

DESIGNATED HERITAGE PROPERTY INCENTIVE GRANT AGREEMENT

This Agreement dated the ____ day of month, year

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON
(hereinafter referred to as the “**City**”)

and

insert name
(hereinafter referred to as the “**Owner**”)

WHEREAS the Owner is the registered owner of the Designated Heritage Property described in Schedule “A” attached to this Agreement (the “**subject lands**”) which are designated under either Part IV or Part V of the Ontario Heritage Act,

AND WHEREAS the Owner has applied to the City for a Designated Heritage Property Incentive Grant (“**Grant**”) with respect to the cultural heritage resource(s) located on the subject lands as described in the grant application dated day, month, year (the “**Grant Application**”),

AND WHEREAS the City has agreed to make such a Grant pursuant to Section 39 and 45 of the Ontario Heritage Act,

AND WHEREAS as a requirement of approval of such a Grant Application, the Owner is required by the City to enter into this Agreement,

NOW THEREFORE IN CONSIDERATION of the City making this Grant in the maximum amount of \$_____ to the Owner, the Owner and the City hereby agree:

1. INFORMATION ON SUBJECT LANDS

- 1.1. The Grant shall apply to the subject lands as set out in Schedule “A” attached hereto.
- 1.2. The subject lands are designated under the *Ontario Heritage Act*.

2. GRANT ELIGIBILITY

- 2.1 To be eligible for the Grant, the works on the subject lands shall conform to and fulfill:
 - a) the objectives and requirements of the Designated Heritage Property Incentive Grant Program; and
 - b) any other requirements as specified by the City.

- 2.2 The Owner acknowledges that it has received and read a copy of the Designated Heritage Property Incentive Grant Application Kit (the “**Kit**”), and the Owner covenants with the City that the Heritage Attributes of the subject lands shall be conserved and the Grant provided for in this Agreement shall be applied in accordance with the City's requirements for the Designated Heritage Property Incentive Grant Program.
- 2.3 The City shall review all cost estimates submitted in support of the Grant Application in evaluating the estimated conservation costs eligible for the Grant, which costs, when designated by the City shall constitute the maximum amount of the total Grant to be paid. In the event the City is not satisfied with said cost estimates, the City may substitute its opinion of such amounts for purposes of calculating the eligible conservation costs for the Grant. If the City is not in receipt of sufficient information satisfactory to the City to determine conservation costs and the amount of the Grant, the Grant Application will not be processed and the Grant Application file will be closed. The decision of the City regarding the total amount of conservation costs, the calculation of the total estimated maximum Grant and the calculation of the actual Grant payments is final, absolute and within the City’s sole discretion.
- 2.4 The Grant will not be rewarded by the City until:
- a) the Owner contacts the City of Brampton Heritage staff to confirm the works are completed and to request that the City of Brampton Heritage staff attend the Designated Heritage Property to inspect the completed works;
 - b) the Owner provides proof of payment in accordance with the eligible conservation Works identified in the Grant Application;
 - c) a statutory declaration (refer Schedule B) by or on behalf of the Owner that the Owner has paid all accounts that are payable in connection with the installation and maintenance of works and that there are no outstanding claims relating to the works; and,
 - d) Designated Heritage Property has been inspected by City of Brampton Heritage staff or designate and the eligible conservation works are confirmed to be completed.
- 2.5 Notwithstanding the above, if the final costs come in less than the estimated costs identified in the Grant Application, the total value of the grant may not exceed 50% of the actual costs of eligible conservation works, up to the limit of **\$10,000.00**.

3. CORPORATE STATUS

- 3.1 Where the Owner is a corporation, the Owner hereby represents to the City that:
- a) the Owner has been duly incorporated as a corporation and is in good standing under the *Business Corporations Act* (Ontario) and is in compliance with all laws that may affect it and will remain so throughout the term of this Agreement;

- b) the Owner has the corporate capacity to enter into this Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement;
- c) to the best of its knowledge, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Owner in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Owner or title to their property or assets; and
- d) the Owner shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(c) above.

4. PROVISIONS RELATING TO THE OWNER

- 4.1. At the time of application for the Program, the Owner shall have submitted to the City for its review and acceptance
- a) Photographs of the project site and of the features showing what and where the work will take place;
 - b) Historical photographs, illustrations or other forms of historical documentation of the property (if available); if not available, general historical references and graphical material that help illustrate what is proposed and why it is historically appropriate;
 - c) Drawings (as necessary) that adequately illustrate the scope and type of work and location that is being proposed;
 - d) At least two (2) competitive cost estimates for all labour and materials involved in the proposed work, unless there is only one specialized supplier of a particular product, trade or service in the GTA. Although not mandatory, owners who want to apply are encouraged to select suppliers, contractors and/or trades people that have demonstrated experience with heritage properties. Cost estimates must be sufficiently detailed so as to clearly indicate the scope and nature of work. If the proposed project includes both eligible and non-eligible work, the cost estimates must clearly differentiate between the two;
- 4.2. The Owner will complete all eligible conservation works as specified in the approved Grant Application, and in documentation submitted in support of the Grant Application, including but not limited to the architectural/design drawings, specifications, contracts, and cost estimates. As the City is relying upon this information, if the information in this Agreement, the Grant Application, and/or any supporting documentation submitted to the City is, in the opinion of the City, incomplete, false, inaccurate or misleading, the Grant may be reduced and/or delayed, and/or cancelled, and where part or all of the Grant has already been paid by the City, such payments shall be repaid by the Owner as required by the City.

- 4.3. The Owner shall not commence any works that are the subject of a Grant Application prior to receiving approval of the Grant Application, and approval and execution of this Agreement.
- 4.4. The Owner agrees that the works made to any buildings on the subject lands shall be made in compliance with all required building permits, and constructed in accordance with the Ontario Building Code and all applicable zoning by-law requirements, municipal requirements and other approvals required at law.
- 4.5. All proposed eligible conservation works shall conform to all municipal by-laws, policies, procedures, standards and guidelines.
- 4.6. Existing and proposed land uses are in conformity with applicable Official Plan(s), zoning by-law(s) and other planning requirements and approvals at both the local and regional level.
- 4.7. The Owner shall complete all eligible conservation works within on (1) year from the date of approval of the heritage property incentive grant by the Council, failing which, unless extended by the City, this Grant approval shall be at an end, there shall be no Grant, and this Agreement shall be terminated. The deadline imposed by this paragraph shall not include delays that are outside the control of the Owner as determined in the sole discretion of the City.
- 4.8. Upon completion of the eligible conservation works, the Owner shall provide the City with documentation satisfactory to the City as to the amount of the actual costs of conservation works incurred by the owner.
- 4.9. The Owner shall ensure there are no liens or other claims outstanding in respect of the subject lands, and that all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid at the time the Owner provides proof that the eligible conservation works are completed in accordance with Section 2.4.
- 4.10. The Owner agrees to comply with the *Construction Act* (Ontario), including its holdback provisions and the Owner represents that it is not aware of any potential or unresolved lien claim in respect of the redevelopment.
- 4.11. The Owner covenants to the City that where the Designated Heritage Property for any reason cease to be in the Owner's ownership by sale, assignment or otherwise, prior to the advance of part or all of the Grant, the Owner will notify the City in writing of said pending ownership change at least 30 days prior to the ownership change taking place and shall advise the new Owner prior to any such sale or assignment that any monies payable pursuant to this Agreement shall be made payable to the Owner only.
- 4.12. The Owner acknowledges that without limiting the generality of the other provisions of this Agreement:
 - a) the onus and responsibility is upon the Owner at all times to assume all costs of

the eligible conservation works and to apply for and obtain, at the Applicant's expense, all approvals required from the City and all other agencies for said works;

- b) nothing in this Agreement limits or fetters the City in exercising its statutory jurisdiction under the *Ontario Heritage Act* or under any other legislative authority or by-law and that in the event the City decides to deny or oppose or appeal any such decision, that such action by the City is not in any manner limited by reason of the City entering into this Agreement;
 - c) the Owner releases the City from any liability in respect of the City's reviews, decisions, inspections or absence of inspections regarding eligible conservation works and the Owner agrees that it is the responsibility of the Owner to prepare and implement the works at all times;
 - d) nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the Designated Heritage Property for compliance or non-compliance or to provide an opinion or view respecting any condition of development approval; and,
 - e) nothing in this Agreement is intended to be or shall be construed to be a representation by the City regarding compliance of the Designated Heritage Property with: (1) applicable environmental laws, regulations, policies, standards, permits or approvals, or, (2) other by-laws and policies of the City.
- 4.14 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, the City may at its sole discretion cease or delay payment of the Grant, and the Owner agrees that notwithstanding any costs or expenses incurred by the Applicant, the Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the City, and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the lapse of time (if any) where the City is exercising its rights herein to either delay a Grant payment pending compliance with this Agreement, or to terminate this Agreement.
- 4.15 The Owner shall indemnify and save harmless from time to time and at all times, the City and its officers, employees, councillors, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:
- a) the City entering into this Agreement; and
 - b) any failure by the Owner to fulfil its obligations under this Agreement.

This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

5. PROVISIONS RELATING TO THE CITY

- 5.1 The City agrees to provide a Grant to the Owner estimated as of the date of this Agreement in the amount of \$_____, subject to and in accordance with the terms and provisions set out in this Agreement.

- 5.2 The City, its employees and agents are entitled to inspect the Designated Heritage Property and all fixtures and improvements upon the Designated Heritage Property at any time during usual business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the provisions of this Agreement.
- 5.3 The City retains the right at all times not to make any or all of Grant payments or to delay payment where the City deems that there is non-compliance by the Owner with this Agreement.
- 5.4 Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.

6. DEFAULT AND REMEDIES

- 6.1 The Owner agrees to maintain in good repair the improvements for which the Grant is provided. In the event that the Owner does not maintain in good repair said improvements, the City may:
 - a) serve on the Owner a written Notice to Repair detailing the particulars of the failure to maintain and the particulars of needed repairs; and
 - b) provide the Owner with at least 30 days to make such repairs.
- 6.2 On the occurrence of an event of default pursuant to subsection 6.3, the City shall be entitled to its remedies to enforce this Agreement, including, but not limited to:
 - a) delaying or ceasing the release of the Grant;
 - b) requiring repayment of the Grant; and/or
 - c) terminating this Agreement.
- 6.3 An event of default shall be deemed to occur upon any default of the Owner in complying with the terms set out in this Agreement, including, but not limited to, the following:
 - a) the as constructed works do not comply with the description of the works as provided in the Grant Application and any other supporting documentation required by the City;
 - b) the works are not undertaken in conformity with the Ontario Building Code and all applicable zoning requirements and planning approvals;
 - c) the building is damaged by fire or otherwise, and repair or reconstruction is not commenced within 90 days;
 - d) the Owner is in property tax arrears with respect to the subject lands for more than 90 days;
 - e) any representation or warranty made by the Owner is incorrect in any material respect;

- f) failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Owner and the City;
- g) the Owner makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Applicant, or if the Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Owner under any mortgage or other obligation, or if the subject lands or interest of the Owner in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;
- h) construction ceases for a period of 60 days due to the Applicant's default (strikes and Acts of God excepted) and/or the Owner abandons the Designated Heritage Property or project; or
- i) if this Agreement is forfeited or is terminated by any other provision contained in it. (each of the above being an "event of default").

6.4 The City may at its sole discretion, provide the Owner with an opportunity to remedy any default.

7. ADDITIONAL PROVISIONS

- 7.1 The headings contained herein are for convenience only and shall not affect the meaning or interpretation thereof.
- 7.2 The approved Grant Application referred to may be amended by the Owner and the City from time to time, as they may agree.
- 7.3 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.
- 7.4 Any amendment, supplement, modification, waiver or termination of this Agreement shall be in writing and signed by the parties.
- 7.5 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract.
- 7.6 Schedule "A" and "B" attached hereto forms part of this Agreement.

8. NOTICES

- 8.1 Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally, by e-mail, by fax or by prepaid registered first class post, by the party wishing to give such notice, to the other party at the address noted below:

Such notice shall be deemed to have been given:

- a) in the case of personal delivery, on the date of delivery;
- b) in the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a holiday, as defined in the *Interpretation Act* (Ontario), failing which it shall be deemed to have been received the next day, provided the next day is not a holiday; and
- c) in the case of registered post, on the third day, which is not a holiday, following posting.

Notice shall be given:

To the Owner at:

Name

Address

Telephone No:

Cell No.:

E-mail:

To the City at:

The Corporation of the City of Brampton
Planning and Development Services
2 Wellington Street West
Brampton, ON L6Y 4R2

Attention: City of Brampton Heritage Staff
Telephone No:
E-mail: heritage@brampton.ca

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and/or affixed their corporate seals attested by the hands of their proper officers duly authorized in that behalf.

Approved as to form – Legal Services ____/____/____ _____	Approved as to content-P&DS ____/____/____ _____	Approved as to content – FIS ____/____/____ _____
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THE CORPORATION OF THE CITY OF BRAMPTON

Mayor

Peter Fay, Clerk

Authorizing By-law _____

Witness:

SCHEDULE "A"

Legal Description of land

SCHEDULE "B"

Date:

XYZ

To Whom It May Concern:

RE: XYZ
Request for Heritage Incentive Grant

Please be advised that the City Of Brampton requires a statutory declaration as per Clause 4.4 (a) of the By-law and Designated Heritage Incentive Grant Program Kit in order for the Heritage Incentive Grant to be rewarded.

Please have a declaration prepared and sworn in the attached format and forward to the writer's attention.

We trust that you will give this matter your immediate attention.

Yours truly,

The information provided in this correspondence is current as of the date indicated above, and after such date is subject to change. Reasonable effort has been made to ensure the information contained herein is correct, however, The Corporation of the City of Brampton cannot certify or warrant the accuracy of the information and it accepts no responsibility for any errors, omissions or inaccuracies.

Enclosure

Province of Ontario) AND IN THE MATTER OF CLAUSE 3.1(b)
) OF THE BY-LAW AND DESIGNATED
(insert here "Regional Municipality of Peel" or "City of Brampton")) HERITAGE INCENTIVE GRANT
) PROGRAM KIT

I, _____ of the _____
(name of individual) (City/Town)

in the _____ SOLEMNLY DECLARE THAT:
(Municipality/County)

1. I am the _____ of _____
(owner) (address)
and as such have knowledge of the matters hereinafter deposed to.

2. All works required to be installed and completed on the property with municipal address have been completed and fully paid for and no one is entitled to a claim or lien in respect of labour or materials supplied in respect of such work.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the _____)
of _____)
in the _____)
of _____)
this _____ day of _____ 2020)
)
)
)

A Commissioner, etc.

) _____
(_____)
(print name of commissioner and date of expiry)