

## RESOLUTION NO. 2016-10

### 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 proven capable of undertaking and completing high-quality rehabilitation and renovation projects in the community; and

**WHEREAS**, it is doubtful that OTTO would fully restore the facade of the building at 101 West Main Street without public assistance as specified herein; and

**WHEREAS**, OTTO has petitioned the Village to assist in rehabilitation and renovation of the building at 101 West Main Street which contributes to the character and integrity of the downtown historic district; and

**WHEREAS**, it is the desire of the Village to have OTTO complete rehabilitation and renovation of the 101 West Main Street building 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 rehabilitating and renovating this building is in the best interest of the Village as it will significantly improve the appearance of a highly-visible property on Main Street, generate tax revenue for the Village, and potentially attract additional investment downtown, 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 approximately \$265,080, within five (5) 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 for eligible reimbursable project costs up to a maximum of \$58,000 as shown in Exhibit A attached hereto.
  - b. 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.
  - c. The requisition must be accompanied by verified bills, invoices, or statements of suppliers, contractors, or professionals, together with mechanics lien waivers and contractors' sworn statements 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.

- d. 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 25<sup>th</sup> day of July, 2016.

AYES: Trustees Price, Yuscka and Pflanz, President Nelson  
NAYS: Trustees Wilbrandt and Hanley  
ABSENT: Trustee Kembitzky



\_\_\_\_\_  
Christopher Nelson, Village President

ATTEST:

  
\_\_\_\_\_  
Kim Tibbetts, Deputy Village Clerk


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IN WITNESS WHEREOF, the Village has caused this Agreement to be executed by its duly authorized officer, and OTTO Engineering has executed this Agreement, this 18<sup>th</sup> day of October, 2016

VILLAGE OF WEST DUNDEE,  
an Illinois Corporation

By:   
\_\_\_\_\_  
Joseph Cavallaro, Village Manager

OTTO ENGINEERING

By:   
\_\_\_\_\_  
Tom Roeser, President

**EXHIBIT A**

<b>PROJECT ITEM</b>	<b>COST</b>
Façade Rehabilitation and Renovation	\$255,080
General Construction (GC) Management	\$10,000
Total Construction-related Expenses	\$265,080
Economic Incentive - Reimbursable at 25%; Not-to-Exceed Amount	<b><u>\$58,000</u></b>