

RECOVERY AND IMPROVEMENT PROGRAM
GRANT AGREEMENT

THIS RECOVERY AND IMPROVEMENT PROGRAM GRANT AGREEMENT (hereinafter “Grant Agreement” or “Agreement”) is made and entered into this ____ day of _____, 20__, by and between the City of Louisville, a Colorado home rule municipal corporation (hereinafter “City”) and _____, a [insert entity type] (hereinafter “Business Owner”).

WHEREAS, the City of Louisville (the “City”) is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and Charter of the City; and

WHEREAS, the Novel Coronavirus 2019 (COVID-19) Pandemic is causing widespread human and economic impacts to the City of Louisville; and

WHEREAS, on March 15, 2020, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville (the “Mayor’s Declaration”) in response to COVID-19; and

WHEREAS, by Resolution No. 27, Series 2020, adopted on March 16, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

WHEREAS, on May 18, 2020, Colorado Governor Jared Polis issued Executive Order D2020-70 Directing the Expenditure of Federal Funds pursuant to the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”); and

WHEREAS, CARES Act funds will be distributed to Boulder County and allocated to the City and other municipalities located within Boulder County pursuant to a collaborative agreement executed between the County and the municipalities, and which funds may be used by the City to assist its local businesses with recovery efforts as set forth herein; and

WHEREAS, the City Council has taken several actions intended to help its residents and businesses with the impacts of COVID-19, including approval of an Emergency Solutions Grant Program in April 2020 to provide assistance to City businesses with immediate needs brought on by COVID-19; and

WHEREAS, the City Council finds the City’s business community is faced with more longer-term needs for building projects and improvements necessary to transform business operations as a result of the pandemic and for façade improvements to ensure commercial buildings remain vibrant and contributing to the overall economic health and wellbeing of the City into the future; and

WHEREAS, on August 11, 2020, the City Council adopted Resolution 60, Series 2020, approving the Recovery and Improvement Program and delegating to the City Manager the authority

to approve applications made pursuant to such Program and to execute Grant Agreements for the Program; and

WHEREAS, the City and Business Owner desire to enter into this Grant Agreement to define the roles and responsibilities of each of the parties regarding the receipt and use of funds and adherence to Program requirements.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. AMOUNT OF GRANT; USE OF GRANT FUNDS: Following execution of this Grant Agreement, the City agrees to provide funding to Business Owner in the amount of \$_____ (the "Grant"). Such amount is calculated as fifty percent (50%) of eligible Program expenses as set forth in the Program application (the "Work"), not to exceed \$10,000. The City shall not make any disbursements of Grant funds unless and until the City has determined that the elements of the work for which funding is requested is in compliance with the approved Grant Application and all applicable plans, specifications, approvals and requirements. The Business Owner shall submit an IRS Form W-9 completed and signed by the Business Owner before any payment to Business Owner is issued by the City. City disbursements shall be made payable to the Business Owner and to no other party. The Business Owner is responsible for ensuring that all contractors and suppliers are paid.

2. USE OF FUNDS; DOCUMENTATION: A. Following completion of the Work, the Business Owner shall provide the City with invoices and other documents showing how funds provided to Business Owner were used to complete the Work for which Grant funding was provided. Each invoice shall contain sufficient detail regarding the elements of the Work and shall relate directly to the Work items detailed in the Program application. Business Owner shall provide true and complete copies of all related payment records, agreements and orders for labor and materials, and such other supporting documentation as the City may require.

B. Business Owner shall also document its expenditure of the full amount of the corresponding match requirement for those elements of the Work subject to matching requirements. Match requirements may not be satisfied by any work performed prior to the date of execution of this Agreement.

3. INSPECTION AND AUDIT; ERRONEOUS PAYMENT: The City and its duly authorized representatives shall have access to all books, documents, papers, electronic files and records of the Business Owner that are related to this Agreement for the purpose of making audits and examinations and determining compliance with this Agreement. The City shall have access to the originals of all such materials and may make and keep copies thereof. If the City upon audit or otherwise determines that any amount has been paid to Business Owner in error for any reason, including, but not limited to overpayments or improper payments, then such funds shall be immediately repaid to the City upon demand and the same may be collected by any appropriate method as a debt to the City. Amounts not so repaid within 15 days of demand shall bear interest at the rate of one and one-half percent from the time of demand until the date of payment.

4. COMPLETION OF WORK: The Business Owner will undertake the construction of the Work in a timely manner. The Business Owner has twelve months to complete the Work, which time period shall begin upon execution of this Agreement.

5. OTHER COSTS: Each party shall bear its own legal, accounting, overhead and administrative costs incurred in the drafting, execution or performance of this Agreement.

6. COMPLIANCE WITH CITY ORDINANCES: The Business Owner shall comply with all applicable City ordinances, resolutions and building codes and shall be responsible at its own expense for obtaining and complying with all building and other permits required by the City for the completion of the Work.

7. TAX IMPLICATIONS: The City shall disclose to the Internal Revenue Service the amount of grant funds distributed to the Business Owner in accordance with the Internal Revenue Code and shall provide to the Business Owner an IRS Form 1099 showing the amount received. The Business Owner acknowledges and understands that grant funds may constitute taxable income. The City makes no representations or warranties concerning the tax consequences to the Business Owner as a result of receiving the grant funds.

8. FAILURE TO COMPLY; REPAYMENT TO CITY: Business Owner acknowledges and agrees that any and all payments received from the City pursuant to this Agreement may become subject to repayment for failure to comply with the terms and conditions of this Agreement or the Grant program. If the Business Owner shall fail to comply with the terms and conditions of this Agreement or Grant program requirements, the City shall have the rights specified herein, which shall be in addition to any rights the City may have at law or in equity. If the City believes that the Business Owner has failed to comply with the terms and conditions of this Agreement or Grant program requirements, it shall provide Business Owner with written notice thereof and a reasonable opportunity to cure such failure. If the City is unsatisfied with Business Owner's cure of any such failure, it may upon written notice to Business Owner terminate the Business Owner's right to Grant payments or suspend further Grant payments until such failure is cured, and may require repayment of any Grant funds spent in violation of this Agreement or Grant program requirements. Any termination or suspension of Grant payments pursuant to this section shall be effective upon the date of written notice provided by the City.

9. NOTICE: Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:
Attn: City Manager
749 Main Street
Louisville, CO 80027

[Insert Name of Business Owner]

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery or upon mailing.

10. ENTIRE AGREEMENT; AMENDMENTS: This writing constitutes the entire Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon and inure to the benefit of the respective successors and assigns of said parties. This Agreement may be amended only by written agreement approved by both parties.

11. NO JOINT VENTURE OR PARTNERSHIP: Nothing contained in this Agreement is intended to create a partnership or joint venture between the City and the Business Owner with respect to the Work, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function or service, nor does it create a joint enterprise, nor does it authorize any party hereto to act as an agent of the other party hereto for any purpose.

12. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Boulder.

13. NO LIABILITY; NO WAIVER OF IMMUNITY: The City shall in no manner be liable to the Business Owner or any other person for any monies expended or liabilities incurred by the Business Owner in connection with the Grant program, whether or not the Business Owner is actually paid any funds from the Grant program. No portion of this Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.

14. NO THIRD PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in the Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be considered to be an incidental beneficiary only.

15. ASSIGNMENT: This Agreement may not be assigned by the Business Owner without the prior written consent of the City, which consent may be given or withheld in the City's sole discretion.

16. INDEMNIFICATION: The Business Owner shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Business Owner, its officers, employees, contractors, agents, representatives or other persons acting under the Business Owner's direction or control in performing or failing to perform any obligation of Business Owner under this Agreement or in any matter related to completion of the Work. To the fullest extent allowed by law, the Business Owner will indemnify and hold harmless the City, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, liens, claims on funds, actions, damages, losses, judgments, costs or expenses, including but not limited to attorney fees, which may be made or brought or which may result against any of the indemnified

parties as a result or on account of the actions or omissions of the Business Owner, its officers, employees, contractors, agents or representatives, or other persons acting under the Business Owner's direction or control in any manner related to this Agreement or completion of the Work.

17. PAYMENTS TO CONSTITUTE CURRENT EXPENDITURES: Business Owner acknowledges and agrees that all payment obligations under this Agreement are current expenditures of the City, payable in the fiscal year for which funds are appropriated for the payment thereof. The City's obligations under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of Article X, Section 20 of the Colorado Constitution.

18. LEGAL CHALLENGE; ESCROW: The City shall have no obligation to make any grant payment hereunder during the pendency of any legal challenge to this Agreement. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

19. TERMINATION: Unless sooner terminated as provided herein, this Agreement shall terminate and become void and of no force or effect upon the City if Business Owner has not completed the Work in compliance herewith by the date described in paragraph 4. Business Owner shall be obligated to repay the City grant funds received for any Work not completed as of the date of termination of this Agreement.

20. NON-WAIVER: Waiver by the City or the Business Owner of any breach of any term or provision of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this _____ day of _____, 2020.

BUSINESS OWNER:
[Insert Business Owner Name]

By: _____
Title: _____

CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: _____
Heather Balsler, City Manager