

## **DONATION AGREEMENT WITH PROJECT BACKBOARD FOR BASKETBALL COURT REPAIR AND RESURFACING AT PORTOLA PARK**

This Agreement is made and entered into this 7th day of March, 2023 by and between Project Backboard, a California non-profit public benefit corporation (Donor), and the City of Santa Ana, a charter city and Municipal Corporation organized and existing under the Constitution and laws of the State of California ("City").

### **RECITALS**

- A.** Donor is a 501(c)(3) organization that renovates public basketball courts and installs large scale works of site specific art on the surface in order to strengthen communities, improve park safety, encourage multi-generational play, and inspire people to think more critically and creatively about their environment.
- B.** Portola Park in the City of Santa Ana has a basketball court available for public use.
- C.** Donor wishes to donate the repair and resurfacing of the public basketball court at Portola Park.
- D.** These repair and resurfacing services will be donated to City and performed by Donor at no cost to City.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

### **1. SCOPE OF SERVICES**

Donor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items and services necessary to repair and resurface the public basketball court at Portola Park, as further described in **Exhibit A**, attached hereto, by June 30, 2023. City grants Donor the right to enter its property for the purpose of repair and resurfacing of the public basketball court at Portola Park.

### **2. COMPENSATION**

City agrees to accept services to be provided above and Donor agrees to provide services and materials free of charge to the City. This Agreement does not contemplate the payment of monies to Donor on the part of the City.

### **3. TERM**

This Agreement shall commence on the date stated above and terminate on April 30, 2023, unless terminated earlier in accordance with Section 12, below.

### **4. INDEPENDENT CONTRACTOR**

Donor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to

create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Donor performs the services which are the subject matter of this Agreement; however, the services to be provided by Donor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Donor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

## **5. INSURANCE**

Donor shall provide to the City proof of insurance prior to undertaking performance of work under this Agreement. Donor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Minimum Scope and Limit of Insurance

- (1) **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (2) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- (3) **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (4) **Broader Coverage:** if the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

b. Other Insurance Provisions

- (1) **Additional Insured Status:** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20

10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 2037 if a later edition is used).

- (2) **Primary Coverage:** For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (3) **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (4) **Waiver of Subrogation:** Contractor hereby grants to City a waiver of any right to subrogation that any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (5) **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- (6) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- (7) **Claims Made Policies:** If any of the required policies provide claims-made coverage:
  - i. The retroactive date must be shown, and must be before the date of the contract or beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract work.**
  - iii. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a retroactive date prior to** the contract effective date, the Contractor must purchase "extending reporting" coverage for a minimum of **five (5) years** after completion of work.

- (8) **Verification of Coverage:** Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- (9) **Subcontractors:** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.
- (10) **Special Risks or Circumstances:** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **6. INDEMNIFICATION**

Donor agrees to and shall defend, indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the direct or indirect operations of Donor or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. Donor further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Donor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Donor.

## **7. CONFIDENTIALITY**

If Donor receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Donor agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall be clearly marked "Confidential Information." Confidential information includes not only written information, but also information transferred orally and reduced to writing, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of Donor disclosed in a publicly available source; (c) is in rightful possession of Donor without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by Donor without reference to information disclosed by the City.

## **8. CONFLICT OF INTEREST CLAUSE**

Donor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

## **9. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax: 714-647-6956

Copies to: Parks, Recreation & Community Services Agency  
City of Santa Ana  
20 Civic Center Plaza (M-23)  
Santa Ana, California 92702  
Fax: 714-571-4221

To Donor: Project Backboard  
Attn: Dan Peterson  
53 Christamon S.  
Irvine, CA 92620

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

#### **10. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Donor regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Donor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Donor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

#### **11. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Donor, Donor may not assign, transfer, delegate, or subcontract any interest herein, except as already specified in this Agreement, without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services, which are the subject to this Agreement performed by City personnel or by other contractors retained by City.

#### **12. TERMINATION**

This Agreement may be terminated by the City upon seven (7) days written notice of termination.

#### **13. NON-DISCRIMINATION**

Donor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Donor affirm that it is an equal opportunity employer and shall comply with all applicable federal, state, and local laws and regulations.

#### **14. JURISDICTION-VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

#### **15. PROFESSIONAL LICENSES**

Donor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Donor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

#### **16. MISCELLANEOUS PROVISIONS**

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

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Jennifer L. Hall  
Clerk of the Council

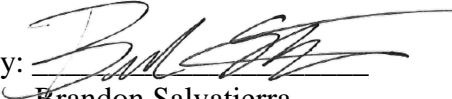
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Kristine Ridge  
City Manager

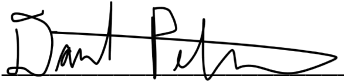
*[signatures continued on next page]*

APPROVED AS TO FORM:

SONIA R. CARVALHO  
City Attorney

By:   
Brandon Salvatierra  
Deputy City Attorney

DONOR

  
Dan Peterson  
Project Backboard

RECOMMENDED FOR APPROVAL:

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Hawk Scott  
Executive Director of Parks, Recreation &  
Community Services Agency



## **EXHIBIT A**

## **Project Backboard**

c/o Dan Peterson  
53 Christamon S.  
Irvine CA, 92620

dpeterson@projectbackboard.org  
(512) 492 2062

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### **Description**

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**This Scope of Work is for the repair and resurfacing of one basketball court at Portola Park, 1700 E Santa Clara Ave, Santa Ana, CA 92705.**

Project Backboard to provide the following:

- Clean existing basketball court.
- Patch and level significant “bird bath” areas and repair existing cracks
- Apply acrylic sports resurfacer (Sport Master or similar brand)
- Two (2) coats, minimum, of acrylic sports specific color coating (Sport Master or similar brand) in accordance with the requirements of final approved design.
- Source all stencils and other materials needed to install court artwork.
- Stripe court(s) with textured acrylic with line paint.
- Remove and replace basketball rims.
- Clean and repaint existing basketball backboards as necessary.

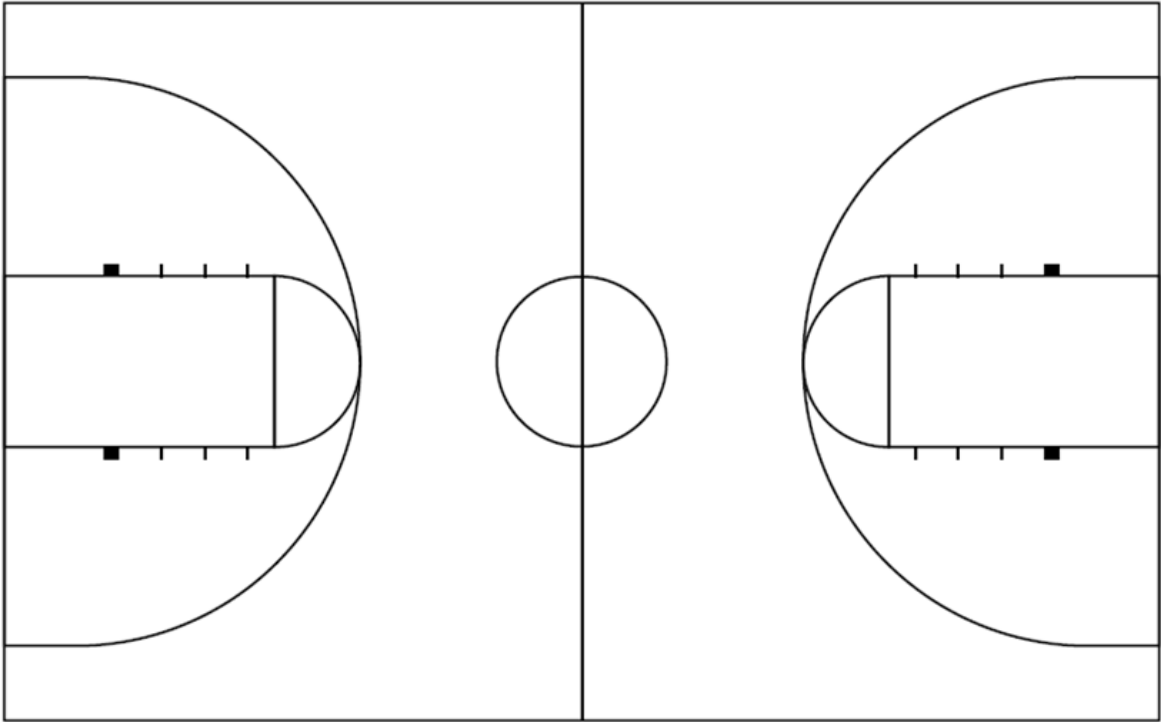
**Portola Park, 1700 E Santa Clara Ave, Santa Ana, CA 92705**  
**Condition as of 2/11/2013**







Portola Park  
Portola Park, Santa Ana, CA 92705  
Approximate measurements  
court - 80ft x 50ft  
surface - 112ft x 78ft































## SAMPLE ARTWORK

