

AGREEMENT

Between City of Portland and Portland-Suzhou Sister City Association

This Agreement is between the CITY OF PORTLAND, OREGON ("CITY") and the Portland-Suzhou Sister City Association ("PSSCA") for the transfer of one Benson Bubbler.

RECITALS:

1. The Sister City movement in the United States was inaugurated by President Eisenhower in 1956 as the "People to People Program" with the purpose of establishing greater friendship and understanding between the people of the United States and the peoples of other nations through direct contact. The City of Portland has maintained a sister city program since 1959 when the City established its first sister city relationship with Sapporo, Japan.
2. Through Ordinance 160692, the Portland City Council authorized the establishment of a sister city relationship with the City of Suzhou and approved the bylaws for the formation of the Portland-Suzhou Sister City Association ("PSSCA") in 1988. PSSCA is an Oregon nonprofit corporation dedicated to mutual friendship and understanding between the people of Portland and Suzhou, China. PSSCA has sponsored, encouraged, and facilitated cultural, economic, educational exchanges and programs of goodwill between our two cities.
3. Lan Su Chinese Garden is the product of collaboration between the cities of Portland and Suzhou, China, our sister city in Jiangsu province famous for its Ming Dynasty Gardens, and which in 2015 celebrated its 15 year anniversary and is today one of Portland's greatest cultural treasures and one of the most interesting sites to see while visiting Portland.
4. In order to promote improved awareness of the history of Portland by the people of Suzhou, the City desires to transfer an iconic 4-bowl Benson Bubbler water fountain ("Benson Bubbler") for installation in the City of Suzhou. The Benson Bubbler was designed by A.E. Doyle, a noted architect of the Multnomah County Library, Multnomah Falls Lodge, and other regional landmarks. The Benson Bubbler was selected because it is today an enduring legacy of our city reflecting over 100 years of Portland history.
5. The Benson Bubbler identified for this project was acquired through general unrestricted funds and was not procured through restricted utility ratepayer funds. It has a value over \$5,000. However, it is a property not needed for City bureau use and can be deemed surplus personal property under PCC 5.36.
6. The gift of this Benson Bubbler to the City of Suzhou further supports the meaningful collaboration and exchange between the two cities. It will be a conveyance that honors the 15th year anniversary of Lan Su Chinese Garden, a result of collaboration between the cities of Portland and Suzhou.

7. PSSCA is willing and able to undertake the tasks identified in this Agreement. PSSCA will take custody and control of the Benson Bubbler for delivery to Suzhou, China, as a gesture of goodwill and in support of the Portland-Suzhou Sister City relationship, and will work to ensure that this important piece of Portland history is cared for and displayed so that future generations may enjoy.

Therefore, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

AGREED:

I. ACTIONS TO BE TAKEN BY PSSCA

PSSCA agrees to take custody, control and possession of one Benson Bubbler at a mutually agreed upon time and place for the purpose of undertaking the actions required in this Agreement.

- A. PSSCA will act for the goodwill and positive public interests of the City of Portland, at every step of the way, working to strengthen the sister city relationship between Portland and Suzhou. PSSCA shall:
 1. Communicate with the City of Suzhou's Foreign Affairs Office to identify the best course of action for the safe delivery of the Benson Bubbler to the City of Suzhou.
 2. Coordinate with the City of Portland Director of International Relations on a Memorandum of Understanding (MOU) that will serve as confirmation and documentation of the City of Suzhou's commitment to the following:
 1. Acknowledge receipt of the Benson Bubbler upon delivery.
 2. Select a suitable location to install and display the Benson Bubbler within the City of Suzhou.
 3. Commemorate and dedicate the Benson Bubbler in honor of the Portland-Suzhou sister city relationship.
 4. Arrange for and provide long-term care for the Benson Bubbler to ensure visitors can enjoy for generations to come.
 3. Provide confirmation of the city of Suzhou's plans for commemorating the Benson Bubbler and documentation of the event.
- B. PSSCA will take all prudent and necessary steps to ensure the safe delivery of the Benson Bubbler to the City of Suzhou. PSSCA agrees to:
 1. Assume all costs related to the safe delivery of the Benson Bubbler to Suzhou, including shipping, freight, insurance, import/export and customs requirements, and other related costs.

Exhibit A

2. Make arrangements for the safe transfer of the Benson Bubbler from the City of Portland to the City of Suzhou, China. PSSCA must take reasonable steps to protect and maintain the good physical condition from the time PSSCA takes physical possession of the Benson Bubbler to when it is accepted by City of Suzhou.
 3. Document and confirm arrangements made for the safe transfer of the Benson Bubbler, including estimated timeline for taking possession, shipping, final delivery, installation, and any planned dedication ceremonies.
 4. Identify and address all logistical needs required to safely deliver the Benson Bubbler to the City of Suzhou Foreign Affairs Office.
 5. Procure and document insurance protection. This insurance must be in force (at a minimum) from the point at which the PSSCA takes possession of the Benson Bubbler up to the point at which the City of Suzhou confirms in writing that it has taken physical possession of the Benson Bubbler in the form of an official City of Suzhou email or letter.
 6. Take possession of the Benson Bubbler at the earliest opportunity, following approval by the Portland City Council, and after complying with steps 1, 2, 3, 4 and 5 of section B.
 7. Compensate the City up to the amount contributed for this transfer in the event that the Benson Bubbler is lost or damaged, and provide an explanation and documentation on the reason for the damage or loss.
- C. PSSCA agrees to provide regular updates to the Director of International Relations on progress made in support of this agreement, along with a final report that summarizes outcomes no later than September 30, 2016.
- D. PSSCA agrees to take commercially reasonable actions in its performance under this Agreement and shall not be deemed in default for the non-performance or for any interruption or delay in performance of this Agreement if its failure to perform is due to a "force majeure" event such as: Acts of God (such as natural disasters, earthquakes, floods and fires); war, riots, sabotage or terrorism; government restrictions, sanctions, embargos, or import/export regulations; labor disputes, strikes or lockouts; inability to obtain labor, services or materials; or other similar causes beyond the reasonable control of PSSCA, providing such cause is not due to the willful act or neglect of PSSCA. PSSCA shall give prompt written notice with full details if PSSCA seeks to excuse its performance based on this paragraph.

II. SPECIFIC CONDITIONS

- A. Lead Coordinator: PSSCA will take the lead in communicating with the City of Suzhou to identify the appropriate channels, processes, and policies that apply to accepting the Benson Bubbler.

Exhibit A

- B. Commemoration of Benson Bubbler Gift: PSSCA will communicate and coordinate with the City of Suzhou and relay to the City's Contract Manager the details of the City of Suzhou's plans for displaying (or otherwise installing) the Benson Bubbler in a manner fitting of this important piece of Portland history, including specific plans for City of Suzhou public ceremonies.
- C. Records and Communication: PSSCA will maintain all records related to completing the transfer of Benson Bubbler to City of Suzhou, China. Further, PSSCA will include the Contract Manager in all communication with the City of Suzhou as it pertains to shipping, delivery, display and other City of Suzhou activities planned around the commemoration of the receipt of the Benson Bubbler. PSSCA will provide accurate English language translation for all Chinese language documents and communication in this project.
- D. CITY Contract Manager: The CITY Contract Manager for this Agreement is Héctor Miramontes, International Relations Director for the City of Portland. CITY Contract Manager is authorized to take all necessary actions to fulfill the City's obligations under this Agreement.
- E. PSSCA Project Manager: The PSSCA Project Manager for this agreement, is Cathy Chinn, PSSCA Board Member and Immediate Past-President of the Portland-Suzhou Sister City Association.
- F. Report: PSSCA to provide a report summarizing the successful execution of the requirements set out in this agreement. PSSCA further agrees to communicate in a timely manner as developments occur that may prevent the successful execution of requirements set out in this agreement.

III. GENERAL PROVISIONS

- A. Cause for Termination. It shall be a material breach and cause for termination of this Agreement if PSSCA uses or allows the use the Benson Bubbler in any manner contrary to the scope of this Agreement, including damaging the goodwill or reputation of the City of Portland, or if PSSCA fails to deliver the Benson Bubbler to Suzhou by September 30, 2016, if PSSCA 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, PSSCA shall commence cure within the thirty (30) days, notify CITY of PSSCA'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. PSSCA shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.
- B. Termination for Cause. Termination for cause based on PSSCA's misuse of the Benson Bubbler 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. At CITY's sole discretion, PSSCA shall return the Benson Bubbler to CITY or compensate CITY for the Benson Bubbler within ten days of the date of the termination notice. All finished or unfinished documents, data, studies, and

reports prepared by PSSCA under this Agreement shall, at the option of CITY, become the property of CITY. PSSCA will have no claims against CITY for costs that it may have expended in carrying out the Agreement prior to notice of termination.

- C. Penalty for Termination for Cause. If this Agreement is terminated for cause, CITY, at its sole discretion, may seek any other legal or equitable remedies, and may decline to approve or award future grant funding or financial support requests to PSSCA.
- D. Amendment. The Contract 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 alter the financial responsibilities outlined for the Parties. Amendments must be in writing and executed by the authorized representatives of the Parties and approved to form by the City Attorney.
- E. Maintenance of and Access to Records. PSSCA shall maintain all books, general organizational and administrative information, documents, papers, and records of PSSCA that are related to this Agreement or PSSCA's performance of work or services, for four (4) years after CITY makes final grant payment or the termination date of this Agreement, whichever is later. PSSCA shall provide CITY prompt access to these records upon request and permit copying as CITY may require.
- F. Non-Discrimination. In carrying out activities under this Agreement, PSSCA 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 Chapter 23.01. PSSCA shall not discriminate in its employment practices because of race, color, religion, sex, age, qualified 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. Buyer 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.
- G. Indemnification. PSSCA 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 PSSCA and/or its contractors in the performance of this Agreement. This duty shall survive the expiration or termination of this Agreement.
- H. Insurance. PSSCA shall maintain public liability and property damage insurance that protects PSSCA and CITY, and their officers, agents, and employees, from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from PSSCA's actions under this 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. 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. However, 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. PSSCA shall acquire sufficient comprehensive property insurance to cover full replacement of the Benson Bubbler in event of lost, damage or other claims. 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.

- I. PSSCA's Contractor; Non-Assignment. If PSSCA utilizes contractors to complete its work under this Agreement, in whole or in part, PSSCA 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, PSSCA shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to PSSCA 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. PSSCA shall require its contractors and agents to have sufficient and prudent types and amount of insurance coverage to address any and all claims that may arise out of the contractors' or the agents' activities related to this Agreement.
- J. Independent Contractor Status. PSSCA, 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.
- K. 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 this Agreement or the proceeds thereof. CITY officer or employee who selected PSSCA, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from PSSCA or be employed by PSSCA during the term of the Agreement, unless waiver is obtained from CITY in writing.
- L. 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.
- M. Compliance with Law. PSSCA and all persons performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. If PSSCA is a 501(c) (3) organization, PSSCA shall maintain its nonprofit and tax exempt status during this Agreement. PSSCA shall be EEO certified by CITY in order to be eligible to receive grant funds.
- N. 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.

- O. 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.
- P. Program and Fiscal Monitoring. CITY shall monitor on an as-needed basis to assure Agreement compliance. Monitoring may include, but are not limited to, on site visits, telephone interviews and review of required reports and will cover both programmatic and fiscal aspects of the Agreement. The frequency and level of monitoring will be determined by the Contract Manager. Notwithstanding such monitoring or lack thereof, PSSCA remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- Q. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement and may only be enforced by the Parties.
- R. 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.
- S. NOTICE: All notices under this Agreement shall be sent to the Parties at the following address:

To City:
Office of Government Relations
Attn: International Relations Director Héctor Miramontes
1221 SW 4th Avenue, Room 440
Portland, Oregon, 97204

To PSSCA:
Attn: Cathy Chinn, Immediate Past President and current board member
PO Box 1025
Portland, OR 97207

IV. TERM

The terms of this Agreement shall be effective from January 27, 2016, and shall remain in effect until the PSSCA provides confirmation that terms of this agreement have been met. All work by PSSCA must be completed no later than September 30, 2016.

CITY OF PORTLAND**PORTLAND-SUZHOU SISTER CITY
ASSOCIATION**

Name: Charlie Hales

Title: Mayor

Date: _____

Name: Cathy Chinn

Title: Treasurer & Immediate Past President

Date: _____

APPROVED AS TO FORM:

City Attorney, City of Portland