

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

EXEMPT FROM RECORDING FEES CA GOV. CODE §27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COMMERCIAL CORRIDOR FAÇADE IMPROVEMENT GRANT PROGRAM
AGREEMENT
BETWEEN THE CITY OF COACHELLA AND
GRANTEE NAME**

This Commercial Corridor Façade Improvement Grant Program Agreement (“Agreement”) is entered into this ____ day of _____ (“Effective Date”), by and between the City of Coachella, a California municipal corporation (“City”), and **Insert Grantee Name**, located at **Insert Business Address (“Grantee”)**. City and Grantee are at times individually referred to as “Party” and collectively as “Parties” herein.

RECITALS

- A. City has established a Commercial Corridor Façade Improvement Grant Program (“Program”) for businesses the City of Coachella’s Downtown Pueblo Viejo District and the segments of Cesar Chavez Street between Avenue 52 and Sixth Street and Sixth Street between Cesar Chavez Street and Grapefruit Boulevard.
- B. City has approved the Commercial Corridor Façade Improvement Grant Program Guidelines (“Program Guidelines”), attached hereto as **Exhibit “A”** and incorporated herein, governing the provision of grants under this Program.
- C. Grantee is the owner or tenant of real property located at _____, Coachella, California (“Property”), otherwise known as _____ (building or business), as depicted in **Exhibit “B,”** Project Location, attached hereto and incorporated herein by reference.
- D. The City shall provide a grant *not* to exceed \$_____ for construction of the Improvements described in **Exhibit “C”**, Scope of Work and Schedule. All of Grantee’s agreements with contractors or vendors are found in **Exhibit “D,”** Contractor Agreements, attached hereto and incorporated herein by reference. Specific City requirements for Contractor Agreements are found in **Exhibit “E,”** Contractor Agreement Requirements, attached hereto and incorporated herein by reference.

- E. The City has reviewed the application, the location of the Property, and the approvals, and has approved the Grant Application attached hereto as **Exhibit “F,”** and incorporated herein by reference.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to grant to Grantee the amount of \$_____ and Grantee agrees to undertake the approved Improvements, under the following terms and conditions:

1. GRANT

1.1. Grant Amount. City hereby grants funds in the amount not to exceed **XXX Dollars (\$)** (“Grant Funds”) to Grantee for construction of the Improvements described in Exhibits “C” and “D.”

1.2. Contract Requirements. Within ten (10) calendar days of the Effective Date, Grantee shall provide to City:

- a. Taxpayer Identification Number and Certification, Form W-9 (Rev. 2024, as issued by the Internal Revenue Service).
- b. Proof of Insurance.
- c. Grant Deed, Proof of Ownership, or Lease Agreement. If tenant, an affidavit from the owner approving the proposed Improvements.
- d. Copy of a Valid City Business License.
- e. Copy of Current Property Tax Bill (Showing Paid).
- f. Mailing address for notification.
- g. Proof that a valid contractor will perform the work (such proof shall include applicable licenses necessary for the work, proof of contractor’s insurance, and contractor’s City Business License).

1.3. Method of Payment. The Grant Funds shall be disbursed to Grantee in a lump sum payment on a date that is after all Improvements are completed, inspected, and approved by the City (“Disbursement Date”). The Grant Funds shall be payable to Grantee as reimbursement for actual costs incurred, based on the documentation submitted to the City in accordance with subsection 1.4, as set forth below. Any expenditure(s) by Grantee which exceed the Grant Funds shall be the sole responsibility of Grantee. Grantee is responsible for direct payment to all vendors, contractors, mechanics, and suppliers utilized with respect to the Improvements.

1.4. Disbursement Requirements. Prior to disbursing the Grant Funds, Grantee shall provide the following to the City so that the reimbursement may be processed:

- a. Copy of the recorded notice of completion (as defined by California Civil Code section 3093) with respect to the Improvements.

- b. Copies of all billings, invoices, and other documents satisfactory to City evidencing the final costs of the Improvements.

2. TERM

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for five (5) years, unless City terminates this Agreement or any portion thereof at an earlier date as provided herein. Notwithstanding the foregoing, certain obligations shall survive the termination of this agreement, as provided herein.

3. GRANTEE OBLIGATIONS

3.1. Use of Grant Funds. The Grant Funds shall be used exclusively for the purposes described in Exhibits “C,” Scope of Work and Schedule, and “D,” Contractor Agreements, unless otherwise approved by the City in writing.

3.2. Schedule. The Parties agree that all Improvements shall be completed according to the Schedule in Exhibit “C.” The Improvements must be completed within 12 months of building permit issuance.

3.3. Representations and Warranties. Grantee hereby represents and warrants to the City that Grantee has read and is familiar with all of the terms, conditions, and provisions of the Program Guidelines, and based thereon, Grantee represents and warrants that Grantee meets the eligibility criteria and qualifies to receive the Grant Funds under the Program Guidelines, and Grantee’s Application and all information is submitted in connection therewith is true, correct, and accurate.

3.4. Compliance with Law. Grantee shall comply with all applicable federal, state, or local ordinances, resolutions, statutes, rules, and regulations, as the same may be amended from time to time.

3.5. Licenses, Permits, Fees and Assessments. Grantee shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required for the lawful operation of Grantee’s business, and as may be required for use of Grant Funds.

3.6. Documentation and Audit Requirements. Grantee shall maintain and ensure its contractor maintains true, proper, and complete documentation that evidences Grantee’s and/or contractor’s expenditures for approved uses of Grant Funds (“Records”) through December 31, 2030. The Grantee shall make available to the City such Records within ten (10) calendar days of the City’s request. The Grantee shall use its best efforts to cooperate, promptly, in any audit by any agency or entity, including an audit by the City. This subsection shall survive the termination or expiration of this Agreement.

3.7. No Conflict of Interest. Grantee, by accepting the Grant Funds, affirms that Grantee, its officers, or employees neither are employed by the City nor does Grantee, its officers, or employees serve on any City board or commission or otherwise have a fiduciary duty to the City that is a conflict of interest, a potential conflict of interest or creates the appearance of impropriety.

3.8. Maintenance. Grantee agrees and covenants that, after the City issues its Certificate of Occupancy, Grantee shall be responsible for maintenance of the Improvements and all other improvements that may exist at the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls in first-class condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Grantee shall also maintain all landscaping required pursuant to Property's approved landscaping plan, if any, in a healthy condition, including replacement of any dead or diseased plants with plants of a maturity similar to those being replaced. Grantee hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply.

4. CONTRACTOR

- 4.1. All work shall be completed by contractors and subcontractors licensed by the State of California.
- 4.2. Grantee shall provide City with at least three (3) written bids for the construction of the Improvements.
- 4.3. Any contract between Grantee and the selected contractor or contractors (collectively, the "Contractor") for the Improvements, including use of the Contractor identified in such contract, must be approved by City prior to its execution by Grantee. ("Contractor Agreement"). City shall approve any Contractor Agreement that contains all of the required provisions shown on the attached Exhibit "E". Subsequent to City's approval of Contractor and Contractor Agreement, Grantee may change or add contractors but only with the prior written approval of the City Manager.
- 4.4. Grantee is solely responsible for: (i) all of Grantee's obligations under Grantee's contract with the Contractor; and (ii) the enforcement of Contractor's obligations under the Grantee-Contractor Agreement.
- 4.5. Grantee shall deliver a copy of the fully executed Contractor Agreement(s) to City within thirty (30) calendar days following Grantee's submittal of the bids referenced in this Section 4.

5. INDEMNIFICATION

- 5.1. To the fullest extent permitted by law, Grantee shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to misrepresentations by Grantee, the expenditure of Grant Funds, the Application, or the Agreement (including the negligent and/or willful acts, errors and/or omissions of the Grantee, its principals, officers, agents, employees, vendors, suppliers,

consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

- 5.2. Notwithstanding the foregoing, nothing herein shall be construed to require Grantee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms set forth in the Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Grantee.

6. GRANTEE INDEPENDENCE

In the performance of this Agreement, the Grantee, its agents, and employees shall act in an independent capacity and shall not be considered officers, agents, or employees of the City. The manner and means of performing under this Agreement are under the control of the Grantee, except to the extent they are limited by state, local, or federal law, and this Agreement. Nothing in this Agreement shall be deemed to constitute approval for the Grantee, or any of the Grantee's employees or agents, to be the agents or employees of City. The Grantee shall have the responsibility for and control over the means of performance under this Agreement, provided that the Grantee is in compliance with the terms of this Agreement.

7. NOTICES

- 7.1. All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided.

- 7.2. All notices, demands, requests or approvals from Grantee to City shall be addressed to the City at:

Attn: [***INSERT NAME***]

City of Coachella
53990 Enterprise Way,
Coachella, CA 92236

- 7.3. All notices, demands, requests or approvals from City to Grantee shall be addressed to Grantee at:

Attn: Name of Business Owner

Grantee Business Name

Grantee Address Line 1

Grantee Address Line 2

8. VIOLATIONS AND TERMINATION

- 8.1. Effect of Violations. If the City discovers that the Grantee has breached any part of this Agreement or made a material misrepresentation, or otherwise falsified its application or

any document provided to City to support the Grantee's application or a reimbursement, or the Grantee has misused the Grant Funds or used them for an ineligible expenditure, the Grantee shall pay an amount equal to the entirety of the Grant Funds to the City within ten (10) calendar days of the City's written notice. The City's decision shall be final. Additionally, the City shall have all other remedies besides the remedy provided herein to enforce this Agreement and its Program.

8.2. Specific Performance. Grantee agrees that the City has the legal right, and all necessary conditions have been satisfied, to specifically enforce Grantee's obligations pursuant to this Agreement.

8.3. Termination. Notwithstanding anything to the contrary herein, the City shall have the right to terminate the Agreement immediately, with or without cause, at any time, by providing written notice to the Grantee. Upon termination, the City shall have no further obligation to provide any Grant Funds. The City has the sole and absolute discretion to terminate the Grant Funds or any portion thereof at any time.

9. PREVAILING WAGES, HOLD HARMLESS, AND DEFEND

Grantee agrees to fully comply with all applicable federal and state labor laws including, without limitation California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. ("Prevailing Wage Laws"). The work to be completed under this Agreement is subject to the Prevailing Wage Laws. Grantee shall bear all risks of payment or non-payment of prevailing wages under California law, and Grantee hereby agrees to defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

10. STANDARD PROVISIONS

10.1. Recitals. City and Grantee acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

10.2. Compliance With all Laws. Grantee shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

10.3. Prohibition Against Transfer. The Grantee shall not assign, sublease, hypothecate, or transfer this Agreement or any of the services to be performed under this Agreement, directly or indirectly, by operation of law or otherwise, without prior written consent of the City. Any attempt to do so without written consent of the City shall be null and void. The Grantee shall be required to reimburse the City within thirty (30) calendar days for any unauthorized assignment, sublease, hypothecation, or transfer of funds. This prohibition against transfers shall survive the expiration or termination of this Agreement.

10.4. Waiver. A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

- 10.5. Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.
- 10.6. Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Grant Application, the terms of this Agreement shall govern.
- 10.7. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.
- 10.8. Amendment. This Agreement may be modified or amended only by a written document executed by both the Grantee and City and approved as to form by the City Attorney.
- 10.9. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- 10.10. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and repayment obligations, shall survive any such expiration or termination.
- 10.11. Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Riverside, State of California.
- 10.12. Equal Opportunity Employment. Grantee represents that it is an equal opportunity employer, and it shall not discriminate against any contractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.
- 10.13. Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall be entitled to attorney's fees.
- 10.14. Taxes. The City and Grantee expressly agree that the Grantee shall be responsible for all taxes that are associated in any way to the Application of the Grant Funds.
- 10.15. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above.

CITY OF COACHELLA

GRANTEE:

APPROVED BY:

[INSERT GRANTEE NAME**]**

Bill Pattison
Acting City Manager

ATTESTED BY:

Signature

Angela M. Zepeda
City Clerk

Name

APPROVED AS TO FORM:

Title

Best Best & Krieger LLP
City Attorney

[END OF SIGNATURES]

EXHIBIT “A”
PROGRAM GUIDELINES
[ATTACHED]

EXHIBIT “B”
PROJECT LOCATION
[ATTACHED]

EXHIBIT “C”
SCOPE OF WORK AND SCHEDULE
[ATTACHED]

EXHIBIT “D”
CONTRACTOR AGREEMENTS

EXHIBIT “E”

CONTRACTOR AGREEMENT REQUIREMENTS

All proposed contracts for the construction of the Improvements shall:

1. Identify the Improvements to be completed by Contractor and list all documents that describe the required work such as, but not limited to, drawings, specifications and negotiated changes to any of such documents.
2. List the Contractor’s California State Contractor’s License Number and the name and California State Contractor’s License Number of each proposed subcontractor.
3. State the complete contract price for the work.
4. Include the following prevailing wage compliance provision, if applicable:

Grantee and Contractor recognize that Grantee has received public funds for the construction of the Improvements, making it a public work to which section 1771 of the Labor Code applies. Contractor shall pay or cause to be paid prevailing wages for all Improvements.

For the purpose of the construction contract(s), Prevailing Wages are the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute this Agreement as ascertained by the Director of the Department of Industrial Relations of the State of California. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the Improvements. Contractor shall post the Prevailing Rate Schedule at the Property. Contractor shall comply with the payroll records requirements concerning apprentices and shall be responsible for causing all of Contractor’s subcontractors to comply with these requirements and provisions.

The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in connection with the project. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code, and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776.

5. Include the following indemnification provision:

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City of Coachella, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the “Indemnified Parties”) from and against any and

all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) from this Agreement, including without limitation with regard to the construction work and/or Improvements including the negligent and/or willful acts, errors and/or omissions of the Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms set forth in the Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

6. Include a Schedule of Performance and a completion date for all work.
7. Require that a conditional lien release in the form of a Conditional Waiver and Release Upon Progress Payment and a full lien release in the form of a Conditional Waiver and Release Upon Final Payment be submitted with requests for payment progress payments and the final payment respectively.
8. Include liquidated damages for unexcused delay in performance by the Contractor which shall be deducted from the Contractor's payment under the contract. The liquidated damages for each day of unexcused delay in performance shall equal \$100.
9. Require insurance and attach certificate of insurance meeting the following requirements, and completed W-9 form.

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

- 9.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001), including Products and Completed Operations, and X, C, U (Explosion, Collapse & Underground) coverage.

(b) Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 “any auto”, or code 2 “owned autos” and endorsement CA 0025. Coverage also to include code 8 “hired autos” and code 9 “nonowned autos.”

(c) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

9.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

(a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit, coverage shall also include \$100,000 Fire Legal Liability.

(b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

(c) Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

EXCEPTION: If, however, the Contractor does not have any employees and does not wish to cover himself or herself for WORKERS' COMPENSATION, the Contractor shall sign the following statement as well as the contract itself to affect a fully initiated contract:

I, as the herein designated Contractor, do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above required Workers' Compensation coverage.

9.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, and its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

9.4 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(a) General Liability and Automobile Liability Coverage.

(i) The City of Coachella, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.

(ii) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Contractor's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.

(iv) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) All Coverage. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City.

9.5 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to the City's Risk Manager.

9.6 Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance, including endorsements, shall be mailed to the following address:

City of Coachella

Attn: [***INSERT NAME***]

53990 Enterprise Way,
Coachella, CA 92236

9.7 Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**EXHIBIT “F”
GRANT APPLICATION**