

Grant No. _____

GRANT AGREEMENT

This Grant Agreement (“**Grant Agreement**”), dated as of January 2, 2018 (the “**Effective Date**”), is entered into by and between Oregon21, LLC, an Oregon limited liability company and wholly-owned subsidiary of TrackTown USA inc. an Oregon non-profit corporation (“**Recipient**”), and the **STATE OF OREGON**, acting by and through the **OREGON TOURISM COMMISSION** (“**Grantor**” or “**OTC**”).

RECITALS

A. In response to Grantor Request for Grant Applications dated November 13, 2017, Recipient submitted an application for a grant to assist Recipient in implementing the sporting event project described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Project**”)

B. Grantor selected Recipient’s Project for grant funding.

C. Grantor and Recipient now desire to enter into this Grant Agreement to specify the amount and terms and conditions of Grantor’s grant funding to Recipient for the Project.

NOW THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE 1 GRANT GENERALLY

Section 1.1 **Grant Amount.** On the terms and conditions of this Grant Agreement, Grantor agrees to make a grant to Recipient in an amount not to exceed TEN MILLION DOLLARS (\$10,000,000.) (the “**Grant**”) to assist Recipient in implementing the Project. Recipient may use the Grant proceeds only for costs necessarily incurred after December 4, 2017 and on or before August 31, 2021 (the “**Project Completion Deadline**”), to implement the Project and within the line item limits of the Sources and Uses of Funding Budget set forth in **Exhibit B** (the “**Budget**”), attached hereto and incorporated herein by this reference (“**Eligible Costs**”); provided, however, that Recipient may transfer funds from one Budget line item to another ~~so long as no line item is changed by more than 10 percent.~~

Section 1.2 **Disbursement of Grant Proceeds.** The proceeds of the Grant shall be held in a grant account and disbursed as described in this Section 1.2u

1.2.1 **Disbursement.** Subject to the conditions set forth in Section 1.2.2, Grantor will disburse the Grant proceeds to Recipient on an Eligible Cost reimbursement basis in up to four annual installments not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) each. Recipient may not request disbursement of Grant proceeds more than once in any calendar year. Recipient's submission of a request for disbursement shall constitute Recipient's affirmation that all of Recipient's representations and warranties set forth in Article 2 are true and correct in all material respects as if made on and as of the date of the disbursement request.

1.2.2 **Conditions to Disbursement.** Each disbursement of Grant proceeds is subject to the following conditions:

- (a) Grantor has received a disbursement request from Recipient, in form and substance satisfactory to Grantor, identifying the Eligible Costs for which Recipient is seeking reimbursement and, if requested by Grantor, supporting documentation satisfactory to Grantor evidencing such Eligible Costs;
- (b) Recipient is in compliance with the reporting requirements set forth in Exhibit A.
- (c) No Event of Default shall have occurred and be continuing and no event shall have occurred that, with the giving of notice or passage of time or both, would become an Event of Default;
- (d) Each of Recipient's representations and warranties set forth in Article 2 shall be true and correct in all material respects as if made on and as of the date of such disbursement; and
- (e) Grantor has received sufficient funding, appropriations and other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement and there are sufficient moneys in the accounts or funds to be used to cover the disbursement, as determined by Grantor in the reasonable exercise of its administrative discretion, to permit Grantor to make the disbursement.

ARTICLE 2 RECIPIENT'S REPRESENTATIONS AND WARRANTIES

Except as described in Schedule 2, Recipient represents and warrants to Grantor as follows:

Section 2.1 **Existence and Power; Authority.** Recipient is a wholly-owned subsidiary of TrackTown USA Inc., an Oregon Non-Profit Corporation, duly organized, validly existing and in good standing under the laws of the State of Oregon. Recipient has (a) full power and authority to carry on its business as now being conducted and as Recipient contemplates it to be conducted with respect to the Project, and (b) full power, authority, and legal right to execute and deliver this Grant Agreement and all other agreements, documents and instruments contemplated hereby or thereby (collectively, the "**Grant Documents**") and to incur and perform its obligations hereunder and thereunder. The execution and performance by Recipient of this Grant Agreement and the other Grant Documents have

been duly authorized by all necessary action of Recipient. This Grant Agreement and the other Grant Documents have been duly executed by Recipient and will constitute legal, valid and binding obligations of Recipient, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 2.2 **No Violations or Default.** Recipient is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Recipient notice or threatened to give it any notice of default under any material agreement. No event has occurred and is continuing and no condition exists with respect to Recipient or the Project that constitutes an Event of Default or an event which, with the giving of notice or passage of time, or both, would become an Event of Default.

Section 2.3 **Litigation.** No action, suit or proceeding (and to Recipient's knowledge, no investigation) is pending against Recipient or with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations, or financial condition of Recipient, the Project or the power of Recipient to complete the Project or (b) that purports to affect the legality, enforceability, or validity of any Grant Document.

Section 2.4 **Compliance With Laws.** Recipient is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Project, and the completion thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

ARTICLE 3 COVENANTS

Until completion of the Project or as otherwise indicated, Recipient covenants and agrees as follows:

Section 3.1 **Completion of Project.** Recipient shall complete the Project no later than Project Completion Deadline and Grantor is not obligated to reimburse any Project costs incurred after this date. Promptly after the Project Completion Deadline or any termination of this Grant Agreement, Recipient shall repay to Grantor any Grant funds remaining in Recipient's possession that are not needed to cover Eligible Costs incurred prior to the Project Completion Deadline or the termination of this Grant Agreement, as the case may be. The foregoing repayment obligation shall survive any termination of this Grant Agreement. Recipient shall implement the Project in an expeditious and continuous manner and in accordance with all the requirements of the Grant Documents.

Section 3.2 **Maintenance of Business and Licenses.** Recipient will remain a wholly-owned subsidiary of TrackTown USA Inc., an Oregon Non-Profit corporation, validly existing under the laws of Oregon and will keep in force all licenses and permits necessary to the proper conduct of its business and the completion of the Project.

Section 3.3 **Compliance with Laws and Use Restrictions.** Recipient will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality having jurisdiction over Recipient or the Project, including all applicable health and safety, environmental, and zoning laws.

Section 3.4 **Other Obligations.** Recipient will pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies except any thereof whose validity or amount is being contested in good faith by Recipient in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Recipient.

Section 3.5 **Indemnity.** Recipient shall defend (subject to ORS Chapter 180), indemnify and hold the State of Oregon, Grantor, and their officers, employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and expenses) that any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made by Recipient in any Grant Document, (b) any transaction contemplated by this Grant Agreement or any other Grant Document or (c) the actions or inactions of Recipient, or its employees, agents, contractors, or subgrantees related to the Project, other than claims, losses, damages, or expenses that arise solely from the gross negligence or willful misconduct of Grantor. This Section 3.5 shall survive completion of the Project and any termination of this Grant Agreement.

Section 3.6 **Records and Inspection.** Recipient shall keep proper books of account and records on all activities associated with the Grant, including but not limited to, books of account and records on the use of all Grant proceeds and Other Financing. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of three years after the Project Completion Deadline or the date that all disputes, if any, arising under this Grant Agreement or the other Grant Documents have been resolved. Recipient will permit Grantor and/or its duly authorized representatives to inspect, review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor and the expenditure of Other Financing. Access to these records is not limited to the required retention period. The authorized representatives shall have access to the records at any reasonable time for as long as the records are maintained. This Section 3.6 shall survive completion of the Project and any termination of this Grant Agreement.

Section 3.7 **Audits and Financial Reviews.** Grantor, either directly or through a designated representative, may conduct financial and performance audits or reviews of the use of Grant proceeds and the implementation of the Project at any time during Project implementation and during the three-year period after the Project Completion Deadline. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit or financial review finds that payments to Recipient were in excess of the amount to which Recipient was entitled, then Recipient shall repay that amount to Grantor. In the event of such audit or financial review, Recipient agrees to provide the designated auditor or reviewer with reasonable access to Recipient's employees

and make all such financial, performance and compliance records available to the auditor or reviewer. This Section 3.7 shall survive completion of the Project and any termination of this Grant Agreement.

Section 3.8 **Insurance.** Recipient shall carry, at a minimum, insurance coverage in the amounts set forth below:

3.8.1 **Workers' Compensation Insurance** in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage for their subject workers. This coverage is required of grantees with one or more employees, unless exempt under ORS 656.027.

3.8.2 **General Liability** insurance with a combined single limit of not less than **\$1,000,000**, on an occurrence basis, for bodily injury and property damage. This type of insurance shall provide contractual liability coverage for the indemnification required under this Grant Agreement. Additionally, "**The Oregon Tourism Commission and its officers, agents and employees**" must be named as Additional Insured with respect to Recipient's Project activities under this Grant Agreement.

3.8.3 **Automobile Liability** insurance with a combined single limit of not less than **\$500,000** per occurrence, for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Prior to execution of this Agreement, Recipient must provide Grantor with certificates of insurance. Insuring companies or entities are subject to Grantor's acceptance and must be licensed to provide insurance in the state of Oregon. Recipient's insurance shall be primary insurance, and any commercial insurance or self-insurance maintained by the State of Oregon and/or Grantor shall not contribute to it. This Section 3.8 shall survive completion of the Project until the Project Completion Deadline.

Section 3.9 **Recycled Products.** To the maximum extent economically feasible, Recipient shall use good faith efforts to use recycled products in connection with its implementation of the Project.

Section 3.10 **Other Financing.** In addition to the Grant, Recipient shall, from its own resources or from third parties, obtain other financing for the Project as set forth in the Budget (the "**Other Financing**").

ARTICLE 4 EVENTS OF DEFAULT

Any of the following shall constitute an Event of Default under this Grant Agreement:

Section 4.1 **Failure to Pay General Debts When Due.** Recipient (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or

hereafter in effect), (v) is adjudicated a bankrupt or insolvent; (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

A proceeding or case is commenced against Recipient, without its consent, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Recipient, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Recipient or for all or a substantial part of its assets, or (iii) relief is granted to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Recipient is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

Section 4.2 **Failure to Disclose Material Facts.** Recipient fails to disclose any fact material to the making of the Grant, or a disbursement, to Recipient, or upon discovery by Grantor of any misrepresentation by, on behalf of, or for the benefit of, Recipient.

Section 4.3 **Failure to Pay Amounts Due.** Recipient fails to pay any sum due under this Grant Agreement or any other Grant Document within the time specified herein or therein.

Section 4.4 **Failure to Comply with Other Obligations.** Recipient fails to observe, perform, discharge or comply with any other covenant, agreement or obligation imposed on Recipient by this Grant Agreement or any other Grant Document, including requirements for mid-year and annual reporting, and such failure remains uncured 30 days after written notice thereof to Recipient.

Section 4.5 **Discontinued Project.** Work on the Project is discontinued or prohibited for 30 or more consecutive days or the Project is abandoned.

Section 4.6 **Failure to Diligently Pursue the Project.** Recipient fails to diligently pursue the Project to completion.

ARTICLE 5
RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Grantor may, at its option, exercise any one or more of the following rights and remedies:

Section 5.1 **Repayment.** Grantor may declare the entire original Grant (or so much thereof as has been disbursed to Recipient) and other charges payable by Recipient pursuant to this Grant Agreement or any other Grant Document, to be immediately due and payable in full and, upon such declaration, Recipient shall pay to Grantor the amount declared to be immediately due and payable.

Section 5.2 **Termination.** Grantor may, by and effective upon written notice to Recipient, terminate this Agreement or Grantor's obligation to disburse additional Grant funds to Recipient.

Section 5.3 **No Election Required.** Grantor shall have any other right or remedy provided in this Grant Agreement or any other Grant Document, or available at law, in equity, or otherwise in such order and manner as it may select.

Section 5.4 **Rights and Remedies Cumulative.** All rights and remedies described in this Article 5 are cumulative and in addition to any other remedy Grantor may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict Grantor's subsequent exercise of such right or remedy nor shall it restrict Grantor's contemporaneous or subsequent exercise of any other right or remedy.

Section 5.5 **No Waiver.** No failure on the part of Grantor to exercise, and no delay in exercising, any right, power, or privilege under this Grant Agreement or any other Grant Document shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Grant Agreement or any other Grant Document shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Recipient shall entitle Recipient to any other notice or demand in other similar circumstances.

Section 5.6 **Payment of Costs of Collection.** In case of an Event of Default or an event which, with the lapse of time or the giving of notice, or both, would become an Event of Default, or in case litigation is commenced to enforce or construe any term of this Grant Agreement or any other Grant Document, to the extent permitted by law the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding the parties may agree to or at trial, on appeal, or in any bankruptcy proceeding.

applicable portions of this Grant Agreement, including but not limited to, the record keeping and reporting requirements and auditing requirements set forth in Sections 3.6 and 3.7 hereof, as necessary to permit Recipient to satisfy its recording keeping and reporting requirements and auditing requirements under this Grant Agreement.

Section 6.6 Governing Law, Jurisdiction, Venue. This Grant Agreement and the other Grant Documents shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of law principles. Any legal action regarding this Grant Agreement or the other Grant Documents must be brought and conducted in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in the Circuit Court in another Oregon county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the preceding paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 6.7 Modification; Prior Grant Agreements; Headings. This Grant Agreement may not be modified or amended except by an instrument in writing signed by Recipient and Grantor. This Grant Agreement taken together with the other Grant Documents reflect and set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. The headings in this Grant Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 6.8 Validity; Severability. If any provision of this Grant Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Grant Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

Section 6.9 Exhibits and Schedules. The exhibits and schedules to this Grant Agreement are, by this reference, incorporated into and deemed a part of this Grant Agreement as if they were fully set forth in the text hereof.

Section 6.10 Time of Essence. Time is of the essence of this Grant Agreement and each of the Grant Documents.

Section 6.11 Relationship of the Parties. Nothing contained in this Grant Agreement or any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 6.12 **No Third Party Beneficiary Rights.** No person not a party to this Grant Agreement is an intended beneficiary of this Agreement, and no person not a party to this Grant Agreement shall have any right to enforce any term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by their duly authorized representatives effective as of the date first above written.

GRANTOR:

STATE OF OREGON acting by and through the **OREGON TOURISM COMMISSION**

By: _____

Name: _____

Title: _____

RECIPIENT:

Oregon21, LLC

By: _____

Name: _____

Title: _____

EXHIBIT A

IAAF WORLD TRACK AND FIELD CHAMPIONSHIPS EVENT

SCOPE OF PROJECT

Recipient will deliver the _____ IAAF OR21 World Track and Field Championships sporting event in _____, as described in Recipient's application materials submitted to Grantor. Those application materials are on file with Oregon Tourism Commission and are incorporated by reference herein.

PROJECT OUTCOMES

In addition to completion of the required Project activities described in the Grant Application submitted by Recipient, success of the Project will also be assessed based on the following metrics:

REPORTING REQUIREMENTS

No later than June 30, 2018, and no later than June 30 of each year thereafter until the Project is complete, Recipient shall prepare and submit to Grantor, a Mid-Year Progress Report on the Project that describes the work completed since the last Annual Progress Report and the work currently in-progress. No later than December 31, 2018, and no later than December 31 of each year thereafter until the Project is complete, Recipient shall prepare and submit to Grantor an Annual Progress Report on the Project that describes the work completed during the prior year and the work currently in progress. After completion of the Project, Recipient shall prepare and submit to Grantor a final written report on the Project that describes the work completed as part of the Project. The final written report on the Project will be due no later than December 31, 2021. After completion of the Project, Recipient will make a presentation before the Oregon Tourism Commission at a public meeting to report on the aforementioned project outcomes at a mutually agreed upon date but no later than June 30, 2022.

EXHIBIT B

Sources and Uses of Funding Budget

DRAFT

SCHEDULE 2

Exceptions to Recipient's Representations and Warranties

Section 2.3 Litigation. _____

DRAFT