

## **AGREEMENT FOR BUSINESS IMPROVEMENT GRANT**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the last signature date affixed hereto (“Effective Date”) by and between the CITY OF GAINESVILLE (“CITY”), a Florida municipal corporation, and \_\_\_\_\_ (“APPLICANT”).

**WHEREAS**, APPLICANT is the owner or tenant of certain real property within the Gainesville Community Reinvestment Area located at \_\_\_\_\_, as described in Exhibit A attached hereto and by this reference incorporated herein (“Property”); and

**WHEREAS**, APPLICANT desires to improve the façade and/or interior of buildings/structures located on the Property as further described herein; and

**WHEREAS**, the CITY agrees to provide incentives in the form of partial reimbursement for eligible expenses incurred in completing the Project, under the CITY’s Business Improvement Grant (BIG) Program and pursuant to the terms of this Agreement; and

**WHEREAS**, pursuant to Article 3.01 below the APPLICANT warrants that the Project Plans are consistent with all applicable development and building regulations of the City and that the CITY is not responsible for any failure to notify applicant of applicable regulations; and

**WHEREAS**, the APPLICANT in their Business Improvement Grant Application has provided their description and plans for work to be performed a synopsis of their planned work is provided in Article 3.04; and

**WHEREAS**, the maximum award the Application is eligible for is \$\_\_\_\_\_.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants herein contained, and such other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### **ARTICLE 1. RECITALS and DEFINITIONS.**

1.01 The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as is fully set forth herein.

1.02 The terms used in this Agreement shall have the following meanings:

“Agreement” means this Agreement for Façade and/or Interior Improvements, including any attached Exhibits, and any revisions.

“Applicant” means the party that submitted the Application that was approved by the City of Gainesville. The Applicant may be the Owner or a Tenant of the Property.

“City” means the City of Gainesville, Florida, a municipal corporation.

“GCRA” means the Gainesville Community Reinvestment Area, a Department of the City of Gainesville.

“Application” means the application for assistance pursuant to the CITY’s Business Improvement Grant (BIG) Program as submitted by the Applicant, a copy of which is on file in the GCRA Office.

“Actual Incentives” means the total amount the CITY reimburses the APPLICANT.

“Commencement Date” means the date on which the Application was approved.

“Completion Date” means the date on which the CITY approves in writing that the Project has been constructed consistent with the Project Plans.

“Business Improvement Grant (BIG) Program” or “Program” means the incentive program approved by the CITY, and now run by the GCRA for the CITY. The most recent Program Guidelines of which are made a part hereof by reference.

“Force Majeure” means conditions beyond the reasonable control of the APPLICANT or OWNER that will excuse OWNER’s untimely performance, as further described in Section 2.03.

“OWNER” means the person or entity holding title to the real property and building upon which the Façade improvements and/or Interior improvements are to be constructed.

“Project Plans” means the plans and specifications for the Project, consistent with the approved Application and submitted by the APPLICANT to the GCRA Director prior to execution of this Agreement, including any changes or additions approved or required by the GCRA.

“Project” means construction and maintenance of the Façade and/or Interior Improvements in accordance with the Application and the Project Plans, including the constructing and equipping thereon of other improvements appurtenant thereto with no unapproved Substantial Changes thereto.

“Project Site” or “Property” means the property described in Exhibit “A” attached hereto and by this reference made a part hereof.

“Substantial Changes” as determined at the sole discretion of the CITY, means any substantial deletions from, or additions to, the exterior appearance of the structures and buildings, as described in the Project Plans (a copy of which are filed in the GCRA office),

or any diminution in the quality and quantity of the specific improvements described in the Project Plans.

## **ARTICLE 2. CONSTRUCTION/ REIMBURSEMENT AND MAINTENANCE.**

2.01. The Project must be constructed as described in the Project Plans, without unapproved Substantial Changes. There may be no unapproved Substantial Changes for a period of five (5) years after the Completion Date for Tier 1 Projects, ten (10) years after the Completion Date for Tier 2 Projects, and fifteen (15) years after the Completion Date for Tier 3 Projects, whether such occur by design, neglect, casualty, or otherwise, except as provided in Section 2.04(a).

2.02. The APPLICANT and CITY acknowledge that in order to promote redevelopment and to encourage and make the Project financially feasible, the CITY is committing funding to improve and maintain the Façade and/or Interior Improvements on the Project Site. The CITY agrees that within 30 days after either the Improvement Easement or the Mortgage is filed as applicable after the COMPLETION DATE it will provide the funding by way of partial reimbursement (100% of cost for Tier 1 grants and 50% of cost for Tier 2 or 3 grants) for actual documented costs, up to the indicated amounts listed below per the Program guidelines. Only those eligible improvements described in the Program are eligible for reimbursement. The APPLICANT understands that if the Tier 2 and Tier 3 grants under the Business Improvement Grant Program are less than listed below, only 50% of the actual cost will be reimbursed.

- The APPLICANT will be eligible for a maximum reimbursement of up to \$ \_\_\_\_\_ for the Project.
- The APPLICANT must match incentive funds dollar-for-dollar; the match shall be of cash value for goods and/or services.
- Labor charges for work performed by APPLICANT or OWNER (if different from APPLICANT will not be eligible for reimbursement.
- Exhibit B, attached and incorporated herein, details the allowable budget for eligible improvements.

2.03. Construction. Once this Agreement is executed, significant, ongoing progress must be demonstrated in order to maintain eligibility for reimbursement. Grant funds allocated to the Project will revert back to the CITY's Program and this Agreement will terminate if the APPLICANT fails to make progress towards completion according to a work schedule agreed upon in conjunction with this Agreement, and on file in the GCRA's Office. APPLICANT is responsible for obtaining or having obtained all required building permits for the work undertaken, meeting all City zoning requirements, and must have a current business license throughout the Project. If the entity is not required to have a business tax license with the City as determined by City staff and presented with the application, having a business tax license requirement is waived.

2.04. OWNER (if different from APPLICANT) agrees that façade and or interior improvements made using these funds will stay in place for a minimum of five years for a **Tier 1** grant. To this effect, prior to receiving reimbursement, the OWNER shall execute and record an improvement

preservation easement, in substantially the same form as Exhibit D, attached hereto. If the façade/improvements are replaced or not maintained in completed condition, normal wear and tear excepted, within five years of façade project completion, the APPLICANT and OWNER (if different from APPLICANT) must repay a portion of the reimbursement paid. As a recorded easement running with the land, the same requirement shall be in effect if the ownership is transferred within five years of façade project completion and as such shall be binding on the successor in interest. Exceptions:

- a. The improvement at no fault of the APPLICANT or OWNER has been damaged beyond repair (i.e. broken awning) and the improvement has been replaced with one of comparable appearance and quality.
- b. The improvement was replaced for the purpose of further renovation that will enhance the Project, as determined in the sole discretion of the City Manager or designee.
- c. If the City is the property OWNER an easement will not be filed.

2.04(b). OWNER (if different from APPLICANT) agrees that façade and or interior improvements made using these funds will stay in place for a minimum of ten years for a **Tier 2** grant. To this effect, prior to receiving reimbursement, the OWNER shall execute and record a Mortgage, in substantially the same form as Exhibit D, attached hereto. If the façade and/or interior improvements are replaced or not maintained in completed condition, normal wear and tear excepted, within ten years of project completion, the APPLICANT and OWNER (if different from APPLICANT) will be in default. As a recorded mortgage running with the land, the same requirement shall be in effect if the ownership is transferred within ten years of project completion and as such shall be binding on the successor in interest. Exceptions:

- a. The improvement at no fault of the APPLICANT or OWNER has been damaged beyond repair (i.e. broken awning) and the improvement has been replaced with one of comparable appearance and quality.
- b. The improvement was replaced for the purpose of further renovation that will enhance the Project, as determined in the sole discretion of the City Manager or designee.
- c. If the City is the property OWNER a mortgage will not be filed.

2.04(c). OWNER (if different from APPLICANT) agrees that façade and or interior improvements made using these funds will stay in place for a minimum of fifteen years for a **Tier 3** grant. To this effect, prior to receiving reimbursement, the OWNER shall execute and record a Mortgage, in substantially the same form as Exhibit D, attached hereto. If the façade and/or interior improvements are replaced or not maintained in completed condition, normal wear and tear excepted, within fifteen years of project completion, the APPLICANT and OWNER (if different

from APPLICANT) will be in default. As a recorded mortgage running with the land, the same requirement shall be in effect if the ownership is transferred within fifteen years of project completion and as such shall be binding on the successor in interest. Exceptions:

- a. The improvement at no fault of the APPLICANT or OWNER has been damaged beyond repair (i.e. broken awning) and the improvement has been replaced with one of comparable appearance and quality.
- b. The improvement was replaced for the purpose of further renovation that will enhance the Project, as determined in the sole discretion of the City Manager or designee.
- c. If the City is the property OWNER a mortgage will not be filed.

2.05. Subordinate to CITY Debt. Any reimbursement obligation of the CITY under this Agreement or Program shall be subordinate in all respects to all debt service obligations of the CITY under bonds or other forms of debt currently outstanding or to be issued in the future. The obligations of the CITY as to any funding required pursuant to this Agreement shall be limited by an obligation in any given fiscal year to budget and appropriate from legally available sums. The CITY shall not be prohibited from pledging any legally available revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the CITY pursuant to this Agreement.

### **ARTICLE 3. PROJECT PLANS.**

3.01. The CITY is not responsible for any error or omission in the Project Plans or failure of the Project Plans to comply with any building, zoning, or other regulations of the CITY or other regulatory agency.

3.02. If Substantial Changes are proposed by the APPLICANT to the Project Plans, they shall be resubmitted to the GCRA Director or designee. The GCRA Director or designee shall review the amended Project Plans within 5 business days of receipt. If the GCRA Director or designee determines that the amended Project Plans do not meet the requirements of the Program or this Agreement, the GCRA Director or designee shall so notify the APPLICANT within three business days of such determination. Upon receipt of such notification, the APPLICANT shall have 15 calendar days to amend the Project Plans accordingly and resubmit them to the GCRA Director or designee.

3.03. If any Substantial Changes are required to be made to the Project Plans during the construction of the Project, the amended Project Plans shall be submitted to the GCRA Director or designee prior to the commencement of the construction of the changes. The GCRA Director or designee shall review the amendments for conformance with the requirements of the Program or this Agreement as described in the above paragraph.

3.04. The following is a synopsis of the approved planned work:

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**ARTICLE 4. INDEMNIFICATION.**

4.01. In consideration of the CITY granting incentives pursuant to this Agreement to APPLICANT in connection with the development of the Project, the APPLICANT and the OWNER (if different from the APPLICANT) hereby indemnifies and holds harmless the CITY, its agents, elected and appointed officers, attorneys, and employees from all suits, actions, claims, demands, damages of every kind and description to which the APPLICANT or OWNER, or their agents, officers, attorneys, or employees may be held liable by a court of competent jurisdiction by reason of injury to persons or death or property damage, resulting from or growing out of any negligence, error, omission, or fault of the APPLICANT and the OWNER (if different from the APPLICANT), and their respective agents or employees, or its contractors or subcontractors occurring in connection with (i) any building, construction, installation, or development work, service, or operation being undertaken or performed in, on or over the Project Site, (ii) any uses, occupancy, maintenance, repair, and improvements, or operation of the Project Site, or (iii) any other occurrence arising under this Agreement.

Provided, however, that the indemnification provided in and contemplated by this section shall not be applicable to the extent that a decision or judgment of a court of competent jurisdiction holds that any injury to persons or death or property damage was solely attributable to acts of negligence or fault of the CITY, or its agents, officers, attorneys, or employees.

4.02. Nothing in this Agreement shall be interpreted or construed as a waiver of the CITY'S sovereign immunity set forth in section 768.28, Florida Statutes.

4.03. The APPLICANT and the OWNER, as a condition of and consideration for the execution of this Agreement, hereby waive and release any recourse for any damages or claims based upon any representation, obligations, covenant, or agreement made by any past, present, or future officer, member, legal , counsel, employee, director, or agent, as such, of the CITY, either directly or through the CITY or respectively, any successor public or private corporation thereto under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise.

4.04. This Article 4 shall survive the Completion Date of the Project and shall survive termination of this Agreement.

**ARTICLE 5. RESERVED.**

**ARTICLE 6. REPRESENTATION, WARRANTIES AND COVENANTS OF OWNER**

6.01. The APPLICANT represents and warrants to the CITY that the following statements are true:

- (a) The APPLICANT is a valid existing entity under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, and has consented to service of process in the State of Florida.
- (b) Each document to which the APPLICANT is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the APPLICANT, and neither the execution and delivery, nor compliance with the terms and provisions: (i) requires the approval of any other party, except as have been obtained or as are noted herein, (ii) contravenes any law, judgment, governmental rule, regulation, or order binding on the APPLICANT, or (iii) results in any default under or creates any lien upon any property of the APPLICANT.
- (c) Each document to which the APPLICANT is or will be a party constitutes a legal, valid, and binding obligation of the APPLICANT, enforceable against the APPLICANT, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
- (d) There are no pending or threatened actions before any court or administrative agency against the APPLICANT, or against any officer of the APPLICANT, that question the validity of any document contemplated herein, or that are likely to materially adversely affect this Agreement or the financial condition of the APPLICANT.
- (e) The APPLICANT is financially capable of carrying out all obligations in connection with the acquisition, construction, and equipping of the Project contemplated by this Agreement.

6.02. The APPLICANT covenants with the CITY that:

- (a) The APPLICANT shall timely fulfill all the conditions herein that are within the control of APPLICANT and are the responsibility of APPLICANT.
- (b) The APPLICANT shall use its best efforts to accomplish the development of the Project, and will not knowingly violate any laws, ordinances, rules, regulations, or orders that are or will be applicable thereto, nor permit others to do so.

## **ARTICLE 7. DEFAULT; TERMINATION.**

7.01. There will be a default by the APPLICANT if the APPLICANT fails to perform or comply with any material provision of this Agreement. There will be a default by the CITY if it fails to perform or comply with any material provision of this Agreement.

7.02. Except as provided in the Improvement Preservation Easement or Mortgage as applicable, attached as Exhibit D, if a default occurs, upon giving 15 calendar days written notice of such default to the defaulting party, and upon expiration of such 15-day notice period if the default has not been cured, the non-defaulting party may terminate this Agreement. In the situation where the non-defaulting party is the APPLICANT, its sole remedy will be the amount of approved Incentives, less reimbursements already made, provided that Completion has timely occurred prior to default. In the case of a default which also involves a violation of the Improvement Preservation Easement or Mortgage, the remedies described in the Easement or Mortgage may also be pursued.

7.03. The failure of the CITY or APPLICANT to promptly insist upon strict performance of any provision will not be deemed a waiver of any right or remedy that they may have and will not be deemed a waiver of subsequent default or nonperformance of such provision.

7.04.

- (a) The undertaking and completion of the Project and performance by the APPLICANT in accordance with the provisions of this Agreement are dependent upon the timely completion and approval of plans, permits, and successful financing. In addition to a termination upon a default, this Agreement may be terminated by the APPLICANT or CITY if the APPLICANT does not commence construction or obtain a building permit for the Project within three months of the effective date of this Agreement, or complete construction in accordance with the agreed upon schedule.
- (b) The Agreement may be terminated by the APPLICANT for any reason prior to receiving payment of any Actual Incentives.
- (c) In the event of a termination pursuant to this Section 7.04, neither the APPLICANT nor CITY will be obligated or liable one to the other in any way, for any claim or matter arising from this Agreement or any actions taken by the APPLICANT or CITY thereunder or contemplated hereby. Each party will be responsible for its own costs.

## **ARTICLE 8. DISPUTE RESOLUTION**

8.01. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the alleged breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.



8.02. In the event of any alleged breach arising out of or relating to this Agreement, that is not resolved in accordance with 8.01 above, the matter may be entered by either party in any court having jurisdiction thereof. In any litigation, including breach, enforcement, or interpretation, arising out of this Agreement, the prevailing party in such litigation will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs, and expenses.

**ARTICLE 9. ANTIDISCRIMINATION.**

The APPLICANT agrees there may be no discrimination against or segregation of any person, or group of persons, on account of age, sex, sexual orientation, race, color, marital status, creed, national origin, ancestry, or disability in the employment of persons for the construction, sale, or lease of any space in the Project.

**ARTICLE 10. MISCELLANEOUS.**

10.01. Assignment. Prior to the Completion Date, the APPLICANT and OWNER (if different from the APPLICANT) may not sell, convey, assign, or otherwise transfer or dispose of any of its rights, title, and interest in the Project, or any duty or obligation of the APPLICANT and OWNER (if different from the APPLICANT) pertaining to the Project, or any part thereof without prior written consent of the CITY. The OWNER may mortgage its interest in the Project or Project Site, or any part thereof, to any Mortgagee. The OWNER may enter into leases in the Project in the ordinary course of business.

10.02. Beneficiaries. The Agreement has been entered into for the benefit of the parties and there are no third party beneficiaries. Unless expressly granted in a written instrument executed by the APPLICANT and OWNER (if different from the APPLICANT) and approved by the CITY, third parties acquiring any indicia of ownership in the Property or any portion of the Project may not, by virtue of such acquisition or otherwise, acquire or receive any right, title, or interest whatsoever in any of the incentives, payments, or benefits to arise or be made by the CITY under this Agreement.

10.03. Notices. All notices, demands, requests for approvals, or other communications will be deemed given and delivered on the date delivered in person or on the date mailed by registered or certified mail, postage prepaid, return receipt requested, and addressed:

To the OWNER (if different from the APPLICANT):

To the APPLICANT:

To the CITY:  
City Manager

City of Gainesville  
PO BOX 490, Station 46

With copy to:  
CITY Attorney  
Office of the City Attorney  
City of Gainesville  
P.O. Box 490, Station 46

These addresses may be changed from time to time in writing delivered to the other party. Until written notice is received, a party may rely upon the last address given. Notice will be deemed given, if notice is by mail, on the date mailed to the address set forth above or as changed pursuant to this Section.

10.04. Severability. If any provision of this Agreement is held invalid, the remainder will not be affected if such remainder would then continue to conform to the requirements of applicable laws and if the remainder can be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties.

10.05. Governing Law; Construction. The laws of the State of Florida will govern the validity, performance, and enforcement of this Agreement. This Agreement has been negotiated by each party. It shall not be deemed to have been prepared by the CITY or APPLICANT, and each of them shall be deemed to have participated equally in the preparation hereof.

10.06. Venue; Jurisdiction.

- (a) Each party submits to the jurisdiction of the State of Florida, Alachua County, and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
- (b) If at any time, the APPLICANT or OWNER (if different from the APPLICANT) is not a resident of the State of Florida or has no agent available for service of process as a resident of the State of Florida, or is a foreign corporation, partnership, or other entity that has no agent available for service in the State of Florida, the OWNER consents to service on its designated agent for such purpose and designates the Secretary of State, State of Florida, its agent for service in any court action between it and the CITY relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the APPLICANT or OWNER (if different from the APPLICANT) at the address for notices.

10.07. Entire Agreement; Conflicts. This Agreement, including the Exhibits attached, constitutes the full and complete agreement between the parties, and supersedes and controls any prior agreements, representations, and statements, whether written or oral. Each Exhibit referred to in this Agreement, together with the Application, are an essential part of this Agreement. The

Exhibits, Application, any documents incorporated by reference and any amendments, even if not physically attached, shall be treated as a part of this Agreement.

10.08. Captions. The section headings and captions of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of this Agreement.

10.09. Successors and Assigns. The terms CITY and APPLICANT shall include their successors and assigns and all benefits and obligations shall inure to and bind such successors and assigns.

10.10. Time. Whenever a notice or performance is to be done on a Friday, Saturday, or Sunday or on a legal holiday observed in the City of Gainesville, Florida, it shall be postponed to the next business day.

10.11. Term. Except as otherwise provided herein, this Agreement shall expire when the Project is completed, reimbursement is made as provided herein, and there are no uncured defaults under this Agreement.

10.12. Effective Date. This Agreement shall be effective on the date the Agreement is executed by the last of the parties below.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

WITNESSES:

CITY:

Sign name: \_\_\_\_\_

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

Print name: \_\_\_\_\_

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

Address: \_\_\_\_\_

City Manager

\_\_\_\_\_

Sign name: \_\_\_\_\_

Print name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Approved as to form and legality:

By: CITY/GCRA Attorney

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the City Manager of the City of Gainesville for and on behalf of the CITY and who is personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

WITNESSES:

APPLICANT:

Sign name: \_\_\_\_\_

Registered Agent:

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

Print name: \_\_\_\_\_

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

Address: \_\_\_\_\_

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

\_\_\_\_\_

Sign name: \_\_\_\_\_

Print name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and who has acknowledged that he/she has executed the same on behalf of the company, and that he/she was authorized to do so. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
Affix Stamp

**\*\*NOTE:**

**If the APPLICANT is different from the OWNER, an OWNER'S ACKNOWLEDGEMENT and CONSENT must be executed by the OWNER and attached, or this Agreement is invalid and of no force and effect.**

**Exhibit A**  
**Legal Description**

**Street Address**

**Exhibit B Project Budget with the Maximum Cost of Each Eligible Improvement**

**Exhibit C Entire Application**