

AGREEMENT NO. _____

This Destination Market Street Program Agreement (“Agreement”) is made and entered into this _____ day of _____, 202_, by and between the City of Inglewood, a municipal corporation and charter city (“City”), 1 W. Manchester Boulevard, Inglewood, California 90301, and _____, an owner of commercially zoned property on or around Market Street between Florence Avenue and Hillcrest Boulevard (“Market Street”) with lease holding commercial tenant(s) or a commercial tenant on or around Market Street who has obtained the property owner’s written consent and is eligible to apply for Destination Market Street Program (“Program”) funds, located at _____ (“Grantee”).

RECITALS

WHEREAS, Market Street is the City’s downtown commercial corridor; and

WHEREAS, there exists a compelling need for targeted revitalization efforts to attract more residents and visitors to Market Street, which can occur by fostering a vibrant environment for dining, shopping and entertainment. Such a revitalization requires an investment in properties and businesses on and around Market Street, which would support the economic goals of the City; and

WHEREAS, Section 19.56(E)(12) of the Budget Act of 2021 appropriated funding from the California General Fund to the California Department of Transportation to be allocated to the City for the Market Street Streetscape Improvement Program and Market Street Façade and Tenant Improvement Program, to fund streetscape improvements as well as provide grants allowing for façade and tenant improvements to owners and businesses on or around Market Street; and

WHEREAS, the Grantee is either 1) an owner of commercially zoned property on or around Market Street with lease holding commercial tenant(s) or 2) a commercial tenant on or around Market Street who has obtained the property owner’s written consent and is eligible to apply for the Program; and

WHEREAS, the funds allocated to the Program shall be disbursed to eligible participants in the form of grants; and

WHEREAS, the City subsequently issued guidelines for the Program and Grantee submitted an application for the grant, both of which are hereby incorporated into this Agreement by reference; and

WHEREAS, the Grantee represents that its contractor possesses a valid state contractor’s license (# _____) and is validly registered with the California Contractors State License Board as required; and

WHEREAS, the Grantee represents that its Contractor and subcontractor(s), if any, is/are in good standing in the State of California and validly registered with the California Department of Industrial Relations as required by law; and

WHEREAS, the Program has reviewed Grantee’s application and determined that it qualifies for a grant;

NOW, THEREFORE in consideration of the mutual covenants and conditions herein contained, and for good and valuable consideration, the City and Grantee (collectively referred to as the “Parties”) mutually agree as follows:

ARTICLE 1 – GRANTEE’S REPRESENTATIONS

Grantee certifies, to the best of its knowledge and belief, that the information provided in its application is true and complete as of the date submitted to the Program, and remains accurate and complete as of the date Grantee’s authorized representative signs this Agreement.

The information contained in Grantee’s application are material representations of fact upon which the City is relying upon in entering into this Agreement, and any misrepresentation shall be considered a material breach of this Agreement, entitling the City to terminate this Agreement, not disburse Grant Funds, and require the Grantee to return any previously disbursed Grant Funds.

ARTICLE 2 – GRANT AWARD

The City shall disburse to the Grantee a one-time grant not-to-exceed _____ (\$_____, “Grant Funds”), in accordance with City’s customary business practices. Grantee shall expend the Grant Funds only for the purposes identified in its grant application and that are eligible under the Program. If applicable, the Grantee is responsible for reporting and paying any taxes associated with receiving this grant.

Eligible Uses of Funds. The Grantee may only use the Grant Funds for improvements to fixed assets as identified in the approved Scope of Work, Cost Estimate, and Budget, as approved by the City (Exhibit A).

Ineligible use of funds. Grantee shall not use the Grant Funds for any of the following:

1. Activities or Improvements:
 - a. Routine maintenance or repairs;
 - b. Structural foundation improvements other than earthquake retrofitting;
 - c. Billboards, roof signs, or temporary signs;
 - d. Temporary window displays;
 - e. Relocation Payments and/or Financial Assistance to displaced individual(s) and/or businesses.

Contingency. Grant Funds are inclusive of a 20% contingency which cannot be disbursed without prior approval from the Program. Should any funds designated as contingency in Budget identified in Exhibit A remain upon completion of Scope of Work identified in Exhibit A,

remaining funds may be allocated by and disbursed to Grantee for other eligible uses, subject to prior written approval by the Program.

Use of Non-Grant Funds. Should the Budget identified in Exhibit A exceed the Grant Funds awarded subject to this Agreement, Grantee shall expend all required non-Grant Funds (the difference between the total Project Budget minus the Grand Funds) prior to seeking disbursement of Grant Funds. Upon request by the City, Grantee shall produce proof of expenditure of non-Grant Funds.

Disbursement of Funds. Grant Funds shall be disbursed by City to Grantee via Electronic Funds Transfer (EFT), see Exhibit B.

1. Following Initial Notice to Proceed, Grantee may submit invoices for expenses related to building permitting fees and the development of necessary documents to seek building permits.
2. Upon issuance of Construction Notice to Proceed, City shall disburse an initial payment of ten percent (10%) of the Grant Funds, which shall be applied to items listed on the first invoice submitted to the Program by Grantee following Construction Notice to Proceed.
3. To request subsequent disbursement of funds, Grantee shall submit invoice(s) to the Program itemizing expenditures to be reimbursed by Grant Funds.
4. Upon receipt of an invoice, the Program shall perform an inspection to confirm completion of invoiced activities. Grant Funds shall be disbursed following confirmation from the Program Inspector of the completion of invoiced activities.
5. The City shall retain ten percent (10%) of invoiced amount subject to reimbursement (Retainage). Retainage shall be disbursed to Grantee upon completion of Scope of Work identified in Exhibit A, as deemed complete by the Program.
6. The Program anticipates Grantee will submit invoices on a monthly basis. Grantee is required to submit a Progress Report for months which it does not submit an invoice.
 - a. Grantee shall be reimbursed, pursuant to the Cost Estimate and Budget in Exhibit A, a not-to-exceed amount of \$xxxx (\$xxx) for all work faithfully performed.
 - b. Grantee shall submit invoices, commencing from the date first entered above, to the Program every thirty (30) days for services contemplated hereunder and which have been completed within that thirty (30) day period.
 - c. Grantee shall invoice the Program for the Retainage within ten (10) working days after the completion of the project. City shall pay Grantee/Contractor in the ordinary course of City business, and agrees that it will use its best efforts to avoid all unnecessary delays in processing Contractor's invoices.
 - d. Grantee agrees that, should work be performed outside the Scope of Work identified in Exhibit A without the prior written approval of the Program, such work shall be deemed a gratuitous effort on the part of Contractor, and Contractor shall have no claim against the City for reimbursement.

ARTICLE 3 – TERM & TERMINATION

The term of this Agreement is for two (2) years from the date first indicated above. Any funds that have not been expended by the Grantee after the expiration of this Agreement shall be returned to the City within sixty (60) days of the City's request for the same. Grantee is expected to advance the Project within 30 days of each Notice to Proceed. Within 30 days of the Initial Notice to Proceed, Grantee is expected to seek all building permits and approvals necessary to commence the Scope of Work identified in Exhibit A. Within 30 days of the Construction Notice to Proceed, Grantee is expected to commence the Scope of Work identified in Exhibit A.

This Agreement may be terminated by the City in its sole discretion if the City is prevented from proceeding with the Agreement by law or by official action of a public authority.

Grantee's representations and obligations for the expenditure of Grant Funds shall survive the termination or expiration of this Agreement.

ARTICLE 4 – BOOKS AND RECORDS

During the term of this Agreement and for five years after the termination or expiration of this Agreement, the Grantee shall keep appropriate books, records, and accounts (collectively "Grant Records") in connection with the expenditure of Grant Funds under this Agreement. All Grant Records shall be stored and maintained by Grantee at its offices located in the City.

City shall have access to and the right to examine, audit, excerpt copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. City auditors, at all reasonable times, shall have access to the offices of the Grantee and all necessary Grant Records, and shall be provided adequate working area for the City auditors to conduct audits in compliance with this Agreement. Such working area shall include: a desk, chair, calculator and telephone, and shall have ready access to a photocopy or facsimile machine. City auditors shall be allowed to interview any employee of Grantee throughout the term of this Agreement and for a period of five (5) years after final expenditure of the Grant Funds, or longer if required by law.

Grant Records shall be provided to the City upon request and at Grantee's expense. Unless otherwise exempt under applicable law, applications and Grant Records are public records subject to the California Public Records Act, and the Grantee shall assist the City in complying with any request for records. Failure to comply with this Article will constitute a violation of this Agreement and may result in a termination of this Agreement and Grantee repaying any funds. This Article survives the termination or expiration of this Agreement.

ARTICLE 5 – NOTICES

Any notice given pursuant to this Agreement shall be deemed received and effective on the date personally delivered, or if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service, when properly addressed, posted, and deposited in the United States mail to the respective parties as follows:

City:

City Manager
City of Inglewood
1 W. Manchester Blvd.
Inglewood, CA 90301

Grantee:

Name & Title:
Entity Name:
Address:
Address:

With Copy to:

City Clerk's Office
City of Inglewood
1 W. Manchester Blvd.
Inglewood, CA 90301

ARTICLE 6 – CHOICE OF LAW & VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

ARTICLE 7 – COMPLIANCE WITH LAWS

Grantee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including, without limitation, requirements regarding the use of grant funds under the Budget Act of 2021 that are in effect as of the effective date of this Agreement and that may later be enacted or promulgated. Applicable regulations include, but are not limited to, the following identified in that certain *Funds Transfer Agreement Between the California Department of Transportation and the City of Inglewood* executed in June 2022:

1. The Drug-Free Workplace Act of 1990, requiring Grantee and any contractors hired to perform work subject to a grant distributed based on the terms of this Agreement to, at a minimum, take the following actions to provide a drug-free workplace:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the employer's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs;
 - and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Ensure that every employee who performs work subject to a grant distributed based on the terms of this Agreement:
 - 1) receives a copy of their employer's drug-free workplace policy statement; and,

- 2) agrees to abide by the terms their employer's statement as a condition of employment associated with this Agreement.
2. California Public Contracting Code sections 10410 *et. seq.*, which establishes conflicts of interest limitations on current or former state employees.
3. California Labor Code section 3700, which requires Grantee to require every employer which it disburses Program funds to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the Labor Code, prior to commencing the performance of the work described in this Agreement.
4. The Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

ARTICLE 8 – INDEMNIFICATION

To the fullest extent provided by law, Grantee shall defend at its own expense, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of Grantee's use of the Grant Funds.

ARTICLE 9 – AUTHORITY OF THE CITY PLANNING DEPARTMENT

All work pursuant to the Grant will be supervised by the City. The City shall have authority over the administrative aspects of the Grant including provisions for time for commencing and completing work and extension of time, if any.

The City shall have the authority to approve contingency disbursements and to give such general directions and exercise such control as may be necessary to ensure that work on the Project is in strict compliance with the Grant Documents. The City shall determine the adequacy of the Contractor's methods, plans, and equipment and may issue such directions relative to the sufficiency of forces as may be reasonably necessary to insure proper and continuous execution of the work. The City shall have the authority to stop the work, if necessary, to prevent its improper execution and shall determine the amount, quality, and fitness of the several kinds of work. The City shall have the authority to reject all work which does not conform to the requirements of the Grant and shall have power to make such other decisions as provided in these specifications.

ARTICLE 10 – MISCELLANEOUS

Authority to Sign Agreement. The person executing this Agreement on behalf of the Grantee warrants that: (1) Grantee is duly organized and existing; (2) s/he is duly authorized to execute this Agreement on behalf of the Grantee; (3) by executing this Agreement, the Grantee is formally bound to the provisions of this Agreement; and (4) entering into this Agreement does not violate any provision of any other agreement to which the Grantee is bound.

Non-Assignability. Grantee shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without prior written approval of the City.

Market Street Streetscape Improvements. Grantee understands and acknowledges that on or around the time Grantee is anticipated to cause the Scope of Work identified in Exhibit A to be performed, the City anticipates performing construction activities on Market Street and the surrounding public right-of-way to make improvements to the streetscape (“Market Street Streetscape Improvements”). Grantee understands and acknowledges that Market Street Streetscape Improvements may result in street closures and/or other limitations on access to the public right-of-way that may cause/require those Grantee has contracted with to complete the Scope of Work identified in Exhibit A to modify means and methods of performance of said Scope of Work and/or coordinate activities with the City.

Prevailing Wages. Grantee is aware of the requirements of 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”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Grant Funds are to be used for payment of wages/payroll, Grantee fully agrees to comply with such laws.

No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

Interpretation. The Parties waive any benefit from the principle of contra proferentum and interpreting ambiguities against drafters. No party shall be deemed to be the drafter of this Agreement, or of any particular provision, and no part of this Agreement shall be construed against any party on the basis that the particular party is the drafter of any part of this Agreement.

Titles. Article titles, paragraph titles, or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

Counterparts. This Agreement may be executed in counterparts, and when each party hereto has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties hereto.

Severability, Invalidity and Waiver. If any provision of this Agreement is to any extent illegal, invalid, or incapable of being enforced, such provision shall be deemed severable and excluded from this Agreement to the extent of such illegality, invalidity or unenforceability; and the remainder of this Agreement shall continue in full force and effect unless the application of this severability provision should render a material term of this Agreement meaningless, in which case the entire Agreement is void.

Waiver by any party to this Agreement of any term, condition or covenant of this Agreement shall not constitute a waiver of any other term, condition or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by the City of any work or services by Special Counsel shall not constitute a waiver of any of the provisions of this Agreement.

Entire Agreement. This Agreement and any agreement, document, or instrument attached hereto or referred to herein, integrate all terms and conditions mentioned herein or incidental hereto, and supersede all oral negotiations and prior writings with respect to the subject matter hereof. In the event of any conflict between the terms, conditions, covenants, and provisions of this Agreement and any other such agreement, document, or instrument, the terms, conditions, covenants, and provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first written above.

CITY OF INGLEWOOD

GRANTEE

James T. Butts, Jr.
Mayor

Name:
Property Owner/Tenant (Circle One)

Acknowledged by **PROPERTY OWNER**, if not Grantee

Name:

ATTEST:

APPROVED AS TO FORM:

Aisha L. Thompson
City Clerk

Rick R. Olivarez
Interim City Attorney

EXHIBIT A

(Insert Cost Estimate, Scope, and Budget)

EXHIBIT B

(Insert ACH/EFT Form)

EXHIBIT C

(Insert executed Maintenance Covenant)