and track communications between PP&R and Contractor.
- e. Pursue warranty repairs and warranty claims against the Contractor; make final determination and, if applicable, secure Contractor confirmation of warranty work and communicate same to Grantor for scheduling purposes.
- f. Obtain a Zoning Permit for a final inspection as required by Land Use Decision LU 18-144362 upon the end of the 2-year landscape planting monitoring and maintenance period.
- g. Coordinate PBOT determination of Final Completion and associated documentation per Public Works Permit (PBOT Job No TB0065).
- h. Reimburse contractor for site visits/completed work deemed to not qualify as warranty work.
- i. Prepare and forward Quarterly Grant Reports to PP&R.

2. Grantor

- a. Perform regular non-warranty maintenance of bridge structure and Site Area consistent with the O&M Manual as determined and provided by

the Grantee, including, but not limited to, ongoing cleaning and general maintenance (leaf/debris removal).

- b. Identify needed repairs and coordinate work execution directly with Contractor subject to approval of Grantee.
- c. Regular maintenance of structures, landscaping and trails within Site Area caused by public use.

3. Grantee's Contractor Under PPF/R&H Contact

- a. Warranty obligations as set forth in the Construction Contract and warranties included in O&M Manual.
- b. Maintenance obligations as defined in Contract Documents and LU 18-144362.
- c. Provide Maintenance/Warranty Bond for Grantee as identified for warranty work per Public Works Permit (PBOT Job No TB0065).

Article V.

Article V Section B shall be deleted in full and replaced with the following:

B. Upon Substantial Completion of the Bridge Project and receipt of the Closeout Payment, Grantee will convey any and all of Grantee's ownership interest in the Bridge to the City, and Grantor agrees to accept this ownership interest subject to fulfillment of the requirements to achieve Substantial Completion of the Bridge Project. Such ownership transfer does not relieve Grantee of its obligations under this Agreement or obligations under the Public Works Permit (PBOT Job No TB0065) and Land Use Decision LU 18-144362 EN. Upon transfer of ownership, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, the Oregon Constitution, Article XI, Section 9 and ORS 105.668, Grantor accepts all liability for third party users of the Bridge, except to the extent that injury or damage occurs due to breach of this Agreement or due to the Contractor's breach of the Construction Contract or due to the Contractor's negligence, gross negligence, or willful misconduct.

Article V, Section W shall be deleted in full and replaced with the following:

W. NOTICE: All notices under this Grant Agreement shall be sent as follows:

GRANTEE

Executive Director
Portland Parks Foundation
1500 SW First Avenue, Suite 760
Portland, OR 97201
[503.445.0994](tel:503.445.0994)
office@portlandpf.org

GRANTOR

Robin Johnson Craig
PP&R Grant Manager
Portland Parks & Recreation
1001 SW 6th Avenue, Ste 2200
Portland, OR 97204
503-823-4182
Robin.JohnsonCraig@portlandoregon.gov

With Copy To:

Office of the City Attorney
1225 SW 4th Avenue
Portland, OR 97204

Article V is hereby amended to add the following Section X:

X. In recognition of the donations made to effectuate this Project, identification of certain donors has been incorporated into the Project in two ways. First, in order to best serve the interests of the City and provide a worthy and enduring legacy, the Bridge will be named the “Barbara Walker Crossing”. The naming of the Bridge acknowledges the sustained contribution to the development and management of the City’s park and recreation system made by Barbara Walker. Any signage for the Bridge shall conform to PP&R standards and be reviewed and approved by PP&R. It is anticipated that Grantor will provide for the official dedication and naming of the Bridge. Second, the Project utilized donor-named pavers to commemorate those who donated time or money to the construction of the Project. Donor-named pavers will be installed on the Project. The City will repair or replace the pavers in a manner reasonably acceptable to the City.

Article V is hereby amended to add the following Section Z:

Z. The City of Portland Public Works Permit (PBOT Job No TB0065), and Land Use Decision, LU 18-144362 EN are attached as Exhibit C and all provisions therein are hereby incorporated into this Agreement. Regardless of transfer of ownership of the Bridge from Grantee to Grantor upon Substantial Completion of the Bridge Project, this Agreement shall not be deemed to affect the Contractor’s obligations under the Contract Documents, including Warranty Period and the two-year plant monitoring and maintenance period required by BDS LU18-144362 EN, with the understanding that a separate Non-Park Use Permit solely between Grantor and Contractor will be executed upon, or prior to,

Substantial Completion. Contractor's obligations include, but are not limited to, the continuous maintenance of all required landscaping in a healthy manner with no more than 15% cover by invasive species by Grantee's contractor during the 2-year maintenance and monitoring period to meet the Land Use Decision, LU 18-144362, requirements. Upon the end of the 2-year monitoring and maintenance period, Grantee will obtain a Zoning Permit for a final inspection, as required by the Land Use Decision, LU 18-144362. Following the two-year warranty period and two-year plant monitoring and maintenance period, and upon Final Completion and closure of the Public Works Permit (PBOT Job No TB0065) by PBOT, the long-term maintenance of the plantings will become the obligation of the City.

II. Term of Grant.

II. Term of Grant shall be deleted in full and replaced with the following:

II. Term of Grant:

The term of this Grant Agreement shall be effective when an ordinance is passed by City Council and the Grant Agreement is executed by all parties, as shown by their signature below, and shall remain in effect until and upon Final Completion and closure of the Public Works Permit (PBOT Job No TB0065) by PBOT, unless subsequent time extension, supplement, addition, continuation or renewal is agreed upon in writing between the parties or the Agreement is terminated earlier, in accordance with the provisions hereof.

Section 2. No Other Changes. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

Section 3. Entire Agreement. This Second Amendment, together with the Grant Agreement, constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

Section 4. Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

PP&R and the Portland Parks Foundation have caused this Second Amendment to be executed by their duly authorized officers.

PORTLAND PARKS FOUNDATION

By: _____
Randy Gragg
Title: Executive Director
Date: _____

PORTLAND PARKS AND RECREATION

By: _____
Adena Long, Director
Date: _____

APPROVED AS TO FORM

City Attorney

EXHIBITS

- Exhibit A - Grant Agreement
- Exhibit B - First Amendment
- Exhibit C - City of Portland NPUP, PWP and Land Use Decision