

**MEMORANDUM OF UNDERSTANDING
 (“Agreement”)**

Between

**CITY OF OAKLAND, A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS
 (“Port of Oakland”)**

And

**THE ROSE FOUNDATION FOR COMMUNITIES AND THE
ENVIRONMENT
 (“Consultant”)**

To Establish the West Oakland Community Fund

June 5, 2024

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THIS MEMORANDUM OF UNDERSTANDING (“**Agreement**”) is entered into between the Port and the Rose Foundation for Communities and the Environment (“**Rose Foundation**”) (as defined below, and collectively referred to as the “**Parties**”), for the purposes of establishing the West Oakland Community Fund (“the Fund”).

1. Recitals

- 1.1 The Port of Oakland has set aside \$2,000,000 derived from mitigation payments related to development projects on the former Oakland Army Base Lands. It is possible that these funds may be supplemented by additional funds in the range of \$2,000,000 from the City of Oakland (“the City”) to further support the grantmaking purposes expressed herein.
- 1.2 The Fund may expand in the future if the appropriate opportunity arises. However, while recognizing the hope of including the City, as well as future theoretical possibilities to expand the Fund to further benefit the community and environment of West Oakland, this MOU shall only be binding related to the terms and conditions related to the Port portion of the funding.
- 1.3 The Fund’s purpose is to provide grants to support equity-centered programs benefiting West Oakland that would facilitate locally-based environmental or economic development projects. All grants must be awarded to 501(c)(3) nonprofit organizations, with preference extended towards non-profit organizations located in West Oakland that provide services to West Oakland individuals and families, and/or the local environment in West Oakland.¹
- 1.4 The Fund is an expendable fund and would conduct annual grantmaking for the charitable purposes expressed herein until the Community Fund is fully paid out.
- 1.5 Any grants awarded from funds provided by the Port of Oakland are subject to Public Trust/Tidelands Trust restrictions as required by the Oakland Army Base Public Trust Exchange Act, S.B. 674, Ch. 644 (Cal. Stat. 2005) (the “OAB Exchange Act”).

2. Parties

- 2.1 **Rose Foundation.** Rose Foundation is a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code based in Oakland.
- 2.2 **Port.** This Agreement is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“**Port of Oakland**” or “**Port**”).
- 2.3 **No Employment Relationship.** Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture, or partnership relationship between the Port and Rose Foundation or its employees, subconsultants, and agents, and no such relationship shall be implied from performance of this Agreement. References in this Agreement to direction from the Port shall be construed as providing for direction as

¹ For the purposes of this Fund, we define West Oakland as the area between I-880 and I-980 to the west and east, respectively, and I-880 and I-880 to the north and south, respectively plus, the industrial portion of Jack London Square between I-880 and the Embarcadero, west of Martin Luther King Jr. Way.

to policy and the result of services only, and not as to means and methods by which such a result is obtained.

- 2.4 No Port Equipment or Accounts.** Unless otherwise authorized by the Project Manager in writing, Rose Foundation shall not be entitled to use any Port equipment or accounts, including, without limitation, email addresses, phone numbers, login credentials, dedicated workspaces, and vehicles.

3. Grant of Funds.

- 3.1** The Port grants to Rose Foundation 2 Million Dollars (\$2,000,000) (“Funds”) to be used solely for the establishment of the Fund for distribution to organizations for projects approved in accordance with this MOU.

4. Term

- 4.1 Term.** The term of this Agreement shall be for a maximum of 8 years commencing June 27, 2024 (“Effective Date”) and terminating June 27, 2033 The MOU will automatically terminate once all of the Funds have been disbursed, the projects funded under the grants are completed, and the final overall report has been produced and submitted to the Port and the California State Lands Commission as required by the OAB Exchange Act.

- 4.2 Suspension and Early Termination.** Either party may suspend or terminate this Agreement prior to the expenditure or reimbursement of the Funds by giving the other party thirty (30) days-notice in writing, at which time this Agreement will terminate and neither party will have any further obligations to the other, except as provided in this Agreement. The Port may terminate this Agreement for Rose Foundation’s breach of the Agreement; provided however, that the Port will give Rose Foundation ten (10) days-notice of its intent to terminate and an opportunity for Rose Foundation to cure the breach within that ten (10) day period.

5. Services

- 5.1 Scope of Services.** Rose Foundation shall provide grants to support equity-centered programs benefiting West Oakland that would facilitate locally-based environmental or economic development projects. All grants must be awarded to 501(c)(3) nonprofit organizations, with preference extended towards non-profit organizations located in West Oakland that provide services to West Oakland individuals and families, and/or the local environment in West Oakland. The fund is an expendable fund and would conduct annual grantmaking for the charitable purposes expressed herein until the Community Fund is fully paid out. Any grants awarded from funds provided by the Port of Oakland are subject to Public Trust/Tidelands Trust restrictions as described in the OAB Exchange Act. Eligible projects must (1) address economic, social and environmental equity issues in West Oakland, and must be focused towards at least one of the following priority areas; and (2) be trust consistent.

- 5.1.1 Priority Goals.** Eligible projects must address economic, social and environmental equity issues in West Oakland, and must be focused towards at least one of the following areas. Funding preference will be given to projects and/or organizations which are based in West Oakland. However, organizations which are not geographically located in West Oakland, or projects which serve residents beyond West Oakland, may also be eligible if the project centers around providing a strong element of direct benefits to the West

Oakland community and is consistent with the one or more of the priority goals of the Fund and conforms to public trust requirements.

- (1) Business Development Projects including programs that support local entrepreneurship, small business development and other targeted local economic development in West Oakland including local hiring programs serving West Oakland businesses and residents.
- (2) Workforce Development Projects targeted towards West Oakland residents including job training programs.
- (3) Educational Projects including but not limited to programs serving West Oakland K-12 students around trust-consistent fields.
- (4) Environmental Projects centering around reducing existing or historical environmental impacts, and/or providing environmental benefits to the West Oakland community.

5.1.2 Trust Consistent. Projects must be compliant with California’s Public Trust, a common law doctrine that protects tide and submerged lands and requires Trust-derived assets to benefit the statewide public rather than for local community or municipal purposes. Trust uses are typically defined in terms of navigation, commerce, and fisheries, but have been held to include water dependent or related activities, including recreation and open space.

5.2 Project Management. Rose Foundation will be responsible for the Project and provide for management of any consultants and contractors with which Rose Foundation contracts, including for schedule, scope and budget. The Port will not enter into agreements with any consultants or contractors for the Fund and will have no obligation to any consultants for contractors.

5.3 Grant Making Framework. Funds would be disbursed in an annual grantmaking process over a 4-8 year period. Approximately \$500,000 or more (less administrative costs) would be awarded each year through an annual grant cycle. The size of individual grants awarded by the fund would be determined by the funding advisory board, and the funding board may advise the acceleration of grantmaking to spend down the Fund more quickly if appropriate opportunities arise.

5.3.1 Any remaining funds after eight years would be awarded as a final round of supplemental grants to support grantees who had achieved the greatest impact during the previous years of annual grantmaking. Exhibit A has a Preliminary Anticipated Timeline.

5.3.2 The Rose Foundation will draw from its existing networks and database as well the assistance of the Funding Advisory Board to develop an outreach list for the Fund. The Rose Foundation will create a Request for Proposals describing the Fund and the funding opportunity, and annually circulate the RFP to the outreach list. Applicant support would include outreach explaining the funding opportunity and application process and allow prospective applicants to ask questions, as well as individualized assistance to applicants who need help developing their proposals. All applications must conform to the Rose Foundation’s normal application processes, which require that applicants provide sufficiently detailed information regarding their organizational capacity, financial capability, project design including timeline and deliverables, constituencies

served, and the metrics used to measure project success. The application process is scalable; applicants from established organizations seeking larger grants are generally required to submit much more detailed information than applicants from small neighborhood organizations seeking lower levels of funding. All grantees are bound by written grant contracts which provide for interim and final narrative and financial reports, and other accountability mechanisms to ensure the Rose Foundation's ability to exercise prudent oversight over its grantees.

5.3.3 Prior to expending any money received from the Port, the Rose Foundation shall provide the Port with a list of proposed projects. As required by the OAB Exchange Act, the Port shall share with the California State Lands Commission a list and description of potential projects that would be funded in whole or in part with that money and seek State Lands Commission approval for those projects. Consistent with the OAB Exchange Act, no Port funds will be spent on a project unless the State Lands Commission has approved the project. Contacts for the State Lands Commission are provided in Appendix D. The Port will be responsible for updating the contact list for itself and State Lands Commission, and Rose Foundation shall keep the Port apprised of its current contacts.

5.4 Funding Advisory Board. Grantmaking strategy and grant recommendations would be guided by a Funding Advisory Board. Funding board members shall each serve 2-year terms, and members may serve for up to four terms. A 5-person Funding Advisory Board is envisioned though as few as three members may serve. All members of the advisory board would be charged with guiding overall grantmaking strategy, helping ensure robust outreach to the West Oakland community regarding the funding opportunity, and reviewing grant proposals to advise grantee selection. The Funding Advisory Board shall be established by the following process:

- (1) WOCAG Community Seat: To be appointed by the West Oakland Community Advisory Group (WOCAG) co-chairs. Their specific role would be to help ensure that the activities of the Fund provide maximum benefit to West Oakland and its residents.
- (2) Port of Oakland Seat: To be appointed by the Port of Oakland. Their specific role would be to advise on Tidelands Trust issues and help ensure that all grants awarded from monies supplied by the Port conform to Public Trust/Tidelands Trust requirements.
- (3) District Three Seat: To be appointed by the Office of the City of Oakland's District 3 Oakland Councilmember. Their specific role would be to help ensure that the activities of the Fund provide maximum benefit to the West Oakland community and the City of Oakland. The District Three Seat will only be filled upon execution of an agreement with the City of Oakland (the "City") and receipt of money from the City. In the event that the City does not execute such an agreement or provide funds, then this seat will remain empty and the seat will be removed from the Funding Advisory Board.
- (4) At-Large Community Seat: To be appointed by the mutual agreement of the Rose Foundation and the other Funding Advisory Board representatives. Their specific

role would be to help ensure maximum benefit to West Oakland and its residents for the activities of the Fund.

- (5) Rotating Technical/Professional Expertise Seat: To be appointed by the mutual agreement of the Rose Foundation and the other Funding Advisory Board representatives. Their specific role would be to provide technical and/or professional expertise related to the four priority goals of the Fund and the Funding Advisory Board's identified grantmaking priorities. Unlike the other seats, the 2-year term for this seat is not renewable in order to allow flexibility for the Funding Advisory Board to adjust grantmaking focus within the four priority areas over time.

5.4.2 Upon the expiration of a Funding Advisory Board member's term, or if for any reason a member is unable to complete their term, a new member shall be appointed by the same process. If for any reason it is not possible to make an appointment through this process, a replacement member shall be appointed by the mutual agreement of the Rose Foundation and the remaining Funding Advisory Board representatives. Although all reasonable efforts will be made to fill any such vacancies in an expeditious manner, the Funding Advisory Board shall still be empowered to advise grantmaking strategy and review grant applications during any period of vacant seat(s).

5.4.3 Funding Advisory Board members shall be subject to the Rose Foundation's conflict of interest policies, including that funding advisory board members should not have a fiduciary relationship or other close association with likely applicants to, or grantees of, the Fund. To recognize the value of their contributions towards the grantmaking process, all community representatives shall be paid an honorarium of \$1,000 per member for each grant cycle.

5.5 Ownership of Work Product. This section only applies to external-facing work product such as promotional materials regarding the Fund. Any interest (including copyright interests) of Rose Foundation or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans, or any other documents (including electronic media) prepared by Rose Foundation or its subcontractors or subconsultants in connection with the Services, shall become the property of the Port. To the fullest extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the Port's property. Rose Foundation shall have a perpetual and cost-free license to use copies of such works for reference and as documentation of experience and capabilities. Grantees receiving money from the Fund are not subcontractors and this provision does not alter or restrict such Grantees except to the extent that Grantees later become consultants, subconsultants, or agents of the Rose Foundation.

6. Reporting

6.1 Annual Reporting. The Rose Foundation will prepare an Annual Report describing the Fund's activities including applicant outreach and grantmaking. These reports shall include a roster of grantees describing each awardee, the amount of the grant award, and a summary project description. As the Fund moves forward, subsequent Annual Reports shall also include a section summarizing key accomplishments of past grantees and the cumulative impacts of the Fund. The Rose Foundation shall also provide the California State Lands Commission an annual statement of all funds received from the Port and expenditures of those funds, as required under the OAB Exchange Act. The Rose Foundation shall include the Port in communications with the California State Lands

Commission, and the Port shall keep Rose Foundation apprised of the State Lands Commission staff who should receive communications related to this agreement.

6.2 Final Report. At the close of the Fund, the Rose Foundation shall produce an overall report describing all grants awarded and summarizing the Fund's overall impacts and benefits to the West Oakland community. The Rose Foundation will provide the State Lands Commission with a final report in a form acceptable to the State Lands Commission as required under the OAB Exchange Act.

6.3 Annual Audit. In addition, the expenditures of the Fund shall be included in the Rose Foundation's annual audit.

7. Payment

7.1 The Rose Foundation will maintain the funds in an interest-bearing account at an Oakland-based financial institution. To defray its costs of administering the funds and the grantmaking, the Rose Foundation shall charge the following fees:

7.1.1 Annual Fee: To defray, the basic costs of establishing and stewarding the Fund, as well as ongoing fund administration, including Annual Reports, as well as necessary institutional overhead including annual audits and tax filings, the Rose Foundation charges an annual fee equivalent to one percent (1%) of the gross value of the Fund. In the opening year of the Fund the Rose Foundation shall collect the Annual Fee by retaining 1% of funds upon receipt. After the initial year, the Annual Fee shall be charged at the rate of one-quarter of one percent (.25%) each quarter.

7.1.2 Grantmaking Fee: To defray the costs of outreach to prospective applicants, reviewing proposals, managing the funding board, conducting due diligence, and awarding and administering grants for the full life of each grant, the Rose Foundation shall charge a grantmaking fee of 12% of each grant awarded at the time of such grant award.

8. Insurance; Indemnification

8.1 Insurance. Rose Foundation shall, at its own expense and during the Term, maintain or cause to maintain in force the insurance in the types and amounts required by **Appendix B (Insurance)**.

8.2 Indemnification. Rose Foundation shall comply with all provisions set forth in **Appendix E (Indemnification)**.

9. Compliance With Laws

9.1 Compliance With All Laws. Rose Foundation shall comply with all laws, regulations, ordinances, rules, permits, or land use restrictions or limitations at any time applicable to the Services ("**All Laws**"), including those applicable to any public or governmental authority (including the City of Oakland and the Port, such as the City Charter), regardless of whether All Laws are specifically stated in this Agreement or are in effect at the beginning of the Term.

Rose Foundation's compliance with All Laws shall include, but not be limited to, compliance with the following, to the fullest extent applicable:

- 9.1.1** Oakland Living Wage provisions, including Section 728 of the Oakland City Charter and Port Ordinance Nos. 3666 and 3719.
- 9.1.2** Security requirements imposed by authorities with jurisdiction over the Services (such as the Federal Aviation Administration and U.S. Department of Transportation), which may include providing information, work histories, and/or verifications requested by such authorities for security clearances or compliance.
- 9.1.3** If the Services are part of a “public works” or “maintenance” project, California Department of Industrial Relations (“DIR”) requirements, which include compliance with California Labor Code Sections 1725.5 and 1771.1, Rose Foundation and subconsultant registration with DIR and licensing by the California Contractors State License Board, and compliance with all laws, regulations, and other requirements for public works of improvement.
- 9.2** **Non-Discrimination.** Rose Foundation shall not discriminate against or harass any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer -related medical condition, known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Rose Foundation shall take affirmative action to ensure that applicants and employees are treated fairly with respect to all terms and conditions of employment, which include (without limitation): hiring, upgrading, recruitment, advertising, selection for training or apprenticeship, demotion, transfer, compensation, layoff, or termination. Rose Foundation acknowledges it has reviewed, or had a full opportunity to review, the current version of the Port’s Discrimination Complaint Procedures/Unlawful Harassment Policy and Complaint Procedures, which provide an effective and expedited method of resolving employment discrimination allegations and prevent unlawful workplace harassment.
- 9.3** **Conflicts of Interest.** Rose Foundation shall comply with all applicable laws and regulations relating to conflicts of interest, including any requirements adopted by the City of Oakland or the Port. Rose Foundation represents that it is familiar with California Government Code Sections 1090 and 87100 et seq., and that it does not know of any facts that may constitute a violation of said sections.

Rose Foundation represents that, to the best of its knowledge, it has disclosed to the Port all facts bearing upon any possible interests, direct or indirect, Rose Foundation believes that any employee, officer, or agent of the Port presently has, or will have, in this Agreement, in the Services, or in any portion of the profits hereunder. Willful failure to make such disclosure, if any, shall constitute grounds for termination of this Agreement by the Port for cause.

Rose Foundation covenants that it shall never have any interest (direct or indirect) that would conflict in any manner with the performance of the Services under this specific Agreement, including an interest Rose Foundation has (or may have in the future) with a person or entity that has an interest adverse or potentially adverse to the Port with respect to this specific Agreement, as determined in the reasonable judgment of the Port.

Provided that this Agreement or the performance thereof does not violate any applicable conflict of interest laws, nothing in this Section shall serve to prevent Rose Foundation from providing services similar to the Services to other entities. The provisions of this Section shall survive the termination of this Agreement.

- 9.4 FAA AIP Grant-Required Provisions. Rose Foundation shall comply with all provisions in Appendix C (FAA AIP Grant-Required Provisions).

10. Confidentiality; Publicity

- 10.1 **Confidentiality.** Rose Foundation acknowledges that, in the performance of the Services or in the contemplation thereof, Rose Foundation may have access to private or confidential information that may be owned or controlled by the Port, the disclosure of which to third parties may be damaging to the Port. Rose Foundation agrees that all information disclosed by the Port to or discovered by Rose Foundation which the Port informs Rose Foundation to treat as confidential shall be held in strict confidence and used only in performance of the Agreement. Rose Foundation shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Rose Foundation shall notify the Port immediately in writing if Rose Foundation is requested to disclose any information made known to or discovered by Rose Foundation during the performance of the Services. The provisions of this Section shall survive the termination of this Agreement.
- 10.2 **Publicity.** Rose Foundation may publicize the Fund provided that the Rose Foundation will work with the Port on the initial announcement to launch the Fund and that Rose Foundation will give the Port notice prior to any publicity regarding the Fund.

11. Audit and Inspection

- 11.1 **Retention.** Rose Foundation shall maintain unaltered all Records during the Retention Period.
- 11.1.1 **"Retention Period"** means the Term and an additional four (4) years following the later of: (a) termination of this Agreement, (b) the Port's final payment under this Agreement, or (c) resolution of pending issues between the Parties under this Agreement, including any issues raised during an Audit.
- 11.1.2 **"Records"** means full and adequate records, in electronic and other mediums, related to this Agreement or prepared by or furnished to Rose Foundation during the course of performing the Services or which show the costs incurred by Rose Foundation in the performance of this Agreement, including accounting records and records documenting selection and performance of Grantees related to this Agreement.
- 11.2 **Audit and Tolling.** During the Retention Period, the Port may Audit the Records. Rose Foundation agrees to toll all applicable periods of any statutes of limitations: (a) commencing on the first day of an Audit and ending four (4) years after the Port delivers to Rose Foundation the final Audit findings; (b) commencing on the first day of an Audit and ending four (4) years after the Port's completion of the Audit, if no final Audit findings and observations are produced; and (c) commencing on the day the Port's claim or right or cause of action arises with regard to any matter under this Agreement and ending four (4) years thereafter.
- 11.2.1 **"Audit"** means to audit, examine, inspect, make copies of, and obtain excerpts and transcripts from the Records.

11.3 Production. During an Audit or as otherwise requested by the Port, Rose Foundation shall Produce Records to the Port or the Port's designated representatives. If Rose Foundation fails to Produce Records to the Port within ten (10) business days of the Port's written request, Rose Foundation shall pay the Port a delinquency charge of \$25 for each day it does not Produce Records. The Parties agree that such delinquency charges are liquidated damages that represent a reasonable estimate of expenses the Port will incur because of Rose Foundation's failure to Produce Records, and that such charges shall be deducted from the Port's next payment to Rose Foundation.

11.3.1 "Produce" means to, at no cost to the Port and within ten (10) business days of the Port's written request, provide the Port (or the Port's representatives): (a) copies of Records requested by the Port; (b) the ability for the Port to inspect the Records at a location within a fifty (50) mile radius from the Port offices at 530 Water Street, Oakland, California, or if the Records are not located within said fifty mile radius, the ability for the Port to inspect the Records at another location after Rose Foundation pays the Port all reasonable and necessary costs incurred (including, without limitation, travel, lodging, and subsistence costs); and (c) copies of Records in electronic format through extracts of data files in a computer readable format, such as email attachments, data storage devices, or another adequate electronic format.

12. Notices; Agent for Service of Process

12.1 Notices. The Port's and Rose Foundation's Notice Addresses are set forth in **Appendix D (Parties)**, unless otherwise amended in writing with notice to the other Party. All notices or other communications given or required to be given under this Agreement shall be effective only if given in writing to the Party's Notice Address and: (a) sent by certified mail with return receipt requested, (b) sent by overnight delivery service, or (c) delivered personally. Any such notice shall be deemed to have been given: (x) five calendar days after the date it was sent by certified mail; (y) one business day after the date it was sent by overnight delivery service; or (z) on the date personal delivery was made. The Parties shall also endeavor to send courtesy copies of all notices and communications electronically.

12.2 Agent for Service of Process. Pursuant to California Code of Civil Procedure, Section 416.10, *et seq.*, as applicable, Rose Foundation hereby designates, authorizes, and/or otherwise identifies an agent for service of process as set forth in **Appendix D (Parties)**. Rose Foundation may at any time designate, authorize, and/or otherwise identify a new agent for service in the State of California by providing written notice in compliance with this Agreement of the full name and address of its new agent ("Designation"). No attempt to revoke the agent's authority to receive service shall be valid unless the Port has first received a duly executed Designation of a new agent meeting the requirements of California law.

13. Disputes; Statutes of Limitation; Governing Law

13.1 Dispute Resolution. In the event of any dispute between the Parties under this Agreement, the Parties shall make their best efforts to meet and confer in good faith to resolve the dispute amicably. Rose Foundation shall continue its work throughout the course of any dispute, and Rose Foundation's failure to continue work during a dispute shall be a material breach of this Agreement.

- 13.2 Attorneys' Fees.** If either Party commences an action against the other in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.
- 13.3 Statutes of Limitation.** As between the Parties, any applicable statute of limitations for any act or failure to act shall commence to run on (a) the date of the Port's issuance of the final Certificate for Payment or termination of this Agreement, or (b) termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 13.4 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of law. Rose Foundation hereby consents to the exclusive jurisdiction of the state and federal courts in Alameda County, California and/or the United States District Court for the Northern District of California, and any actions arising out of or filed in connection with this Agreement shall be filed solely in such courts.

14. Miscellaneous

- 14.1 No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer rights or benefits on persons or entities not party to this Agreement.
- 14.2 Time of the Essence.** Time is of the essence in the performance of this Agreement. Attachment A provides the anticipated timeline.
- 14.3 No Waiver.** Any progress payments, approvals, inspections, reviews, oral statements, or certifications by any Port representative or by any governmental entity with respect to this Agreement shall in no way limit Rose Foundation's obligations under this Agreement. Either Party's waiver of any breach, or the omission or failure of either Party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any Party is entitled, and shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every provision hereof.
- 14.4 Covenant Against Contingent Fees.** As required by the Port's Purchasing Ordinance No. 4576 (as it may be amended from time to time), Rose Foundation warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from Rose Foundation the full amount of the contingent fee. The following definitions apply to this Section:
- 14.4.1** "bona fide agency" means an established commercial or selling agency, maintained by Rose Foundation for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 14.4.2** "bona fide employee" means a person, employed by Rose Foundation and subject to Rose Foundation's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

14.4.3 “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

14.4.4 “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

14.5 **Warranty of Signatories.** Every person signing this Agreement on behalf of Rose Foundation and the Port represents and warrants that such person has sufficient authority to sign this Agreement and create a valid and binding obligation on Rose Foundation.

14.6 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

14.7 **Severability.** If any provision (or portion thereof) of this Agreement is found to be invalid by a court, arbitrator, or government agency of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. If any provision (or portion thereof) of this Agreement is prohibited by, or made unlawful or unenforceable under, any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective without affecting the remainder of this Agreement, which shall be enforceable to the fullest extent permitted by law. To the greatest extent permitted by law, the provisions of such applicable law are hereby waived so that this Agreement may be deemed to be a valid and binding agreement.

14.8 **Entire Agreement.** This Agreement contains the entire, exclusive, and integrated agreement between the Parties regarding the subject matter of this Agreement and shall supersede any and all prior negotiations, representations, understandings, or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by mutual written agreement by the Parties and approval, as necessary, by the Board of Port Commissioners and/or Port Attorney.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<p>PORT OF OAKLAND</p> <p>CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,</p> <p>By: _____ DANNY WAN, Executive Director</p> <p>_____</p> <p>THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL SIGNED BY THE PORT ATTORNEY.</p> <p>Approved as to form and legality:</p> <p>By: _____ MARY C. RICHARDSON, Port Attorney (Or Assistant Port Attorney or Deputy Port Attorney signing on behalf of)</p> <p>Port Resolution No.:</p> <p>Board Approval Date:</p> <p>PA#: 2024-</p>	<p>ROSE FOUNDATION</p> <p>_____, a California 501(c)(3) organization,</p> <p>By: _____</p> <p>Name: Angela ("Aiko") Pandorf Title: Interim Executive Director Email: apandorf@rosefdn.org</p> <p>_____</p> <p>ATTEST (only if California Corp.)</p> <p>By:</p> <p>Name: Title: Email:</p>
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APPENDIX A
PROJECT TIMELINE

Special Year 1 Deliverables:

- Accept payment and establish dedicated account at local financial institution
- Coordinate any opening announcements regarding the launch of the Fund with the Port
- Form Funding Advisory Board

Annual Deliverables (until funds are exhausted):

- Develop and circulate a Request for Proposals
- Conduct “How to Apply” outreach and respond to prospective applicants
- Receive and review grant applications, including coordinate review by Funding Advisory Board
- Submit a list of proposed grantees to the Port, and support the Port’s coordination of State Lands Commission approval of the proposed grants
- Award and administer grants
- Receive and review grantee reports
- Produce an Annual Report describing the Fund’s activities and grants awarded.

Periodic Deliverables (as needed):

- Manage the renewal or replacement of Funding Advisory Board members
- Upon exhaustion of funds, produce a Final Report

APPENDIX B

INSURANCE

1. Commercial General Liability Insurance

- **Coverage:** Standard ISO Commercial General Liability form.
- **Limits:** \$1,000,000 per occurrence; \$2,000,000 annual general aggregate; \$2,000,000 products and completed operations aggregate; \$1,000,000 each offense for personal and advertising injury.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Cross liability/separation of insureds.
- Waiver of subrogation in favor of additional insured.
- If the Services involve construction activities, completed operations coverage must remain in force until at least 5 years after completion and acceptance of the Services.

2. Business Automobile Liability Insurance

- **When Required:** If Consultant owns any vehicles.
- **Coverage:** Standard ISO Business Automobile Liability form for all owned, non-owned and hired automobiles.
- **Limits:** \$1,000,000 each accident.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per accident unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.

3. Workers' Compensation and Employer's Liability Insurance

- **Coverage:** Statutory Workers' Compensation and Side B Employer's Liability form.
- **Limits:** Statutory for workers' compensation and \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease, for Employer's Liability.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence for Employer's Liability unless otherwise approved by Port Risk Management.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

4. Professional Liability Insurance

- In the event that Consultant chooses to obtain, at no expense to the Port, Professional Liability Insurance for whatever limit is available, the Port will be provided with evidence of such coverage.

Other Insurance Requirements:

- **Notice of Cancellation.** Consultant or Consultant's agent must provide 30-days prior written notice to the Port Risk Management Department of any insurance policy cancellation, except 10-days prior written notice for non-payment of premium.
- **Right to Higher Limits.** If Consultant maintains higher limits than the minimum show

above, the Port requires and shall be entitled to the higher limits maintained by the Consultant.

- **Right to Broader Coverage.** If Consultant maintains broader coverage than the minimum show above, the Port requires and shall be entitled to the broader coverage maintained by the Consultant.
- **Excess/Umbrella Liability Insurance.** Any umbrella or excess insurance shall strictly follow form of underlying insurance and comply with any requirements of this Agreement pertaining to the underlying coverage.
- **Proof of Insurance/Insurer Rating.** Consultant must deliver to the Port Risk Management Department, prior to the commencement of the Services, certificates of insurance evidencing all required insurance and additional insured status for the Port. All required insurance shall be provided by insurance companies with current A.M. Best ratings of A- VII or better. Upon failure to so file such insurance certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at Consultant's expense and Consultant shall promptly reimburse the Port for such expense (Services may be interrupted without proper evidence). In addition to the certificate of insurance, Consultant shall provide copies of the actual insurance policies if requested by the Port.
- Please send certificates and other required insurance information to:
Port of Oakland
Attn: Risk Management Dept.
530 Water Street
Oakland, CA 94607
Email: risktransfer@portoakland.com

APPENDIX C

FAA AIP GRANT-REQUIRED PROVISIONS

The following provisions are required in all Port contracts because of the Port's participation in the FAA Airport Improvement Program (AIP). Rose Foundation shall fully comply with all of the following provisions and shall also include each these provisions in all of its contracts and subcontracts related to this Agreement.

Note: Rose Foundation is sometimes hereinafter referred to as "Consultant" and the Port is sometimes hereinafter referred to as "Sponsor". The Agreement is sometimes hereinafter referred to as "contract". These provisions, as worded below, are required by the AIP and may not be amended.

A. General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Consultant agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. The above provision binds the Consultant and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Compliance With Nondiscrimination Requirements.

During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. Compliance with Regulations:** The Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The Consultant, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin. As set forth in Section 5.5. above, Grantees are not considered subcontractors.
- 4. Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to

its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the Nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- Withholding payments to the Consultant under the contract until the Consultant complies; and/or
 - Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, the Consultant agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms

“programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, et seq).

D. Fair Labor Standards Act.

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping and child labor standards for full and part-time workers. The Rose Foundation has full responsibility to monitor compliance to the referenced statute or regulation. The Rose Foundation must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

E. Occupational Safety and Health Act.

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Rose Foundation must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Rose Foundation retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The Rose Foundation must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

[FAA Updated 5.2023]

APPENDIX D

PARTIES

ROSE FOUNDATION

Full Legal Name of Rose Foundation:

Corporate Address:

Form of Business Entity (Check one)

- Sole proprietorship**
- Corporation: State of _____**
- Partnership: General Limited**
- Limited Liability Company**
- Other: _____**

If Corporation, LLC, LP, LLP:

(Required Information)

Agent for Service of Process

(Name and Address)

Contact Individual / Position:

Telephone No.:

Facsimile No. (if any):

Email Address:

Website (if any):

Tax Identification No.:

PORT

Division Director	Amy Tharpe
Project Manager	Laura Arreola
Port's Notice Address	Laura Arreola Port of Oakland 530 Water Street Oakland, CA 94607

STATE LANDS COMMISSION

Senior Staff Counsel	Andrew Kershen andrew.kershen@slc.ca.gov
Public Land Management Specialist	Reid Boggiano Reid.Boggiano@slc.ca.gov

APPENDIX E
INDEMNIFICATION

- A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782, 2782.6, and 2782.8), Rose Foundation shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Port and its officers, agents, departments, officials, representatives, and employees (collectively, “Indemnitees”) from and against the Liabilities related to the services outlined in this Agreement.

“Liabilities” means any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Rose Foundation or its Subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, paralegal and attorneys’ fees (including costs attributable to in-house paralegals and attorneys), Port staff costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that:

- (1) Arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Rose Foundation, any Subconsultant, or anyone directly or indirectly employed or controlled by Rose Foundation or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8; and
- (2) For Services not governed by California Civil Code Section 2782.8, arise from or relate to, directly or indirectly, in whole or in part:
 - (a) the Services, or any part thereof,
 - (b) any negligent act or omission of Rose Foundation, any Subconsultant, or anyone directly or indirectly employed or controlled by Rose Foundation or any Subconsultant,
 - (c) any claim of infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other intellectual property or proprietary right of any person or persons in consequence of the use by the Port, or any of the other Indemnitees, of any of the articles or Services to be supplied in the performance of this Agreement (including any Software or Equipment, as defined in the Services), and/or
 - (d) any claim of unauthorized collection, disclosure, use, access, destruction, or modification, or inability to access, or failure to provide data, by any person or persons in consequence of any act or omission by Rose Foundation or any Subconsultant.

Such obligations to defend, hold harmless, and indemnify any Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

Rose Foundation shall cause its Subconsultants to agree to indemnities and insurance obligations in favor of Port and other Indemnitees in the exact form and substance of those contained in this Agreement. As set forth in Section 5.5. above, Grantees are not considered subcontractors.

B. *The following provision shall only apply to the extent that Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8:*

- (1) Port shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Rose Foundation for damages resulting from the negligence of the general contractor and its subcontractors. Port shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Rose Foundation as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provisions is on Rose Foundation. Therefore, Rose Foundation shall review the construction contract prior to bidding to ensure that such provision has been included in the draft of the bid documents.
- (2) If there is an obligation to indemnify under this Agreement, Rose Foundation shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Rose Foundation's negligence, recklessness, or willful misconduct.