

RESOLUTION NO. 2016-03

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE AGREEMENT
by and between
THE VILLAGE OF WEST DUNDEE and OTTO ENGINEERING**

This ECONOMIC INCENTIVE AGREEMENT (this "Agreement") is entered into by and between the Village of West Dundee, an Illinois municipal corporation located in Kane County, Illinois (the "Village") and OTTO Engineering ("OTTO"). The Village and OTTO are collectively referred to as the Parties.

WHEREAS, the Village of West Dundee is a home rule municipality as contemplated under Article VII, Section 6 of the Constitution of the State of Illinois, and is authorized to exercise and perform any function pertaining to its government and affairs; and

WHEREAS, the Village has adopted a Resolution supporting the concept of economic incentives in order to encourage private investment and to enhance the tax base of the Village and affected taxing districts through the reinvestment of tax dollars as permitted by State statute; and

WHEREAS, OTTO has been assisting in the redevelopment of numerous commercial and residential properties throughout the Dundee area, and has demonstrated very successful and high quality rehabilitation and renovation projects in the community; and

WHEREAS, it is doubtful that OTTO would fully restore the facades of the buildings at 109 and 111 West Main Street without public assistance as specified herein; and

WHEREAS, OTTO has petitioned the Village to assist in rehabilitation and renovation of the buildings at 109 and 111 West Main Street which contribute to the character and integrity of the historic district; and

WHEREAS, it is the desire of the Village to have OTTO complete rehabilitation and renovation of the 109 and 111 West Main Street buildings subject to reasonable economic incentives as set forth herein in an effort to assist the Village in implementing its recently adopted Downtown Plan; and

WHEREAS, the Village finds that the rehabilitation and renovation of these buildings are in the best interests of the Village and will result in maintaining and improving tax revenue for the Village, improving the appearance of the downtown area, and spurring additional retention and attraction of other businesses to the area, all of which are consistent with the Village's resolution supporting the concept of economic incentives;

WHEREAS, discussions have taken place between OTTO and the Village and an accord has been reached;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals**: The recitals set forth above are expressly incorporated into and made part of this Agreement.
2. **Authority**: This Agreement is entered into by the Village pursuant to the Village's authority as a Home Rule unit of local government.
3. **Undertakings on the Part of OTTO**:
 - a. OTTO agrees to use its best efforts to complete the exterior rehabilitation and renovation described in Exhibit A, estimated to cost of \$169,459, within three (3) months from the date of this Agreement.
 - b. OTTO agrees to comply with all applicable ordinances and State and federal statutes to the extent required by law.
 - c. OTTO hereby covenants and agrees that at all times it shall comply with all applicable local zoning ordinances and regulations, building code, fire code, and all other applicable Village ordinances, resolutions, and regulations.
4. **Undertakings on the Part of the Village**:
 - a. On the condition that there is no default on the part of OTTO under this Agreement, the Village covenants and agrees to reimburse OTTO \$42,365 of the reimbursable project costs listed in Exhibit A attached hereto.
 - b. On the condition that there is no default on the part of OTTO under this Agreement, the Village covenants and agrees to waive a lien on the property in the amount of \$27,259 for prior repair work already expensed as listed in Exhibit A attached hereto.
 - c. Reimbursement to OTTO for reimbursable project costs shall be made pursuant to a requisition for payment ("Requisition") submitted by OTTO to the Village of West Dundee. For purposes of the Agreement, one payment shall be made at final completion of improvements as outlined in Exhibit A.
 - d. The requisition must be accompanied by verified bills, invoices, or statements of suppliers, contractors, or professionals, together with mechanics liens waivers and contractors sworn statement as required by the Village and certification from OTTO that the item to which such bill, invoice, or statement relates has been completed in

accordance with all applicable permits and ordinances. The requisition shall include a bill, invoice or statement for any work or materials which have been included in any other grant request from the Village pursuant to this Agreement or any other agreement between OTTO and the Village.

- e. The Village Manager shall approve or disapprove the Requisition in writing within thirty (30) days after receipt. If the Requisition is disapproved, the reasons for disallowance shall be set forth in writing and OTTO may resubmit the Requisition with such additional information as may be required and the same time limitations and procedures set forth herein shall apply to such resubmittals.

5. Mutual Agreements:

- a. This agreement incorporates all agreements and understandings of the parties hereto as of the date of its execution. Each party acknowledges that no representations or warranties have been made which have not been set forth herein.
- b. Time is of the essence.
- c. All notices and requests, if any, required pursuant to this Agreement shall be sent by certified mail as follows:

To OTTO

OTTO Engineering
Attention: Tom Roeser
2 East Main Street
Carpentersville, IL 60110

To the Village

Village of West Dundee
Attention: Joseph A. Cavallaro, Manager
102 South Second Street
West Dundee, IL 60118

- d. This agreement shall be construed and enforced in accordance with the laws of the State of Illinois.
- e. OTTO shall not assign this Agreement to any person or entity without written consent of the Village, which consent shall not be unreasonably held. All obligations of OTTO remain in full force and effect until such time as the assignee to which the Village has

consented has assumed all such obligations. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto.

- f. If the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- g. No recourse under or upon any obligation, covenant, or provision of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against the Village, its officers, agents, and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to OTTO hereunder subject to the terms and conditions herein and no liability, right or claim at law or inequity shall attach to or shall be incurred by the Village, its officers, agents, and employees in excess of such amounts and all and any such rights or claims against the Village, its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

6. Defaults:

- a. Failure on the part of OTTO to comply with any term, representation, warranty, provision, or condition of this Agreement within thirty (30) days after the written notice thereof from the Village shall constitute an event of the default. Upon an occurrence of an event of default, the Village shall be relieved of any and all of its obligations arising pursuant to this Agreement and such obligations shall be immediately canceled and without any force and effect and the Village may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance and observance of any obligation, undertaking, covenant, or agreement of OTTO. Further, upon an occurrence of default by OTTO, said parties shall be responsible to the Village for reimbursement of all costs incurred by the Village in seeking to enforce the performance and observance of any obligation, understanding, covenant, or agreement as aforesaid including but not limited to costs incurred by use of its employees, officers, and attorneys.
- b. In the event OTTO fails to complete the rehabilitation and renovation to the Subject Property as required by the terms and conditions of this Agreement, this Agreement shall be null and void.

7. Term:

- a. The term of this Agreement shall commence as of the date of its execution after approval by the corporate authorities of the Village. This Agreement will terminate one year after the date of commencement.

PASSED AND APPROVED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, this 7th day of March, 2016.

AYES: Trustees Wilbrandt, Kembitzky, Price, Yuscka and President Nelson

NAYS: Trustee Pflanz

ABSENT: Trustee Hanley



Christopher Nelson, Village President

ATTEST:



Barbara Traver, Village Clerk

EXHIBIT A

PROJECT ITEM	COST
Façade Rehabilitation and Renovation Construction	\$147,356
General Construction (GC) Management	\$22,103
Total Construction-related Expenses	\$169,459
Economic Incentive Reimbursable at 25% (new cash outlay)	<u>\$42,365</u>
Waiver of Lien (already expensed for prior repair work)	<u>\$27,259</u>
Total Value of Rehabilitation-related Project Costs	<u>\$69,624</u>