

ATTACHMENT A

GRANT AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND TRELLIS INTERNATIONAL

This Grant Agreement ("Agreement") is entered into this 15th day of September, 2021 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and Charter City ("City"), and Trellis International, a California corporation located at 711 W. 17th St., Suite E5, Costa Mesa, CA 92627 ("Grantee"). City and Grantee are at times individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

- A. It is the policy of the City Council that the City's budget specifically allows the City Council to direct revenue towards non-profit agencies, community groups, community events, or enhancement projects with worthy projects or programs which the City Council deems beneficial to the residents' quality of life.
- B. Grantee requested a grant from the City for Voluntary Service Project Labor ("Grant Proposal").
- C. The City Council determined the Grant Proposal is for a worthy project that will benefit the City's residents' quality of life.
- D. The City Council approved a grant in the amount of Thirty Thousand Dollars and 00/100 (\$30,000.00) ("Grant Funds") to Grantee pursuant to certain conditions regarding expenditure, reporting, and accounting requirements.

NOW, THEREFORE, the Parties agree as follows:

1. GRANT

1.1. City awards to Grantee Grant Funds in the amount of Thirty Thousand Dollars and 00/100 (\$30,000.00) as requested by Grantee in the Grant Proposal attached hereto as Exhibit A and incorporated herein by reference, or such other amount as authorized by the City Council.

1.2. Grant Funds shall be disbursed by City to Grantee by the 15th of each month, in equal installments of Two-Thousand Six-Hundred Dollars and 00/100 (\$2,600.00) for the first eleven (11) months of the Agreement and one (1) final payment of One-Thousand Four-Hundred Dollars and 00/100 (\$1,400.00) for the final month of the Agreement.

2. TERM

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until September 14, 2022, unless terminated earlier as provided herein.

3. RESTRICTIONS ON USE OF FUNDS AND OTHER REQUIREMENTS RELATED TO THE RECEIPT OF GRANT FUNDS

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

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

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

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

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

4. REPORTING AND ACCOUNTING REQUIREMENTS

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

4.2. If the Grantee has been audited by an independent auditor or has been the subject of a compliance audit/examination by a grantee or regulatory agency during the past three years, audit reports and management letters indicating compliance violations, fraud, illegal acts, material weaknesses in internal control structure or reportable conditions, in connection with such audits shall be delivered to the City thirty (30) days prior to the effective date of this agreement. If no audits or events as described above have occurred during this period, the Grantee shall provide City a written assertion that no audits or similar examinations have occurred during the three (3) year period and an assertion that the Grantee is not aware of any events or conditions, described above, or other information that might reasonably impact City's decision to fund the grant as requested.

4.3. City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a Certified Public Accounting firm who shall have the

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

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

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

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

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

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

- a. An identifying donor number, date and amount of each reported contribution; and
- b. A detail of expenditures sufficient enough to determine that the expenditures were solely for PAC-related expenses; and

- c. Any retained earnings or fund balance at the end of each fiscal year.

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

5. USE OF GRANT FUNDS

5.1. The Grant Funds shall be used solely by Grantee for the Approved Uses and for no other use. In the event that the Grant Funds are not used for the Approved Uses or are not expended by or before September 14, 2022, Grantee shall notify the City in writing, and shall be obligated to return the Grant Funds to City within thirty (30) days.

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

6. INDEMNIFICATION

6.1. To the fullest extent permitted by law, Grantee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Grantee, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) and/or if it is subsequently determined that an employee of Consultant is not an independent contractor.

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

7. GRANTEE INDEPENDENCE

In the performance of this Agreement, the Grantee, and the agents and employees of Grantee, shall act in an independent capacity and are not officers, employees or agents of the City. The manner and means of performing the Approved Uses are under the control of Grantee, except to the extent they are limited by statute, rule or regulation and

the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Grantee or any of Grantee's employees or agents, to be the agents or employees of City. Grantee shall have the responsibility for and control over the means of performing the Approved Uses, provided that Grantee is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Grantee as to the details of the performance or to exercise a measure of control over Grantee shall mean only that Grantee shall follow the desires of City with respect to the results of the Approved Uses.

8. PROHIBITION AGAINST TRANSFERS

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

9. INSURANCE

Without limiting Grantee's indemnification of City, and prior to commencement of Work, Grantee shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference.

10. NOTICES

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

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

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

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

Attn: Isabel Carpenter
Trellis International
711 W. 17th St., Suite E5
Costa Mesa, CA 92627

11. TERMINATION

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

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

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

12. STANDARD PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

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

Date: 9/20/2021

By:  for

Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
A California municipal corporation

Date: _____

By: _____

David A. Webb
Public Works Director

GRANTEE: Trellis International, a
California corporation

Date: _____

By: _____

Ian Stevenson
Chief Executive Officer

Date: _____

By: _____

Rachel Maxfield
Treasurer

Attachment: Exhibit A: Grant Proposal
Exhibit B: Insurance Requirements

[END OF SIGNATURES]

Exhibit A
Grant Proposal

Exhibit A

Trellis International Requirements for Participants and Work Project Tiers

In general, Trellis International requires all volunteers, regardless of Tier, to be sober, with moderate-to-excellent level of cleanliness, wear a Trellis Team T-shirt and hat, and adhere to the Community Impact Team (CIT) zero-tolerance policy for foul language or other objectional behavior, such as smoking on-site, and/or drug/alcohol use.

Trellis International proposes that, as a recipient of the grant, that it will complete a minimum of 8-or more work projects in Newport Beach each month. In performing volunteer work, Trellis International, recognizes that the City does not have public restrooms at all locations where volunteer projects are being performed and will provide restroom facilities or transport volunteers to restroom facilities, as needed.

Work project examples shown below.

Tier One

Participant Profile	Examples of Potential Work Projects
New to program or reliability untested Requires oversight and direction Suitable for low-stress projects Low level of interaction with public	Trash and debris pick-up in public areas Vegetation trim and cut back Vegetation cleanup and removal Sweeping, raking public areas Other suitable projects

Tier Two

Participant Profile	Examples of Potential Work Projects
Moderate to high level of reliability Good team member/potential leader Commitment to the project, CIT and the City	Bay or Beach clean-up Tree/Bush planting Moderate traffic area clean-up such as Trails, Parking Lots, Piers and Docks, CdM, etc. Clean Park BBQs, Picnic areas Graffiti/Sticker removal, Clean stains/gum/etc. from hardscape and other amenities Sweeping, raking, washing public areas Low exposure arterial trash clean-up walk

Tier Three

Participant Profile	Examples of Potential Work Projects
Team Leader High level of responsibility Requires little oversight. Self-starter Exemplary appearance and behavior Eager to advance	High population area clean-up School perimeter clean-up Miscellaneous Waste disposal and clean-up Graffiti/Sticker removal, Clean stains/gum/etc. from hardscape and other amenities Sweeping, raking, washing public areas High exposure arterial trash cleanup walk

Tier Four

Participant Profile	Examples of Potential Work Projects
Proven Team Leader Committed to personal advancement High level of trust and reliability	High-exposure area maintenance Semi-challenging projects Painting projects Minor repair work to public amenities

EXHIBIT B

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Grantee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Grantee agrees to provide insurance in accordance with requirements set forth here. If Grantee uses existing coverage to comply and that coverage does not meet these requirements, Grantee agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.

- A. Workers' Compensation Insurance. Grantee shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Grantee shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.

- B. General Liability Insurance. Grantee shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- C. Automobile Liability Insurance. Grantee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Grantee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or

rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Grantee or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Grantee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Grantee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Grantee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the

required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Grantee sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Grantee, City and Grantee may renegotiate Grantee's compensation.
- C. Right to Review Subcontracts. Grantee agrees that upon request, all agreements with subcontractors or others with whom Grantee enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Grantee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Grantee shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Grantee acknowledges and agrees that any actual or alleged failure on the part of City to inform Grantee of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Grantee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Grantee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Grantee or any subconsultant fails to provide and maintain insurance as required herein, then City shall

have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Grantee's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Grantee or reimbursed by Grantee upon demand.

- H. Timely Notice of Claims. Grantee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Grantee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Grantee's Insurance. Grantee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.