

1/21/2015

10-R-15

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute a Hotel-Motel Tax Sharing Agreement with ZS Associates, 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 to execute the Hotel-Motel Tax Sharing Agreement, attached hereto as Exhibit 1, the terms are incorporated herein by reference, with ZS Associates, Inc., an Illinois corporation.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Hotel-Motel Tax Sharing Agreement as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

SECTION 3: That this Resolution 10-R-15 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: February 9, 2015

EXHIBIT 1

Hotel-Motel Tax Sharing Agreement

HOTEL-MOTEL TAX SHARING AGREEMENT

THIS HOTEL-MOTEL TAX SHARING AGREEMENT (“**Agreement**”) is entered into this”), by and between the CITY OF EVANSTON, Illinois, an Illinois home rule municipal corporation (the “**City**”), and ZS ASSOCIATES, INC. an Illinois corporation (the “**Proprietor**”) (individually, the City and Proprietor are referred to herein as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS:

WHEREAS, the City is a home rule municipality in accordance with Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970; and

WHEREAS, Proprietor operates a sales and marketing consultant business at 1800 Sherman Avenue, Evanston, Illinois and seeks to move its office and leased 47,000 square feet of office space at the commercial building known as One Rotary Center at 1560 Sherman Avenue, Evanston, Illinois (the “**Property**”); and

WHEREAS, Proprietor will be renovating its leased spaced at the Property for its business (the “**Project**”); and

WHEREAS, the Parties agree that extraordinary costs associated with the Project renovations require certain incentives from the City, and the incentives that will be offered to offset the Projects costs in the form of rebates from the City’s portion of the local hotel-motel taxes generated by employee and client stays at hotels and motels in the City of Evanston; and

WHEREAS, the City desires to retain existing businesses, diversify the tax base, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and its residents; and

WHEREAS, the City has determined that providing financial assistance in the form of a hotel-motel tax sharing agreement is a proper exercise of its home rule powers and the City Council has made the following findings with respect to the Property and the Project; and

- A. The Project is expected to create and maintain job opportunities within the City;
- B. The Project will serve to further stabilize areas adjacent to the Property;
- C. The Proprietor meets high standards of credit-worthiness and financial strength;
- D. The Project will maintain the neighborhood commercial base of the City; and
- E. This Agreement is made in the best interest of the City.

WHEREAS, the City has agreed, pursuant to the terms of this Agreement, to provide certain hotel-motel tax sharing provisions in order to insure the economic feasibility of the Project which will have the benefits described above,

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the Parties hereto as follows:

SECTION 1: Recitals. The Parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

SECTION 2: Rebate.

A. Rebate: This Agreement is limited only for the hotel-motel tax revenue generated from hotels or motels booked by the Proprietors employees, clients or prospective clients, or meeting/conference attendees for ZS Associates business related functions only (“Qualifying Customers”).

1. **First Tier Rebate:** The City agrees to rebate a portion of its revenue from the Hotel-Motel Tax transactions authorized by City Code of 2012, as amended, and received from the Illinois Department of Revenue. The First Tier Rebate issued to the Proprietor will be based on the number of rooms booked at Evanston hotels or motels. The City shall rebate \$6.00 to the Proprietor for each room and up to a maximum of 5,000 rooms annually ($\$6 \times 5,000 = \$30,000$).

2. **Second Tier Rebate:** If the First Rebate threshold is met and the total annual hotel or motel rooms rented under this Agreement by Qualifying Customers exceeds 5,000 rooms for a year, the City agrees to rebate a portion of its revenue at the rate of \$9 per room up to a total of 2,500 rooms annually ($\$9 \times 2,500 = \$22,500$). The Second Tier Rebate rate will only be calculated for the number of rooms over 5,000, meaning the elevated Rebate amount is limited to 2,500 rooms above the first 5,000 rooms.

3. **Maximum Rebate Total:** In no event will Proprietor’s Rebate exceed a total value of the combined First Tier Rebate and Second Tier Rebate, Fifty-Two Thousand Five Hundred and no/100 Dollars (\$52,500). The Rebate issued also does not fluctuate based on the room rate assessed by the hotel or motel or increase based on inflation over the Rebate Term of this Agreement.

B. Rebate Term:

1. The rebate term shall be eight (8) years (the “**Rebate Term**”) commencing on January 1, 2016 (“**Rebate Term Commencement Date**”) and expire on December 31, 2024.

2. The Proprietor may not petition for any additional extensions or renewals of this Agreement.

C. Rebate Payments: After receipt of the hotel-motel tax revenue and tax data from the Illinois Department of Revenue, the City will issue the Rebate within 30 days of the request for the annual Rebate payment. Any failure to transmit the hotel-motel tax revenue data and revenue by the Illinois Department of Revenue shall not be considered an Event of Default of the City and cannot be cured by the City.

D. Conditions Precedent to Rebate Payment: The following shall be conditions precedent to the City’s obligation to pay any monies to the Proprietor under the Rebate for the initial payment:

1. Receipt of an annual certification submitted by Proprietor attesting to the number of hotel or motel rooms rented by employees, clients or prospective clients, or meeting/conference

attendees hosted by Proprietor. The certification should have a detailed spreadsheet attached which outlines the hotel-motel transactions by hotel and date. The form certification that Proprietor shall utilize during the Term is attached as Exhibit A.

2. Conditioned on the City receiving information from the State of Illinois related to hotel-motel tax for the Proprietor, the City shall have thirty (30) days after receipt of these documents within which to verify the sufficiency of the information contained within the produced documents.

3. The Proprietor must not be in default of any term of this Agreement or in default of any term of the Forgivable Loan Agreement dated _____, 2015 executed between the Parties (the "Forgivable Loan"), the terms of which are incorporated herein by reference.

4. Proprietor must be in good standing on any and all City accounts, including but not limited to real estate tax payments to Cook County, wheel tax payments, parking tickets, water bills, and fines.

SECTION 3. Proprietor's Responsibilities.

The Hotel-Motel Tax Sharing Agreement is conditioned on the completion and satisfaction of each part of this Section 3 and confirmed by the Director and/or his designee. If Proprietor fails to perform any condition fully set forth herein, it shall be considered an Event of Default, defined in Section 9. For the Term of this Agreement, Proprietor's responsibilities shall include the following:

A. Summary of Project: Proprietor shall renovate the Property in accordance with its representations to the City's Economic Development Committee, City Council, and City staff. Said conversion and improvement (the "**Project**") includes: demolition of portions of the Property building; environmental remediation efforts (asbestos abatement); update mechanicals; refurbishing the interior for office use, repair and detail work; sealcoating/stripping the parking lot for car storage; and other improvements as determined.

1. Proprietor shall maintain and operate the ZS Associates business at the Property for the term of this Agreement. Proprietor is permitted, provided it obtains any necessary local approvals, to contract for a portion of the Property to be operated by a separate and unrelated business related to automotive and body shop work.

2. Proprietor shall construct and complete the Project in a good and workmanlike manner in accord with all Federal, State and local laws and regulations. The Proprietor, at its expense, shall secure or cause to be secured any and all permits, documents, zoning relief, or plats which may be required for the Project by City Code, and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, or from any other agency which may have or exercise any jurisdiction of any type whatsoever in connection with the Project. Except as provided in this Agreement, the costs of the Project shall be borne and paid for by the Proprietor or its landlord.

3. Proprietor shall obtain at least three (3) bids for the Renovations, at least one (1) of the contractors providing an estimate shall be an Evanston-based company. In the event no Evanston-based contractor is identified, Proprietor must provide written notice attesting to this fact to City staff.

C. Mayor's Summer Youth Employment Program: Proprietor shall coordinate with the City's Youth and Young Adult Program Manager to employ two (2) Evanston youth residents to work for Proprietor during the summer through the Mayor's Summer Youth Employment Program each year of the Term.

D. Philanthropy Efforts. City staff and Proprietor will work during the first 6 months of the Term to identify a plan to support the Evanston non-profit community through volunteerism and/or sponsorship (the "**Non-Profit Engagement Plan**"). The implementation of the Non-Profit Engagement Plan will be evaluated by City staff on an annual basis in conjunction with the issuance of the Rebate. If Proprietor is held to not be in compliance with the Philanthropy efforts outlined in the Non-Profit Engagement Plan, it agrees to work diligently to address any and all shortfalls within the plan.

E. Sale or Transfer prior to end of Term:

1. If Proprietor sells or transfers in whole or in part any of the businesses listed in Section 2(A) to any unrelated entity or individual, it shall be considered an Event of Default.

2. If Proprietor vacates the Subject Property for a different location or reduces the footprint within the leased Subject Property by more than 20%, it shall be considered an Event of Default.

3. If Proprietor reduces its full-time employee staff working at the Subject Property below 320 people, it shall be considered an Event of Default. As of the Effective Date, the Proprietor employs 325 people at its headquarters location at 1800 Sherman and must retain during the entire Term at least 320 persons in a full-time employment status at the Evanston headquarters location.

F. Notwithstanding any other provision of this Agreement, in the event that Proprietor (i) declares insolvency or bankruptcy; (ii) makes an assignment for the benefit of creditors; or (iii) is unable to meet its financial obligations, then this Agreement shall be deemed terminated and of no further force and effect, and the Parties are relieved of all covenants, conditions, obligations and liabilities hereunder.

G. Proprietor acknowledges and agrees that the provisions of this Agreement shall be a matter of public record and subject to disclosure under the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, and other transparency reporting to the City Council, as shall any and all payments made by the City to Proprietor pursuant to this Agreement.

H. Proprietor shall throughout the Rebate Term and for a period of two (2) years following the expiration of the Rebate Term, keep and make available for the inspection, examination and audit by City or City's authorized employees, agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by Proprietor, relating to the Hotel-Motel

Tax Sharing Agreement and the Project, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by Proprietor is found to have been overstated, Proprietor shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City's expenses for and in connection with the audit respecting such invoice.

SECTION 4. City Responsibilities.

A. In consideration of Proprietor's work on the Project, the City agrees to issue the Rebate to Proprietor for the hotel-motel tax revenue generated from hotels or motels booked by the Proprietors employees, clients or prospective clients, or meeting/conference attendees for ZS Associates business related functions only. The City shall disburse to Proprietor the Rebate as specified in Section 2(A) until the expiration of the Term on an annual basis and in compliance with Section 2(E).

B. Notwithstanding anything to the contrary herein contained, the City shall have no obligation to disburse to Proprietor any portion of the City's Hotel-Motel Tax Share accruing or arising after the expiration of the Rebate Term.

SECTION 5. Casualty/Extension of Term.

In the event of a casualty or destruction of substantially all of the improvements on the Subject Property during the term of this Agreement, and Property Owner or Proprietor elects not to rebuild said improvements or fails to promptly commence and diligently pursue said reconstruction and recommence its retail operations on the Property within twelve (12) months after the date of said casualty, the City shall only be responsible for a Rebate to the date of Casualty and any repayment responsibilities after said date will be null and void.

SECTION 6. Indemnification.

Proprietor shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Proprietor or its subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement. Nothing contained herein shall be construed as prohibiting City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Proprietor shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* At the City Corporation Counsel's option, Proprietor must defend all suits brought upon all such Losses and

must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Proprietor of any of its obligations under this Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Proprietor must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City. No member, official, agent, legal counsel or employee of the City shall be personally liable to the Proprietor, 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 Proprietor or successor or on any obligation under the terms of this Agreement.

SECTION 7. Mutual Assistance. Proprietor and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

SECTION 8. Anti-Discrimination and Minority Business Participation.

A. Proprietor agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Proprietor agrees to make good faith, commercially reasonable efforts to have its general contractor and major subcontractors, to the extent they hire new employees and can include minorities, women and City residents to work on the Project. Nothing herein shall require Proprietor or its contractors or major subcontractors to displace any employees in its current work force to achieve the foregoing goal.

B. Notwithstanding the foregoing provisions, Proprietor shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

SECTION 9. Event of Default and Default Remedies.

A. Notice of Default: In the event of failure by either party to substantially perform any material term or provision of this Agreement, including but not limited to conditions contained in Sections 2 and 3 ("**Event of Default**"), 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 by Section 14 hereof 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 a 15-day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion.

C. City Remedies not Exclusive: If an Event of Default occurs, which Proprietor has not cured within the timeframe set forth in subparagraph B above, the City, at its option, may terminate this Agreement and/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.

D. Reimbursement of Rebate:

1. If a Default by Proprietor is not cured under Section 9(B), the Proprietor may be responsible for reimbursement of the last Rebate issued depending on the date of Default (the “**Date of Default**”). If the Default is discovered after the City has paid the Rebate which encompasses the date of Default, then Proprietor must reimburse the City for the full Rebate. Meaning, if the Proprietor defaults in the fall quarter and the City issues an annual payment for the fall and winter quarters in January the following year, and the City subsequently discovers or the Proprietor reports the Default in February, then the Proprietor shall reimburse the City for the last Rebate issued.

2. If a Default is discovered before the City has issued the Rebate for the period of time encompassing the Default, the City shall not issue a Rebate for said subject period. In addition, the City will not issue a partial or pro-rated Rebate to Proprietor to the date of Default.

3. The “Date of Default” shall mean the date on which the Proprietor violates any condition of the Agreement and it is not cured within the applicable time period. The Proprietor has an affirmative obligation to report any and all Defaults to the City.

E. Proprietor’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 Section. Accordingly, Proprietor 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 Proprietor and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief and specific performance shall be Proprietor sole and exclusive judicial remedies.

SECTION 10. Entire Agreement. This Agreement sets forth all the promises, inducements, Agreements, conditions and understandings between Proprietor and City relative to the subject matter hereof, and there are no promises, Agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth.

SECTION 11. Survival of Terms, Binding upon Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

SECTION 12. Governing Law and Attorney’s Fees. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois. In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Proprietor, or arising out of a breach of this Agreement by Proprietor, the City shall recover from the Proprietor as part of the judgment against Proprietor, its attorneys’ fees and costs incurred in each and every such action, suit, or other proceeding.

SECTION 13. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, restrictive governmental laws and regulations, epidemics, quarantine restrictions, freight embargoes, lack of

otherwise provided herein, no third party shall have any right(s) or claim(s) against the City that may arise from this Agreement.

SECTION 18. **Amendments.** This Agreement may be amended from time to time with the written consent of the Parties hereto.

SECTION 19. **Execution of this Agreement.** This Agreement shall be signed last by the City and the City Manager shall affix the date on which he/she signs and approves this Agreement on the first page hereof, which date shall be the effective date of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date executed by the Lender.

PROPRIETOR:

ZS ASSOCIATES, INC., an Illinois corporation

By: _____
Christopher Wright
Its President

Dated: _____

LENDER:

CITY OF EVANSTON, an Illinois municipal corporation

By: _____
Wally Bobkiewicz
Its City Manager

Dated: _____

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Christopher Wright in his capacity as president of ZS Associates, Inc., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such president, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2015.

My Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Wally Bobkiewicz, as City Manager of the City of Evanston, Illinois, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Wally Bobkiewicz, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said municipality, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2015.

My Commission Expires: _____

EXHIBIT A

HOTEL-MOTEL TAX ANNUAL CERTIFICATION

The Proprietor is required to complete and sign this affidavit on an annual basis, starting on or around January 1, 2017. The Proprietor shall certify the total number of hotel or motel rooms rented by employees, clients or prospective clients, or meeting/conference attendees hosted by Proprietor.

This certification must be accompanied by a detailed spreadsheet attached which outlines the hotel-motel transactions by hotel or motel, dates, rate assessed, and other pertinent information that the City may request to complete the review and reconciliation of the hotel-motel tax generated by ZS Associates on an annual basis.

I, Christopher Wright, President of ZS Associates, Inc., affirm under penalties of perjury and upon personal knowledge that the contents of the foregoing certification are true and accurate.

Name (Print)

Date

Name (Signature)