


## MEMORANDUM

**TO:** Trustee Anthony Puccio, Chairperson  
Economic and Community Development Committee Members

**FROM:** William J. Heniff, AICP, Director of Community Development 

**MEETING DATE:** November 13, 2023

**RE:** **Yorktown Reserve Economic Incentive Agreement – First Amendment Request**

As the Economic & Community Development Committee (ECDC) members are aware, developer (Synergy Construction) presented an economic incentive request for the former Carson's Anchor Store (230 Yorktown Shopping Center) and related perimeter of the Yorktown Center mall building abutting the site. Through a series of meetings over the past year, the culmination of this effort was the creation of the attached Economic Incentive Agreement between the Village and Lombard Development Manager LLC for the Yorktown Reserve project, which was approved by the Village Board on July 21, 2023 (Ordinance 8181).

Subsequent to the approval, implementation steps have been ongoing to secure project financing and companion coordination efforts to facilitate project construction. However, through this effort, a few financial/market related conditions have arisen which is resulting in a request for a First Amendment to the Agreement. Attached is a question/answer correspondence provided by project representative Phil Domenico offering responses to their actions to date and their purpose and rationale for the economic incentive request. Below is a staff narrative regarding each of the changes.

### **INCENTIVE AGREEMENT AMENDMENT REQUEST**

#### **Section V. 5. Development of the Subject Property**

As stated in Attachment A, Synergy has been in the process of securing project funding and continues to do so. However, given current lending conditions and general practices, this effort is taking longer than initially anticipated. Synergy is still committed to the project but is seeking minor amendments to the stated benchmarks within the Agreement stated below which will hopefully address the matter. Below in italics are the relevant subsections for amendment consideration:

*5. For the Phase 1 Project and the Greenscape Project, the Developer shall:*

- a. On or before December 31, 2023, provide the Village with written evidence of funding for construction.*

- b. ***On or before February 28, 2024, the Developer shall: (i) apply with the Village for demolition as required for Phase I, (ii) apply for building permits, and (iii) apply for all necessary permits and approvals from all governmental agencies having jurisdiction over the Subject Property, other than the Village, as may be necessary to commence construction.***
- c. ***On or before June 1, 2024, construction shall commence.***
- d. ***On or before December 31, 2026, subject to Force Majeure, completion of construction shall occur, meaning that the Developer has received a final certificate of occupancy and zoning certificate from the Village.***

Synergy is requesting and staff can conceptually support that all dates within Subsection 5 be extended 90 days from the originally stated date. Such a request is not uncommon, and the Village has recently consented to such actions for the Horton Summit at Yorktown project in 2022 (to accommodate private holiday construction covenant provisions) and Lilac Station in 2020 (due to financing and construction-related elements).

If after the 90-day extension period, the project results in further delays, rather than bringing forward a Second Amendment, staff would conceptually support a provision whereby an additional 90-day period (for a total extension of 180 days in total) could be approved by the Village Manager, without further action by the ECDC/Village Board, provided that the following benchmarks are met:

1. The developer will not only have a loan commitment, but will have closed on the loan; and
2. The developer will have applied for and received a building permit from the Village for the environmental remediation/asbestos removal within the existing Carson’s building, and work on the remediation has been started by the applicable contractor(s); and
3. The developer shall have applied for a building permit from the Village for the demolition of the Carson’s building.

**Section VIII A. Developer Obligations**

Consistent with the proposed changes above, a 90-day period (with 90-day additional option) is also requested to the date referenced below and based upon the rationale and provisions above.

- A. *The Developer shall acquire title to the portion of all tracts of land that comprise the Subject Property on or before **December 31, 2023**. In the event the Developer fails to do so, this Agreement shall terminate upon receipt of thirty (30) days written notice from the Village during which time the Developer may acquire title to the portion of all tracts of land comprising the Subject Property, in which case the Village shall no longer have the*

*right to terminate this Agreement as set forth in this Section VIII A., and the Parties shall have no further obligations hereunder.*

#### **Section VI. B. 6. Parsing Reimbursements for Greenspace Improvements**

Starting in August, 2023, Synergy started putting together final quotes and project costs for the asbestos remediation within the Carson's building a permit submittal effort – a precursor step to the full building demolition effort. Synergy inquired about release of payment process for this initial step. Through this discussion with staff, the following Section VI. B. 6. is noted (emphasis added):

*For the Greenscape Improvements Project, the Village shall reimburse the Developer for documented Eligible Redevelopment Costs, as provided for in Village-approved Reimbursement Requests, payable as follows: (a) All available dollars funds in the Village's BD Sales Tax Account (which is currently estimated to be Four Million and No/100 Dollars (\$4,000,000.00) **upon the issuance of a temporary or final certificate of completion by the Village for the Greenscape Improvements** and subject to the Reimbursement True-Up provision; and (b) the remaining balance of Village-approved reimbursement up to the Greenscape Improvements Incentive Cap shall be paid on a quarterly basis as BD Sales Tax funds are received by the Village, with reimbursement payments to the Developer made within forty-five (45) calendar days following the Village's receipt of its share of the BD Sales Taxes collected by the State of Illinois Department of Revenue and paid to the Village by the State Treasurer.*

Implied within this highlighted section that the Greenscape Improvements portion of the project would only be subject to reimbursement after the entirety of this phase is completed. As a practical matter, it is possible that this effort may take an extended period to complete based upon various construction timing matters. To that end, the developer is seeking the ability to provide for incremental reimbursements upon satisfactory completion of defined activities. This request will also help the developer be able to recoup expenses after completion of phases, and by association, construction carrying costs. As such these requested benchmarks are offered:

1. Fund release option at the time of completion environmental/asbestos removal within the Carson's building
2. Fund release option upon demolition of the Carson's building
3. Fund release option upon completion of new exterior mall wall exposures (in case this work is completed, but we are in winter conditions); and
4. Fund release option upon completion of Greenspace improvements

Staff is conceptually supportive of this amended approach as it still follows the performance-based language offered within the Village's Economic Incentive Policy. If earlier steps were completed, but later steps were not undertaken, for whatever reason, there is still value to the property being gained that a substitute or future building/property owner could benefit from at a later date.

**FINAL STAFF COMMENTS**

Overall, the proposed amendments can be supported by staff as:

1. The amendments still follow the framework of the Village’s Economic Incentive Policy performance-based structure;
2. The amendments can be supported by general market conditions facing most any merchant developer of this nature and scope, and not this developer in particular;
3. All other terms and conditions of the Agreement remain in full force and effect;
4. The amendments do not increase any the actual incentive request; and
5. Most importantly, the request will help ensure that the proposed Yorktown Reserve project can proceed as originally proposed.

**ACTION REQUESTED**

This item is on the November 13, 2023 ECDC Meeting agenda for the following purposes:

1. To inform the ECDC members of the latest efforts relative to the property, proposed project and pending incentive request; and
2. Staff and the petitioner request that the ECDC support the proposed amendment to the Yorktown Reserve Economic Incentive Agreement as set forth within the staff report and that Village Counsel finalize a First Amendment to the Agreement for Village Board consideration.

**Attachment A**

**Question/Answer Statements relative to Yorktown Reserve Economic Incentive Agreement  
First Amendment Request**

**1. What have you undertaken since the original agreement was approved?**

Since the EIA was approved in late July we have been busy working with the design consultants to complete the architectural, structural, MEP and civil engineering/design work. Permit drawings are nearly complete for both the multifamily building as well as the greenspace and retail work. Concurrently, we have finalized the RCOE amendments with Von Maur, JCP and Pacific. The contract with JCP to purchase the additional ~3 acres adjacent to our property is done and closing is contingent on project financing. In other words, this project is “shovel ready” – provided we are able to close on construction debt financing early next year we can immediately start demolition on the Carson’s building and submit for plat of subdivision and permit on the phase 1 multifamily building.

**2. What have been the financing conditions and challenges?**

Aside from all the preconstruction work, a majority of our time has been spent aggressively working on securing a construction loan for the project. Back in July we immediately recognized the increasingly tighter lending environment and retained a leading capital markets broker - Frank Montalto with IPA/Marcus & Millichap. Frank and his team not only solicited term sheets from conventional banks outside the Midwest but also alternative construction lenders like life insurance companies and private equity debt funds. A list of almost 300 potential lenders has been provided to the Village for reference. attached.

**3. What is the rationale and approach to requesting the first amendment?**

The critical path to getting this project off the ground is construction debt financing. Despite the unprecedented state of the capital markets, every potential lender that has looked at this deal has liked it especially given the generous EIA support from the Village. There are 3 main headwinds facing lenders – 1) higher interest rate risks, 2) existing loan renewals are at a all-time high because of lack of sales and refinancing activity and 3) potential exposure to commercial office building loses. A 90-180 day extension will give us enough time to find the right construction debt program.

**4. Can you provide a statement that the direct financial ask remains unchanged;**

The financial risk has increased – interest rates are even higher than anticipated and construction costs keep rising. Despite the increased risk associated with these financing delays we are confident that we can still successfully develop this project within the existing terms of the EIA.

**5. Can you offer a new timeline based upon the best information available at this time?**

As mentioned above, this project is shovel ready. We can immediately start the Carson's demolition after we close on financing hopefully in January. Then in the Spring we can break ground on the phase 1 multifamily building and finish construction in late 2025.

**6. And most importantly, are you still committed to the project.**

1000%. We own the Carson's property and have invested over \$1,000,000 in preconstruction work. Our 3 long-time equity partners have reiterated their commitment to the project but we need finalize a construction debt program with reasonable terms. Many lenders have also expressed that their fiscal year is now closed but the hope is right after the 1<sup>st</sup> of the year we will be looking at multiple financing options for this project.