

8/27/2013

**52-R-13**

**A RESOLUTION**

**Authorizing the City Manager to Execute an Economic Development Grant Agreement with Now We're Cookin', Inc.**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

**SECTION 1:** The City Manager is hereby authorized and directed to sign the second grant agreement between the City and Now We're Cookin', Inc., attached hereto as Exhibit A and incorporated herein by reference ("Agreement").

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

**SECTION 3:** This Resolution 52-R-13 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: September 9, 2013

**EXHIBIT A**

**Second Grant Agreement Between the City and Now We're Cookin', Inc.**

## GRANT AGREEMENT

THIS GRANT AGREEMENT [**"Agreement"**] is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2013 [**"Effective Date"**], by and between the City of Evanston [**"City"**], and Now We're Cookin', Inc., an Illinois corporation [**"Grantee"**], regarding the expansion of the business located at 1601 Payne Street, Evanston, Illinois, described in Exhibit "A", attached hereto and incorporated herein by reference [**"Property"**].

### RECITALS

WHEREAS, the City desires to retain local businesses and jobs as part of its economic revitalization efforts throughout Evanston; and

WHEREAS, Grantee intends to expand its use of the Property as a business incubator (the **"Incubator"**); and

WHEREAS, the City Council, as recommended by the Economic Development Committee, has authorized staff to manage and administer this Agreement on the City's behalf, including, without limitation, authorizing the City Manager to execute this Agreement with Grantee, thereby establishing the terms, conditions, and requirements for participation in this Agreement in accordance with City guidelines,

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual obligations of the parties as herein expressed, the City and Grantee agree as follows:

### AGREEMENT

#### I. DEFINITIONS

The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise. Any ambiguity as to the intended meaning or scope of the terms set forth below shall be resolved solely by the City through its designated representative.

- a. **"Completion Date"** means the date that the Grantee has finished the Project pursuant to the plans approved by City Council and to the satisfaction of the Manager.
- b. **"Manager"** means the City's Economic Development Manager, who shall manage and administer this Agreement on behalf of the City, or his/her designee.
- c. **"Grant"** means the total amount of the City's grant of Economic Development Fund moneys to Grantee for purposes of funding the Project, which shall not exceed \$60,932.00, the amount approved by City Council.

- d. **"Project"** means the expansion of Incubator services by Grantee, as described in this Agreement.
- e. **"Total Allowable Expenses"** means the actual costs incurred, paid for, and documented by Grantee and approved by the Manager for the proper performance of the Project.
- f. **"Total Project Expenditure"** means the total actual Project costs incurred by and paid for by Grantee including the costs of staff and marketing.

## II. TERMS OF GRANT

- a. City shall grant Grantee moneys not to exceed \$60,932.00 (the **"Grant Amount"**) from its Economic Development Fund in accord with the terms of this Agreement.
- b. The City shall disburse the Grant moneys to Grantee in five (5) installments.
  - 1. The City shall make the first such disbursement, not to exceed \$4,632.00, no earlier than September 30, 2013.
  - 2. The City shall make the second such disbursement, not to exceed \$14,075.00, no earlier than December 31, 2013.
  - 3. The City shall make the third such disbursement, not to exceed \$14,075.00, no earlier than March 31, 2014.
  - 4. The City shall make the fourth such disbursement, not to exceed \$14,075.00, no earlier than June 30, 2014.
  - 5. The City shall make the fifth such disbursement, not to exceed \$14,075.00, no earlier than August 31, 2014.
- c. The City shall not disburse any Grant installment to Grantee until the City receives the relevant quarterly report from Grantee required by Section III of this Agreement. The City shall disburse each installment no later than ten (10) business days after receipt of a quarterly report from Grantee that the Manager deems satisfactory in his/her discretion.

## III. GRANTEE'S RESPONSIBILITIES

- a. Grantee shall comply with all terms and conditions of this Agreement and all applicable requirements of Federal, Illinois, and City of Evanston law.

- b. Grantee shall obtain and submit all required certificates of insurance, as set forth herein, to the Manager upon execution of this Agreement and prior to City's execution.
- c. Grantee shall hire a manager for the Incubator no later than September 30, 2013.
- d. Grantee shall offer a quarterly pre-launch "Food Business 101" training seminar.
- e. Grantee shall develop and implement a marketing campaign to promote Incubator activities.
- f. Grantee shall submit to the City's Economic Development Committee a quarterly progress report, with the first such report due September 30, 2013 that summarizes the following with regards to Incubator clients':
  - 1. Initial contact/entry Date;
  - 2. Client training program participation dates;
  - 3. Kitchen rental (start/end dates);
  - 4. Number of employees (initially and upon leaving the Incubator);
  - 5. Sales growth during tenure with the Incubator;
  - 6. Location after leaving the Incubator;
  - 7. Length of time to reach "fully loaded" / cash break-even;
  - 8. Length of time in business after leaving the Incubator;
  - 9. Whether external financing obtained, and from what source;
  - 10. Training, seminar, and/or networking events held;
  - 11. Summaries of satisfaction survey results regarding such events;
  - 12. Public relations and media activity;
  - 13. Profiles of companies in the incubator.
- g. Grantee shall facilitate City staff access to client companies to discuss opportunities for retention and the promotion of economic development in Evanston.
- h. Grantee shall notify City staff of companies associated with Grantee looking to expand so Staff may present retention opportunities within Evanston.

- i. Grantee shall complete the Project per the Time of Performance set forth herein.
- j. Grantee shall acknowledge, in any Project press release(s), programs, and events, that the City's Grant was vital to completion of the Project.

#### IV. THE CITY'S RESPONSIBILITIES

- a. Within a reasonable time after Grantee notifies City of the completion of the Project or any portion thereof, the Manager shall inspect the relevant reports to ascertain whether they were completed in accordance with the Project scope approved by the City Council.
- b. Manager shall review Grantee's request and accompanying documents for the Grant. If Grantee meets all its terms, conditions, and obligations under this Agreement, the Manager shall issue the Grant moneys as set forth herein.

#### V. TIME OF PERFORMANCE

The Grantee shall complete the Project no later than December 31, 2014. Failure to complete the Project within said time shall result in Grantee's breach of this Agreement. Requests for additional time and extensions in Project completion time may be granted, but only if submitted in writing prior to the expiration of this Agreement.

#### VI. INSURANCE

- a. During the entire period in which work on the Project is performed, the Grantee shall obtain and maintain in full force and effect during said period a Comprehensive General Liability Insurance policy in a general aggregate amount of not less than \$1,000,000.
- b. The Comprehensive General Liability Insurance and Automobile Insurance policies, if any, shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insureds.
- c. All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of the City of Evanston.
- d. Grantee shall provide evidence of required insurance to the Manager before execution of this Agreement.

#### VII. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Grantee covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual

orientation, marital status, national origin, ancestry, age, or physical or mental disabilities that do not impair ability to work, and further that it shall examine all job classifications to determine if minority persons or women are underutilized and shall take appropriate affirmative action to rectify any such underutilization.

- b. If Grantee hires additional employees in order to perform its responsibilities pursuant to this Agreement, or any portion hereof, it shall determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it shall hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it shall state that all applicants shall be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

#### VIII. NO AGENCY CREATED

Neither Grantee nor any third party hired by Grantee to complete the Project is an agent of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Grantee concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Grantee shall follow the direction of the City concerning the end results of the obligations.

#### IX. OWNERSHIP OF DOCUMENTS

All documents prepared and submitted to the City pursuant to this Agreement (including any duplicate copies) shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights thereto.

#### X. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Grantee agrees to and shall defend, indemnify and hold harmless the City, and its respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including expert witness fees, reasonable attorneys' fees, and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or property resulting or arising from or in any way connected with the following, provided Grantee shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the City, or their respective officers, officials, active employees, contractors or agents:

- a. The development, construction, marketing, use or operation of the Property by the Grantee, its officers, contractors, subcontractors, agents, employees or other persons acting on Grantee's behalf [**"Indemnifying Parties"**];

- b. The displacement or relocation of any person from the Property as the result of the development of the Project on the Property by the Indemnifying Parties;
- c. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Grantee, or resulting from any breach or default by Grantee, under this Agreement; and
- d. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits by the City, and their respective officers, officials, employees, contractors or agents.

The foregoing indemnity shall continue to remain in effect after the Completion Date or after the earlier termination of this Agreement, as the case may be.

#### XI. DUTY TO DEFEND

Grantee further agrees that the hold harmless agreement in Article X, and the duty to defend the City, and their respective officers, officials, employees, contractors and agents, require the Grantee to pay any costs that the City may incur which are associated with enforcing the hold harmless provisions, and defending any claims arising from obligations or services under this Agreement. If the City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to obligations or services under this Agreement, the Grantee agrees to pay the City's attorney's fees, expert witness fees, and all costs.

#### XII. COMPLIANCE WITH LAW

Grantee agrees to comply with all the requirements now or hereafter in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and implementation of the Project, as well as operations conducted on the Property. The Manager shall not issue any Grant money to the Grantee if there is in violation of any law, ordinance, code, regulation, or permit.

#### XIII. TERMINATION

If Grantee shall fail to cure any Event of Default upon notice and within the time for cure provided for herein, the City may, by written notice to the Grantee, terminate this Agreement. Such termination shall trigger the "Repayment of Grant" defined herein.

Grantee may not terminate this Agreement without the express written consent of City.

#### XIV. NOTICES

All notices permitted or required hereunder must be in writing and shall be effected by (i) personal delivery, (ii) first class mail, registered or certified, postage fully prepaid, or (iii) reputable same-day or overnight delivery service that provides a receipt showing date and time of delivery, addressed to the following parties, or to such other address as any party may, from time to time, designate in writing as provided herein:

To City: City of Evanston  
Economic Development Manager  
2100 Ridge Avenue  
Evanston, IL 60201  
Telephone: 847.448.4311  
Facsimile: 847.448.8020  
Email: economicdevelopment@cityofevanston.org

To Grantee: Now We're Cookin', Inc.  
1601 Payne Street  
Evanston, Illinois 60202  
Telephone: 847.570.4140  
Facsimile: 617.687.2560  
Attention: Neil Funk, President

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by delivery service to the addresses above, and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

#### XV. DEFAULT; REMEDIES; DISPUTE RESOLUTION

##### a. Notice of Default.

In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required herein identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

##### b. Cure of Default

Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within ninety (90) days and shall continuously and diligently prosecute the same to completion.

c. City Remedies; Repayment of Grant.

In the event of a default by Grantee of the terms of this Agreement that has not been cured within the timeframe set forth in Paragraph b above, the City, at its option, may terminate this Agreement or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement

In the event of a default by Grantee that occurs after the City has disbursed any Grant funds, the total of such disbursement(s), plus any accrued interest, shall become immediately due and payable. All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal. All payment shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Article XIV herein or at such other address as City may direct pursuant to notice delivered to Grantee in accordance with Article XIV.

d. Grantee's Exclusive Remedies.

The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Article. Accordingly, Grantee shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Grantee and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Grantee's sole and exclusive judicial remedies.

XVI. APPLICABLE LAW

The internal laws of the State of Illinois without regard to principles of conflicts of law shall govern the interpretation and enforcement of this Agreement.

XVII. CONFLICT OF INTEREST

- a. No member, official, or employee of the 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/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Grantee warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for obtaining this Agreement.

## **XVIII. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES**

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Grantee, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Grantee or successor or on any obligation under the terms of this Agreement.

## **XIX. BINDING EFFECT**

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

## **XX. AUTHORITY TO SIGN**

The Grantee hereby represents that the persons executing this Agreement on behalf of Grantee have full authority to do so and to bind Grantee to perform pursuant to the terms and conditions of this Agreement.

## **XXI. COUNTERPARTS**

This Agreement may be executed by each party on a separate signature page, and, with the executed signature pages combined, shall constitute one single instrument.

## **XXII. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

- a. This Agreement and the Exhibits and references incorporated into this Agreement express all understandings of the parties concerning the matters covered in this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- b. All waivers of and/or amendments to the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Grantee.

## **XXIII. NON-ASSIGNMENT**

The Grantee shall not assign the obligations under this Agreement, nor any moneys due or to become due, without the City's prior written approval, and Grantee and Grantee's proposed assignee's execution of an assignment and assumption agreement in a form approved by the City. Any assignment in violation of this paragraph is grounds for breach of this Agreement, at the sole discretion of the City Manager. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

#### XXIV. NO WAIVER

No failure of either the City or the Grantee to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect.

[Signature page to follow]

IN WITNESS WHEREOF, the City, and the Grantee have signed this Agreement as of the dates set opposite their signatures.

"CITY"

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

"GRANTEE"

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

ATTACHMENT:

1. Exhibit A – Legal Description of Property

Return this form to:  
City of Evanston  
Economic Development Manager  
2100 Ridge Avenue  
Evanston, IL 60201

**Exhibit A:**

**Legal Description**

THE WEST 136.8 FEET OF LOT 7 (EXCEPT THAT PART FALLING WITHIN THE NORTH 35 FEET OF THE EAST 90 FEET OF SAID LOT 7 IN BLOCK 6, IN PAYNE'S ADDITION TO EVANSTON IN SECTION 12, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.

**PIN:** 10-12-015-413-0000

**Commonly Known As:** 1601 Payne Street, Evanston, Illinois.