

**GRANT AGREEMENT
CITY OF INDIO
Highway 111 Building Beautification Program**

THIS GRANT AGREEMENT is hereby entered into this _____ day of _____ (“Effective Date”), by and between the City of Indio, a California municipal corporation (hereinafter referred to as “City”) and the following designated OWNER/LESSEE (“Grantee”):

Owner Name: _____

Lessee’s Name: _____

Name of Business (“Business”): _____

Address of Property to be Improved: _____

RECITALS

A. As a way to enhance the business corridor along Highway 111 (“Highway 111 Corridor”) in the City of Indio, the City has created the Highway 111 Building Beautification Program (“Program”).

B. The Program is administered by the City with the advice of the City Council, is funded by the City General Fund for the purpose of commercial revitalization efforts in the Highway 111 Corridor Specific Plan Area (“Program Area”), and engages one of the City’s most valuable assets — storefront businesses along Highway 111.

C. Under the Program, the City will reimburse eligible property owners/lessees for the cost of eligible improvements to properties in the Program Area up to a maximum of Fifty Thousand Dollars (\$50,000) provided the owners/lessees are responsible for ongoing maintenance, keep their business open to the public, and keep their property free of building code violations and/or tax liens for a period of five (5) years.

D. Grantee owns property at the above-listed address in the Program Area, more particularly described in Exhibit “A,” attached hereto and incorporated herein (“Property”), and has submitted a Program application for certain improvements to the Property. For purposes of this Agreement, the final scope of work approved by the City for said improvements shall be referred to as the “Project.”

E. The Parties intend this Agreement to set forth Grantee’s obligations with respect to the Project, including all terms and conditions of this Agreement and all Program guidelines established by the City, as may be amended from time to time (“Program Guidelines”).

NOW THEREFORE, in consideration of the mutual covenants and agreements obtained herein, the City and the Grantee do hereby agree as follows:

SECTION 1. GRANT FUNDS.

a. Amount of Funding. Grantee shall be reimbursed for Eligible Expenses, as defined below, up to a maximum amount of Forty Thousand Dollars (\$40,000) for building façade improvements and up to a maximum amount of Ten Thousand Dollars (\$10,000) for interior improvements. The total reimbursement amount per this Agreement shall not exceed Fifty Thousand Dollars (\$50,000) (hereafter referred to as “Grant Funds”). Grantee acknowledges that payment to Grantee is contingent upon funding allocation, and in the event of funding reduction, including elimination, the City may reduce the Grant Funds as a whole or in part. Any such change shall be reflected by written amendment to this Agreement or by notice provided pursuant to Section 5, if applicable.

b. Eligible Expenses. Grant Funds shall only be used to reimburse costs for labor and materials directly related to Eligible Improvements (“Eligible Expenses”). “Eligible Improvements” shall mean property improvement, as defined in the Program Guidelines. The following conditions apply:

1. Tools may not be purchased with Grant Funds, but tool rental is allowable.
2. Grant Funds must be used for property improvements that are visible to the public or enhance the building’s use, rather than simple routine maintenance.
3. Structural improvements not related to the exterior improvements, including seismic upgrades, are not allowed.
4. Improvements must be consistent with the City’s Highway 111 Corridor Specific Plan and Indio General Plan 2040.
5. Improvements must adhere to all applicable building codes, sign ordinances, and development/design standards for the City of Indio.
6. Portable signs, and signs not mounted or not attached to the storefronts, are not allowed.

c. Prevailing Wage. All Project improvements are “public work,” as that term is used in Section 1720 of the California Labor Code. Grantee and all contractors and subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code. The Director’s determination is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof. The wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

SECTION 2 TERM.

a. Grant Agreement. The term of this Agreement shall be from the Effective Date and shall terminate on the Completion Date, unless terminated earlier as provided herein. Notwithstanding the foregoing, the terms, covenants, conditions, and restrictions set forth in Section 6 shall survive the termination and expiration of this Agreement.

b. Regulatory Agreement. As consideration for the Grant Funds, Grantee agrees to be bound by the covenants, conditions, and restrictions set forth in the Regulatory Agreement, attached hereto as Exhibit “B,” which shall be recorded in the Official Records of the County of Riverside as a condition precedent to the City’s disbursement of the Grant Funds.

SECTION 3 PROJECT TIMELINE.

a. Design Approval. After the City has approved the final scope of work for the Project, Grantee shall submit to the City the design plans for the Project. Grantee shall not undertake any improvement until the design for the Project has been submitted to and approved by the City.

b. Notice to Proceed. If the City approves of the design of the Project, the City shall issue to the Grantee a Notice to Proceed. Expenses incurred prior to the issuance of the Notice to Proceed shall not be reimbursed.

c. Time for Completion. Following the City’s issuance of the Notice to Proceed, the Grantee shall contract for the work and shall commence and complete the Project within ninety (90) days.

d. Extensions. Grantee may request a ninety (90) day extension provided there is a demonstrated hardship. It is within the City’s sole and absolute discretion to grant such extension. Notwithstanding the foregoing, the City reserves the right to provide any length of extension as may be necessary and reasonable for the completion of the Project.

e. Documentation. Upon completion of the work, the Grantee shall submit to the City proof of all incurred expenses, including payments made to contractors and subcontractors, final lien waivers from all contractors and subcontractors, and an executed Regulatory Agreement as referenced in Section 2.

f. Final Inspection. Upon receipt of the documentation set forth in Section 3(e), the City shall perform a final inspection. If approved, the City shall issue a final notice to the Grantee certifying that the Project has been completed (“Certificate of Completion”).

g. Reimbursement. Within thirty (30) days of the issuance of the Certificate of Completion, the City shall issue a check to the Grantee in an amount equal to the amount of Eligible Expenses, not to exceed those amounts set forth in Section 1. The date the City issues the reimbursement for Eligible Expenses shall hereafter be referred to as “Completion Date.”

SECTION 4 MONITORING.

The City has a right to periodically review the progress of work for the Project. Such inspections shall not replace any required permit inspection by Building Inspectors. All work that is not in conformance with the approved plans, design drawings, and specifications shall be immediately remedied by the Grantee, and deficient or improper work shall be replaced and made to comply with the approved plans, design drawings, and specifications and the terms of this Agreement.

SECTION 5 TERMINATION BY CITY.

The City may terminate this Agreement, immediately, if the Grantee fails to comply with any rules, regulations, or provisions set forth or referred to herein, if the Grantee fails to complete the improvement work in conformity with the approved plans, design drawings, and specifications and the terms of this Agreement, or if the Grantee submits any documentation that is incomplete, incorrect, or falsified in any material respect. Notice of termination shall be given by the City to the Grantee by certified mail to the address listed above. Upon the date such notice is mailed, this Agreement shall terminate and the financial obligations on the part of the City shall cease and become null and void.

SECTION 6 GRANT CONDITIONS.

a. Maintenance. For a period of five (5) years from the Completion Date unless otherwise agreed upon by the parties in writing, the Grantee agrees to maintain the Property, including any landscaping, at his/her sole expense.

b. Business Operations. For a period of five (5) years from the Completion Date unless otherwise agreed upon by the parties in writing, the Grantee agrees to keep the Business open as a fully-fixtured, fully-stocked, fully-staffed, and continuously operating business open to the public at the Property during regular business days and hours.

c. Code Compliance. For a period of five (5) years from the Completion Date unless otherwise agreed upon by the parties in writing, the Grantee agrees to comply with all building, health, and safety standards and regulations applicable to the Property and to keep the Property clear of all such violations. Should any code violations occur related to any improvements made using Grant Funds and remain uncured for a period of time as outlined in a code enforcement citation, the Grantee may be required to reimburse the City for any unamortized funding over five (5) years from the date Grant Funds are released.

d. Tax Liens. For a period of five (5) years from the Completion Date unless otherwise agreed upon by the parties in writing, the Grantee agrees to keep the Property free of tax liens.

e. Insurance. Without limiting or diminishing the Grantee's obligation to indemnify or hold the City harmless, the Grantee shall procure and maintain or cause to be maintained, at its sole cost and expense, property insurance and flood insurance of the Property in sufficient amounts to keep the Property and the Project improvements insured against loss by fire, hazards included within the term "extended coverage," and such other hazards, including floods or flooding.

f. Non-Liability of Officials, Employees and Agents. No elected official, officer, employee, or agent of City shall be personally liable to the Grantee for any obligation created under the terms of this Agreement, unless such an obligation is made express and by written instrument.

g. Indemnity. Notwithstanding the insurance coverage required herein, the Grantee, and its successors, assigns, and heirs, shall indemnify, defend, and hold the City, its elected officials, officers, employees, and agents (“Indemnitees”) harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys’ fees) which the City may incur as a result of: (a) the City providing Grant Funds to the Grantee; (b) the Grantee’s performance of or failure to perform any obligations as and when required by this Agreement; (c) a failure of any of the Grantee’s representations or warranties to be true and complete in any material respect; (d) any act or omission by the Grantee or any of Grantee’s contractors, subcontractors, architects, engineers, or suppliers with respect to the Project or the Property; (e) failure of the Grantee, the Grantee’s contractors, or subcontractors to comply with the covenants, conditions, and restrictions contained in this Agreement or the Regulatory Agreement or to comply with all other laws, rules, regulations, and restrictions related to the use of Grant Funds, and/or (f) any claim related to the Property, Project, or Grant Funds, except if the loss is caused by the sole negligence or willful misconduct of the City. The Grantee shall pay immediately upon the City’s demand any amounts owing under this indemnity. The duty of the Grantee to indemnify includes the duty to defend the City in any court action, administrative action, or other proceeding brought by any third party arising from the Project, the Agreement, the Regulatory Agreement, or the Property.

SECTION 7 GENERAL PROVISIONS.

a. Political Activity. None of the funds, materials, property, or services contributed by the City to the Grantee under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

b. Discrimination. The Grantee covenants and agrees for itself and its successors and assigns, that all persons employed by or applying for employment by it, and all subcontractors, vendors, and volunteers are and will be treated equally and the Grantee shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, or military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, the Grantee agrees to conform to the requirements of the Americans with Disabilities Act.

c. Compliance with Laws. The Grantee shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect the Grantee, the Property, or in any way affect the completion of the Project by the Grantee. The Grantee shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible

for any failure to comply with all applicable laws, ordinances and regulations. The City shall not be responsible for informing the Grantee of such laws or changes to such laws.

d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Grantee agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the County of Riverside or the United States District Court for the Central District of California.

e. Attorneys' Fees and Costs. In the event any legal or administrative action is brought to interpret or enforce the terms of the This Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

f. Relationship of Parties. The relationship of the Grantee with the City for this Project shall not be construed as a joint venture, equity venture, partnership, or any other relationship. City neither undertakes nor assumes any responsibility or duty to the Grantee (except as provided for herein) or any third party with respect to the Project or the Property. Except as City may specify in writing, Grantee shall have no authority to act as an agent of the City or to bind the City to any obligation.

g. Waiver. Any waiver by the City of an obligation in this Agreement must be in writing. No waiver shall be implied from any delay or failure by thr City to take action on any breach or default of the Grantee or to pursue any remedy allowed under the this Agreement or applicable law. Any extension of time granted to the Grantee to perform any obligation under the this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by the Grantee shall not be construed to be a consent to any other act or omission or to waive the requirement for the City's written consent to future waivers.

h. Integration. This Agreement, including exhibits, contain the entire agreement of the parties and supersede any prior negotiations.

i. Other Agreements. Grantee represents that the Grantee has not entered into any agreements that are inconsistent with the terms of this Agreement. Grantee shall not enter into any agreements that are inconsistent with terms of this Agreement without an express waiver by the City in writing.

j. Amendments and Modification. Any amendments or modifications to this Agreement must be in writing and shall be effective only if executed by the Grantee and the City.

k. Severability. Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

l. Counterparts. This Agreement and all other agreements executed pursuant to this Agreement may be executed in counterpart originals, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

J. Exhibits. The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

Exhibit “A” – Property

Exhibit “B” – Regulatory Agreement

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

PROPERTY OWNER(S)

CITY OF INDIO

Name

Bryan H. Montgomery, City Manager

Signature

Name

Signature

LESSEE/BUSINESS OWNER

Approved as to Form

Name

Steven P. Graham, City Attorney

Signature

EXHIBIT “A”
PROPERTY
(Attached)

EXHIBIT "B"

REGULATORY AGREEMENT

Exempt from Recording Fees
Pursuant to Government Code § 6103

When Recorded Mail to:

City of Indio
Economic Development Department
100 Civic Center Drive
Indio, California 92201

Address: [REDACTED]
APN: [REDACTED]

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

REGULATORY AGREEMENT

(HIGHWAY 111 BUILDING BEAUTIFICATION PROGRAM)

THIS REGULATORY AGREEMENT ("Regulatory Agreement") is made and entered into this ____ day of _____ 202__, by [REDACTED] ("GRANTEE") and **THE CITY OF INDIO**, a California municipal corporation ("City") with reference to the following facts:

RECITALS

A. On [REDACTED], 202__, the City and the Grantee entered into that certain Grant Agreement for the City of Indio's Highway 111 Building Beautification Program, pursuant to which the City granted the Grantee [REDACTED] Dollars (\$ [REDACTED]) ("Grant Funds") for certain property improvements at the property located at [REDACTED], in the City of Indio, identified as Assessor Parcel Number 210-202-001 and more particularly described in the Legal Description attach hereto ("Property").

B. Pursuant to the Grantee Agreement, in consideration for the Grant Funds, the Grantee agreed to be bound by the covenants, conditions, and restrictions set forth in this Regulatory Agreement.

C. The Grantee by this document, agrees to comply with the terms, conditions and covenants imposed by the City which restrictions, conditions, covenants and agreements all are for the benefit of the Property. Further, this Regulatory Agreement will serve to put future property owners on notice of the terms, conditions, restrictions, covenants and agreements.

NOW, THEREFORE, the Grantee covenants, agrees, and declares for itself, its successors, and it assigns that the Property shall be held, used, maintained, and transferred pursuant to the terms of this Regulatory Agreement and the conditions contained herein as follows.

COVENANTS AND RESTRICTIONS

1. **Restrictions Run With the Land.** The restrictions (“Restrictions”) set forth herein are limitations on the ownership and use of the land as provided in Civil Code § 784. The Restrictions are made for the direct benefit of the Property and shall run with the land and be binding upon the Grantee, its successors and assigns. These Restrictions benefit, and may be enforced by, the City of Indio and its respective successors or assigns. The Grantee expressly acknowledges and agrees that these Restrictions and this Regulatory Agreement are reasonable restraints on Grantee’s right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint on alienation.

2. **Use of the Property.** The Property shall be used for the business purposes identified in the Grant Agreement and be kept open to the public as a fully-fixtured, fully-stocked, fully-staffed, and continuously operating lawful business during regular business days and hours. Such use shall not change without the written permission of the City.

3. **Transfer of the Property.** The Grantee shall not transfer the Property or any portion thereof, without the written permission of the City. “Transfer” shall mean the sale, assignment, conveyance, or transfer, voluntary or involuntary, of any interest in the Property, including the financing or refinancing of the Property.

4. **Maintenance of the Property.** The Grantee covenants and agrees for itself and its successors and assigns, that it will, at its sole cost and expense: (i) maintain the appearance and safety of the Property (including all improvements, fixtures, and landscaping) in good order, condition, and repair, and free from the accumulation of trash, waste materials, and other debris; (ii) remove all graffiti placed upon the Property (including all improvements, fixtures, and landscaping) within seventy-two (72) hours of its appearance; (iii) maintain in good order, condition and repair, properly functioning landscape irrigation systems on the Property; and (iv) remove and promptly replace all dead or diseased landscaping material on the Property.

5. **Taxes, Assessments, Encumbrances, Charges, and Liens.** The Grantee shall pay, before delinquency, all taxes and assessments affecting the Property and all encumbrances, charges and liens, with interest, on said Property or any part thereof.

6. **Notice and Right to Cure Defaults.** In the event of a default of this Regulatory Agreement, the City shall provide the Grantee with written notice of said default and an opportunity to cure said default. The Grantee shall have fifteen (15) days in which to cure said default. Should the Grantee require more than fifteen (15) days to cure said default, the Grantee shall notify the City, in writing, for the reasons requiring additional time, but in no event shall the additional time exceed thirty (30) days. Should the Grantee fail to cure the default within the required time, the City or its agents, employees and contractors shall have the right, but not the obligation, to enter upon the Property without further notice and to take such actions as are

necessary to cure the default. The Grantee shall reimburse the City for all costs associated with cure of the default (including but not limited to, staff services, administrative costs, legal services, and third party costs), within fifteen (15) days after service of a written notice by the City. If the Grantee fails to pay within the time provided, such costs shall be a lien upon the Property, as provided by California Civil Code § 2881. The City may enforce and foreclose such lien in any manner legally allowed.

7. **Nondiscrimination.** The Grantee covenants and agrees for itself and its successors and assigns, that all persons employed by or applying for employment by it, and all subcontractors, vendors, and volunteers are and will be treated equally and the Grantee shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, or military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, the Grantee agrees to conform to the requirements of the Americans with Disabilities Act.

8. **Compliance with Laws.** The Grantee shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect the Grantee, the Property or in any way affect the performance of services by the Grantee. The Grantee shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. The City shall not be responsible for informing the Grantee of such laws or changes to such laws.

9. **Annual Review.** Every year, the City shall review the Grantee's compliance with this Regulatory Agreement. Should any default of this Regulatory Agreement have occurred in the preceding year, and such default was not cured by Grantee within the time periods set forth in Section 6, or should any code violations have occurred in the preceding year and not been cured by Grantee within the period of time outlined in a code enforcement citation, the Grantee shall be required to reimburse the City for noncompliance that year in an amount equal to 20% of the amount of Grant Funds. This amount shall be in addition to, and not in lieu of, any fines, penalties, or costs owed to the City under the Indio Municipal Code, or any other rights and remedies available to the City under this Regulatory Agreement. If the Grantee fails to pay within the time provided, such costs shall be a lien upon the Property, as provided by California Civil Code § 2881.

10. **Duration.** This Regulatory Agreement shall remain in effect for a period of five (5) years following the recordation of this Regulatory Agreement with the Riverside County Recorder.

(Signatures on Following Page.)

IN WITNESS THEREOF, the parties hereto have executed this Regulatory Agreement on the date first appearing above.

PROPERTY OWNER(S)

CITY OF INDIO

Name

Bryan H. Montgomery, City Manager

Signature

Name

Signature

LESSEE/BUSINESS OWNER

Approved as to Form

Name

Steven P. Graham, City Attorney

Signature

EXHIBIT "A"

LEGAL DESCRIPTION