

Exhibit A
Donation Agreement
Patrick-Rulo Fund
(Non-Real Estate)

This Donation Agreement (this "Agreement") is entered into on _____, 2023, by and between the City of Portland, by and through Portland Parks & Recreation ("City" or "PP&R"), and Stephen L. Rulo and Thomas M. Patrick, individuals and residents of the State of California ("Donors" collectively unless individual reference is needed, and together with the City or PP&R, the "Parties").

RECITALS

- A. Donors desire to establish a charitable fund to be held by The Oregon Community Foundation ("OCF") wherein Donors' assets would be transferred to be managed for charitable uses.
- B. Donors and OCF will enter into a fund agreement ("Fund Agreement") designated as the Patrick - Rulo Fund of The Oregon Community Foundation (the "Fund") which will be administered, managed and maintained under the Oregon Uniform Prudent Management of Institutional Funds Act.
- C. Donors intend to make the bulk of their charitable contributions to the Fund at the death of the survivor of the Donors but may contribute to the Fund during their lifetimes.
- D. Donors intend for OCF to make charitable distributions from the Fund in accordance with instructions in the Fund Agreement and any Advisory Letter (as that term is defined in the Fund Agreement) supplemental to the Fund Agreement.
- E. It is the purpose of the Fund Agreement and the Fund to benefit the City of Portland, specifically for PP&R's International Rose Test Garden ("Rose Garden") at Washington Park in Portland, Oregon.
- F. The City is agreeable and willing to accept this contingent donation of property, specifically distributed money from the Fund. The City agrees that the City's use of the gifted property will be in accordance with the Donors' intention and conditions.

The above Recitals are hereby incorporated, and the Parties agree as follows:

AGREEMENT

- 1. This Agreement is effective on the last date of execution by all Parties and shall be in effect for the duration of the life of the Fund. This Agreement has been determined to be a

property agreement outside the limitations of contract term in existing Portland City Charter Section 2-105. In the unlikely event that this Agreement is later determined to be subject to the contract term limitation of the above Charter section, this Agreement is deemed to be a new agreement of five years and an automatic extension of five additional years, with such continuous new agreement to exist for the life of the Fund.

2. Donors agree to:

- a. Execute a mutually agreeable Fund Agreement with OCF. A copy of the Fund Agreement is attached hereto as Exhibit B.
- b. Provide the City with an executed Fund Agreement and any Advisory Letter supplemental to the Fund Agreement directly or through OCF.
- c. Determine, in their sole discretion, if and when to contribute and transfer assets to the Fund during their respective lifetimes.
- d. Unless their estate planning desires change prior to the death of the survivor of the Donors, contribute and transfer assets to the Fund at the time of the death of the survivor of the Donors.

3. The City agrees to:

- a. Upon notice from OCF of the initial distribution, establish an appropriate City account in accordance with City financial and accounting policies to hold moneys distributed from the Fund in accordance with this Agreement.
- b. Use moneys distributed in its reasonable discretions solely for the following purposes:
 - i. Renew the rose plants at the Rose Garden and the infrastructure that supports them and their display, such as soil amendments, watering systems, mulch, fertilizer and plant identification.
 - ii. Enhance or replace the pathways in the Rose Garden that can include drainage enhancement, lawn replacement, raising the level of the lawn pathways or replacement of lawn pathways with another material such as gravel or pavers.
 - iii. Enhance or replace any infrastructure in the Gold Medal Garden.
 - iv. Pay or supplement the salary of any intern or assistant of the Rose Garden the curator deems necessary for the support and maintenance of the Rose Garden.
- c. Despite any provision of Section 3.b. above, the City shall not use moneys distributed for these following purposes:
 - i. Replace funds for the Rose Garden that the City would normally provide in the ordinary course.
 - ii. Enhance or replace any infrastructure unrelated to the maintenance of the Rose Garden, such as (i) access to comply with requirements under the Americans with Disabilities Act of 1990, as amended from time to time, (ii)

parking lots, (iii) souvenir stores, and (iv) any matters unrelated to maintenance and enhancement of the rose displays.

- d. Complete and submit to OCF a progress report on July 31st of each year following receipt of annual distribution, unless another reporting date has been agreed to. The report will summarize how the distributed funds were used in the prior year.
4. As a condition to receiving any funds, the City agrees that it will, either in its own capacity or through an affiliate, commit to maintaining a bed of the rose "Stephen Rulo" within the public Rose Garden, in perpetuity (or for the life of the Rose Garden).
5. Donors understand and agree that the City is the sole entity to make contracting and labor/employment decisions regarding independent contractors or employee workforce who will be performing services or doing work at the Rose Garden. These City decisions include but are not limited to: executing contracts for general or professional services; undertaking employment actions such as hiring, firing or disciplining; review performance of workers; making assignment of work; and determining contract compensation, employee salaries and benefits. Nothing in this agreement obligates the City to have any specific minimum number of interns or assistants, or require that employee(s) who may be deemed the Rose Garden curator(s) be solely assigned to Rose Garden.
6. If at any time the Rose Garden ceases to exist and the specified purpose to benefit the Rose Garden cannot be met, the City understands and acknowledges that no further distributions will be made from the Fund to the City, but rather the Fund will be used to support one or more qualified charitable organizations with similar objectives and purposes as the Rose Garden as selected by OCF in its sole discretion. For purposes of this Section 7, "qualified charitable organization" means an Oregon tax-exempt charitable organization or governmental unit described in Internal Revenue Code section 509(a)(1), (2), or (3).
7. The Parties will mutually coordinate through their Agreement representatives identified below, and shall notify the other Parties of any update to these contacts.
 - a. PP&R Representative: Megan Dirks, Community Partnership analyst, 503-312-2299
 - b. OCF Representative: Sarah Grace McIlveen, Director of Philanthropy, 503-227-6846
8. Notices required for this Agreement shall be in writing and effective: (a) upon delivery, if delivered personally to the identified representative below; (b) upon delivery to the manager or person in charge of a Party's business office during regular business hours; (c) upon mailing, if deposited in the United States mail, postage prepaid; or (d) upon deposit, if tendered to an overnight or commercial courier (such as Federal Express), and addressed to the person and address below, or to another designee or address as either party may specify in writing from time to time. Notice sent by facsimile transmission or electronic mail (email) is deemed sufficient when received during regular business hours, except for notice related to termination of Agreement or assertion of either Party's failure to meet any legal obligations under the Agreement.

If to City:

City of Portland – Portland Parks & Recreation
1120 SW 5th Avenue, Suite 858
Attn: Megan Dirks
Portland, Oregon 97204
Email: megan.dirks@portlandoregon.gov

With a copy to:

Office of the City Attorney
1221 SW 4th Avenue, Suite 430
Portland, Oregon 97204
Phone: 503-823-4047

If to Donors:

Stephen L. Rulo and Thomas M. Patrick
282 S. Via Las Palmas, Palm Springs, CA 92262
Email: tom.patrick282@gmail.com;
slarulo@yahoo.com

With a copy to:

Nicole M. Pearl
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
Email: npearl@mwe.com

9. The City of Portland is a tax-exempt public corporation under 26 USC 115(2). Nothing in this Agreement requires the City to provide any goods or services to the Donors for their cash donation to the City. Donors are solely and jointly responsible for determining whether any donations to the Fund would be tax deductible under the law or may otherwise be in compliance with the Oregon Uniform Prudent Management of Institutional Funds Act. Donors are solely and jointly responsible for compliance with any tax reporting obligation.
10. The Parties understand that the City of Portland is subject to the Oregon Public Records Law. This Donation Agreement, the amount of distributions received from the Fund, the City's uses of public funds and City files are deemed public information and may be subject to public records request. If Donors determine that there is a need to submit confidential information to the City, Donors shall identify, highlight, and segregate any information that is identified as confidential from information that is not confidential or exempt. Donors shall identify applicable legal exemptions under the Oregon Public Records Act. Donors acknowledge that information that has not been properly marked as confidential by OCF may be disclosed by the City in response to a public records request.
11. Amendments or modification of this Agreement shall be in writing and executed by the authorized representatives of the Parties. Upon Donors' deaths, the Donors acknowledge that OCF will be authorized to represent both Donors' and OCF's interests.
12. This 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 that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures and facsimiles.

The signatories indicated below are authorized to execute this Donation Agreement for themselves and/or their respective organizations.

Stephen L. Rulo, Donor

City of Portland, Portland Parks & Recreation

Date _____

Adena Long, Director
Date _____

Thomas M. Patrick, Donor

Date _____

Approval as to Form

City Attorney