

CONTRACT

THIS CONTRACT by and between the City of St. Joseph, Missouri, a Municipal Corporation, hereinafter termed "City," and John Doe, LLC hereinafter "Grantee", on the terms, conditions and provisions as set forth described below.

RECITALS:

WHEREAS, John Doe, LLC, 555 W. Francis Street is listed as a contributing structure in the Museum Hill National/Local Historic District; and

WHEREAS, the St. Joseph City Council established a fund in its FY2011/2012 City budget from riverboat gaming funds to save and secure historically significant structures; and

WHEREAS, Grantee, on or about June 28, 2011, submitted an application for a Save Our Heritage Grant (SOHG) which will leverage the private investment necessary to save this historic structure.

NOW, THEREFORE, IN CONSIDERATION OF THESE MUTUAL COVENANTS, Grantee and City do hereby agree as follows:

Section 1. Definitions

"DIRECTOR" shall mean the Director of the Department of Planning and Community Development of the City of St. Joseph, Missouri.

"GRANTEE" shall mean John Doe, LLC, 555 W. Francis Street, MO, 64501.

"CITY" shall mean the City of St. Joseph, Missouri, a municipal corporation and administrator of the Save Our Heritage Grant program.

"GRANT" or *"SAVE OUR HERITAGE GRANT"* shall mean a grant utilizing riverboat gaming funds in an amount not to exceed ? Thousand Dollars (\$?0,000.00) which is subject to the terms, conditions, and requirements as stated in this Contract.

"PROPERTY, LAND AND/OR STRUCTURE" shall mean the land and structures located at: All of Lot eight (8) in Block sixty-three (63) in Bob Doe's Addition to the City of St. Joseph, Buchanan County, Missouri, and subject to all prior easements, restrictions, reservations, covenants and encumbrances, public and private roads and easements now of record, if any.

"REHABILITATION" shall mean, but not be limited to, the restoration or rehabilitation of the exterior of a building to a state of newness in accordance with the United States *Secretary of the Interior's Standards for Rehabilitation* and

other established program design guidelines, and both interior and exterior restoration in accordance with the City's codes and building regulations.

"*SCOPE OF WORK*" shall mean the following work to be completed to the structure;

1. Tuck-pointing where needed; and
2. Exterior restoration of brick and stone work; and
3. Cleaning and sealing the entire exterior of the building with water repellent.

"*TOTAL COMPLETED PROJECT*" shall mean the completion of exterior rehabilitation, as specified herein. All work shall be executed in a professional manner and in accordance with the United States *Secretary of Interior's Standards* and other established program design guidelines, and the City of St. Joseph's codes and building regulations.

WITNESSETH, For and in consideration of the mutual promises herein contained:

Section 2. Duties and Conditions of City

2.1 The City agrees to make available to Grantee funds in the form of a grant in the amount of ? Thousand Dollars (\$?0,000.00). The City's financial obligation shall not exceed ? Thousand Dollars (\$?0,000.00).. Such grant is subject to the terms and conditions specified in this Contract. All financial obligations by City in regard to this Contract shall cease upon final payment to Grantee for said eligible rehabilitation work under this contract or when the City has distributed the entire ? Thousand Dollars (\$?0,000.00). whichever comes first. SOHG money needs to be used by the end of the fiscal year in which they were granted or they will be revoked and returned to the City. This Contract, and all subsequent payments to the Grantee, will be administered by the City of St. Joseph, Department of Planning and Community Development, City Hall, Room 101A, 1100 Frederick Ave., St. Joseph, MO 64501.

2.2 In no event shall the City assume any obligation to make or continue to make any funding available other than the above stated amount, nor shall City incur any liability hereunder, unless and until the Grantee has timely and fully complied with his/her duties and obligations arising hereunder.

2.3 No deviations from the Scope of Work in relation to the expenditure of funds shall be made without written consent of City and the Planning and Community Development Department. The City, without invalidating this Contract, may authorize deviations from said rehabilitation contained herein which are necessary to accomplish the original scope of this Contract or to alleviate emergency situations. Need for such changes shall be determined by City. The amount of deviation necessary shall be determined by City and shall be stated in writing to the grantee.

2.4 Funds from the City for rehabilitation work will be used only for those work items listed in the Scope of Work, as defined in Section 1 of this contract.

2.5 Grantee agrees to contribute all the labor necessary, as well as any and all expenses above and beyond the City's grant of ? Thousand Dollars (\$?0,000.00)., toward items listed in the Scope of Work and towards the Total Completed Project, as specified in Section 1 of this contract.

Section 3. Duties and Responsibilities of the Grantee

3.1 Grantee agrees to complete the rehabilitation work specified in the Scope of Work and finish construction as a Total Completed Project as defined in this contract.

3.2 Grantee agrees to start the work specified within this contract no later than forty-five (45) days from the date this contract is signed by the City Manager. Grantee shall have the work detailed in the Scope of Work and Total Completed Project completed no later than three hundred and sixty-five (365) days from date this Contract is signed by the City Manager. If the Grantee finds that the improvements will not be completed within the stated time, the Grantee must request an extension in writing from the Historic Preservation Planner in the Department of Planning and Community Development and such request may be approved by the Planning and Community Development Director. Failure to complete the scope of work within three hundred and sixty-five (365) days of the date this agreement is signed by the City Manager, or a request in writing and receiving an extension, will be considered non-conformance and material breach of this Contract.

3.3 A lien will be recorded on the property when fifty percent (50%) of the funds, or \$?0,000 has been dispersed. Should the grantee fail to comply with the terms of this grant, there shall become a second lien for the total amount of money paid to the grantee that will be a recorded lien on the property. No notice to the grantee is required. The grantee further acknowledges that his/her failure to comply with the terms of this contract will result in this grant becoming a promissory note. That it will be a personal debt of the grantee and it will accrue interest at the rate of 8% per month on the total amount of the grant actually paid to grantee. Should the City be required to take legal action, reasonable attorney fees of twenty-five percent of the grant paid to grantee are deemed reasonable. Notice of this grant becoming a promissory note, personal debt and lien shall be mailed certified mail to the grantee at his/her last known address.

3.4 Rehabilitation work shall also be in conformity with all applicable and existing state, federal and local laws, ordinances, regulations and codes. It shall be the Grantee's responsibility to seek out and obtain any necessary permits before performing work, including but not limited to City Building Permits, Demolition Permits, Certificates of Appropriateness from the Downtown Review Board or the Landmark Commission, Dumpster Permits, and/or Street Closure Permits.

3.5 All improvements as specified in the Scope of Work shall be in accordance with *the United States Secretary of the Interior's Standards for Rehabilitation*. Complete copies of *the United States Secretary of the Interior's Standards for Rehabilitation* are

available on-line at <http://www.nps.gov/history/hps/tps/tax/rhb/stand/htm>. All rehabilitation shall be done in a professional, workmanlike manner.

3.6 Grantee shall ensure that all property taxes, regular and special, not otherwise abated or eliminated by government authority, are paid up-to-date and must remain current throughout the term of this Contract.

3.7 Grantee agrees to maintain detailed records and receipts on the building construction activity to document Grantee's expenditures and to be responsible for such record keeping. The Grantee further agrees to make all records concerning the building construction activity available at all times to the City during the term of this Contract, and shall allow the City to conduct routine monitoring and review of internal control and actual expenditures related to funding herein.

3.8 Grantee agrees to indemnify, defend and hold harmless the City, its officials, employees, and agents from any violation by Grantee of any laws, rules, regulations, and ordinances.

3.9 The Grantee agrees to provide worker's compensation insurance for any employees, as required by state law, and to require any contractor or subcontractor to do the same. In addition, the Grantee agrees that if a contractor is employed to complete the work, then the contractor shall require its employees and/or agents to maintain motor vehicle insurance pursuant to minimum state requirements for operation of motor vehicles under their direction and control.

3.10 The Grantee shall use general contractor(s) or subcontractor(s) licensed by the City of St. Joseph and who maintain the required insurance coverage. The Grantee shall ensure that no contractor or sub-contractor is used on the project that may be disbarred or disqualified by the City.

3.11 The Grantee shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this contract, the Grantee shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The Grantee shall also affirm, by sworn affidavit, that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The Grantee further agrees to abide by any and all rules promulgated by the attorney general that are designed to implement R.S.Mo. Sections 285.525 – 285.550.

3.12 The Grantee understands and agrees that the Grant will be used solely for labor, materials, and other items listed in the approved specifications.

Section 4. Mutual Agreements

4.1.1 The parties mutually agree that the grant money, as specified in Section 2.1 of this Contract, may be paid in installments as the rehabilitation is completed, accepted, and approved by the City.

4.1.2 Any work not performed by Grantee shall be “bid out”. A minimum of three bids shall be received in writing. Copies of bids shall be furnished to the City Department of Planning and Community Development.

4.1.3 All requests for payment shall be submitted with an invoice from the contractor. Upon satisfactory completion of the work specified in the Scope of Work, subject to the requirements of Section 4.1.4 of this Contract, the City shall issue a single warrant to the Grantee, the amount of which shall be equal to the approved amount of the billing request.

4.1.4 The City reserves the right to inspect for completion of items listed in the Scope of Work and withhold payment for any request that does not pass said inspection. The City may, in its sole discretion, release a partial payment of any request for payment submitted by the Grantee, if portions of the work in the Scope of Work for which payment is requested, contained in the request for payment are satisfactory. No payment of a portion of any request shall constitute an acceptance of unsatisfactory rehabilitation work excepted for payment in this section.

4.1.5 Any and all inspections prior to payment are specifically limited to the appropriateness of payment by the City and in no way shall they create liability upon the City for those inspections. Further, the Grantee, the Contractor or their agents, employees, invitees, licensees, or any person claiming under said parties may not rely on said inspections for any purpose, other than the appropriateness of payment. **THE CITY DOES HEREBY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, THAT MAY ARISE AS A RESULT OF ANY INSPECTIONS CONTEMPLATED IN THIS CONTRACT.**

The Grantee agrees, and City states, that the City:

4.2 Owes no duty to the Grantee or any other person, including any lender, which shall arise because of any inspection of the premises by the City's agents or employees.

4.3 May inspect the property at any reasonable time, including a final inspection of the rehabilitation work described in the Scope of Work, to certify completion prior to final disbursement of said Grant funds.

4.4 May inspect the property at any reasonable time to ensure compliance with other provisions of the Contract through and to the end of the total completed project.

4.5 The City's officers, employees, and agents, shall be held harmless and indemnified by the Grantee for all injuries, damages, or claims, including any attorneys' fees, arising by virtue of the rehabilitation work listed in the Scope of Work contemplated by this Contract. Grantee covenants and agrees to hold harmless and defend City, its officers, agents, employees, franchisees, contractors, and subcontractors from and against any and all claims or suits for property loss or damage, and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of all activities related to this Contract.

4.6 The Grantee shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the City, its Planning and Community Development Staff or their authorized representatives.

4.7 The Grantee shall supervise and direct the work, using his or her best skill and attention, and the Grantee shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under this Contract. The Grantee shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities temporary or permanent and whether or not incorporated or to be incorporated into the work. The Grantee warrants that all materials and equipment incorporated into the work will be new unless otherwise specified and approved by the Planning and Community Development Department and the property owners, and that all work will be of good quality. The Grantee will pay all sales, consumer, use and similar taxes, and shall secure and pay for the building permits and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work. All of these costs are included in the contract sum. The Grantee shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work. The Grantee shall keep the premises free from accumulation of waste material or rubbish caused by his or her operations. At the completion of the work, and prior to final inspection, the Grantee shall remove all of the waste materials and rubbish from the work area as well as tools, construction equipment, machinery and surplus materials.

4.8 The Grantee shall be required to provide matching funds that are equal to or greater than Two-hundred percent (200%) of the amount of the Grant.

4.9 The contract time for completion of the work shall be three hundred and sixty-five (365) days from date the grant is signed by the City Manager.

4.9.1 The Grantee shall start the work as listed under Scope of Work within forty-five (45) days of the date of this contract is signed by the City Manager. The Grantee shall have the work performed fully, faithfully, and in an acceptable manner, within the time stated in the contract, or within the time provided in the last extension thereof, and all extensions of time must be approved by the Director of Planning and Community Development and the Grantee prior to the time stated in the contract or the date of the last preceding extension thereof. An executed copy of this contract shall be given to the grantee. The City may but is not required to issue a Notice to Proceed within thirty (30) days after the date the City Manager signs this contract.

4.9.2 In case of changes to the contract (Change Orders), an extension of time may be granted by the City to the Grantee; if so granted, extension shall be stated in a written Change Order.

4.9.3 A calendar day is defined as any day of the year, including weekends and holidays. Extensions other than those specifically provided for herein, will be available upon consideration by the Planning and Community Development office and the Grantee.

4.10 Should the Grantee be delayed in the completion of the work by default of the Grantee or of the City, or by any damage caused by fire or for which the Grantee is not responsible or by acts of nature, the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be made, determined and fixed by the City and the Grantee, but no such allowance shall be made unless a claim therefore is presented in writing to the City and the Grantee within forty-eight (48) hours of the occurrence of such delay.

4.11 The parties shall not discriminate against anyone in connection with the work being done and materials being furnished under the contract for any reason directly or indirectly related to age, political affiliation, race, creed, color, religion, sex, national origin ancestry, marital status or disability.

4.12 Simultaneous with the execution of this agreement, the Grantee shall furnish the City a list of any and all sub-contractors employed for the project, with their business addresses and phone numbers. Each and every sub-contractor shall be approved by the City.

4.13 Before the City authorizes release of payment for any work performed by a

contractor or sub-contractor, Grantee shall furnish the City, upon completion of any contractor sub-contractor's work or delivery of supplies by a material person, an executed "Waiver of Mechanics' Lien – by Sub-contractor" for such work or supplies with Grantee's accompanying Affidavit of Payment on the form provided therefore by the City. Grantee shall also be responsible for furnishing partial waiver of mechanics' lien by contractors or sub-contractors with Grantee's accompanying Affidavit, for any installment payments made to the sub-contractor during the term of the contract in addition to the "Waiver of Mechanics' Lien – by Sub-contractor" heretofore required. If at any time there shall be evidence of any Mechanics' Lien which is chargeable to the Grantee, the City shall have the right to retain out of any payment then due or thereafter to become due to contractor an amount sufficient to completely indemnify the City and/or Grantee against such Mechanics' Lien. Should there prove to be any such Mechanics' Lien after final payment, the Grantee shall indemnify the Grantee and/or City all monies that it may be compelled to pay in discharging any such Mechanics' Lien on said premises.

4.14 The Grantee shall complete the work specified in the Scope of Work of this Contract. Grantee agrees that failure to satisfy the specified work within the time frame specified in Sections 3.2 & 4.8 of this contract constitutes a material breach of this contract. Remedies available to Grantor for breach of this contract include all available remedies under the law.

4.15 For just cause, and as requested in writing, the Director of Planning and Community Development shall have the power and sole discretion to extend said deadline for a single one hundred and eighty (180) day period.

4.16 No installment payment made pursuant to the contract shall be construed to be an acceptance of defective or improper work and/or materials. The making and acceptance of final payment shall constitute a waiver of all claims by the Grantee.

4.17 This contract is binding upon the parties, their successors, assigns, heirs, executors and administrators.

IN WITNESS WHEREOF, the parties have executed this Contract as of the _____ day of _____, 2011.

I HEREBY CERTIFY THAT THERE IS AN UNENCUMBERED BALANCE TO THE CREDIT OF SUCH APPROPRIATION SUFFICIENT TO PAY FOR THAT PORTION OF THE CONTRACT WHICH WILL CONSTITUTE THE CITY OF ST JOSEPH'S PRO RATA SHARE AND ACTUAL CONTRIBUTION TO THE PROJECT.

Carolyn Harrison, Director of
Financial Services

ATTEST:

CITY OF ST. JOSEPH, MISSOURI
A Municipal Corporation

Paula Heyde, City Clerk

Vincent J. Capell, City Manager

APPROVED AS TO FORM:

GRANTEES

Ted Elo, Assistant City Attorney

John Doe, Vice-President

Jane Doe, Secretary

ATTEST: (SEAL)