

Small Business Façade and Site Improvement Program Agreement

Chic ‘N Bull, Inc. d/b/a Beefy King

THIS AGREEMENT is made and entered into by and between the **City of Orlando, Florida**, a Florida municipal corporation (hereinafter referred to as the “City”), the principle address of which is Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801, **Chic ‘N Bull, Inc. d/b/a Beefy King**, whose principal address is 424 N. Bumby Ave., Orlando, Florida 32803 (hereinafter referred to as the “Applicant”), and Roland Smith, Sandra Lee Smith, James S. Woodrow, Jr., and Shannon Lee Woodrow, whose mailing address is 3229 Inverness Ct., Orlando, Florida 32806 (hereinafter referred to as the “Property Owners”) (hereinafter singularly referred to by their respective designation contained hereinabove, or as the “party”, and collectively as the “parties”).

WHEREAS, in an effort to accomplish the objectives of the Economic Development Department, the Orlando City Council has approved and established the Small Business Façade and Site Improvement Program (hereinafter referred to as the “Program”), which provides certain City financial assistance in the form of an interest free deferred loan to be used by the Applicant as described in the Program description attached hereto as Exhibit “A”; and

WHEREAS, the Applicant is eligible for City financial assistance pursuant to the Program, and the City desires to provide such assistance; and

WHEREAS, the City has found and declared that the Program serves an important and significant public purpose and is necessary and proper in order to promote the health, safety, and welfare of the public, and the Orlando City Council hereby finds and determines that Applicant’s proposal likewise is in the best interest of the public health, safety, and welfare, and serves a valid public purpose; and

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Applicant agree as follows:

1. **Incorporation of Recitals.** The recitals set forth hereinabove are true and correct and are incorporated herein as if fully set out below.

2. **Loan.** Subject to the Applicant complying with all terms and conditions contained in this Agreement, including any and all exhibits hereto, the City shall award to the Applicant an amount not to exceed the sum of Twelve Thousand, Five Hundred Dollars and No Cents (\$12,500.00) for the sole purpose of acquiring the goods and services for alterations and improvements to property located at **424 N. Bumby Ave., Orlando, Florida 32803** (“the Property”) as set forth in the Project Description in Exhibit “B”. The City shall loan to the Applicant an amount not to exceed fifty percent (50%) of the total project cost. The Applicant shall be responsible for the remaining fifty percent (50%) of the total project cost.

No interest shall accrue upon the principal of the total loan amount described in this part and payment to the City shall be deferred for a four (4) year period. The total loan amount shall depreciate at 25% for each year during the deferment period. At the end of four (4) years, the loan shall be forgiven in its entirety on the condition that the improvements are installed and maintained in reasonably good condition and do not incur violations of Orlando City Code during the deferment period. The loaned funds shall be paid to Applicant only upon completion of the work, upon the receipt by City of third party invoices for the provision of goods and services delivered to Applicant in accordance with the Project Description, and upon proof shown that Applicant has in fact paid for said goods and services. The work must be initiated within ninety (90) days and completed within the first year of the date of execution of this Agreement.

If the improvements are not installed and maintained in reasonable good condition and incur violations of Orlando City Code at any time during the deferment period, Applicant shall pay the City a pro rata share (using a four-year amortization schedule for the loan proceeds) of the total loan amount. If the total amount of funds disbursed equal \$999 or less, Applicant shall pay the City the total sum that was disbursed.

3. Covenants, Representations, and Acknowledgements of Applicant. The Applicant hereby covenants, represents, and acknowledges the following:

- a. The Applicant shall at all times be in compliance with the Orlando City Code, including, but not limited to, code sections pertaining specifically to planning, zoning and permitting. This part is not intended to preclude the City of Orlando from granting the Applicant certain waivers, exemptions, or variances as allowed under the Orlando City Code.
- b. The Applicant shall maintain occupancy of the Property for a minimum of four (4) years from the effective date of the Agreement.

4. Records. The Applicant shall compile and maintain accurate books and records indicating its compliance with the requirements of this Agreement, and shall make such records available at a mutually agreed upon time for inspection and audit by the City during regular business hours.

5. Default. The following events or conditions shall be a default and deemed a breach of this Agreement by the Applicant if they occur during the term of this Agreement, and shall entitle the City, subject to section 2 hereinabove, to immediately seek the repayment of funds already loaned by the City to the Applicant, and to terminate this Agreement upon ten (10) days written notice to the Applicant:

- a. The Applicant's failure to comply with any of the terms and conditions of this Agreement and exhibits attached hereto.
- b. The Applicant's abandonment or closing of the business for any reason.

- c. Demolition of the Property or the improvements for any reason.
- d. Transfer of title to the Property.
- e. The Property or Applicant’s business incurs a code enforcement lien.
- f. Refinancing of the Property on a “cash out” basis without prior approval from the City.

6. Indemnification. To the extent permitted by law, the Applicant shall indemnify, defend and hold harmless the City, its agents, employees, and elected and appointed officials, from and against all claims, damages, losses, and expenses (including all attorneys’ costs and fees reasonably and actually incurred, and all attorneys’ costs and fees on appeal) arising out of or resulting from the Applicant’s performance under this Agreement, and which are caused in whole or in part by the Applicant, its agents, employees or subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

7. Agency. The Applicant and City, and their agents, contractors, and subcontractors, shall perform all activities that are contained herein as independent entities and not as agents of each other.

8. Third-party Beneficiaries. This Agreement is solely for the benefit of the parties signing hereto and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

9. Binding Nature of Agreement. This Agreement shall be binding, and shall inure to the benefit of the successors or assigns of the parties hereto, and shall be binding upon and inure to the benefit of any person, firm, or corporation that may become the successor in interest, directly or indirectly, to the Applicant, or any portion thereof.

10. Controlling law and venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the City of Orlando now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.

11. No Liability or Monetary Remedy. The Applicant hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the City, and that the City bears no liability for direct, indirect or consequential damages arising in any way out of this Agreement. The only remedy available to the Applicant for any breach by the City is one of mandamus to require the City’s specific performance under the terms and conditions of this Agreement.

12. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the Applicant and the City. The

Applicant cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each party acknowledges that it is not acting as a fiduciary for or any advisor to the other in respect to this Agreement or any responsibility or obligation contemplated herein. The Applicant further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by the Applicant as an inducement to entering into this Agreement.

13. Personal Liability. No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the City in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the City contained herein.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waiver of the provisions herein shall be made by the parties in writing.

15. Acknowledgment. None of the provisions, terms, and conditions contained in the Agreement are meant to modify any existing lease, contract, or agreement between the Applicant or Applicant's business and the Property Owner. The sole purpose of the Property Owner executing the Agreement is to demonstrate recognition and acknowledgment of any changes, modifications, or alterations being made to the Property by the Applicant or Applicant's business with the funding assistance provided under the terms of the Agreement.

16. Severability. If any sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portion hereto.

17. Estoppel Letter. Upon the request of the Applicant or one of its lenders, the City hereby agrees to furnish a letter stating whether (i) this Agreement is in full force and effect, (ii) there are any defaults under this Agreement and, if any, identify them, and (iii) all amounts due and payable hereunder have been paid in full, and, if not, the outstanding balances hereunder. Such letter shall be furnished within ten (10) days after request therefore.

18. Notices. Any notice required or allowed to be delivered hereunder shall be in writing and deemed to be delivered when (i) hand delivered to the person hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the party's name below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith:

City: Economic Development Department
Orlando City Hall

SBF&SIP Agreement – Chic ‘N Bull, Inc. d/b/a Beefy King

400 S. Orange Ave.
Orlando, Florida 32801
(with a copy to the City Attorney’s Office)

Applicant: Chic ‘N Bull, Inc. d/b/a Beefy King
Attn: Roland Smith, President
424 N. Bumby Ave.
Orlando, Florida 32803

Property Owners: Roland Smith, Sandra Lee Smith, James S. Woodrow, Jr., and Shannon
Lee Woodrow
3229 Inverness Ct.
Orlando, Florida 32806

19. Assignment. The Applicant shall not assign this Agreement without the prior and written consent of the City.

20. Term. The term of this Agreement shall be four (4) years, commencing on the day of full execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below.

[signatures are on the following pages]

Chic ‘N Bull, Inc. d/b/a Beefy King

By: _____

Print Name: _____

Title: _____

Witness:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBF&SIP Agreement was acknowledged before me this ____ day of _____, 2014, by _____, who is the _____ of Chic ‘N Bull, Inc. d/b/a Beefy King, the Applicant. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

Property Owners

Roland Smith

Witness:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBFP Agreement was acknowledged before me this _____ day of _____, 2014, by _____, who is the Property Owner. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

Sandra Lee Smith

Witness:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBFP Agreement was acknowledged before me this _____ day of _____, 2014, by _____, who is the Property Owner. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

James S. Woodrow, Jr.

Witness:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBFP Agreement was acknowledged before me this _____ day of _____, 2014, by _____, who is the Property Owner. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

Shannon Lee Woodrow

Witness:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBFP Agreement was acknowledged before me this _____ day of _____, 2014, by _____, who is the Property Owner. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

THE CITY OF ORLANDO, FLORIDA

Mayor/Mayor Pro Tem

Date

ATTEST:

Orlando City Clerk

The foregoing SBF&SIP Agreement is approved as to form and legality for the use and reliance of the City:

Assistant City Attorney

EXHIBIT “A”

The Small Business Façade Program (SBFP) is an economic development program designed to provide an interest free deferred loan for façade improvements to new and existing commercial property and business owners, in the City of Orlando. This loan will provide assistance with costs related to physical improvements in commercial corridors, particularly in blighted areas. The SBFP offers matching loan funds to commercial property owners and new and existing businesses in the City of Orlando to off-set design and façade improvement expenses such as painting, wall repair or cleaning; window repair or replacement; awnings; new or replacement signage; landscaping; lighting; streetscape and door repair or replacement.

Criteria

- Buildings must be located within the City of Orlando limits. Small Business Façade and Site Improvement Grants shall only be awarded for eligible properties that pay ad valorem taxes.
- Applicants must be a commercial property owner and/ or a new, for-profit business (tenant) moving into an existing site, or an existing for-profit business (tenant) in the City of Orlando.
- Propose a minimum of three (3) distinct improvements.
- Only one (1) Grant per property owner or tenant per fiscal year, and only one (1) Grant per property per five-year program term. When an entity owns multiple properties that are adjacent, the Grant funding may be shared between these properties for a unified improvement plan. When an entity owns multiple properties that are not adjacent, only one (1) property may receive grant monies in that particular fiscal year.
- All proposed improvements must meet the requirements of the Appearance Review Board (ARB), if located in Downtown Orlando; the Historic Preservation Board (HPB) if located within a Downtown Historic District; or the Board of Zoning Adjustment (BZA) as well as all other City Code requirements. Approvals or Certificates issued by the ARB, HPB or BZA do not guarantee approval of a Small Business Façade Grant.
- Applications will be evaluated by the Façade Grant Review Committee

Procedures

The procedure for project review is as follows:

1. Pre-Application Meeting

The applicant is required to meet with the Façade Program Coordinator who will review the applicant's plans per the program requirements to determine eligibility, necessary review by applicable City Board and next steps.

2. Grant Application Submission

The Grant application and all attachments are submitted to the Façade Program Coordinator for formal consideration of funding. A \$50 non-refundable application fee is due with application submission. The application fee offsets the cost of background checks and other necessary due diligence performed by the Façade Program Coordinator.

3. Review Grant Application

Once an eligible application and the supporting documents are received, the Façade Program Coordinator will then conduct the mandatory criminal background check and assess the application with regard to all program requirements. All eligible applications will be forwarded to the Façade Grant Review Committee for review according to the Grant criteria in an interview format with the applicant. The Committee may recommend approval, deny, or table applications.

4. Final Agreement and Construction

Once the Façade Grant Review Committee recommends approval, a funding agreement will be presented to City Council for approval. If approved for funding, the applicant (and property owners, if a tenant is the applicant) shall sign the required funding agreement. After the funding agreement has been executed on behalf of the City, the applicant may secure permission from the City to construct by securing appropriate building permits. Substantial modifications to final plans or change orders to construction documents which produce visible differences in the previously approved façade design will require review and approval of the Façade Grant Review Committee. Evidence of licensure and insurance of the selected contractor(s) shall be submitted to the Façade Program Coordinator prior to commencement of any work associated with the Grant.

5. Construction Approval

On completion of construction, including final inspection by the Permitting Services Division, the grantee shall submit a request for reimbursement to the Façade Grants Coordinator. Along with request for reimbursement, the grantee must submit the following to assure the terms of the agreement have been honored:

- Proof of all project costs, including contractor invoices
- Receipts proving payment for services and supplies
- Lien release(s) by the contractor(s)
- One photo of each improvement and at least one photo of the entire façade

The Façade Program Coordinator will certify that all work was permitted and inspected by the City's Permitting Services Division and verify the work was completed in a satisfactory and professional manner.

6. Disbursements

Funds will generally be provided upon completion of the project. However, at the City's discretion and pursuant to the terms of the funding agreement, funds may be distributed incrementally as phases of the approved project are completed. Reimbursements will be

made according to City’s accounting procedures with funds disbursed by check payable to the grantee. All Grant funds shall be issued to the grantee on a reimbursement basis only.

EXHIBIT “B”

Project Description

The project is a total rehabilitation of the original Beefy King sign that was originally erected in 1967. The sign will once again be fully functional and operational. The SBFP portion of the project is \$12,500.00.