

COMMERCIAL AREA BEAUTIFICATION PROGRAM AGREEMENT

2011 Program

Between:

THE CITY OF ST. ALBERT

of 71 St. Albert Trail, St. Albert, AB T8N 6L5 (Attention: Business & Tourism Development)

- and -

of _____

WHEREAS:

- i. the Program encourages the beautification of St. Albert's commercial areas by providing for grants to offset the costs of placing decorative improvements outside local business premises;
- ii. the City Engineer or designate has the discretion under the *Traffic Bylaw* to allow obstructions onto public property;
- iii. some improvements and obstructions require further authorization through the issuance of a development permit; and
- iv. the Applicant wishes to take part in the Program,

NOW THEREFORE, in consideration of the mutual covenants and benefits as set out in this Agreement, the Parties agree as follows:

Definitions

1. In this Agreement:

- (i) "Agreement" means this Commercial Area Beautification Program Agreement, including all attached Schedules and executed amendments;
- (ii) "Applicant" means the business known as _____;
- (iii) "City" means the City of St. Albert, a Municipal Corporation, and includes all City agents and authorized contractors;
- (iv) "City Property" means any property owned or controlled by the City upon which or over which the Improvement may be placed or extend;
- (v) "Improvement" means the decorative improvement referenced in Schedule A;
- (vi) "Parties" means the City and the Applicant;
- (vii) "Party" means the City or the Applicant, as applicable;
- (viii) "Regulations" means the placement regulations referenced in Schedule B;

- (ix) "Schedule" means a Schedule attached to this Agreement;
- (x) "Section" means a section of this Agreement;
- (xi) "Subsection" means a subsection of this Agreement; and
- (xii) "Term" means the term of this Agreement as set out in Section 4;

Authorization

- 2. (1) Subject to Section 3 the Applicant may install the Improvement outside his or her place of business in accordance with the Regulations.
- (2) Ownership of the Improvement shall at all times remain with the Applicant.

City's Capacity and Interest in City Property

- 3. (1) Notwithstanding any other term or condition contained in this Agreement, nothing in this Agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to a City bylaw, the *Municipal Government Act*, R.S.A. 2000, Ch. M-26 (and any amendments thereto), and any other legislation in force in Alberta or Canada. The Applicant acknowledges its sole responsibility to confirm the necessity of and obtain any such approvals or permits.
- (2) Nothing in this Agreement restricts the City, its municipal council, its officers, servants or agents in the full exercise of any and all powers and duties vested in them in their respective capacities as a municipal government, as a municipal council and as the officers, servants and agents of a municipal government.
- (3) This Agreement shall not constitute a waiver by the City of its legal rights to the City Property, and shall not restrict the City's right to use or dispose of the City Property as it deems appropriate or as legally required.

Term

- 4. This Agreement shall be effective until termination as set out in this Agreement.

Grant

- 5. (1) Upon receiving copies of
 - i. payment receipt(s) related to the acquisition of the Improvement; and
 - ii. any required development permits further to the Improvement,
 the City shall pay to the Applicant an amount equal to fifty percent (50%) of the Applicant's cost of acquiring the Improvement (up to a total of \$2500.00).
- (2) The equivalent amount to the payment referenced in Subsection (1) shall be considered a debt owing to the City by the Applicant if the Improvement is not installed outside the Applicant's place of business as intended hereunder.

Maintenance, Repair and Replacement

6. (1) The Applicant shall bear all costs and responsibility for the proper and professional installation, maintenance, repair and replacement of the Improvement, which shall be kept in a good and safe condition at all times.
- (2) Notwithstanding Subsection (1), the City may require the Applicant to temporarily dismantle and remove the whole or any part of the Improvement such that the City may gain unobstructed access to the City Property from time to time. The City shall endeavour to provide the Applicant with reasonable notice within which to effect such removal, and if the Applicant fails to comply by the end of the referenced notice period, the City may remove the Improvement at the Applicant's cost.
- (3) The circumstances contemplated by Subsection (2) do not invoke permanent removal as contemplated by Section 9.

Insurance

7. (1) Pursuant to its activities and obligations under this Agreement, the Applicant shall place and maintain a policy of commercial general liability insurance and shall ensure that any party engaged in installing, maintaining or removing the Improvement maintains current and appropriate WCB and liability insurance coverage (including all appropriate coverage endorsements).
- (2) The Applicant shall be solely responsible for determining that it has sufficient and effective insurance coverage as required by the City, and acceptance or rejection of the same by the City shall not in any way make the City liable to the Applicant or imply that the City acts as the Applicant's representative further to determining the sufficiency or effectiveness of coverage.
- (3) Notwithstanding Subsection (b), the City may review insurance coverage from time to time and the requisite endorsements shall be amended as the City in its sole discretion deems necessary, and in any event (unless otherwise specified by the City), the required insurance coverage shall:
 - i. not be less than two million (\$2,000,000.00) dollars per accident or occurrence;
 - ii. disclose a waiver of the right of subrogation against the City; and
 - iii. contain a clause that the insurer will not cancel or change or refuse or renew the insurance without first giving the City thirty (30) days' prior written notice.
- (4) In evidence of valid insurance coverage, the Applicant shall provide to the City a copy of an insurance certificate in compliance with the requirements specified in Schedule C.
- (5) Notwithstanding the requirements of this Section, the Applicant's obligation to obtain a policy of insurance covering activities relating to the subject matter of this Agreement applies only if the City, in its sole discretion, determines that the said activities are not fully covered under another policy of insurance held by the Applicant.
- (6) If the Applicant's conduct (whether or not the City has authorized the same), or any acts or omissions of the Applicant cause any increase in premiums respecting the insurance carried by the City, the Applicant may be required to pay the equivalent of the increase to the City on demand.

Indemnification and Reimbursement

8. (1) The Applicant shall at all times indemnify and save harmless the City against:

- (i) any and all losses, damages, demands, claims, liabilities, costs and expenses of every kind and nature, including lawyer's fees (on a solicitor and own client basis) that are reasonably incurred in the prosecution, defence or appeal of any action in respect of; or
- (ii) any payment made in good faith in settlement of any claim arising out of, occasioned by, or in any way related to,

any acts or omissions of the Applicant respecting the purported performance or non-performance of its obligations under this Agreement.

- (2) If the City is required to take any action, incur any costs or expend any funds, howsoever arising because of any acts or omissions of the Applicant respecting the purported performance or non-performance of its obligations under this Agreement, the Applicant shall, on demand, reimburse the City for all costs it so incurs (including legal fees on a solicitor-client basis).
- (3) This Section shall survive the termination or expiration of this Agreement.

Termination

- 9. (1) This Agreement shall terminate, and any associated authorization or permit shall cease to be effective:
 - (i) if for any reason the Applicant removes the Improvement for a period in excess of thirty (30) days;
 - (ii) if the City deems the Improvement to be persistently unsafe or in poor condition and orders its removal; or
 - (iii) at the City's discretion in accordance with Subsection (3).
 - (2) Proceeding under Subsection (1)(ii), the City shall send notice to the Applicant requiring the Applicant to remove the Improvement. If the Applicant fails to remove the Improvement within seven (7) days of receiving the said notice, the City may effect such removal at the Applicant's cost. If the Improvement remains unclaimed for a period of more than thirty (30) days thereafter, the City may dispose of the Improvement as it deems fit.
 - (3) Proceeding under Subsection (1)(iii), the City shall send six (6) months' notice of termination to the Applicant, and if the Applicant fails to remove the Improvement by the end of the six-month notice period, the City may effect such removal at the Applicant's cost.
- 10. Upon termination of this Agreement, the Applicant shall restore any affected City Property to its condition immediately prior to the installation of the Improvement.
 - 11. The City shall not be responsible for any costs incurred by the Applicant in relation to the termination of this Agreement.
 - 12. If the City refrains from taking immediate action under this Section, the resulting delay shall not be construed as a waiver of the City's rights hereunder.

Notice

- 13. (1) Any notice required by this Agreement shall be in writing and may be delivered personally to the address for service of either of the Parties, or by registered mail, in which case it shall be deemed to be served five (5) days after depositing the same in any post office in Alberta.
- (2) In the event of a postal service disruption, such notice shall be deemed effective five (5) days following the resumption of normal mail service.
- (3) The Parties' addresses for service as indicated above, or such other address(es) as the Parties may advise from time to time.

Binding Effect

- 14. The Applicant shall undertake to advise any assignee, successor or transferee about this Agreement, and require any assignee, successor or transferee to acknowledge in writing that they are bound by this Agreement.

Entire Agreement

- 15. (1) This instrument covers all arrangements between the Parties relative to the subject matter of this Agreement, and neither Party shall be bound by any representation or promise not referenced herein.
- (2) No amendment to this Agreement shall be binding unless the same is in writing and is signed by the Parties.

Severance

- 16. Should any provision of this Agreement be unenforceable in law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though the unenforceable provision had not been included.

Signing Authority

- 17. Where the Applicant is a corporation or other business entity, it warrants that:
 - (i) its signatory is duly authorized by law to execute this Agreement on behalf of the Applicant; and
 - (ii) the City is entitled to rely on such execution to bind the Applicant to the terms of this Agreement.

Each Party hereby executes this Agreement on the respective dates indicated below.

Applicant

The City of St. Albert

Name: _____

Per: _____ (seal)

Date: _____

Date: _____

Schedule "A" – Improvement Description / Depiction
(including size, materials, dimensions and location of the improvement)

Schedule "B" – Regulations

A. Planters / Flower Pots

The following shall apply to the installation of planters located on downtown sidewalks, supported by street light poles or hanging in any manner as an obstruction:

- pole-supported planters shall be a minimum of 2.4 metres (8 ft) above the sidewalk to the lowest part of the planter or planting, shall be constructed of weather resistant material and shall be mounted in a manner as to cause no damage to the pole on which it is mounted.
- plantings shall be flowers, plants or evergreen shrubs. Trees shall not be permitted in the planters unless specifically approved.
- planters containing annual flowers and plants shall be removed from the street light poles or sidewalk after the first killing frost each year
- the planter and sidewalk around the planters shall be maintained in a neat condition
- growth of the planting shall be controlled to an area of 30 cm (12 inches) from the periphery of the planter.

B. Sidewalk cafés

- a Development Permit must be obtained to operate an outdoor eating area. In addition to any requirements or conditions specified in a development permit decision to approve a sidewalk café, the following shall apply:
 - tables and chairs shall be uniform and may not be anchored to the sidewalk.
 - all sidewalk cafés will require a Food Services Permit from capital health.
 - to serve alcoholic beverages to the outdoor café, approval of the Alberta Gaming and Liquor Commission is required.
- sidewalk cafés can only be installed after April 1 and must be removed no later than October 31.

C. Projecting Signs

Any projecting signs shall be subject to the issuance of a development permit and must be installed such that they are consistent with the provisions of Schedule C of the Land Use Bylaw and any conditions specified in a development permit decision.

D. Obstructions - General

The following applies to all obstructions authorized by this Agreement:

- applications shall be accompanied by a drawing showing size, materials, dimensions and location of the obstruction
- obstructions shall be located in a manner that will allow easy access for vehicle doors to open and they shall not impede the use of the street for parking purposes

- obstructions shall be out of the main pedestrian traffic flow, allowing a 1.5M (5 feet) of unobstructed walkway and shall present no hazard to pedestrians
- obstructions shall not block access to and from buildings or restrict the normal flow of pedestrians
- obstructions shall not be placed on poles supporting traffic signals and shall not interfere with signing or other control devices.
- obstructions shall have a maximum length parallel to the street of 2.75 metres (10 ft), a maximum width perpendicular to the street of 1 metre (3 ft) and a maximum height of 1 metre (3 ft) unless otherwise specifically approved.
- obstructions shall be limited to two per business where space permits
- obstructions shall be made of substantial weather resistant materials in a good workmanlike manner with no sharp corners or edges
- obstructions shall be maintained in good condition
- if in the opinion of the City Engineer, the placement of the obstruction is in violation of these or other applicable regulations, the violations shall be immediately corrected to the satisfaction of the City Engineer
- the City Engineer or his designate may contact adjacent property owner or other interested parties if it is perceived the obstruction approval may adversely affect the neighbourhood
- fire service connections must be unobstructed

E. Cost Share Grant Funding Policy Guidelines

- The City of St. Albert will pay 50% of improvements to a maximum of \$2500.00 per business. This is a 2011 program only.
- Funding applications will be processed on a first come/first served basis
- This grant program has a maximum expenditure of \$100,000.00 for the duration of the 2011 program.
- Funding applicants must be accompanied by a copy of all relevant permits and receipts
- Deadline for refund applications is November 30, 2011.
- Applications will be processed as they are received.
- Refunds will take approximately 4 – 6 weeks to process
- Grant program refund requests should be sent to:

Business & Tourism Development
 71 St. Albert Trail
 St. Albert, AB T8N 6L5
 Attn: Director

Schedule "C" – Insurance Requirements

The Certificate of Insurance is to include evidence of the following (as a minimum):

Commercial General Liability coverage (with a minimum of **\$2,000,000 per occurrence**), which coverage shall include:

- Occurrence Property Damage
- Non-Owned Automobile
- Employees as additional insured
- Products and Completed Operations
- Broad Form Property Damage
- Severability of Interests Clause
- Personal Injury
- Cross Liability Clause
- Blanket Contractual Liability

The Commercial General Liability policy(ies) above shall apply as the primary insurance and not excess to any other insurance available to the City. Other endorsements shall include:

- Tenant's Legal Liability
- 30 days written notice of cancellation or material change
- **Add the City of St. Albert as "Additional Insured"**

Insurance Certificates shall be forwarded to the following address:

The City of St. Albert
5 St. Anne Street
St. Albert, AB T8N 3Z9
Attention: Risk & Insurance Manager