

# DRAFT

## GRANT AGREEMENT NO.

This is a Grant Agreement between the CITY OF PORTLAND, OREGON ("City") and VOZ Workers Rights Education Project ("Grantee") in an amount not to exceed \$200,000.

### RECITALS:

This grant is designed to provide seed money in establishing a Day Labor Hire Site ("Hire Site") as a long-term solution for day laborers seeking work at the informal sites in the Central Eastside area. Day laborers have been convening around informal sites for over ten years.

Informal observations in 2006 and 2007 indicate that the number of day laborers varies from day to day and month to month, but averages between 75 to 200 laborers each day.

### AGREED:

#### I. SPECIFIC CONDITIONS OF THE GRANT

- A. Records: GRANTEE will maintain all records regarding the program. Those records, as well as general organizational and administrative information, will be made available to the Grant Manager, or other designated persons, upon request; it being understood that the individual workers who seek work through the program and the employers who seek workers will be reported to the Grant Manager only by a unique numerical identifier,
- B. Grant Manager: The Grant Manager for this grant is Kevin Easton, or such other person as may be appointed by the Mayor.
- C. Amendment. The Grant Manager, with the agreement of the GRANTEE, is authorized to amend the terms and conditions of the grant provided such changes do not increase the CITY's financial risk. If approved, such changes shall be incorporated into a formal grant amendment and signed by the Grantee and the Grant Manager before such changes are effective. Any change to the amount of the Grant must be approved by the City Council unless the City Council delegated authority to amend the amount of the grant to a specific individual in the ordinance authorizing the grant.
- D. Billings/Invoices/Payment: The CITY Grant Manager is authorized to approve work and billings and invoices submitted pursuant to this grant and to carry out all other CITY actions referred to herein in accordance with this Agreement.
- E. Performance: GRANTEE shall perform all work and receive grant funds in accordance with the provisions of Exhibit A to this agreement.
- F. Fiscal Agent: Until GRANTEE obtains a favorable advance ruling from the United States Internal Revenue Service ("IRS") with respect to its application for designation as a 501(c)(3), GRANTEE shall use St. Francis of Assisi Church ("St. Francis") as its fiscal agent, or such other fiscal agent as the CITY Grant Manager may permit. In addition:
  1. GRANTEE agrees that City may pay any grant funds due under this agreement to its fiscal agent.

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2. GRANTEE agrees to keep CITY promptly informed about the status of its 501(c)(3) application.
3. Upon receipt of a favorable advance ruling from the IRS, City will pay any additional grant funds to GRANTEE, provided that GRANTEE has a Fidelity Bond in place, as noted in Section II.K below.
4. GRANTEE shall provide the CITY with a copy of its agreement with this fiscal agent for the CITY'S approval prior to the disbursement of any funds under this Agreement. The City shall be named as a third party beneficiary to any such agreement.

## II. GENERAL GRANT PROVISIONS

- A. TERMINATION FOR CAUSE. If, through any cause, GRANTEE shall fail to fulfill in timely and proper manner his/her obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the CITY shall notify the GRANTEE of such failure or violation. Thereafter, GRANTEE shall be afforded a reasonable opportunity to cure or correct such failure or violation within a reasonable time, If GRANTEE fails to correct or cure within a reasonable time the CITY shall have the right to give written notice to GRANTEE of termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.
1. During the 30 day period CITY is under no obligation to continue providing Grant Funds and Grantee is not authorized to perform services or take actions that would require the City to pay additional grant funds to Grantee.
  2. During the 30 day period, GRANTEE shall not spend unused grant funds.
  3. 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. However, GRANTEE may redact any information identifying individuals seeking employment or training through the Hire Site or any employers seeking workers through the Hire Site.
- B. TERMINATION BY AGREEMENT OR FOR CONVENIENCE. The CITY and GRANTEE may terminate this Grant Agreement at any time by mutual written agreement. Alternatively, the City may, upon sixty (45) days written notice, terminate this agreement for any reason deemed appropriate in its sole discretion. If the Grant Agreement is terminated as provided in this paragraph GRANTEE shall return any Grant funds that would have been used to provide services after the effective date of termination, less any costs incurred by Grantee in winding down its operations under this Grant.
- C. CHANGES. The CITY may request changes in the scope of the services or terms

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and conditions hereunder. Such changes, including any increase or decrease in the amount of GRANTEE's award, shall be incorporated in written amendments to this Grant Agreement before they become effective.

- D. NON-DISCRIMINATION. In carrying out activities under this Grant Agreement, GRANTEE shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. GRANTEE shall take 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, sexual orientation 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. GRANTEE shall post in conspicuous places, available to employees and applicants for employment, notices provided by the CITY setting for the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph in all of its Grant Agreements for work funded under this Grant Agreement, except Grant Agreements governed by Section 104 of Executive Order 11246.
- E. ACCESS TO RECORDS. GRANTEE shall provide the CITY, or its duly authorized representatives, prompt access to any and all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Grant Agreement or GRANTEE's performance of services, for the purpose of making audit examination, copies, excerpts, and transcriptions. Although GRANTEE is not required by this grant to maintain any records of names of individual laborers, in the event that GRANTEE undertakes that action, the CITY is not entitled to review such names and GRANTEE may redact any information identifying individuals seeking employment or training through the Hire Site or any employers seeking workers through the Hire Site. All required records must be maintained by GRANTEE for four years after the CITY makes final payment and all other pending matters are closed. GRANTEE shall also ensure, through its agreement with its fiscal agent, that the fiscal agent provides access to the City of its records that relate to this Grant.
- F. MAINTENANCE OF RECORDS. GRANTEE shall maintain records on a current basis to support any billings or invoices submitted by GRANTEE to CITY. The CITY, or its authorized representative, shall have the authority to inspect, audit, and copy on reasonable notice, and from time to time may examine any records of GRANTEE regarding its billings or its work hereunder. GRANTEE shall retain these records for inspection, audit, and copying for four years from the date of completion or termination of this Grant Agreement.
- G. AUDIT. The CITY, either directly or through a designated representative, may audit the records of GRANTEE at any time during the four year period established by Section G above. If an audit discloses that payments to GRANTEE were in excess of the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to the CITY.
- H. INDEMNIFICATION. 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

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any of them arising from GRANTEE's work or any of GRANTEE's contractors work under this Grant Agreement.

### I. WORKERS' COMPENSATION INSURANCE.

1. 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 covering GRANTEE's employees, or a 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 its employees for the duration of this Agreement.
2. 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.

### J. LIABILITY INSURANCE.

1. Prior to beginning any work under this grant and prior to the disbursement of any funds, GRANTEE shall acquire and 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 insureds the CITY and its officers, agents, and employees. Notwithstanding the naming of additional insureds, 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 insureds 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.
2. 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.

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- K. FIDELITY BOND. GRANTEE's fiscal agent shall provide and maintain a Fidelity Bond, or equivalent insurance, in the amount of \$200,000. The bond shall name St. Francis of Assisi Church as Principal on the bond. When GRANTEE no longer uses the services of a fiscal agent then it shall provide the bond with GRANTEE as principal on the bond. The form of the bond shall be subject to the approval of the City Attorney's office.
- L. GRANTEE'S CONTRACTORS AND ASSIGNMENT. GRANTEE shall not subcontract, assign or transfer this agreement to another party without the express written approval of CITY. If approval is granted, and 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.
- 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. 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 Grant Agreement or the proceeds thereof. No CITY officer or employees who participated in the award of this Grant Agreement shall be employed by GRANTEE during the period of the Grant Agreement.
- O. OREGON LAWS AND FORUM. This Grant Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between the CITY and GRANTEE arising under this Grant Agreement or out of work performed under this Grant 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.
- P. COMPLIANCE WITH LAWS. In connection with its activities under this Grant Agreement, GRANTEE shall comply with all applicable federal, state, and local laws and regulations. GRANTEE shall be EEO certified by the City of Portland in order to be eligible to receive grant funds.
- Q. INDEPENDENT FINANCIAL AUDITS/REVIEWS. Any Grantee receiving \$300,000 or more in CITY funding, in any program year, is required to obtain an independent audit of the CITY-funded program(s). Any Grantee receiving between \$25,000 and \$300,000 in CITY funds, in any program year, is required to obtain an independent financial review. Two copies of all required financial

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audits or reviews shall be submitted to the Grant Manager within thirty days of their completion.

R. 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.

S. INTEGRATION. This agreement contains the entire agreement between the CITY and GRANTEE and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Grant that are not contained herein.

T. PROGRAM AND FISCAL MONITORING. The CITY shall monitor on an as needed basis to assure Grant Agreement compliance. Such monitoring may include, but are not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the Grant Agreement. The frequency and level of monitoring will be determined by the Program Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the services required by this Grant in accordance with its terms and conditions.

grant U. THIRD PARTY BENEFICIARIES: There are no third party beneficiaries to this agreement. The agreement may only be enforced by the parties.

V. NOTICE: All notices under this Grant Agreement shall be sent to GRANTEE and to Fiscal Agent at the following addresses:

GRANTEE:

Fiscal Agent:

**III. TERM OF GRANT**

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 December 31, 2009.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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**CITY OF PORTLAND**

**GRANTEE**

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

Title:

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

Title:

**APPROVED AS TO FORM:**

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