

GRANT AGREEMENT NO:

An agreement between the CITY OF PORTLAND, OREGON (City) and the _____ (Grantee) for the purpose of receiving grant funds to reduce water use.

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 funding of the project to reduce water use by 20% over code or industry standard will provide significant cost and water savings to business customers.
- (2) The GRANTEE is a Portland Water Bureau non-residential customer, with an active account in good-standing.
- (3) Before this Grant was executed, City staff conducted an audit of the property for the purpose of recommending and/or reviewing proposed improvements to fixtures/appliances/machinery that, if implemented, would save the Grantee water and reduce the Grantee's water bills. The recommended changes to be funded are described below.

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 spend grant funds in the following way:

A. Project description and location:

Grantee will _____ (describe what actions the grantee will do for incentive money) at this location _____.

B. Removal and recycling of old fixtures/appliances/machinery:

GRANTEE will recycle old plumbing fixtures, appliances, and/or machinery to the greatest extent possible, as identified in the water audit that was conducted by City staff before this agreement was executed. Failure to recycle when feasible will be a material breach of contract, permitting the City to terminate this agreement for cause pursuant to Section V.A.

C. Purchase and permitting of new fixtures/appliances:

GRANTEE shall purchase only WaterSense labeled toilets, showerheads, faucet fixtures or other devices that EPA's WaterSense program has labeled. GRANTEE must obtain all necessary permits for the installation of any permitted fixtures/appliances/machinery. Failure to purchase WaterSense products or to obtain all necessary permits will be a material breach of contract, permitting the City to terminate the agreement for cause pursuant to Section V.A.

D. Project Completion:

GRANTEE must have completed all aspects of its improvements and submitted all required paperwork to the Portland Water Bureau by May 30, 2012 in order to be reimbursed for a portion of the improvements, unless another date is approved in writing by the City Grant Manager.

E. Reporting:

GRANTEE shall furnish the City Project Manager with a final report and a request for reimbursement. Requirements for the report and for reimbursement are set out below in Section II.

F. City Review

GRANTEE shall make its improvements available for inspection by City staff after the improvements are completed and before final documents are provided and a request for reimbursement has been made.

II. Reporting

A. **Reports:** GRANTEE will submit to the Grant Manager a report prior to reimbursement, no later than May 30, 2012 unless another date is approved, in writing, by the City Grant Manager. The Report shall include:

- (1) Property address and information including detailed description of project.
- (2) Date project began and ended.
- (3) Model and quantity of fixtures, appliances, and/or machinery removed, if applicable.
- (4) Model and quantity of new fixtures, appliances, and/or machinery installed, if applicable.
- (5) Copy of receipts for purchase of new fixtures, appliances, and/or machinery, if applicable;
- (6) Copy of receipts for professional services, if applicable;
- (7) Copies of permits and inspection reports, if applicable; and
- (8) Copy of receipts for recycling of old fixtures, appliances, and/or machinery, if required in the agreement.

III. Funding, Method of Payment & Audit Requirement

A. The City shall provide funding to reimburse Grantee for the improvements, but in no event shall such reimbursement exceed _____. If expenditures are less than the "not to exceed" amount, the City is required to pay only for the amount of the actual expenditures and no more. Expenditures in excess of this amount are solely the responsibility of the Grantee.

GRANTEE will not receive reimbursement until receipt of final project documentation, any and all invoices for which reimbursement is sought, and after a site inspection by City staff. The report shall be sent to:

City of Portland
Water Bureau
Attn: Jeff Sandberg
1120 SW 5th Avenue
Portland, OR 97204

Invoices shall be sent to the following address:

City of Portland Water Bureau
Finance Department
Attn: Accounts Payable
1120 SW 5th Avenue
Room 609
Portland, OR 97204

Invoices can also be sent electronically to wbaps@portlandoregon.gov

- B. 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.
- C. Grantee shall be required to cooperate with a City audit of all expenses as requested.
- D. If, for any reason, GRANTEE receives a grant payment under this Grant Agreement and does not use grant funds, provide required services, or take any actions required by the Grant Agreement, the CITY may, at its option, terminate, reduce, or suspend any grant funds that have not been paid and may, at its option, require GRANTEE to immediately refund to the CITY the amount improperly expended or received by GRANTEE.
- E. Grant payment under this Agreement may be used only to provide for services or take the actions listed previously in this Grant Agreement and shall not be used for any other reason.
- F. 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 Jeff Sandberg, Water Conservation, Business, Industry, and Government Water Efficiency Program. 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.
- C. Amendment. The Grant manager is authorized to amend the terms and conditions of the grant provided such changes do not increase the CITY's financial risk. The Bureau Director is authorized to increase grant funding up to a maximum amount of 25% of the original grant amount, not to exceed the maximum amount allowable of \$5,000 per grant. If approved, such changes shall be incorporated into the formal grant amendment and signed by the GRANTEE and Grant Manager or Bureau Director before such changes are effective. Any other changes to the amount of the Grant must be approved by the City Council.

- 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.

V. Termination, Defaults and Remedies

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 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.

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.

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 thirty (30) 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.

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 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.

- 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. 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 GRANTEE's work or any of GRANTEE's contractors work under this Grant 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 without regard to its provisions regarding conflicts of laws. 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.
 - a. LIABILITY INSURANCE
 - i. 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 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.
 - ii. 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

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and fiscal aspects of the agreement. The frequency and level of monitoring will be determined by the City Grant 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 no later than May 30, 2012 unless another date has been approved, in writing, by the City Grant Manager.

Dated this _____

Day of _____, 2011.

CITY OF PORTLAND

GRANTEE

David G. Shaff
Administrator
Portland Water Bureau

Name: _____

APPROVED AS TO FORM

Linda Meng

CITY ATTORNEY
Linda Meng
City Attorney