

RESOLUTION 20-05

RESOLUTION REGARDING A PARTICIPATION AGREEMENT FOR FUNDING UNDER THE DCEO BLOCK GRANT BETWEEN VILLAGE OF SHERMAN & SCHNEIDER-KASTEN D/B/A FAIRLANE DINER

THIS AGREEMENT is made as of the 18th day of August 2020 by and between the Village of Sherman (hereinafter "Village") and Schneider-Kasten, Inc. d/b/a Fairlane Diner (hereinafter "Business")

WHEREAS, the Village is interested in maintaining its economic base with the Illinois Department of Commerce and Economic Opportunity to implement an economic development program that significantly impacts upon the Village's economic base; and

WHEREAS, the Business is interested in maintaining its employment base; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

I. GENERAL DEFINITIONS

- 1.1.1 "Application" shall mean all materials submitted by the Business of the Village or the State of Illinois in connection with this Agreement.
- 1.1.2 "DCEO Funds" shall mean the sum of \$25,000 representing the grant received by the Village pursuant to its agreement with the Illinois Department of Commerce and Economic Opportunity (DCEO).

II. PERFORMANCE

- 2.1.1 The Village agrees, subject to the terms and conditions of this Agreement, to provide grant funds to the Business for the purpose of working capital.
- 2.1.2 Grant funds shall be paid with Community Development Block Grant funds through DCEO.
- 2.1.3 Business must remain open or reopen and retain or re-employ permanent jobs prior to the grant end date (one year from grant award).
- 2.1.4 In the event of the Village fails to receive the DCEO funds, for any reason, this agreement shall be terminated, at the sole option of the Village, without fault as to either party.

III. COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE BUSINESS

- 3.1.1 On or prior to the date of this Agreement, all legal matters incident to this Agreement and the transactions contemplated hereby shall be satisfactory to the Village.
- 3.1.2 Business represents and warrants that:
 - a) Business is a sole proprietorship, corporation, or partnership, as the case may be, duly formed, validly existing and in good standing under the laws of Illinois, is duly licensed and duly qualified as a foreign corporation or partnership, as the case may be, in good standing in all the jurisdictions in which the character of the property owned or leased or the nature of the business conducted by it requires such licensing or qualification and has all proprietorship, corporate, or partnership powers, as the case may be, and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

- b) The execution, delivery, and performance by the Business of this agreement, are within Business's proprietorship, corporate, or partnership powers, have been duly authorized by all necessary proprietorships, corporate or partnership action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene any provisions of applicable law or regulation or of the Articles of Incorporation or By-Laws or Partnerships Agreement of Business, as the case may be.
- c) This Agreement constitutes a valid and binding agreement of Business.
- d) The Application is in all respects true and accurate and there are no omissions or other facts or circumstances which may be material to this Agreement or the Project.
- e) The financial information delivered to Village pursuant to the Application fully and accurately present the financial condition of the Business. No material adverse change in the condition, financial or otherwise, of Business has occurred since the date of the financial statements most recently delivered to the Village.
- f) Neither business nor, to the best of the Business's knowledge, any of Business's employees have been convicted of bribing, or attempting to bribe an officer or employee of the Village, nor has the Business made an admission of guilt of such conduct which is a matter of record.

3.3 The Business shall keep detailed records of all matters related to this Agreement (including the Exhibits hereto). The Business shall provide the Unit of Local Government all materials necessary for the Village to meet reporting and other requirements of this grant.

3.4 The Business shall comply with all applicable state and federal law and regulations promulgated thereunder. Business shall comply with all applicable laws and regulations prohibiting discrimination on the basis of race, sex, religion, national origin, age or handicap, including but limited to the Illinois Human Rights Act, as now or hereafter amended, and the Equal Employment Opportunity Clause promulgated pursuant thereto.

3.5 Business shall fully and completely indemnify, defend and hold harmless the Village and the State of Illinois and their officers, directors, employees and agents against any liability, judgement, loss, cost, claim, damage (including consequential damage) or expense (including attorney's fees and disbursements, settlement costs, consultant fees, investigation, and laboratory fees) to which any of them may become subjects insofar as they may arise out of or are based upon this Agreement or any agreement or document executed by Business and Village as part of the transaction described herein.

3.6 The Village shall have the right of access, at all reasonable hours, to Business's premises and books and records for purpose of determining compliance with this Agreement. In addition to the reporting specifically required hereunder, Business shall

furnish to the Village such information as the Village may reasonably request with respect to this Agreement.

IV. DEFAULT AND REMEDIES

- 4.1 If one or more of the following events (“Defaults”) occurs and is not timely cured, then, the Village may declared Business in default under this Agreement and seek any of the enumerated remedies described in this Section.
- a) Business fails to observe or perform any covenant or agreement contained in this Agreement, including the Exhibits hereto, for 10 days after written notice to cure thereof has been given to Business and Village.
 - b) Any representation, warranty, certificate, or statement made by Business in this Agreement, including the Exhibits hereto, or in any certificate, report, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect when made in any material respect;
 - c) Business shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of the creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;
 - d) An involuntary case of other proceeding shall be commenced against Business seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceedings shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Business under the federal bankruptcy laws as now or hereafter in effect;
 - e) Business ceases the conduct of active trade or business in the Village’s community for any reason, including, but not limited to, fire or other casualty; and does not reopen prior to the end date of the grant agreement.
- 4.2 If a Default occurs and is not timely cured, then the Village shall seek reimbursement from the Business for all funds (including DCEO funds) expended by the Unit of Local Government on or related to the project, including, but not limited to working capital, equipment, architectural engineering, construction, administrative, real estate and incidental costs related thereto.
- 4.3 Upon notice of a Default and if said Default is not timely cured, the Village shall notify the Business that reimbursements shall be made to the Village within 30 days after said notice. If the Business fails to reimburse the Unit of Local Government within 30 days after the date of the notice, the Village shall have the right to collect interest on the

unpaid balance beginning on the 31st day after notice at a rate of equal to 12% per annum.

4.4 If the Village is successful in any proceeding to enforce the terms of this Agreement, then the Village shall have the right to obtain from the Business, as an additional remedy, attorney fees, costs and expenses, related to the proceeding.

V. TERMINATION

5.1 This agreement may be terminated at any time by written, mutual agreement of the parties, provided the Village has obtained written consent from the Illinois Department of Commerce and Economic Opportunity as to such termination.

5.2 This Agreement may be terminated by the Village whenever it issues a notice of Default to the Business and the Business does not timely cure the Default pursuant to Section IV.

5.3 This Agreement will terminate when the Project has been completed and when all the terms and conditions of this Agreement (including the Exhibits thereto) creating duties upon the Business, have been satisfied by the Business.

VI. GENERAL PROVISIONS

6.1 Notice required hereunder shall be in writing and shall be deemed to have validly served, given or delivered upon deposit in the United States mail, by registered mail, return receipt requested, at the address set forth on the signature page hereof or to such other address as each party may specify for itself by like notice.

6.2 All covenants, agreements, representations and warranties made herein and, in the certificates, delivered pursuant hereto shall survive the execution of the Agreement and shall continue in full force and effect so long as the Agreement shall be in force.

6.3 No failure to delay by the Village in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

6.4 Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be invalid under applicable law, such provisions shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this Agreement.

6.5 This Agreement represents the full and complete agreement between the parties with respect to the matters addressed herein and there are no oral agreements or understandings between the parties.

6.6 This Agreement shall be construed in accordance with and governed by the law of the State of Illinois

- 6.7 This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
- 6.8 No modification of or waiver of any provisions of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto, and provided further, that the Village shall obtain written consent of the Illinois Department of Commerce and Economic Opportunity prior to executing any such modification of waiver.
- 6.9 The Business certifies that it has not been barred from bidding on or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961 (bid rigging or bid rotating, respectively) (720 ILCS 5/33E-3 and 5/33-4).
- 6.10 The Business certifies that it has not been barred from being awarded a contract or subcontract under Section 50-5 of the Illinois Procurement (Code 30 ILCS 500).
- 6.11 The Business acknowledges that receipt of benefits under this agreement may require compliance with the Prevailing Wage Act (820 ILCS 130). Persons willfully failing to comply with or violating this act may be in violation of the Criminal Code. Questions concerning compliance with the Prevailing Wage Act should be directed to the Illinois Department of Labor.
- 6.12 The Village acknowledges that if the project as proposed by this Agreement is completed in accordance with this Agreement and the Agreement executed between the Village and the Department of Commerce and Economic Opportunity then the provisions cited above in 6.9; 6.10 and 6.11 do not apply to the Business but do apply to the activities to be completed by the Village.

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first above written.

Schneider-Kasten, Inc.

Village of Sherman

d/b/a Fairlane Diner



Redjep Sadiku, President

Trevor J Clatfelter, President

	YES	NO	ABSENT	PRESENT
GRAY	✓			
HAHN	✓			
ROCKFORD	✓			
SCHULTZ	✓			
TIMM	✓			
LONG	✓			
CLATFELTER				
TOTALS:	6	0	0	0

