

GRANT AGREEMENT NO.

This is Grant Agreement between the CITY OF PORTLAND, OREGON (“CITY” OR “GRANTOR” and Japanese Garden Society of Oregon, an Oregon nonprofit corporation (“GRANTEE” or “Society”) in an amount not to exceed \$40,000.

RECITALS:

1. The Japanese Garden of the City of Portland (“Garden”) located at Washington Park (611 SW Kingston Avenue, in Portland, Oregon) has been an important cultural asset for this community for 48 years. Attracting over 215,000 people annually, the Garden is a strong part of what makes Portland a wonderful place to live, work, and visit.
2. The Japanese Garden Society of Oregon (“Society”) is an Oregon nonprofit corporation formed with the mission to create, maintain, improve, and administer an authentic, world-class Japanese garden in the City of Portland and to offer compatible educational, cultural, artistic, horticultural, environmental, and charitable activities. Through City Ordinance No. 181323, the City Council licensed Society to operate the Garden in Washington Park.
3. To accommodate rising attendance and growing demand, the Society has planned a physical and programmatic expansion that will: serve regional, national, and international audiences, including an international training institute; offer greater community access; improve traffic flow and safety for visitors and Washington Park users; and develop a dynamic tourist attraction, benefiting the economy and stature of the region.
4. The Society will use funds granted to help pay for costs associated with the design phase of a Garden expansion project, specifically, expenses associated with geographic and engineering studies and architectural design fees.
5. Funds were appropriated in the FY 2011-12 Adopted Budget as a Special Appropriation.
6. The amount of this Grant is not to exceed \$40,000.

AGREED:**I. ACTIONS TO BE TAKEN BY GRANTEE**

In accordance with the above Recitals which are incorporated to this Grant Agreement, and consideration of the grant funds provided by CITY, GRANTEE agrees to perform the following actions and/or spend grant funds in the following way:

GRANTEE will use funds granted to help pay for costs associated with the design phase of the Garden expansion project, specifically, expenses associated with geographic and

engineering studies and architectural design fees that will be expended in the design phase which is scheduled to begin July 1, 2012 and to finish no later than June 30, 2013.

II. SPECIFIC CONDITIONS OF THE GRANT

- A. Publicity: GRANTEE may mention City's funding in its programs.
- B. Records: GRANTEE will maintain all records for the program, including all records regarding the program, as well as general organizational and administrative information, will be made available to the Grant Manager, or other designated persons, upon request;
- C. Grant Manager: The Grant Manager for this grant is Noah Siegel, Director of International Affairs in the Office of Mayor Sam Adams, (1221 SW 4th Avenue, Rm 340, Portland, Oregon 97204; noah.siegel@portlandoregon.gov; 503-823-4125.)
- D. Amendment. The Grant Manager is authorized to amend the terms and conditions of the Grant Agreement provided such changes do not increase the CITY's financial risk. If approved, such changes shall be incorporated into a formal grant amendment and signed by the GRANTEE and the Grant Manager before such changes are effective. Any change to the grant amount must be approved by the City Council unless the City Council delegated authority to amend the grant amount to a specific individual in the ordinance authorizing the Grant Agreement.
- E. Billings/invoices/Payment: The Grant Manager is authorized to approve work and billings and invoices submitted pursuant to this Grant Agreement and to carry out all other CITY actions referred to herein in accordance with this Grant Agreement.
- F. Reports: GRANTEE will submit to the Grant Manager one or more reports at the completion of the design phase. The report(s) will include:
- Summary of design for expansion and detailed financial report documenting expenditures associated with the design phase;
 - Verification by authorized GRANTEE representative that funds were used in accordance with this Grant Agreement.
- G. Other: CITY reserves the right to request additional documentation to support GRANTEE's expenditure of grant funds. GRANTEE will identify in writing a representative who is authorized to act on behalf of GRANTEE and serve as the point of contact for the Grant Agreement.

III. PAYMENTS

- A. GRANTEE will receive its funding as follows:

- 1. CITY agrees to disburse funds in an amount of forty thousand dollars and no cents (\$40,000) within 30 days of the effective date of this Grant Agreement, to GRANTEE. Payment(s) under this Grant Agreement may be used only to provide the services or take the actions listed previously in this Grant Agreement and shall not be used for any other purpose.
 - 2. GRANTEE will receive one payment which will be paid upon receipt by the CITY of an invoice from GRANTEE.
- B. If for any reason GRANTEE receives a payment under this Grant Agreement and does not use the funds, provide the required services or take any actions required by the Grant Agreement, the CITY may, at CITY's sole option, terminate, reduce or suspend any grant funds that have not been paid and may, at its option, require GRANTEE to immediately refund to the CITY the amount improperly expended or received by GRANTEE.
 - C. Grant payments under this Grant Agreement may be used only to provide the services or take the actions listed previously in this Grant Agreement and shall not be used for any other purpose.
 - D. If applicable, 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.
 - E. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, CITY's payment of funds under this Grant Agreement may be terminated, suspended or reduced.

IV. GENERAL GRANT PROVISIONS

- A. **TERMINATION FOR CAUSE.** If, through any cause, GRANTEE fails to fulfill in timely and proper manner its obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, CITY shall have the right to terminate this Grant Agreement by giving written notice to GRANTEE of such termination.
 - 1. During the 30 day period, CITY is under no obligation to continue providing funds and GRANTEE is not authorized to perform services or take actions that would require CITY to pay additional grant funds to GRANTEE.
 - 2. During the 30 day period, GRANTEE shall not spend unused grant funds and shall return to CITY all funds paid to GRANTEE.
 - 3. In the event of a termination for cause, all finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Grant Agreement shall, at the option of the CITY, become the property of the CITY and GRANTEE shall be entitled to receive just and equitable

compensation for any satisfactory work completed on such documents up until the time of notice of termination.

- B. **TERMINATION BY AGREEMENT OR FOR CONVENIENCE.** CITY and GRANTEE may terminate this Grant Agreement at any time by mutual written agreement. Alternatively, CITY may, upon thirty (30) days written notice, terminate this Grant Agreement for any reason deemed appropriate in its sole discretion. If the Grant 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.
- C. **CHANGES.** CITY may request changes in the scope of the services or terms and conditions hereunder. Such changes, including any increase or decrease in the amount of GRANTEE's award, shall be incorporated in written amendments to this Grant Agreement before they become effective.
- D. **NON-DISCRIMINATION.** In carrying out activities under this Grant 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 insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Such action 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 provided by CITY setting for the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph in all of its Grant Agreements for work funded under this Grant Agreement, except Grant Agreements governed by Section 104 of Executive Order 11246.
- E. **ACCESS TO RECORDS.** GRANTEE shall provide CITY, or its duly authorized representatives, prompt access to any and all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Grant Agreement or GRANTEE's performance of services, for the purpose of making audit examination, copies, excerpts, and transcriptions. All required records must be maintained by GRANTEE for four years after CITY makes final payment and all other pending matters are closed.
- F. **MAINTENANCE OF RECORDS.** GRANTEE shall maintain records on a current basis to support any billings or invoices submitted by GRANTEE to CITY. CITY, or its authorized representative, shall have the authority to inspect, audit, and copy on reasonable notice, and from time to time may examine any records of GRANTEE regarding its billings or its work hereunder. GRANTEE shall retain these records for inspection, audit, and copying for four years from the date of completion or termination of this Grant Agreement.

- G. AUDIT. CITY, either directly or through a designated representative, may audit the records of GRANTEE at any time during the four year period established by above section(s). If an audit discloses that payments to GRANTEE were in excess of the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to CITY.
- H. INDEMNIFICATION. GRANTEE shall hold harmless, defend, and indemnify CITY and CITY's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from GRANTEE's work or any of GRANTEE's contractors work under this Grant Agreement.
- I. WORKERS' COMPENSATION INSURANCE.
1. GRANTEE, its contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Worker's Compensation law and shall comply with ORS Chapter 656, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Grant Agreement and shall be incorporated herein and made a term and part of this Grant Agreement. GRANTEE further agrees to maintain worker's compensation insurance coverage for the duration of this Grant Agreement.
 2. In the event GRANTEE's worker's compensation insurance coverage is due to expire during the term of this Agreement, GRANTEE agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by ORS Chapter 656, before its expiration, and GRANTEE agrees to provide CITY such further certification of worker's compensation insurance a renewals of said insurance occur.
- J. LIABILITY INSURANCE.
1. GRANTEE shall maintain commercial general liability insurance that protects GRANTEE and CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from GRANTEE's work under this Grant Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the CITY and its officers, agents, and employees. GRANTEE's insurance shall be primary and non-contributory to any other insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each 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. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to CITY. If the insurance is canceled or terminated prior to completion of the Grant Agreement,

- GRANTEE shall provide a new policy with the same terms. GRANTEE agrees to maintain continuous, uninterrupted coverage for the duration of the Grant Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by GRANTEE.
2. GRANTEE shall maintain on file with the City Auditor a certificate of insurance, along with applicable endorsement, certifying the coverage required under subsection (1). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by CITY. 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 ORS 30.270.
- K. GRANTEE'S CONTRACTORS AND ASSIGNMENT. If GRANTEE utilizes contractors to complete its work under this Grant Agreement, in whole or in part, GRANTEE shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Grant Agreement as specified in this Grant Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to GRANTEE hereunder. GRANTEE agrees that if GRANTEE's contractors are employed in the performance of this Grant Agreement, GRANTEE and its contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. GRANTEE shall not assign this Grant Agreement in whole or in part or any right or obligation hereunder, without prior written approval of CITY. GRANTEE's contractors shall be responsible for adhering to all local, state and federal laws and regulations.
- L. INDEPENDENT STATUS OF GRANTEE. GRANTEE is independent of CITY and GRANTEE and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. 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.
- M. CONFLICTS OF INTEREST. No CITY officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Grant Agreement or the proceeds thereof. No CITY officer or employees who participated in the award of this Grant Agreement shall be employed by GRANTEE during the period of the Grant Agreement.
- N. OREGON LAWS AND FORUM. This Grant Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between CITY and GRANTEE arising under this Grant Agreement or out of work performed under this Grant Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

- O. **COMPLIANCE WITH LAWS.** In connection with its activities under this Grant Agreement, GRANTEE shall comply with all applicable federal, state, and local laws and regulations. GRANTEE shall be EEO certified by the City of Portland in order to be eligible to receive grant funds.
- P. **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. Two copies of all required financial audits or reviews shall be submitted to the Grant Manager within thirty days of their completion.
- Q. **SEVERABILITY.** If any provision of this agreement is found to be illegal or unenforceable, this agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- R. **INTEGRATION.** This Grant 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 Grant Agreement that are not contained herein.
- S. **PROGRAM AND FISCAL MONITORING.** CITY shall monitor on an as needed basis to assure Grant Agreement compliance. Such 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 Grant Agreement. The frequency and level of monitoring will be determined by the Program Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the services required by this Grant in accordance with its terms and conditions.
- T. **THIRD PARTY BENEFICIARIES:** There are no third party beneficiaries to this grant agreement. The agreement may only be enforced by the parties.
- U. **ASSIGNMENT:** This agreement cannot be assigned or transferred by GRANTEE without the prior written permission of CITY.
- V. **COUNTERPARTS/ELECTRONIC MEANS:** This Grant Agreement 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. The parties agree CITY and GRANTEE may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

V. **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 during any period for which GRANTEE has

received CITY funds and required to perform work. This Grant Agreement shall terminate on December 31, 2012.

Dated this _____ day of _____, 2011.

CITY OF PORTLAND

GRANTEE

Name:
Title:

Name:
Title:

APPROVED AS TO FORM:



City Attorney