

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ENTER INTO A GRANT AGREEMENT WITH THE STATE OF CALIFORNIA BUREAU OF CANNABIS CONTROL TO RECEIVE \$560,082.30 IN LOCAL EQUITY GRANT FUNDING**

**WHEREAS**, cannabis equity programs seek to provide employment and entrepreneurship opportunities in the new cannabis industry to individuals who may have been disproportionately arrested, incarcerated, or otherwise impacted by previous cannabis policies; and

**WHEREAS**, the members of the California Legislature have recognized the need for equity grant funding; and

**WHEREAS**, funding has been provided to the Bureau of Cannabis Control to provide grant funds to local governments pursuant to the Budget Act of 2019, Item 1111-490 – Reappropriation; and

**WHEREAS**, the City of San José (“City”) has adopted or operates a local equity program for commercial cannabis activity; and

**WHEREAS**, the City has determined that it will use grant funds from the Bureau of Cannabis Control to assist local equity applicants and licensees through its local equity program for commercial cannabis activity as described in its application for grant funds; and

**WHEREAS**, the City has been approved to receive funding in the amount of \$560,082.30; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

The City Manager or his designee of the City of San José is authorized to execute on behalf of the Council of the City of San José the attached standard agreement, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

IT IS AGREED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California, Department of Consumer Affairs, Bureau of Cannabis Control disclaims responsibility for any such liability.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk



## CALIFORNIA LOCAL EQUITY GRANT PROGRAM



### GRANT AGREEMENT

This California Local Equity Grant Program Agreement ("Agreement") is by and between the City of San Jose (or "Grantee"), the Department of Consumer Affairs (DCA), and the Bureau of Cannabis Control ("Bureau"), hereinafter jointly referred to as the "Parties" or individually as the "Party." Unless otherwise specified in this Agreement, all definitions, rules, guidelines, and requirements specified in the California Local Equity Grant Program Fiscal Year 2019-20 Grant Solicitation ("Grant Solicitation") issued on July 31, 2019, shall apply to this Agreement. The identification number for this Agreement is **DCA-BCC-2019-007**.

In consideration of the mutual covenants and promises in this Agreement, the Parties agree as follows:

- 1. Authority.** This Agreement is authorized and entered into pursuant to the California Cannabis Equity Act of 2018 established by Senate Bill 1294 (Bradford 2018) and the Budget Act of 2019, Item 1111-490 – Reappropriation (Equity Grant Funding). The Equity Grant Funding allows for direct assistance to local jurisdictions' commercial cannabis equity programs that provide assistance to local equity applicants or local equity licensees.
- 2. Grant Term.** The performance period of this Agreement shall be from the execution of this Agreement through [one year from date of disbursement] ("Grant Term"). Grant funds shall be expended only during the Grant Term.
- 3. Grant Award.** Based on the points allocated to the Grantee pursuant to the Local Equity Grant guidelines and application and conditioned upon the requirements set forth in this Agreement, the Bureau shall provide Grantee a grant award of \$560,082.30 for the term of this Agreement. In no event shall the Bureau be obligated to pay any amount in excess of the maximum grant award. Grantee waives any and all claims against the Bureau, DCA and the State of California for any costs that exceed the grant award amount identified above.
- 4. Unused Grant Funds.** Any amount of grant funds provided for under this Agreement that is not expended within one year of disbursement, or at the termination of this Agreement, whichever is sooner, shall be returned to the Bureau. Grantee shall notify Bureau of such unused funds and Bureau in coordination with DCA shall provide Grantee with instructions as to how to return the funds.
- 5. Funding Contingency Clause.** The funding for this Agreement is allocated pursuant to the Equity Grant Funding. Grantee agrees that the Bureau's obligation to pay any sum under this Agreement is contingent upon availability of funds disbursed from the Equity Grant Funding. If there is insufficient funding, the Bureau shall have the option to either: 1) terminate this Agreement, whereby no party shall have any further obligations or liabilities under this Agreement, or 2) negotiate an Agreement amendment with Grantee to reduce the grant award and scope of services to be provided under this Agreement.
- 6. Grant Fund Disbursement.** Grant funds awarded pursuant to the Equity Grant Funding will be issued directly to Grantee in one disbursement, upon execution of this Agreement, and passing of a resolution, provided by the Grantee and attached as Exhibit A, Grantee's adopted resolution.
- 7. Subcontractors.** No amount of the grant award may be used to subcontract any of the commitments contemplated in this Agreement to another entity or person, unless with the written approval of the Bureau pursuant to section 13 of this Agreement.

- 8. Documentation and Reporting Requirements.**
- (a) Grantee must be able to demonstrate to the satisfaction of the Bureau that the grant funds were expended for eligible uses and consistent with the activities identified in its application, and under the Equity Grant Funding.
  - (b) Grantee shall submit an annual report to the Bureau on or before January 1, 2020, and annually thereafter for each year that grant funds are expended. No report shall be submitted prior to December 15, 2019. Grantee shall provide a report to the Bureau notwithstanding whether or not the Grant Term has expired, or Grantee has expended the Grant Funds before the end of the Grant Term.
  - (c) At a minimum, the annual report to the Bureau shall include all of the following information:
    - (i) How the local jurisdiction disbursed grant funds;
    - (ii) How the local jurisdiction identified local equity applicants or local equity licensees, including how the local jurisdiction determines who qualifies as a local equity applicant or local equity licensee;
    - (iii) The number of local equity applicants and local equity licensees that were served by the grant funds;
    - (iv) Demographic data on equity applicants, equity licensees, and other applicants and licensees in the jurisdiction, including, but not limited to, race, ethnicity, gender, sexual orientation, income level, prior convictions, and veteran status. This information will be consolidated and reported without the individual's identifying information.
  - (d) Grantee must maintain records detailing the expenditure of all grant funds for a period of seven (7) years after the end of the Grant Term, and shall provide this information to the Bureau upon request.
- 9. Audit.** The books, accounts, files, receipts, and other records of Grantee which are applicable to this Agreement shall be made available for inspection, review, and audit immediately upon request by the Bureau and its representatives to verify proper use of the grant award.
- 10. Eligible Uses.** Grant funds shall be used for the purpose of assisting local equity applicants and local equity licensees in that local jurisdiction to gain entry to, and to successfully operate in, the state's regulated cannabis marketplace and consistent with Grantee's application for Equity Grant Funding. No more than ten (10) percent of the grant funds awarded to the local jurisdiction may be used for administration, including employing staff or hiring consultants to administer grants and the local equity program. As determined by the Bureau, upon its review, Grantee shall reimburse the Bureau for any ineligible or improper uses of grant funds, including any grant funds in excess of ten (10) percent used for administration costs or expenses. Assistance that grant funds may be used for, include, but are not limited to, any of the following:
- (a) To provide a loan or grant to a local equity applicant or local equity licensee to assist with startup and ongoing costs, including but not limited to, rent, leases, local and state application and licensing fees, regulatory adherence, testing of cannabis, equipment, capital improvements, and training and retention of a qualified and diverse workforce.
  - (b) To support local equity program efforts to provide sources of capital to local equity applicants and local equity licensees.
  - (c) To provide direct technical assistance to local equity applicants and local equity licensees.
  - (d) To assist in the administration of local equity programs.
- 11. Termination of Agreement.** This Agreement may be terminated by the Bureau upon action, or inaction by the Grantee that constitutes a material breach of this Agreement. A material breach includes, but is not limited to, refusal or inability to complete the commitments contemplated in this Agreement, improper expenditure of grant funds, failure to properly maintain records or allow the Bureau access to records as required under this Agreement, and failure to timely complete and submit the reports required under this Agreement. The Bureau will notify Grantee in writing if it intends to terminate the Agreement pursuant to this section and provide Grantee an opportunity to cure the breach within thirty (30) calendar days.
- 12. Assignment.** This Agreement is not assignable by Grantee, either in whole or in part, without the consent of the Bureau in the form of a written amendment.

- 13. Amendment.** This Agreement may be amended or modified only in writing signed by all parties.
- 14. Grantee – Representations and Warranties.** Grantee represents and warrants that:
- (a) Grantee is an eligible applicant as set forth in the Local Equity Grant Guidelines;
  - (b) It is not a party to any agreement, written or oral, creating obligations that would prevent it from entering into this Agreement or satisfying the terms herein.;
  - (c) All of the information in its grant application and all materials submitted to the Bureau are true and accurate; and
  - (d) Grantee's governing body has authorized the Grantee to enter into this Agreement and has designated by title the individual authorized to sign the Agreement on behalf of Grantee, through a resolution in the form of the Sample Resolution.
- 15. Nondiscrimination.** Grantee shall comply with all applicable federal and state laws and statutes related to nondiscrimination, including, but not limited to, race, color, national origin, gender, handicap or disability, sexual preference, drug addiction, and alcoholism.
- 16. Union Activities.** Grantee acknowledges that Government Code Section 16645.2 applies to this Agreement. Pursuant to Government Code Section 16645.2, Grantee certifies that none of the grant award will be used to assist, promote, or deter union organizing. If Grantee makes expenditures to assist, promote, or deter union organizing, it shall maintain records sufficient to show that no portion of the grant award was used for those expenditures. Grantee shall provide those records to the Attorney General upon request.
- 17. Media Release.** Grantee may elect to issue a press release related to this Agreement, but any release shall be approved by the Bureau and in coordination with DCA (as applicable) in writing prior to such release. Such approval shall not be unreasonably withheld.
- 18. Indemnification/Warranty and Disclaimer/Limitation of Liability.** Grantee shall defend, indemnify, and hold DCA, the Bureau and its agents or assigns, harmless from and against all claims, damages, and liabilities (including reasonable attorneys' fees) arising from this Agreement due to the Grantee's breach of this Agreement, or the result of the Grantee's negligence or willful misconduct. UNDER NO CIRCUMSTANCES WILL THE STATE OF CALIFORNIA, DCA, THE BUREAU, ITS AGENTS OR EMPLOYEES, BE LIABLE TO THE GRANTEE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT ARISE FROM THIS AGREEMENT.
- 19. Force Majeure.** If by reason of force majeure Grantee's performance hereunder is delayed or prevented, then the performance by Grantee may be extended for the amount of time of such delay or prevention. The term "force majeure" shall mean any fire, flood, earthquake, or public disaster, strike, labor dispute or unrest, embargo, riot, war, insurrection or civil unrest, any act of God, any act of legally constituted authority, or any other cause beyond the Grantee's control which would excuse Grantee's performance as a matter of law.
- 20. Notice of Force Majeure.** Grantee agrees to provide the Bureau written notice of an event of force majeure under this Agreement within ten (10) days of the commencement of such event and within ten (10) days after the termination of such event, unless the force majeure prohibits Grantee from reasonably giving notice within this period. Grantee will give such notice at the earliest possible time following the event of force majeure.
- 21. Integration.** This Agreement (including the exhibits hereto and any documents explicitly incorporated by reference, and any written amendments hereof executed by the Parties) constitutes the entire Agreement between the Parties related to this grant award and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the grant award described herein.

- 22. Notice.** Within thirty calendar (30) days of the effective date of this Agreement, Grantee shall notify the Bureau, in writing, of the name, address, phone number, and email of its contact person for future communication relating to this Agreement. In addition, Grantee agrees to immediately inform the Bureau of any changes to the name, address, phone number, and email of its contact person. Unless otherwise specified in this Agreement, any notice required or permitted to be given under this Agreement to the Bureau shall be emailed to [BCCGrants@dca.ca.gov](mailto:BCCGrants@dca.ca.gov).
- 23. Ambiguities.** Each Party has had the opportunity to seek the advice of counsel or has refused to seek the advice of counsel. Each Party and its counsel, if appropriate, have participated fully in the negotiation, drafting, review, and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.
- 24. Necessary Acts, Further Assurances.** The Parties shall at their own cost and expense execute and deliver any further documents and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.
- 25. Sections and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 26. Attorneys' Fees.** In the event of any litigation between the parties concerning the terms and provisions of this Agreement, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.
- 27. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.
- 28. Severability.** If any portion of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such portion shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 29. Governing Law and Consent to Jurisdiction.** This Agreement will be governed, construed, and enforced according to the laws of the State of California without regard to its conflict of laws rules. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of any state court located within Sacramento County, State of California in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement.
- 30. Definitions:**
- (a) "Eligible local jurisdiction" means a local jurisdiction that has adopted or operates a local equity program.
  - (b) "Local equity applicant" means an applicant who has submitted, or will submit, an application to a local jurisdiction to engage in commercial cannabis activity within the jurisdictional boundaries of that jurisdiction and who meets the requirements of that jurisdiction's local equity program.
  - (c) "Local equity licensee" means a person who has obtained a license from a local jurisdiction to engage in commercial cannabis activity within the jurisdictional boundaries of that jurisdiction and who meets the requirements of that jurisdiction's local equity program.
  - (d) "Local equity program" means a program adopted or operated by a local jurisdiction that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to

populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization. Local equity programs may include, but are not limited to, the following types of services:

- (1) Small business support services offering technical assistance to those persons from economically disadvantaged communities that experience high rates of poverty or communities most harmed by cannabis prohibition, determined by historically high rates of arrests or convictions for cannabis law violations.
  - (2) Tiered fees or fee waivers for cannabis-related permits and licenses.
  - (3) Assistance in paying state regulatory and licensing fees.
  - (4) Assistance securing business locations prior to or during the application process.
  - (5) Assistance securing capital investments.
  - (6) Assistance with regulatory compliance.
  - (7) Assistance in recruitment, training, and retention of a qualified and diverse workforce, including transitional workers.
- (e) "Local jurisdiction" means a city, county, or city and county.
- (f) "State commercial cannabis license" means a license issued pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act by the Bureau, the California Department of Public Health, or the California Department of Food and Agriculture.
- (g) "Transitional worker" means a person who, at the time of starting employment at the business premises, resides in a ZIP Code or census tract area with higher than average unemployment, crime, or child death rates, and faces at least one of the following barriers to employment: (1) is homeless; (2) is a custodial single parent; (3) is receiving public assistance; (4) lacks a GED or high school diploma; (5) has a criminal record or other involvement with the criminal justice system; (6) suffers from chronic unemployment; (7) is emancipated from the foster care system; (8) is a veteran; or (9) is over 65 years of age and is financially compromised.

*Remainder of the page is intentionally left blank. Signature page immediately follows.*

**California Department of Consumer Affairs**

By:

Name: Kimberly Kirchmeyer

Title: Director

Date:

**Bureau of Cannabis Control**

By:

Name: Lori Ajax

Title: Chief, Bureau of Cannabis Control

Date:

**Grantee**

**City of San Jose**

By:

Name: Leland Wilcox

Title: Chief of Staff

Date:



**Exhibit A**  
**[Attached Resolution]**



DCA-BCC-2019-007 City of San Jose, CA