



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Economic Development Incentive Agreement MyNosh LLC: 22 N. Third Street		
Presenter & Title:	Cathleen Tymoszenko, Economic Development Director		
Date:	February 8, 2017		
<b>Please Check Appropriate Box:</b>			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting		Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting		Special City Council Meeting
<input type="checkbox"/>	Public Hearing		Other -
Estimated Cost: TBD	Budgeted? _____		<b>YES</b>
	<input checked="" type="checkbox"/>		<b>NO</b>
<i>If NO, please explain how the item will be funded:</i> Funded by new sales tax revenue			
<b>Executive Summary:</b>			
<p>In September 2016 Mike Dixon, owner of Nosh, and Tom Stuart, owner of My Salon, submitted a request for assistance with the purchase/redevelopment of 22 N. Third Street for future co-tenancy. The request sought financial assistance with costs associated with infrastructure and utility upgrades. In response, discussions with public works utility divisions were held and no areas of relief could be identified. Detailed plans were drawn, City approvals gained and construction bids obtained. Bid costs exceeded budget estimates with a \$300,000 gap causing ownership to again approach the City for assistance.</p> <p>The subject property is not within a business or tax increment financing district, therefore the City's ability to assist as a non-home rule municipality is limited. State statute allows rebate of a portion of a retailer's occupation taxes generated by the development or redevelopment over a finite period of time if the property is currently developed with a business that no longer complies with code or has been vacant or underutilized for at least one year, if the project creates or retains jobs, if the project furthers development of adjacent sites, if the developer demonstrates creditworthiness and financial strength, and if the project strengthens the commercial sector, enhances the tax base and is within the bests interest of the municipality.</p> <p>The subject property was previous occupied by JC Licht from 1981-1999, Periscope and other tenants thereafter, and has been vacant since December 2008. Assistance will result in the retaining and expansion of jobs and the project will serve to help anchor the N. Third Street corridor and strengthen the commercial tax base. As the EAV for the property has decreased four of the last five tax years, the project is expected to halt and reverse future decline.</p>			

In reviewing the project budget totaling \$1,879,632, certain costs can be attributed to the age of the building, infrastructure and change of use requirements. (The building was built in 1942 with previous occupancies being retail). Such costs include electric and water upgrades, facade modifications, and sprinklers and plumbing upgrades totaling \$469,725. In keeping with recent decisions on a similar request, the attached draft Economic Development Incentive Agreement contemplates providing reimbursement for half the costs attributed to hard costs that are above and beyond expected tenant improvements and attributable to readying an older structure for future modern occupancy as related to change of use requirements. This amount is proposed to be \$234,863. The term is proposed to be ten years. Although the attributable amount is less than the gap identified by ownership, it is not likely that the uses proposed will generate enough revenue to meet the gap amount over the allotted time period. It is more likely that during the term of the agreement, ownership will receive a total incentive at the low end of \$50,000 and at the high end of \$100,000. Allowing for the potential for a larger reimbursable amount is an incentive to the owners to increase sales to the best of the project's ability.

Retaining half of the municipal portion of sales tax will be a positive gain to the City from a site that has been vacant since 2008. It should be noted that since established, a high percentage of Nosh's sales tax revenues at its present location are rebated to the property owner as part of the Simon sales tax agreement. Therefore, the proposed tax share percentage for the relocated Nosh is expected to result in a higher retention of sales tax for the City. This higher percentage retainage coupled with new revenues generated by additional seating and extended hours at the restaurant and with new Geneva sales tax dollars from products sold at the salon is expected to provide an enhanced sales tax revenue stream. For these reasons, and the reasons outlined earlier with respect to EAV, employment, neighborhood stabilization and tax base enhancement we recommend approval of the inducement as proposed.

**Attachments:** *(please list)*

- Resolution Authorizing Execution of an Economic Development Incentive Agreement
- Economic Development Incentive Agreement between City of Geneva and MyNosh LLC.

**Recommendation / Suggested Action:** *(briefly explain)*

Motion to approve a Resolution Authorizing Execution of Economic Development Incentive Agreement between the City of Geneva and MyNosh LLC.

**RESOLUTION NO. 2017-19**

**RESOLUTION AUTHORIZING EXECUTION OF  
AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BY AND BETWEEN CITY OF GENEVA AND MYNOSH, L.L.C**

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**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS**, as follows:

**SECTION 1:** That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City of Geneva, An Economic Development Incentive Agreement by and between City of Geneva and MyNosh, L.L.C., a copy of which is attached hereto as Exhibit "A".

**SECTION 2:** This Resolution shall become effective from and after its passage as in accordance with law.

**PASSED** by the City Council of the City of Geneva, Kane County, Illinois, this \_\_\_ day of February, 2017.

**AYES: \_\_\_ NAYS: \_\_\_ ABSENT: \_\_\_ ABSTAINING: \_\_\_ HOLDING OFFICE: \_\_\_**

Approved by me this \_\_\_ day of February, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Lynn Landberg, City Clerk

**EXHIBIT A**

**Economic Development Incentive Agreement**

## ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

by and between

**CITY OF GENEVA and MY NOSH L.L.C.**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by the CITY OF GENEVA, Kane County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "CITY"); and MY NOSH, L.L.C., an Illinois limited liability company, c/o Nosh., 22 N. Third Street, Geneva, IL 60134 (hereinafter referred to as "OWNER"). The CITY and the OWNER are collectively referred to as the Parties.

Pursuant to the provisions of statutes hereinafter cited and the Illinois Constitution of 1970, and in consideration of the Findings set forth below, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

### **I. AUTHORITY**

Authority for the Parties to enter into this Agreement is hereinafter set forth:

- A. The Illinois Constitution of 1970 provides in pertinent part: The corporate authorities of a municipality may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the municipality. Under this agreement, the municipality may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time. (65 ILCS 5/8-11-20 eff. 8-7-01)
- B. The Illinois statutes provides that before entering into an economic incentive agreement authorized by statute, the corporate authorities shall make the following findings:
  - 1) If the property subject to the agreement is currently developed with a building(s) that no longer complies with current building codes, or that the buildings on the property have remained less than significantly unoccupied or underutilized for a period of at least one year;

- 2) That the project is expected to create or retain job opportunities within the municipality;
  - 3) That the project will serve to further the development of adjacent areas;
  - 4) That without the agreement, the project would not be possible;
  - 5) That the developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:
    - a. Corporate debenture rating of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.;
    - b. A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or
    - c. Specific evidence of equity financing for not less than 10% of the total project costs;
  - 6) That the project will strengthen the commercial sector of the municipality;
  - 7) That the project will enhance the tax base of the municipality; and
  - 8) That the agreement is made in the best interest of the municipality.
- C. As set forth in Section II below, the CITY hereby finds that pursuant to all of the authority and the actions described above, the execution and implementation of this Agreement is lawful and proper.

## **II. FINDINGS**

Among the factors of consideration, which the Parties find have resulted in this Agreement, are the following:

- A. The CITY has adopted an Economic Incentive Policy to establish a set of goals within adopted

long-term planning documents that involve the continued development and redevelopment and to establish a guideline and framework for reviewing requests for assistance.

- B. The OWNER is owner of certain property (the "Subject Property") being Lots 10 and 11 in Earl Carlson's Subdivision of Public Square, in the City of Geneva, Kane County, Illinois and located within the boundaries of the City of Geneva and legally described in Exhibit "A".
- C. The City of Geneva finds that the Subject Property has been previously improved with a commercial structure consisting of approximately 4,864 sf of rentable area which was previously occupied by a regional retailer until December of 2008, and has been vacant in excess of eight (8 ) years.
- D. The City Council further finds that the Subject Property, as it exists on the date of this Agreement, requires certain site, building and leasehold improvements to meet the site and space requirements of modern retailers. These modifications and enhancements will be detailed in the Preliminary Plans for building, landscaping, and signage improvements as provided in Section III below and hereafter sometimes referred to as the "Project".
- E. The OWNER, who shall act as the developer ("Developer") of the Project, has purchased the property and is seeking economic assistance from the CITY in order to complete improvements and has demonstrated that without the economic assistance to be given by the CITY the Project as contemplated by the Project Budget as set forth in Exhibit "C" attached hereto would not be economically viable; and
- F. The City Council finds that the Owner has demonstrated that if the Project expenditures are made, the vacant retail space will become leasable and occupied; and
- G. The City Council also finds that Owner has demonstrated credit worthiness and financial strength to complete the project as provided for in Section B; and

- H. The City Council finds that such improvements require assistance from the CITY in order to complete the improvements and it is in the City of Geneva's best interest to have the Subject Property redeveloped and re-tenanted in order to service the needs of the CITY and its residents; that the re-tenanting of the Subject Property will increase employment opportunities in the City, serve to enhance the commercial economic conditions in the City, stimulate commercial growth and enhance the tax base of the City.
- I. Accordingly, and based on such Findings, which satisfy all of the Findings required to be made under the statute as set forth in Section I. B. above, and subject to the Conditions Precedent set forth in Section III below, the CITY is prepared to commit to incentives under the terms and conditions hereinafter set forth to induce and assist in the Project.
- J. For the purpose of this Agreement, the use of the terms "sales tax" and "sales tax revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as "State") for distribution to the CITY pursuant to the Retailer's Occupation Tax Act (as said Act may be amended), or any other "sales tax" or similar tax that may be enacted by the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois, and which are collected by the State of Illinois and distributed to the CITY but exclusive of any future service tax that may be imposed by the State. Currently such net portion is one percent (1%) of the total amount of gross sales within the CITY that are subject to the aforementioned tax.

### **III. CONDITIONS PRECEDENT**

All undertakings on the part of the CITY pursuant to the Agreement are subject to the satisfaction of the following conditions:

- A. The Preliminary Plans for building, landscaping, and signage improvements constituting the Project will have been reasonably approved by the CITY and its Commissions, as required by law, and as provided in CITY ordinances.

- B. OWNER will have completed the modifications and enhancements substantially as shown in the Preliminary Plans as provided in Subsection III. A.
- C. OWNER will have demonstrated to the reasonable satisfaction of the CITY that it has contributed up to \$ 1,879,632 (or more than such amount) toward the Project Budget within twenty-four (24) months of the date of this Agreement. Prior to any reimbursement and following completion of the Project, OWNER shall provide CITY with any documentation necessary to establish its Reimbursable Improvement Costs (as defined in Section IV.C below). Such documentation shall include, but shall not be limited to, written proof of CITY inspections indicating code compliance (or no violations of codes) and/or compliance with approved plans, as applicable, and proof that the persons making such improvements have been paid in full.
- E. In the event the foregoing conditions precedent are not satisfied within twenty-four (24) months of the date of this Agreement, either party may terminate this Agreement by sending thirty (30) days' written notice to the other party, whereupon this Agreement shall terminate and be of no further force and effect upon the expiration of such thirty (30) day period unless the foregoing conditions precedent are satisfied prior to the expiration of such 30 day period.

#### **IV. DEVELOPMENT INCENTIVE REIMBURSEMENT**

The CITY finds and declares that the Project proposed by DEVELOPER on the Subject Property is desirable to the CITY since the development as proposed shall provide economic revenue to the CITY and other taxing bodies and create additional employment opportunities. The CITY further recognizes and acknowledges that OWNER would not proceed with the Project except for the incentives to be provided by the CITY pursuant to the authority cited above. As such, the FINDINGS set out at Section II. above are hereby adopted and incorporated herein by reference and upon the satisfaction of the Conditions Precedent set forth in Section III. above, the incentives to be granted to OWNER shall be applied as hereinafter set forth:

- A. Local Sales Tax Rebate: OWNER shall be reimbursed on an annual basis a portion of the sales tax generated from the retail project on the Subject Property at a rate of fifty percent (50%) of the CITY's allocated portion of sales tax revenue (currently 1%) attributable to the retail sales generated by the Project.
- B. The period of payment to OWNER shall commence on the date that the first tenant who satisfies the criteria at Subsection III. B. above in the Subject Property first opens for business to the public which shall not be later than 36 months from the date of this Agreement, and shall continue thereafter for ten (10) years from the said business opening or until such time that the OWNER receives fifty percent (50%) of the amount of the improvements up to the amount set forth in the Project Budget as included as Exhibit C (the "Reimbursable Improvement Costs"). Notwithstanding the statements contained in the prior sentence to the contrary, this Agreement shall terminate on December 31, 2028.
- D. Sources of Funds to Pay Reimbursable Improvement Costs: Any and all funds committed by the CITY herein are to be solely derived from the sales tax generated by the Subject Property. This pledge of sales tax revenues hereby receives the approval of the CITY in accordance with the terms of this Agreement.

**V. REIMBURSEMENT PROCEDURES**

- A. Sales Tax Reports: OWNER shall be responsible for duly executing appropriate agreements with any and all retail tenants in the Subject Property requiring same, and require such tenants contemporaneous with the filing of sales tax reports with the Illinois Department of Revenue or successor agency, to furnish to the CITY certified copies of any and all sales tax returns, sales tax reports, amendments, or any other paper filed with the State of Illinois, said Department of Revenue or other appropriate governmental entity, which documents are being provided to the CITY for purposes of identifying sales tax revenues collected pursuant to this Agreement. In the alternative, OWNER shall be responsible for obtaining, and subsequently providing to the CITY, a list of the names and Illinois Department of Revenue Retail Occupancy Tax Identification Numbers for all retail tenants not later than ten (10) days after the last day of each

quarter year. To the extent permitted by law, the CITY shall maintain the confidentiality of the information contained in such reports, but shall be permitted to disclose such information and documents to employees and consultants as the CITY, in its sole discretion, deems appropriate in order to monitor compliance with and audit, this Agreement. The CITY shall employ all legal means to protect the privacy of this information including the defense of any legal action brought against the CITY. In such event, OWNER shall be joined by the CITY to such litigation and OWNER shall provide its own counsel and shall bear all of its costs of defense. OWNER shall not be obligated to provide a defense for the CITY.

- B. Payment Dates and Change in Sales Tax Structure: The CITY hereby agrees to pay tri-annual installment payments on March 31, July 31, and November 30 of each year (payment date) beginning with the second payment date after the opening date of the first tenant in the Subject Property who satisfies the criteria at Subsection III. B. above to open for business to the public and continuing until such time as to include all sales tax revenues generated from actual sales occurring within the period indicated in Section IV., subject to the following calculations, deductions, terms and conditions:

- 1) The "tri-annual installment payment" shall mean an amount equal to fifty percent (50%) of the local share of sales tax revenue attributable to sales generated by the Project. Provided the CITY has received the sales tax information in a timely manner, all amounts paid to OWNER will be due and payable solely from the sales tax revenues received by the CITY from the Project according to the following schedule:

<u>Calendar Period to Which Sales Tax Receipts Relate</u>	<u>Installment Payment Date</u>
Sept., Oct., Nov., Dec.,	Mar. 31
Jan., Feb., Mar., Apr.	July 31
May, June, July, Aug.	Nov. 30

- 2) However, if the CITY no longer receives sales tax revenues from the Subject Property due to a change in Illinois statutes, then the CITY shall make payments to OWNER in the amount of the Local Sales Tax Rebate described in Section IV. hereof from any alternate sources of revenue provided to the CITY by the State specifically as a replacement or substitute for sales tax revenue presently received by the CITY. In the event that the CITY's share of said sales tax or substitute tax is reduced or increased by the State, then the OWNER's share thereof shall be reduced or increased utilizing the same percentage factor. Nothing in this Subsection 2) changes or affects Subsection IV. C. hereof.

## **VI. ADDITIONAL COVENANTS**

- A. Cessation of Business Operation: In the event of complete cessation of operation of the Subject Property before the total of the above described sales tax rebate disbursements are made, and only in such event, the remaining sales tax rebate obligation equal to but not exceeding the above described reimbursable costs may not be transferred to any successors or assigns of any interest of OWNER in the Subject Property without the consent of the CITY.
- B. Time: Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

C. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the CITY and OWNER and their respective successors and assigns. Notwithstanding anything herein to the contrary, the rights and benefits of this Agreement shall remain personal to OWNER, provided, however, OWNER may assign, without release of OWNER its duties, obligations and benefits to any entity which meets the standards for transfer, conveyance or sale set forth below, and CITY shall direct such reimbursement payments in accordance with any assignment notice to be provided by OWNER to CITY within thirty (30) days of such assignment. The standards for transfer, conveyance or sale shall be that the transferee developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:

- 1) Corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.;
- 2) A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the transferee developer; or
- 3) Specific evidence of equity financing for not less than 10% of the total project costs.

Once reimbursements to OWNER commences, OWNER may freely sell the Project or any portion thereof and retain the right to receive such reimbursements as this Agreement shall not be construed to run with the land.

Notwithstanding anything herein to the contrary, OWNER may assign this Agreement to a construction or mortgage lender as security for a loan with respect to the Project.

D. Law Governing: This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

E. Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the CITY does not have the power to perform any such provision, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions continued herein.

F. Notices: All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

To the OWNER: MyNosh LLC  
22 N. 3<sup>rd</sup> Street  
Geneva, IL 60134-2229  
Attn: Mike Dixon

With copies to: MyNosh, LLC  
22 N. 3<sup>rd</sup> Street  
Geneva, IL 60134-2229  
Attn: Tom Stuart

To the CITY: City Clerk, City of Geneva  
22 South First Street  
Geneva, Illinois 60134  
Phone: (630) 232-7494

With copies to: City Administrator  
22 South First Street  
Geneva, Illinois 60134  
Phone: (630) 232-7494

City Attorney  
312 West State Street  
Geneva, Illinois 60134  
Phone: (630) 232-4511

G. Authority to Execute: The signatories of the parties hereto warrant that they have been lawfully authorized by the City Council of the CITY and the OWNER to execute this Agreement on their behalf.

IN WITNESS WHEREOF, this Agreement is entered into at Geneva, Illinois, as of the date and year shown above.

APPROVED BY the City of Geneva, Kane County, Illinois, by Resolution No. 2017-\_\_\_\_\_, on the \_\_\_\_ day of\_\_\_\_\_, 2017.

CITY OF GENEVA,  
an Illinois Municipal Corporation

MY NOSH  
an Illinois limited liability company

\_\_\_\_\_  
Kevin R. Burns  
Mayor

\_\_\_\_\_  
Name  
Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT A: LEGAL DESCRIPTION**

Lots 10 and 11 in Earl Carlson's Subdivision of Public Square in the Original Town of Geneva,  
in the City of Geneva, Kane County, Illinois

**EXHIBIT B: ELEVATIONS**



Third Street Facade



Third Street Facade



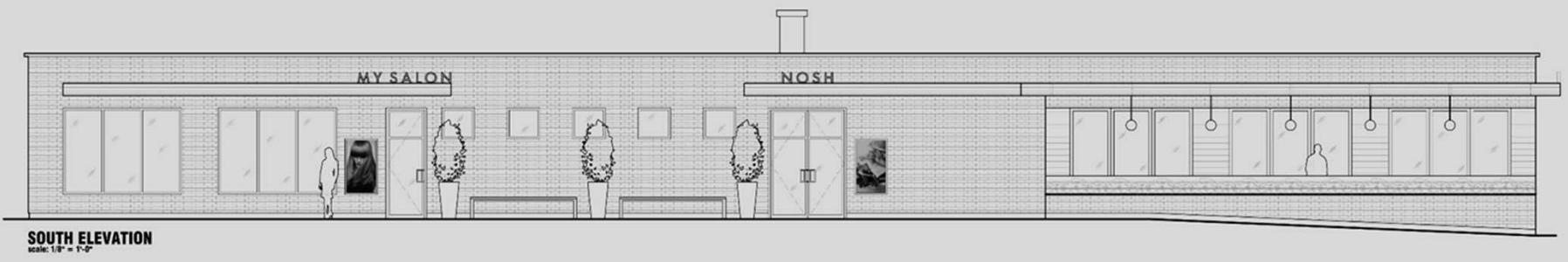
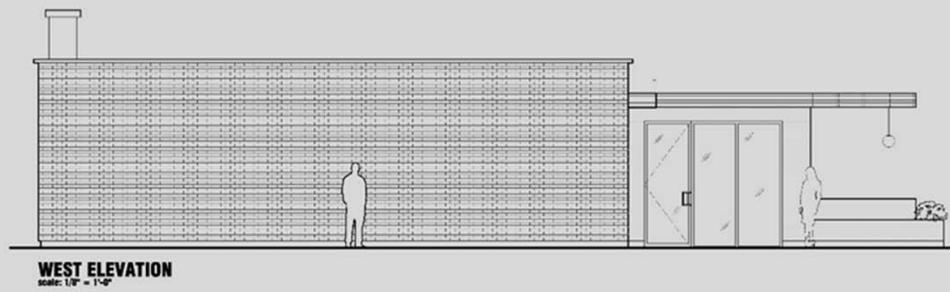
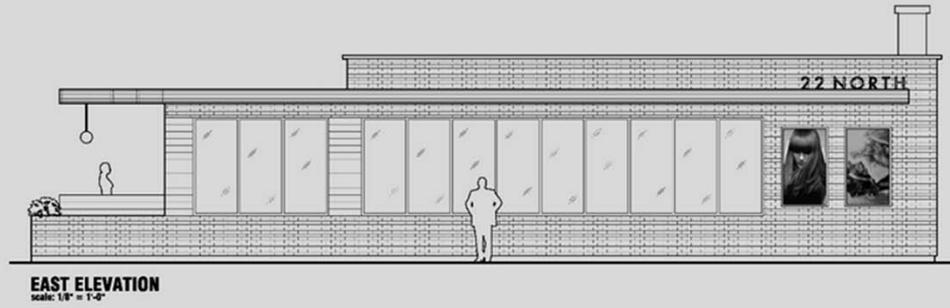
Left: View from Northeast



Right: View from South Parking



Right: View from South Parking towards Third Street



<sup>215</sup>  
**EXHIBIT C: PROJECT BUDGET AND REIMBURSEABLE COSTS\***

**1. PROJECT BUDGET**

Property Acquisition:	\$ 605,000
Site and Building Improvements:	\$1,274,632
<b>Total</b>	<b>\$ 1,879,632</b>

**2. REIMBURSEABLE PROJECT COSTS:**

New Water Service:	\$ 32,845
Façade- exterior windows/doors	\$ 60,000
Electric Service from Hamilton	\$ 37,500
Electric Labor and Fixtures	\$ 179,380
Sprinklers	\$ 36,000
Plumbing	\$ 124,000
<b>Total</b>	<b>\$ 469,725</b>

\* Owner shall be entitled to receive 50% of amounts contributed up to the Reimbursable Improvements Costs in accordance with the terms of the agreement (\$234,863), even if it contributes less than the full amount of the Reimbursable Improvements Costs. Applicable line items may increase or decrease within the project budget.

(65 ILCS 5/8-11-20)

Sec. 8-11-20. Economic incentive agreements. The corporate authorities of a municipality may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the municipality. Under this agreement, the municipality may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time. Before entering into the agreement authorized by this Section, the corporate authorities shall make the following findings:

(1) If the property subject to the agreement is vacant:

(A) that the property has remained vacant for at least one year, or

(B) that any building located on the property was demolished within the last year and that the building would have qualified under finding (2) of this Section;

(2) If the property subject to the agreement is currently developed:

(A) that the buildings on the property no longer comply with current building codes, or

(B) that the buildings on the property have remained less than significantly unoccupied or underutilized for a period of at least one year;

(3) That the project is expected to create or retain job opportunities within the municipality;

(4) That the project will serve to further the development of adjacent areas;

(5) That without the agreement, the project would not be possible;

(6) That the developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:

(A) corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.;

(B) a letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the developer; or

(C) specific evidence of equity financing for not less than 10% of the total project costs;

(7) That the project will strengthen the commercial sector of the municipality;

(8) That the project will enhance the tax base of the municipality; and

(9) That the agreement is made in the best interest of the municipality.

(Source: P.A. 92-263, eff. 8-7-01.)

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