

SMALL BUSINESS ASSISTANCE PROGRAM AGREEMENT

THIS SMALL BUSINESS ASSISTANCE PROGRAM AGREEMENT ("Agreement") dated as of this [REDACTED] day of [REDACTED], 2019, the date of execution by the City (the "Effective Date") is entered into by and between the CITY OF DUBLIN, a public body corporate and politic ("City"), [REDACTED] ("Owner"), and [REDACTED] ("Tenant" and "Applicant") [if applicable].

RECITALS

A. The City has adopted a Small Business Assistance Program ("Program") in order to provide grants to certain owners or tenants of eligible buildings to assist with the cost of complying with federal, state and local laws relating to disability access requirements, trash enclosures, sewer connections and other such obligations imposed on small businesses.

B. Applicant ["leases space from Owner at" or "owns"] certain real property located at [REDACTED], Dublin CA (the "Site"), and within the boundaries outlined by the Small Business Assistance Program Guidelines ("Program Guidelines").

C. Applicant has submitted an application to the City pursuant to the Program Guidelines for a compliance grant for certain improvements to the Site, and City has determined that Applicant and the Site meet the eligibility criteria for the Program.

D. City desires to enter into this Agreement because the improvement will better the physical access and/or health and safety for the public and/or Title 24 compliance of the Site, and thereby enhance the economic vitality of commercial businesses, generate additional tax revenue and economic growth in the City.

E. Applicant desires to enter into this Agreement with City to receive assistance in making certain improvements to the Site, and City is willing to do so on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, City and Applicant hereby agree as follows:

Section 1. GENERAL.

1.1 **Term.** This Agreement shall begin on the Effective Date and expire five (5) years following the Applicant's approval of contractor's notice of completion ("Term").

Section 2. IMPROVEMENT OF THE SITE.

2.1 **Scope of Work.** Applicant shall complete the proposed project in accordance with the Scope of Work attached hereto as Exhibit 1 (the "Project").

2.2 **Small Business Assistance Grant Funds.** The City agrees to reimburse to the Applicant a sum not to exceed [spell out amount] \$ [REDACTED] (the "Grant Amount"), for certain eligible improvements (the "Eligible Improvements") as set forth below:

- a. The Grant Amount may be used only to fund those Eligible Improvements identified in Exhibit 2 attached hereto.
- b. All services to be performed by a third-party contractor shall be the subject of agreement between Applicant and the third-party contractors. The City shall not assume any liability for such agreements. The Applicant shall submit to the City all invoices from the contractor or contractors for work performed on the Eligible Improvements in order to receive reimbursement.
- c. A representative of the City shall inspect the completed Project after a completion notice has been submitted to the City.
- d. The City will only issue the Grant Amount after the Project has been completed. Upon determination by the City's representative that the Project has been completed in conformance with the Scope of Work (Exhibit 1) and the City approvals, the City shall issue a check made payable to the Applicant in an amount equal to the lesser of the Grant Amount or the actual amount of the invoices submitted to the City by the Applicant. The City Manager in his or her sole discretion may issue the Grant Amount at an earlier time than set forth in this Section 2.2(d), if the Applicant can demonstrate good cause.
- e. Any and all costs of the Project including, but not limited to the Eligible Improvements, which are in excess of the Grant Amount, shall be the sole responsibility of, and be borne by, the Applicant.

2.3 Permits and Approvals. Before commencement of the Project, Applicant shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency affected by such construction or work.

2.4 Commencement of the Project. Within 60 days after the Effective Date, Applicant shall have selected and authorized one or more contractors to complete the Project, and shall have provided notice to the City of such selection and authorization. In the event the Applicant fails to select and authorize a contractor or contractors to complete the Project within such 60-day period, the City may, at its option, terminate this Agreement upon written notice to the Applicant. In such event, neither party shall have any further rights against or liability to the other in connection to this Agreement. All contractors performing work on the Project must be licensed in the State of California.

2.5 Building Permit. A Building Permit must be obtained within six months of the Effective Date. In the event the Applicant fails to obtain a Building Permit within such six-month period, the City may, at its option, terminate this Agreement upon written notice to the Applicant. In such event, neither party shall have any further rights against or liability to the other in connection to this Agreement. An additional six-month extension may be approved with the City's prior written consent.

2.6 Completion of the Project. Applicant shall complete the Project and satisfy all other obligations and conditions of this Agreement within 120 days of building permit issuance. This completion date is subject to revision from time to time as mutually agreed upon in writing between Applicant and the City Manager, or their designee. Upon completion, Applicant shall require contractors' completion notice signed by the contractor. When the Project is completed as set forth in this Agreement, a notice of completion shall be delivered to and approved by the Applicant. Notice of completion shall then be delivered to the City as set forth in Section 2.2.

Section 3. INSURANCE REQUIREMENTS.

Before fully executing this Agreement, Applicant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or

damages to property that may arise from or in connection with the performance of the work hereunder by the Applicant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Applicant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Applicant shall maintain the insurance policies required by this section throughout the term of this Agreement. Applicant shall not allow any contractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. **VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION.** Applicant shall maintain all required insurance listed herein for the duration of this Agreement.

3.1 Workers' Compensation.

3.1.1 General Requirements. Before beginning any work under this Agreement, Applicant's contractor(s) shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, contractor may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.

3.1.2 Submittal Requirements. To comply with Subsection 3.1, Applicant shall submit the following:

- a. Certificate of Workers' Compensation Insurance in the amounts specified in the section for all contractor(s) performing work related to the Project; and
- b. Waiver of Subrogation Endorsement as required by the section for all contractor(s) performing work related to the Project.

3.2 Commercial General and Automobile Liability Insurance Requirements. Before beginning any work under this Agreement, Applicant and its contractor(s) shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Applicant or its contractor and its agents, representatives, employees, and subcontractors. Applicant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Applicant shall maintain the insurance policies required by this section throughout the term of this Agreement. Applicant shall not allow any contractor or subcontractor to commence work on until Applicant has obtained all insurance required herein for the contractor or subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance

policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the Applicant's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 12. In the event Applicant fails to maintain coverage as required by this Agreement, City at its sole discretion may purchase the coverage required and the cost will be paid by Applicant. Failure to exercise this right shall not constitute a waiver of right to exercise later. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

3.2.1 Commercial General and Automobile Liability Insurance.

3.2.1.1 General requirements. Applicant and all contractors and subcontractors, at their own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

3.2.1.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 1 ("any auto").

3.2.1.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Applicant, including the insured's general supervision of Applicant; products and completed operations of Applicant; premises owned, occupied, or used by Applicant; and automobiles owned, leased, or used by the Applicant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Applicant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Applicant shall notify City within 14 days of notification from Applicant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.
- f. For Applicant's contractors and subcontractors, an endorsement for completed operations for the construction project, such as the CG 20 37 "Additional Insured—Owners, Lessees or Contractors—Completed Operations" endorsement form, shall be submitted by Applicant to the City no later than 30 days after completion of the Project.

3.2.1.4 Submittal Requirements and Verification of coverage. Applicant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- a. Prior to execution of this Agreement, Applicant shall submit:
 - Certificate(s) of Commercial General Insurance and Automobile Liability Insurance; and
 - Waiver of Subrogation Endorsement.
- b. Prior to commencement of the Project as described in Section 2.4., Applicant shall furnish City with contractor's certificates of insurance and with original endorsements effecting coverage required herein.

3.2.1.5 Contractors and Subcontractors. Applicant agrees to include with all contractors or subcontracts the same requirements and provisions of this Agreement including the Indemnification and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Contractors or subcontractors hired by Applicant agree to be bound to Applicant and the City in the same manner and to the same extent as Applicant is bound to the City under the Contract Documents.

3.2.1.6 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

3.2.1.7 Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) and/or deductibles must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or the City.

3.2.1.8 Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before City's own insurance or self-insurance shall be called upon to protect City as a named insured.

3.2.1.9 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Applicant shall provide written notice to City at Applicant's earliest possible opportunity and in no case later than five days after Applicant is notified of the change in coverage.

3.2.2 Term of Coverage. Applicant, at its own cost and expense, shall maintain all insurance policies required by this Agreement for the duration of the Agreement's Term. Applicant shall require that all contractors and subcontractors, at their own cost and expense, maintain the insurance policies required by this Agreement until the Project is complete and the Applicant accepts contractor's completion notice.

3.2.3. Remedies. In addition to any other remedies City may have if Applicant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Applicant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Applicant to stop work under this Agreement or withhold any payment that becomes due to Applicant hereunder, or both stop work and withhold any payment, until Applicant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 4. PREVAILING WAGES.

Applicant shall require any contractors performing work under this Agreement to pay prevailing wages pursuant to the requirements of the California Labor Code, Section 1771, et seq. For the purpose of this Agreement, prevailing wages are the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute this Agreement as ascertained by the Director of the Department of Industrial Relations of the State of California. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of worker employed on the project.

The Contractors and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractors or subcontractors in connection with the Project. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code, and Contractor and each subcontractor shall otherwise comply with requirements of such Section 1776.

Section 5. NONDISCRIMINATION AND EQUAL OPPORTUNITY.

Applicant 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 (each a "Protected Characteristic"), against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Applicant under this Agreement.

Applicant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 6. MAINTENANCE COVENANTS.

The Applicant covenants and agrees, for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that the Applicant will maintain, at Applicant's own cost and expense, the improvements on the Site in a clean and orderly condition, free of graffiti, and in good condition and repair, and will keep the Site free from any accumulation of debris and waste materials. Any damage to the building visible from the street is to be repaired immediately. The Applicant shall promptly touch up painted areas and perform any other repairs needed to maintain an attractive building appearance, including cleaning all awnings, if any, at least once a year.

The foregoing covenants shall remain in effect for a period of 60 months from the completion of the Project. During this 60-month period, Applicant agrees, for itself, its successors, its assigns and every successor in interest, that it will not materially alter the improvements made with City funds, without the prior written consent of City which consent may be conditioned by City to preserve those features to the extent necessary to achieve the objectives of City for entering into this Agreement. Any violation of this section not cured within 60 days shall entitle City to reimbursement of the funds granted by City from the person or entity responsible for the violation.

6.1 Improvements Cannot Be Removed by Applicant or Owner Without City's Consent. All Eligible Improvements will become permanent fixtures of the property and cannot be removed by Applicant or Owner upon expiry or termination of the lease or sale of the property. Exceptions can be made with the prior written consent of the City. Any violation of this section not cured within 60 days shall entitle City to reimbursement of the funds granted by City from the person or entity responsible for the violation.

Section 7. GENERAL PROVISIONS.

7.1 Rights of Access. Representatives of the City shall have the reasonable right to access the Site, without charges or fees, for the purpose of inspecting the Project, including the Eligible Improvements. City (or its representatives) shall, except in emergency situations, give Applicant reasonable advance notice prior to exercising its rights herein. Nothing herein shall be deemed to limit the ability of the City to conduct code enforcement and other administrative inspections of the Site in accordance with applicable law.

7.2 Compliance with Laws. Applicant shall carry out the Project in conformity with all applicable federal, state and local laws, including Labor Code requirements; City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans with Disabilities Act, 42 U.S.C. Section

12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

7.3 Assignment. Applicant shall have the right to assign all of its rights and obligations under this Agreement, provided however that any such assignment shall be effective only upon receipt by City of written notice of the assignment.

7.4 Notices, Demands and Communications between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Dublin
100 Civic Plaza
Dublin, CA 94568
(925) 833-6650

Attention: City Manager

To Applicant: Owner

Phone: _____
Email: _____

Attention: [REDACTED] [name & title]

And

Tenant

[REDACTED]
[REDACTED]
Phone: _____
Email: _____

Attention: [REDACTED] [name & title]

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

7.5 Relationship between City and Applicant. It is hereby acknowledged that the relationship between City and Applicant is not that of a partnership or joint venture and that City and Applicant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site or the Eligible Improvements. Applicant agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Applicant with respect to the development, operation, maintenance or management of the Site or the Eligible Improvements.

7.6 Integration. This Agreement contains the entire understanding between the parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

7.7 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

7.8 Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

7.9 Applicant's Indemnity; Waiver. Applicant shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City, and its officers, employees, agents and representatives, harmless from, any and all Claims of any kind or nature arising out of the Project or this Agreement or the implementation hereof, including, but not limited to, any damages to property, injuries to persons or accidental death (including reasonable attorneys' fees and costs), which may be caused by the work performed under this Agreement or any activities associated with the Project, whether such activities or work is performed by Applicant or by anyone directly or indirectly employed or contracted with by Applicant. Applicant's indemnity obligations under this section shall survive termination of this Agreement. Applicant's indemnity obligations under this section shall not extend to claims, demands, damages, defense costs or liability for property damage, bodily injury or death occasioned by the active negligence or willful misconduct of the City, or its officers, employees, agents or representatives.

Applicant hereby waives, releases and discharges forever the City, and its employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with this Agreement, the performance of the work, or Applicant's obligation to comply with all laws with respect to the work.

7.10 Non-liability of Officials and Employees of City. No member, official or employee of the City shall be personally liable to Applicant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Applicant or its successors, or on any obligations under the terms of this Agreement.

7.11 Applicable Law. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

7.12 No Third Party Rights. This Agreement is made and entered into solely for the benefit of the City and Applicant and no other third party shall have any right of action under this Agreement.

7.13 Disclosure of Documents. Applicant acknowledges that the City is subject to the provisions of the California Public Records Act and that any information submitted to the City may be disclosed to the extent required by law.

7.14 Joint and Several Liability. Owner and Tenant are jointly and severally liable for any Claims arising out of this Agreement.

7.15 Termination. In addition to City's right to terminate under Section 2.4 and 2.5, City or Applicant may terminate this Agreement upon written Notice to the other in the event that the other party fails to comply with its obligations under this Agreement.

IN WITNESS WHEREOF, City, Applicant and Owner have executed this Agreement on the respective dates set forth below.

CITY:

THE CITY OF DUBLIN, a public body, corporate and politic

By: _____

Christopher L. Foss,
City Manager

Dated: _____

OWNER:

[Entity Name]

By: _____

Printed Name: _____

Title: _____

Dated: _____

ATTEST:

Caroline P. Soto,
City Clerk

APPROVED AS TO FORM:

John D. Bakker,
City Attorney

TENANT:

[Entity Name]

By: _____

Printed Name: _____

Title: _____

Dated: _____

**EXHIBIT NO. 1
SCOPE OF WORK
PROJECT**

SAMPLE

EXHIBIT NO. 2
ELIGIBLE IMPROVEMENTS

SAMPLE