

# **Grant Agreement between the Ann Arbor Downtown Development Authority (“DDA”) and Ann Arbor Housing Development Corporation (AAHDC)**

This agreement (the “Agreement”) is made between the **DDA** (the “Grantor”) and **AAHDC** (the “Grantee”). Collectively, the signatories are referred to as the Parties, and individually, as a Party.

WHEREAS, the Grantor intends to award a grant in the amount of Six Hundred and Fifty Thousand Dollars (\$650,000) to the Grantee for the purpose of installing a fire suppression at Baker Commons - an AAHDC property at 106 Packard Street - as described in Grant Request attached as Exhibit A; and

WHEREAS, the Parties understand and acknowledge by executing this Agreement the Grantor will not provide additional funding beyond what is written in the preceding paragraph and any project cost overruns or other expenses not expressly agreed in writing prior to the expenses being incurred will not be a liability on the part of the Grantor and will be the responsibility of the Grantee to pay; and

WHEREAS, the Parties have agreed to enter into this Agreement to provide the rights, remedies, and responsibilities of each Party, the Parties hereby agree as follows:

1. **Completion of the Project.** The Grantee shall design and execute the project pursuant to the terms of this Agreement.

2. **Representations and Warranties.**

a. The Grantor hereby represents and warrants that it has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required on the part of the Grantor and its officers, directors and shareholders for the authorization, execution and delivery of this Agreement and the performance by the Grantor of its obligations hereunder have been taken. This Agreement, when executed and delivered, shall constitute the legal and binding obligation of the Grantor in accordance with its terms, subject to (a) laws and court rules respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect generally relating to or affecting creditors’ rights.

b. The Grantee hereby represents and warrants that has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required on the part of the Grantee and its officers, and agents for the authorization, execution and delivery of this Agreement and the performance by the Grantee of its obligations hereunder

have been taken. This Agreement when executed and delivered, shall constitute the legal and binding obligations of the Grantee in accordance with its terms, subject to (a) laws or court rules respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect generally relating to or affecting creditors' rights.

c. The Grantee has not been debarred by either the federal, state or any local unit of government from receiving state or federal funds, nor is it currently the subject of any debarment or similar proceedings. The Grantee has no record of violation of any federal, state or local government's procurement, contracting or ethics rules. The Grantee certifies that it and its principals are not presently suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

d. The Grantee represents and warrants that it has disclosed in writing any existing conflicts of interest involving the Grantor or any contractor or subcontractor of the Grantee which will perform any work on the project, and that it will disclose in writing to the Grantor any such conflicts that arise during the term of this Agreement. The Grantee represents and warrants that it has not, and will not, offer to the Grantor or any of the Grantor's employees any unlawful inducement, prohibited benefit, or improper incentive to enter into this or any other agreement with the Grantor.

e. The Grantee shall ensure the project is completed in a diligent manner in accordance with industry practices, by individuals of suitable training and skill. The Grantee will ensure that all contractors, employees or other persons completing the Project have, and will maintain throughout the term of this Agreement, all licenses, permits, authorizations and approvals necessary for the lawful conduct of its business.

f. The Grantee acknowledges that the Grantor is providing funds for the costs of the project up to the amount of the grant award. The Grantor is not responsible for any Costs of the project in excess of the amount of the grant award. The Grantee represents that it has sufficient available funds to pay any remaining costs of the project and will use such funds to complete the project.

g. The Grantee agrees that it will not pass-through funding to any other organization or entity without first obtaining express written consent from the Grantor.

3. **Costs of the Project.** The Grantor shall provide funding at the time when this Agreement is fully executed to the Grantee for the Cost of the Project on a schedule as described in Schedule attached as Exhibit B, and in an amount up to the amount of the reward. Any remaining amount of the costs of the project not covered by the award shall be the responsibility of the Grantee. The Grantee shall submit invoices and supporting documentation to the Grantor from Grantee suppliers and contractors sufficient to support that the funds have been spent in

accordance with the Grantee's project application, including documentation certifying that all subcontractors and suppliers have been paid.

4. **Effective Date.** This Agreement shall become effective on the date (the "Effective Date") of execution by authorized representatives of the parties.

5. **Term and Termination.** This Agreement shall commence on the Effective Date and shall terminate, unless extended by mutual written agreement of the parties, when the project is properly and fully completed, and the Grantor has remitted final payment to the Grantee for the costs of the project as set forth in this Agreement.

6. **Termination for Cause.** Either Party may immediately, upon written notice to the other Party, terminate this Agreement for cause if the other Party is in breach of any provision hereof or is in breach of any provision of applicable law.

7. **Return of Funds.** In the event the Grantee is in breach of any provision of the Agreement or law, or misuses the award in any way, it shall immediately, upon written demand from the Grantor, repay all of the award previously received pursuant to this Agreement, except to any extent the Grantor determines that any portion of the award may be retained by the Grantee for services rendered.

8. **Limitation of Liability; No Special Damages.** Except as otherwise provided herein, neither Party shall be liable to the other for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement. Nothing in this Agreement shall be construed as a waiver of governmental immunity, where applicable.

9. **Notice of Claims.** If either Party becomes aware of any injury, damages, claim, demand, action, legal proceeding, or other loss that may involve the other Party, whether directly or indirectly, it shall inform the other Party in writing within fifteen (15) business days of becoming aware of the injury, damages, claim, demand, action, legal proceeding, or other loss.

10. **Indemnification.** To the extent permitted by law, the Grantee shall indemnify and hold harmless the Grantor and the Grantor's employees, agents, directors and officers against all liability arising out of, or resulting from any third Party claim, suit, action or proceeding related to the award, this Agreement or the project and arising out of or resulting from (i) the failure of the Grantee or any of its agents, employees or contractors, to comply with the terms of this Agreement or any Applicable Law; (ii) the failure of the Grantee or any of its agents, employees or contractors, to pay any of its contractors, suppliers, or subcontractors; or (iii) any injury, loss, claim or damages arising from the actions or omissions of the Grantee or an agent, employee, director, officer or contractor of the Grantee.

11. **Cooperation.** The Parties hereby agree to cooperate with each other to the fullest extent possible to effectuate the purposes of this Agreement and to assist each other with the satisfaction of any obligations of such Party under Applicable Laws.

12. **Informal Dispute Resolution.** The Grantor and the Grantee will attempt to settle any dispute through informal good faith negotiations. The dispute will be escalated to appropriate senior level management of the Parties, if necessary. Except as otherwise set forth herein, if such managers are unable to resolve the dispute within fifteen (15) business days of referral (or any other mutually agreed upon timeframe), the Parties will seek resolution of such disputes pursuant to Paragraph 14.

13. **Jurisdiction and Venue.** In the event the informal dispute resolution process described in Paragraph 13 is unsuccessful, any legal, equitable, or other action must be initiated in the courts of Washtenaw County, Michigan. The Grantee waives any objections, such as lack of personal jurisdiction or *forum non conveniens* to suit filed against it in Washtenaw County.

14. **Amendment.** This Agreement can be modified or amended only by written agreement executed and approved by both Parties in the same manner as required for the initial effectiveness of the Agreement.

15. **Heirs, Successors, and Assigns; Transferability.** All provisions of this Agreement are and will be binding on the heirs, executors, administrators, personal representatives, successors and assigns of the Grantor and the Grantee. This Agreement may not be transferred to any third party except by written agreement of the Parties.

16. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

17. **Governing Law.** The laws of the State of Michigan will control in the construction and enforcement of this Agreement.

18. **No Third-Party Beneficiaries.** Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the Parties to this Agreement or their respective successors or permitted assignees any legal or equitable right, remedy or claim under or in respect of this Agreement, it being the intention of the Parties that this Agreement and the transactions contemplated hereby shall be for the sole and exclusive benefit of such Parties or such successors and permitted assignees. The Grantee's contractors are not considered the Grantee's assignees and are not third-party beneficiaries.

19. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any related to the subject matter of this Agreement. It is further understood and agreed that the

terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

20. **Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by either electronic mail with confirmation of receipt or by first class mail. All such written notices shall be addressed as provided below. All correspondence shall be considered delivered to a Party as of the date that the electronic confirmation of receipt is received (if notice is provided by electronic mail) or when notice is deposited with sufficient postage with the United State Postal Service. A notice of termination shall be sent via electronic mail with confirmation of receipt or via certified mail to the address specified below. Notices shall be mailed to the following addresses:

If to the Grantor:

Ann Arbor DDA  
150 S Fifth Street  
Ann Arbor, MI 48104  
mthomson@a2dda.org

If to Grantee:

Ann Arbor Housing Development Corporation  
2000 S. Industrial  
Ann Arbor, MI 48104  
jhall@a2gov.org

21. **Force Majeure.** Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, epidemics, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, that prevent the claiming Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes.

Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

24. **Rules of Construction.** The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

25. **Right of Inspection.** Within ten (10) calendar days of providing notice, the Grantor and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where work is being performed under this Agreement or in any location where records are kept related to the Project, and examine, copy, and audit all records related to this Agreement in order to ensure that Federal funds are used solely for authorized activities. The Grantee must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded.

This Agreement is executed by the Parties on the dates indicated below, and each signatory warrants that he or she has the authority to execute this Agreement in behalf of said party.

**ANN ARBOR DOWNTOWN DEVELOPMENT  
AUTHORITY**

Dated: \_\_\_\_\_

\_\_\_\_\_

By:

Title:

**ANN ARBOR HOUSING DEVELOPMENT  
CORPORATION**

Dated: \_\_\_\_\_

\_\_\_\_\_

By:

Title:

**GRANTEE FUNDING REQUEST**

**Exhibit A (see following page)**



## **SCHEDULE OF PAYMENT**

### **Exhibit B**

Following execution of this Agreement payment shall be made by the Grantor on the following basis:

- 50% paid upon commencement of the project
- 50% paid on a reimbursement basis.

The Grantee shall provide reimbursement requests to the Grantor along with proof of actual costs of the project including vendor invoices, etc. as appropriate.

The Grantor shall process payment to the Grantee within 30 days after receipt of each reimbursement request. Total reimbursement shall not exceed the amount specified within this Agreement.

The Grantee shall designate "FINAL" on the last reimbursement request submitted.