

AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into this _____ day of _____, 2011, by and between the City of Overland Park, Kansas (the "CITY"), and Goodwill Industries, Inc., Job Hunter's Program, a non-profit agency ("Goodwill Industries").

WHEREAS, Goodwill Industries intends to provide a self-directed job search program for disadvantaged individuals residing in the CITY; and

WHEREAS, Goodwill Industries has identified a need to help unemployed CITY residents to have access to services that include job lead lists, computer, voice mail, bus passes and the opportunity to attend workshops focused on job search information; and

WHEREAS, the CITY has approved and proposes to make a grant of up to **\$9,784** from the Community Development Block Grant (CDBG) program, to provide a self directed job search program for lower income Overland Park families, as described in the grant proposal dated March 26, 2010.

NOW, THEREFORE, in consideration of the promises and covenants of this contract, the parties hereto agree as follows:

I. Term

The term of this Agreement shall be for the period commencing on June 1, 2011, and ending May 31, 2012, subject to the terms and conditions hereinafter contained.

II. Eligibility

Goodwill Industries shall provide eligibility determination for applicants for the job search program funded by this grant. The following factors will be used to determine eligibility:

- a. The applicant is a resident of the CITY; and
- b. The total income for all members of the applicant's household does not exceed 80% of the median income of the Kansas City metropolitan area, as determined by the Secretary of Housing and Urban Development.

III. Funding

The CITY agrees to disburse to Goodwill Industries, in quarterly payments, a grant of up to **\$9,784** from CDBG funds, payment subject to conditions hereinafter stated and those applicable regulations as established by the Department of Housing and Urban Development, Catalog of Federal Domestic Assistance Number 14-218.

The CITY agrees to disburse the CDBG funds on the following schedule:

Funds shall be disbursed by the CITY upon request by Goodwill Industries, based on funds expended and costs incurred quarterly. Final request for funds is to be made within thirty (30) days of the termination of this Agreement.

Goodwill Industries shall provide to the CITY, within thirty (30) days of the termination of this Agreement, a full accounting of the expenditure of all grant funds. All grant funds unexpended as of May 31, 2012, shall be retained by the CITY as unexpended funds.

Any program income derived from the Community Development Block Grant shall be reported to the CITY and shall be used by Goodwill Industries for purposes as outlined in this Agreement and subject to the requirements and conditions herein specified and with applicable federal requirements.

The cost and liability to the CITY for work under this Agreement shall not exceed the amount of fiscal year 2011 CDBG funds authorized and available to the CITY for this project and shall be subject to the release of funds by the Department of Housing and Urban Development.

IV. Records and Reports

Goodwill Industries agrees to maintain records and submit reports to the city on a quarterly basis. Such records and reports, at a minimum, shall include services provided and client totals by low/moderate income, race, ethnic group, head of household, city of residence and other information as may be required by the CITY and shall be in a form as approved by the CITY. These records shall also include all documentation pertaining to the applicant's eligibility for the programs funded by this grant. Goodwill Industries shall provide the CITY with access to all records upon request. Goodwill Industries agrees to maintain all records for five years following the termination of this Agreement.

V. Special Requirements

Goodwill Industries agrees to comply with applicable CITY zoning ordinances, building code requirements and other applicable city and state codes, ordinances, or licensing requirements. Goodwill Industries understands that execution of this Agreement is in no way a waiver or approval of any provision of this section.

Goodwill Industries will comply with all applicable state and federal laws and regulations that apply to faith-based groups and programs pursuant to the Charitable Choice laws, Presidential Executive order and implementing regulations adopted by the appropriate federal agencies.

Goodwill Industries, by signing the Agreement, agrees to provide certification that the facility and operation outlined in this Agreement will principally serve low-and moderate income persons.

Goodwill Industries understands and agrees that the administration and expenditure of funds from this grant shall be in compliance with CDBG regulations; provided further, Goodwill Industries agrees to be solely responsible for ensuring said compliance. Goodwill Industries further certifies that it will comply with the applicable provisions of the Code of Federal Regulations 24 CFR, Part 570, to include, but not limited to, 24 CFR, Section 570.502, and Office of Management and Budget Circulars, to include, but not limited to, Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997; provided further, that Goodwill Industries agrees to

comply with applicable federal law and regulations described in 24 CFR, Part 570, Subpart K including the Conflict of Interest provisions at 24 CFR Part 570, Subpart K, 570.611.

Title 31 U.C.S., Section 1352, requires all subgrantees, contractors, subcontractors, and consultants who receive federal funds via the CITY to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the Grant Program Coordinator, Community Planning and Services of the CITY and must be returned to the CITY with other contract documents. It is the responsibility of the general contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the CITY with the same.

VI. Non-Discrimination

A. Non-Discrimination. Goodwill Industries agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, Goodwill Industries, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, *et seq.*) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees Goodwill Industries, all subcontractors and vendors shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission (“Commission”);
3. If Goodwill Industries, a subcontractor or vendor fails to comply with the manner in which Goodwill Industries, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Goodwill Industries, subcontractor or vendor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;
4. If Goodwill Industries, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Goodwill Industries, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the CITY;
5. Goodwill Industries shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

- B. Age and ADA Discrimination. Goodwill Industries further agrees that Goodwill Industries shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*), and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

VII. General Administration

It is the intent of the parties hereto in the preparation and execution of this Agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas, and if any provision herein is found to be in conflict with state law or regulation, it is the intent of the parties hereto that such provisions shall have no force and effect, and the remainder of the Agreement shall be valid as though such conflicting provisions had not been written or made a part hereof.

It is understood and agreed that the written terms and provisions of the Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the CITY and Goodwill Industries and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way, the written Agreement.

The parties agree that neither party shall assign or transfer their interest in this Agreement without the written consent of the other.

The failure of the CITY or Goodwill Industries to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision at any time thereafter.

Goodwill Industries agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgements for personal injury, bodily injury, property damage, and/or death arising out of Goodwill Industries or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this Agreement.

Goodwill Industries shall maintain, either through traditional insurance, in whole or in part, or through a risk management reserve fund, in whole or in part, coverage of the types and in such amounts as may be necessary to protect itself and the CITY against all hazards or risks of loss as hereinafter specified, whether such hazards or risks of loss be generated by Goodwill Industries, its officers, employees, or agents, and shall provide the CITY with evidence of such coverage.

- 1) Commercial General Liability - \$500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
- 2) Workers' Compensation and Employers' Liability
 - a) Workers' Compensation - Statutory
(Include all states' endorsement)
 - b) Employer's Liability - \$100,000 Each Occurrence

Comprehensive Automobile Liability - \$500,000 combined single limit per occurrence written in a comprehensive form, protecting the COUNTY against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover the operation on and off the site of any automobile, whether it is owned, non-owned, or hired.

VIII. Termination

A. Termination for Convenience

The CITY may, when the interests of the City so require, with 60 days notice, terminate this contract in whole or in part, for the convenience of the CITY. The CITY shall give written notice of the termination to Goodwill Industries specifying that the contract, or a designated part thereof, shall be terminated; and when termination becomes effective, Goodwill Industries shall incur no further obligations to the CITY in connection with the terminated work or services; and on the date set in the notice of termination, Goodwill Industries will stop work or services on behalf of the CITY to the extent specified.

In the event the contract is terminated for convenience of the CITY, the CITY will disburse funds for costs incurred and funds expended by Goodwill Industries prior to the date of termination.

B. Termination for Default

If Goodwill Industries is violating any of the conditions of this Agreement or is executing the same in bad faith, the CITY may serve written notice on Goodwill Industries of its intention to terminate the contract and unless, within seven (7) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this contract shall terminate. The CITY retains the right to withhold the grant or any portion thereof for damages incurred as a result of Goodwill Industries breach of this Agreement.

IX. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. Section Headings and Subheadings

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XI. Waiver

The CITY's failure to act with respect to a breach by Goodwill Industries does not waive its right to act with respect to subsequent or similar breaches. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XII. Entire Agreement

This Agreement constitutes the entire agreement between the CITY and Goodwill Industries for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and Goodwill Industries with respect to this Agreement.

XIII. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas`

Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

GOODWILL INDUSTRIES, INC.

By _____
Carl Gerlach, Mayor

By _____
Brad Burger, CEO/President

ATTEST:

ATTEST:

Marian Cook, City Clerk

Mark Smith, Manager, Job Center Program

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney