

# CITY OF MADISON RETAIL IMPROVEMENT GRANT PROGRAM



## *Strengthening Downtown Independent Retail*

Economic Development Division  
215 Martin Luther King Jr., Boulevard  
Ruth Rohlich, 267-4933  
[rrohlich@cityofmadison.com](mailto:rrohlich@cityofmadison.com)  
website address: [www.cityofmadison.com/retailgrant](http://www.cityofmadison.com/retailgrant)

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## PROGRAM SUMMARY

As the City of Madison, residents, business owners and development community continue to invest in creating a vibrant downtown we recognize the need to invest in the independent retailers in the downtown area to make sure we continue to maintain the independent flavor that makes Madison special.

Unique and successful independent retail businesses (see definitions) can have a significant effect on the attractiveness and marketability of the surrounding area. This program encourage business owners to reinvest in the downtown business area by offering matching grants to assist with the capital costs associated with renovating the interior and exterior of retail spaces.

### **Applicant Eligibility Requirements**

Property owners of commercial/mixed-use structures and building tenants, with leases of more than five years in length, located within the target area, are eligible for funding. Governmental entities and public and quasi-public authorities are ineligible for funding.

### **Property Eligibility Requirements**

Properties that are used in whole or part for commercial activities, with a strong focus on retail product sales, are eligible for funding. The program is intended to assist projects that promote independent retail activities, create an attractive environment and encourage neighborhood character. Projects meeting these objectives are eligible for a grant for up to one half the cost of leasehold improvements up to \$50,000.

**In order to qualify, applicants cannot start on their project until after receiving the necessary approvals. If work begins before application or approval, the City cannot fund the project with Retail Improvement Grant Funds.**

### **Target Area**

- Properties located within the boundary map titled TID #32 Retail Grant Program

### **Forgivable Grant Amount**

Grants will be provided in an amount up to 50% of the total project cost, to a maximum of \$50,000 for eligible interior and exterior improvements. The owner/tenant must use private, non-City funds to match the City's grant.

### **Eligible Costs**

To the greatest extent possible, the City would like to invest in interior and exterior improvements that would benefit not only the current, but future retailers within the space. Such eligible interior improvements would include, but are not limited to, the following:

- HVAC, electrical, or plumbing improvements

- ADA compliance improvements
- The construction of customer restrooms
- Rehabilitation of the space to basic “white-box conditions”, such as repairing or replacing cracked plaster walls, structural improvements or ceilings
- New flooring
- New lighting
- New windows and doors
- Restoration of deteriorated historic/architectural elements
- Loading dock, storage, store room repairs and construction
- Other elements that could be useful to a new retailer should the retailer seeking funds cease business operations.

Other build-out costs associated with customizing the space to the specific needs of the retailer could be applied to the applicant’s 1:1 match requirement, as long as the items are not likely removed from the space at the time of vacancy, such as built-in shelving or counter space.

Personal property (furniture, racks and shelves that can be easily removed and sold etc.) is not eligible for funding and will not be counted toward the required match.

- Eligible exterior improvements would mirror those improvements considered eligible under the current Façade Improvement Grant Program.
- Design and architectural associated with the construction are also eligible project costs.

### **Ineligible Costs**

Please recognize this funding is intended to preserve commercial retail establishments in the Retail Grant Program Area. Ineligible costs will include costs that are for fixtures and improvements that would not reasonably be of use to another retailer, operating costs, and any permit fees required by governmental agencies. Some of these less permanent additions may be used for the 1:1 required match.

- Security systems that are personal to the business and not transferrable to a new user
- Personal property, furniture, racks and shelves or counter space
- ***This funding is not available to retailers who principally sell food, beverages, and/or alcohol.***

### **Grant Requirements**

All projects must follow normal city processes.

The owner/tenant shall comply with all sign control ordinances contained in chapter 31 of the Madison General Ordinances and keep the exterior surfaces maintained to prevent deterioration and to present an attractive appearance. The owner/tenant shall comply with all applicable provisions of the Madison General Ordinances concerning equal employment opportunity and affirmative action programs and practices in connection with the construction work being completed using grant funds. The owner/tenant shall assist and actively cooperate with the City in obtaining the compliance of contractors with such provisions of the Ordinances, and with the rules, regulations and relevant orders issued by the City pursuant to such provisions of the Ordinances.

**In order to qualify, applicants cannot start (see definitions) on their project until after receiving the necessary approvals. If work begins before application or approval, the City cannot fund the project with Retail Improvement Grant Funds. With proper permission from the City exceptions for design work and exploratory work can be made, however, no project costs can be incurred before final approval of the Grant Fund by the City Council.**

## **Processing Steps**

- Step 1** Applications must be submitted to the Economic Development Division, 215 Martin Luther King Jr., Boulevard, Room 312, P.O Box 2983, Madison 53701-2983 An application from a tenant must include a copy of the lease and written approval from the owner. Applications must include a detailed description of the improvements suggested.
- Step 2** A City staff team will visit the site to discuss the proposed improvements. If the proposal meets the requirements of the Retail Building Improvement Grant, a Conditional Letter of Approval will be sent to the owner/tenant. This letter may require modifications or changes to the original proposal.
- Step 3** The applicant will then submit approved drawings and cost estimates to the Economic Development Division for review.
- Step 4** The Economic Development Division will prepare the appropriate resolutions for Board of Estimates and Common Council action.
- Step 5** Following approval by the Board of Estimates and Common Council, the Economic Development Division will prepare and furnish the applicant with the grant agreement.
- Step 6** The applicant must sign the grant agreement and return to the City.
- Step 7** The applicant must obtain permits for the required work. The applicant must display the sign provided by the City on the site indicating “Financing provided in part by the City of Madison Retail Improvement Grant Program.”
- Step 8** The applicant pays for the completed construction work and submits paid receipts and lien waivers from the contractors to the Economic Development Division.
- Step 9** Following a final inspection, the Economic Development Division authorizes a check for the approved amount.

## **Definitions**

**Independent Retailers:** for profit businesses owned by individuals, must be more than 50% owned by individuals residing in Dane County.

Businesses not owned by individuals, must be:

- headquartered in Dane County
- have more than 50% of key managers living in Dane County
- Business is registered in Wisconsin
- Business independently controls purchasing decisions, business makes independent decisions regarding the name and look of the business, including marketing, advertising, logo design and branding decisions. Business makes independent decisions regarding business procedures, practices and policies.

**Start Date:** With exception of light and exploratory demolition applicants cannot start on their project until after receiving the necessary approvals. If work begins before application or approval, the City cannot fund the project with Retail Improvement Grant Funds.

1. Loan\* Purpose. This Agreement is for the purpose of providing tax incremental financing assistance from the City to Borrower in the form of a zero percent (0%) interest, forgivable loan in the amount of \_\_\_\_\_ (the "Loan") to partially finance Borrower's rehabilitation of the Property (the "Project"). This Loan is to assist Borrower with tax incremental financing eligible project expenses, as defined by Sec. 66.1105(2), Wis. Stats. The Loan shall be repaid in accordance with the terms of the Note.

2. Conditions Precedent to Loan. The Loan is subject to the fulfillment, or waiver at the option of the City, in its sole discretion, of each and every one of the following terms, conditions and covenants prior to Loan closing:

a. Borrower shall execute a Note in the amount of the Loan (the "Note") secured by a leasehold mortgage on the Property (the "Mortgage") for the benefit of the City. The Mortgage shall be recorded in the office of the Dane County Register of Deeds at Borrower's expense on the day of closing or the next business day. The lien of the Mortgage shall be subject to and subordinate in all respects to the lien of a first mortgage in the maximum principal amount of \$\_\_\_\_, as well as to restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not due as of the date of the Mortgage, the rights of tenants in possession, and other encumbrances acceptable to the City;

b. Borrower shall have received a financing commitment from a financial institution acceptable to the City providing for the first mortgage financing, if applicable;

c. Borrower shall submit evidence that a property insurance policy of the proper type and amount of coverage to protect the City's loan participation has been obtained. Borrower shall list the City as a mortgagee on the policy. Borrower agrees to maintain such coverage during the term of the Loan and to submit annually to the City insurance certificates or policies that indicate insurance requirements are met and that premiums are fully paid;

d. Borrower shall provide an ALTA commitment for lenders title insurance on the Property issued by a responsible title insurance company licensed by the State of Wisconsin, committing said title insurance company to issue insurance for the Property, showing all liens, encumbrances and other matters of record, and such other endorsements as the City may require. The City shall receive a standard mortgage loan policy in the full amount of the Loan within thirty (30) days of closing listing the City as an additional insured. Such lenders title insurance shall be at Borrower's expense;

e. Borrower shall provide to the City releases of all easements, liens, encumbrances or claims against the Property or any part thereof which conflict with construction or occupancy of the Project or negatively impact the City's Loan and mortgage lien; and

f. The City shall have received and reviewed an acceptable After Rehabilitation Value Appraisal, if applicable.

3. Subordination. The City agrees to subordinate its mortgage lien to a mortgage lien in the amount of \_\_\_\_\_ to \_\_\_\_\_ in a form approved by the City Attorney.

4. Use of Loan Proceeds. Borrower shall use the Loan proceeds to pay for TIF eligible expenses. Borrower shall redevelop and construct the Project in accordance with the approved application submitted by Borrower, and all demolition and construction permits issued for the Project.

\*"Loan" refers to the Retail Improvement Grant

5. Termination of Lease. The mortgage and remaining balance will be due and payable upon termination of the Borrower's lease and occupancy of the Property if not otherwise satisfied.

6. Relatedness of Other Loan Documents. The terms of the Note and Mortgage are hereby incorporated herein by reference, and noncompliance with any term or condition of any of them shall be deemed a default hereunder.

7. Environmental Issues.

a. To Borrower's knowledge after reasonable investigation, with respect to the time before Borrower owned or occupied the Property, no person or entity has caused or permitted materials to be stored, deposited, treated, recycled or disposed of on, under or at the Property, which materials, if known to be present, would require cleanup, removal or some other remedial action under any Environmental Law.

b. To the best of Borrower's knowledge, there are no conditions existing currently or likely to exist during the term of this Agreement which would subject Borrower to damages, penalties, injunctive relief or cleanup costs under any Environmental Law or which require or are likely to require cleanup, removal, remedial action or other response pursuant to any Environmental Law by the Borrower.

8. Rights of Access to Property. Borrower shall permit the representatives of the City to have access to the Property at all reasonable times when the City deems access necessary to insure compliance with the terms and conditions of this Agreement, including but not limited to access for inspection of all work being performed in connection with the construction of the Project. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section 7.

10. Obligation to Maintain and Repair. Borrower agrees that at all times after construction of the Project, it will keep and maintain, or cause to be kept and maintained, the Property and all improvements thereon in good repair and working order and will make, or cause to be made, from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof, so as to maintain the Property and all improvements thereon in habitable form, ordinary wear and tear and obsolescence excepted until the City has recovered or forgiven its Loan.

11 Loss or Damage. If there is any unpaid principal on the Loan when all or any of the Property is destroyed or damaged, and unless Borrower exercises its option to prepay the entire amount owing on the Note, then the following subsections shall apply:

a. Borrower shall proceed promptly to replace, repair, rebuild and restore the Property to substantially the same condition as existed before the event causing the damage or destruction, with such changes, alterations and modifications (including substitution or addition of other property) as may be desired by Borrower consistent with existing land use approvals and will be suitable for continued use of the Property as a retail business. Borrower will pay all costs thereof and be entitled to all net proceeds of the condemnation award or insurance claim. If the net proceeds are not sufficient to pay such costs in full, Borrower will nonetheless complete it and will pay that portion of the cost in excess of the amount of the net proceeds.

b. Borrower shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from the City or any abatement or diminution of the amounts payable under the Note and Mortgage or other sums payable by Borrower under the Agreement.

12. Indemnification. Borrower and Borrower's authorized agents, engineers, consultants and contractors shall be liable to and shall agree to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in connection with, caused by or resulting from the acts or omissions of the Developer and /or its authorized agents, engineers, consultants and contractors, and all of their and Developer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property. Negligence on the part of the Seller and its officials, officers, agents or employees shall not eliminate the indemnification obligations stated in the preceding sentence.

13 Events of Default. Any one or more of the following events is an event of default under this Agreement:

- a. The undersigned, or surviving spouse, or domestic partner as defined in Section 39.03(2)(n), Madison General Ordinances, defaults on any note or mortgage secured by the Property; or
- b. Nonperformance by Borrower of any covenant, term or condition of either the Mortgage or Agreement.

14 Remedies. Upon the occurrence of an Event of Default, the City shall, by written notice to Borrower, declare the Loan and Note to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal under the Note, including delinquency charges or other remedies as are provided in the Mortgage.

No remedy conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

In the event Borrower should default under any of the provisions of the Agreement and the City should employ or assign attorneys or incur other expenses for the collection of the Loan or the enforcement of performance of any obligation or covenant on the part of Borrower hereunder, Borrower will on demand pay to the City the reasonable costs, charges or fees of such attorneys and such other expenses so incurred.

15 Conflict of Interest. No officer, consultant, employee or agent of Borrower, or his designees, who is or has been a public official of the City and who exercises or who has exercised any function or responsibility with respect to the Project during his or her tenure as such public official, or who is in a position to formally participate in a decision-making process or gain insider information with respect to the Project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, or work to be performed in connection with the Project, or benefit therefrom, at any time during such person's tenure as such public official. This provision shall be in addition to the requirements in Section 3.35 of the Madison General Ordinances.

16 Recording of Documents. Title Company or the City shall promptly record the Mortgage in the office of the Register of Deeds for Dane County, Wisconsin. Borrower shall pay all recording fees.

17 Accessibility Accommodations. Borrower shall comply with the provisions of Exhibit B attached hereto and shall ensure that the Property shall be accessible to persons with physical disabilities, and that the Project is in compliance with Madison General Ordinance Section 39.05 and the Americans with Disabilities Act, where applicable.

18. Affirmative Action. As used in this Section 18, the term "Developer" means Developer and all contractors and subcontractors who perform work on the Project. The Developer agrees and understands that an Affirmative Action Plan is required by this agreement. Options C. and D. in Article IV below are not available to the Developer, per MGO sec. 39.02(9)(a)3., which requires the submission of an Affirmative Action Plan by all developers or other entities who enter into a contract authorized by Wis. Stat. § 66. 1105(3)(e), and their contractors and subcontractors.

#### Article I

The Developer shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Developer. The Developer agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

#### Article II

The Developer shall in all solicitations or advertisements for employees placed by or on behalf of the Developer state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin.

#### Article III

The Developer shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Developer's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

#### Article IV

(This article applies only to non-public works contracts.)

The Developer agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Developer warrants and certifies that one of the following paragraphs is true (check one):

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- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 CFR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
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- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.\*
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than twenty-five thousand dollars (\$25,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.\*

*\* Options C and D under Article IV are not available to the Developer under this Agreement.*

#### Article V

(This article is not applicable)

#### Article VI

The Developer will maintain records as required by Section 39.02 (9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

#### Article VII

In the event of the Developer's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.02 and 39.03 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the Developer ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime Developer 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Developer in the manner described above. The preceding sentence shall not be construed to prohibit a prime Developer from recovering the amount of such damage from the noncomplying subcontractor.

#### Article VIII

(This article is not applicable)

#### Article IX

The Developer shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article.)

20. Living Wage. Borrower agrees to pay all employees employed by Borrower in the performance of this Agreement, whether on a full-time or a part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances.

21. Equal Benefits. For the duration of this Contract, the Contractor agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of Sec. 39.07, MGO. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, the Contractor is unable to provide the benefit, the Contractor shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. The Contractor may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

Notice Posting, Compliance. The Contractor shall post a notice informing all employees of the equal benefit requirements of this Contract, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

Subcontractors (Service Contracts Only). Contractor shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Sec. 39.07, MGO.

Notification of Position Openings. Developer agrees to notify the State of Wisconsin Department of Workforce Development and the local workforce development board established under 29 USC 2832 of any positions to be filled in Dane County, as required by Sec. 66.1105(6c), Wis. Stats.

22. Wisconsin Law. This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin.

23. No Waiver. Failure of the City to insist upon the strict performance of any of the terms, covenants or conditions here to be performed by Developer shall not be deemed a waiver of any rights or remedies which the City shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed by Developer.

24. Severability. If any term or provision of this Agreement or the application thereto to any person or circumstance, shall, to any extent, be held invalid, unlawful or otherwise unenforceable, the

remainder of this Agreement, or the application of such term or provisions to the persons or circumstances other than those as to which it is invalid, unlawful or otherwise unenforceable shall not be affected thereby and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. Inspection of Records. The City shall, from the date of this Agreement, have the right upon reasonable notice and during business hours to audit and inspect any and all records, contracts, financial statements, ledgers or written documents from, to or in the possession of Developer which relate to and are generated by the responsibilities of this Agreement. The City's rights hereunder shall apply to not only those records and documents that are within the physical control and custody of Developer but also any records, statements and documents that may be within the custody and control of third parties or generated by third parties in the performance of the obligations and responsibilities hereunder, including but not necessarily limited to the architect, contractor and all subcontractors of Developer.

26. Notices and Demands. A notice, demand or other communication under this Agreement by any party to any other party shall be sufficiently and deemed received three (3) days after deposit if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

City:

City of Madison  
Director of Planning and Development  
P.O. Box 2983  
215 Martin Luther King, Jr. Blvd., LL-100  
Madison, WI 53701-2983

With copy to:

City Attorney  
City County Building, Rm. 401  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703

Developer:

With a copy to:

or such other addresses as the parties may designate to each other in writing from time to time.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.

28. Amendments, Supplements. This Agreement may be supplemented or amended only by written instrument executed by the parties.

31. Termination. This Agreement and Developer's obligations under the Note and Mortgage shall terminate at such time as Developer's obligations as set forth in Sections 3, 5, 6, 7, and 31 herein have been performed. At such time, the City shall execute an acknowledgment of termination or a release of this Agreement, the Note, the Personal Guaranties, and a satisfaction of the Mortgage in recordable form.