



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Economic Development Incentive Agreement with MB5 T&T, LLC		
Presenter & Title:	Cathleen Tymoszenko, Economic Development Director		
Date:	November 4, 2024		
Please Check Appropriate Box:			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting	<input type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: EV-II			
Estimated Cost: \$ 36,000	Budgeted?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Other Funding," please explain how the item will be funded:</i>			
Executive Summary:			
<p>The MB5 Hospitality LLC (Marshall McCarty) has a leasehold interest at 204 W. State (former Beer Cellar). MB5 Hospitality has built a positive reputation in Geneva and is working to create a new dining concept/neighborhood bar. Bad Alice is described as a cozy place to congregate and celebrate offering a wide variety of local craft as well as world-renowned import beers, a Tiki-inspired cocktail list and a fun and comfortable atmosphere.</p> <p>As plans to transform the space were being developed, enhancements to life safety improvements were discussed and considered. Specifically, the City worked with MB5 to incorporate several sprinkler heads into the planned improvements for the project. This improvement is in keeping with prior determinations for expenditures of American Rescue Plan Act Funds set aside for Historic Preservation and Adaptive Reuse. Therefore, we recommend a grant award for \$36,000. This amount is 80% of the estimated sprinkler cost and is approximately 13% of the total project costs for the project.</p>			
Attachments: <i>(please list)</i>			
<ul style="list-style-type: none"> • Resolution and Economic Development Incentive Agreement 			
Voting Requirements:			
<p><i>This motion requires a simple majority of affirmative votes for passage. (City Council Only)</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the alderpersons has resulted in a tie; (b) when one half of the alderpersons elected have voted in favor of an ordinance, resolution, or motion even though there is no tie vote; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p>			
Recommendation / Suggested Action: <i>(how the item should be listed on agenda)</i>			
Approve Resolution Authorizing Development Economic Incentive Agreement between City of Geneva and MB5 T&T, LLC for 204 W. State Street.			

RESOLUTION NO. 2024 -119

**RESOLUTION AUTHORIZING EXECUTION OF
AN ECONOMIC INCENTIVE AGREEMENT BY AND
BETWEEN CITY OF GENEVA AND MB5 T&T, LLC .**

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

SECTION 1: That the City Administrator is hereby authorized to execute, on behalf of the City of Geneva, An Economic Incentive Agreement by and between City of Geneva and MB5 T&T, LLC, in the form attached hereto at Exhibit “A”, relating to life safety improvements at 204 W. State Streets, Geneva IL.

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 _____, 2024

AYES: __ NAYS: __ ABSENT: __ ABSTAINING: __ HOLDING OFFICE: __

Approved by me this ____ day of _____, 2024.

Mayor

ATTEST:

City Clerk

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

By and Between

**CITY OF GENEVA AND MB5 T&T, LLC
FOR 204 W. STATE STREET, GENEVA, IL.**

This Agreement is entered into this _____ day of _____, 2024, by the City of Geneva, Kane County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "City" or "corporate authorities"); DPC Holdings, LLC Series K State Street an Illinois Limited Liability Company ("Owner") and MB5 T&T, LLC, an Illinois limited liability company ("Tenant"). The City, the Owner and the Tenant are collectively referred to as the "Parties."

Pursuant to the provisions of statutes and Government Funds and Plans (as hereinafter defined) 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:

SECTION I. AUTHORITY

The authority for the Parties to enter into this Agreement is:

A. As a non-home rule unit of government the City's authority is expressly limited by Article VII, Section 7 of the Illinois Constitution of 1970, which provides in part that non-home rule units of government shall only have powers granted to them by law.

B. Accordingly, under Illinois law (65 ILCS 5/8-1-2.5) the corporate authorities may enter into an economic incentive agreement relating to the making of grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the municipality.

C. The Coronavirus State and Local Fiscal Recovery Funds, a part of the federal American Rescue Plan (known as the Government Funds and Plans), delivered funds to local government to support recovery and to ensure that governments have the resources needed to fight

the pandemic, support families and businesses, maintain public service and build a strong, resilient and equitable economy by making investments that support long-term growth and opportunity. In keeping with this goal and the U.S. Department of the Treasury Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule issued in January 2022 and amended in 2023, the City Council of the City of Geneva has determined that a portion of the City of Geneva's American Rescue Plan will be used to support investment in historic downtown Geneva.

SECTION II. FINDINGS

In accordance with the statutory provisions cited above as well as the City Council's intended use of Government Funds and Plans referenced above, the factors of consideration that have resulted in this Agreement are the following:

A. The Owner is the legal owner of certain real property ("Property") located within the boundaries of the City, commonly known as 204 W. State Street, Geneva, Illinois 60134. The Property is improved with a two-story building with basement consisting of approximately 4,880 square feet and is located in an established downtown commercial area near to the primary intersection of Third and State Streets. The Property is legally described in **Exhibit A**. The Tenant has a leasehold interest in the first floor and basement commercial space. The Owner and Tenant are collectively referred to as "Developer".

B. The building was constructed in 1868 and is identified as a Contributing Property in the Central Historic District, part of the National Register of Historic Places. The structure is noted for significance in relation to individuals, architectural style, and community development, particularly during Geneva's Early Settlement Period (1837-1857).

C. The Developer is proposing to undertake extensive capital investment to create a full service restaurant with entertainment described as a cozy place to congregate and celebrate offering a wide variety of local craft as well as world-renowned import beers, a Tiki inspired cocktail list and a fun and comfortable atmosphere. Improvements include but are not limited to carpentry, electric, plumbing, fire prevention and equipment upgrades. Total project costs represent a total investment of **\$278,000** as detailed in **Exhibit B**.

E. The corporate authorities finds that the Property, as it exists on the date of this Agreement, will benefit from continued investment and that the Project requires assistance from the City in order to complete the improvements and it is in the City of Geneva's best interest to enter into this Agreement in order to have the Property redeveloped and re-tenanted in accordance with the Project. The City will contribute a grant award for **\$36,000** that is 80% of these total Reimbursable Costs as detailed in **Exhibit C**. The grant award will be provided on a reimbursement basis.

F. The Parties acknowledge that the Project requires municipal reviews and approvals that may include the Plan and Zoning Commission, the Historic Preservation Commission and City Council.

G. The Developer is seeking economic assistance from the City in order to complete the Project and has demonstrated that without the economic assistance to be given by the City the Project as contemplated by the Project Budget would not be economically viable; and

H. The corporate authorities finds that the Developer has demonstrated that if the Project expenditures are made, the commercial space will become more viable and will continue to be leasable and occupied; and

I. The corporate authorities also finds that Developer is a recognized and established developer of commercial lease space and has provided specific evidence of equity financing for not less than 10% of the total project costs; and

J. The corporate authorities finds that completing the Project requires assistance from the City in order to complete the improvements and it is in the City of Geneva's best interest to enter into this Agreement in order to have the Property modified in accordance with the Project, that the Project will increase employment opportunities in the City, strengthen the commercial sector of the City and enhance the tax base of the City.

K. Pursuant to the 65 ILCS 5/8-11-20, the City Council of the City has made the

following findings with respect to the Project:

- i. The Project is expected to create or retain job opportunities within the City.
- ii. The Project will serve to further the development of adjacent areas.
- iii. Without this Agreement, the Project would not be possible.
- iv. The Developer meets high standards of creditworthiness and financial strength, as demonstrated by specific evidence of equity financing for not less than 10% of the total project costs.
- v. The Project will strengthen the commercial sector of the City.
- vi. The Project will enhance the tax base of the City.
- vii. This Agreement is made in the best interest of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate the City and the Owner agree as follows:

SECTION III. INCORPORATIONS OF RECITALS. The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Agreement.

SECTION IV. INTENT. Subject to the Conditions Precedent set forth in Section IV below, the City is prepared to commit to the incentives under the terms and conditions hereinafter set forth to induce and assist in the Project.

SECTION V. 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 plans for building and signage improvements constituting the Project will have been approved by the City as required by law and as provided in City ordinances.

B. Developer will have completed the modifications and enhancements included in the Project Budget set forth on **Exhibit B** and City has closed the permit for the Project.

C. Developer will have demonstrated to the reasonable satisfaction of the City that it has contributed up to **\$ 278,000** (or more than such amount) toward the Project Budget set forth on **Exhibit B** prior to seeking any reimbursement. Following completion of improvements, Developer shall provide City with any documentation necessary to establish its Reimbursable Improvement Costs as defined in **Exhibit C** hereto. 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. Such reimbursement must be sought on or before September 1, 2025.

SECTION VI. REIMBURSEMENT PROCEDURES

The City shall contribute, as a grant, to the cost of the historic renovation and adaptive reuse of the building in an amount equal to 80% (eighty percent) but not to exceed **\$ 36,000** of the Project cost as set out in **Exhibit C**. The CITY will provide this grant award upon completion of all building and site improvements evidenced by the closing of the permit by the City for the Project. The Developer shall submit to the City a verified statement, in such detail that is satisfactory to the City, showing proof of payment for the full cost of all work and labor, and/or of each separate component amount due to the contractor(s) involved in furnishing labor, materials, or equipment in said work, and/or component part. The City shall, upon receipt of said proof of

payment, issue payment to the Developer for the portion of storefront restoration. Such payment must be applied for before September 1, 2025 and issued prior to December 31, 2025. The City shall diligently process payment of the Grant to Developer within a reasonable time after submission of all documentation in support to fits Reimbursement improvement Costs.

SECTION VII. TERM

The period of payment to Developer shall commence on the date that the Developer received documentation of final inspection and permit closure thereafter until December 31, 2025.

SECTION VIII. ADDITIONAL COVENANTS

A. 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.

B. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the City and Developer and their respective successors and assigns. Notwithstanding anything herein to the contrary, the rights and benefits of this Agreement shall remain personal to Developer, provided, however, Developer may assign, without release of Developer 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 Developer to City within thirty (30) days of such assignment.

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

D. 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.

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

To the DEVELOPER:

MB5 T & T
204 W. State Street
Geneva IL 60134

To the CITY:

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

With copies to:

City Clerk
22 South First Street
Geneva, Illinois 60134

City Attorney
22 South First Street
Geneva, Illinois 60134

F. Authority to Execute: The signatories of the parties hereto have been authorized by the corporate authorities of the City and the Developer to execute this Agreement on their behalf.

G. Successors and Assigns. All the terms and provisions of this Agreement will be binding on and inure to the benefit of all of the successors and assigns of the parties hereto.

H. Third-Party Beneficiaries. The City and the Developer agree that this Agreement is for the benefit of the parties hereto and not for the benefit of any third-party beneficiary. Except as otherwise provided herein, no third party will have any rights or claims against the City arising from this Agreement.

I. Time. Subject to Section 7K hereof, time is of the essence under 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.

J. Limitation of Liability. Notwithstanding anything herein to the contrary by implication

or otherwise, any obligations of the City created by or arising out of this Agreement will not be a general debt of the City on or a charge against its general credit or taxing powers but will be payable solely out of the Coronavirus State and Local Fiscal Recovery Funds as set forth in Section 3. No recourse will be had for any payment pursuant to this Agreement against any officer, employee, attorney, or elected or appointed official, past, present, or future, of the City.

K. No Waiver or Relinquishment of Right To Enforce Agreement. Failure of any party to this Agreement to insist on the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, on any other party imposed will not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement, or condition, which will continue in full force and effect.

L. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between the Developer and the City relative to the subject matter thereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them related thereto, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. However, whenever under the provisions of this Agreement any notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other, such approval or such consent or such request will be given for the City, unless otherwise provided herein, by the Mayor or his or her designee and for the Developer by any officer or employee as the Developer so authorizes.

M. Counterparts. This Agreement may be executed in two or more counterparts, each of which taken together will constitute one of the same instrument.

N. Default. In the event of any material default under or violation of this Agreement, the party not in default or violation will serve written notice on the party or parties in default or violation, which notice will be in writing and will specify the particular violation or default. All parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within 30 days after receipt of written notice of such default, provided that said 30-day period will be extended (a) if the alleged violation or default is not reasonably susceptible to being

cured within this 30-day period, (b) if the party in default has promptly initiated a cure of the violation or default, and (c) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

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

APPROVED BY the City of Geneva, Kane County, Illinois, by Resolution No. 2024-

_____, on the _____ day of _____, 2024.

CITY OF GENEVA,
an Illinois Municipal Corporation

Stephanie K. Dawkins
City Administrator

ATTEST:

City Clerk

DEVELOPER:

MB5 T&T LLC, an Illinois Limited Liability Company

Marshall McCarty, Manager

EXHIBIT A: LEGAL DESCRIPTION

That part of lot 1 in Block 51 of the Original Town (now city) of Geneva, Kane County, Illinois, described as follows, to wit: Commencing at a point in the North line of said Lot 1, 13 feet east of the Northwest corner thereof, and running thence East along the North line of said lot, 25 feet; thence South parallel with the West line of said lot, 138 feet to the North line of an alley conveyed and dedicated to the City of Geneva, Illinois; thence West along the North line of said alley to a point running 13 feet distant from the West line of said Lot 1; thence North parallel with the West line of said Lot 1, 138 feet to the North line thereof and the point of beginning, in the City of Geneva, Kane County, Illinois.

PIN 12-03-413-007

Commonly Known As: 204 W. State, Geneva, IL 60134

EXHIBIT B: PROJECT BUDGET**Total Project Costs**

Carpentry and Electric	\$ 85,000
Plumbing	30,500
Sprinklers	45,000
Equipment	95,000
Landlord Improvements	<u>22,500</u>
TOTAL	278,000

EXHIBIT C: REIMBURSEABLE PROJECT COST

Sprinklers	\$45,000
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Developer shall be entitled to receive 80% of amounts contributed up to the Reimbursable Improvement Costs in accordance with the terms of the Agreement. Applicable line items may increase or decrease within the Project budget.