

**GRANT AGREEMENT
BETWEEN THE CITY OF NEWPORT BEACH AND**

This Grant Agreement ("Agreement") is entered into this ____ day of _____, _____ ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and Charter City ("City"), and _____, a _____ located at _____ ("Grantee"). City and Grantee are at times individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

- A. It is the policy of the City Council that the City's budget specifically allows the City Council to direct revenue towards non-profit agencies, community groups, community events, or enhancement projects with worthy projects or programs which the City Council deems beneficial to the residents' quality of life.
- B. Grantee requested a grant from the City for _____ ("Grant Proposal").
- C. The City Council determined the Grant Proposal is for a worthy project that will benefit the City's residents' quality of life.
- D. The City Council approved a grant in the amount of _____ (\$_____) ("Grant Funds") to Grantee pursuant to certain conditions regarding expenditure, reporting, and accounting requirements.

NOW, THEREFORE, the Parties agree as follows:

1. GRANT

1.1. City awards to Grantee Grant Funds in the amount of _____ (\$_____) as requested by Grantee in the Grant Proposal attached hereto as Exhibit A and incorporated herein by reference, or such other amount as authorized by the City Council.

1.2. Grant Funds shall be disbursed by City to Grantee as follows (select one):

- At the time of execution of this Agreement.
- On or before _____.
- In four (4) equal installments on the following dates: (a) _____(b) _____(c)_____; and (d)_____.

2. TERM

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until _____, unless terminated earlier as provided herein.

3. RESTRICTIONS ON USE OF FUNDS [AND OTHER REQUIREMENTS RELATED TO THE RECEIPT OF GRANT FUNDS] (CMO GRANT AGREEMENTS)

3.1. The Grant Funds are subject to the following expenditure conditions (“Approved Uses”):

3.1.1. The Grant Funds shall be expended solely for the purposes provided in Exhibit A;

3.1.2. The Grant Funds shall not be used for any activity that would violate City, state or federal statutory or decisional law such as regulations affecting non-profit or tax exempt organizations exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; and

3.2. Grantee further warrants to City that the Grant Funds will be spent solely for the Approved Uses and the Grant Funds shall be used by Grantee during this Agreement’s term otherwise the Grant Funds shall be returned to City, as provided in Section 5 below.

3.3. [CMO GRANT AGREEMENTS] Grantee shall conduct background checks for all of its volunteers and employees who work with minor children in relation to any project described in Grantee’s Grant Proposal. To the extent applicable, Grantee shall provide the City certification that it has complied with this requirement prior to the receipt of Grant Funds.

4. REPORTING AND ACCOUNTING REQUIREMENTS

4.1. At all times during the term of this Agreement, Grantee shall maintain true, proper, and complete books, records, and accounts (collectively, “Books and Records”) in which shall be entered fully and accurately all transactions taken with respect to the operations of Grantee under the Grant Proposal and the expenditure of the Grant Funds. Grantee shall maintain the Books and Records in accordance with Generally Accepted Accounting Principles. Grantee shall make available to City such Books and Records upon City’s request.

4.2. If the Grantee has been audited by an independent auditor or has been the subject of a compliance audit/examination by a grantee or regulatory agency during the past three years, audit reports and management letters indicating compliance violations, fraud, illegal acts, material weaknesses in internal control structure or reportable conditions, in connection with such audits shall be delivered to the City thirty (30) days prior to the effective date of this agreement. If no audits or events as described above have occurred during this period, the Grantee shall provide City a written assertion that no audits or similar examinations have occurred during the three (3) year period and an

assertion that the Grantee is not aware of any events or conditions, described above, or other information that might reasonably impact City's decision to fund the grant as requested.

4.3. City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a Certified Public Accounting firm who shall have the right to audit Grantee's accounting procedures and internal controls of Grantee's financial systems as they relate to the Grant Proposal and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by City or its representative(s) at mutually agreed upon reasonable times and in conformance with generally accepted auditing standards. Grantee agrees to fully cooperate with any such audit(s).

4.4. This right to audit shall extend during the length of this Agreement and for a period of three (3) years or longer, if required by law, following the date of any Grant Funds tendered under this Agreement. Grantee agrees to retain all necessary records/documentation for the entire length of this audit period.

4.5. [REMOVE SECTION FROM COMMUNITY & HUMAN SERVICES GRANT AGREEMENTS] Grantee shall, upon conclusion of the event, furnish the City with a Balance Sheet and Income Statement describing the receipt and disbursement activities of Grantee with respect to the Grant Funds. In its sole and absolute discretion, the City may also require Grantee to submit: (i) quarterly check registers and descriptions of each disbursement; (ii) budget-to-actual-results; and (iii) a statement of position describing the assets and liabilities associated with the Grant event. All reports, including a post-event evaluation, shall be due to the City no later than forty-five (45) days following the conclusion of the event. In the event that an independent audit is conducted, Grantee shall forward a copy of the audited report to the City for review, including any Management Letter, Report on Internal Controls, or Reportable Conditions letter generated during the course of the audit.

4.6. Grantee agrees to exercise prudent financial management processes including proper oversight of all assets, budget preparation, and timely reporting including budget-to-actual-comparisons.

4.7. All Approved Uses shall be performed by Grantee or under Grantee's supervision. Grantee represents that it possesses the professional and technical skills required to perform the services required by this Agreement, and that it will perform all services with a standard of care and in a manner commensurate with the community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances.

4.8. If Grantee has supported Political Action Committees(s) (PACs) during the past three (3) years, the Grantee shall hire an independent auditor to perform limited, agreed-upon testwork procedures to provide City assurance that City sponsored event profits did not subsidize the funding of Political Action Committees (PACs) and event proceeds were adequately segregated from funds used to support PACs. Agreed upon procedures may

include a review of a detail list of the past three (3) years of PAC contributions and expenditures, including:

- a. An identifying donor number, date and amount of each reported contribution; and
- b. A detail of expenditures sufficient enough to determine that the expenditures were solely for PAC-related expenses; and
- c. Any retained earnings or fund balance at the end of each fiscal year.

Substantive documentation for the contribution and expenditure should be available upon request. City shall approve the agreed-upon testwork procedures prior to the commencement of fieldwork.

5. USE OF GRANT FUNDS

5.1. The Grant Funds shall be used solely by Grantee for the Approved Uses and for no other use. In the event that the Grant Funds are not used for the Approved Uses or are not expended by or before _____, Grantee shall notify the City in writing, and shall be obligated to return the Grant Funds to City within thirty (30) days.

5.2. The City's grant contribution shall only be used for non-secular purposes. Grantees shall not use the City's grant contribution, or any portion thereof, for any purpose that violates local, state, or federal law, including, but not limited to, the Establishment Clause.

6. INDEMNIFICATION

6.1. To the fullest extent permitted by law, Grantee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Grantee, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

6.2. Notwithstanding the foregoing, nothing herein shall be construed to require Grantee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Grantee.

7. GRANTEE INDEPENDENCE

In the performance of this Agreement, the Grantee, and the agents and employees of Grantee, shall act in an independent capacity and are not officers, employees or agents of the City. The manner and means of performing the Approved Uses are under the control of Grantee, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Grantee or any of Grantee's employees or agents, to be the agents or employees of City. Grantee shall have the responsibility for and control over the means of performing the Approved Uses, provided that Grantee is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Grantee as to the details of the performance or to exercise a measure of control over Grantee shall mean only that Grantee shall follow the desires of City with respect to the results of the Approved Uses.

8. PROHIBITION AGAINST TRANSFERS

Grantee shall not assign, sublease, hypothecate or transfer this Agreement or any of the services to be performed under this Agreement, directly or indirectly, by operation of law or otherwise without prior written consent of City. Any attempt to do so without written consent of City shall be null and void.

9. NOTICES

9.1. All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided.

9.2. All notices, demands, requests or approvals from Grantee to City shall be addressed to the City at:

Attn: City Manager
City of Newport Beach
100 Civic Center Drive
P.O. Box 1768
Newport Beach, CA 92658-8915

9.3. All notices, demands, requests or approvals from City to Grantee shall be addressed to Grantee at:

Attn: _____

10. TERMINATION

10.1. Termination for Cause. Grantee shall be in default if Grantee fails or refuses to perform any duty required by the Agreement or performs in a manner inconsistent with

the terms, conditions and restrictions in this Agreement. In such event, City shall give Grantee, thirty (30) days written notice to cure, if the default can be cured and City shall be entitled to terminate this Agreement if Grantee has not cured the default within the thirty (30) day cure period. City shall be entitled to immediately terminate this Agreement if the default cannot be cured through corrective action. If terminated for cause, Grant Funds shall be returned to the City pursuant to Section 5. This Agreement is made on an annual basis, and as such is subject to non-renewal at its termination.

10.2. Termination without Cause. City may terminate this Agreement at any time with or without cause upon seven (7) days written notice to Grantee, any remaining Grant Funds in Grantee's possession at the time of termination shall be returned to City pursuant to Section 5.

10.3. Specific Performance. Grantee agrees that the City has the legal right, and all necessary conditions have been satisfied, to specifically enforce Grantee's obligations pursuant to this Agreement.

11. STANDARD PROVISIONS

11.1. Recitals. City and Grantee acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

11.2. Compliance With all Laws. Grantee shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

11.3. Waiver. A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

11.4. Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

11.5. Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Grant Proposal or any other attachments attached hereto, the terms of this Agreement shall govern.

11.6. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

11.7. Amendments. This Agreement may be modified or amended only by a written document executed by both Grantee and City and approved as to form by the City Attorney.

11.8. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

11.9. Controlling Law And Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

11.10. Equal Opportunity Employment. Grantee represents that it is an equal opportunity employer and it shall not discriminate against any contractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.

11.11. No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

11.12. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: _____

CITY OF NEWPORT BEACH,
A California municipal corporation
Date: _____

By: _____
Aaron C. Harp
City Attorney

By: _____
Grace K. Leung
City Manager

ATTEST:
Date: _____

GRANTEE: _____, a

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____

Date: _____

By: _____

Attachment: Exhibit A: Grant Proposal

[END OF SIGNATURES]

Exhibit A