



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Jim DellaLonga, Director of Economic Development

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. XXX, in a form approved by the City Attorney, with Jamie Fronk for the granting of funds for the maintenance of existing dining establishments under the Downtown Bellflower Restaurant Assistance and Expansion Program, Element No. 3.

DATE: November 14, 2016

EXECUTIVE SUMMARY

This action would authorize the City to enter into an agreement with Jamie Fronk of Fronk's Restaurant, approving grant funding for the maintenance of an existing dining establishment under the City's Downtown Restaurant Assistance Program, Element No. 3.

RECOMMENDATION TO CITY COUNCIL

- 1) Authorize the City Manager to execute Agreement File No. XXX, in a form approved by the City Attorney; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The total annual grant amount is \$15,000 with a not-to-exceed amount of \$100,000 over the life of the grant. Funds for the Restaurant Improvement Program, Element 3 are available and have been budgeted in Account No. 510-44410-4002.

DISCUSSION

On September 26, 2016, the City Council adopted Resolution No. 16-71 which set forth policies and procedures for the Downtown Restaurant Assistance Program, Element No. 3 (the Program). The Program provides assistance to existing restaurants that may have expanded too rapidly or been challenged with unexpected federal, state, or local government requirements. In such circumstances, the City's assistance is necessary to ensure that otherwise successful businesses do not prematurely close. On October 27, 2016, Jamie Fronk (the Applicant), owner and operator of Fronk's restaurant, submitted his application for the Program. Economic Development Department staff reviewed the application and determined that the Applicant qualifies for the Program. The Applicant has requested a grant of \$15,000 annually to assist with the payment of delinquent sales tax obligations.

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The City will disburse funds to the Applicant annually in a lump sum, and the Applicant will be required to provide proof that the grant disbursement was applied to the Applicant’s tax debt. Under no circumstances will the City grant more than a total of \$100,000 to any individual applicant/grantee.

ATTACHMENT

Agreement File No. XXX..... 3

**AGREEMENT FILE NO. XXX
GRANT AGREEMENT
BETWEEN
THE CITY OF BELLFLOWER AND
FRONK'S RESTAURANT, LLC**

This agreement is entered into this ____ day of ____, 20__ by and between the City of Bellflower, a general law city and municipal corporation ("City"), and Fronk's Restaurant, LLC ("Grantee"), owning or leasing real property located at 16922 Bellflower Boulevard ("Property").

1. **RECITALS.** This agreement is made with reference to the following facts and objectives:

- A. Grantee wishes to participate in the Program which is made available to persons owning or leasing eligible real property within the Program Boundary.
- B. The Program is established in accordance with Resolution No. 16-71, adopted September 26, 2016, and the administrative policies and procedures promulgated to implement the Program.
- C. Based on the application and documentation provided by the Grantee, the Grantee is eligible for the maximum annual grant amount of \$15,000, but not to exceed a total of \$100,000.

2. **DEFINITIONS.** Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Agreement. Undefined words and phrases will be those set forth within the Program Guidelines.

- A. "Applicant" means a property owner or tenant currently operating a dining establishment within the program boundaries as established with the Program;
- B. "Application" means the form provided by the Program Manager to be filled out in its entirety in order for an Applicant to be considered for the Program;
- C. "Director" means the Director of Economic Development, who is assigned as the City's Program Manager;
- D. "Grant" means funding provided by the City of Bellflower for which payback of the funds is not required;

- E. "Maximum Annual Grant Amount" means not more than \$15,000 per year;
- F. "Program" means the process (including application, administration, and consultation) for participating in Element No. 3;
- G. "Program Boundary" means the Downtown Bellflower Corridor on Bellflower Boulevard from the 91 Freeway north to the former Pacific Electric Railroad Right of Way within the CG-Zone-Town Center District;
- H. "Property" means real property owned or leased by Grantee;
- I. "Property Owner" means the owner of property within the Program Boundary;
- J. "Tenant" means a renter or lessee of real property within the Program Boundary.

3. UNDERSTANDING REGARDING THE PROGRAM.

- A. By signing this Agreement, Grantee certifies that Grantee understands the manner in which the Program is funded and administered. Grantee further acknowledges that Grantee received written program materials regarding the Program and is fully informed regarding Grantee's obligations if Grantee participates in the Program.
- B. Specifically, Grantee agrees that:
 - i. Grant funds provided pursuant to Element No. 3 can only be used to service sales tax debt.
 - ii. The grant will immediately terminate upon any one of the following occurrences:
 - a. Grantee's suspension or cessation of operations for longer than two weeks;
 - b. Any transfer of ownership;
 - c. If outstanding sales tax debt is satisfied by means other than Element No. 3.
 - iii. Pursuant to Government Code § 52200.2, Grantee must demonstrate that participation in the Program will result in the creation or retention of two to three (2-3) full-time equivalent jobs.

- C. Grants are available to eligible dining establishments for not more than a maximum of annual amount of \$15,000, but not to exceed a total of \$100,000.
 - i. Grants will continue on an annual basis, until either the sales tax obligation with the Board of Equalization is satisfied or the maximum total grant amount of \$100,000 reached.
 - ii. Grant payments will be made in an annual lump sum upon the Director's confirmation that the Grantee is complying with Element No. 3.

4. **CONTROL OVER THE PROGRAM.** Grantee understands and agrees that City has sole discretion over all aspects of the Program including, without limitation, scheduling the Program as it applies to the Property. Grantee should not have any expectation, nor does Grantee have any right to demand, an immediate start to the Program upon signing this Agreement. City will use its best efforts to equitably and expeditiously implement the Program, but will not be liable for any failure to do so.

5. **PROGRAM COORDINATION AND SUPERVISION.** The Director of Economic Development is designated as City's Program Manager and will monitor the progress and execution of this Agreement. Jaime Fronk is designated as Grantee's Representative.

6. **NOTICES.** All communications to either party by the other party will be deemed made when received by such a party at its respective name and address, as follows:

City
City of Bellflower
Attn: Director of Economic Development
16600 Civic Center Drive
Bellflower, CA 90706

Grantee(s)
Fronk's Restaurant, LLC
Attn: Jaime Fronk
16922 Bellflower Boulevard
Bellflower, CA 90706

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

7. **INSURANCE.** Grantee will maintain commercial general liability insurance throughout the term of this Agreement in an amount not less than \$100,000 per occurrence for bodily injury and property damage. Grantee agrees to provide City with copies of insurance certificates and endorsements showing coverage.

8. LICENSE TO AUDIT GRANTEE'S FOOD SERVICE AND ACCOUNTING PRACTICES.

- A. Grantee grants City's representatives the right to audit the Grantee's food service and accounting practices subject to the following requirements:
 - i. Individuals permitted access to Grantee's food service and accounting information are limited to City's appointed officers, consultants, employees, and contractors that are directly concerned with administering the Program.
 - ii. City's representatives will schedule appointments with Grantee to acquire or review documents pertaining to food service or accounting practices.
 - iii. Grantee will provide proof to the satisfaction of the Director that the funds paid by the City are being utilized to meet the restaurant's ongoing debt obligation to the BOE.
 - iv. Grantee will allow a consultant of the City's choice to audit its food service and accounting practices at the discretion of the City.

9. HOLD HARMLESS.

- A. Grantee will hold City, and its agents, harmless and free from any and all liability arising out of this Agreement, or its performance, including any such liability caused, in part, by the passive negligent act or omission of City, or its agents. Should City, or its agents, be named in any suit, or should any claim be against it, or any of its agents, by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, pursuant to this Agreement, Grantee will defend City (with counsel satisfactory to City), and its agents, and will indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise.
- B. For purposes of this section "City" includes City's elected officials, appointed officers, and employees.
- C. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

10. CITY'S TERMINATION.

- A. City may terminate this Agreement with or without cause. Except as provided herein, City will not be liable to Grantee for any damages that might arise from such termination.

- B. Grantee agrees that nothing in this Agreement is intended to, nor will it, obligate City to continue the Program should federal, state or local funding become unavailable. Should any funding sources become unavailable to City for continued funding of the Program, this Agreement will automatically terminate. City will notify Grantee as soon as practicable regarding such termination, but in no event later than 15 days following such an event.

11. **ASSIGNABILITY.** This Agreement may not be assigned without City's prior written consent. Any attempt to assign this Agreement without City's consent will result in immediate termination of this Agreement.

12. **INTERPRETATION.** This Agreement was drafted in, and will be construed in accordance with the laws of, the State of California and exclusive venue for any action involving this Agreement will be in Los Angeles County.

13. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. This Agreement will bind and insure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

14. **WAIVER.** In no event will any payment or any acceptance of payment by City hereunder constitute or be construed as a waiver by City or Grantee of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or Grantee, and the making of any such payment while any such breach or default exists will in no way impair or prejudice any right or remedy available to City or Grantee with respect to such breach or default.

15. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. City's City Manager may execute any such amendment on behalf of City.

16. **RECORDATION.** The Parties agree that a copy of this Agreement will be recorded, at City's cost, in the Los Angeles County Recorder's office.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF BELLFLOWER

Fronk's Restaurant, LLC

Jeffrey L. Stewart, City Manager

James Fronk, Owner/Operator

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney