CITY OF TIGARD, OREGON

RESOLUTION NO. 04-22

A RESOLUTION ACKNOWLEDGING THAT THE TIGARD FESTIVAL OF BALLOONS IS A CITY OF TIGARD SPONSORED EVENT AND ESTABLISHING THE MODIFIED STANDARD AGREEMENT FORM AS AGREED UPON BY THE CITY OF TIGARD AND BALLOON FESTIVAL ORGANIZERS

WHEREAS, the City of Tigard Vision Task Force and Action Planning Committee Strategy for Community Character and Quality of Life calls for development of an overall approach for sponsoring community events, including long-standing events and new events, and development of a philosophy for event sponsorship; and

WHEREAS, City of Tigard Resolution No. 01-58 established procedures for City Sponsorship of Community Events; and

WHEREAS, Resolution No. 00-20 established that the Balloon Festival Event is a City Sponsored Event and the initial amount of funding for this event is $10,000; and

WHEREAS, on April 13, 2004, the Tigard City Council reviewed the proposed modified standard agreement as attached (Exhibit 1).

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Balloon Festival Event is a City of Tigard sponsored event with the length of sponsorship to be automatically renewed from year-to-year, with a one-year notice to the event organizers should the City decide not to renew funding.

SECTION 2: The Mayor is hereby authorized to sign the agreement attached (Exhibit 1).

SECTION 3: The resolution is effective immediately upon passage.

PASSED: This 13th day of April 2004.

Mayor - City of Tigard

ATTEST:

Catherine Wheatley
City Recorder - City of Tigard

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SPONSORSHIP AGREEMENT

This Sponsorship Agreement ("Agreement") is between the City of Tigard, an Oregon municipal corporation ("City") and the **Tigard Festival of Balloons**, a non-profit organization ("Organizer").

RECITALS

a. Organizer is the organizer of the Balloon Festival (the "Event") and has asked the City to be a sponsor of the Event. Although open to the public, the Event put on by Organizer is a private event and not an official City event.

b. City has passed a resolution that provides procedures and policies for City sponsorship of events.

c. City has passed a resolution that authorized City sponsorship of the Event, subject to execution of this Sponsorship Agreement.

d. City and Organizer have agreed to the scope of the City sponsorship and the relationship between the City and Organizer as set forth below.

AGREEMENT

1. This Agreement shall be effective when Organizer provides certificates of insurance as required by Section 13 G.

2. This Agreement shall remain in effect until terminated as provided in Section 24 below.

3. City shall reimburse (pay) Organizer up to $10,000 for fiscal year 03/04, for costs incurred to put on the Event. Payment shall be made only after Organizer provides proof that the costs have been incurred and paid by the Organizer and were costs of the Event. (Payment shall be made no more than 60 days prior to the Event to pay costs of the Event.) The amount of funds, if any, that the City will provide for future fiscal years shall be determined by the Tigard City Council in its sole discretion.

4. City shall make City facilities available for use by Organizer as specified on a map approved by the Public Works Director or his designee.

   The dates and times of use of the City facilities shall be specified in a permit that must be applied for at least 90 days before the Event. All fees for the permit may be waived.

During the period that Organizer has the right to use these areas, Organizer may determine who may engage in commercial activities within these areas. For all other areas Organizer shall have no right to exclude persons or prevent them from engaging in commercial activity.

To provide security for equipment, goods and other property of Organizer during the Event, camping within the exclusive area is permitted to Organizer and those permitted to camp by Organizer. This section constitutes the camping permit authorized by TMC §7.80.020.

5. City shall provide the following in-kind services to the Organizer:

City shall police Cook Park during the Event. Organizer shall have no right to control or direct City police operations and City employees. Nothing in this section relieves Organizer from responsibility for damage to City property or other property resulting from the Event.

City shall provide litter clean up for the Event within Cook Park, however, Organizer is encouraged to enlist the assistance of volunteers to aid in litter clean up during and immediately after the Event. Organizer shall have no right to control or direct City employees. Nothing in this section relieves Organizer from responsibility for damage to City property or other property resulting from the Event.

6. If the Event does not take place because of weather or other reason outside the control of the Organizer, the City may reimburse Organizer for expenses incurred by Organizer prior to the cancellation up to the amount stated in Section 2. If the Event is canceled by Organizer for reasons within Organizer's control, the City shall not pay any funds to Organizer and Organizer shall return to the City all funds paid by the City to Organizer in connection with the canceled Event within ten (10) business days of the cancellation.

If the Event is canceled for any reason, the City shall not provide any in-kind services after the date of cancellation. If the Event is canceled for any reason, the City's facilities shall be available to the Organizer on the same basis that they are available to any other person or entity.

If the main location of the Event moves outside the City limits of the City of Tigard for a given year, the City may terminate or reduce payments and/or the provision of services as it determines appropriate. The termination or reduction shall be decided by the City Council in its sole discretion.

7. Organizer shall identify City as a sponsor of the Event and Organizer shall provide the following rights to City:

   A. The right to have a booth paid for by the Organizer at the Event at a location acceptable and mutually agreed upon by the City and Organizer.

B. The right to have banners of a size and design chosen by the City and placed at locations mutually agreed upon. City's banners are to be located at site with other major sponsors. The City would provide banners.

C. The right to signage on any courtesy vehicles used by Organizer in connection with the Event. It is understood that no courtesy vehicles have been used in recent years.

D. The City's logo is to be used in all paid advertising purchased by the organizer when other sponsor logos are used. The size of the City's logo shall be comparable to those corporate sponsors making similar financial contributions.

E. The right to be named in all press releases issued by Organizer.

F. The right to be listed in any list of sponsors or to be included in any acknowledgment of sponsors.

G. The right to advertise in the official program produced by Organizer.

H. The right to use photographs and film of this Event generated by the City, its employees, agents or volunteers.

I. The right to make public address announcements during the Event. (Emergency announcements may be made at any time and generic public service announcements as mutually agreed upon.)

Nothing in the identification of the City as a sponsor shall state or imply that the Organizer is an agent of the City or that the City is responsible in any way for the Event.

8. Organizer shall provide sufficient means by which the public may obtain information about the Event, including but not limited to adequate phone lines to handle inquiries about the Event. The information phone lines shall be answered by a person or by a message that includes Event location, schedule and pricing information. Organizer shall provide City a written public information and communication plan at least 90 days before the Event. The City may require revisions to the plan. If Organizer fails to provide a plan or to comply with the plan, the City may terminate this Agreement, suspend or reduce payments, or deny Organizer the use of City facilities or services. City's only obligation to provide information about the Event shall be to provide the Event's information telephone number and/or web site address.

9. Food, Beverages and Music.

A. Organizer represents and warrants that it will cause all food and beverage vendors to represent and warrant, as a condition of their participation in the Event, that they will comply with all food service, sanitation and other regulations applicable to their services at the Event and provide proof of insurance.

B. If alcohol is served at the Event, Organizer will use its best efforts, and will cause its vendors to use their best efforts, to comply with all applicable laws and regulations, including City regulations, regarding the service of alcohol to intoxicated or underage persons, and to encourage the safe use of alcohol. Organizer shall require any third party serving alcohol at the Event to obtain Liquor Liability coverage. Limits for Liquor Liability coverage must match the limits required of Organizer for Commercial General Liability coverage. The Liquor Liability endorsement must be attached to the certificate of insurance provided to the City.

C. If alcohol is served at the Event, Contractor shall provide proof of Liquor Liability coverage required by Sections 12 and 14 of this Agreement.

D. Organizer represents and warrants that all music played at the Event, whether live, recorded or publicly broadcast, will be duly licensed for public performance by ASCAP, BMI, SESAC or such other performing rights societies or copyright owners as may be required by law, or else in the public domain. Organizer will indemnify and hold City harmless from and against any liability arising out of the performance of music at the Event.

10. The City and Organizer enter into this Agreement at arms-length and their only relationship is contractual. Neither party is an employee, agent, partner, or co-venturer in relationship to the other. Organizer is and remains an independent entity and has no authority whatsoever to act for the City. Organizer is not an officer, employee or agent of City as those terms are used in ORS 30.265. Organizer's officers, employees and agents are not the officers, employees, or agents of City those terms are used in ORS 30.265. Organizer, its employees and officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so. Organizer shall include a provision that it is not an agent of the City in all contracts it enters into with third parties.

Organizer is solely responsible for the organization of the Event and accepts responsibility and liability for all personal injury, property damage, and other damages arising from or related to the Event. The City has no responsibility for the organization or operation of the Event. To the fullest extent permitted by law, Organizer agrees to fully indemnify, hold harmless and defend the City, its elected and appointed officials, employees and volunteers from and against all claims, damages, losses and expenses incidental to the investigation and defense thereof, based upon or arising out of or

incidental to damages or injuries to persons or property, in any way related to the Event, or any activity associated with the Event, except for claims, damages, losses and expenses that are solely attributable to the actions of the City. Organizer's agreement to indemnify, hold harmless and defend the City extends to all claims damages, losses and expenses caused by or alleged to be caused by the fault or negligence in whole or in part of Organizer's agents, contractors, sub-contractors, employees or any third-parties that are in any way related to the Event. This provision is essential to the City's agreement to sponsor the Event and may not be severed from this Agreement. This indemnity extends to all claims, damages, losses and expenses relating to operation of hot-air balloons, the operation of any carnival rides or games, and the sale or consumption of food or drink in connection with the Event.

11. Organizer shall require the carnival and balloon owners and operators (third party) to provide City with proof of liability insurance naming the City as an additional insured at least 10 days prior to commencement of the event, and to defend, hold harmless, and indemnify the City as to any claim arising from the actions or negligence of the third party. Organizer shall provide City with the name, address and phone number of all third parties and sponsors with which it contracts and a general description of the engagement.

12. Organizer has chosen to use City property and facilities for the Event based on Organizer's inspection of the property and facilities and determination that the property and facilities are appropriate for the Event. Organizer accepts that the City is not responsible for any defects, imperfections, or lack of suitability of the City property and facilities.

13. During the term of this Sponsorship Agreement, Organizer shall purchase and maintain insurance of the types and in the amounts specified in this section. Organizer shall furnish acceptable certificates of insurance to City at least 10 days before commencement of the event. Organizer shall indemnify City for any liability or damages that City may incur due to Organizer's failure to purchase or maintain any required insurance. Organizer shall be responsible for the payment of all premiums and deductibles. Organizer shall maintain insurance of the types and in the amounts described below.

A. **General Liability Insurance**

Organizer shall obtain, at Organizer's expense, and keep in effect during the term of this Agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent).

This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The following limits of insurance will be carried:

Coverage	Limit
General Aggregate	$1,000,000

Products - Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one Fire)	50,000
Medical Expense (Any one Person)	5,000
Special Event Liability	1,000,000 each occurrence/ 2,000,000 aggregate

B. **Aviation Event Coverage**

Organizer shall obtain, at organizer's expense, and keep in effect during the term of this contract, Aviation Event Liability coverage including coverage for premises. The Combined Single Limit per occurrence shall not be less than $1,000,000.

C. **Liquor Liability Coverage**

If alcohol is to be served at the Event, Liquor Liability coverage will be endorsed to the Commercial General Liability coverage. Limits for Liquor Liability coverage will match the limits provided for the Commercial General Liability coverage. The endorsement must be attached to the certificate of insurance provided to the City.

D. **Commercial Automobile Insurance**

Organizer shall also obtain, at Organizer's expense, and keep in effect during the term of this Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than $1,000,000. This requirement applies if the Organizer provides transportation to or from the Event for participants.

E. **Workers Compensation Insurance**

Organizer shall provide coverage for all employees coming under the scope of State Workers Compensation laws. This shall include Employers Liability Insurance with coverage of not less than $500,000 per incident.

F. **Additional Insured Requirement**

The City of Tigard, its officers, directors, employees, and volunteers shall be added as additional insured with respect to the Event. All Commercial General Liability insurance policies and aviation Event coverage policies will be endorsed to show this additional coverage.

G. **Insurance Carrier Acceptability**

An insurance company acceptable to the City of Tigard must underwrite coverages provided by the Organizer.

H. **Evidence of Insurance**

As evidence of the insurance coverage required by this Agreement, the Organizer shall provide a certificate of insurance to the City. No use of City facilities, payment or other benefit will be provided by the City to the Organizer until the required certificates have been received and approved by the City. The certificate will specify and document all provisions required by this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

I. **Cancellation Provisions**

Coverage may not be canceled or materially changed without 30 days' written notice to the City. The notice of cancellation provision shall be physically endorsed on the Commercial General Liability policy.

Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Organizer's obligation to maintain such insurance.

15. Organizer shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances and obtain all required permits. Required permits may include but are not limited to:

Park Reservation Permit
Parade Permit
Liquor Licenses
Food Handler Permits
Public Assembly Permits

Fees for permits for the Event may be waived.

16. Notices. All notices required or permitted to be made under this Agreement shall be in

writing and shall be deemed to have been duly given when delivered or sent by prepaid certified or registered mail or fax:

If to Organizer, to: _____
(Address) (Fax)

If to City, to: _____
(Address) (Fax)

or such other address as either party may designate in writing to the other party for this purpose.

17. Other Warranties. Organizer represents and warrants that:

A. Organizer has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;

B. Organizer's trademarks do not infringe the trademarks or trade names or other rights of any other person;

C. Organizer has all government licenses, permits or other authorizations necessary to conduct the Event as contemplated under this Agreement; and

D. Organizer will comply with all applicable laws, regulations and ordinances pertaining to the promotion and conduct of the Event.

E. Organizer will ensure that all persons and entities it contracts with to provide services or goods at the Event shall have the knowledge, experience and capacity to provide the goods and services.

18. Records and Reporting

A. Organizer shall maintain a complete set of records relating to the Event, in accordance with generally accepted accounting procedures. The records must be maintained for at least three years from the date they are generated. Organizer shall permit the authorized representatives of the City to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Organizer relating to the Event while this Agreement is in effect and for three years after termination of this Agreement. The obligations imposed by this section shall survive termination of this Agreement.

B. Organizer shall request funding on an annual basis for future years within the City's established budget cycle. The request for funding shall include:

i. Financial statements from the previous year's Event.

ii. The budget for the Event to the year for which funding is requested.
iii. An Event schedule.
iv. A list of events associated with the Event.
v. The amount of funds requested and the purpose for which the funds will be used.
vi. A list of all other services, facilities, or other benefits, that Organizer is requesting from City.

C. Failure to comply with subsections A or B of this section shall constitute cause for termination of this Agreement by the City.

19. Governing Law and Consent to Jurisdiction. This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon, except for choice of law provisions. City and Organizer both consent to jurisdiction in the state and federal courts located in Oregon. Organizer shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279.312, 279.314, 279.316 and 279.320, which are hereby incorporated by reference.

20. Non-Assignment. Neither party shall assign this Agreement without the prior written approval of the other party, except that City may assign this Agreement to any successor entity.

21. Complete Agreement. This Agreement represents the entire agreement between the parties and supersedes all other agreements, if any, express or implied, whether written or oral. Organizer has made and makes no representations of any kind except those specifically set forth herein.

22. Binding Agreement. This Agreement shall be binding upon the parties, their successors and assigns.

23. If any provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, either party may, within 30 days of the court decision, request that the parties meet to negotiate an amendment to compensate for the loss of the provision declared invalid, void or unenforceable. If the provision declared invalid, void or unenforceable is one that this Agreement provides is not severable, the parties shall meet as soon as possible to attempt to renegotiate this Agreement. If after good faith efforts to renegotiate the Agreement the parties cannot agree on an amendment, either party may declare the Agreement terminated. In that event, all obligations intended to survive termination, including indemnification obligations and records inspection requirements, shall remain effective but the Agreement shall be otherwise be terminated. In the event of termination under this provision, any payments made by the City to Organizer shall be refunded, except that Organizer shall not be required to refund any amount actually expended for the Event. In the event that neither party requests renegotiation within 30 days and the provision declared void, invalid or unenforceable is not one that the Agreement provides is non-severable, the Agreement shall remain in effect except for the provision declared invalid, void or unenforceable.

24. This Agreement may be terminated by mutual agreement of the parties. Either party may terminate this Agreement for no reason by providing notice of termination one year prior to termination. Either party may terminate this Agreement for default by providing 30 days' notice. If the other party may cure the default and does so within 30 days, the Agreement shall not terminate. City may terminate this Agreement without notice by vote of the City Council if the City Council determines that it is in the public interest to do so. Any breach of this Agreement shall be considered a default. The indemnification provisions shall survive termination.

25. Except for those responsibilities expressly reserved to the City Council, all rights and duties of the City may be exercised by the City Manager or designee.

ORGANIZER

_____
[Name]

_____
[Signature]

_____
[Date]

SPONSOR

_____
City of Tigard

Craig E. Dirksen, Mayor
[~~Signature~~]

April 13, 2004
[Date]

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