

Small Business Façade Program

Spanish Table, LLC d/b/a Txokos Basque Kitchen

THIS SMALL BUSINESS FACADE PROGRAM AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between the **City of Orlando, Florida**, a Florida municipal corporation (hereinafter referred to as the “City”), whose principal address is Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801, **Spanish Table, LLC d/b/a Txokos Basque Kitchen**, a Florida limited liability company whose principal address is 3201 Corrine Drive, Ste. 100, Orlando, Florida 32803 (hereinafter referred to as the “Applicant”) and East End Market, LLC, a Florida limited liability company (hereinafter referred to as the “Property Owner”) whose mailing address is 3201 Corrine Drive, Ste. 201, Orlando, Florida 32803 (hereinafter referred to singularly 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 Program, formally known as the Neighborhood Commercial District Revitalization 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 Twenty Thousand Dollars and No Cents (\$20,000.00) for the sole purpose of acquiring the goods and services for alterations and improvements to property located at **3201 Corrine Drive, Orlando, Florida 32803** (“the Property”) as set forth in the Project Description in Exhibit “B”. The City shall pay the first \$1000 of the total cost of the project and loan to Applicant an amount not to exceed the remaining eighty percent (80%) of the total project cost. The Applicant shall be responsible for the remaining twenty percent (20%) of the total project cost.

No interest shall accrue upon the principal of the total loan amount described in this part (which includes the first \$1,000) and payment to the City shall be deferred for a five (5) year period. The total loan amount shall depreciate at 20% for each year during the deferment period. At the end of five 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 that result in a lien on the Property 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 installed and completed within the first year of this agreement.

If the improvements are not installed and maintained in reasonable good condition or a default or breach of this Agreement occurs at any time during the deferment period, Applicant shall pay the City a pro rata share (using a five-year amortization schedule for the loan proceeds) of the total loan amount. If the total amount of funds disbursed equal \$1000 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's business must remain in operation at the Property for a minimum of five (5) 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. Complete demolition of the Property or demolition or removal of the improvements for any reason.
- d. The Property incurs a code enforcement lien.

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

SBFP Agreement – Spanish Table, LLC d/b/a Txokos Basque Kitchen

Applicant: Spanish Table, LLC
Attn: Henry Salgado
3201 Corrine Drive, Ste. 100
Orlando, Florida 32803

Property
Owner: East End Market, LLC
3201 Corrine Drive, Ste. 201
Orlando, Florida 32803

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 five (5) 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.

Spanish Table, LLC d/b/a Txokos Basque Kitchen

Print Name: _____
Title: _____

WITNESS:

Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

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

Notary Public
My Commission Expires:

East End Market, LLC

SBFP Agreement – Spanish Table, LLC d/b/a Txokos Basque Kitchen

Print Name: _____
Title: _____

WITNESS:

Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing SBFP Agreement was acknowledged before me this _____ day of _____, 2014, by _____, who is the _____ of East End Market, LLC, 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 SBFP Agreement is approved as to form and legality for the use and reliance of the City:

Assistant City Attorney

EXHIBIT “A”

Small Business Facade Program

The Small Business Facade 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, located in the City of Orlando. This loan will provide assistance with costs related to physical improvements to buildings in need of enhancement. The SBFP pays 100% of the first \$1,000 and offers loan funds up to 80% of remaining project costs 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

- Commercial property owners, for-profit new businesses moving into an existing site or existing small businesses in the City of Orlando are eligible.
- All business owner applicants must be a small business as defined by the U. S. Small Business Administration.
- All proposed façade improvements must meet the Code of the City of Orlando. All business owner applicants must possess a City of Orlando Business Tax Receipt.
- All applicants must be current with state and local taxes and not have any outstanding liens imposed against any property.
- Applicant(s) must provide at least 20% of the project cost.
- Maximum award amount is \$20,000 per applicant.
- The City will pay 100% of the first \$1,000 of the total project cost and loan 80% of the remaining balance.
- For loan amounts of \$1,000 to \$9,999, payment to the City is deferred for a **three (3)** year period where the loan depreciates at 33% for the first two years and 34% the third year. At the end of three years, the loan is forgiven in its entirety. For loan amounts of \$10,000 to \$14,999, payment to the City is deferred for a **four (4)** year period where the loan depreciates at 25% each year. At the end of four years, the loan is forgiven in its entirety. For loan amounts of \$15,000 to \$20,000, payment to the City is deferred for a **five (5)** year period where the loan depreciates at 20% each year. At the end of five years, the loan is forgiven in its entirety.
- If the total project cost is \$999 or less, and the property is either demolished, title to the property has been transferred, the property has been refinanced, or the property incurs a code enforcement lien during the one-year period following disbursement of funds by the City, the full amount disbursed must be paid back to the City of Orlando Economic Development Department.
- Recipients of the SBFP may also apply for the Business Assistance Program (BAP). Past BAP may also apply for SBFP assistance. However, total assistance from both programs may not exceed \$20,000.
- The following businesses are not eligible for the Small Business Facade Program: National franchises; non-profit agencies; residential property; government owned/occupied buildings; churches/religious institutions; health and social service industries; agricultural service industries; nightclubs, bars or taverns; tattoo parlors; body piercing or body art shops; adult entertainment facilities; adult oriented or adult themed retail businesses; liquor stores; gun shops; businesses that sell drug paraphernalia; any business with outstanding code enforcement violations (including red light infractions) or liens; any business or commercial property that is not current with state and local taxes, and/or has any outstanding tax lien(s) against any property; and any business or commercial property with outstanding debt to the City.

SBFP Agreement – Spanish Table, LLC d/b/a Txokos Basque Kitchen

Process

- Submit application to the Economic Development Department.
- Applications exceeding \$5,000 are presented to City Council for final approval.
- Funds will be distributed for reimbursement after completion of proposed work.

EXHIBIT “B”

Project Description

Install new awnings, decorative wrought iron in windows and doors, landscaping/planters, stucco exterior walls and paint portion of building.