

Conditional Grant Agreement

THIS CONDITIONAL GRANT AGREEMENT(this "Agreement") dated as of this _____ day of _____, 20____, is entered by and between the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF AUBURN, a Michigan public authority organized under the laws of the State of Michigan, of 113 E. Elm St., Auburn, Mi 48611 (the "DDA") and _____, a Michigan _____, of _____, Michigan, 48_____ the owner.

RECITALS

A. The DDA is engaged in a program to enhance the appearance of the downtown district of the city of Auburn by encouraging the coordination and enhancement of building facades as authorized by Act No. 197 of the Public Acts of 1975, as amended ("act 197")

B. The applicant is the Owner of that certain building in the downtown district of the City of Auburn commonly known as _____, The City of Auburn 48611, and more particularly described on the attached Exhibit A (the "Building").

C. The Owner has submitted an application to the DDA for a grant for construct and install upon the building facade improvements described in the plans and specifications attached as Exhibit B (the "Facade Improvements").

D. The Owner and the DDA desire to enter into this agreement to set forth the terms and conditions of the construction, installation and maintenance of the Facade Improvements; and the DDA's grant of certain funds to the Owner upon satisfactory completion of the Facade Improvement, all as set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and the sufficiency of which is acknowledged, for the Owner and the DDA hereby agree as follows:

- I. Completion of Facade Improvements. The property Owner or his agents and contractors shall obtain all the necessary permits and approvals and complete or cause its contractors and/or subcontractors to complete the facade improvements (the "work") within one (1) year of the date of this agreement.
- II. Grant Disbursement.
 - A. Grant amount. Subject to satisfaction of the conditions precedent set forth in this section, the DDA shall disburse a grant to the Owner the amount of _____ Dollars.
 - B. Conditions Precedent to grant disbursement
 1. Completion of the work. Owner and his or her contractors and/or subcontractors shall have completed the work in accordance with approved plans and permits an in accordance with the plans and specifications attached as Exhibit B.
 2. Submittal. The following documents shall be submitted to the DDA:
 - (a) Completed Facade Easement;
 - (b) Invoices and/or contracts documenting the costs of completing the work; or Canceled checks or credit card receipts documenting payment of the costs of completing the work; or lien waivers from all contractors, subcontractors and suppliers;
 - (c) Copy of approved final building inspections and certificate of occupancy (if required); and
 - (d) Photograph of the building Facade(s) prior to and after completion of the work.

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(e) Draws may be allowed (3 max) prior to completion at the discretion of the Auburn DDA Board or Director. Proof of payment is required for each draw.

(f) Project may be completed in phases within one year of approval.

- III. Maintenance of facade improvements. The Owner, at its sole cost and expense, shall maintain the facade improvements in accordance with the approved plans and permits and all applicable federal state and local laws and regulations.
- IV. Indemnification. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless the DDA, the City of Auburn, and their elective and appointive boards, commissions, officers, agents and employees (collectively, "DDA Parties"), from any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "Claims") arising, directly or indirectly from the acts or omissions of the Owner or its contractors, subcontractors, employees, representatives or agents. Owner's indemnity obligations shall survive the expiration or termination of this agreement.
- V. Insurance. Until completion of the work and disbursement of the Grant by DDA, the Owner shall maintain or shall cause its contractor to maintain commercial general liability and workers' compensation insurance.
- A. Commercial General Liability. A policy in the amount of one million dollars (\$1,000,000) combined single limit, or such other policy limit as the DDA may approve at its discretion, including contractual liability, as shall protect general liability policy hereunder shall name the DDA and the City and its and their respective officers, agents, employees, and representatives as additional insured.
- B. Workers' Compensation insurance. Owner shall furnish to the DDA evidence satisfactory to the DDA that any contractor with whom it has contracted for the performance of the Work of otherwise pursuant to this Agreement carries any applicable Workers' Compensation Insurance as required by law.
- VI. Compliance With Laws. The Owner and his or her contractors or agents shall carry out the work in conformity with all applicable federal, state and local laws.
- VII. Notices. Any notices relating to this Agreement shall be given in writing to the addresses that first appear above and shall be deemed sufficiently given and served for the purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid.
- VIII. Default.
- A. Any failure by the Owner to perform any term or provision of this Agreement shall constitute an "Event of Default" if the Owner does not cure such failure within thirty (30) days following written notice of default from the DDA. Upon the occurrence of an event of default, the DDA shall have the right, in addition to any other rights or remedies (a) to institute any action at law or in equity to cure, correct, prevent or remedy any Event of Default; (b) to recover damages for any Event of Default; or (c) to terminate this agreement by written notice to the Owner. The Owner's indemnity obligations under Section 4 shall survive such termination.
- B. Any failure or delay by DDA in asserting any of its rights or remedies as to any event of default shall not operate as a waiver of any event of default or of any such rights or remedies.
- C. A failure of the Owner to complete payments to the City of Auburn for taxes, utilities and fees.

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IX. Miscellaneous terms and provisions.

- A. Severability. If any term, provision, condition or covenant of this agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- B. Integrated Agreement. This Agreement represents the entire understanding of the Owner and the DDA as to those matters contained herein. In the event of any conflict between the provisions of this Agreement and the Building Facade Program Guidelines, the provisions of this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties.
- C. No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it.
- D. Governing Law; Venue. The laws of the State of Michigan shall govern the interpretation and enforcement of this Agreement without reference to principles of conflict of laws.
- E. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind.
- F. No Agency Relationship. Neither the Owner or the Owner's agents, contractor or subcontractors are or shall be considered to be agents of the DDA in connection with the performance of any of Owner's obligations under this Agreement.

IN WITNESS WHEREOF, the DDA and the property Owner have caused this Agreement to be executed as of the dates set forth below.

DDA:

By: _____, Chair

Owner:

By: _____

Name: _____

Its: _____