

COMMERCIAL RENT RELIEF GRANT PROGRAM AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2021 by and between the **City of Dublin**, a municipal corporation (“City”), [**Landlord Name**] {a/an} {list landlord’s company’s state of registration here} {identify type of entity here; i.e., a California corporation} (“Commercial Landlord”) who is the commercial landlord and owner of the property, located at [Address], Dublin, CA 94568 (“Property”) and [**Tenant**], {a/an} {list tenant’s company’s state of registration here} {identify type of entity here} (“Small Business Tenant”) who currently leases the Property (together sometimes referred to as the “Parties”).

RECITALS

In support of community recovery from the local emergency in the City of Dublin related to the COVID-19 pandemic, the City has established a Commercial Rent Relief Grant Program, which is a financial assistance program that provides \$10,000 in relief funds per lessee to a commercial landlord. The City Council redirected \$1,000,000 from the American Rescue Plan Act funds to cover the costs of this program.

The City has agreed to provide funds as an incentive for commercial landlords to permanently reduce or waive, unpaid lease payments for small businesses that have been negatively impacted by the COVID-19 pandemic.

This program is intended to assist commercial landlords pay their fixed costs, many of whom are local small business owners themselves, and leverage City funds to provide additional relief to tenants experiencing a loss of income due to COVID-19-related partial or complete closure of their businesses.

The Commercial Landlord and Small Business Tenant have submitted a signed application, attached hereto as Exhibit A, attesting to their eligibility for this program. The City has reviewed and considered the application and has selected the applicants as a recipient of matching funds pursuant to the terms of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, City, Commercial Landlord, and the Small Business Tenant hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. **Distribution of Grant Funds.** City shall provide \$10,000.00 (“Grant Funds”), which represents a grant for the unpaid rent due from the Small Business Tenant and permanently waived by the Commercial Landlord that accrued during the state of local emergency related to the COVID-19 pandemic. The Commercial Landlord warrants that it has provided the Small Business Tenant a permanent waiver of unpaid rent in at least the same amount as the Grant Funds (“Waived Unpaid Rent”).
 - a. It is agreed and understood that City shall pay the Grant Funds to the Commercial Landlord directly. Unless otherwise provided herein, the Grant Funds will be paid in one installment to cover the delinquent rent, or portion of rent, as described herein.

- b. Commercial Landlord and Small Business Tenant represent and warrant that the information presented to City in connection with the application and supporting documentation/verifications is true and accurate as of the date given and remains true and accurate as of the date of this Agreement. Commercial Landlord and Small Business Tenant understand that the City has relied upon such information and representations to determine Commercial Landlord and Small Business Tenant's eligibility to receive the City's grant.
- c. City's acceptance of the Commercial Landlord and the Small Business Tenant as participants is based on the information contained in the application. If City determines that the information contained in the application is materially inaccurate or if the Commercial Landlord attempts to recover the Waived Unpaid Rent from the Small Business Tenant at any time, City reserves the right to terminate this Agreement pursuant to Section 10 and the Commercial Landlord shall repay the Grant Funds to the City. The Commercial Landlord and/or the Small Business Tenant shall notify City as soon as possible if the Commercial Landlord or the Small Business Tenant cannot comply with the terms and conditions of the program.
- d. Commercial Landlord and Small Business Tenant agree that use of Grant Funds for any purpose other than as set forth herein, and/or any noncompliance with this Agreement will result in forfeiture of Grant Funds and potential ineligibility for future funding. Commercial Landlord and Small Business Tenant represent and warrant that no other financial assistance has or will be received for the same costs covered by Grant Funds. If Commercial Landlord and/or Small Business Tenant receives duplicative financial assistance for the same costs covered by the Grant Funds, the Grant Funds shall be prepaid to the City.
2. **Permanent Waiver of Unpaid Rent.** The Commercial Landlord agrees that the Waived Unpaid Rent for purposes of receiving the Grant Funds shall be permanently waived. The Commercial Landlord will not attempt to recover those funds from the Small Business Tenant at any point or in any proceeding.
3. **Small Business Tenant Eligibility.**
- a. Small Business Tenant must own a business located within the city limits of Dublin, California. Such business must employ at least one (1) employee and no more than a total of fifty (50) full-time employees and must have an active Dublin business license as of March 1, 2021.
- b. Such business must occupy commercial rental Property located within the incorporated city limits of Dublin, California.
- c. Small Business Tenant's name or Small Business Tenant's business name must appear as primary, master tenant (not as a sub-lease or similar arrangement) on a bona fide written lease for the Property.
- d. Small Business Tenant must have at least \$10,000 in commercial rent arrears for the above-referenced commercial lease and business accumulated from March 31, 2020, to present.

- e. Small Business Tenant must, by their signature to this Agreement, acknowledge that the Grant will be provided directly to the Commercial Landlord and not to the Small Business Tenant.
 - f. Small Business Tenant must, by their signature to this Agreement, attest that the Small Business Tenant/the business is not a lending/investment institution, insurance company, home-based business, non-profit entity, corporately-owned chain/franchise store, professional service, or hotel.
4. **Commercial Landlord Obligations.** Commercial Landlord represents, warrants, acknowledges and agrees to the following:
- a. The Property must be a commercial rental property located within the incorporated city limits of Dublin, California.
 - b. Small Business Tenant's name or Small Business Tenant's business name must appear as primary, master tenant (not as a sub-lessee or similar arrangement) on a bona fide written lease for the Property.
 - c. Commercial Landlord's name must appear on such lease as primary, master landlord (not as sub-lessor or other similar arrangement).
 - d. Commercial Landlord shall use Grant Funds solely to pay Small Business Tenant's unpaid rent for the Property, deferred between March 31, 2020 to present.
 - e. By signing this Agreement, Commercial Landlord declares that the Small Business Tenant has a current lease through 2021 or Commercial Landlord intends to renew lease through 2021 and declares intent to not commence an eviction process through 2021.
5. **Small Business Tenant Obligations.** Small Business Tenant represents, warrants, acknowledges and agrees to Section 2 (Small Business Tenant Eligibility), and to the following:
- a. By signing this Agreement, Small Business Tenant attests that they meet the eligibility requirements in Section 2 (Small Business Tenant Eligibility), and information provided in the application process is true and correct.
 - b. Small Business Tenant understands that Commercial Landlord shall use Grant Funds solely to pay Small Business Tenant's unpaid rent for the Property, deferred as early as March 31, 2020.
6. **Recordkeeping.** Commercial Landlord and Small Business Tenant agree to keep records sufficient to demonstrate that the Grant Funds have been used in accordance with this Agreement, and, upon request, to provide timely responses to City for information about Grant Fund use and allow inspection of records related to Grant Fund use.
7. **Responsibility for Taxes.** The City is required to issue a 1099 form for the Grant Funds. Commercial Landlord and Small Business Tenant acknowledge and agree that any and all federal, state, and/or

local taxes resulting from their participation in this program is their responsibility and shall not be paid by the City.

8. **Indemnity.** Commercial Landlord and Small Business Tenant hereby agree to defend, indemnify, and hold harmless City, its elected officials, officers, directors, employees, and designated volunteers from and against any and all claims, lawsuits, losses, liabilities, damages, including but not limited to reasonable attorney, consultant and expert fees, and court costs arising out of or in connection with this Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, and designated volunteers. The provisions of this section shall survive the expiration of the terms of this Agreement.

Commercial Landlord and Small Business Tenant each warrant that they have each received independent legal advice from their own respective legal counsels as to all matters set forth herein, or have knowingly chosen not to consult legal counsel as to the matters set forth herein.

9. **Nondiscrimination and Equal Opportunity.** During the performance of this Agreement, Commercial Landlord and Small Business Tenant shall not discriminate, on the basis of a person's race, sex, gender, religion (including religious dress and grooming practices), national origin, ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), marital status, age, sexual orientation, color, creed, pregnancy, genetic information, gender identity or expression, political affiliation or belief, military/veteran status, or any other classification protected by applicable local, state, or federal laws.
10. **Termination.** At any time City shall have the right to terminate this Agreement immediately by giving written notice to the other parties.
11. **Remedies.** All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy.
12. **Relationship of Parties.** Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between City and the other parties or their agents or employees, and Commercial Landlord and Small Business Tenant shall at all times be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement. Except as City may specify in writing, Commercial Landlord and Small Business Tenant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.
13. **Amendment.** No modification, recession, waiver, release or amendment of any provision of this Agreement shall be made except by written agreement executed by Commercial Landlord, Small Business Tenant and City.

14. **Notices.**

All notices required to be given to City under this Agreement shall be in writing and shall be addressed as follows:

City Manager

City of Dublin
100 Civic Plaza
Dublin, CA 94568

All notices required to be given to Commercial Landlord under this Agreement shall be in writing and shall be addressed as follows:

[Commercial Landlord]
[Address]
[City, State Zip]
[Email]
[Phone]

All notices required to be given to Small Business Tenant under this Agreement shall be in writing and shall be addressed as follows:

[Small Business Tenant]
[Address]
[City, State Zip]
[Email]
[Phone]

15. **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
16. **Venue.** In the event that any party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
17. **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
18. **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
19. **Successors and Assigns.** Commercial Landlord and Small Business Tenant may not assign or otherwise transfer this Agreement or any interest in it without the City's written consent, which the City may grant or deny in its sole discretion. An assignment or other transfer made contrary to this section is void.
20. **Entire Agreement.** This Agreement, together with any other written document referred to or contemplated by it, embody the entire Agreement and understanding between the Parties relating to the subject matter of it. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by all Parties.

21. Integration. This Agreement, including the Commercial Rent Relief Grant Program Application attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Commercial Landlord and Small Business Tenant, and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Commercial Rent Relief Grant Program Application

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

CITY OF DUBLIN

COMMERCIAL LANDLORD

Linda Smith, City Manager

[Name, Title]

Attest:

SMALL BUSINESS TENANT

Marsha Moore, City Clerk

[Name, Title]

Approved as to Form:

John D. Bakker, City Attorney

EXHIBIT A

COMMERCIAL RENT RELIEF GRANT PROGRAM APPLICATION

3836600.1

SAMPLE