

RESOLUTION NO. 68-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING A GRANT PURSUANT TO THE DOWNTOWN MESQUITE FAÇADE IMPROVEMENT PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MESQUITE; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A DOWNTOWN MESQUITE FAÇADE IMPROVEMENT PROGRAM GRANT AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH BILL METZGER FOR FAÇADE IMPROVEMENTS TO THE BUILDING LOCATED AT 111 WEST MAIN STREET, MESQUITE, TEXAS 75149; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Mesquite, Texas (“City”) created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas and established a Board of Directors for the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas (“Board”), by Ordinance No. 3257, approved by the City Council of the City (“City Council”) on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 (the “Act”); and

WHEREAS, in accordance with the Act, the original boundaries of the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, have been enlarged and the geographic area of the original zone has been increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, as created by City Ordinance No. 3257, as now and hereafter amended including, without limitation, as amended by Ordinance No. 4529 increasing the geographic area of the zone and enlarging the boundaries of the zone, is hereinafter collectively referred to as the “Zone”; and

WHEREAS, the City has a downtown area consisting in part of older buildings with historical significance and being the properties located within the boundaries outlined in red on the map attached hereto as **Exhibit “1”** and made a part hereof for all purposes (“Downtown Mesquite”); and

WHEREAS, Downtown Mesquite is located within the Zone; and

WHEREAS, the rehabilitation, enhancement, restoration and preservation of building facades in Downtown Mesquite will be a catalyst to: (i) attract new customers and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; and (iv) promote commercial revitalization of Downtown Mesquite; and

WHEREAS, on May 6, 2019, the Board established a façade improvement program pursuant to Section 311.010(h) of the Act and Chapter 380 of the Texas Local Government Code to make grants from the tax increment fund of the Zone to encourage the rehabilitation, enhancement, restoration and preservation of building facades in Downtown Mesquite (the “DM Façade Improvement Program”); and

WHEREAS, the Board has determined that the DM Façade Improvement Program will benefit the Zone by developing, expanding and stimulating business and commercial activity in the Zone and will further a purpose of the Zone, which is to provide economic development incentives; and

WHEREAS, on May 20, 2019, by Ordinance No. 4672, the City Council approved the DM Façade Improvement Program and determined that the DM Façade Improvement Program is in the public interest and that the investment of public resources in Downtown Mesquite through façade improvement grants pursuant to and in accordance with the terms, conditions and guidelines of the DM Façade Improvement Program is for a public purpose and will promote local economic development in the City and stimulate business and commercial activity in the City; and

WHEREAS, Bill Metzger (the “Grant Applicant”), has submitted an application (the “Application”), for a grant under the DM Façade Improvement Program for proposed improvements to the façade of the building located at 111 West Main Street, Mesquite, Texas 75149 (the “Building”); and

WHEREAS, the Grant Applicant’s proposed improvements to the façade of the Building (the “Project”) are more particularly described in **Exhibit “B”** to the Downtown Mesquite Façade Improvement Program Grant Agreement attached hereto as **Exhibit “2”** and made a part hereof for all purposes; and

WHEREAS, the Building is located within the Zone and within the boundaries of Downtown Mesquite and the Grant Applicant, the Building and the Project meet the terms, conditions, guidelines and eligibility requirements of the DM Façade Improvement Program; and

WHEREAS, on December 17, 2018, by Ordinance No. 4637, the City Council created the Mesquite Downtown Development Advisory Board (the “MDDAB”) to, among other things, make recommendations to the City Council regarding applications for incentive programs relating to Downtown Mesquite; and

WHEREAS, the MDDAB has reviewed the Application and has recommended the City Council approve the Application; and

WHEREAS, the City Council has been presented with the proposed Downtown Mesquite Façade Improvement Program Grant Agreement attached hereto as **Exhibit “2”** and made a part hereof for all purposes providing economic development incentives to the Grant Applicant for improvements to the façade of the Building (the “Grant Agreement”); and

WHEREAS, after holding a public hearing and upon consideration of the Application, the Grant Agreement, and all matters attendant and related thereto, the City Council finds that the Grant Agreement will assist in implementing the DM Façade Improvement Program and will promote local economic development and stimulate business and commercial activity in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the facts, recitations and findings contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the Grant Agreement will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Chapter 380 of the Texas Local Government Code.

SECTION 3. That the Grant Agreement is hereby approved and, subject to the terms, provisions, covenants, conditions and obligations of the Grant Agreement, the City Council approves a grant to the Grant Applicant under the DM Façade Improvement Program in the amount equal to the lesser of: (i) fifty percent (50%) of the costs and expenses incurred and paid by the Grant Applicant in connection with “Eligible Reimbursements” (as defined in the Grant Agreement) within the scope of the “Work” (as defined in the Grant Agreement); or (ii) \$8,001.50.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Grant Agreement and take all other actions and execute all other documents necessary to consummate the transactions contemplated by the Grant Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Grant Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) extend the time for the Grant Applicant to “Commence the Work” and/or “Complete the Work” (as defined in and as more fully set forth in the Grant Agreement); (ii) provide any notices required or permitted by the Grant Agreement; (iii) approve amendments to the Grant Agreement; (iv) approve or deny any matter in the Grant Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Grant Agreement that requires the consent of the City pursuant to the terms of the Grant Agreement shall require the approval of the City Council; (v) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Grant Agreement; (vi) exercise any rights and remedies available to the City under the Grant Agreement; and (vii) execute any extensions, notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of December 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT 2

**DOWNTOWN MESQUITE FAÇADE IMPROVEMENT PROGRAM
GRANT AGREEMENT**

(Chapter 380 Agreement)

DOWNTOWN MESQUITE FAÇADE IMPROVEMENT PROGRAM
GRANT AGREEMENT

(Chapter 380 Agreement)

This Downtown Mesquite Façade Improvement Program Grant Agreement (*"Agreement"*) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the *"City"*), and Bill Metzger (the *"Grant Recipient"*).

WITNESSETH:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the City created the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas and established a Board of Directors for the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas (*"TIRZ Board"*), by Ordinance No. 3257, approved by the City Council of the City (*"City Council"*) on September 21, 1998, to promote development or redevelopment in such reinvestment zone, in accordance with the Tax Increment Financing Act, V.T.C.A, Tax Code, Chapter 311 (the *"Act"*); and

WHEREAS, in accordance with the Act, the original boundaries of the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, have been enlarged and the geographic area of the original zone has been increased by Ordinance No. 4529, approved by the City Council on December 18, 2017; and

WHEREAS, the Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas, as created by Ordinance No. 3257, as now and hereafter amended including, without limitation, as amended by Ordinance No. 4529 increasing the geographic area of the zone and enlarging the boundaries of the zone, is hereinafter collectively referred to as the *"Zone"*; and

WHEREAS, the City has a downtown area consisting in part of older buildings with historical significance and being the properties located within the boundaries outlined in red on the map attached hereto as *Exhibit "A"* and made a part hereof for all purposes (*"Downtown Mesquite"*); and

WHEREAS, Downtown Mesquite is located within the Zone; and

WHEREAS, the rehabilitation, enhancement, restoration, and preservation of building facades in Downtown Mesquite will be a catalyst to: (i) attract new customers and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; and (iv) promote commercial revitalization of Downtown Mesquite; and

WHEREAS, on May 6, 2019, the TIRZ Board established a façade grant program to make grants to encourage the rehabilitation, enhancement, restoration and preservation of building facades in Downtown Mesquite (the *"DM Façade Improvement Program"*); and

WHEREAS, the TIRZ Board has determined that the DM Façade Improvement Program will benefit the Zone by developing, expanding and stimulating business and commercial activity in the Zone and will further a purpose of the Zone, which is to provide economic development incentives; and

WHEREAS, by Ordinance No. 4672, the City Council approved the DM Façade Improvement Program and determined that the DM Façade Improvement Program is in the public interest and that the investment of public resources in Downtown Mesquite through façade improvement grants pursuant to and in accordance with the terms, conditions and guidelines of the DM Façade Improvement Program is for a public purpose and will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens; and

WHEREAS, a copy of the DM Façade Improvement Program is on file in the office of the City Secretary of the City and is incorporated herein by reference for all purposes; and

WHEREAS, the Grant Recipient is the owner or tenant of a building located at 111 W. Main St., Mesquite, Texas 75149 (the “Building”); and

WHEREAS, the Building is located in Downtown Mesquite and is within the Zone; and

WHEREAS, on the 12th day of October 2020, the Grant Recipient submitted an application for a grant under the DM Façade Improvement Program (the “Grant Application”); and

WHEREAS, the Grant Recipient has agreed to rehabilitate, enhance, restore and/or preserve the façade of the Building by repairing, removing, replacing, restoring, constructing and/or installing improvements to the façade of the Building as more particularly described in *Exhibit “B”* attached hereto and made a part hereof for all purposes (the “*Work*”); and

WHEREAS, the City Council has determined that the project described in the Grant Application and the Work comply with the terms, conditions and guidelines of the DM Façade Improvement Program and authorizes this Agreement as part of the DM Façade Improvement Program; and

WHEREAS, the Grant Recipient desires to participate in the DM Façade Improvement Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the DM Façade Improvement Program and that the performance of Grant Recipient’s obligations set forth in this Agreement will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals ("**Recitals**") are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used in this Agreement, the following terms shall have the following meanings, to-wit:

"Act" shall have the meaning set forth in the Recitals of this Agreement.

"Agreement" shall mean this agreement together with all exhibits attached hereto.

"Building" shall have the meaning set forth in the Recitals of this Agreement.

"Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed by the Grant Recipient certifying to the City: (i) that the Grant Recipient has complied with all of the terms, provisions and guidelines of the DM Façade Improvement Program; (ii) that all Grant Reimbursement Conditions Precedent have been satisfied and are then continuing; and (iii) that no Grant Recipient Default then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Grant Recipient Default under the terms of this Agreement.

"City" shall mean the City of Mesquite, a Texas home rule municipality.

"City Default" shall have the meaning set forth in Article IX, Section 2 of this Agreement.

"City Council" shall mean the City Council of the City.

"City Manager" shall mean the City Manager of the City.

"Commence the Work" shall mean: (i) that the Grant Recipient has obtained all City approvals, building permits and sign permits required in connection with the Work; (ii) the Grant Recipient's contractor(s) have ordered all materials necessary to "Complete the Work" (as hereinafter defined); and (iii) the Grant Recipient's contractors(s) have commenced construction or performance of the Work.

"Complete the Work" shall mean: (i) that the Work has been substantially completed in accordance with all plans, approvals, building permits and sign permits issued in connection with the Work; (ii) the Work complies with the project as described in the Grant Application; (iii) the Work has been inspected by the Downtown Development Manager and the City's building and code inspectors; (iv) the Downtown Development Manager has confirmed in writing that the Work complies with the project as described in

the Grant Application; and (v) the City's building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work and with all City building codes, ordinances and regulations.

"DM Façade Improvement Program" shall have the meaning set forth in the Recitals of this Agreement.

"Downtown Development Manager" shall mean the Downtown Development Manager of the City.

"Downtown Mesquite" shall mean only those properties located within the boundaries outlined in red on the map attached hereto as **Exhibit "A"** and made a part hereof for all purposes.

"Effective Date" shall mean the date the Grant Recipient and the City execute this Agreement if both the Grant Recipient and the City execute this Agreement on the same date. If the Grant Recipient and the City execute this Agreement on different dates, any reference to the "Effective Date" shall mean the later of the two dates this Agreement is executed by the Grant Recipient and the City.

"Eligible Reimbursements" shall mean costs and expenses incurred in connection with the following improvements and fees:

- Signs (new, repairs, replacement, removal);
- Awnings;
- Paint;
- Removal/replacement of inappropriate or incompatible exterior finishes or materials;
- Door/window/trim replacement or repair;
- Brick/stone/masonry;
- Structural improvements to the façade;
- Exterior lighting attached to the façade;
- Building permit fees, sign permit fees and inspection fees; and
- Architect, engineering and survey fees.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of the Grant Recipient's existence as a going business, insolvency, appointment of a receiver for any part of the Grant Recipient's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by the Grant Recipient, or the involuntary commencement of any proceeding against the Grant Recipient under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

"Façade Grant" shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

"Grant Application" shall have the meaning set forth in the Recitals of this Agreement.

"Grant Approval Date" shall mean December 21, 2020.

"Grant Recipient" shall have the meaning set forth in the initial paragraph of this Agreement.

“Grant Recipient Default” shall have the meaning set forth in Article IX, Section 1, of this Agreement.

“Grant Reimbursement Conditions Precedent” shall mean the conditions precedent to the payment of the Façade Grant more fully set forth in Article VII of this Agreement.

“Indemnitee” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Maintenance Period” shall mean the period commencing with the date the City’s building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work and continuing for three (3) years thereafter, or, if the Grant Recipient is a tenant with a remaining lease term of less than three (3) years, the **“Maintenance Period”** shall mean the period commencing with the date the City’s building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work and continuing thereafter for the remainder of the Grant Recipient’s lease term.

“Maximum Grant Amount” shall mean EIGHT THOUSAND ONE AND 50/100 DOLLARS (\$8,001.50).

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Non-Eligible Reimbursements” shall mean costs and expenses incurred in connection with the following:

- Routine maintenance;
- Interior improvements;
- Heating, air-conditioning, plumbing, electrical;
- Landscaping;
- Parking lots and/or paving;
- Sidewalks;
- Equipment;
- Legal and all other professional fees except for the professional fees specifically listed in this DM Façade Improvement Program as Eligible Reimbursements;
- Financing costs; and
- Sums paid to any contractor, laborer or supplier owned directly or indirectly by the Grant Recipient, building owner, or family member of the Grant Recipient or building owner.

“Parties” shall mean both the Grant Recipient and the City.

“Party” shall mean either the Grant Recipient or the City.

“Person” or **“Persons”** shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability Grant Recipient(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Reimbursement Request” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Secretary of the Interior’s Standards for Rehabilitation” shall mean the following guidelines for rehabilitating properties as established by the United States Secretary of the Interior:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“TIRZ Board” shall have the meaning set forth in the Recitals of this Agreement.

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Grant Recipient, are not lawfully admitted for permanent residence to the United States or are not authorized

under law to be employed in that manner in the United States; and (ii) such other persons as are included within the definition of “Undocumented Worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced, or any other applicable law or regulation.

“**Work**” shall have the meaning set forth in the Recitals of this Agreement.

“**Work Commencement Date**” shall mean March 21, 2021, provided, however, if the Grant Recipient is unable for good cause to Commence the Work within ninety (90) days from the Grant Approval Date and requests an extension of such date in writing to the City Manager prior to the expiration of such ninety (90) days, the City Manager may, in the City Manager’s sole discretion, extend the time for the Grant Recipient to Commence the Work up to a maximum of sixty (60) days if the City Manager, in the City Manager’s sole discretion, determines that the Grant Recipient’s failure to timely Commence the Work is for good cause and in such event the “**Work Commencement Date**” shall be the date as extended in writing by the City Manager.

“**Work Completion Date**” shall mean June 19, 2021, provided, however, if the Grant Recipient is unable for good cause to Complete the Work within one hundred eighty (180) days from the Grant Approval Date and requests an extension of such date in writing to the City Manager prior to the expiration of such one hundred eighty (180) days, the City Manager may, in the City Manager’s sole discretion, extend the time for the Grant Recipient to Complete the Work up to a maximum of ninety (90) days if the City Manager, in the City Manager’s sole discretion, determines that the Grant Recipient’s failure to timely Complete the Work is for good cause and in such event the “**Work Completion Date**” shall be the date as extended in writing by the City Manager.

“**Zone**” shall have the meaning set forth in the Recitals of this Agreement.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the DM Façade Improvement Program and that the Grant Recipient’s performance of its covenants and obligations as set forth herein will promote local economic development in the City, stimulate business and commercial activity in the City, and benefit the City and its citizens.

ARTICLE IV

Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) four (4) years after the Effective Date; or (ii) the date this Agreement is terminated by the City or the Grant Recipient pursuant to a right to terminate as expressly provided herein (the “*Term*”).

ARTICLE V

Grant Recipient’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Grant Recipient hereby certifies that the Grant Recipient and each branch, division, and department of the Grant Recipient does not employ any Undocumented Workers and the Grant Recipient hereby covenants and agrees that the Grant Recipient and each branch, division and department of the Grant Recipient will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Grant Recipient further hereby covenants and agrees to provide the City with written notice of any conviction of the Grant Recipient, or any branch, division or department of the Grant Recipient, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Facade Grant in Event of Conviction for Employing Undocumented Workers. If, after receiving any Facade Grant under the terms of this Agreement, the Grant Recipient, or a branch, division or department of the Grant Recipient, is convicted of a violation under 8 U.S.C. §1324a (f), the Grant Recipient shall pay to the City, not later than the 120th day after the date the City notifies the Grant Recipient of the violation, an amount equal to the total Facade Grant previously paid by the City to the Grant Recipient under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the Facade Grant being recaptured from the date the Facade Grant was paid by the City to the Grant Recipient until the date repaid by the Grant Recipient to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Facade Grants. The City shall have no obligation to pay the Facade Grant to the Grant Recipient if the Grant Recipient, or any branch, division or department of the Grant Recipient is convicted of a violation under 8 U.S.C. §1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Grant Recipient to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Grant Recipient is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Grant Recipient, or by a person with whom the Grant Recipient contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Grant Recipient and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Grant Recipient's Obligations

In consideration of the City entering into this Agreement providing for a grant to the Grant Recipient under the terms and conditions set forth herein, the Grant Recipient represents, covenants and agrees as follows, to-wit:

1. Compliance with DM Façade Improvement Program. The Grant Recipient shall comply with all of the terms, conditions and guidelines of the DM Façade Improvement Program;

2. Match. The Grant Recipient shall match the amount of the Façade Grant dollar for dollar in cash or cash equivalent and Grant Recipient agrees that such match shall not include any in-kind donations, "sweat equity" contributions, or costs and expenses incurred or paid in connection with any Non-Eligible Reimbursements;

3. Permits. The Grant Recipient shall obtain all applicable permits and approvals required by the City for the Work prior to the commencement of any Work;

4. Commencement of the Work. The Grant Recipient shall Commence the Work on or before the Work Commencement Date;

5. Completion of the Work. The Grant Recipient shall Complete the Work on or before the Work Completion Date in a good and workmanlike manner in accordance with all plans approved by the City and all City building permits and sign permits issued in connection with the Work and in compliance with all applicable City building codes, ordinances and regulations;

6. Payment for the Work. The Grant Recipient shall pay all architects, engineers, contractors, suppliers, laborers and all other costs and expenses in connection with the Work in full before requesting reimbursement from the City;

7. Inspections. The Grant Recipient shall allow the Downtown Development Manager and the City's building and code inspectors to access the Building to conduct inspection(s) of the Work;

8. Non-Alteration of the Work. Grant Recipient shall not make any changes in the Work without the prior written consent of the City;

9. Non-Alteration of Façade, Awning or Sign Improvements. Grant Recipient shall not alter any façade, sign or awning improvements completed as part of the Work within one (1) year after the date the City's building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work or, if the Grant Recipient is a tenant with a remaining lease term of less than one (1) year, during the remainder of the Grant Recipient's lease term, without the prior written consent of the City;

10. Maintenance of Sign, Awning and Façade Improvements. During the Maintenance Period, Grant Recipient shall, at Grant Recipient's cost and expense, maintain all sign, awning and façade improvements completed as part of the Work in the same or better condition existing as of the commencement of the Maintenance Period;

11. Repair of Partial Damage to Sign, Awning or Façade Improvements. During the Maintenance Period, the Grant Recipient shall commence the repair of any partial damage to any sign, awning or façade improvements completed as part of the Work within sixty (60) days after the damage and complete such repairs within one hundred and twenty (120) days after the damage;

12. Replacement of Sign, Awning or Façade Improvements. During the Maintenance Period, the Grant Recipient shall commence the replacement of any sign, awning or façade improvements completed as part of the Work that are totally destroyed within ninety (90) days after the destruction and shall complete such replacement within one hundred and eighty (180) days after the destruction;

13. Insurance. During the Maintenance Period, Grant Recipient shall maintain casualty insurance covering the full replacement cost of all signs, awnings and façade improvements completed as part of the Work and shall provide insurance certificates evidencing such coverage to the City within thirty (30) days after request by the City;

14. Compliance with Laws. Grant Recipient shall comply with all applicable federal, state and local laws pertaining to the use of grant funds;

15. Timely Payment of Fees. The Grant Recipient shall timely pay all building permit fees, sign permit fees and other development fees in connection with the Work to the City as and when due;

16. Timely Payment of Taxes. The Grant Recipient shall timely pay all ad valorem taxes due and payable by the Grant Recipient to the City as and when due;

17. Performance of Agreement. The Grant Recipient shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Grant Recipient under the terms of this Agreement;

18. Performance of Other Agreements. The Grant Recipient shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Grant Recipient under the terms of all other agreements now or hereafter existing between the Grant Recipient and the City; and

19. No Goods or Services. The Grant Recipient agrees the performance of any or all obligations of the Grant Recipient under the terms of this Agreement does not constitute the provision of goods or services to the City.

ARTICLE VII

Grant Reimbursement Conditions Precedent

The Grant Recipient and the City hereby expressly acknowledge and agree that the City's payment of the Façade Grant to the Grant Recipient as set forth in Article VIII shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (collectively the "**Grant Reimbursement Conditions Precedent**"), to-wit:

1. Reimbursement Request. The Grant Recipient shall have submitted to the City's Director of Finance at 757 N. Galloway, Mesquite, Texas 75149, within sixty (60) days after the date the City's building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work, a written request for reimbursement of the lesser of: (a) 50% of the costs and expenses incurred and paid by the Grant Recipient in connection with Eligible Reimbursements within the scope of the Work; and (b) the amount of the approved grant (the "**Reimbursement Request**");

2. Compliance Documentation. The Grant Recipient shall have submitted the following documentation to the City with the Reimbursement Request:

- (i) a Certificate of Compliance dated effective as of the date of the Reimbursement Request duly executed by the Grant Recipient;
- (ii) a detailed description of all completed Work, together with an itemized list of all costs and expenses incurred and paid by the Grant Recipient in connection with the Work differentiating between Eligible Reimbursements and Non-Eligible Reimbursements;
- (iii) proof of payment by the Grant Recipient of all costs and expenses in connection with the Work differentiating between Eligible Reimbursements and Non-Eligible Reimbursements including, without limitation, copies of paid invoices, the front and back of cleared checks, bank statements and/or paid credit card receipts and a bills' paid affidavit executed by the Grant Recipient's general contractor;
- (iv) "after" photographs of the exterior of the Building showing the Work that has been completed; and
- (v) a completed W-9 and all other forms required by the City's Finance Department for payment of the Façade Grant;

3. Compliance with DM Façade Improvement Program. The Grant Recipient shall have complied with all of the terms, conditions and guidelines of the DM Façade Improvement Program;

4. Match. The Grant Recipient shall have matched the amount of the Façade Grant dollar for dollar in cash or cash equivalent, provided evidence reasonably satisfactory to the City of such match and such match shall not include any in-kind donations, "sweat equity" contributions or Non-Eligible Reimbursements;

5. Payment for the Work. The Grant Recipient shall have paid all architects, engineers, contractors, suppliers, laborers and all other costs and expenses in connection with the Work in full before submitting the Reimbursement Request;

6. Compliance with Grant Recipient Obligations. The Grant Recipient shall have timely complied with all covenants and obligations of the Grant Recipient pursuant to Article VI, Sections 3, 4, 5, 8, 14, 15 and 16 of this Agreement;

7. Inspections. The Grant Recipient shall have permitted the Downtown Development Manager and the City's building and code inspectors to access the Building to conduct inspection(s) of the Work and (i) the Downtown Development Manager has confirmed in writing that the Work complies with the project as described in the Grant Application; and (ii) the City's building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work and with all City building codes, ordinances and regulations;

8. Non-Alteration of the Work. The Grant Recipient shall not have made any changes in the Work without the prior written consent of the City;

9. Timely Payment of Fees. The Grant Recipient shall have timely paid all building permit fees, sign permit fees and other development fees in connection with the Work to the City as and when due;

10. Timely Payment of Taxes, Judgments and Fines. The Grant Recipient shall not owe any debts to the City that are past due including, without limitation, any past due property taxes, judgments or fines for code violations;

11. Performance of this Agreement. The Grant Recipient shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Grant Recipient under the terms of this Agreement and no Grant Recipient Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Grant Recipient Default under the terms of this Agreement;

12. Performance of other Agreements. The Grant Recipient shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Grant Recipient under the terms of all other agreement(s) now and hereafter existing between the Grant Recipient and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Grant Recipient under the terms of such agreement(s); and

13. No Conviction for Undocumented Workers. As of the date of the Reimbursement Request, and at all times during the Term of this Agreement prior to the Reimbursement Request, the Grant Recipient shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Grant Recipient at the Building or at any other branch, division or department of the Grant Recipient.

ARTICLE VIII

Economic Development Incentive Facade Grant

1. Facade Grant. In consideration of and subject to the Grant Recipient's compliance with all of the terms, provisions, covenants, conditions and obligations of this Agreement, the City shall, as an economic development incentive, provide to the Grant Recipient a facade grant in the amount equal to the lesser of (i) fifty percent (50%) of the costs and expenses incurred and paid by the Grant Recipient in connection with Eligible Reimbursements within the scope of the Work; or (ii) the Maximum Grant Amount (the "**Facade Grant**").

2. Payment of Façade Grant. Provided all Grant Reimbursement Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Façade Grant to the Grant Recipient in a single payment reimbursement within sixty (60) days after the later of the following dates: (i) the date the Grant Recipient timely submits a Reimbursement Request; and (ii) the date the Grant Recipient has satisfied all Grant Reimbursement Conditions Precedent.

3. Funds Available for Payment of Facade Grant. The Facade Grant is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. The Facade Grant shall be payable only from the tax increment fund of the Zone as authorized by the Act, Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380, and shall be subject to the availability of grant funds and the approval of funds for such purpose in the fiscal year for which the Façade Grant is approved. This Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Grant Recipient's Default. Grant Recipient shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Grant Recipient; (ii) upon any assignment of this Agreement by the Grant Recipient in violation of Article X, Section 3 of this Agreement; or (iii) upon the failure of the Grant Recipient to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Grant Recipient under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the City to the Grant Recipient (each a "**Grant Recipient Default**").

2. City Default. City shall be in default of this Agreement upon the failure of the City to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the Grant Recipient to the City (each a "**City Default**").

3. City Remedy for Grant Recipient's Deviation from the Work. Any deviation from the Work without the prior written consent of the City may, in the City's sole discretion, result in the forfeiture by the Grant Recipient of the Façade Grant and in such event the City shall have the right to terminate this Agreement by written notice to the Grant Recipient and neither Party hereto shall have any further rights or obligations under this Agreement except for those that expressly survive the termination of this Agreement.

4. City Remedy for Grant Recipient's Alteration of Façade, Awning or Sign Work. If Grant Recipient alters any façade, sign or awning improvements completed as part of the Work within one (1) year after the date the City's building and code inspectors have confirmed in writing that the Work complies with all plans, approvals, building permits and sign permits issued in connection with the Work or, if the Grant Recipient is a tenant with a remaining lease term of less than one (1) year, during the remainder of the Grant Recipient's lease term, without the prior written consent of the City, the Grant Recipient shall repay to the City all or a portion of the Façade Grant as determined by the City in the City's sole discretion, within thirty (30) days after written demand by the City. In the event the Grant Recipient fails to timely pay the sum demanded by the City pursuant to this Article IX, Section 4, the Grant Recipient shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Grant Recipient, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sum.

5. City Remedy for Grant Recipient's Failure to Maintain, Repair or Replace Improvements. If Grant Recipient fails to timely comply with the Grant Recipient's covenants to maintain, repair and/or replace improvements completed as part of the Work as more fully set forth in Article VI, Sections 10, 11 or 12 of this Agreement, the Grant Recipient shall repay to the City all or a portion of the Façade Grant as determined by the City in the City's sole discretion, within thirty (30) days after written demand by the City. In the event the Grant Recipient fails to timely pay the sum demanded by the City pursuant to this Article IX, Section 5, the Grant Recipient shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Grant Recipient, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sum.

6. City's Additional Remedies. In addition to the remedies set forth in Article IX, Sections 3, 4 and 5 above, in the event of a Grant Recipient Default, the City shall have the right to terminate this Agreement by written notice to the Grant Recipient in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement and the City shall further have the right to exercise any and/or all other rights and remedies available to the City under this Agreement and/or pursuant to the laws of the State of Texas, provided, however, the City shall not be entitled to the recovery of attorney's fees [except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code] or consequential, punitive, exemplary or speculative damages.

7. Grant Recipient Remedy. Upon the occurrence of a City Default, the Grant Recipient shall have the right to terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. The City and the Grant Recipient acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant

to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed the amount of the Façade Grant;
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Grant Recipient shall not recover attorney's fees; and
- (iv) the Grant Recipient shall not be entitled to specific performance or injunctive relief against the City.

8. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Indemnity. THE GRANT RECIPIENT HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS THE CITY, THE ZONE, THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "**INDEMNITEE**") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, LAWSUITS AND LIABILITIES OF EVERY KIND AND CHARACTER INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF LITIGATION, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY ACT OR OMISSION OF THE GRANT RECIPIENT OR THE GRANT RECIPIENT'S OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND THE CONTRACTORS' AND SUBCONTRACTORS' EMPLOYEES, IN CONNECTION WITH THE DESIGN, CONSTRUCTION, WORKMANSHIP AND PERFORMANCE OF THE WORK DESCRIBED IN THE GRANT APPLICATION (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATH OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS ARTICLE X, SECTION 1 SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. This indemnity shall expressly survive the expiration or termination of this Agreement.

2. Project Promotion. The Grant Recipient hereby authorizes the City to promote the project described in the Grant Application including, without limitation, displaying a sign at the Building during and after construction and performance of the Work identifying participation in the DM Façade Improvement Program and using photographs, illustrations and descriptions relating to the project in the City's printed promotional materials, press releases and websites.

3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding

anything contained herein to the contrary, this Agreement and the rights and obligations of the Grant Recipient hereunder may not be assigned or transferred by the Grant Recipient to any Person without the prior written consent of the City which may be withheld in the City's sole discretion. In the event the Grant Recipient is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Grant Recipient or the sale, transfer or assignment of a controlling interest in the membership interests of the Grant Recipient shall constitute an assignment of this Agreement and the failure of the Grant Recipient to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Grant Recipient. In the event the Grant Recipient is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Grant Recipient's general or managing partner shall constitute an assignment of this Agreement and the failure of the Grant Recipient to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Grant Recipient. Furthermore, neither the Grant Recipient nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Grant Recipient or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall apply only to the specific transaction authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Grant Recipient and in the event the Grant Recipient attempts to assign this Agreement in violation of this Article X, Section 3, the City shall have the right to terminate this Agreement by written notice to the Grant Recipient.

4. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

GRANT RECIPIENT: Bill Metzger
111 W. Main St.
Mesquite, TX 75149

CITY: City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
Attention: City Manager

With a copy to: Downtown Development Manager
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

5. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Grant Recipient to the City regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

6. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

7. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Grant Recipient. Oral revisions, modifications or amendments are not permitted.

8. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

9. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

10. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

11. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE GRANT RECIPIENT AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

12. Attorney's Fees. In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall not be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.

13. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

14. No Partnership or Joint Venture. Nothing contained in the Grant Application or this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint enterprise between the Parties. The Grant Recipient is not the agent or servant of the City. The doctrine of respondent superior shall not apply between the City and the Grant Applicant, or between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of the Grant Recipient.

15. No Acceleration. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

16. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to create any third-party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.

17. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

18. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

19. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

20. Authority. The Grant Recipient represents that the Grant Recipient has the full power and authority to enter into and fulfill the obligations under this Agreement and that the Person signing this Agreement on behalf of the Grant Recipient has the authority to sign this Agreement on behalf of the Grant Recipient.

21. Usury Savings Clause. The Grant Recipient and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Grant Recipient are hereby limited by the provisions of this Article X, Section 21 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 21 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Grant Recipient or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

22. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

23. Form 1295 Certificate. The Grant Recipient agrees that if V.T.C.A, Government Code, §2252.908 applies to the Grant Recipient, the Grant Recipient will go online with the Texas Ethics Commission to complete a Form 1295 Certificate and will print and execute the completed certificate in such form as is required by V.T.C.A., Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and completed Form 1295 Certificate.

24. Anti-Boycott Verification. The Grant Recipient hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other “affiliates” (as hereinafter defined), if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with V.T.C.A., Government Code, §2270.002, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Grant Recipient understands “affiliate” for purposes of this Article X, Section 24 means an entity that controls, is controlled by, or is under common control with the Grant Recipient and exists to make a profit.

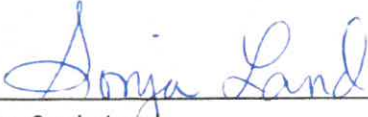
25. Iran, Sudan and Foreign Terrorist Organizations. The Grant Recipient represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other “affiliates” (as hereinafter defined) is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under V.T.C.A., Government Code, §2252.153 or §2270.0201, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with V.T.C.A., Government Code, §2252.152, and to the extent such Section does not contravene applicable Federal law and excludes the Grant Recipient and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Grant Recipient understands “affiliate” for purposes of this Article X, Section 25 means any entity that controls, is controlled by, or is under common control with the Grant Recipient and exists to make a profit.


26. Execution of Agreement by Parties. If this Agreement is not executed by both the Grant Recipient and the City within thirty (30) days after the Grant Approval Date, this Agreement will be null and void and of no force or effect.

27. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

By: 
Name: Sonja Land
Title: City Secretary
Date: 1.11.2021

CITY OF MESQUITE,
a Texas home rule municipality

Name: Cliff Keheley
Title: City Manager
Date: 1-11-2021

APPROVED AS TO FORM:


City Attorney or Designee


GRANT RECIPIENT:

Name: Bill Metzger
1-8-2021
Date

EXHIBIT "A"
Boundary Map of Downtown Mesquite

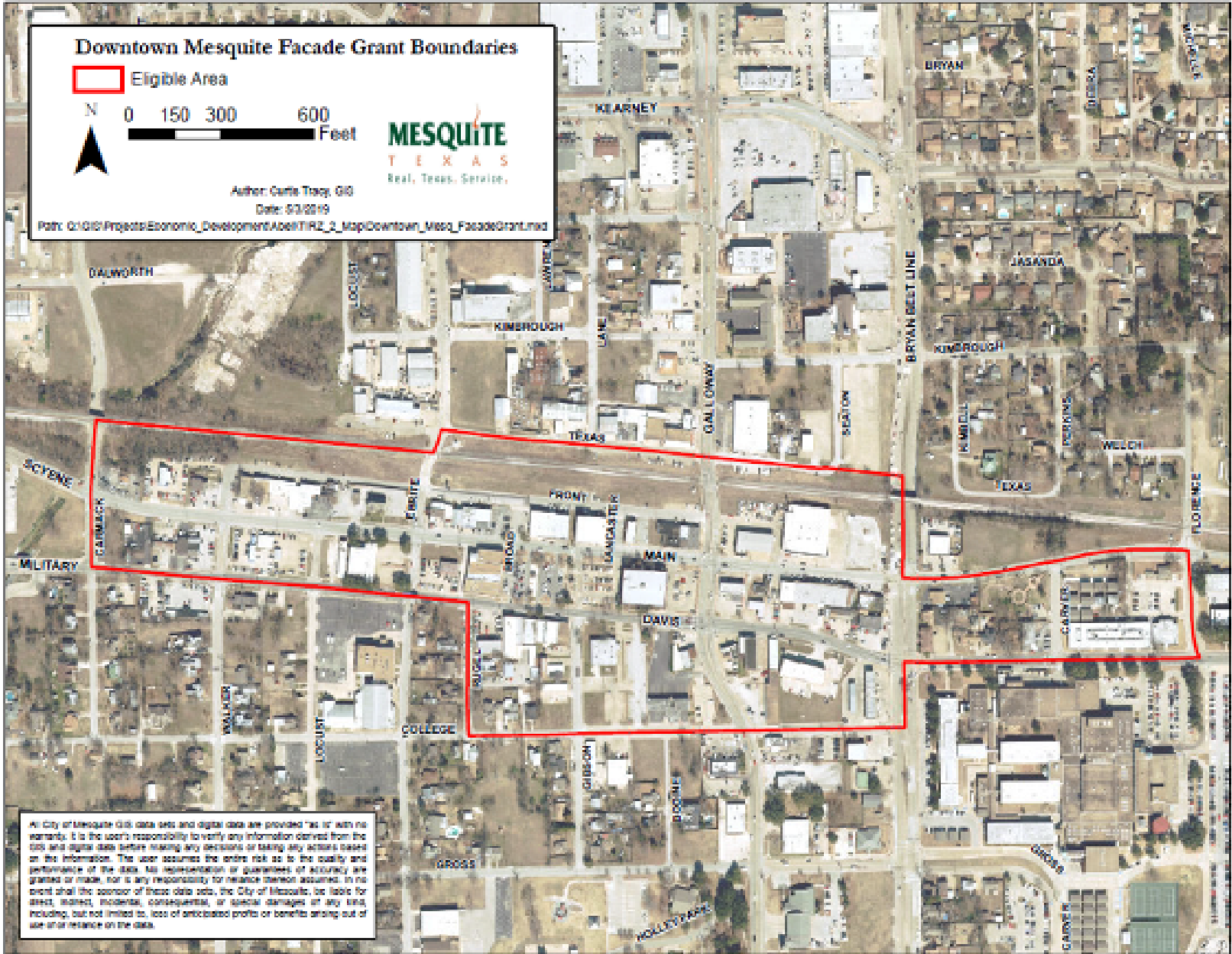


EXHIBIT "B"

Description of the Work

Work	Quote
Signage	\$1,617
Electrical	\$8,900
Paint	\$2,780
Awning	\$2,706
Total	\$16,003