

**SPONSOR OF LINCOLN
GRANT AGREEMENT**

This Grant Agreement (AGREEMENT) is made and entered into by and between the City of Lincoln, Nebraska, a municipal corporation, on behalf of the Urban Development Department, hereinafter called "Sponsor"; and the Downtown Civic Ventures, Inc., a Nebraska nonprofit organization, hereinafter called "Grantee".

WITNESSETH:

WHEREAS, the parties are required or authorized to expend funds for the following services by the provisions of *Neb. Rev. Stat. § 18-2104*, as amended; and

WHEREAS, Downtown Lincoln is the heart of our community, a unique common ground for all Lincoln and Lancaster County residents;

WHEREAS, At the same time, Downtown Lincoln belongs to all resident of Nebraska because "downtown" is synonymous with the University of Nebraska, state government, and the State Capital building. This state-wide ownership has strong economic implications, and for that reason, as well as the desire to maintain downtown as the "heart" of the community, the City of Lincoln and Lancaster County, Nebraska, adopted a Comprehensive Plan that ensures that the downtown remains a special place.

WHEREAS, the Sponsor seeks to preserve the vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce;

WHEREAS, the Sponsor, through its Urban Development Department Downtown Retail Implementation Project, desires to increase downtown business and activity recruitment and retention efforts to fulfill the goals and strategies of the Lincoln Center Redevelopment Plan, as amended;

WHEREAS, the Grantee's organization was formed to further the economic development and social welfare of downtown Lincoln, Nebraska and it environs by protecting, increasing, facilitating, developing, coordinating, improving and promoting commercial, educational, residential, cultural, entertainment, tourism, civic, financial land uses, business and buildings; and

WHEREAS, the Grantee desires to support the City of Lincoln and downtown Lincoln, Nebraska and its environs by providing opportunities for retail recruitment and retention programs;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows by the parties hereto:

A. Purpose. The purpose of this Agreement is to provide one time grant of funds in the amount of \$100,000 from the Fast Forward Fund to provide for operational expenditures of the Grantee in implementing and maintaining a retail recruitment and retention program.

B. Grant Award.

The Sponsor and Grantee agree to the following grant award and obligations:

- (1) The goal of the Grantee's program is to create or expand a total of nine new retail businesses in three years.
- (2) The type of retail incentivized would included dry goods, white table restaurants with an emphasis on businesses that would be a draw to downtown shopping. The following types of businesses are specifically excluded from the program:
 - (a) A business whose predominant operation is the retail sale of alcoholic beverages for off-premises consumption or any such business that has an unreasonable pattern of lawful disturbances of liquor law violations.
 - (b) A business whose predominate operation is the retail sale of tobacco products or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations.
 - (c) Any business operated or held out to the public as sexually oriented business including any business in sexually oriented entertainment or performance, demonstration, film, video book or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunications, internet, or similar service; sexually oriented massage parlor; or escort service.
 - (d) Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, excluding the retail sale of lottery tickets as permitted by applicable law.
- (3) The target area for the program would be generally between 7th and 17th Street, and "O" and "R" Street, Lincoln, Nebraska.

- (4) The programs goal is to remove blight in the target area by incenting and encouraging the location of new and/or expanded retail into vacant and underutilized commercial space in the target area.

C. The Grantee further agrees to the following obligations and restrictions:

- (1) To use the Sponsor's funding solely for the Grantee's operations over a period of two years, to include staff support for Grantee, marketing and public improvements. No Sponsor funds shall be used as subsidies or as financial incentives.
- (2) The Grantee shall obtain matching funds of \$250,000 prior to receiving Sponsor funds and to raise an additional \$150,000 over the next two years. Such funds from non-sponsor sources may be used as subsidies and financial incentives provided directly to participating retail businesses or property owners. No Sponsor funds shall be used as subsidies or financial incentives.

D. Payment of Grant.

- (1) Upon proof of matching funds in the amount of \$250,000, the Sponsor will pay the Grantee the entire grant award of \$100,000; and
- (2) The Grantee will provide a final grant report of the funds raised and expenditures made; and

E. Term. The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than two year after the date of execution by the Sponsor.

F. Termination for Breach. Sponsor has the right to terminate this Agreement if Grantee fails to perform requirements of this Agreement. Termination rights under this section may be exercised only after Sponsor notifies Grantee of the failure to perform in writing upon giving thirty (30) days written notice. Upon termination, Grantee to return any unused grand funds immediately to the Sponsor.

G. Prohibited Interests. Grantee covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of the requirements of this Agreement. Grantee further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained under this Agreement.

H. Obligation to Third Parties. Sponsor shall not be obligated or liable hereunder to any party other than Grantee, and only to the Grantee within the limits and terms of this Agreement.

I. Termination for Lack of Funding. Sponsor may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of Sponsor. In the event of unavailability of funds to pay any amounts due under this Agreement, Sponsor shall immediately notify Grantee and this Agreement shall terminate without penalty or expense to Sponsor. Upon termination, Sponsor shall pay Grantee for any approved and documented grant services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

J. Independent Contractor. The parties are interested only in the results produced by this Agreement. Each party has sole and exclusive charge and control of the manner and means of performance. Each party shall perform as an independent contractor and it is expressly understood that neither the party nor any of its staff are employees of the other party and, thus they are not entitled to any of the other party's benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

K. Insurance.

- (1) Grantee shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Grantee and the Sponsor, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Grantee and Grantee's employees and/or volunteers, or those directly or indirectly employed by Grantee. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
 - (a) All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 - (b) Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 - (c) Personal Injury Damage - \$1,000,000 each Occurrence; and
 - (d) Contractual Liability - \$1,000,000 each Occurrence; and
 - (e) Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
 - (f) Medical Expenses (any one person) - \$10,000.
- (2) The following shall be provided and attached to this Agreement by Grantee:
 - (a) A Certificate of Insurance for its General Liability Insurance. The Sponsor (City of Lincoln) shall be specifically named as an additional insured on the General Liability Insurance. Grantee may present

evidence of equivalent self-insurance in place of a certificate of insurance for General Liability Insurance. The Sponsor shall be treated as an additional insured as if Grantee possessed General Liability Insurance; and

- (b) Proof of Workers' Compensation Insurance, where appropriate.
- (3) Grantee is required to provide the Sponsor with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement. If Grantee obtains General Liability Insurance during the term of this Agreement, it shall add the Sponsor as an additional insured and provide a copy of the Certificate of Insurance naming the Sponsor as an additional insured.

L. Indemnification. To the fullest extent permitted by law, Grantee shall indemnify, defend and hold harmless the Sponsor, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Grantee, or anyone for whose acts any of them may be liable. This section will not require Grantee to indemnify or hold harmless the Sponsor for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the Sponsor. The parties do not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. This section survives any termination of this Agreement.

M. Fair Employment. The Grantee shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and *Neb. Rev. Stat. § 48-1122*, as amended.

N. Fair Labor Standards. The Grantee shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

O. Nebraska Law. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of laws.

P. Integration, Amendments, Assignment. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are

hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

Q. Severability & Savings Clause. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

R. Capacity. The undersigned person representing the parties do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the party to this Agreement.

IN WITNESS WHEREOF, the Sponsor and Grantee do hereby execute this Agreement.



Terry Uland
Downtown Civic Ventures, Inc.
206 South 13th, Suite 101
Lincoln, Nebraska 68508

Chris Beutler
Mayor of Lincoln
555 South 10th Street
Lincoln, Nebraska 68508

3-26-2009

Date of Signature

Date of Execution