



# staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Jim DellaLonga, Director of Economic Development

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. XXX, in a form approved by the City Attorney, with Tom Marino for the granting of funds for restaurant improvements under the Downtown Restaurant Assistance Program, Element No. 2.

DATE: October 10, 2016

## **EXECUTIVE SUMMARY**

This action would authorize the City to enter into an agreement with Tom Marino of Marino's Italian Restaurant approving grant funding for restaurant improvements under the City's Downtown Restaurant Assistance Program, Element No. 2.

## **RECOMMENDATION TO CITY COUNCIL**

- 1) Authorize the City Manager to execute Agreement File No. XXX, in a form approved by the City Attorney; or
- 2) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

The total grant will be an amount not to exceed \$40,000. Funds for the Restaurant Improvement Program, Element No. 2 are budgeted in Account No. 510-44410-4002.

## **DISCUSSION**

On April 25, 2016, the City Council adopted Resolution No. 16-18 which set forth policies and procedures for the Downtown Restaurant Assistance Program, Element No. 2 (the Program). The Program provides assistance to property and restaurant owners who want to create a new restaurant use or improve an existing restaurant use within the Program Boundary. On August 10, 2016, Tom Marino (the Applicant), owner and operator of Marino's Italian Restaurant, submitted his application to the Program. Economic Development Department Staff reviewed the application and determined that the applicant qualifies for the Program. The Applicant has requested up to \$40,000 for interior and exterior improvements to the restaurant including installation of new light fixtures, carpet replacements and drop-ceiling replacement. All improvements funded by the grant meet the Program guidelines. Funds for the improvements will be provided on a reimbursement basis.

## **ATTACHMENT**

Agreement File No. XXX..... 2

**AGREEMENT NO. XXX  
GRANT AGREEMENT  
FOR THE DOWNTOWN RESTAURANT ASSISTANCE PROGRAM  
ELEMENT NO. 2  
BETWEEN  
THE CITY OF BELLFLOWER AND  
TOM MARINO**

This agreement is entered into this \_\_\_ day of \_\_\_, 20\_\_ by and between the City of Bellflower, a general law city and municipal corporation (“City”), and Tom Marino (“Grantee”), owning or leasing real property located at 17126 Bellflower Boulevard (“Property”).

1. **RECITALS.** This agreement is made with reference to the following facts and objectives:

- A. Grantee wishes to participate in the Program which is made available to persons owning or leasing eligible real property within the Program Boundary.
- B. The Program is established in accordance with Resolution No. 16-18, adopted April 25, 2016, and the administrative policies and procedures promulgated to implement the Program.

2. **DEFINITIONS.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Agreement. Undefined words and phrases will be those set forth within the Program Guidelines.

- A. “Project” means the process (including design, administration, and construction) for completing the Eligible Improvements;
- B. “The Property” means real property owned or leased by Grantee;

3. **UNDERSTANDING REGARDING THE PROGRAM.**

- A. By signing this Agreement, Grantee certifies that Grantee understands the manner in which the Program is funded and administered. Grantee further acknowledges that Grantee received written program materials regarding the Program and is fully informed regarding Grantee’s obligations if Grantee participates in the Program.
- B. Grantee agrees to maintain the Eligible Improvements in a satisfactory manner for a period not less than 3 years after their completion.

- C. Specifically, Grantee agrees that it will:
- i. Maintain the Eligible Improvements funded through the Agreement in good condition including maintenance of the building interior and exterior and perimeter clean and free of graffiti, and the adjacent sidewalks clear and free of litter in accordance with industry health and safety standards and in accordance with this Agreement.
  - ii. Maintain the building façade on the Property in good condition clean and free of graffiti and litter.
  - iii. Maintain any building signage in good condition, in which signage will not be removed or changed without the written approval of the City except for signage changes made necessary by changes in tenancy.

**4. CONTROL OVER THE PROGRAM AND PROGRESSION OF PROJECT.** Grantee understands and agrees that City has sole discretion over all aspects of the Program including, without limitation, scheduling the Project as it applies to the Property. Grantee should not have any expectation, nor does Grantee have any right to demand, an immediate start to the Project upon signing this Agreement. City will use its best efforts to equitably and expeditiously implement the Program, but will not be liable for any failure to do so.

**5. PROJECT COORDINATION AND SUPERVISION.** Jim DellaLonga is designated as City's Program Manager and will monitor the progress and execution of this Agreement. Tom Marino is designated as Grantee's Representative.

**6. NOTICES.** All communications to either party by the other party will be deemed made when received by such a party at its respective name and address, as follows:

If to GRANTEE(S):

Attention: Tom Marino  
709 N. Pacific Street  
Oceanside, CA 92054  
(562) 810-0606  
pastaman50@cox.net

If to CITY:

Attention: Jim DellaLonga  
City of Bellflower  
16600 Civic Center Drive  
Bellflower, CA 90706  
(562) 804-1424  
jdellalonga@bellflower.org

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

**7. INSURANCE.** Grantee will maintain commercial general liability insurance throughout the term of this Agreement in an amount not less than \$100,000 per occurrence for bodily injury and property damage. Grantee agrees to provide City with copies of insurance certificates and endorsements showing coverage.

**8. STRUCTURAL DEFECTS AND ILLEGAL CONSTRUCTION.** Grantee understands and agrees to repair any structural defect(s) on the Property during the term of this Agreement identified by City as necessary to continue the Project. Such repair will be accomplished at Grantee's sole cost. Should Grantee fail to perform such repair, and such failure interferes with the timely progression of the Project, City may either suspend the Project or terminate this Agreement. Structural defects include, without limitation, dry rot, termite damage, illegal construction, or other physical damage.

**9. LICENSE TO ENTER GRANTEE'S PROPERTY.**

- A. Grantee grants City's representatives the right to access the Property subject to the following requirements:
  - i. Individuals permitted access are limited to City's appointed officers, consultants, employees, and contractors that are directly concerned with administering the Program.
  - ii. Grantee also grants City's building inspectors the right to access the Property to inspect the construction of Eligible Improvements and to determine whether the Eligible Improvements meet the requirements of applicable law.
  - iii. City's representatives will schedule appointments with Grantee to enter onto the Property.
  - iv. If Grantee rents out the Property, Grantee agrees to take all steps reasonably necessary for City's representatives to gain entry to the Property.
  - v. Grantee, or Grantee's representative, will accompany City's representatives during all pre-construction entries onto the Property.
  - vi. Grantee also agrees to allow City's representatives to enter Property not later than ninety (90) days after City files a Notice of Completion to evaluate the effectiveness of the Eligible Improvements.

**10. HOLD HARMLESS.**

- A. Grantee will hold City, and its agents, harmless and free from any and all liability arising out of this Agreement, or its performance, including any such liability caused, in part, by the passive negligent act or omission of City, or its agents. Should City, or its agents, be named in any suit, or should any claim be against it, or any of its agents, by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, pursuant to this Agreement, Grantee will defend City (with counsel satisfactory to City), and its agents, and will indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise.
- B. For purposes of this section "City" includes City's elected officials, appointed officers, and employees.
- C. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**11. CITY'S TERMINATION.**

- A. City may terminate this Agreement with or without cause. Except as provided herein, City will not be liable to Grantee for any damages that might arise from such termination. Should City terminate without cause, City agrees to provide Grantee with those plans and specifications, or other documents (if any), necessary for Grantee to continue installation of Eligible Improvements.
- B. Grantee agrees that nothing in this Agreement is intended to, nor will it, obligate City to continue the Project should federal, state or local funding become unavailable. Should any funding sources become unavailable to City for continued funding of the Project, this Agreement will automatically terminate. City will notify Grantee as soon as practicable regarding such termination, but in no event later than 15 days following such an event.
- C. Should Grantee choose to continue with the Project, Grantee will be responsible for all actions associated with the Project including, without limitation, cost.

**12. MAINTENANCE.** Grantee agrees to assume the responsibility for maintenance and operation of the Eligible Improvements after City files a Notice of Completion. City does not bear any responsibility for the maintenance and operation of these items.

**13. ASSIGNABILITY.** This Agreement may not be assigned without City's prior written consent. Any attempt to assign this Agreement without City's consent will result in immediate termination of this Agreement.

**14. INTERPRETATION.** This Agreement was drafted in, and will be construed in accordance with the laws of, the State of California and exclusive venue for any action involving this Agreement will be in Los Angeles County.

**15. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. This Agreement will bind and insure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

**16. WAIVER.** In no event will any payment or any acceptance of payment by City hereunder constitute or be construed as a waiver by City or Grantee of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or Grantee, and the making of any such payment while any such breach or default exists will in no way impair or prejudice any right or remedy available to City or Grantee with respect to such breach or default.

**17. AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. City's City Manager may execute any such amendment on behalf of City.

**18. RECORDATION.** The Parties agree that a copy of this Agreement will be recorded, at City's cost, in the Los Angeles County Recorder's office.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement the day and year first hereinabove written.

**CITY OF BELLFLOWER**

**MARINO'S ITALIAN RESTAURANT**

\_\_\_\_\_  
**Jeffrey L. Stewart  
City Manager**

\_\_\_\_\_  
**Tom Marino  
Property Owner/Operator**

**ATTEST:**

Federal Tax ID No. 95-4568456

\_\_\_\_\_  
**Mayra Ochiqui,  
City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Karl H. Berger, City Attorney**