

**GRANT AGREEMENT NO:**

An agreement between the CITY OF PORTLAND, OREGON (City) and \_\_\_\_\_ (Grantee) for the purpose of installation of WaterSense-labeled high efficiency toilets in low-income multi-family buildings.

**RECITALS:**

- (1) The City of Portland Water Bureau offers water conservation information and technical resources for all of its customers to help them use water efficiently and cost effectively. The installation of WaterSense labeled High-Efficiency Toilet models that flush with 1.28 gallons per flush will provide significant water and cost savings for organizations that provide affordable housing.
- (2) The GRANTEE provides affordable housing to City of Portland residents.
- (3) The GRANTEE is installing \_\_\_\_\_ (total number) WaterSense-labeled High-Efficiency Toilets at \_\_\_\_\_ (the property address).
- (4) The CITY will reimburse the GRANTEE for the replacement of toilets including; purchase of WaterSense labeled high efficiency toilets, recycling of old toilets, and the installation of new toilets.

**AGREED:****I. Actions to be taken by Grantee:**

In consideration of the grant funds provided by CITY, GRANTEE agrees to perform the following actions and/or spend grant funds in the following way:

**A. Schedule a pre-program water audit:**

GRANTEE will schedule a site visit of the property located at \_\_\_\_\_ with the Portland Water Bureau prior to replacing any fixtures. The audit will be performed by Portland Water Bureau staff and will measure toilet flush volumes and look for additional water efficiency opportunities.

**B. Removal & recycling of old toilets:**

GRANTEE will remove \_\_\_\_\_ toilets from the building located at \_\_\_\_\_ Portland, OR. GRANTEE will recycle all removed toilets at Environmentally Conscious Recycling and receive a scale receipt as proof of recycling.

**C. Purchase & permitting of new toilets:**

GRANTEE will purchase only WaterSense labeled high efficiency toilets under the grant agreement. GRANTEE must provide proof of purchase of each qualified toilet. GRANTEE must obtain all necessary permits for the installation of toilets.

D. Installation & inspection of new toilets:

GRANTEE must have toilets installed and inspected as well as old toilets recycled along with all documents submitted by **May 30, 2010** in order to be reimbursed for the project.

E. Reporting:

GRANTEE shall furnish the City Project Manager with a final report and a request for reimbursement by **May 30, 2010**. Requirements for what the report must contain, for reimbursement to occur, are set out below in subsection II.

## II. Reporting

A. **Reports:** GRANTEE will submit to the Grant Manager a report no later than **May 30, 2010**. The Report shall include:

- (1) Property address and information including total number of units and estimated occupancy at the time of installation of the new toilets.
- (2) Model and quantity of toilets removed.
- (3) Model and quantity of new toilets installed.
- (4) Copy of plumbing permits.
- (5) Copy of receipts for purchase of new toilets; and
- (6) Copy of receipts for recycling of old toilets.

## III. Funding, Method of Payment & Audit Requirement

- A. The City shall provide funding not to exceed \$ \_\_\_\_\_ to the Grantee for purposes described in Part I above.
- B. GRANTEE will receive its funding as a reimbursement for expenses incurred as demonstrated by the final report. CITY will not make a payment until the final report has been received.
- C. GRANTEE will keep vendor receipts and evidence of payment for materials and services and time records and evidence of payment for program wages, salaries, and benefits, and GRANTEE services. All such receipts and evidence of payments will promptly be made available to the Grant Manager or other persons designated by the CITY'S Grant Manager, upon request.
- D. Grantee shall be required to cooperate with a City audit of all expenses as requested.
- E. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, the CITY's payment of funds under this grant may be terminated, suspended or reduced.

## IV. Project Managers

- A. The Grant Manager for this grant is Sarah Murphy Santner, Residential Water Conservation Coordinator for the Portland Water Bureau. The City Grant Manager is authorized to approve work and billings hereunder, to give notices referred to herein,

to terminate this agreement, as provided herein, and to carry out all other city actions referred to herein. All formal, written communication to the Portland Water Bureau regarding the agreement should be directed to the City Grant Manager.

- B. The Grantee's Project Manager is to be \_\_\_\_\_. All formal written communication regarding the agreement should be directed to its Project Manager. The Grantee's Project Manager is authorized to approve all financial and performance reports.

## **V. Termination, Defaults and Remedies**

- A. A default will consist of:
- (1) any use of Grant funds for any purpose other than activities related to the conditions of the grant;
  - (2) any failure to perform or breach of any covenant, agreement, provision, representation, or warranty of the Grantee made in this Grant Agreement;
  - (3) a failure by the Grantee to commence, to the satisfaction of the City, work under any conditions of the grant by **May 30, 2010** unless the date is modified by mutual agreement of the City and the Grantee.
- B. Promptly upon the discovery of any default with respect to any conditions of the grant, the Grantee shall:
- (1) give prompt written notice to the City;
  - (2) to the fullest extent possible, vigorously pursue or cause to be pursued all remedies available to Grantee to remove or cure such default, obtain redress therefore and minimize the effects of the default, including all reasonable efforts under the circumstances to complete the conditions of the grant.
- C. Upon the occurrence of any default, the City may reduce or recapture the Grant or take other appropriate action. For purposes of this section, "other appropriate action" means any remedial action legally available. In the event that the City makes such a determination, then the Grantee will deliver to the City certified, true copies of all documents in its possession relevant to the defaulted conditions of the grant.
- D. If, through any cause, GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the CITY shall have the right to terminate this Grant Agreement by giving written notice to GRANTEE of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.
- E. In the event of a termination for cause, all finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Grant Agreement shall, at the option of the CITY, become the property of the CITY and GRANTEE shall be

entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination.

- F. The CITY and GRANTEE may terminate this Grant Agreement at any time by mutual written agreement. Alternatively, the CITY may, upon thirty (30) days written notice, terminate this agreement for any reason deemed appropriate in its sole discretion.

## **VI. General Grant Provisions**

- A. **CHANGES.** The City or Grantee may, from time to time, request changes in writing in the terms and conditions hereunder. If all parties agree, such changes shall be incorporated in written amendments to this agreement.

Changes in funding up to twenty-five percent of the agreement total must be approved by the Portland Water Bureau Administrator. Any change that exceeds twenty-five percent of the original funding amount requires City Council approval.

- B. **NON-DISCRIMINATION.** In carrying out activities under this agreement, the Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status or national origin. The Grantee shall take affirmative actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Grantee will comply with the equal employment and non-discrimination requirements of Portland City Code Sections 3.100.005 (City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights), 3.100.042 (Certification of subcontractors), and Chapter 23 – Civil Rights.
- C. **ACCESS TO RECORDS AND RIGHT TO AUDIT.** Upon reasonable notice, and for a period of no less than three years after execution of this Agreement, the City shall have access to and the right to inspect, copy, and audit any books, general organizational and administrative information, documents, papers, and records of the Grantee which are directly pertinent to this agreement, for the purpose of making audit or monitoring, examination, excerpts, and transcriptions. All required records must be maintained by the Grantee per OAR 166 Division 200.
- D. **MAINTENANCE OF RECORDS.** The Grantee shall maintain fiscal records on a current basis to support its billings to the City. The Grantee shall retain fiscal as well as all records relating to program management and operation, program beneficiaries, demographics and eligibility for inspection, audit, and copying. The City or its authorized representative shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Grantee regarding its billings or its work hereunder.

- E. **AUDIT OF PAYMENTS.** Upon reasonable notice, the City, either directly or through a designated representative, may audit the records of the Grantee at any time during the duration period established by Section F above.

If an audit discloses that payments to the Grantee were in excess of the amount to which the Grantee was entitled, then the Grantee shall repay the amount of the excess to the City.

- F. **INDEMNIFICATION.** The Grantee shall hold harmless, defend, and indemnify the City and the City's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the actions or omissions of Grantee, its employees, agents, or contractors related to this agreement. The City, to the extent allowed by the Oregon Constitution and as limited by the Oregon Tort Claims Act, shall hold harmless, defend, and indemnify The Freshwater Trust and its officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the actions or omissions of the City, its employees, agents, or contractors related to this agreement.

- G. **CONFLICTS OF INTEREST.** No City officer or employee, during his or her tenure or for one year thereafter, shall have any interest, direct, or indirect, in this agreement or the proceeds thereof.

No board of director member or employee of the Grantee, during his or her tenure or for one year thereafter, shall have any direct financial interest in this agreement or the proceeds thereof.

No City Officer or employees who participated in the award of this agreement shall be employed by the Grantee during the agreement.

- H. **GRANTEE'S CONTRACTORS AND ASSIGNMENT.** If GRANTEE utilizes contractors to complete its work under this Grant Agreement, in whole or in part, GRANTEE shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Grant Agreement as specified in this Grant Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to GRANTEE hereunder. GRANTEE agrees that if GRANTEE's contractors are employed in the performance of this Grant Agreement, GRANTEE and its contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. GRANTEE shall not assign this Grant Agreement in whole or in part or any right or obligation hereunder, without prior written approval of the CITY. GRANTEE's contractors shall be responsible for adhering to all local, state and federal laws and regulations.

- I. **OREGON LAWS AND FORUM.** This agreement shall be construed according to the laws of the State of Oregon.

Any litigation between the City and the Grantee arising under this agreement or out of work performed under this agreement shall occur, if in the state courts, in the

Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

J. COMPLIANCE WITH LAWS. In connection with its activities under this agreement, the Grantee shall comply with all applicable federal, state, and local laws and regulations.

K. INSURANCE REQUIREMENTS.

1. WORKERS' COMPENSATION INSURANCE

- (a) GRANTEE, its contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Worker's Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement and shall be incorporated herein and made a term and part of this Agreement. GRANTEE further agrees to maintain worker's compensation insurance coverage for the duration of this Agreement.
- (b) In the event GRANTEE's worker's compensation insurance coverage is due to expire during the term of this Agreement, GRANTEE agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and GRANTEE agrees to provide the CITY such further certification of worker's compensation insurance a renewals of said insurance occur.

2. LIABILITY INSURANCE

- (a) GRANTEE shall maintain public liability and property damage insurance that protects GRANTEE and the CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from GRANTEE's work under this Grant Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the CITY and its officers, agents, and employees. Notwithstanding the naming of additional insured's, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured's on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the CITY Auditor. If the insurance is canceled or terminated prior to completion of the Grant Agreement, GRANTEE shall provide a new policy with the same terms. GRANTEE agrees to maintain continuous, uninterrupted coverage for the duration of the Grant Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by GRANTEE.

- (b) GRANTEE shall maintain on file with the CITY Auditor a certificate of insurance certifying the coverage required under subsection (1). The adequacy of the insurance shall be subject to the approval of the CITY Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the CITY. In lieu of filing the certificate of insurance required herein, if GRANTEE is a public body, GRANTEE may furnish a declaration that GRANTEE is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.270.
- L. PROGRAM AND FISCAL MONITORING. The City shall monitor on a regular basis to assure agreement compliance. Such monitoring may include, but is not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the agreement. The frequency and level of monitoring will be determined by the City Project Manager.
- M. INDEPENDENT STATUS OF GRANTEE. GRANTEE is independent of the CITY and GRANTEE and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. GRANTEE and its contractors and employees are not employees of the CITY and are not eligible for any benefits through the CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits
- N. SEVERABILITY. If any provision of this agreement is found to be illegal or unenforceable, this agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- O. INTEGRATION. This agreement contains the entire agreement between the City and the Grantee and supersedes all prior written or oral discussions or agreements.
- P. THIRD PARTY BENEFICIARIES: There are no third party beneficiaries to this grant agreement. The agreement may only be enforced by the parties.
- Q. ASSIGNMENT: This agreement cannot be assigned or transferred by GRANTEE without the prior written permission of CITY.
- R. ELECTRONIC MEANS: The parties agree the CITY and GRANTEE may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

**VII. Period of Agreement**

The terms of this Grant Agreement shall be effective when an ordinance is passed by City Council and the Grant Agreement is executed by all the parties, as shown by their signatures below, and shall remain in effect during any period for which GRANTEE has received CITY funds. Work by GRANTEE shall terminate as of May 30, 2010.

Dated this \_\_\_\_\_

Day of \_\_\_\_\_, 2009.

**CITY OF PORTLAND**

**GRANTEE**

\_\_\_\_\_  
David G. Shaff  
Administrator  
Portland Water Bureau

\_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Linda Meng  
City Attorney