



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Economic Development Incentive Agreement 427 E. State (Nicolaou)		
Presenter & Title:	Cathleen Tymoszenko, Economic Development Director		
Date:	December 16, 2024		
<b>Please Check Appropriate Box:</b>			
<input 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: \$ 38,608	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>			
<b>Executive Summary:</b>			
<p>Nick and Jim Nicolaou (Owner), purchased the property at 427 E. State and are working to create a new dine in/carry out chicken restaurant concept named HoneyBird. The subject property is improved with a one-story frame building that was previously used for office space. Converting the space to a restaurant will require extensive interior remodeling, structural engineering and site work. Plans also include adding ADA bathrooms and a fire alarm. The estimated total project costs including acquisition are about \$970,179.</p> <p>The Owner is working to finalize a TIF request. In keeping with prior determinations for expenditures of American Rescue Plan Act Funds set aside for Historic Preservation and Adaptive Reuse, we recommend a grant award for \$38,608. This amount is 80% of the cost of ADA bathrooms and fire alarm and approximately 4% of the total project costs including acquisition. This grant amount will be taken into consideration during a review of the pending TIF request.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution and Economic Development Incentive Agreement</li> </ul>			
<b>Voting Requirements:</b>			
<p><i>This motion requires a simple majority of affirmative votes for passage. (Mayor and City Council)</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>			
<b>Recommendation / Suggested Action:</b> <i>(how the item should be listed on agenda)</i>			
<p>Approve Resolution Authorizing Economic Development Incentive Agreement between City of Geneva and Nick Nicolaou and Jim Nicolaou for 427 E. State Street.</p>			

**RESOLUTION NO. 2024 - 135**

**RESOLUTION AUTHORIZING EXECUTION OF  
AN ECONOMIC INCENTIVE AGREEMENT BY AND BETWEEN  
CITY OF GENEVA AND NICK NICOLAOU AND JIM NICOLAOU  
FOR 427 E. STATE GENEVA, IL**

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**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 Nick Nicolaou and Jim Nicolaou in the form attached hereto at Exhibit “A”, relating to the adaptive reuse and life safety improvements at 427 E. State Street, Geneva IL.

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

**PASSED** by the Mayor and City Council of the City of Geneva, Kane County, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2024.

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

\_\_\_\_\_  
Mayor

ATTEST:

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

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**By and Between**

**CITY OF GENEVA AND NICK NICOLAOU and JIM NICOLAOU**

**FOR 427 E. STATE, 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"); and Nick Nicolaou and Jim Nicolaou (hereinafter collectively referred to as "Owner"). The City and the Owner 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 427 E. State Street, Geneva, Illinois 60134, and legally described in **Exhibit A**. The Property is improved with a one-story frame building consisting of approximately 1,047 square feet ("Building"). The Building is located in an established downtown commercial area adjacent to the primary intersection of East State Street and Woodlawn Drive.

B. The Building was constructed in 1877 and is part of the Early Settlement Period of Geneva (1837-1857). The Property was most recently used for offices.

C. The Owner purchased the property in August 2024 and is proposing to undertake extensive capital investment to create a new restaurant. Such improvements include but are not limited to structural and civil engineering improvements, extensive interior remodeling including kitchen equipment and fixtures, plumbing, electrical and mechanical upgrades, adding ADA bathroom(s), and installing and maintaining a fire alarm. Such improvements represent an investment of **\$970.000** as detailed in **Exhibit B**.

D. The corporate authorities finds that the Property, as it exists on the date of this Agreement, will benefit from the proposed investment hereinafter referred to as the "Project" as further defined in the Project Budget as set forth in **Exhibit B**. The Project will improve the

character of the property and the neighborhood by establishing a new commercial opportunity along East State Street and improving curb appeal.

E. The Parties acknowledge that the Project requires municipal reviews and approvals in order to proceed.

F. The Owner 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

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

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

I. 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.

J. 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. The Owner 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.

- iv. The Project will strengthen the commercial sector of the City.
- v. The Project will enhance the tax base of the City.
- vi. 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 V 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. Owner 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. Owner will have demonstrated to the reasonable satisfaction of the City that it has contributed up to approximately \$ **970,719** toward the Project Budget set forth on **Exhibit B** prior to seeking any reimbursement. Following completion of improvements, Owner 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 life safety and adaptive reuse improvements of the property in an amount equal to 80% (eighty percent) but not to exceed **\$ 38,608** 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 Owner 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 Owner. 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 Owner within a reasonable time after submission of all documentation in support to fit Reimbursement Improvement Costs.

## **SECTION VII. TERM**

The period of payment to Owner shall commence on the date that the Owner 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 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.

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 OWNER

Nick Nicolaou and Jim Nicolaou  
702 Chase Lane  
Lombard, IL 60148

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 Owner 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 Owner 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. 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 I. 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.

J. 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.

K. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between the Owner 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 Owner is required, or the City or the Owner 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 Owner by any officer or employee as the Owner so authorizes.

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

M. 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

**OWNER:**

\_\_\_\_\_  
Nick Nicolaou

\_\_\_\_\_  
Jim Nicolaou

**EXHIBIT A: LEGAL DESCRIPTION**

Lot 5 in block 4 of Howard and Bairds addition to Geneva, as amended by IRA Minard; in the city of Geneva, Kane County, Illinois excepting therefrom that part taken for road purposes per document 2024K032428.  
(Insert)

PIN 12-02-376-008

Commonly known as: 427 E. State, Geneva, IL 60134

**EXHIBIT B: PROJECT BUDGET**

Property Acquisition	\$282,172
Builder's Risk Insurance	4,520
Architecture and Structural Engineering	12,000
Civil Engineering	16,600
Carpentry	358,723
Plumbing	39,970
Equipment and Fixtures	104,518
Kitchen Exhaust Hood	33,625
Fire Alarm	12,500
HVAC Equipment	27,000
Signage	21,702
Ansul System	11,289
Awning and Canopy	15,700
Alarm System	400
Landscaping	30,000
<b>TOTAL</b>	<b>\$970,719</b>

**EXHIBIT C: REIMBURSEABLE PROJECT COST**

ADA Bathroom	\$35,760
Fire Alarm	12, 500
<b>TOTAL</b>	<b>\$48,260</b>

Owner shall be entitled to receive 80% of amounts contributed up to the Reimbursable Improvement Costs in accordance with the terms of the Agreement, even if it contributes less than the full amount of the Reimbursable Improvement Costs. Applicable line items may increase or decrease within the Project budget.