

**City of Portland****SPECIAL APPROPRIATION GRANT AGREEMENT FY'14-15****Agreement No.:** \_\_\_\_\_

This Grant Agreement ("Agreement") is between the CITY OF PORTLAND, OREGON ("CITY" OR "GRANTOR") and Friends of Zenger Farm ("GRANTEE") in an amount not to exceed \$100,000. This Agreement may refer to the CITY and GRANTEE individually as a "Party" or jointly as the "Parties."

**RECITALS:**

1. GRANTEE is a local non-profit farm in East Portland that models, promotes and educates youth and adults about sustainable food systems, environmental stewardship, community development and access to good food for all.
2. GRANTEE works to reduce hunger and improve nutrition through advocacy, nutrition education, learning gardens, access to healthy foods and public education.
3. GRANTEE models and promotes sustainable practices and environmental stewardship through its farming methods, development and maintenance of its facilities, youth and community education, and partnerships with environmental and community organizations.
4. GRANTEE seeks to increase its capacity to serve East Portland and partner with other community organizations by building an Urban Grange that will be a community learning center that supports the organization's mission.
5. GRANTEE mission is consistent with Council desires to eliminate hunger in the City of Portland and expand the use of sustainable building practices, green infrastructure and environmental education.
6. In accordance with the FY 2014-15 Budget, the City now desires to make a grant to GRANTEE in an amount not to exceed \$100,000.

**AGREED:****I. TERM**

This Agreement is effective upon execution by all parties and shall terminate on June 30, 2015.

**II. ACTIONS TO BE TAKEN BY GRANTEE**

In consideration of the grant funds provided by the GRANTOR, GRANTEE agrees to perform the actions and spend the grant funds as described in GRANTEE's 2014-15 Special Appropriation Request for financial assistance, attached hereto as Exhibit A.

### III. SPECIFIC CONDITIONS OF THE GRANT

- A. Publicity: During the term of this Agreement, GRANTEE shall use its best efforts to mention the CITY's grant funding in publicity regarding the programs that will be supported by the grant funds.
- B. Records: GRANTEE will maintain all records for the program. Those records, as well as general organizational and administrative information, will be made available to the CITY Grant Manager or other designated persons upon request;
- C. CITY Grant Manager: The CITY Grant Manager for this grant is Marie Walkiewicz.
- D. GRANTEE Project Manager: The GRANTEE Project Manager is Jill Kuehler.
- E. Funding: This grant is funded by the City's General Fund.
- F. Fiscal Agent: The CITY's Bureau of Environmental Services (BES) will act as CITY's fiscal agent for this Agreement.
- G. Billings/Invoices/Payment: The CITY Grant Manager is authorized to approve work, billings, and invoices submitted pursuant to this grant and to carry out all other CITY actions referred to herein in accordance with this Agreement.
- H. Report: GRANTEE will complete and submit to the CITY Grant Manager the **Special Appropriation Reporting Form**, attached as Exhibit B, no later than thirty (30) days after the completion of the project.

### IV. PAYMENTS

- A. GRANTEE will receive its funding as follows: After the Agreement becomes effective, GRANTEE will submit an invoice for the full amount of the grant to the CITY Grant Manager for approval. The CITY will pay GRANTEE the amount of the invoice within thirty (30) days of the approval date. This will be a direct payment, not an advance, to the GRANTEE.
- B. If for any reason GRANTEE receives a grant payment under this Agreement and does not use grant funds, provide required work or services or perform as required by the Agreement, then CITY may at its option terminate this Agreement, reduce or suspend any grant funds that have not been paid, require GRANTEE to immediately refund to CITY the amount improperly expended, return to CITY any unexpended grant funds received by GRANTEE, require GRANTEE to fully refund any or all grant funds received, or any combination thereof.
- C. Grant payments under this Agreement may be used only to provide the services or take the actions required in this Agreement and shall not be used for any other purpose.
- D. 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.

- E. 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 designated persons, upon request.

## V. GENERAL GRANT PROVISIONS

- A. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if GRANTEE uses grant funds outside of the scope of this Agreement, or if GRANTEE fails to comply with any other term or condition or to perform any obligations under this Agreement within thirty (30) days after written notice from CITY. If the breach is of such nature that it cannot be completely remedied within the thirty (30) day cure period, GRANTEE shall commence cure within the thirty (30) days, notify CITY of GRANTEE's steps for cure and estimate time table for full correction and compliance, proceed with diligence and good faith to correct any failure or noncompliance, and obtain written consent from CITY for a reasonable extension of the cure period.
- B. No Payment or Further Services Authorized During Cure Period. During the cure period, CITY is under no obligation to continue providing additional grant funds notwithstanding any payment schedule indicated in this Agreement. GRANTEE shall not perform services or take actions that would require CITY to pay additional grant funds to GRANTEE. GRANTEE shall not spend unused grant funds and such unused funds shall be deemed held in trust for CITY. GRANTEE shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.
- C. Termination for Cause. Termination for cause based on GRANTEE's misuse of grant funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30 day period unless a written extension of cure period is granted by CITY. GRANTEE shall return all grant funds that had not been expended as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by GRANTEE under this Agreement shall, at the option of CITY, become the property of CITY; and GRANTEE may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination, in a sum not to exceed the grant funds already expended.
- D. Penalty for Termination for Cause. If this Agreement is terminated for cause, CITY, at its sole discretion, may seek repayment of any or all grant funds tendered under this Agreement, and decline to approve or award future grant funding requests to GRANTEE.
- E. Termination by Agreement or for Convenience of City. CITY and GRANTEE may terminate this Agreement at any time by mutual written agreement. Alternatively, CITY may, upon thirty (30) days written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion. If the 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. Unless the Parties agree otherwise, GRANTEE shall finish any work and services covered by any grant funds already paid and shall not commence any new work or services which would require payment from any unused grant funds.

- F. Changes in Anticipated Services. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, CITY's payment of grant funds may be terminated, suspended or reduced. GRANTEE shall immediately refund to CITY any unexpended grant funds received by GRANTEE.
- G. Amendment. The BES Bureau Director, or authorized designee, may amend this Agreement provided the amendment does not increase the grant amount.
- H. Maintenance of and Access to Records. GRANTEE shall maintain all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Agreement or GRANTEE's performance of work or services, for four (4) years after CITY makes final grant payment or the termination date of this Agreement, whichever is later. GRANTEE shall provide CITY prompt access to these records upon request and permit copying as CITY may require.
- I. Audit. CITY may conduct financial or performance audit of the billings and services under this Agreement or GRANTEE records at any time in the course of this Agreement and during the four (4) year period established above. As applicable, audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit discloses that payments to GRANTEE exceeded the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to CITY.
- J. Indemnification. GRANTEE shall hold harmless, defend, and indemnify CITY, 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 actions or omissions of GRANTEE and/or its contractors in the performance of this Agreement. This duty shall survive the expiration or termination of this Agreement.
- K. Insurance. During the term of this Agreement, GRANTEE shall obtain and maintain in force at its own expense the required insurance identified below. Failure to maintain this insurance shall be cause for immediate termination of this Agreement by the CITY.
  - 1. Workers' Compensation Insurance. GRANTEE, its contractors and all persons working under this Agreement are subject employers under the Oregon workers compensation law and shall provide workers compensation insurance for all their subject workers. If GRANTEE qualifies as a non-subject employer, proof of that certification shall be provided to CITY.
  - 2. Commercial General Liability Insurance: GRANTEE shall maintain general liability insurance for bodily injury and property damage in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000. It shall include contractual liability coverage for the indemnity provided in this Agreement, shall provide that the City of Portland, and its agents, officers and employees are additional insured but only with respect to the services provided under this Agreement, and shall provide that coverage applies to claims between insureds on the policy.

3. Automobile Liability Insurance: GRANTEE shall have automobile liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable. This coverage may be combined with the commercial general liability insurance policy.
  4. Notice of Change or Cancellation: There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from GRANTEE or its insurer(s) to the CITY.
  5. Certificate(s) of Insurance: As evidence of the insurance coverages required by this Agreement, GRANTEE shall furnish acceptable insurance certificates to the CITY at the time GRANTEE returns the signed Agreement. The certificate will specify all of the parties who are Additional Insured and will include an additional insured endorsement form.
- L. Grantee's Contractor; Non-Assignment. If GRANTEE utilizes contractors to complete its work under this 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 Agreement as specified in this Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to GRANTEE hereunder. This Agreement shall not be assigned or transferred in whole or in part or any right or obligation hereunder, without prior written approval of CITY.
  - M. Independent Contractor Status. GRANTEE, and its contractors and employees are not employees of CITY and are not eligible for any benefits through CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
  - N. Conflict of Interest. No CITY officer or employee, during his or her tenure or for two (2) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. CITY officer or employee who selected GRANTEE, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from GRANTEE or be employed by GRANTEE during the term of the Agreement, unless waiver is obtained from CITY in writing.
  - O. Governing Law/Venue. The provisions of this Agreement shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.
  - P. Compliance with Law. GRANTEE and all persons performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. If GRANTEE is a 501(c) (3) organization, GRANTEE shall maintain its nonprofit and tax exempt status during this Agreement.

- 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 audits or reviews shall be submitted to the CITY Grant Manager within thirty days of audit completion or upon request by the CITY Grant Manager.
- R. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- S. Merger. This Agreement encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether verbal or written.
- T. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Enforcement of this Agreement is reserved to the Parties.
- U. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument. The CITY and GRANTEE may conduct this transaction by electronic means, including the use of electronic signatures.

**CITY OF PORTLAND****FRIENDS OF ZENGER FARM**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Name: Jim Kuchle

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

Title: Executive Director

Date: \_\_\_\_\_

Date: 1.14.2015

APPROVED AS TO FORM  
 APPROVED AS TO FORM: [Signature]

CITY ATTORNEY  
 Office of City Attorney