

RESOLUTION NO. 34-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN A GRANT AGREEMENT WITH METRO TO ASSIST THE CITY IN ESTABLISHING A FAÇADE IMPROVEMENT PROGRAM.

WHEREAS, the City has an interest in encouraging new investment in the downtown area in ways that support positive economic development, strengthen the retail core, and bring additional civic pride to the community; and

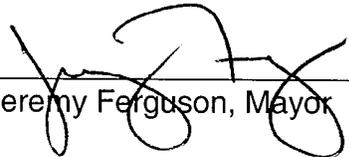
WHEREAS, the City intends to establish a Façade Improvement program to provide matching public funds to encourage investments that improve the aesthetic appearance of facades and storefronts in the historic downtown core; and

WHEREAS, Metro, through its Development Center, is willing to contribute \$25,000 on a one-time-only basis to assist the City in this effort;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Milwaukie that the City Manager is authorized to sign a grant agreement with Metro to assist the City in establishing a façade improvement program, the grant agreement is attached as Exhibit A.

Introduced and adopted by the City Council on March 15, 2011.

This resolution is effective on March 15, 2011.



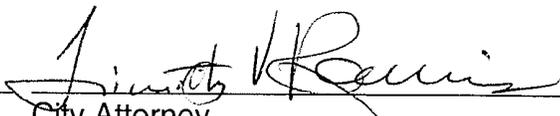
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

EXHIBIT A

 **METRO**
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Facade Improvements Pilot Program Grant Agreement

Metro Grant Agreement No. _____
FACADE IMPROVEMENTS PILOT PROGRAM GRANT AGREEMENT
DEVELOPMENT OPPORTUNITY FUND

This Facade Improvements Pilot Program Grant Agreement (the "Grant Agreement"), is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and the City of Milwaukie, whose address 10722 SE Main Street, Milwaukie, OR 97222, hereinafter referred to as the "Grant Recipient." In consideration for the mutual covenants and promises contained herein, including monetary and other consideration, hereby acknowledged, the parties hereby agree as follows:

ARTICLE I GRANT AWARD

Metro agrees to pay Grant Recipient up to \$25,000.00 (the "Grant Funds") for design, implementation, administration and reporting of the Facade Improvements Pilot Program set forth in the Project Scope attached as Exhibit "A." In return, the Grant Recipient agrees to use Grant Funds solely for the purposes of performing the Facade Improvements Pilot Program described in the Project Scope, and promises to fully perform and complete the Project Scope set forth therein.

ARTICLE II TERM OF GRANT AGREEMENT

This Grant Agreement is effective the last date of signature affixed below (the "Effective Date"). The term of this Grant Agreement shall be for a period commencing upon the Effective Date through and including June 30, 2012, unless earlier terminated by Metro as provided herein, or extended by mutual written agreement of Metro and Grant Recipient.

ARTICLE III PAYMENT SCHEDULE

Metro shall remit the Grant Funds to the Grant Recipient in the amounts and on the schedule set forth in Exhibit "A." Grant Recipient acknowledges and agrees that Metro has final and sole discretion to determine whether Grant Recipient has fully and successfully completed the Project Scope.

ARTICLE IV NO CONSTRUCTION CONTRACT, PARTNERSHIP, EMPLOYER STATUS

Notwithstanding any extra-contractual statements or inferences to the contrary (if any), Metro neither intends nor accepts any direct involvement in these projects, any supervisory responsibilities with respect to the projects or services funded, or any sponsorship or responsibilities for care and custody of the tangible products which result from the Façade Improvements Program. Grant Recipient is solely responsible for its performance under the Grant Agreement and the quality of its work, for obtaining and maintaining all licenses and certifications necessary to carry out its obligations hereunder, for payment of any fees, taxes, royalties or other expenses necessary to complete the work except as otherwise specified in Exhibit "A," and for meeting all other legal requirements in carrying out its obligations hereunder. Metro has established this grant with the sole purpose of encouraging the establishment of the City of Milwaukie

Facade Improvements Pilot Program Grant Agreement
City of Milwaukie

Metro Grant Agreement No. _____
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Facade Improvements Pilot Program Grant Agreement

Facade Improvements Pilot Program. Nothing in this Grant Agreement or the acts of the parties resulting therefrom shall be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, employer to employee, partnership, joint venture or any other fiduciary association between Metro and Grant Recipient. Metro is not the operator or contractor for the Facade Improvements Pilot Program set forth in the Project Scope. This Grant Agreement is not intended to be a contract that provides for the construction of façade improvements, either in whole or in part. The rights and duties of any contractors are the subject of a separate contract or contracts to which Metro is not a party.

ARTICLE V
LIABILITY AND INDEMNITY

Grant Recipient is an independent contractor and assumes full responsibility for the performance of the Project Scope and the content of its work and performance of Grant Recipient's labor. Subject to the limitations of the Oregon Tort claims Act and the Oregon Constitution, Grant Recipient agrees to indemnify and defend Metro and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its negligence in the performance of this Grant Agreement. Grant Recipient is solely responsible for paying Grant Recipient's subcontractors, suppliers and employees. Nothing in this Grant Agreement shall create any contractual relationship between any subcontractor, supplier or employee and Metro.

ARTICLE VI
TERMINATION

Metro may unilaterally terminate this Grant Agreement upon giving Grant Recipient seven (7) days' written notice. In the event of termination, Grant Recipient shall be entitled to payment for eligible costs of façade improvement grants awards approved prior to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against the Grant Recipient.

ARTICLE VII
ATTORNEY'S FEES

In the event of any litigation concerning this Grant Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE VIII
SUBCONTRACTORS

All contracts between Grant Recipient and subcontractors related to this Grant Agreement shall include the terms and conditions of this Grant Agreement. Grant Recipient shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE IX**DEFAULT REMEDIES - RIGHT TO WITHHOLD PAYMENTS**

If Grant Recipient fails or refuses to fulfill any obligation or carry out any provision of this Grant Agreement within the time allowed for said performance, Metro shall give written notice of said failure of compliance, specifically describing the failure to perform. Grant Recipient shall cure any failure to perform within thirty (30) days of receipt of the notice given by Metro; provided that, if the failure cannot reasonably be cured within such 30-day period, Grant Recipient shall not be deemed in default if Grant Recipient undertakes curative action within such 30-day period and diligently pursues the same to completion. Metro may extend the period for cure for ninety (90) days, or a longer reasonable period of time, at its sole discretion. If Metro determines not to grant said extension, Metro shall declare a Default. Upon Default, Metro may choose to both withhold future payments and pursue specific performance of this Grant Agreement, or terminate it. Metro shall have the right to withhold from payments due Grant Recipient such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grant Recipient's performance or failure to perform under this Grant Agreement or the failure of Grant Recipient to make proper payment to any suppliers or subcontractors. If Metro notifies Grant Recipient in writing that it elects to terminate this Grant Agreement, then this Grant Agreement shall terminate effective upon receipt by Grant Recipient of said notice. Upon termination, Grant Recipient shall promptly return all disbursements of the Grant Funds to Metro, with interest from the date of disbursement at the statutory rate set forth in ORS 82.010. Grant Recipient shall pay damages to Metro, in an amount equal to Metro's out-of-pocket costs, which shall include all consulting fees paid and due diligence reports produced for Metro by third parties to pursue and arrange this transaction, and reasonable reimbursement for Metro staff time in an amount not to exceed \$5,000.00.

ARTICLE X**SAFETY**

If services of any nature are to be performed pursuant to this Grant Agreement, Grant Recipient shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XI**INTEGRATION OF GRANT AGREEMENT DOCUMENTS**

This Grant Agreement and attachments hereto represents the entire and integrated Agreement between Metro and Grant Recipient and superseded all prior negotiations, representations or agreements, either written or oral. This Grant Agreement may be amended only by written instrument signed by both Metro and Grant Recipient. The law of the state of Oregon shall govern the construction and interpretation of this Grant Agreement.

ARTICLE XII

MISCELLANEOUS TERMS

- A. **Assignment.** Grant Recipient shall not assign any rights or obligations under or arising from this Grant Agreement without prior written consent from Metro.
- B. **Waiver.** No waiver made by Metro with respect to the performance, or manner or time thereof, of any obligation of Grant Recipient shall be considered a waiver of any of Metro's other rights hereunder. No waiver by Metro of any provision of this Grant Agreement, or of any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.
- C. **Choice of Law and Forum.** This Grant Agreement shall be interpreted under the laws of the State of Oregon. Any litigation between the parties arising under or regarding this Grant Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court in Portland, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon in Portland, Oregon.
- D. **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Grant Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- E. **No Special or Consequential Damages.** Metro makes no warranties, express or implied, regarding the Façade Improvements or their potential benefits. Grant Recipient expressly waives any claims against Metro regarding the Façade Improvements Pilot Program scope, practices and features. Metro's liability under this Grant Agreement shall be limited to payment of the Grant Funds, to the extent that Grantee has fully and completely complied with all terms and conditions of this Grant Agreement. In no event shall Metro be liable for and Grant Recipient specifically releases Metro from any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Grant Agreement or for any failure of performance related to the Project Scope or this Grant Agreement, however caused, whether or not arising from Metro's sole, joint or concurrent negligence.
- F. **Access to Records.** Metro shall have access to the books, documents, papers and records of Grant Recipient that are directly related to this Grant Agreement, the Grant Funds provided hereunder, or the Project Scope for the purpose of making audits and examinations. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Grant Agreement, the Grant Funds or the Project for a minimum of three (3) years, or such longer period as may be required by other provisions of this Grant Agreement or applicable law, following termination or expiration of this Grant Agreement. If there are unresolved audit questions at the end of the 3-year period, Grantee shall retain the records until the questions are resolved. Grant Recipient shall document the expenditure of all Grant Funds disbursed by Metro under this Grant Agreement. Grant Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit Metro to verify how the Grant Funds were expended.

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CITY OF MILWAUKIE

METRO

Signature

Signature

Bill Monahan
City Manager

Robin McArthur
Director, Planning and Development

Date

Date

Metro Grant Agreement No. _____

EXHIBIT "A"
PROJECT SCOPE

PROJECT TITLE: Milwaukie Façade Improvements Program
GRANT RECIPIENT: City of Milwaukie, 10722 SE Main Street, Milwaukie, OR 97222
PROJECT COORDINATOR: Alex Campbell, Resource Development Specialist
GRANT AGREEMENT TERMS: Upon Grant Agreement execution through June 30, 2012
MAXIMUM GRANT AMOUNT: \$25,000.00

PROJECT SCOPE

The City of Milwaukie ("and/or "Grant Recipient") will use Metro's grant award to design, implement, administer and evaluate a facade improvements pilot program in historic downtown Milwaukie consistent with the following program objectives:

1. Design a pilot program based upon best practices and lessons learned from other local jurisdictions that have successfully implemented façade improvement programs.
2. Educate, inspire and provide financial incentives for owners and/or tenants to make facade improvements that enhance downtown and pay-back through increased sales and/or rents.
3. Extend benefits to the public and surrounding businesses by funding exterior façade improvements visible from the sidewalk/street.
4. Benefit multiple business entities by limiting the maximum grant amounts per building, per owner/tenant, and per time period.
5. Directly leverage private investment requiring businesses to match the public contribution, dollar per dollar.
6. Catalyze other private investments by concentrating façade improvements geographically in Milwaukie's core downtown area to establish the impression the area is improving.
7. Support quality design by requiring compliance with the City's design recommendations, as well as applicable design requirements.
8. Minimize administrative costs by designing streamlined processes that minimize paperwork and avoid redundancy.
9. Control financial risk by releasing grant funds on a reimbursement basis only.
10. Routinely monitor program processes and results, take corrective actions to make program improvements during the pilot period, and present a summary program evaluation report, with staff recommendations regarding program continuation, to the Milwaukie City Council.

PROGRAM DESIGN

The City of Milwaukie shall have lead responsibility for designing a Façade Improvements Program consistent with the program objectives stated above, and subject to Metro approval. City staff will secure concurrence from Metro regarding the eligibility criteria, program procedures and other requirements before requesting Milwaukie City Council approval or implementing the program design. City staff will routinely assess the strengths and weaknesses of program design and operation, and may periodically decide to recommend program adjustments. City staff will secure concurrence from Metro staff before requesting City Council approval of or implementing changes to the program.

GRANT APPROVALS

The City of Milwaukie shall have full responsibility for review and approval of Façade Improvement Program grant requests within the approved program design. Metro's funding commitment is to reimburse the City for up to 50% of the expense of grant payments, provided the City has adhered to the approved program design.

PROJECT ACKNOWLEDGEMENT

The City of Milwaukie is responsible for requiring the grant program participants to acknowledge Metro's support for each project. Metro's name shall be included in project signage during construction and any promotional materials where the City's grant program is mentioned.

PROGRAM ADMINISTRATION

The City of Milwaukie shall have full responsibility for program and financial administration.

PROJECT REPORTING AND EVALUATION

The Grant Recipient's project coordinator will provide quarterly program activity and financial reports during the term of the grant, in a form acceptable to Metro.

APPROVED PROJECT COSTS

Metro shall reimburse the City for up to 50% of the funds it disburses within the approved program guidelines for Façade Improvement grants, not to exceed the \$25,000 total grant amount. City expenditures for program administration are not eligible for reimbursement. Metro funding is exclusively for the façade improvement expenses eligible under the approved program guidelines.



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PAYMENT

Metro will provide grant funding to the City of Milwaukie within 30 days of receipt of an approved invoice. Grant Recipient's billing statements will include appropriate documentation such as the grant award, description of improvements and costs, before and after photographs, invoices and receipts. Attention: Meganne Steele, Development Center, 600 NE Grand Avenue, Portland, Oregon, 97232-2736.