



**FULTON AVENUE IMPROVEMENT ASSOCIATION
LANDSCAPE IMPROVEMENT
GRANT PROGRAM
Memorandum of Understanding**

This Memorandum of Understanding is made on _____ day of _____, 20__ between the Fulton Avenue Improvement Association (hereinafter referred to as the “FAA” or the “Association”) and _____(hereinafter referred to as “Recipient”) upon all the terms and conditions contained herein.

Recitals:

- A. The FAA is a nonprofit mutual benefit corporation organized under the laws of the State of California for the purposes of preserving, promoting and enhancing the Fulton Avenue District.
- B. The district is composed of that geographical area generally between Arden Way and Auburn Boulevard.
- C. Recipient is a business or commercial property owner within the district.
- D. Recipient has submitted an Application for Landscape Improvement Grant (hereinafter referred to as “Application”) which provides details for the type and scope of improvements intended.
- E. The purpose of the application is to obtain a grant to complete a project (“the Project”) of specified and approved works of improvement on the Recipient’s property.
- F. The FAA has reviewed and approved Recipient’s Application.

Terms and Conditions:

In consideration of the mutual promises set forth below, Recipient agrees as follows:

- (a) That Recipient shall construct or have constructed the project as applied for and outlined in the Application, a copy of which, along with any supporting documents, is incorporated by reference herein;
- (b) That at all times Recipient shall use Memorandum of Understanding or and sub Memorandum of Understanding or licensed by the Memorandum of Understanding or State License Board, as required by law, to construct the works of improvement and that all such Memorandum of Understanding or and sub Memorandum of Understanding or shall at all times be fully insured;

- (c) That Recipient shall obtain any and all permits and governmental approvals required prior to beginning the work of improvement; and
- (d) That Recipient shall pay all costs and complete the project. Recipient hereby agrees to promptly pay all suppliers, workman, Memorandum of Understanding or, sub Memorandum of Understanding or and any others involved in the construction of its improvements and shall keep the project free and clear of Mechanics liens or liens of any kind. In the event that a lien is filed, FAA shall have the right to suspend payment under this Memorandum of Understanding until such time as the lien is removed, satisfied or otherwise dissolved.
- (e) That Recipient shall complete the project within six months of the project award.

2. Upon completion of the project and after all the terms and conditions required of Recipient are met, the FAA will provide a one time grant of \$_____(\$) or one half the actual amounts expended on the project, whichever is less, to Recipient. Payment is expressly conditioned on the successful completion of all the covenants and conditions of this agreement by Recipient. All covenants and conditions shall be strictly construed. Payment shall be as follows:

- (a) Within thirty (30) days of completion of the project. The term “completion” shall mean substantial completion and in all events shall require that any building permits be signed off as completed and any licenses, if any, be issued.
- (b) FAA shall have the right to demand proof of substantial completion as contemplated above in the form of copies of signed permit cards, letters, or other written statements evidencing completion of the project; proof of payment by Recipient to all Memorandum of Understanding or and sub Memorandum of Understanding or; unconditional and final lien releases by Memorandum of Understanding or, suppliers and sub Memorandum of Understanding or; and/or other documentation that it, in its sole discretion, deems necessary
- (c) Upon verification that Recipient has made the works of improvements in accordance with the proposal set forth in Recipient’s application for grant.
- (d) Upon receipt of a statement from Recipient stating that the project is completed, all costs arising out of the Application have been paid, and proof satisfactory to the FAA of the actual and final costs of the project.

3. At all times during this agreement, Recipient shall have general liability insurance and shall name the FAA as additional insured. Furthermore, the insurance requirements of Memorandum of Understanding or and sub Memorandum of Understanding or as stated in paragraph 1 (b) shall include the insurance and limits set forth in this paragraph. As used in this paragraph, the term “insurance” shall mean general liability insurance covering personal injury and property damage in an amount no less than \$500,000.00 single limit and shall, in the case of Memorandum of

Understanding or sub Memorandum of Understanding or, further mean Workers Compensation Insurance. In all cases the insurance shall be issued by insurance companies licensed to issue insurance in the State of California.

4. Recipient hereby agrees that it shall not deviate from the plans, specification or description set forth in the Application submitted to the FAA. Any changes in the plans, specification or description must be first approved by the FAA and whenever practical, Recipient shall give the FAA the (10) working days notice of any proposed changes. Recipient shall supply the FAA with enough detail, including plans, drawings, materials, etc, for the FAA to make a determination of the changes are within the scope of the Application. In the event that the changes are, in the sole determination of the FAA, materially different than as set forth in the Application, the FAA reserves the right to terminate this Memorandum of Understanding without further liability on its part.

5. Recipient further agrees to indemnify, defend and hold harmless the FAA, its officers, Board of Directors, employees and agents from all liability for any loss, or injury to person or property arising from or related to the performance of this agreement or the project, including without limitation all consequential damages whether or not resulting from the negligence of the FAA, its Board of Directors, employees or its agents. As part of this indemnification, Recipient hereby agrees to indemnify and defend the FAA, its officers, Board of Directors, employees, and agents by counsel of their own choosing from any lawsuits arising out of this Memorandum of Understanding.

6. The FAA may terminate this agreement at its option by giving written notice of termination to Recipient if Recipient should:

- (a) FAA funds be used for purposes other than set forth in the Application;
- (b) An unapproved material deviation from the plans and specification;
- (c) The failure to used licensed and insured Memorandum of Understanding or and sub Memorandum of Understanding or as required by law;
- (d) The failure to have insurance or to require others to have the required insurance;
- (e) Cease doing business or owning the property where the project is located during the pendency of the project;
- (f) Fail to complete the project six months of the project award.

7. The benefits conferred by this agreement are for a specific project and a specific property, all of which have been considered and approved by the FAA. The execution and completion of the project is important to the FAA. Therefore, this Memorandum of Understanding and the right to funds awarded are not assignable.

8. Recipient agrees that it shall comply with all state and federal laws, including any non-discrimination laws that may apply to this work of improvement.

9. If any part of this Memorandum of Understanding conflicts with any law and is void, the offending part shall be stricken and the remaining portions shall be in full force and effect.

10. In the event that any litigation, whether legal or equitable, arises out of this Memorandum of Understanding, whether that litigation is terminated by mediation, trial or appeal, the prevailing party shall be entitled to reasonable attorney's fees and costs to be set by a court of competent jurisdiction.

11. In no event shall the member of the Board of Directors, either individually or collectively, its officers or agents, be personally liable under this Memorandum of Understanding and Recipient agrees to look solely to the assets of the FAA in the event any liability attaches to the FAA under or arising out of this Memorandum of Understanding.

12. It is the policy of the FAA to make a one-time grant of funds for approved projects. Recipient acknowledges that by awarding this grant, the FAA is not expressly or impliedly agreeing to any further grants and that the FAA has no further or continuing obligation to Recipient of any kind whatsoever. Recipient further acknowledges and agrees that by this grant, the FAA, its Board of Directors, employees or agents, are not joint venturers or partners with Recipient in any way.

13. Venue for any action arising out of this Memorandum of Understanding shall be Sacramento County and the laws of the State of California shall apply.

14. Any amendment or modification of this agreement must be in writing and signed by the parties to be effective. No oral modifications shall be permitted.

15. This agreement constitutes the entire agreement between the parties and supercedes all other agreements, whether oral or written, and each party acknowledges that no representations, inducements, promises or agreements have been made by or on behalf of any party except those covenants and agreements contained in this agreement. This agreement shall be binding on the heirs, executors, successor and assigns of the parties.

Dated: _____, 2008

Dated: _____, 2008

FULTON AVENUE
IMPROVEMENT ASSOCIATION

By: _____

By: _____