

## REIMBURSEMENT AGREEMENT – FAÇADE IMPROVEMENT PROJECT

Made this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BETWEEN:

“ ”

(the “**Owner**”)

-and-

**THE CITY OF EDMONTON**

(the “**City**”)

WHEREAS:

- A. The Owner is the registered owner of a building with the municipal address: located on property legally described as: Legal Description: **Plan Block Lot** in Edmonton, Alberta.
- B. On November 26, 2002 City Council approved a policy entitled the “Retail and Commercial Façade and Storefront Improvement Program Policy C216” to provide matching grants to owners of buildings in targeted areas who improve the appearance and functionality of their buildings. On May 14, 2008 City Council approved an amendment to Policy C 216, Policy C216A (the “Policy”).
- C. The Policy calls for the Owner and the City to enter an Agreement setting out their respective obligations.

THEREFORE the parties agree as follows:

### **1. DEFINITIONS**

#### **1.1** In this Agreement:

- (a) “**Deficiency List**” means a description of the particulars given by the City to the Owner that specifies how the Exterior Improvements work is inadequate or deficient;
- (b) “**Exterior Improvements**” means the improvements to the subject property as set out in Section 3 herein and further described in Schedule “A”;
- (c) “**Matching Grant**” means financial assistance available to the Owner and payable by the City under the Program in accordance with the terms of this Agreement; and

(d) “**Program**” means the City’s Retail and Commercial Façade and Storefront Improvement Program.

## **2. SCHEDULES**

2.1 **Schedule “A”, Description of Exterior Improvements**, is attached to and forms part of this Agreement.

## **3. EXTERIOR IMPROVEMENTS WORK**

3.1 The Owner shall construct the Exterior Improvements set out in the table below:

<b>Description of City Funded Work (for example)</b>	<b>Total Estimated Cost</b>	<b>Matching Grant Amount Allocated</b>
Stucco		
Project Manager		
Demolition and Clean Up		
Carpentry		
Windows - finishing		
New Door		
Electrical		
Masonry		
Windows		
Concrete Ramp + railings		
Signage		
<b>Total</b>		<b>\$30,000.00</b>

3.2 The Exterior Improvements must conform to the details as set out in Schedule “A”. Any deviation from the details set out on Schedule “A” may, in the sole discretion of the City, render the Owner ineligible for the Matching Grant, in whole or in part, unless the City has provided its prior written consent for such deviation.

3.3 The Owner is responsible for obtaining all necessary approvals for the Exterior Improvements, including City of Edmonton development and building permits. All work associated with the Exterior Improvements must comply with municipal, provincial, and

- 3.4 If the Building is a designated municipal historic resource, the Exterior Improvements are subject to review by a City heritage planner and must comply with the applicable legislation and the City's heritage buildings preservation programs.
- 3.5 The Exterior Improvements work must be performed by a licensed contractor qualified to perform the work in Alberta.
- 3.6 On completion of the Exterior Improvements, the Owner shall notify the City who shall inspect the Exterior Improvements and either confirm in writing that the project is complete or provide a Deficiency List.
- 3.7 If the City issues a Deficiency List, the Owner shall forthwith commence remediation of the deficiencies described in the Deficiency List.
- 3.8 The Owner shall complete the Exterior Improvements, including remediation of any deficiencies described in the Deficiency List, by no later than December 31, 2011 in order to be eligible for the Matching Grant.

#### 4. **PAYMENT OF MATCHING GRANT**

- 4.1 The City shall not be liable to pay the Owner the Matching Grant for work associated with the Exterior Improvements until:
- (a) the Owner has secured all required construction permits from the City's Sustainable Development department;
  - (b) the City has confirmed in writing that all the Exterior Improvements as set out in Section 3.1 are complete, including remediation of any deficiencies if the City had issued a Deficiency List; and
  - (c) **the Owner has provided to the City receipts satisfactory to the City for the Exterior Improvements work as set out in Section 3.1, such receipts evidencing payment for the Exterior Improvements work.**
- 4.2 After the requirements in Section 4.1 have been satisfied, the City shall pay the Owner the lesser of:
- (a) \$ 30,000; or
  - (b) 50% of the approved project costs as described in Schedule "A".

#### 5. **MAINTENANCE**

- 5.1 The Owner shall repair and maintain the Exterior Improvements in accordance with the standard of care applicable to owners of valuable real estate in a large city and shall, at minimum, provide regular cleaning and prompt repair of damage.
- 5.2 For a period of five (5) years following completion of the Exterior Improvements, the City may on reasonable notice to the Owner inspect the Building at the City's own expense to ensure that the Building is appropriately maintained.
- 5.3 If the Owner has failed to repair or maintain the Building in accordance with the standard of care set out in Section 5.1, within sixty (60) days of its inspection the City may prepare a written report setting out recommendations for remedial or maintenance work on the Building (the "Remedial Work").
- 5.4 The Owner shall promptly carry out the Remedial Work and notify the City on completion.
- 5.5 If the Owner fails to carry out the Remedial Work, the City in its sole discretion may require the Owner to repay up to fifty percent (50%) of the Matching Grant.** In that event, on receipt by the Owner of notice from the City of the requirement to repay a portion of the Matching Grant, that amount becomes a debt due and owing to the City and the Owner shall reimburse the City within thirty (30) days of the City issuing an invoice to the Owner.
- 5.6 The Owner shall be solely responsible for ensuring that the Building and any improvements thereto comply with all applicable federal, provincial and municipal laws, regulations, bylaws, codes and guidelines. The Owner acknowledges and agrees that nothing in this Agreement shall be deemed or construed as an obligation on or duty of the City to ensure compliance with this section or to advise the Owner of deficiencies in the Owner's compliance with this section.
- 5.7 The owner shall maintain the signage for the building and businesses in keeping with the original design of the project. No subsequent additions of vinyl backlit boxed lighting will be added.
- 5.8 In keeping with the window display guidelines, no additional signage will be added in windows or doors that contravenes the window display guidelines in order to maintain clear and transparent windows and inviting window displays. No window or door shutters or grills will be added to the windows.
- 5.9 Reduction of crime through design (CPTED) principles will be maintained through good area lighting, cleaned up landscaping and clear access to and around entrances.

## **6. DISPUTE RESOLUTION**

6.1 If a dispute arises between the City and the Owner as to the proper interpretation or effect of any of the terms or conditions of this Agreement, such dispute shall be resolved in accordance with the following procedure:

- (a) The party requesting that the matter in dispute be resolved in accordance with the provisions of this Clause 6 (the "**Disputing Party**") shall notify the other party (the "**Defending Party**") in writing of the details of the nature and extent of the dispute (the "**Arbitration Notice**").
- (b) Within **Seven (7) days** of the receipt of the Arbitration Notice, the Defending Party shall by written notice advise the Disputing Party that it disputes all matters referred to in the Arbitration Notice except those for which the Defending Party admits responsibility and proposes to take remedial action.
- (c) The terms of reference for arbitration shall be those areas of dispute referred to in the Arbitration Notice with respect to which the Defending Party has not admitted or proposes to take remedial action.
- (d) The City and the Owner shall within **Ten (10) days** after the date of receipt by the Disputing Party of the Defending Party's notice, appoint an arbitrator who shall be acceptable to both parties (the "**Arbitrator**"). In the event that the parties shall fail to appoint the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator.
- (e) Not later than **Twenty (20) days** after the appointment of the Arbitrator, the Arbitrator shall make his written decision, and shall give it to the parties immediately.
- (f) Unless the Arbitrator orders otherwise, the City and the Owner shall equally bear the costs of the arbitration.
- (g) The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts.
- (h) Except as modified by this Agreement, the provisions of the *Arbitration Act*, R.S.A. 2000, c. A-43, as amended, shall apply.

## **7. NOTICE**

7.1 Any notice given pursuant to the terms of this Agreement shall be sufficiently given: in case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

**General Manager, Sustainable Development**  
5th Floor,  
10250 - 101 Street NW

Edmonton, AB T5J 3P4

and also to:

**Corporate Services, Law Branch**

9th Floor Chancery Hall

#3 Sir Winston Churchill Square

Edmonton, AB T5J 2C3

in case of notice to the Owner, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

**Owner:**

Name of Building

Address

EDMONTON AB Postal Code

7.2 Notice given as aforesaid, if posted, other than during an actual or threatened postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which the notice is mailed. Any notice personally delivered or sent by telecopier or other form of facsimile transmission shall be deemed to have been given on the date of actual delivery.

7.3 Either party may, at any time, give notice in writing to the other of any change of address of the party giving such notice and, from and after giving of such notice, the address therein specified shall be deemed to be the address of the party for the giving of notice hereunder.

## **8. GENERAL PROVISIONS**

8.1 The parties shall execute and deliver to the other all such further assurances and documents which may reasonably be deemed necessary by the solicitors for either of them to give full force and effect to the Agreement. The Agreement is not intended to nullify, replace, circumvent, extend or modify any existing statutes, bylaws, policies or permit conditions, which govern development or construction within the City.

8.2 The failure of the City at any time to require performance by the Owner of any of the Owner's covenants will in no way affect the City's right to enforce such covenant, nor will the waiver by the City of the performance of any covenant be taken or be held to be a waiver of the performance of that covenant or any other covenant hereunder at any later time.

8.3 If any portion of this Agreement is found to be unenforceable, the remaining portions of this Agreement shall be given full force and effect.

8.4 No amendments to this Agreement are valid unless they are in writing and signed by both parties to this Agreement.

8.5 Time is of the essence in this Agreement.

8.6 Everything herein contained shall inure to the benefit of and be binding upon the parties hereto, their administrators, successors and assigns respectively.

IN WITNESS WHEREOF the parties have signed this Agreement on the day and year first above written.

A P P R O V E D

THE CITY OF EDMONTON  
as represented by the Manager of the  
Housing and Economic  
Sustainability, Sustainable  
Development

\_\_\_\_\_

As to Content

\_\_\_\_\_  
Housing and Economic Sustainability  
Sustainable Development

THE OWNER(S)

Witness/Seal\_\_\_\_\_

Per:\_\_\_\_\_  
(Print Name)

Per:\_\_\_\_\_  
(Signature)

Witness/Seal\_\_\_\_\_

Per:\_\_\_\_\_  
(Print Name)

Per:\_\_\_\_\_  
(Signature)

## *SCHEDULE "A"*