

**ACTIVE STOREFRONTS ASSISTANCE GRANT AGREEMENT**  
**Exterior Space Improvements**

This Grant Agreement ("Agreement") is entered into as of this 27th day of September, 2021 ("Effective Date"), by and between THE CITY OF SAN JOSE, a charter city ("City"), and El Diferente, a California Partnership ("Tenant").

**RECITALS**

A. On August 1<sup>st</sup>, 2018 Company leased a 1,358 square foot office building on 0.3 acres located at 795 S 2<sup>nd</sup> St in San Jose, California, currently used as a food truck space ("Premises"). Now, an occupied storefront, the Company would like to activate their exterior space with a sign and outdoor seating.

B. In connection with the occupancy of the Premises, the City is assisting Company by providing a matching grant to reimburse Company for the cost of City fees, permit and taxes, construction materials, furnishings, fixtures and equipment associated with the exterior space improvements of the Premises intended to provide pedestrian-scale, public space engagement, placemaking and increased economic activity.

C. The Premises is used by Company to provide space for residents to order food and drink and purchase catering services. The City desires to assist with the costs of fees, permits, taxes, construction materials, furnishings, fixtures and equipment for the exterior space improvements of the Premises to further the goals of the City's economic development strategy. The City desires to preserve and expand the number of jobs and tax revenues provided by the facilities operated by Company, and recognizes the need to further renovate and improve the Premises to accomplish these ends. In order to assist the Company to improve the Premises, which will bring jobs and revenue to the City, the City is providing the financial assistance in this Agreement to be paid on a reimbursement basis.

D. Subject to the terms and conditions set forth in this Agreement, the City desires to reimburse Company for a portion of the cost of City fees, permits and taxes for the rehabilitation of the Premises and the first year of the business license tax paid to the City, provided that if Company vacates the Premises or ceases operation of the Company within certain time periods as set forth herein, Company shall reimburse the City as more particularly described herein.

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

1. City Financial Assistance. Subject to the terms and conditions set forth herein, the City shall reimburse Company of up to Ten Thousand Dollars (\$10,000) to reimburse Company for a portion of the costs of City fees, permits and taxes associated

with the rehabilitation of the Premises (“City Assistance”) and the first year of the business license tax paid to the City.

2. Eligible Fees, Permits, Taxes, Construction Materials, Furnishings, Fixtures and Equipment. Grant funds under this Agreement may be used to reimburse Company for the cost of the following:

- a. Planning Permits;
- b. Building Permits;
- c. Planning and Building Review Fees;
- d. Expedited Reviews;
- e. City Business License Tax for the first year.
- f. Construction Materials
- g. Durable, exterior-grade outdoor furniture, fixtures and equipment
- h. Sidewalk Replacement via City open purchase order

3. City Financial Assistance. After the Company has executed a lease for the Premises and filed the required applications for the installation of the Premises, Company may submit to the City a reimbursement request under this Agreement for applicable City fees, permits or taxes. Company shall also provide a copy of the relevant invoices and receipts to accompany a reimbursement request. 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, permit or tax for the rehabilitation of the Premises. In no event shall the City be obligated to reimburse Company for any costs in an amount in excess of Ten Thousand Dollars (\$10,000). The City’s obligation to provide City Assistance shall expire on June 30<sup>th</sup>, 2022 if the City has not issued a permit set forth in Section 2 of this Agreement by that date. Company’s financial contribution to the project eligible for consideration of matching funds may include, but may not be limited to the following:

- a. Design Fees
- b. Labor for installation and construction
- c. Any materials, furnishings, fixtures and equipment in excess of 10,000 claimed for reimbursement.

4. Failure to Occupy the Premises. The City has agreed to provide the City Assistance hereunder as an incentive to [attract and] [not relevant in this case] retain Company in San Jose. If Company vacates or otherwise no longer occupies any portion of the Premises at the applicable times stated below in this Section 4 (collectively, "Reimbursement Event"), Company shall, within thirty (30) days thereafter, reimburse the City for the City Assistance that the City has provided, as follows:

(a) If a Reimbursement Event occurs before the first anniversary of the date the permit approval including appeal period, if any set forth in Section 2 of this Agreement is issued by the City ("Permit Issuance Date"), Company shall reimburse the City ninety percent (90%) of any City Assistance disbursed to Company under this Agreement;

(b) If a Reimbursement Event occurs on or after the first anniversary of the Permit Issuance Date, but before the second anniversary of the Effective Date, Company shall reimburse the City sixty seven percent (67%) of any City Assistance disbursed to Company under this Agreement;

(c) If a Reimbursement Event occurs on or after the second anniversary of the Effective Date, but before the third anniversary of the Permit Issuance Date, Company shall reimburse the City thirty-three percent (33%) of any City Equipment Assistance disbursed to Company under this Agreement;

(d) If Company remains in occupancy of the Premises on or beyond the third anniversary of the Permit Issuance Date, Company shall not be required to reimburse the City for any portion of the City Equipment Assistance.

5. Termination. This Agreement shall terminate on the third anniversary of the Permit Issuance Date; provided, however, that in the event that Company fails to comply with any term or condition of this Agreement, City may terminate the Agreement with seven (7) days written notice to Company.

6. Amendments. This Agreement may be amended, changed or modified only by an instrument in writing signed by the City and Company.

7. 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.

8. 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.

9. Waiver. Any waiver by the City or Company 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.

10. 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: Director of Economic Development  
200 East Santa Clara Street, 17<sup>th</sup> Floor Tower  
San Jose, CA 95113

To: Monserrat Barrita  
El Diferente  
795 S 2<sup>nd</sup> Street  
San Jose, CA 95112

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

A copy of any notice of a legal nature, including, but not limited to any claims against the City, its officers or employees, shall also be served in the manner specified above to the following address:

City of San Jose  
Nora Frimann, City Attorney  
200 East Santa Clara Street, 16<sup>th</sup> Floor Tower  
San Jose, CA 95113

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification receipt), or on the date delivery is refused, if applicable.

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

12. 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 to the extent of the active negligence, willful misconduct, or breach of this Agreement by the City or any of such other indemnified parties.

13. 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 sole and absolute discretion of the City Manager.

14. 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

**Sarah Zarate**

*x Sarah Zarate*  
Sarah Zarate (9/27/2021)  
Email: sarah.zarate@sanjoseca.gov

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

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

**"COMPANY"**

El Diferente, A California Partnership

**Monse Barrita**

*x Monserrat Barrita*  
eldiferente1505@gmail.com (9/23/2021)  
Email: eldiferente1505@gmail.com

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

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