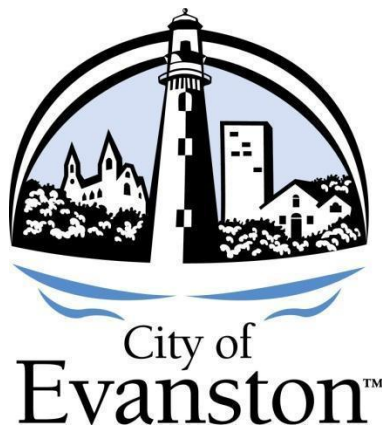


# Sustain Evanston Incentive Program



## Program Guidelines 2024

CITY MANAGER'S OFFICE  
ECONOMIC DEVELOPMENT DIVISION  
SUSTAINABILITY & RESILIENCE DIVISION  
2100 RIDGE AVENUE, EVANSTON, ILLINOIS 60201  
847-448-8100 | [WWW.CITYOFEVANSTON.ORG](http://WWW.CITYOFEVANSTON.ORG)

## Contents

Program Purpose and Overview	3
Eligibility Criteria	3
<b>Application Process</b>	<b>3</b>
Eligible Expenses	4
Ineligible Expenses:	4
Sustain Evanston Incentive Program Administration	4
Program Steps And Projected Timelines	5
Step 1: Arrange to Meet with Designated City Staff	5
Step 2: Application Submission	6
Step 3: Staff Application Review Process	6
Step 4: Public Review and Approval Process	6
Step 5: Execution of Program Agreement	6
Step 6 (if applicable): Project Phasing Plan	6
Step 7: Attend Celebration Event	7
Terms & Conditions	8
<b>ATTACHMENT A: Program Agreement</b>	<b>10</b>

## Program Purpose and Overview

The City of Evanston's "Sustain Evanston" Incentive Program is a funding tool to assist small business owners to implement sustainability measures that align with the goals of the City's Climate Action & Resilience Plan while reducing their operating costs and better serving their customers. The City provides a rebate of the total cost of qualifying interior or exterior improvements. The Economic Development Division and Sustainability & Resilience Division manage the program. The project award is capped at \$25,000; all funding is reviewed by a City of Evanston staff team and approved by the City Manager or designee.

## Eligibility Criteria

### Eligible participants of the program include:

- Commercial property owners
- Tenants of commercial buildings
- Business Districts
- Coalition of businesses

### Tenants must have:

- A written commitment to operating within the City of Evanston:
  - A current lease with a minimum of five (5) years remaining from the date of application or;
  - Evidence that the business has operated in Evanston for over five (5) years or;
  - A combination of historical operation and remaining lease time totaling at least five (5) years
- Written approval from the property owner to participate in the Program
- Proper business license and/or registration with the City
- No outstanding debt with the City

### Business Districts or Coalitions must have:

- List of businesses that the project would benefit;
- Participating business owners' signed letter of support or signature
- Proper business license and/or registration with the City
- No outstanding debt with the City

### Commercial Property Owners must have:

- Proof of ownership
- No outstanding debt with the City

### Ineligible Participants of the program include:

- National franchises/for profit corporations with more than ten locations outside of Evanston, unless the organization is headquartered in Evanston;
- Occupants or owners of buildings that are not current with property taxes, water bills, or properties possessing any sort of non-mortgage liens (i.e. mechanics lien, etc.);
- Religious organizations such as churches, synagogues, mosques, etc.;
- Government offices and agencies (non-governmental tenants are eligible)
- Parties that owe outstanding fees or debt with the City of Evanston

## Application Process

Applicants will submit applications online through CivicServe.

Reimbursement grants will be awarded between \$1,000 and \$25,000 depending on the scope of work, available funding, and grant funding tiers listed below.

Applications involving more than one business should submit just one application; letters of support from all participating businesses will be required.

### **Eligible expenses include projects that the City determines are aligned with the City's [City's Climate Action & Resilience Plan](#):**

- Capital Projects such as:
  - EV charging infrastructure
  - Waste collection enclosures
  - Balers/Compactors
  - Green infrastructure
  - Green roofs
  - Solar PV
  - Insulation
  - Windows
  - Doors
  - Heat pumps
- Equipment such as:
  - Takeout containers
  - Reusable containers
  - Lighting/Fixtures
  - All-electric and [Energy Star](#) Appliances (dishwasher, refrigerator, induction stove, etc)
  - Electric vehicles
- Education Materials such as:
  - Signage
  - Labels
- Services such as:
  - Composting services
  - Recycling services
  - Energy/Water benchmarking services
  - Consulting

All projects will be reviewed on a case-by-case basis and are prioritized based on CARP. Applications for “Services” must include a plan for sustainably financing services beyond the grant period. Applications for appliances that are directly powered by fossil fuels will not be considered.

### **Ineligible Expenses:**

- Reimbursement for any work/procurement that has been completed prior to awarding application
- Appliances fueled with a fossil fuel like natural gas

## Grant Funding Levels

Eligible applicants will receive assistance from \$1,000 to \$25,000 in assistance available for them. The grant assistance can be extended across multiple projects across multiple years. Once an eligible applicant has received \$25,000 in assistance under the Sustain Evanston grant program they will not be eligible to receive additional assistance. There is no match for any of the projected costs.

## **Sustain Evanston Incentive Program Administration**

The Program provides participants the opportunity to receive a rebate upon the completion of their approved Project, up to an approved amount, based on the maximum amounts set forth in the sections below.

**Funding Source(s):** Projects will be funded through Economic Development Funds and the Sustainability Fund with the opportunity to leverage additional funding from other sources.

**Project Approval:** The City of Evanston must approve the project scope and reimbursement prior to commencing construction or project implementation. No reimbursement will be considered for work completed prior to City Manager approval of a project scope.

**Estimates for the Project:** Three estimates for each aspect of their project, of which one should be from an Evanston-based business. The only exception to this rule is if seeking assistance for any composting or recycling related services, as those have franchise service providers detailed by the City.

**Completion Date:** Project completion must occur within one hundred eighty (180) days of commencement date.

**Reimbursement:** Reimbursement shall only be made after the defined work has been completed and certificate of occupancy is issued if needed. For approved projects for which a grant of \$10,000 or more is awarded an applicant may request up to two payments for the project. In such cases, a schedule for the partial payment and a timeline with benchmarks for completion for each project phase must be submitted and approved by Economic Development Staff. Staff will consider release of funding directly to contractors on a case by case basis if the applicant demonstrates a financial need.

**City Code:** All funded projects must comply with all city codes.

## **Program Steps And Projected Timelines**

### **Step 1: Arrange to Meet with designated City Staff.**

Applicants are encouraged to schedule a meeting with the Economic Development Division, Sustainability & Resilience Division, and/or Public Services Bureau of the Public Works Agency to discuss the program, ask questions, and obtain application materials.

### **Step 2: Application Submission.**

(Rolling; February 14th- June 30th, 2024)

- Applicants must submit an application online at <https://evanstonil.civicserve.com/applicant/14033/new-application/details/0>
- Attach three estimates for each aspect of the proposed work (one Evanston-based)
- Letter of support from property owner (if applicable)
- Narrative of Needs
- Alignment with Climate Action & Resilience Plan
- Additional documentation including photos may be required

### **Step 3: Staff Application Review Process.**

(Rolling; February 14th- June 30th, 2024)

After Applications are submitted, Staff will:

- Evaluate each project submitted to determine if Application is complete;
- Confirm eligibility of proposed project tasks and determine total eligible project cost;
- Identify appropriate funding sources for each proposed project;
- Prepare recommendations of approval of funds to the City Manager or appropriate Committee.

Staff will evaluate Applications on the following criteria:

- Total project budget;
- Narrative of how the project aligns with a component of the City of Evanston's Climate Action and Resiliency Plan
- Demonstration that the project would not be obtainable or feasible without the City's support
- Anticipated metrics to illustrate project impact

Upon receipt of all application materials and any requested documentation, applicants can expect to receive a response within 2 weeks.

### **Step 4: Public Review and Approval Process**

Staff will submit recommendations to the City Manager for review and approval.

### **Step 5: Execution of Program Agreement.**

Following approval by the City Manager, Participants will be required to enter into and execute a written agreement with the City of Evanston which will establish the terms, conditions, and requirements for participation in the Program. Once the Program Agreement has been executed to the satisfaction of the City Manager, a **Notice to Proceed** will be issued to the Participant. A sample copy of the terms and agreements of the agreement are provided in **Attachment A** of this document.

### **Step 6 (if applicable): Project Phasing Plan.**

Applicants that have been approved for projects with a rebate of \$10,000 or more may submit to Economic Development Staff a written request to divide projects into two phases for the purposes of partial reimbursement of project costs. For example, if a project includes multiple components, applicants may propose to staff to divide work into two phases in order to seek repayment after certain aspects of the project have been completed. Applicants shall submit to

the staff a project phasing plan, which clearly defines the work to be completed in each phase along with expected completion dates. Such a phasing plan must be approved by Staff in order to establish a partial payment plan.

**Step 7: Attend Celebration Event**

(October/November)

Applicants will attend a celebration event upon the completion of their projects to share the results of their projects and help illustrate the impacts and lessons learned to City staff and other applicants that received funding.

**Note: Commencement of work without an executed Program Agreement will automatically disqualify a Participant from being eligible to participate in the Program, and negates the City's obligation to rebate any portion of the work.**

## Terms & Conditions

In accordance with the Program Guidelines, the City of Evanston will provide financial assistance up to the approved amount of a project at no more than half of the total project cost.

Any rebates paid by the City of Evanston pursuant to this program shall not be made until all work has been completed; all improvement work has been inspected and approved by the City of Evanston. If a partial rebate payment schedule with project completion benchmarks has been established with and approved by Economic Development Staff (for projects eligible for \$10,000 or more), work must still be inspected and approved by the City prior to partial payment being issued. Additionally, all payments for said work must be made to contractors, material suppliers, and vendors. Participants of the Program must submit to the City of Evanston itemized invoices detailing work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. Documentation must be submitted within 45 days of project completion. The participant shall also submit unconditional lien releases and other documentation as required by this Program. **The participant is responsible for all payments to all contractors, material suppliers, and vendors.**

Any rebates paid by the City of Evanston pursuant to this Program constitute grants. The property owner or successor-in-interest may assume the Participant's obligations of the Program Agreement pursuant to a City-approved assignment and assumption agreement, and continues to own and/or occupy the rehabilitated property and maintain the improvements for a period ending five (5) years from the date of receipt of the rebate without removing or significantly altering the Improvements, as determined by the City of Evanston in its sole discretion.

If the property owner sells the property or any item purchased with grant funds, or the business owner fails to occupy a property in Evanston prior to the end of the fifth (5<sup>th</sup>) year, the remaining share of the grant(prorated on a monthly basis) shall become due, as follows:

Year 1: 100% of the grant amount  
Year 2: 80%  
Year 3: 60%  
Year 4: 40%  
Year 5: 20%  
After 5 years: 0%

The aforementioned payment is due unless the succeeding property owner or business owner (i) assumes the obligations of the Program Agreement pursuant to a City of Evanston approved assignment and assumption agreement, and (ii) does not make any changes to the property resulting in the removal of significant alteration to the Improvements, and maintains the Improvements for a period of five (5) years from the date of receipt of the rebate. The prorated amount due will be obtained by multiplying the original rebate amount times the percentage obtained by dividing the number of months remaining in the five (5) year period that commences on the month that the project was recorded by the Cook County Recorder of Deeds (for projects receiving \$5,000 or more in grants) and ends on the 5<sup>th</sup> anniversary date by 60, which is the total number of months in the grant period. Refusal to pay back the grant under the aforementioned circumstances will result in the City's seizure of the equipment purchased.



**Project Completion:** Projects must be completed within one hundred eighty (180) days of approval date as specified in Section VI of the Program Agreement (extensions will be considered on a case-by-case basis);

**Property Taxes and Liens:** Property taxes must be current, and participants may have no debts in arrears to the City when the Commitment Letter is issued. The property must also be clear of all other non-debt related liens and.

## **ATTACHMENT A: Program Agreement**

THIS PROGRAM AGREEMENT [Agreement] is entered into on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ [Effective Date], by and between the City of Evanston [City], and \_\_\_\_\_ [Participant], owner (or tenant) of property located at \_\_\_\_\_ [Property], with regard to Participant's participation in the "City of Evanston – Sustain Evanston Business Incentive Program" [Program].

### **RECITALS**

WHEREAS, the City desires to achieve the goals of the Climate Action & Resilience Plan, enhance the visual appearance, functionality, accessibility, and environmental sustainability of buildings and structures, stimulate private investment, and complement other community revitalization efforts throughout Evanston as identified in the Program Guidelines; and

WHEREAS, investment in commercial sustainability improvements will beautify the subject properties and surrounding area, create a positive visual and environmental impact, increase the volume of business by making the subject properties and businesses more attractive, stimulate private investment, and complement other community revitalization and sustainability efforts within the City; and

WHEREAS, the City has authorized Economic Development Division, Sustainability & Resilience Division, and/or Public Services Bureau of the Public Works Staff to manage and administer the Program on behalf of the City including, without limitation, authorizing the City Manager to execute this Agreement with the Participant thereby establishing the terms, conditions, and requirements for participation in the Program in accordance with the Guidelines for the Program approved by the City Council [Program Guidelines]; and

WHEREAS, the City Manager and/or their designee has approved the Participant and the proposed project for participation in the Program, subject to the terms and conditions of the Program Guidelines and this Agreement.

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 Participant 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 will be resolved solely by the City through its designated representative.

- a. **“Economic Development Division, Sustainability & Resilience Division, and/or Public Services Bureau of the Public Works”** means the City’s designated representative responsible for managing and administering the Program on behalf of the City.
- b. **“Completion Date”** means the date that the contractor has finished the Project pursuant to the design and architectural plans approved by City Council, the City Manager, or his/her designee, and to the satisfaction of the Participant, as evidenced by final payment to the contractor from the Participant.
- c. **“Improvements”** means any agreed sustainability improvements made to the Property as part of the Program.
- d. **“Owner Consent”** means a Certification of Ownership and Consent to be executed by the owner of the Property, if the Participant is not the owner, in the form attached hereto and incorporated herein as Exhibit “C”.
- e. **“Participant”** means the person applying for a rebate for Improvements on the Property and determined eligible by the City Council or City Manager or his/her designee to participate in the Program. Participant may be the owner of the Property or a business owner who has obtained written consent of the Property owner to participate in the Program and to proceed with the improvements identified within this Agreement.
- f. **“Program Guidelines”** means the “City of Evanston -- Sustain Evanston Business Incentive Program Guidelines” approved by the City Council that govern the Program and this Agreement. The Program Guidelines are attached hereto and incorporated herein as Exhibit “D”. All terms not defined herein shall have the meanings ascribed thereto in the Program Guidelines.
- g. **“Project”** means the sustainability improvements on the subject property as proposed by the Participant and approved by the City Council.
- h. **“Project Completion Date”** means the date agreed upon by the Participant and the City of Evanston when the approved Sustain Evanston Business Incentive Program project will be completed by.
- i. **“Property”** means the subject property owned or occupied by the Participant on which the improvements shall be completed. The Property is located within the City of Evanston and is legally described in Exhibit “A”, which is attached hereto and incorporated herein by this reference.
- j. **“Rebate”** means the total amount of the City’s grant provided to the Participant, which is equal to no more than half the final total project cost up to the amount approved by City Council (whichever is less).
- k. **“Total Allowable Expenses”** means the actual costs incurred, paid for, and documented by the Participant and approved by the City Manager or his/her

designee for the proper performance of the improvement work required by the plans and specifications and/or architectural/design renderings for the Project.

- I. **“Total Project Expenditure”** means the total actual Project costs incurred by and paid for by the Participant including, without limitation, the costs of construction, materials, and supplies.

## II. CERTIFICATION OF OWNERSHIP

If Participant is not the fee owner of the Property, Participant shall, prior to the City’s execution hereof, obtain and provide to the City from the fee owner of the Property his/her/its approval in writing for Participant to participate in the Program and proceed with the Project, and for the recordation against the Property of a Declaration in the Official Records of the County Recorder of Cook County, by and through the Owner’s execution of a Certification of Ownership and Consent substantially in the form attached hereto as Exhibit “C” and incorporated herein by this reference (the “Owner Consent”).

## III. TERMS OF REBATE

- a. The Participant hereby agrees to comply with all terms and conditions of the Program as set forth in the Program Guidelines. (See Exhibit “D”.)
- b. The Rebate paid by the City pursuant to this Program shall not be made until all of the improvement work comprising the Project has been completed, all of the improvement work comprising the Project has been inspected and approved by the City Manager or his/her designee, and all payments for said work have been made to contractors, materials suppliers, and vendors. Thus, the Participant shall finance the Project, with tenant/owner funds (cash) and/or private funding (bank loan), during construction the Participant shall submit to the City Manager or his/her designee itemized invoices detailing the work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. The Participant is responsible for all payments to the contractors, materials suppliers, and vendors, and for providing true and correct copies of unconditional lien releases to the City.
- c. The Rebate paid by the City pursuant to the Program is a grant to Participant. The Participant or successor-in-interest that has assumed the obligations of Participant hereunder pursuant to an City-approved assignment and assumption agreement, must own or occupy, as the case may be, the rehabilitated Property for a period of five (5) years from the date of receipt of the Rebate without removing or significantly altering the Improvements, as determined by the City in its sole discretion, and agrees to maintain the improvements for said five (5) year period. The grant will be forgiven in twenty percent (20%) increments, on an annual basis, until the end of five (5) years. If the Participant sells the Property or fails to occupy the Property, as the case may be, prior to the end of the fifth (5th) year, the remaining pro rata share of the grant, with interest at the rate of three percent (3%) per annum, is due and payable to the City within thirty (30) calendar days, unless the succeeding property owner or business owner, as the case may be, (i) assumes the obligations of

Participant pursuant to an City-approved assignment and assumption agreement, and (ii) does not make any changes to the Property resulting in the removal or a significant alteration to the Improvements, and maintains the improvements, for a period of five (5) years from the date of receipt of the Rebate.

#### IV. PARTICIPANT'S RESPONSIBILITIES

- a. In preparation for submission of an Application, the Participant shall obtain a minimum of three (3) written bids from qualified, licensed contractors to perform the Project. Once the Participant awards a bid to a qualified, licensed contractor, the Participant shall provide to the City Manager or his/her designee information on the awarded bid and rejected bid. At least one (1) bid must be from an Evanston-based contractor. If an Evanston-based contractor is not sought, written evidence must be provided that documents why an Evanston-based contractor was not considered and provided in the original submission.
- b. The Participant shall obtain and submit all required certificates of insurance, as set forth in the Program Guidelines, to the City Manager or his/her designee upon execution of this Agreement and prior to City's execution.
- c. The Participant shall be responsible for hiring a licensed contractor to complete the Project. The City Manager or his/her designee may require submission of proof of the State License issued to the selected contractor.
- d. The Participant shall be responsible for contacting the City Manager or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
- e. The Participant must issue a notice to proceed to the contractor within thirty (30) calendar days of receipt of the Notice to Proceed issued by the City to Participant.
- f. The Participant shall be fully responsible for managing, monitoring, and scheduling the construction of the Project, for ensuring compliance with the payment of prevailing wages (if applicable), and for ensuring that all improvements are completed properly and in conformance with the approved project.
- g. The Participant shall be fully responsible for making all payments to contractors, suppliers, vendors and/or other third parties and for ensuring that all contractors, subcontractors, suppliers, vendors and/or other third parties are paid in full.
- h. The Participant acknowledges and agrees that the improvements to be constructed in anticipation of a Rebate, in the form of a grant provided by the City, constitutes the construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. The Participant shall comply with all requirements of Federal, Illinois and City of Evanston law.

- i. The Participant shall be responsible for ensuring approved project is completed by project completion date agreed upon by the Participant and the City detailed in Section VI of this agreement.
- j. Upon completion of the Project, the Participant shall notify the City Manager or his/her designee and call for an inspection of the Project. The City Manager or his/her designee will arrange for the Property to be inspected.
- k. The Participant shall submit to the City Manager or his/her designee a written request for a Rebate within forty-five (45) calendar days of the Completion Date, and shall include the following:
  - i. Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project and requesting the Rebate;
  - ii. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
  - iii. Proof of payment of all invoices for all expenditures associated with the Project;
  - iv. Unconditional lien releases;
  - v. Any additional backup material requested by the City Manager or his/her designee;
  - vi. Before and after photographs;

## V. THE CITY'S RESPONSIBILITIES

- a. City Manager or his/her designee shall review the bids for construction submitted by Participant and prepare a submission to the appropriate City Committee that approves the Project based on the particular funding source for the project.
- b. City Manager or his/her designee shall issue the Notice to Proceed to the Participant upon his/her receipt of this Agreement and any other required or requested documentation.
- c. Within a reasonable time after Participant notifies City of the completion of the Project, the City Manager or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved project scope.
- d. City Manager or his/her designee shall review Participant's request and accompanying documents for a Rebate. If all the terms, conditions, and obligations of Participant under this Agreement and the Program Guidelines have been met, the City Manager or his/her designee shall issue the Rebate in an amount not to exceed one-half (1/2) of the Total Allowable Expenses, within the maximum allowable limits set forth in the Program Guidelines.

## VI. TIME OF PERFORMANCE

The Participant shall complete the Project by the agreed upon project completion date between the Participant and the City in order to remain eligible for receipt of the Rebate.

Failure to complete the Project by the agreed upon project completion date below will result in termination of this Agreement. Requests for additional time and extensions in project completion time will be granted, but only if submitted in writing prior to the expiration of the agreement.

**Project Completion Date:** \_\_\_\_\_

**Applicant Signature:** \_\_\_\_\_ **City Signature:** \_\_\_\_\_

#### VII. AMOUNT OF REBATE

The total amount of the Rebate to be made by the City pursuant to the terms and conditions of this Agreement, shall not exceed the amount equal to one-half (1/2) of the Total Allowable Expenses approved by City Council for the Project up to the maximum allowable rebate amount stated above. The Total Allowable Expenses will be determined at completion of the Project at which time the total amount of the Rebate to be made by the City shall be calculated based on actual expenditures, and not to exceed program maximums, and such amount will be stated in the Declaration.

**Approved Rebate Amount:** \_\_\_\_\_

**Applicant Signature:** \_\_\_\_\_ **City Signature:** \_\_\_\_\_

#### VIII. INSURANCE

- a. During the entire period in which work on the Project is performed until termination of the Declaration, the Participant shall obtain and maintain in full force and effect during said period the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than one million dollars (\$1,000,000), \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 each occurrence and including; (ii) Automobile Insurance, maintained in full force and effect in an amount of not less than one million dollars (\$1,000,000) per accident;
- b. The Comprehensive General Liability Insurance and Automobile Insurance policies shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insured.
- 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. Participant shall provide evidence of required insurance to the City Manager before execution of this Agreement.

#### IX. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Participant covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it will not discriminate against any employee or

applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

- b. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will 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 will state that all Participants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

#### X. NO AGENCY CREATED

The Participant and any contractor, supplier, vendor or any third party hired by Participant to complete the Project are not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Participant concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Participant shall follow the direction of the City concerning the end results of the obligations.

#### XI. OWNERSHIP OF DOCUMENTS

All documents, including, without limitation, designs, plans, bids, bills and receipts, 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.

#### XII. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Participant agrees to and shall defend, indemnify and hold harmless the City, and their 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 the property of any person resulting or arising from or in any way connected with the following, provided Participant 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 Participant, its officers, contractors, subcontractors, agents, employees or other persons acting on Participant'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 plans or designs for the Project prepared by or on behalf of Participant including, without limitation, any errors or omissions with respect to such plans or designs;
- d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Participant, or resulting from any breach or default by Participant, under this Agreement; and
- e. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the improvements 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.

### XIII. DUTY TO DEFEND

The Participant further agrees that the hold harmless agreement in Article XII, and the duty to defend the City, and their respective officers, officials, employees, contractors and agents, require the Participant 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 Participant agrees to pay the City's attorney's fees, expert witness fees, and all costs.

### XIV. COMPLIANCE WITH LAW

The Participant agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and construction of the Project, as well as operations conducted on the Property. The City Manager or his/her designee will not issue any Rebate to the Participant if there is in violation of any law, ordinance, code, regulation, permit or Program Guideline.

### XV. TERMINATION

If Participant shall fail to cure any Event of Default upon notice and within the time for cure provided for in XVII below, the City may, by written notice to the Participant, terminate this Agreement. Such termination shall trigger the "Repayment of Pro Rata Share of Rebate defined in XVII.

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

### XVI. 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 in the manner as provided herein:

To City: City of Evanston  
Economic Development Division  
2100 Ridge Avenue  
Evanston, IL 60201  
Email: [economicdevelopment@cityofevanston.org](mailto:economicdevelopment@cityofevanston.org)

To Participant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

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.

## XVII. 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 by Article XVI 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 such thirty (30) day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion. For purposes of this Agreement, "business days" shall refer to Monday through Friday, inclusive, other than State, Federal, or other locally declared holidays.

### c. City Remedies; Repayment of Pro Rata Share of Rebate.

In the event of a default by Participant 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 Participant that occurs after the City has disbursed the Rebate, the “Pro Rata Repayment Amount” and interest, at the rate of three percent (3%) per annum, commencing on the date City disbursed the Rebate to Participant, shall become immediately due and payable. The rate of interest applicable to periods of default for the defaults set forth in this paragraph shall be calculated at the lesser of three percent (%) per annum or the maximum legal rate, and shall accrue as of the date such payment was originally due.

The “Pro Rata Repayment Amount” shall be the amount obtained by multiplying the original Rebate amount times the percentage obtained by dividing the number of months remaining in the five (5) year covenant period that commences on the month the Declaration is recorded, and ends on the 5th anniversary (the “Covenant Period”) by 60, which is the total number of months in the Covenant Period (12 months x 5 years). For example, if the amount of the Rebate is \$15,000, and the breach occurs after 3 years and two months (38 months), Participant shall repay \$5,500 plus any interest that has accrued during this time.

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 XVI herein or at such other address as City may direct pursuant to notice delivered to Participant in accordance with Article XVI.

d. Participant’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, Participant 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 Participant 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 Participant’s sole and exclusive judicial remedies.

## XVIII. 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.

## XIX. 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 Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

#### XX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Participant, 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 Participant or successor or on any obligation under the terms of this Agreement.

#### XXI. 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.

#### XXII. AUTHORITY TO SIGN

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

#### XXIII. COUNTERPARTS

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

#### XXIV. 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 the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Participant.

#### XXV. NON-ASSIGNMENT

The Participant shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City Manager's prior written approval, and Participant and Participant'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 immediate termination 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.

#### XXVI. NO WAIVER

No failure of either the City or the Participant 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.

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

"CITY"

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

By: \_\_\_\_\_ (signature)

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

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

"PARTICIPANT"

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

By: \_\_\_\_\_ (signature)

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

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

#### ATTACHMENTS:

1. Exhibit A – Legal Description of Property
2. Exhibit B – Certification of Ownership and Consent

Return this form to:  
City of Evanston – City Manager’s Office  
Economic Development Division  
2100 Ridge Avenue  
Evanston, IL 60201

For Official Use Only
-----------------------

## **Exhibit A: LEGAL DESCRIPTION OF PROPERTY**

(Attach behind this page)

## EXHIBIT B: CERTIFICATION OF OWNERSHIP AND CONSENT

This CERTIFICATION OF OWNERSHIP AND CONSENT (this "Consent") is executed by the undersigned ("Owner") at the request of \_\_\_\_\_ ("Tenant").

1. Owner is the owner in fee of that certain real property located at \_\_\_\_\_, in the City of Evanston, County of Cook, State of Illinois (the "Property").
2. The Property is improved with a building (the "Building"). The Property is currently leased to \_\_\_\_\_, who operates a business thereon (the "Tenant").
3. The Tenant has submitted an Application to the City of Evanston (the "City") pursuant to the City's Sustain Evanston Incentive Program (the "Program") for a rebate in connection with certain improvements the Tenant contemplates making to the Building (the "Improvements").
4. The Tenant has entered into a Program Agreement with the City that sets out the terms and conditions of the Program, and includes the Program Guidelines. Pursuant to the Program Agreement if the Tenant completes construction of the Improvements within ninety (90) days after the date of the Program Agreement, and satisfies certain other requirements set forth therein, the Tenant will be eligible for a rebate (the "Rebate"). The Rebate will be in the form of a grant, the repayment of which will be forgiven if the Tenant maintains and does not alter or remove the Improvements for a period of five (5) years from the Tenant's receipt of the Rebate.
5. If the Tenant sells the business without obtaining the prior written consent of the City and/or fails to maintain or alters or removes the Improvements before the close of the five (5) year period referenced above, the Tenant will be required to repay a pro rata share of the Rebate.

Owner now wishes to provide its written consent to all of the foregoing.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby declares as follows:

1. Owner hereby consents to all of the following:
  - a. Tenant's execution of the Program Agreement and participation in the Program.
  - b. Tenant's construction of the Improvements.
2. The person or persons executing this Consent on behalf of Owner is fully empowered to do so and in so doing binds Owner according to the terms hereof.
3. Owner acknowledges that Tenant and City are relying upon the provisions of this Consent and that the City would not agree to provide the Rebate to Tenant without this Consent.
4. City is a third party beneficiary to this Consent.



IN WITNESS WHEREOF, Owner has executed this Consent as of \_\_\_\_\_  
(date).

“OWNER”

By: \_\_\_\_\_  
(signature)

Its: \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

Its: \_\_\_\_\_