

AMENDED AND RESTATED AGREEMENT NO. 30005536

This Agreement (“Agreement”) is between the CITY OF PORTLAND, OREGON (“City”), a municipal corporation of the State of Oregon, and Sport Oregon (“SO” or “Contractor”), an Oregon non-profit organization in an amount not to exceed five hundred twenty-five thousand dollars (\$525,000). This Agreement may refer to the City and SO individually as a “Party” or jointly as the “Parties.”

RECITALS:

- A. Sport Oregon, formerly named Oregon Sports Authority, has worked both formally and informally with the City during the past two decades to achieve its mission of enhancing Portland’s economic development by securing sports events and facilitating sports franchise acquisitions.
- B. During this time period, the City has been supportive of Sport Oregon’s mission by providing administrative support on numerous sports events, and through specific funding for events and general funding of the organization’s work through payment of membership dues.
- C. Sport Oregon’s record of successful sports events and franchise facilitation has contributed an estimated \$400 million in economic activity over the last 27 years in Oregon, the majority of which has directly benefited the City of Portland.
- D. Notable Sport Oregon events hosted and bids won in partnership with the City of Portland between 2016-2020 include the 2018 U.S. Synchronized Skating Championships, future NCAA Men’s Basketball Tournaments in 2022 and 2026, the 2019 & 2020 NCAA Women’s Basketball Tournament Regionals, the 2016 Davis Cup quarterfinal, the 2016 IAAF World Indoor Track & Field Championship, the 2016 Gay & Lesbian Soccer International World Championship, the 2017 Gay Softball World Series, several Little League Softball World Series tournaments and the ongoing pursuit of an MLB franchise. The Sports Events & Tourism Association reported that nearly 180 million people traveled to a sports event in the U.S. in 2019 and sports travelers, event organizers and venues spent \$45.1 billion in the same year. The sports event industry will continue to be increasingly competitive and financially demanding as destinations look toward aggressive recovery efforts in a post-COVID-19 sports landscape.
- E. Advancing the nature of the partnership between the City of Portland and Sport Oregon to a multi-year formal Agreement and increasing the City’s annual financial support to the organization enhances Sport Oregon’s ability to make competitive bids for sports events and supports their efforts to capture a larger share of the valuable sports event industry to bring greater economic development to the City.
- F. Sport Oregon’s commitment to Diversity, Equity and Inclusion work is a top priority for the organization that aligns with the City of Portland’s values. The organization has made a significant commitment to diversify the Sport Oregon Board to amplify the voices of BIPOC communities to improve the quality of life through sports for all Portlanders. Sport Oregon’s

ongoing DEI work will continue to focus on programs for youth living in underserved and underprivileged local communities. Sport Oregon is committed to collaborate with BIPOC communities and partners in all aspects of the organization's efforts to increase economic impact through sporting events.

AGREED:

I. ACTIONS TO BE TAKEN BY CONTRACTOR

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

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

II. SPECIFIC CONDITIONS OF THE AGREEMENT

- A. Effective Date and Duration: This Agreement shall be in effect on July 1, 2021, or when the Agreement is executed by all the Parties, whichever comes first, and shall expire, unless otherwise terminated or extended, on June 30, 2026.

- B. Consideration: City agrees to pay SO a sum not to exceed five hundred twenty-five thousand dollars (\$525,000) for accomplishment of the work described in Section I. Payments shall be made consistent with Section III below.
- C. SO Representative: SO's authorized representative for this Agreement is Jim Etzel, Chief Executive Officer, or such other person as may be designated by SO Board of Directors in writing.
- D. City Program Manager: The Program Manager for this Agreement is Karl Lisle, the Spectator Venues Program Manager, or such other person as may be designated by City's Chief Administrative Officer in writing.
- E. Oversight: The City's Chief Administrative Officer shall have administrative oversight responsibility for this Agreement and may initiate or implement, directly or through his/her designee, any City action or approval described herein unless otherwise noted. Approval of this Agreement and specific actions under this Agreement, as noted, require City Council action.
- F. Approval of Work and Invoices: The City Program Manager is authorized to approve work and invoices submitted pursuant to this Agreement.
- G. Reports: After the first quarter of each Fiscal Year this agreement is in effect, SO will submit to the City Program Manager a report covering the progress and outcomes from the actions required of SO under this Agreement during the prior Fiscal Year. SO will also present its Annual Report to the City Council after the first quarter of each Fiscal Year this agreement is in effect.

The Annual Report will include:

1. Detailed descriptions of all sports events pursued and successfully supported during the prior Fiscal Year as well as partnerships created to secure and support such sports events;
2. A description of each event's magnitude in terms of the number of Portland tourists and hospitality impact: metrics could include room nights, estimated economic impact, visitor event participant and attendee totals, total attendance numbers and various other direct and indirect community impacts;
3. An assessment of the national and international visibility brought to Portland from each of the events secured and pursued;
4. A summary of progress made on sports franchise pursuits and sports facility development in Portland;
5. A description of geographical geographic representation and impact in Portland from events pursued or supported;
6. A summary of work specifically benefiting City-owned venues; and
7. A summary of Sport Oregon's focus, actions and goals within business practices that targets the organization's Diversity, Equity and Inclusion work.

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

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

III. PAYMENTS

- A. Payments to SO: During the first quarter of each Fiscal Year this agreement is in effect, SO will submit an invoice, consistent with City invoice requirements, for one fifth of the Agreement's total consideration (i.e. \$55,000 for each Fiscal Year).
- B. All City payments under this Agreement shall be made on a net 30-day basis. Payments under this Agreement may be used only to provide the services or take the actions described in this Agreement and shall not be used for any other purpose.
- C. If for any reason SO receives a payment under this Agreement and does not use City funds to provide required work or services or perform as required by the Agreement, then City may, at its option, terminate this Agreement, reduce or suspend any further payments, require SO to immediately refund to City the amount improperly expended, return to City any unexpended funds received by SO, require SO to fully refund any or all funds received, or any combination thereof.

IV. GENERAL PROVISIONS

- A. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if SO uses funds outside of the scope of this Agreement, or if SO 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, SO shall commence cure within the thirty (30) days, notify City of SO's steps for cure and estimate time table for full correction and compliance, proceed with diligence and good faith to correct any failure or noncompliance, and obtain written consent from City for a reasonable extension of the cure period.
- B. No Payment or Further Services Authorized During Cure Period. During the cure period, City is under no obligation to continue providing additional funds notwithstanding any payment schedule indicated in this Agreement. SO shall not perform services or take actions that would require City to pay additional funds to SO. SO shall not spend unused funds and such unused funds shall be deemed

held in trust for City. SO 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 SO's misuse of funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30-day period unless a written extension of cure period is granted by City. SO shall return all funds that had not been expended as of the date of the termination notice. All finished or unfinished work products prepared by SO under this Agreement shall, at the option of City, become the property of City; and SO may be entitled to receive just and equitable compensation for any satisfactory work completed on such work products up until the time of notice of termination, in a sum not to exceed the funds already expended.
- D. Penalty for Termination for Cause. If this Agreement is terminated for cause, City, at its sole discretion, may seek repayment of any or all funds tendered under this Agreement, and decline to approve or award future funding requests to SO.
- E. Termination by Agreement or for Convenience of City. City and SO 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, SO shall return any funds that would have been used to provide services after the effective date of termination. Unless the Parties agree otherwise, SO shall finish any work and services covered by any funds already paid and shall not commence any new work or services which would require payment from any unused funds.
- F. Changes in Anticipated Services. If, for any reason, SO's anticipated services or actions are terminated, discontinued or interrupted, City's payment of funds may be terminated, suspended or reduced. SO shall immediately refund to City any unexpended funds received by SO.
- G. Amendment. The City's Chief Administrative Officer is authorized to execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase City's financial obligations. Approval of this Agreement and increases to the annual payment amount or total Agreement amount must be authorized by the City Council. Amendments to this Agreement must be in writing and executed by the authorized representatives of the Parties and approved as to form by the City Attorney.
- H. Non-discrimination; Civil Rights. SO shall comply with nondiscrimination, civil rights and equal employment opportunity and rehabilitation provisions under applicable federal, state and local laws, including but not limited to: Civil Rights Act of 1964; Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008; Age Discrimination in Employment Act; the American with Disabilities Act and amendments thereof; ORS Chapters 659 and 659A; and Portland City Code Title 23. SO shall not discriminate in the provision of its services to the public or in its employment practices because of race, color, religion, sex, age, disability, familial status, sexual orientation, national origin or

other protected status. Employment practices include but are not be limited to: hiring, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SO shall incorporate the requirements of this paragraph in all of other agreements for work related to this Agreement, except agreements governed by Section 104 of Executive Order 11246 shall comply with the requirements of the Executive Order and relevant federal regulations.

- I. Maintenance of and Access to Records. SO shall maintain all books, general organizational and administrative information, documents, papers, and records of SO that are related to this Agreement or SO's performance of work or services, for four (4) years after City makes final payment or the termination date of this Agreement, whichever is later. SO shall provide City prompt access to these records upon request and permit copying as City may require.
- J. Audit. City may conduct financial or performance audit of the billings and services under this Agreement or SO records at any time in the course of this Agreement and during the four (4) year period established above. As applicable, audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit discloses that payments to SO exceeded the amount to which SO was entitled, then SO shall repay the amount of the excess to City.
- K. Indemnification. SO shall hold harmless, defend, and indemnify City, and its officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from actions or omissions of SO and/or its contractors in the performance of this Agreement. This duty shall survive the expiration or termination of this Agreement.
- L. Insurance. SO 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. SO, 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, SO, its contractors and any employers working under this Agreement shall maintain coverage for all subject workers.
 2. Commercial General Liability Insurance: SO shall have commercial general liability insurance covering bodily injury, personal injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, products and completed

operations, in a per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

3. Automobile Liability Insurance: SO 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 SO's or its contractor's activities to be performed or services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
5. Continuous Coverage; Notice of Cancellation: SO 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 SO to City. If the insurance is canceled or terminated prior to termination of the Agreement, SO 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: SO shall provide proof of insurance through acceptable certificate(s) of insurance, along with applicable endorsements, to City at execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of funds. The certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to City. SO 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 SO is a public body, SO may furnish a declaration that SO is self-insured for public liability

and property damage for a minimum of the amounts set forth in ORS 30.270.

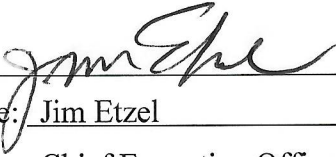
- M. SO's Contractor; Non-Assignment. If SO utilizes contractors to complete its work under this Agreement, in whole or in part, SO shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Agreement as specified in this Agreement. However, SO shall remain obligated for full performance hereunder, and City shall incur no obligation other than its obligations to SO hereunder. This Agreement shall not be assigned or transferred in whole or in part or any right or obligation hereunder, without prior written approval of City.
- N. Independent Contractor Status. SO, and its contractors and employees are not employees of City and are not eligible for any benefits through City, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
- O. Conflict of Interest. No City officer or employee, during his or her tenure or for two (2) year thereafter, shall have any interest, direct or indirect, in Agreement or the proceeds thereof. City officer or employee who selected SO, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from SO or be employed by SO during the term of the Agreement, unless waiver is obtained from City in writing.
- P. Oregon Law and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to principles of conflicts of law. Any litigation between the Parties arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County Circuit Court or the United States District Court for the State of Oregon.
- Q. Compliance with Law. SO 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. SO shall maintain its nonprofit and tax-exempt status during this Agreement. SO shall be EEO certified by City in order to be eligible to receive funds.
- R. Independent Financial Audits/Reviews. SO shall provide an annual accounting from an independent accounting firm of its profit and loss for the year, its balance sheet, and an itemization of all the organization's expenses for the year. Two copies of the required financial review shall be submitted to the City Program Manager within thirty days of audit completion or upon request by the Program Manager.
- S. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

- T. Merger. This Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Agreement that are not contained herein.
- U. Program and Fiscal Monitoring. City Program Manager shall monitor on an as-needed basis to assure Agreement compliance. Monitoring may include, but is not limited to, on site visits, telephone interviews and review of required reports and will cover both programmatic and fiscal aspects of the Agreement. The frequency and level of monitoring will be determined by the Program Manager. Notwithstanding such monitoring or lack thereof, SO remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- V. Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement and may only be enforced by the Parties.
- W. Electronic Transaction; Counterparts. The Parties agree that they may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures. This Agreement, and any amendment, may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

CITY OF PORTLAND


SPORT OREGON

 Name: Tom Rinehart
 Title: Chief Administrative Officer
 Date: _____



 Name: Jim Etzel
 Title: Chief Executive Officer
 Date: 4/27/21

Approved as to Form

APPROVED AS TO FORM


Sr. Deputy City Attorney

 Ken McGair, City Attorney