

**AGREEMENT BETWEEN THE CITY OF PEORIA, ILLINOIS  
AND  
THE CHEF AND THE BAKER  
FOR  
CDBG ECONOMIC DEVELOPMENT FUNDS  
AT  
106 E MCCLURE AVENUE**

**Project # 16ED01  
IDIS # 4547  
Total Project Funding: \$35,000**

**Approved by the Peoria City Council on January 12, 2016  
Council Agenda Item # 16-017**

This Agreement entered into and between The City of Peoria ("City"), an Illinois municipal corporation, and The Chef and The Baker, a sole proprietorship, entered into this 13<sup>th</sup> day of January, 2016.

**WITNESSETH**

WHEREAS, the City is a recipient of funds from the United States Department of Housing and Urban Development ("HUD"), as administrator of the Community Development Block Grant Program ("CDBG") pursuant to which HUD has agreed to make a grant to the City, the Proceeds (as hereinafter defined) of which are used to create employment opportunities for low-income individuals through the expansion of business development; and

WHEREAS, The Chef and The Baker made application to the City for CDBG Economic Development funds in connection with the renovation of a vacant building into a new restaurant and catering facility;

WHEREAS, The Chef and The Baker made application to and was awarded CDBG Economic Development funds from the City in the form of a forgivable grant in the amount of Thirty Five Thousand Dollars (\$35,000) for the following business development purpose: renovation of a vacant building into a new restaurant and catering facility and will create one (1) new full-time equivalent ("FTE", as hereinafter defined) employment positions within six (6) months after Certificate of Occupancy is obtained from the City of Peoria. At least 51 percent of the FTE positions created will be made available to or held by LMI individuals (as hereinafter defined) and be retained for the minimum term as defined herein; and

NOW, THEREFORE, it is hereby agreed by and between the parties, for and in consideration of the following mutual covenants and promises, as follows:

**I. RECITALS.** The foregoing recitals are made a part of this Agreement.

**II. PURPOSE.** The purpose of this Agreement is to provide a forgivable grant to The Chef and The Baker for eligible project expenses it incurs in order to renovate a vacant building into a restaurant and catering facility. As a result of the construction The Chef and The Baker will create

one (1) new full-time equivalent ("FTE", as hereinafter defined) employment positions within six (6) months after Certificate of Occupancy by the City of Peoria. At least 51% of the FTE employment positions will be made available to or held by LMI individuals (as hereinafter defined). This Agreement and the CDBG funds shall be subject to the terms and conditions of the Housing and Community Development (HCD) Act of 1974 and the Code of Federal Regulations Title 24, Volume 3 [24CFR570 *et seq*]; Code of Federal Domestic Assistance 14.218.

### III. TERMS AND SECURITY.

A. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1) The term "CDBG funds" shall mean a Forgivable Grant in the sum of Thirty Five Thousand Dollars (\$35,000.00) of CDBG Economic Development Program funds awarded to The Chef and The Baker.

2) Eligible Project Costs means those certain costs and expenditures incurred by The Chef and The Baker in connection to the renovation of a vacant building into a restaurant and catering facility, as more fully described in Exhibit A.

3) Full-Time Equivalent ("FTE") Employment Position means any permanent, full-time position where an employee is required, as a condition of employment, to work at least 40 hours per week and 2,080 hours per year including paid leave and holidays. Two or more part-time positions will be considered the equivalent of a single full-time position if collectively; the employees are required, as a condition of employment, to work at least 40 hours per week and 2,080 hours per year including paid leave and holidays.

4) Low-Income Individual ("LMI") means a person whose household income is at or below 80% of the Area Median Income ("AMI") for Peoria County as published by HUD on an annual basis.

5) A FTE employment position will be considered made available to or held by LMI individuals when:

i. Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; OR

ii. The employment position is actually held by a LMI and income verification is collected.

1. For the purposes of determining if the preceding requirements are met, an individual may be presumed to be LMI if:

a. He/She resides in a census tract/block numbering area that has a 20% poverty rate (30% if the area includes a central business district) and there is documented evidence of pervasive poverty and general distress of the area; OR

b. He/She resides in a census tract/block numbering area where at least 70% of the residents are LMI.

2. The FTE positions may also be presumed to be held by LMI individuals if the job and business are located in an area that:

i. has a 20% poverty rate (30% if the area includes a central business district) and there is documented evidence of pervasive poverty and general distress of the area; AND

ii. The FTE positions will be located in the qualifying area.

- 6) The minimum job retention requirement is based upon the amount of CDBG funds provided. A pro-rated amount of the total funds provided will be forgiven each month the job retention requirement is met. The minimum job retention period will commence on the 1st of the month following the completion date of the project in HUD's Integrated Disbursement and Information System (IDIS) The minimum job retention period is as follows:
- i. \$0 to \$75,000 funds provided: job retention period of 12 months
  - ii. \$75,001 to \$100,000 funds provided: job retention period of 24 months
  - iii. \$100,001 to \$210,000 funds provided: job retention period of 36 months

#### **IV. SCOPE OF SERVICE.**

##### **A. Activities**

The Chef and The Baker shall renovation the vacant building into a restaurant and catering facility at 106 E. McClure Ave. in a manner satisfactory to the City. As a result of the construction, The Chef and The Baker will create one (1) new FTE employment positions within six (6) months after Certificate of Occupancy from City of Peoria. At least 51% of the FTE employment positions will be made available to or held by Low-Income Individuals. CDBG funds will include reimbursement for the following eligible activities under the CDBG Economic Development Program:

- Activity #1: The renovation of the vacant building into a restaurant and catering facility at the 106 E. McClure. This should occur within twelve (12) months from the execution of this Agreement. Please reference Exhibit B – "Construction Schedule".
- Activity #2: The reimbursement of CDBG funds will be made to The Chef and The Baker upon completion of Activities 1 listed above.
- Activity #3: The minimum job retention term of one (1) years / 12 months will commence on the 1st of the month following the completion date of the project in IDIS.

##### **B. Performance Monitoring**

The City will monitor the performance of The Chef and The Baker according to the goals and performance standards contained in this Agreement. During the minimum job retention term, at the request of the City, The Chef and The Baker will certify the continued employment of the FTE position. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by The Chef and The Baker within 60 days after being notified by the City, termination of the Agreement may be initiated and all funds must be returned to the City.

Participation in any prohibited activities as defined in 24 CFR 570.207 (a-b) shall constitute noncompliance with this Agreement.

### C. Construction Monitoring

The City will monitor the performance of The Chef and The Baker during the renovation. The City reserves the right to review and approve all general contractors and sub-contractors that shall participate in the portion of the construction for which CDBG funds will be used. Funds cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor, subrecipient or sub-contractors during any period of debarment, suspension or placement of ineligibility status on the Federal System for Award Management lists.

The Chef and The Baker will secure all appropriate building permits, zoning permits, and all required approvals from the City. All plans must utilize new construction materials or equivalent grade materials as authorized by the City Building Inspection staff.

During the construction phase of the project, The Chef and The Baker agrees to allow City staff access to the project at all reasonable times for the purpose of inspection, provided that a representative of The Chef and The Baker must have the opportunity to accompany such City staff. The primary purpose of the inspection will be to ensure that the construction meets all applicable City, State of Illinois, and HUD property standards, codes, regulations, and laws. Moreover, The Chef and The Baker agrees to allow City Building Inspectors access for required building inspections such as, but not limited to plumbing and electrical inspections.

### D. Labor Provisions

i. *Davis-Bacon Federal Labor Act (40 U.S.C. 276a-276a-5)*: The renovation work will trigger the requirements of the Davis-Bacon Act. The Chef and The Baker agrees to include the provisions of the Davis-Bacon Act in all contracts. Additionally, The Chef and The Baker agrees to provide the U.S. Department of Labor Certified Transcript of Payroll (form WH-347) to document prevailing wage compliance to the City upon request.

iii. *Copeland (Anti-Kickback) Act (40 USC 276c)*: The Copeland Act will apply to the renovation, as the project is considered a "federally assisted contract in excess of \$2,000". The Chef and The Baker agrees to prohibit contractors and subcontractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment in performance. In order to document compliance, the City will accept the U.S. Department of Labor Certified Transcript of Payroll (form WH-347).

iv. *Fair Labor Standards Act (FLSA) of 1938, as amended (29 USC 201, et.seq.)*: The FLSA will apply to the renovation. The Chef and The Baker agrees to require contractors and subcontractors to pay Federal minimum wage for all workers and provide at least one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. Additionally, The Chef and The Baker agrees to prohibit contractors and subcontractors from employing youth under the age of 18 for performance of the project.

**V. SCOPE OF SERVICE.**

**A. Budget**

Please reference Exhibit C – “Project Scope Line Item and Unit Costs”

**B. Reimbursement Procedures**

It is expressly agreed and understood that the total amount to be reimbursed by the City under this Agreement shall not exceed Thirty Five Thousand Dollars (\$35,000.00).

The City will reimburse The Chef and The Baker, upon completion of Activity # 1 listed above in Section IV(A). The City will reimburse The Chef and The Baker for eligible activity expenses, based upon program and budget information submitted by The Chef and The Baker, and consistent to City policy and procedures concerning reimbursement. The Chef and The Baker shall also secure all lien waivers prior to reimbursement for all suppliers and all trades which performed work in connection with the Eligible Project Costs. Such lien waivers may be subject to City review prior to reimbursement.

All reimbursements must be accompanied by corresponding documentation that shows amounts, items, descriptions and any other necessary information to demonstrate eligibility. Appropriate documentation includes, but is not limited to, a contractor’s affidavit or bill and proof of payment by The Chef and The Baker.

Specific questions regarding reimbursement documentation may be directed to the Community Development Director or his/her designee.

**VI. NOTICES.**

Communication and details concerning this Agreement shall be directed to the following representatives:

CITY  
Community Development Director  
(or his/her designee)  
City Hall  
419 Fulton Street, Suite 300  
Peoria, IL 61602  
309-494-8656

THE CHEF AND THE BAKER  
106 E. McClure Ave.  
Peoria, IL 61603

**VIII. GENERAL CONDITIONS.**

**A. Hold Harmless**

The Chef and The Baker shall hold harmless, defend, and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of project performance or nonperformance of the services or subject matter called for in this Agreement.

**B. Insurance**

The Chef and The Baker shall procure and maintain comprehensive property damage, comprehensive liability and business interruption insurance reasonably acceptable to the City and shall upon request of the City provide documentation specifying the details of such insurance in effect.

**C. Amendments**

The City or The Chef and The Baker may amend this Agreement at any time and are executed in writing, signed by a duly authorized representative of both parties. Such amendments shall not invalidate this Agreement, nor relieve or release the City or The Chef and The Baker from its obligations under this Agreement. The City may, in its discretion, amend this Agreement to conform with Federal, state, and local governmental guidelines, policies, and available funding amounts, or for other similar reasons. If such amendments result in a change in funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the City and The Chef and The Baker. The Agreement cannot be assumed by or assigned to another entity without written authorization and approval from the City.

**D. Suspension or Termination**

The City may suspend or terminate this Agreement, in whole or in part, if The Chef and The Baker materially fails to comply with any term of this Agreement, or with any of the rules, regulations, or provisions referred to herein, and such failure is not cured within 60 days after being notified by the City; and the City may declare The Chef and The Baker ineligible for any further participation in the City's programs, in addition to other remedies as provided by law. In the event there is reason to believe The Chef and The Baker is in noncompliance with any applicable rules or regulations, the City will suspend ALL reimbursement of the said Agreement funds until such time as The Chef and The Baker is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

**IX. ADMINISTRATIVE REQUIREMENTS.**

**A. Financial Management**

The Chef and The Baker agrees to have financial management systems that meet the standards of 2 CFR Part 200.

**1) Internal Controls**

The Chef and The Baker shall have the following internal controls within its financial management system:

- An organizational chart setting forth the actual lines of responsibility of personnel involved in financial transactions;
- Written definition and delineation of duties among key personnel involved in financial transactions;
- An accounting policy and procedures manual that includes specific approval authority for financial transactions and guidelines for controlling expenditures, a set of written procedures for recording of transactions, and utilizes a chart of accounts;
- Separation of duties is adequate so that no one individual has authority over a financial transaction from beginning to end. In other words, one

person should not have responsibility for more than one of the following functions:

- Authorization to execute a transaction;
- Recording of the transaction;
- Custody of the assets involved in the transaction
- Hiring policies ensuring that staff qualifications are commensurate with job responsibilities
- Control over assets, blank forms and confidential documents so that these types of documents are limited to authorized personnel only.
- Periodic reconciliation of financial records to actual assets and liabilities.

## 2) Budget Controls

The Chef and The Baker shall have the following budget control within its financial management system:

- Maintain accounting records (as defined in subsection 3 below) for the amounts budgeted for eligible activities;
- Periodically compare actual obligations and expenditures to date against planned obligations and expenditures, and against projected accomplishments for such outlays;
- Report deviations from budget and program plans, and request approval for budget and program plan revisions.

## 3) Accounting Records

The Chef and The Baker shall have the following accounting records within its financial management system:

- Chart of accounts- a list of account names and the numbers assigned to each of the account names;
- Cash receipts journal- documents, in chronological order, when funds were received, in what amounts and from what sources;
- Payroll journals
- General Ledger- summarizing, in chronological order, the activity and financial status of all the accounts.

## B. Documentation and Record Keeping

### 1. Records to be Maintained

The Chef and The Baker shall maintain all records required by Federal regulations, specified in 24 CFR Part 570, that are pertinent to the project and the eligible costs to be funded under this Agreement. Such records shall include, but not be limited to:

- a. Records providing a full description of the project;
- b. Records required to document the eligibility of costs;
- c. Records required to document the eligibility of activities, specifically:
  - i. Records demonstrating that creation of each FTE position;
  - ii. Individual income eligibility for the low income job creation to the extent required by this Agreement;
  - iii. Records demonstrating that the project meets the property standards of the City, State and Federal requirements.

- d. Records documenting compliance with Fair Housing and Equal Opportunity components of the CDBG Program;
- e. Financial records as required by 2 CFR Part 200.

2. Retention

The Chef and The Baker shall retain all records pertinent to expenditures and FTE employment positions created under this Agreement for a period of five (5) years after the expiration of the minimum job retention term. If there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until the completion of the action and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Audits and Inspections

The Chef and The Baker records with respect to any matters covered by this Agreement shall be made available to the City and its designees, or HUD and its designees, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make copies of all relevant data. Any deficiencies noted in audit reports must be fully corrected by The Chef and The Baker within 30 days. Failure of The Chef and The Baker to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

In addition, The Chef and The Baker understands that all aspects of the sponsored activity(ies) or program will be open to inspection by employees or agents of the City, State and/or Federal governments.

**X. OTHER PROGRAM REQUIREMENTS.**

A. Conflict of Interest

The Chef and The Baker understands and agrees that no person, who is an employee, agent, consultant, or officer of The Chef and The Baker may obtain an interest, financial or otherwise, or benefit from a CDBG assisted activity or have any interest in any contract, subcontract, or agreement with respect to any CDBG assisted activity pursuant to 24 CFR 570.611. This prohibition applies to employees, agents, consultants, or officers of The Chef and The Baker or those with whom they have family or business ties during their entire employment/business relationship with The Chef and The Baker and for one (1) year after the expiration of their employment/business relationship with The Chef and The Baker.

B. Nondiscrimination

The Chef and The Baker will not discriminate against anyone because of race, color, creed, religion, sexual orientation, ancestry, national origin, sex, disability, or other handicap, age, marital or familial status, or status with regard to public assistance. The Chef and The Baker will take affirmative action to insure that all practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Chef and The Baker agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.



Specifically, The Chef and The Baker must show proof of valid City Equal Employment Opportunity Certification prior to any request for the reimbursement of funds.

**C. Religious Organization**

The Chef and The Baker agrees that funds provided under this contract will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR Part 570.200.

**D. Prohibition Against hiring City Employees**

The Chef and The Baker agrees, as a condition of accepting this Agreement with the City, that for a period of one year following completion of this Agreement, that it shall be prohibited from hiring, directly or indirectly, any City employee or official who was involved, directly or indirectly in: (1) the selection and/or recommendation to select The Chef and The Baker for performance of this Agreement; (2) coordinating the efforts of The Chef and The Baker in the consummation or completion of this Agreement; or (3) monitoring or determining the performance of The Chef and The Baker. The Chef and The Baker further acknowledges and agrees that upon the City's determination that a violation of this provision has occurred, the penalty imposed, at the sole discretion of the City, may include one or more of the following; (1) cancellation of any other contract(s) between the City and The Chef and The Baker; (2) disqualification of The Chef and The Baker from bidding or being awarded future contracts with the City for a period of 2 years; and/or (3) payment of liquidated damages to the City in the amount of \$25,000.

**XI. ENVIRONMENTAL REQUIREMENTS.**

The City shall conduct an environmental assessment pursuant to 24 CFR Part 58 prior to approving any requests for the release of funds by The Chef and The Baker. The Chef and The Baker understands and agrees that it may not receive any funds until the City has conducted an Environmental Assessment pursuant to 24 CFR Part 58 and approved accordingly.

**XII. SEVERABILITY.**

If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XIII. ENFORCEMENT OF THIS AGREEMENT.**

If The Chef and The Baker fails to comply with the requirements and covenants contained herein, the same shall constitute a breach of this Agreement and the City shall be entitled to all remedies under Illinois law at the time of the breach, subject to the cure rights as set forth in Section VIII.D hereof.

**XIV. SURVIVAL OF OBLIGATIONS.**

The Chef and The Baker obligations as set forth in this Agreement shall survive the disbursement of the CDBG funds and shall expire upon the minimum job retention term, and The Chef and The Baker shall continue to cooperate with the City and furnish any documents, exhibits or showings as required during such term.

**XV. WAIVER OF JURY TRIAL.**

THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER

WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROJECT OR THIS AGREEMENT.

**XVI. LIABILITY OF CITY.**


In no event shall the City be liable to The Chef and The Baker for consequential or incidental damages, including, without limitation, lost profits, whatever the nature of the breach by the City of its obligations under this Agreement or in connection with the Project, and The Chef and The Baker waives all claims for consequential and incidental damages and for all damages described in Paragraph XVII below.

**XVII. FUNDING.**

The parties acknowledge that the CDBG funds are monies provided by HUD, and that the City is under no obligation to request such funds for any disbursement unless and until all necessary preconditions to disbursement have been satisfied to the City's satisfaction, and that significant time delays might result from the funding of such monies by HUD. Without limiting the generality of Paragraph XVI above, in no event shall the City be liable to The Chef and The Baker for any damages whatsoever which might result in whole or in part from any delays in funding.

APPROVED AND EXECUTED AS OF THIS 13<sup>th</sup> DAY OF JANUARY 2016.


The Chef and The Baker, a sole proprietorship

Signature: 


Name: DAN HOEKER

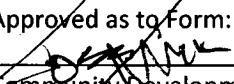
Title: OWNER/OPERATOR

CITY OF PEORIA, ILLINOIS, an Illinois Municipal Corporation

By:   
City Manager

Attest:   
City Clerk

Approved as to Content:   
Corporation Counsel

Approved as to Form:   
Community Development Department

**EXHIBIT A:  
PROJECT DESCRIPTION & BUDGET**

HVAC (\$17,600)
Hood Equipment: \$6,200
Installation: \$7,800
Construction: \$1,000
Ansil System: \$2,600
Plumbing: \$15,013
Reading & Son Plumbing
Resurfacing Parking Lot:
awaiting bid
Construction of garbage enclosure:
awaiting bid
Electrical:
\$20,295
Oberlander Electric
Construction materials:
estimated \$3,000
Flooring:
estimated \$1,500
Equipment:
\$42065.80
Johnson Mechanical
Window Reinforcement:
\$1,000
Signage:
\$500

**EXHIBIT B:  
CONSTRUCTION SCHEDULE**

Activity Name	Start Date	Finish Date
City Council Meeting	1/12/16	1/12/16
Permits approved	1/13/16	1/13/16
Pour concrete slab for walk in	1/16/16	1/16/16
Framing walls	1/17/16	1/24/16
Plumber begin, cut slab and run pipes	1/18/16	1/26/16
Electrician begin, fix current problems and be,	1/20/16	2/17/16
Bench, Tables, Chairs	1/20/16	3/20/16
Equipment arrive	2/1/16	2/1/16
Drywall	2/7/16	2/14/16
Hood Arrive	2/8/16	2/8/16
Hood installment	2/8/16	2/14/16
Equipment install	2/15/16	2/14/16
Getz Fire Installment	2/16/16	2/16/16
Bathrooms	2/15/16	2/20/16
Ceiling Tiles	2/21/16	2/27/16
Countertop, Cabinets	2/28/16	2/28/16
Painting	3/6/16	3/12/16
Flooring	3/13/16	3/13/16
Parking lot/ garbage enclosure	3/20/16	3/27/16

**EXHIBIT C:  
PROJECT SCOPE LINE ITEM AND UNIT**

Plumbing - \$15,013

Work to be completed by Reading & Son Plumbing

Electrical - \$20,295

Work to be completed by Oberlander Electric.