

**AGREEMENT**

**between**

**SALT LAKE COUNTY**

**and**

**[[NAME OF GRANTEE]]**

**for**

***Magna Main Street Façade Improvement Grant Program***

**\*\*\***

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Salt Lake County, a body corporate and politic of the State of Utah (the “Agency”) and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_ (“Grantee”). The Agency and Grantee may be referred to as the “Parties.”

**RECITALS**

WHEREAS, on July 15, 2022, the Agency issued Request for Applications No. \_\_\_\_\_ (the “RFA”), seeking potential recipients of the Magna Main Street Façade Improvement Grant.

WHEREAS, on \_\_\_\_\_, 2022, the Grantee submitted an application (the “Application”) in response to the Agency’s RFP.

WHEREAS, on \_\_\_\_\_, 2022, the Agency’s RFP selection committee announced its decision to award the contract to the Grantee.

**AGREEMENT**

THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Agreement, the Parties covenant and agree as follows:

**1. THE PROJECT**

1.1 The Grantee agrees to negotiate and enter into a construction contract with a third-party general contractor (the “Contractor”) to complete the façade restoration, remodeling or construction project described in the RFA, which is attached hereto as Exhibit 1 and incorporated herein by this reference, and the Application, which is attached hereto as Exhibit 2 and incorporated herein by this reference (the “Project”). The Contractor shall be selected by the Grantee from a list of general contractors that have been approved by the Agency to participate in the Magna Main Street Façade Improvement Grant Program. The contract between the Grantee and the Contractor shall hereafter be referred to as the “Construction Contract.”

1.2 The Parties understand and agree that the Agency will not be a party to the Construction Contract. The Agency shall have no liability, obligation or responsibility whatsoever to the Grantee or the Contractor with respect to the Construction Contract or the

Project except as provided in Section 2, below. The Agency does not guarantee or warrant the services, workmanship, materials or manner of construction provided by the Contractor, nor does it warrant any plans, profiles or specifications for the Project. Moreover, the Agency shall not be liable or responsible for: a) the performance or default of the Grantee or the Contractor, their designers or architects, any construction consultants, any subcontractors, or any other parties; b) the quality, design, construction, structural integrity, or health or safety features of any property or the Project; c) any failure by the Grantee or the Contractor to construct, complete, protect, or insure the Project; d) the payment to any subcontractor for its costs of labor, materials, or services; or e) the performance of any obligation of the Grantee or Contractor whatsoever. Nothing, including without limitation, any disbursement of funds or the approval of any document (including bids or final plans) or instrument or consent or waiver, shall be construed as a representation or warranty, express or implied, to any party by the Agency.

1.3 The Grantee agrees to obtain any permits required by the local permitting authority (including building permits and conditional use permits) and all other necessary approvals (including the written approval of any relevant property owners) before commencing work on the Project. Grantee shall also require the Contractor to: a) refrain from entering upon private property for any purpose without obtaining permission; b) preserve of all public property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and use every precaution necessary to prevent damage or injury thereto; c) use suitable precautions to prevent damage to the pipes, conduits, and other underground structures including public utilities; and d) protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. Grantee shall indemnify and save harmless the Agency and Salt Lake County from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against the Agency or Salt Lake County by reason of any omission or act of the Grantee or the Contractor, their agents or employees in connection with of the Project or in the guarding of it.

1.4 The Grantee shall require the Contractor to furnish a payment bond with good and sufficient surety or sureties for the protection of persons furnishing material or labor in connection with the Project under the Construction Contract.

1.5 The Grantee hereby certifies that the Project meets all the eligibility requirements set forth in the RFA. The Grantee agrees that it will maintain its own eligibility for participation in the Magna Main Street Façade Improvement Grant Program, as set forth in the RFA. The further Grantee agrees to maintain at least 50% of the total floor area of the property whereon the Project occurred for commercial use for a minimum of five years after completion of the Project.

## 2. GRANT FUNDS

2.1 The Agency shall pay an amount not to exceed \$ \_\_\_\_\_, on behalf of the Grantee, to complete the Project.

2.2 In the event the total cost of the Project exceeds the not-to-exceed amount set forth in subsection 2.1, the Grantee shall be responsible for securing sufficient funds from another source to pay such excess costs. The Grantee agrees that its duty to indemnify the Agency and Salt Lake County under Section 8 includes any and all actual or threatened claims,

losses, damages, injuries, and liabilities of, to, or by third parties, including the Contractor, its subcontractors, or the employees of either, for payment in excess of the not-to-exceed amount.

2.3 No grant funds shall be disbursed by the Agency under this Agreement until: a) the Grantee has selected a Contractor to complete the Project; b) the Grantee and Contractor have entered into the Construction Contract; c) the Agency has approved the final plans and the Contractor's bid for the Project; d) the Grantee has, by an amendment to this Agreement, designated the Contractor to receive the disbursements of grant funds under this Agreement on behalf of the Grantee; and e) the Grantee has submitted documentation to the Agency showing amounts due and owing by the Grantee to the Contractor for work related to the Project and the Construction Contract.

2.4 All payments under this Agreement shall be made—at the times and in the amounts due—directly to the Contractor upon the occurrence of all the events described in subsection 2.3. No grant funds shall be paid or disbursed directly to the Grantee.

2.5 The disbursement of grant funds or the approval of any document (including bids or final plans) by the Agency, shall not be construed as a waiver of the requirements or the payment limits set forth in this Section 2.

3. EFFECTIVE DATE/TERM

This Agreement shall become effective upon execution by both Parties and shall expire upon the earlier of: a) the date the Parties have performed all of the material obligations described herein; or b) December 31, 2030.

4. INDEPENDENT CONTRACTOR AND TAXES

4.1 The relationship of Agency and Grantee under this Agreement shall be that of an independent contractor status. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between Agency and Grantee of employer and employee, partners or joint venturers.

4.2 The Parties agree that the Agency's obligations under this Agreement are solely to the Grantee, and that the Grantee's obligations under this Agreement are solely to the Agency. This Agreement shall not confer any rights to third parties unless specifically and expressly provided.

4.3 No agent, employee or servant of Grantee or Agency is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Grantee and Agency shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. Grantee and Agency shall each make all commercially reasonable efforts to inform all persons with

whom they are involved in connection with this Agreement to be aware that Grantee is an independent contractor.

5. AGENCY REPRESENTATIVE

Agency hereby appoints \_\_\_\_\_ as Agency Representative to assist in the administrative management of this Agreement and to coordinate performance of Grantee under this Agreement.

6. GRANTEE REPRESENTATIVE

Grantee shall designate an employee and make known to the Agency the name and title of this employee within its organization who is authorized to act as Grantee's representative in its performance of this Agreement. Grantee Representative shall have the responsibility of working with the Agency to coordinate the performance of its obligations under this Agreement.

7. STANDARD OF PERFORMANCE/PROFESSIONALISM

Grantee acknowledges the standard of performance and professionalism required in the performance of this Agreement. Grantee agrees to perform its obligations under this Agreement with the level of professionalism expected in its industry/profession in the community. Further, Grantee, while performing its obligations under this Agreement, will conduct itself in such a manner that will promote the best interests of the Agency.

8. INDEMNIFICATION

The Grantee agrees to hold harmless and indemnify the Agency and Salt Lake County, their officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the Contractor, its subcontractors, or the employees of either, including claims for breach of contract, personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of: a) the Grantee's breach of this Agreement; b) any acts or omissions of or by the Grantee, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or c) the Grantee's breach of the Construction Contract; or d) any acts or omissions of or by the Grantee, its agents, representatives, officers, employees, or subcontractors in connection with the performance of the Construction Contract. The Grantee agrees that its duty to indemnify the Agency and Salt Lake County under this Agreement includes any sums expended by or assessed against the Agency or Salt Lake County to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of the Agency or Salt Lake County.

9. GOVERNMENTAL IMMUNITY

Agency is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), UTAH CODE §§ 63G-7-101 to -904 (2022). The parties agree that the Agency shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

10. NON-FUNDING CLAUSE.

10.1 Agency intends to request the appropriation of grant funds. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the Agency's

obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the Agency as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Grantee, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

10.2 If funds are not appropriated for a succeeding fiscal year to fund performance by Agency under this Agreement, Agency shall promptly notify Grantee of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

## 11. INSURANCE

11.1 Agency represents that it is self-insured pursuant to the provisions of Utah Code Ann. § 63G-7-801.

11.2 Grantee shall, at its sole cost and expense, secure and maintain during the term of this Agreement, including all renewal or additional terms, the following minimum insurance coverage:

### GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES.

A. Any insurance coverage required herein that is written on a “claims made” form rather than on an “occurrence” form shall: (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement; and (ii) be maintained for a period of at least three years following the end of the Term of this Agreement or contain a comparable “extended discovery” clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the Agency.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

- (i) Currently rated A- or better by A.M. Best Company; or
- (ii) Listed in the United States Treasury Department’s current *Listing of Approved Sureties (Department Circular 570)*, as amended.

C. The Grantee shall furnish certificates of insurance, acceptable to the Agency, verifying compliance with the insurance requirements herein prior to the execution of this Agreement. Grantee shall also provide updated certificates of insurance on or before the anniversary date of any of the evidenced policies throughout the life of this agreement.

D. The Grantee's insurance policies shall be primary and non-contributory to any other coverage available to the Agency. The workers’ compensation, general liability and auto liability policies shall be endorsed with a waiver of subrogation in favor of the Agency.

E. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, the Grantee shall provide a new certificate of insurance within thirty days after being notified thereof in writing by the Agency, certifying coverage in

compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the Agency.

F. All required policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty days prior written notice to the Agency in a manner approved by the County District Attorney.

G. In the event Grantee fails to maintain and keep in force any insurance policies as required herein Agency shall have the right at its sole discretion to obtain such coverage and reduce payments to Grantee for the costs of said insurance.

#### REQUIRED INSURANCE POLICIES.

Grantee agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

A. Workers' compensation and employer's liability insurance as required by the State of Utah unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, Grantee shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance on an occurrence form with the Agency as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate and \$2,000,000 products completed operations policy aggregate. The policy shall protect the Agency, Grantee, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Grantee's operations under this Agreement, whether performed by Grantee itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

C. If there will be any vehicle operations, commercial automobile liability insurance that provides coverage in the minimum amount of \$500,000 per occurrence per person / \$1,000,000 per accident / \$250,000 property damage OR single combined limit of \$1,000,000 with the Agency named as an additional insured. Inasmuch as the Grantee agrees not to operate a vehicle in connection with this Agreement, the Agency shall not require the Grantee to provide commercial automobile liability insurance.

#### 12. NO OFFICER OR EMPLOYEE INTEREST

It is understood and agreed that no officer or employee of the Agency has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Grantee or any member of their families shall serve on any Agency board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Grantee's operations, or authorizes funding or payments to Grantee.

#### 13. ETHICAL STANDARDS

Grantee represents that it has not: (a) provided an illegal gift to any Agency officer or employee, or former Agency officer or employee, or to any relative or business entity of an Agency officer or employee, or relative or business entity of a former Agency officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County Code of Ordinances § 2.07 (as in effect at any given time); or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any Agency officer or employee or former Agency officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

14. AFFIDAVITS

Upon the execution of this Agreement and if requested by the Agency, Grantee shall submit a sworn affidavit from each officer, employee, or agent of Grantee who has been in contact or communicated with any officer, agent or employee of Agency during the past calendar year concerning this Agreement. The affidavit shall contain the following statement:

I do solemnly swear that neither I, nor to the best of my knowledge, any member of my firm or company, have either directly or indirectly restrained free and competitive bidding by entering into any Agreement, participated in any collusion, or otherwise taken any action unauthorized by the governing body of the Agency, or in violation of applicable law.”

15. TERMINATION

The Agreement may be terminated by either Party for any reason upon not less than 30 days’ prior written notice to the other Party delivered in accordance with Section 23 stating its intention to terminate this Agreement. Upon such termination, the Agency shall satisfy all its remaining obligations up to the date of termination. Each Party agrees that any such termination will not be deemed a termination for default nor will it entitle the non-terminating Party to any rights or remedies provided by law or this Agreement for breach of contract or any other claim or cause of action.

16. COMPLIANCE WITH LAWS

Each party agrees to comply with all federal, state, and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Grantee certifies it is in compliance with Utah Code § 63G-27-201 and will remain in compliance for the duration of this Agreement. Any violation by Grantee of applicable law shall constitute an Event of Default under this Agreement and Grantee shall be liable for and hold the Agency harmless and indemnify the Agency pursuant to the terms of paragraph 9 above. Grantee is responsible, at its expense, to acquire, maintain, and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

17. NON-DISCRIMINATION

Grantee and any agent of Grantee agree that they shall comply with all federal, state and county laws, rules and regulations governing discrimination and they shall not discriminate in the

engagement or employment of any professional person or any other person qualified to perform under this Agreement.

18. NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS (“URS”)

Agency is a URS “participating employer.” Entering into an agreement with Agency may affect a URS retiree’s retirement benefits including, but not limited to, cancellation of the retiree’s “retirement allowance” due to “reemployment” with a “participating employer” pursuant to Utah Code Ch. 49-11. In addition, Grantee is required to immediately notify Agency if a retiree of URS is the Grantee; or an owner, operator, or principal of the Grantee. Grantee shall refer the URS retiree to the URS Retirement Department at 801-366-7770 or 800-695-4877 for all questions about post-retirement employment regulations.

19. LABOR REGULATIONS AND REQUIREMENTS

Grantee agrees to comply with all federal, state, and local labor laws. Grantee shall indemnify and hold Agency harmless against any and all claims for liability arising out of any violation of this paragraph or the laws referenced by Grantee, its agents or employees.

20. EMPLOYEE STATUS VERIFICATION SYSTEM

If this Agreement was the result of a Request for Proposals by Agency, Grantee shall register and participate in the Status Verification System before entering into a contract with the Agency as required by Utah Code § 63G-12-302. The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. § 1373 to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Grantee is individually responsible for verifying the employment status of only new employees who work under Grantee’s supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that Grantee or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. The contractor shall comply in all respects with the provisions of Utah Code § 63G-12-302. Grantee’s failure to so comply may result in the immediate termination of its contract with the Agency.

21. GOVERNMENT RECORDS ACCESS MANAGEMENT ACT

21.1 Grantee acknowledges that Agency is a governmental entity subject to the Utah Government Records Access and Management Act (“GRAMA”), UTAH CODE §§ 63G-2-101 to -901. As a result, Agency is required to disclose certain information and materials to the public, upon request. Grantee agrees to timely refer all requests for documents, materials and data in its possession relating to this Agreement and its performance to the Agency Representative for response by Agency.

21.2 Generally, any document submitted to Agency is considered a “public record” under GRAMA. Any person who provides to the Agency a record that the person believes should be protected under U.C.A §§ 63G-2-305(1) or (2) shall provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets



or commercial information that could reasonably be expected to result in unfair competitive injury.

22. ASSIGNMENT

Grantee shall not assign or transfer its duties of performance nor its rights under this Agreement without the prior written approval of Agency. Agency reserves the right to assert any claim or defense it may have against Grantee and against any assignee or successor-in-interest of Grantee.

23. NOTICES

All notices to be given under this Agreement shall be made in writing and shall be deemed given upon personal delivery, upon the next business day immediately following the day sent if sent by overnight express carrier, or upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the following addresses (or to such other address or addresses as shall be specified in any notice given):

AGENCY:	Contracts Administrator Salt Lake County 2001 South State, Suite, N-4500 Salt Lake City, Utah 84190-3100 Email: SLCo-Purchasing@slco.org
GRANTEE:	<i>[Name and Address]</i>

24. TIME

The parties stipulate that time is of the essence in the performance of this Agreement. The time set forth for performance in this Agreement shall be strictly followed and any default in performance according to the times required shall be a default of this Agreement and shall be just cause for immediate termination by Agency of this Agreement and pursuit of any remedy allowed by this Agreement and by law.

25. ENTIRE AGREEMENT

Agency and Grantee acknowledge and agree that this Agreement constitutes the entire integrated understanding between Agency and Grantee, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the parties to this Agreement except as set forth in this Agreement. This Agreement may not be amended, enlarged, modified or altered, except in writing, signed by both Parties.

26. GOVERNING LAW

It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

27. COUNTERPARTS

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

28. INTERPRETATION

28.1 The Agreement documents are complementary and what is called for by any one of them shall be as binding as if called for by all. In the event of any inconsistency between any of the provisions of the Agreement documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. This Agreement;
- B. Agency's Request for Proposals (Exhibit 1); and
- C. Grantee's Proposal in response to Agency's Request for Proposals (Exhibit 2).

28.2 Agency and Grantee agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be invalid, prohibited or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year recited above.

THE REDEVELOPMENT AGENCY OF  
SALT LAKE COUNTY:

\_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

Reviewed as to Form:

By: \_\_\_\_\_  
Deputy District Attorney

Date: \_\_\_\_\_

[[NAME OF GRANTEE]]:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The individual signing above hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of the Contractor by authority of law and that this Agreement is binding upon the Contractor. A person who makes a false representation of authority may be subject to criminal prosecution under Utah Code § 76-8-504.