

GRANT AGREEMENT NO.

This is Grant Agreement between the CITY OF PORTLAND, OREGON (“CITY” OR “GRANTOR” and PORTLAND FARMERS MARKET (“PFM” OR “GRANTEE”) in an amount not to exceed \$15,000.

RECITALS:

Whereas, the Portland Farmers Market is Portland’s largest farmers market, attracting approximately 15,000 visitors to the South Park Blocks on Saturdays and connecting Portland residents and visitors with local, fresh and healthy food; and

Whereas, the Portland Farmers Market is consistently ranked among the top farmers markets in the country; and

Whereas, the Portland Farmers Market has pledged to become the greenest farmers market in the United States; and

Whereas, more than sixty 45-gallon bags of waste, including food scraps, plastic water bottles, paper plates, and packaging, are collected at each Saturday market event; and

Whereas, a waste audit conducted by the City of Portland’s Office of Sustainable Development (now Bureau of Planning and Sustainability) in 2008 found that 90 percent of that waste could be diverted to recycling and composting streams; and

Whereas, the Portland Farmers Market will implement a “green market” Wastewise program to educate market visitors and vendors about waste reduction and diversion, and will set up a waste collection system to sort compostables and recyclables, with the goal of diverting 90 percent of the market’s waste from landfills by year three of the program; and

Whereas, the FY 2009-2010 Adopted Budget included a Special Appropriation to the Portland Farmers Market to help launch this program.

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:

Summary: Portland Farmers Market (PFM) will implement an ongoing WASTEWISE PROGRAM beginning with the Saturday PSU Market with the ultimate goal of diverting 90 percent of on-site market waste by volume from the landfill. This diversion goal will be accomplished over a three-year period and encompass a roll-out to PFM satellite markets in years two and three of the initiative. With the launch of the PFM WASTEWISE PROGRAM (name may change), PFM pledges to reduce PFM’s ecological footprint and educate more than 370,000

shoppers over the course of the 2010 season. PFM is fully committed to realizing the difference PFM can make on waste reduction on our community.

The grant supported activities will include:

1. A three-year process of reducing on-site market waste by volume that is sent to the landfill. In year one of the program, PFM will divert 50 percent of waste generated at the Saturday PSU Market. In year two of the program, PFM will divert 75 percent of waste generated at downtown Portland market locations. By year three, PFM pledges to divert 90 percent of waste generated at all market locations from the waste stream.
2. Three physical waste stations at the Saturday PSU Market location. Waste stations will include educational signage with visual and written elements, and separate bins for non-glass recyclables, glass recyclables, compostables, and garbage. The number of waste stations will increase proportionally as the WASTEWISE PROGRAM is rolled out to additional market locations.
3. The hiring of additional staff (.25 FTE) dedicated to coordination and oversight of the WASTEWISE PROGRAM.
4. A kick off celebration and reusable tote bag giveaway on April 24, 2010 (“Earth Day”) to publicly launch the WASTEWISE PROGRAM after a soft launch beginning on March 20, 2010. This celebration will provide an opportunity for city leaders and sustainability partners to address market shoppers about the potential impact of the WASTEWISE PROGRAM. The celebration will include an educational display with visual components to illustrate the volume of waste generated at markets and the impact waste diversion will have on the community.
5. A dedicated section of the PFM website specific to public education, information sharing, and networking with like-minded organizations devoted to similar goals of decreasing carbon footprints and teaching others to ‘live lightly’ in the world. This section of the website will also serve as a resource for other organizations in our community and beyond that seek to reduce the refuse generated at farmers markets.
6. Ongoing customer and vendor education via PFM’s electronic newsletter, on-site market materials, and website.
7. Collaboration with up to nine businesses or other community organizations to promote the WASTEWISE PROGRAM to the general public over the course of the 2010 season. Potential collaborations include staffing waste stations at the Saturday PSU Market, educational content development, public speaking engagements, material donations, etc.
8. A good faith effort over the course of a three-year campaign to minimize and eliminate whenever possible single use plastic packaging at PFM locations, including disposable plastic bags.

II. SPECIFIC CONDITIONS OF THE GRANT

- A. Publicity: Any publicity about the WASTEWISE PROGRAM will identify the City of Portland as partner of the project. The City of Portland logo or other artwork will be included on materials upon request.
- B. Records: Grantee will maintain all records for the program, including

1. Financial expenditures
2. Monthly audit of refuse generated and diverted by market location

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 Amy Ruiz, Mayor's Office.
- 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 report at the conclusion of the project. The Report will include:
1. Regular reports in May, August and December that detail:
 - a. volunteer hours served staffing waste stations; and
 - b. community partnerships formed and/or reinforced with the WASTEWISE PROGRAM; and
 - c. summary diversion rates by market; and media coverage generated by the WASTEWISE PROGRAM campaign.
 2. A year-end summary report highlighting program results, including
 - a. the amount of waste by volume diverted from the landfill;
 - b. success stories;
 - c. areas for improvement; and
 - d. stakeholder feedback about the WASTEWISE PROGRAM.

III. PAYMENTS

- A. GRANTEE will receive its funding as follows: The \$15,000 payment will be made to Portland Farmers Market within 10 working days of approval of the grant by City Council.
- 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. No Grant payments under this Agreement may be used only for to provide 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 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. 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 CITY's payment of funds under this grant may be terminated, suspended or reduced.

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 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.
- 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. 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.
 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. 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.

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. 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. GRANTEE shall be EEO certified by the City of Portland in order to be eligible to receive grant funds.
- P. 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 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 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, 2010.

Dated this 21st day of December, 2009.

CITY OF PORTLAND

GRANTEE

Name: Amy Ruiz
Title: Planning & Sustainability
Policy Advisory
Office of Mayor Sam Adams

Name: Ann Forsthoefel
Title: Executive Director

APPROVED AS TO FORM
APPROVED AS TO FORM
Linda Meng

Linda Meng, City Attorney