

GRANT AGREEMENT NO.

This is a Grant Agreement between the CITY OF PORTLAND, OREGON ("CITY" OR "GRANTOR" and Friends of Gateway Green ("FOGG" OR "GRANTEE") in an amount not to exceed \$45,000.

RECITALS:

The City of Portland recently conducted the *East Portland Action Plan: a guide for improving livability on outer East Portland*. The *East Portland Action Plan* (EPAP) was adopted by Portland City Council on February 18, 2009 (Resolution 36682). An action plan committee convened by former Portland Mayor Tom Potter, Multnomah County Chair Ted Wheeler, and U.S. Senator Jeff Merkley met in 2007-08 over the course of nine months to develop the *East Portland Action Plan* which contains over one hundred action items and strategies for improving conditions on Portland's outer east side. During the EPAP process, the Portland City Council allocated a \$500,000 special appropriation for EPAP implementation in FY 2008-09 (subsequently reduced to \$475,000 due to budget cuts). An EPAP Implementation Group met in Fall 2008 to evaluate actions and select a number of actions to fund using the special appropriation. Among the actions identified for funding was the following action item: **P.4.4: Continue planning and promotion of "Gateway Green" open area.** The EPAP implementation group allocated \$50,000 (subsequently reduced to \$45,000 due to budget cuts) to financially support needed background studies and other preliminary efforts needed to actualize the envisioned open space and recreation facility as outlined in the *Gateway Green Vision Plan (2008)*. The Portland City Council endorsed this allocation of funds when it adopted the *East Portland Action Plan Exhibit C: East Portland Action Plan Projects for Funding with FY 2008-09 Budget*.

This grant award transfers the \$45,000 allocation to a non profit organization, Friends of Gateway Green (FOGG), for the purpose of furthering development of the Gateway Green. The funding is intended to be used for needed special studies, or other actions that are critical path steps necessary to actualize the vision for the area.

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:

- Coordinate with Oregon Department of Transportation (property owner) to determine needed studies and research needed to facilitate ultimate use of the property as envisioned.
- Coordinate with City of Portland Bureau of Parks and Recreation to determine critical path steps necessary to ensure long-term management of the effort.
- Coordinate with other agencies and organizations to determine the most appropriate approach to facilitating an agreement between major stakeholder groups for development

and long-term management of Gateway Green. If Gateway Green is declared, by the Governor's office, to be an Oregon Solutions project, enter into a contract with Oregon Solutions for such facilitation.

- Solicit proposals from a minimum of two contractors for any studies or research determined necessary for implementation.
- Submit to the city of Portland Bureau of Planning and Sustainability proposals for use of grant funds for review in advance of execution.
- Enter into a minimum of one contract with a consultant or non profit organization to conduct planning studies and/or stakeholder facilitation to further implementation of the Gateway Green Vision as approved by the Friends of Gateway Green Board of Directors.
- Prepare reports as described as Section II.F.
- The grant funds are to be used exclusively as payment for planning studies and stakeholder facilitation through Oregon Solutions determined necessary to advance implementation of the Gateway Green Vision plan. The use of grant funds for salaries or other compensation, meeting space and related expenses, meals, travel expenses, and other items is prohibited unless previously approved by the Grant Manager.
- Grant funds may be used for reimbursement of FOGG board members up to \$1500 for Alta Planning contract expenses incurred between September 1, 2008 and June 30, 2009.

II. SPECIFIC CONDITIONS OF THE GRANT

A. Publicity: Grantee will mention/acknowledge City of Portland and East Portland Action Plan in all publicity materials, on the web site, in marketing and presentation materials, and at public events through 2010.

B. Records: Grantee will maintain all records for the program, including

- All communication with stakeholder agencies that articulate the need for studies or background research needed for advancing implementation
- Records of proposals from contractors for studies and research
- Ranking and evaluation sheets for proposals used in selecting contractors
- Work products of contractors and other users of grant funds
- Records of payments to contractors and other users of grant funds
- Documentation of work scope and expenditures related to stakeholder facilitation

All records regarding the program, as well as general organizational and administrative information, will be made available to the Grant Manager, or other designated persons, upon request;

C. Grant Manager: The Grant Manager for this grant is Deborah Stein, District Liaison program Manager for Portland Bureau of Planning and Sustainability.

D. 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. 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.

- E. 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.
- F. Reports: Grantee will submit to the Grant Manager a semi-annual report until funds have been expended. The Report will include:
 - 1. Program records listed in section B above.
 - 2. In addition, within 60 days of expending the grant funds, Grantee shall submit to the City of Portland a final written report outlining accomplishments using the grant funds.

III. PAYMENTS

- A. GRANTEE will receive its funding as follows: The city shall advance the GRANTEE the grant award of \$45,000 upon execution of this grant agreement.
- B. 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.
- C. Grant payments under this Agreement may be used only to obtain the services or take the actions listed previously in this Grant Agreement and shall not be used for any other purpose.
- D. GRANTEE will keep vendor receipts and evidence of payment for materials and services. All such receipts and evidence of payments will promptly be made available to the Grant Manager or other designated persons, upon request. At a minimum, such records shall be made available and will be reviewed as part of the annual monitoring process.
- E. If, for any reason, GRANTEE's anticipated services or actions are terminated, discontinued or interrupted, the GRANTEE shall return all uncommitted grant funds (uncommitted funds are those not required to pay a contract under this agreement that was executed before notice of termination) within 30 days.

IV. 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 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 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 uncommitted grant funds and shall return any uncommitted grant funds (uncommitted funds are those not required to pay a contract under this agreement that was executed before notice of termination).

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.
- C. **CHANGES.** The CITY may request changes in the scope of the services or terms 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. All required records must be maintained by GRANTEE for four years after the CITY makes final payment and all other pending matters are closed.

- 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 any of them arising from GRANTEE's work or any of GRANTEE's contractors work under this Grant Agreement.
- I. WORKERS' COMPENSATION INSURANCE.
 - 1. If GRANTEE, which currently has no employees, hires any employees during the duration of this Agreement, GRANTEE will acquire worker's compensation insurance and provide a copy thereof to the CITY, and agrees to maintain worker's compensation insurance coverage for the duration of this Agreement. Further, any contractors of the GRANTEE, 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, for the contractor shall be attached to any contract entered into by the GRANTEE.
- J. LIABILITY INSURANCE.
 - 1. GRANTEE shall ensure that all contractors with and users of grant funds awarded to the 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 and the contractors' 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 require any contractors and users of grant funds to provide a new policy with the same terms. In such case GRANTEE shall require any contractors and users of grant funds 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 any contractors and users of grant funds.

2. All contractors with and users of grant funds awarded to the 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.

- K. 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.
- L. 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.
- M. 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.
- N. 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.

- O. **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.
- P. **INDEPENDENT FINANCIAL AUDITS/REVIEWS.** Any Grantee receiving between \$25,000 and \$300,000 in CITY funds, in any program year, is required to obtain an independent financial review, which may consist of a simple review by a qualified, independent third party. The review shall be completed by June 30, 2011. Two copies of all required financial audits or reviews shall be submitted to the Grant Manager within thirty days of their completion.
- Q. **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.
- R. **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.
- S. **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.
- T. **THIRD PARTY BENEFICIARIES:** There are no third party beneficiaries to this grant agreement. The agreement may only be enforced by the parties.
- U. **ASSIGNMENT:** This agreement cannot be assigned or transferred by GRANTEE without the prior written permission of CITY.
- V. **ELECTRONIC MEANS:** The parties agree the City and Contractor may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

V. TERM OF GRANT

The terms of this Grant Agreement shall be effective when City Council adopts an ordinance to approve this Grant Agreement 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 be completed and grant funds shall be expended by June 30, 2011. Any grant funds not expended by this date shall be returned to the city by July 30, 2011.

GRANTEE DATA, CERTIFICATION, AND SIGNATURE

Name: Friends of Gateway Green (FOGG), a non-profit corporation; Linda Robinson, Chair

Address: 1115 NE 135th Avenue, Portland, OR 97230; Tel: 503-261-9566

Federal Tax ID #: 26-4534441 State Registration #: 39705

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☒ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to grant approval. Information not matching IRS records could subject you to 20 percent backup withholding.

I, the undersigned, agree to perform work outlined in this grant agreement in accordance to the terms and conditions made part of this agreement.

Approved by the Grantee: _____
 Signature/Title _____ Date _____

CITY OF PORTLAND SIGNATURES

Approved by
 Bureau of Planning
 and Sustainability:

Susan Anderson 8.3.09
 Susan Anderson, Director Date

Approved by City Auditor:

 Lavonne Griffin-Valade Date

Approved as to form
 by City Attorney:

APPROVED AS TO FORM
Linda Henry 8/4/09
 Office of City Attorney Date
CITY ATTORNEY