

## DISABILITY ACCESS IMPROVEMENT GRANT AGREEMENT

This Grant Agreement ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), by and between THE CITY OF SAN JOSE, a charter city ("City"), and \_\_\_\_\_, (TYPE OF CORPORATION) ("Tenant" or "Property Owner), otherwise known as ("COMPANY").

### RECITALS

A. Company leases or owns \_\_\_\_\_ square feet of an \_\_\_\_\_ square foot commercial building on \_\_\_ acres located at \_\_\_\_\_, in San José, California, to be used as a \_\_\_\_\_. ("Premises").

B. The City is assisting Company by providing a grant to credit Company up to \$8,000 for the costs of a Certified Access Specialist (CAsp) inspection, plan reviews, and City permits and inspection fees ("Phase 1"); and/or up to \$25,000 of grant funding for the costs of architectural design to remove barriers, accessibility compliance remediation, construction or labor, furniture, fixtures, and/or equipment, and initial and final CAsp inspection ("Phase 2") associated with the upgrades of the Premises to assist Company's efforts to conform with all Federal Americans with Disabilities Act (ADA) and State Accessibility Standards. Labor costs associated with construction remediations and installation of furniture, fixtures, and/or equipment must comply with all applicable labor laws, including applicable City and State [prevailing wage requirements](#).

C. The City desires to assist with the costs of a CAsp inspection fees and City permits and inspection fees and accessibility remediations to remove barriers that may prevent Company from being accessible to or usable by individuals with disabilities. The City desires to encourage Company to engage in voluntary CAsp inspection and ADA/Accessibility compliance to increase access for persons with disabilities to the goods, services, and facilities available in our respective communities, and recognizes the need to renovate and improve the Premises to accomplish these ends. In order to assist Company to improve the Premises, which will bring jobs and revenue to the City and improve accessibility for all, the City is providing the financial assistance for Phase 1 in this Agreement on a fee credit basis and for Phase 2 in this Agreement as a grant or installment basis of 80% for the initial cost estimates and the remaining funds (20%) as the last installment.

NOW, THEREFORE, the City, and Company hereby agree as follows:

1. City Financial Assistance for Phase 1. Subject to the terms and conditions set forth herein, the City shall credit Company of up to Eight Thousand Dollars (\$8,000) for costs of a CASp inspection, and City permits and inspection fees associated with the upgrades of the Premises to conform with all ADA and State Accessibility Standards of the Premises (“City Assistance”).

Company may submit to the City a grant application, along with a copy of the certification of the CASp inspection report, relevant invoices, and receipts. Company acknowledges and agrees that the City’s obligation to apply the funds under this Agreement is conditioned upon the City approving the applications for the fee or permits for the upgrades of the Premises. In no event shall the City be obligated to reimburse Company for any costs in an amount in excess of Eight Thousand Dollars (\$8,000). The City’s obligation to provide City Assistance shall expire within one year if the City has not issued a permit set forth in Section 2 of this Agreement.

2. Eligible Cost, Fees and Permits for Phase 1. Grant funds under this Agreement may be used to credit Company for the cost of the following:

- a. CASp inspection cost;
- b. Review of design plans;
- c. Planning, Building, Fire, Public Works Permit Fees; and
- d. Building and Fire Inspection Fees.

3. City Financial Assistance for Phase 2. Subject to the terms and conditions set forth herein, the City shall grant Company up to Twenty-Five Thousand Dollars (\$25,000) for the costs of accessibility compliance remediation, including architectural design to remove barriers, construction or labor, furniture, fixtures, and/or equipment, and initial or final CASp inspections for remediations that do not require City permits associated with the upgrades of the Premises to conform with all Federal Americans with Disabilities Act (ADA) and State Accessibility Standards of the Premises (“City Assistance”).

Company may submit to the City a grant application, along with a copy of the design and project estimates, relevant invoices, prevailing wage attestation confirming compliance with City and State prevailing wage requirements, and pictures of completed remediation. Company acknowledges and agrees that the City’s obligation to apply the funds under this Agreement is conditioned upon the City approving the applications for the accessibility compliance remediations of the Premises. In no event shall the City be obligated to grant Company for any costs in an amount in excess of Twenty-Five Thousand Dollars (\$25,000). The City’s obligation to provide City Assistance shall expire one year after issuance of permit set forth in Section 2 of this Agreement, unless an extension is granted by the City.

4. Eligible Cost, Fees for Phase 2. Grant funds under this Agreement may be used by Company for the cost of the following:
  - a. Initial CASp inspection if recommended remediations do not require City permits;
  - b. construction remediation and labor;
  - c. non-construction remediations and materials;
  - d. accessible furniture, fixtures, and/or equipment; and
  - e. final CASp inspection after corrective remediation to ensure accessibility.

The cost of labor and installation (and any related permit fees) can only be reimbursed if Company's contractors have complied with all applicable prevailing wage for the work. Grant funds will not cover accessible furniture, fixtures, and/or equipment if labor for the installation does not comply with all applicable prevailing wage requirements.

5. Termination. This Agreement shall terminate three months after second anniversary of signing this Agreement; provided, however, that in the event that Company fails to occupy the Premises or comply with any term or condition of this Agreement, City may terminate the Agreement with seven (7) days written notice to Company.
6. Misappropriation of Funding. Should Company knowingly make any false or misleading statement or material omission in the information or materials required for City to approve application for funding, or misappropriate Phase 2 grant funds to cover ineligible costs and fees, Company must repay funds to City within 30 days of City's demand for repayment.
7. Amendments. This Agreement may be amended, changed or modified only by an instrument in writing signed by the City and Company.
8. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. Any oral representations or modifications concerning the subject matter of this Agreement shall be of no force and effect.
9. Non-Discrimination. Company covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, nor shall Company itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location,

number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Premises.

10. Waiver. Any waiver by City of any term, condition or requirement of this Agreement shall not constitute a waiver of any other term, condition or requirement hereof or constitute a waiver of the same term, condition or requirement in any other instance.

11. Notices. Any notice or demand which shall be required or permitted by law or any provisions of this Agreement shall be in writing, and shall be deemed effective when personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

To: City of San Jose  
Attention: Office of Economic Development and Cultural  
Affairs  
200 East Santa Clara Street, 17<sup>th</sup> Floor Tower  
San Jose, CA 95113

To: (COMPANY CONTACT ADDRESS)

or to such other address as any party may designate by notice in accordance with this Section.

12. Time. Time is of the essence in this Agreement.

13. Hold Harmless. Company shall indemnify, defend and hold the City, its officers and employees harmless from all suits, actions, claims, causes of action, costs, demands, judgments or liens arising out of this Agreement as a result of any acts or omissions of Company or its contractors, subcontractors, or persons claiming under any of the aforesaid, except for the sole negligence or willful misconduct of City or any of such other indemnified parties.

14. Assignment. Company shall not assign this Agreement, except by operation of law or to a wholly owned subsidiary of Company or a successor-in-interest to Company by merger, acquisition or corporate reorganization, without the express written consent of the City, which consent shall be within the reasonable discretion of the Planning, Building and Code Enforcement Director. The Director may consider the financial stability, nature of business and business plan of the proposed assignee as factors in the Director's decision to consent to any such proposed assignment.

15. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**"CITY"**

**FORM APPROVED BY THE  
OFFICE OF THE CITY ATTORNEY**

CITY OF SAN JOSE, a charter city

By: \_\_\_\_\_

Title: \_\_\_\_\_

**"COMPANY"**

(TENANT or PROPERTY OWNER NAME),  
(TYPE OF ORGANIZATION)

By: \_\_\_\_\_

Title: \_\_\_\_\_