



**CUYAHOGA COUNTY**  
**STOREFRONT RENOVATION REBATE CONTRACT**  
**Between**  
**CUYAHOGA COUNTY**  
**And**

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THIS STOREFRONT RENOVATION REBATE CONTRACT ("Contract") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the COUNTY OF CUYAHOGA, OHIO, (the "County"), on behalf of the Department of Development ("DOD"), and **4476 Ridge Road Holdings, LLC** a **Limited Liability** corporation with its principal office located at **4476 Ridge Road**, **Brooklyn**, Ohio 44144, (the "Property Owner").

WHEREAS, such activities to be performed include exterior renovation of the property located at **4476 Ridge Road**, **Brooklyn, Ohio 44144** (the "Property").

NOW, THEREFORE, for the consideration of mutual promises hereinafter set forth, the County and the Property Owner agree as follows:

**ARTICLE I – SCOPE OF WORK:**

Property Owner shall cause the completion of the exterior renovation work ("Renovation Work") at the Property for this Contract as set forth in the completed Cuyahoga County Storefront Renovation Rebate Application, attached hereto as Exhibit A and incorporated herein by reference.

**ARTICLE II – TIME OF PERFORMANCE:**

The Renovation Work set forth in Exhibit A ("Services") shall commence on \_\_\_\_\_, 20\_\_ and shall be completed by no later than \_\_\_\_\_, 20\_\_.

**ARTICLE III - WORK PRACTICES:**

Property Owner will enter into an agreement with a qualified and licensed contractor ("Contractor"), who is registered, bonded and insured as required by the County under Article VI below, to complete all Renovation Work. The Renovation Work shall comply with requirements of all current versions of the **City of Brooklyn** Building Code.

**ARTICLE IV – METHOD OF PAYMENT:**

Property Owner guarantees and warrants that the costs submitted for reimbursement will be actual and legitimately incurred for the Renovation Work outlined in the Cuyahoga County Storefront Renovation Rebate Application and accompanying documentation. The County will provide the requested Storefront Renovation Rebate Amount ("Rebate Amount") pursuant to this Contract in one lump sum upon receipt of a reimbursement request and a completed final report, in a format required by the County, stating completion of all Renovation Work to the satisfaction of the City of Brooklyn. No advances or partial payments of the approved Rebate Amount will be issued. No payments of the Rebate Amount will be issued for any Renovation Work completed prior to the County's issuance of a notice to proceed. The Rebate Amount shall be mailed directly to the Property Owner, at the address of record, within 4-6 weeks after receipt and approval of the completed final report and reimbursement request by the County.

#### ARTICLE V – CONDITIONS:

1. **SUBSTITUTIONS/CHANGES:** It is not the desire of the County to exclude any products or materials of equal or greater merit to those specified in the attached Cuyahoga County Storefront Renovation and Rebate Application. If Property Owner wishes to make substitutions, Property Owner will provide the County with complete information about the substituted product or material when required prior to the commencement of the Renovation Work. Said substitutions or changes must not alter the terms of the prior approved Rebate Amount.
2. **UTILITIES:** The Rebate Amount is based on the Property Owner using existing utilities such as light, heat, power and water necessary for the completion of the Renovation Work. Property Owner warrants that costs for utility usage shall neither be submitted for reimbursement by the Property Owner, nor paid for by the County.
3. **PERMITS/LICENSES:** All permits and licenses necessary for the completion of the Renovation Work shall be secured and paid for by the Property Owner and/or Property Owner's Contractor prior to the commencement of the Renovation Work. All Renovation Work shall be performed in compliance with all applicable federal, state, and local laws, regulations, codes and requirements. If the Contractor performs contrary to such laws, regulations and/or codes, Property Owner shall bear all costs to immediately correct the Renovation Work.
4. **INSPECTION OF WORK:** The County and the City of Brooklyn (municipality) shall have access to the Renovation Work at all times. If the Renovation Work is not completed in accordance with this Contract, the County may declare the Property Owner in default and terminate the Contract.
5. **PUBLIC RECORDS:** The Property Owner acknowledges that the County is a political subdivision in the State of Ohio, and as such is subject to the Ohio Revised Code and other laws related to the keeping of and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements and retention schedules affecting any and all manner of communication with the County and any and all documents in any format or media.
6. **APPLICABLE LAWS AND CODE:** Property Owner agrees that in the performance of this Contract, there shall be no discrimination against any person due to sexual orientation,

race, color, sex, religion, or national origin as provided in Title VII of the Civil Rights Act, the laws of the State of Ohio, County of Cuyahoga, and City of Brooklyn. Any such violations thereof shall be deemed a breach of this Contract.

This Contract shall be subject to all applicable chapters of the County Code, including, but not limited to the chapters pertaining to County Ethics, the County Inspector General and the County Contracts and Purchasing Board. The Property Owner shall comply with all of the County Code as an integral part of this Contract. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us>.

7. **GOVERNING LAW AND JURISDICTION:** This Contract will be construed and enforced in accordance with the laws of the State of Ohio, applicable to agreements of this nature. The County and the Property Owner hereby consent to the jurisdiction and venue in Cuyahoga County, in said State of Ohio. Property Owner hereby agrees not to challenge this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of the County for any reason.

8. **GOOD STANDING:** The Property Owner has been duly organized, is a validly existing business entity and is in good standing under the laws of the State of Ohio, and has all requisite power, corporate or otherwise, to conduct the its business, as presently conducted, to own, or hold under lease, the Property Owner's assets and properties and is duly qualified to do business in all other jurisdictions in which the Property Owner owns property and will remain so qualified and in good standing during the term of this Contract.

#### ARTICLE VI – MANDATORY INSURANCE REQUIREMENTS:

The Property Owner shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

1. **Mandatory Insurance Requirements.**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

If Property Owner has employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and federal laws as applicable including Employers' Liability coverage with limits of liability not less than:  
\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- (b) Commercial General Liability Insurance with limits of liability not less than:
  - \$1,000,000 each occurrence bodily injury & property damage;
  - \$1,000,000 personal & advertising injury;
  - \$2,000,000 general aggregate;
  - \$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

## 2. Additional Insurance Coverage

Although these coverages may not be listed as mandatory County insurance requirements, it is at the County's discretion to mandate these coverages where deemed necessary based on the nature of the contracted services/products. Based on the nature of the services to be provided by the Contractor, the Property Owner is responsible for ensuring that the Contractor has the above mandatory coverages as well as following coverages:

- (a) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;
- (b) All Risk Equipment Insurance covering all risk of physical damage to equipment provided for use by Contractor.
- (c) Builders Risk Insurance on an All Risks Property Coverage Form covering damage to buildings or other structures while under construction or renovation including materials and fixtures whether or not yet incorporated into the buildings or other structures.

## 3. Insurance Coverage Terms and Conditions

- (a) The insurance policies of the Property Owner required for this Contract, with the exception of the All Risk Equipment Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:
  - (i) Thirty (30) days prior notice of cancellation or material change; and
  - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- (b) The insurance required for this Contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- (c) These insurance provisions shall not affect or limit the liability of the Property Owner stated elsewhere in this Contract or as provided by law.
- (d) The Property Owner shall require its Contractor and any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

(e). The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

(f). The Property Owner shall and/or shall cause its contractor to furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

## ARTICLE VII - INDEMNIFICATION

Property Owner hereby agrees to save harmless and indemnify County, and its officers, employees, agents, representatives, departments, agencies, boards, and commissions from any and all claims and liability, caused by the negligence, errors or omissions due to the activities of themselves, their agents and/or employees and subcontractors in the performance of the services under this Contract.

Property Owner acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no Article of this Contract or any other contract or agreement between the Property Owner and the County may be interpreted to obligate the County to indemnify or defend Property Owner or any other party.

## ARTICLE VIII – DEFAULT AND TERMINATION:

This Contract may be terminated by the County upon ten (10) days written notification by County to Property Owner ("Termination Notice") if Provider materially defaults in the performance of any of its material covenants, agreements or obligations hereunder, and such default continues for a period of thirty (30) days after Provider's receipt of written notice of such default or breach from County ("Default Notice").

## ARTICLE IX – MISCELLANEOUS:

1. COUNTY AGENT AND LIAISON: For the purpose of this Contract, the agent for the County and liaison officer on the matter contained herein shall be the Director or Manager of DOD and/or such members of her/his staff as designated; and

2. AGREEMENT TO REMAIN IN COMPLIANCE WITH CERTIFICATIONS, REPRESENTATIONS, AND WARRANTIES AS CONTINUING COMMITMENTS OR VERIFICATION: Property Owner shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and it shall immediately notify the County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, County has the unequivocal right to review and audit Property Owner's continuing certifications, representations, and warranties.

During the performance of this Contract, Property Owner agrees to itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of the County, relative to equal employment, affirmation action and Small/Women/Minority Business Enterprise requirements, which are herein incorporated by reference and made a part of this Contract. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Contract.

Property Owner warrants and represents that it has not employed or retained any company, firm or person, other than a bona fide employee working for the Property Owner, to solicit or secure this Contract, and that it has not paid or agreed to pay any company, firm or person, other than a bona fide employee working for Property Owner, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County shall have the right to annul this Contract without liability or in its discretion to deduct from the contract fee or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, or contingent fee.

3. **INDEPENDENT CONTRACTOR:** Property Owner, its Contractor, employees and subcontractors shall perform all work pursuant to this Contract as independent contractors and not as employees of the County or DOD.

4. **PROHIBITION ON ASSIGNMENT:** Property Owner may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of the County.

5. **NOTICES.** Any notice required pursuant to this Contract shall be made in writing and shall be accomplished by e-mail, personal delivery, facsimile, or by U.S. Mail, certified, return receipt requested, addressed to the following parties:

DOD:  
Department of Development  
Attn: Michael J. Towarnicky  
Reserve Square, 1<sup>st</sup> Floor  
1701 east 12<sup>th</sup> Street  
Cleveland, Ohio 44114

Property Owner:

Mukesh Agarwal  
4476 Ridge Road Holdings, LLC\_  
4476 Ridge Road, Brooklyn, OH 44144\_\_

6. **FINDINGS FOR RECOVERY:** Property Owner represents and warrants that it is not subject to an "unresolved" finding for recovery under the Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Contract is void ab initio, and

Property Owner must immediately repay to the County any funds paid under this Contract and must make the County whole for any damages sustained by the County.

7. ENTIRE CONTRACT: This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.

8. NO APPARENT AUTHORITY: Property Owner recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures.

9. PARTIES BOUND AND BENEFITTED: This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.

10. NON-WAIVER: Either party's failure to require performance of any Article of this Contract, or if it requires performance and does not follow through, shall not affect the non-defaulting party's right to require performance at any time thereafter. Additionally, either party's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

11. CONTRACT INTERPRETATION AND CONSTRUCTION: In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the Articles of this Contract.

12. COUNTERPARTS: This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.

13. SEVERABILITY: If any Article of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such Article and the remainder of this Contract shall be and remain valid and binding as though such Article was not included herein.

#### ARTICLE X - ELECTRONIC SIGNATURE:

By entering into this Contract or by submission of a bid or proposal, Property Owner agrees on behalf of the contracting business entity, its officers, employees, subowners, sub grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring County signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of said document. Property Owner also agrees, on behalf of the aforementioned entities and persons, that Property Owner is bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as

they pertain to electronic transactions, and will comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the day and year below.

**Property Owner:**

Name: Majeed G. Makhoul

Title: Owner

**County of Cuyahoga:**

Edward FitzGerald, County Executive

By: Ed FitzGerald/ap

2014-02-20 15:56:05

Edward FitzGerald, County Executive

By: Lawrence E. Benders

Director Department of Development

The legal form and correctness  
of this Contract is hereby approved:

Law Department

County of Cuyahoga, Ohio

Majeed G. Makhoul, Director of Law

LISA C AVERYHART, ASSISTANT DIRECTOR OF LAW

By: Lisa C Averyhart  
Assistant Director of Law  
2014-02-21 09:27:55

Name: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF RENOVATION WORK**

**The project will include the complete scraping, repair, power washing and painting of the exterior of the entire building, 4750 square feet; with new awnings on the front and back doors and windows; energy saver lighting on all sides of the building, and a new sign which is 8'by6' lighted sign board plus lettering approved by the Brooklyn Planning Commission.**