

COUNCIL WORKSHOP ITEM

ITEM: Economic Development Agreement
DATE: May 17, 2001
PREPARED BY: Steve Rockwell, Director of Economic Development
PURPOSE: A 50% Sales Tax Sharing Agreement to Fry's Electronics, Inc

DISCUSSION:

THE HISTORY OF FRY'S ELECTRONICS, INC.

Fry's Electronics, Inc. was founded in 1985 in Sunnyvale, California in a 20,000 square foot location by the three Fry brothers, John, Randy, and Dave, and Kathy Kolder. Fry's is a closely held private company, and all of the founders are actively involved in the daily operation of the business.

Fry's was founded as a Silicon Valley retail electronics store to provide a one-stop-shopping environment for the hi-tech professional. Fry's has been keeping hi-tech professionals supplied with products representing the latest technological trends and advances in the personal computer marketplace for almost 15 years. Fry's retails over 50,000 electronics items within each store, now totaling 17. There are currently 6 stores in Northern California and 6 stores in Southern California, 2 stores in Texas, 1 store in Oregon and 2 stores in Arizona. The stores range in size from 50,000 to over 180,000 square feet.

Each store carries its own unique theme. In Northern California, Sunnyvale reflects the history of the Silicon Valley. Palo Alto steps straight out of the old wild, wild west. Campbell's ancient Egyptian theme has a 20-foot sphinx and King Tut tombs. Fremont's 1893 World's Fair theme is a flashback to the first city powered by electricity. San Jose pays tribute to the first astronomers, the Mayans, with settings from Chichenitza. In Southern California, Fountain Valley hails the ruins of ancient Rome, complete with a flowing aqueduct. Manhattan Beach takes you to Tahiti with sculpted lava tiki heads and its own rain forest. Woodland Hills is a page out of Lewis Carroll's Alice in Wonderland storybook, with 10 to 15-foot high figurines of the story characters. Anaheim places you on the NASA flight deck for the Endeavor Space Shuttle, complete with launches on big screens all weekend long. Burbank pulls you back in time to the 1950's with a retro-space theme from Hollywood, complete with little green Martians and Gort, the robot. Dallas allows you to experience the Lazy-K ranch, complete with a herd of longhorn cattle. Currently, as of this printing, Sacramento and San Diego, California; Tempe, Arizona; Wilsonville, Oregon; and Arlington, Texas are all works in progress.

Fry's services the hi-tech professional by focusing on our motto of always providing each customer with fast, friendly, courteous service. Fry's has become the place where a technical customer can shop with confidence and comfort. All of Fry's stores sell, service, and support computer hardware and software products, I.C.'s, components and accessories, as well as audio, video, and telecommunication products, and appliances.

Proposed Project

Frys plans to enter the Chicagoland market in the very near future. Fry's is seriously contemplating its options to open its first store in this market in Downers Grove. Fry's is in discussions with the landowner, Electec LP of San Jose, who bought the property from Auto Nation in late February. Fry is proposing to bring a vibrant and substantial retail development to replace the closed Auto Nation facility.

This potential Downers Grove store will be erected on the site where Auto Nation is now. The current facility would first be demolished. On the southern part of the site, Fry's would propose concept plans for a 144,000 square foot retail facility. Additionally, Fry's would support the sale of the portion of the twenty-three (23) acre site to other users, including a hotel, a restaurant and/or an office building.

ATTACHMENTS:

- 1) Economic Development Commission Incentive Matrix Scoring (12/27/00)
- 2) Cost Benefit Analysis provided by Frys prepared by Strategy Planning Associates of Schaumburg (by FEDX)
- 3) Frys Application for Incentives to the EDC (12/21/00)
- 4) Proposed Frys Electronic Development Agreement

RECOMMENDATION:

The EDC Board reviewed the request for assistance from Frys in December and a few times since then. Specifically, the EDC determined that Frys' request for financial assistance Sales Tax Sharing Agreement to complete the anticipated purchase, demolition and construction of its new retail complex was validated by the DC Incentive Matrix scoring system utilized for this purpose. The Incentive Committee, the EDC and the staff all feel that such a sales tax sharing agreement should be granted.

If Frys locates in Downers Grove, it would make a very substantial investment with a first-class retail facility. Frys would build a building worth approximately \$ 15 million (approximately \$100 per square foot). Further, Frys proposes to create approximately 350-400 full-time jobs. If the Village Council agrees with these findings, we would suggest that a resolution adopting this agreement be considered.

EDC Incentive Committee and Staff Report

Name of Enterprise: *Frys Electronics, Inc./Downers Grove*

Owners: *John and David Fry*

Phone: *(847) 330-2423*

Address: *3300 Finley Road/Downers Grove, Illinois*

Established in 1985

THE HISTORY OF FRY'S ELECTRONICS, INC.

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Fry's was founded as a Silicon Valley retail electronics store to provide a one-stop-shopping environment for the hi-tech professional. Fry's has been keeping hi-tech professionals supplied with products representing the latest technological trends and advances in the personal computer marketplace for almost 15 years. Fry's retails over 50,000 electronics items within each store, now totaling 17. There are currently 6 stores in Northern California and 6 stores in Southern California, 2 stores in Texas, 1 store in Oregon and 2 stores in Arizona. The stores range in size from 50,000 to over 180,000 square feet.

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Fry's services the hi-tech professional by focusing on our motto of always providing each customer with fast, friendly, courteous service. Fry's has become the place where a technical customer can shop with confidence and comfort. All of Fry's stores sell, service, and support computer hardware and software products, I.C.'s, components and accessories, as well as audio, video, and telecommunication products, and appliances. Fry's also sells personal electronics, as well as convenience and general merchandise

items. Fry's has been providing customers with a broad product selection from all areas of the electronics industry for over a decade.

Fry's goal is to continue our focus on the hi-tech professional and to progressively expand in the future.

Proposed Project

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This potential Downers Grove store will be erected on the site where Auto Nation is now. The current facility would first be demolished. On the southern part of the site, Fry's would propose concept plans for a 144,000 square foot retail facility. Additionally, Frys would support the sale of the portion of the twenty-three (23) acre site to other users, including a hotel, a restaurant and/or an office building.

Economic Need

Frys states that in order to make this project economically feasible, it is necessary that the Village of Downers Grove form some degree of partnership with the enterprise to accomplish this new undertaking. Specifically, Frys states that they must receive financial assistance to complete the anticipated purchase, demolition and construction of its new retail complex. Frys believes that the Village should be willing to provide economic incentives for this project.

If Frys locates in Downers Grove, it would make a very substantial investment with a first-class retail facility. Frys would build a building worth approximately \$ 15 million (approximately \$100 per square foot). Further, Frys proposes to create approximately 350-400 full-time jobs.

Frys feels that in order to attract a large volume of Chicagoland area customers to this Downers Grove site, they must pay for Chicago newspaper, radio and television advertising. Frys expects advertising costs to be 50% higher than what Frys has spent in other locations.

Cost Benefit Analysis/Matrix Scoring

AESTHETICS – In the opinion of the EDC Incentive Committee and Board, the proposed changes will, without question, improve the aesthetics of the study area.

CODE/ZONING VARIANCE REQUIREMENTS- Frys feels that the project will not require any changes or variances to the Downers Grove Zoning Ordinance.

CREATES MORE MARKETABLE SPACE- The EDC Incentive Committee determined that the space was not at all marketable in its current state. Many months of realtor showings has borne that out. The proposed facility would permit the space to be more fully utilized in the future.

CULTURAL BENEFITS-With the novel attempts by Frys to create “*mini-museums*” with its themes, the Incentive Committee was able to allow a mid-range of points for this project. It is believed that this concept might work very well with existing facilities as well.

DENSITY- Frys would add to the density of an are that we have programmed to sustain more retail and office. This was determined to score well with the committee.

ENVIRONMENTAL IMPACTS- The facility has already been the cause of correcting a few wetlands infractions and therefore scored in the midrange. The wetlands were restored and Frys would have scored higher except for the large need for parking spaces.

FILLS VACANCY- Obviously the Auto Nation site has been vacant now as we approach the two- year mark. The proposed facility would not only fill the vacancy, but would help insure future users might also be interested as well.

FINANCIAL INVESTMENT OF IMPROVEMENTS- With nearly \$15 million of proposed facility, plus the purchase of the land, the development was able to score well in the mid range with the committee here.

JOB CREATION/RETENTION – With the creation of 350-400 jobs, Frys would be a large retail employer. The committee took note of this fact by granting the maximum score here.

MEETS REDEVELOPMENT GOALS- With the attraction of a very large retail sales tax generator, the committee was impressed and again granted this project the maximum score on the matrix.

NEW/CONTINUING VILLAGE REVENUES- With the loss of Auto Nation a large drain was noticed on the Village sales tax revenues. Frys proposal would not only bring us back to the days when Auto Nation was here, but would more than double that amount. The Incentive committee again wasted no time in granting full score.

PARKING/TRAFFIC IMPACTS- The committee withheld a few points here due to the large requirements for parking and the high volume times for traffic. It was still determined that the impact would not be substantial.

PROXIMITY TO LIKE BUSINESSES- Due to the Ogden and Butterfield Corridors the ability to shop and shop again does exist. It was also felt that the Best Buys, Comp USA and Circuit City, all Downers businesses, might get the benefit of comparison shopping.

PUBLIC SAFETY RESOURCE REQUIREMENTS- The project was able to score fully here because the development has agreed to align the entrance with the exiting light. Further, the reduction of a vacant public attraction should relieve some pressure on the need for special patrols.

REAL ESTATE ASSESSED VALUATION IMPACT- The real estate values of the vacant property are greatly diminished, at this time. With the new project, the value of the land and the new building would improve dramatically. Therefore, the committee score the maximum points.

REMEDICATION OF BLIGHTED PROPERTY- Although this property is not "blighted" by definition, the committee deliberated very long and determined that the property was very much underutilized. Therefore, the maximum points were awarded.

SPIN-OFF-BENEFITS- The staff and committee determined that if Frys were to really advertise with over \$7 million, that this constant barrage of the name of Downers Grove should be very helpful. Again, a very high score, but not the maximum here.

TYPE OF BUSINESS USE- Frys is exactly the type of use that the Village should be targeting. With the return of the Comprehensive Economic Development Strategy, the EDC was rewarded for determining that a high-end electronic store with large sales tax generation capabilities was right on target.

EDC Evaluation Matrix

Frys Electronics, Inc.

<i>Weighted Score</i> (1-5)	<i>General Criteria</i>	<i>Raw Score</i> (-5 to +5)	<i>Total</i> (-25 to +25)
Four X	1) Aesthetics	4	16
Three X	2) Code/Zoning Variance Requirement	2	6
One X	3) Creates More Marketable Space	5	5
Three X	4) Cultural Benefits	4	12
Three X	5) Density	4	12
Three X	6) Environmental Impact	5	15
Two X	7) Fills Vacancy	5	10
Three X	8) Financial Investment of Improvements	5	15
Four X	9) Job Creation/Retention	5	20
Five X	10) Meets Redevelopment Goals	4	20
Five X	11) New/Continuing Village Revenues	5	25
Four X	12) Parking/Traffic Impact	4	12
Three X	13) Proximity to Like Businesses	3	12
Four X	14) Public Safety Resource Requirement	5	20
One X	15) Real Estate Assessed Valuation Impact	5	5
Five X	16) Remediation of Blighted Property	4	20
Two X	17) Spin-off Benefits	4	8
Three X	18) Type of Business Use	5	15
	Total Score	78	248

12/27/2000

GRAFT, SCIACCOTTA & ASSOCIATES

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

WILLIAM C. GRAFT
JOHN C. SCIACCOTTA

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TELEPHONE (847) 330-2423
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†ADMITTED ALSO IN OHIO
AND CALIFORNIA

December 21, 2000

VIA FEDERAL EXPRESS

Steven Rockwell
Director of Economic Development
Economic Development Commission
5205 Washington - Suite 2
Downers Grove, IL 60515

**Re: Fry's Electronics, Inc. / Downers Grove -
3300 Finley Road, Downers Grove, Illinois**

Dear Mr. Rockwell:


Thank you to the Mayor, you and the Downers Grove management team for your time and effort in helping to consider recruiting Fry's Electronics into Downers Grove. We appreciate your time and wisdom on meeting the mutual needs of the Village and Fry's Electronics.

Enclosed please find your Village's Economic Incentive Policy Contact Form which we have completed, along with our check #4916 in the amount of \$500.00 payable to the Village of Downers Grove to cover the Application Fee regarding the above-referenced matter.

We look forward to working with you and all Village officials. As the primary contact for Fry's, if you have any questions, please call me.

Very truly yours,

GRAFT, SCIACCOTTA & ASSOCIATES


William C. Graft

WCG/cmn
Enclosures

cc: Mayor Brian J. Krajewski - (w/ enclosures)
Fry's Electronics, Incorporated (et alia)

Fry's has spent in its other locations. As a result of marketing costs, more retail customers will be drawn to Downers Grove than ever before.

Fry's has not yet invested in costly architecture to detail its building elevations, but will work with the Village to deliver an attractive, large retail store destination. Fry's intends to use attractive pre-cast concrete construction, and could add architectural texture, color and details to present a very pleasing retail appearance. Landscaping will be planned by Mr. Charles Crump, an outstanding and well-known landscape designer. Further, this project will not disturb the open space/wetlands to the north. Overall, this will be an extremely attractive retail facility.

To develop its retail store on this site, Fry's would not require any changes or variances to the Downers Grove Zoning Ordinance. This AutoNation site has the most restrictive zoning in the area, and the Village and Fry's should consider some changes to make sure the zoning is consistent with nearby properties and to assist the development of other beneficial uses on this site. Additional development of "outlots" can maximize the benefits to the Village. With proper land entitlement, this site generates more taxes and marketable commercial development in Downers Grove.

The Fry's proposal brings many community benefits, exciting retail services, substantial tax revenue and benefits to the entire Downers Grove community and school districts. In addition to redeveloping a highly visible vacancy, Fry's interest in this site can be credited with improving the wetlands to the north, by forcing the seller to properly permit wetland impacts caused during the construction of the AutoNation facility and site.

Fry's hopes to locate in Downers Grove. We believe Fry's is exactly what the Village had in mind when it created its Economic Incentive Policy. Fry's meets and exceeds all Downers Grove economic incentive and redevelopment goals by redeveloping an abandoned site and bringing a very significant amount of new sales and property tax revenue and jobs to the Village. Fry's will have numerous positive tangible and spin-off benefits, all of which benefit the Village of Downers Grove and its citizens.

We look forward to meeting soon with the Downers Grove Economic Development Commission.

Respectfully submitted,



William C. Graft

Attorney and Agent for Fry's Electronics, Inc.



DOWNERS GROVE
ECONOMIC DEVELOPMENT COMMISSION
Stability, Diversity, Opportunity

Economic Incentive Policy
CONTACT FORM

Please submit this completed form; the \$500 application fee; your written proposal with pertinent discussion of the General Criteria and other documentation to the Economic Development Commission, 5202 Washington Street, Suite 2, Downers Grove, Illinois 60515.

Date: December 13, 2000

Name of Enterprise: FRY'S ELECTRONICS, INC.

William C. Craft of CRAFT,

Contact Name: SCIACCOTTA & ASSOCIATES Title: Partner

Phone: (317) 330-2423 Fax: (847) 330-1652 Email: _____

Address 1200 East Golf Road - Suite 600

City Schaumburg State IL Zip Code 60173-5006

Year Enterprise Established: 1985 Year Enterprise Established in Downers Grove: N/A

Are you moving to OR within Downers Grove: We are considering possibility of large retail facility in Downers Grove.

What date will the move or expansion occur? Spring of 2001, if incentives mutually agreeable.

What is the new address? 3300 Linley Road

Is the site a headquarters for your business? No. (First Chicago area retail store of large west coast (5 state) Consumer Electronics Retailer.)

Do you plan to lease or own? own If leasing, indicate the duration: _____

Do you plan to renovate or expand your property? Yes

If YES, what is the approximate cost? \$27,000,000 total: (Building Cost \$15,000,000.00 and Land Cost \$12,000,000.00)

Who is the decision maker for this project within your enterprise? Leonard Sabatini and ownership of Fry's Electronics.

What other communities are you considering for this project? Naperville, Darien, Arlington

Heights, Palatine, Deerfield, Chicago and other locations

If you have a real estate company involved in the project, please provide the contact, name of the company, address and phone number: (out-of-state) Matt Alexander of Staubach Realty Co.

201 Howard Street - Suite 930, San Francisco, CA 94105 (415) 908-4935

If you have an attorney involved in the project, please provide the contact, name of the company, address and phone number: (PLEASE CONSIDER PRIMARY CONTACT)

William C. Craft of CRAFT, SCIACCOTTA & ASSOCIATES, 1900 East Golf Road - Suite 600, Schaumburg, IL 60173-5006 PHONE: (847) 330-2423

Signature _____

William C. Craft, Attorney in Fact for Fry's Electronics, Inc.



Downers Grove Economic Development Commission Economic Incentive Policy CONTACT FORM

**FRYS ELECTRONICS, INC.
ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement ("Agreement") is made and entered into as of this 4th day of June, 2001, by and between the Village of Downers Grove, DuPage County, Illinois ("Village"), an Illinois home-rule municipal corporation, and Frys Electronics, Inc., a California corporation ("Developer").

WHEREAS, Developer operates a successful retail business outside the corporate limits of the Village; and

WHEREAS, in order for the business of the Developer to continue to prosper and grow, the Developer has determined that it is in its best interest to purchase land and to build a facility within the municipal boundaries of the Village in order to relocate and expand its existing business; and

WHEREAS, it is in the best interests of the Village to enter into this Agreement in order for the Developer to increase its business potential within the corporate limits of the Village and for the Village to realize a substantial economic benefit as a result of the relocation;

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein as if set forth verbatim.
2. **Developer to Relocate and Expand Business.** Developer is in the process of acquiring approximately 23 acres of property on Finley Road in the Village ("Property") whereupon it intends to build a facility of approximately 144,000 square feet containing a showroom of approximately 100,000 square feet, a warehousing distribution facility of approximately 40,000 square feet, and office area of approximately 4,000 square feet ("Facility"). Developer will execute a contract to acquire the Property which provides for a closing date in sixty (60) days (subject to two (2) 60-day extensions) and Developer agrees to exercise its diligent efforts to complete construction of the Facility within eighteen (18) months of the date that the Village Board approves this Agreement. Developer's failure to meet the dates contained in the previous sentence will not result in a breach of this Agreement provided that Developer did or is exercising diligent efforts to comply with such dates. However, the terms of this Agreement shall not become effective until and unless the Developer acquires the Property and begins conducting business from the Facility.

3. **Building Plans.** Developer shall submit its development and building plans to the Village for its prior approval, consistent with the applicable ordinances and regulations of the Village. Developer shall provide Village with evidence of its acquisition of good title to the Property.

4. **Sales Tax Sharing.** In order to make it economically feasible for Developer to substantially expand its business, including the acquisition and development of the Property, a portion of the sales tax revenue generated from the Developer's business shall be rebated by the Village to Developer.

5. **Rebate of Sale Tax Revenue.**

(a) Rebate of sales tax revenue shall commence with the sales tax revenue proceeds received by the Village from the State of Illinois at the end of the first full three (3) calendar month period immediately following the Village's issuance of a certificate of occupancy to the Developer for its Facility. The first day of the calendar month following Developer's initial retail sale at the Property shall be referred to as the "Effective Date." The parties acknowledge that the initial year that this Agreement is in effect will consist of twelve (12) full calendar months, plus one (1) partial month, being the month of the initial retail sale at the Property. Subject to the Project Cap defined in Paragraph 5 (b) below, such rebates will continue for each three-month period thereafter, utilizing the formula shown in the following schedule:

Sales Tax Revenue Distribution Formula

<u>Annual Sales</u>	<u>Share of Sales Taxes to be rebated to Developer</u>
Up to the amount of \$10,000,000.00	Village 100%, Developer 0%
From \$10,000,001.00 - \$20,000,000.00	Village 0%, Developer 100%
Above \$20,000,001.00	Village 50%, Developer 50%

(b) Developer is limited to the receipt from the Village of a total amount of \$8,000,000 of rebates from sales tax revenues pursuant to the terms of this Agreement (the "Project Cap").

(c) Subject to the Project Cap defined in Paragraph 5(b) above, the rebates herein provided shall be earned by the Developer for the fifteen (15) year period from and after the Effective Date.

6. **Business Retention Within the Village.** Developer agrees to maintain a retail sales operation within the corporate limits of the Village for a period of not less than fifteen (15) years after the Effective Date. Should Developer cease to maintain a retail operation from the Facility within the first five (5) years after the Effective Date, the Developer must pay to the Village one hundred percent (100%) of any sales tax revenues rebated to Developer under this Agreement pursuant to the sales tax sharing formula set forth in Paragraph 5, above. Should Developer cease to maintain a retail operation from the Facility between years six (6) through ten (10) following the Effective Date, Developer must pay the Village two-thirds (2/3) of all sales tax revenues rebated to the Developer by the Village under this Agreement; and should Developer cease to maintain a retail operation from the Facility between years eleven (11) and fifteen (15) following the Effective Date, Developer must pay the Village one-third (1/3) of all sales tax revenues rebated to the Developer by the Village under this Agreement. After year fifteen (15), the Developer may cease retail operations in the Village without payment to the Village of any previously rebated sales tax.

7. **Method/Time of Payment.** The Village shall make sales tax rebates to Developer quarterly within forty-five (45) days of the end of each three month period commencing on the last day of the third (3rd) full calendar month after the Effective Date. The parties acknowledge that gaps or delays in payment could arise due to delays in payments to the Village by the State of Illinois. The payments to Developer pursuant to the formula contained in Paragraph 5, above, shall be based only on actual cash receipts by the Village of its share of sales tax revenues collected from Developer by the State of Illinois. In the event there is a discrepancy between the sales amounts reported on Developer's sales tax reports and the cash receipts amount received by the Village from the State of Illinois, the Village agrees to immediately notify the Developer of such discrepancy in writing to allow the Developer an opportunity to investigate and, if appropriate, correct the error. The term "sales tax" used herein shall refer to the Village's share of (1) Retailers' Occupation Tax, Service Occupation Tax and Use Tax collected by the Illinois Department of Revenue, paid by and shown on a filed tax return of Developer ("**State Sales Tax**"), and (2) any national, state, or local sales, use, consumption,

excise, or any similar tax which does not exist as of the date hereof but which is hereafter imposed upon sales of the Developer's goods and products placed over the Internet or similar electronic means ("**Internet Tax**"). State sales tax shall not include any additional taxes which the Village may impose as a home-rule municipality under Illinois law. Should the one percent (1%) rate at which municipalities share in such revenue be increased during the term of this Agreement, sales tax shall include the amount attributable to such increase and rebates of such amounts shall be made, up to the Project Cap defined in 5(b) above.

8. **Changes in Law.** The Parties acknowledge that the agreement to distribute State Sales Tax revenues as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the State Sales Tax generated within each such municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of State Sales Tax revenues to Illinois municipalities. The Parties desire to make express provision for the effect that such a change in state law would have upon the operation of this Agreement. Accordingly, the Parties agree as follows:

(a) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period eliminate the distribution of State Sales Tax revenues to Illinois municipalities, the Village shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the eliminated State Sales Tax distributions, provided, however, that in the event that the Village does impose a municipal sales tax or other tax to provide a source of funds to replace the eliminated State Sales Tax, then in such case the Parties agree to exercise their respective best efforts to make the appropriate equitable changes to this Agreement to carry out the intent of this Agreement, which is to share on a 50/50 basis the sales tax revenues made available and produced by sales made by Frys at the Downers Grove Village location.

(b) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period eliminate the distribution of State Sales Tax revenues to Illinois Municipalities, or otherwise alter the distribution formula in a manner which prevents the Village and Developer from being able to equitably ascertain the amount of State Sales Tax revenues being received by the Village as a direct result of the retail sales activities generated by the

Developer, the Village shall have no obligation to make State Sales Tax distributions to Developer based upon the retail sales activities generated by the Developer, provided, however, in such a case, the Parties agree to exercise their respective best efforts to make the appropriate equitable changes to this Agreement to carry out the intent of this Agreement, which is to share on a 50/50 basis the sales tax revenues made available and produced by sales made by Frys at the Downers Grove Village location.

(c) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period increase the percentage of State Sales Tax revenues distributed to Illinois municipalities, the State Sales Tax distributions provided for herein shall continue but shall apply solely to the amount of municipal State Sales Tax revenues equal to one percent (1%) of retail sales activities generated by the Developer, with such distribution continuing to be made in accordance with the distribution formula contained in this Agreement.

(d) Should the Illinois General Assembly hereafter and during the State Sales Tax participation period reduce the percentage of State Sales Tax revenues distributed to Illinois municipalities, States Sales Tax distributions provided for herein shall continue but solely to the extent of municipal State Sales Tax revenues generated from retail sales activities of Developer, with such distribution continuing to be made in accordance with the distribution formula in this Agreement.

9. **Proof of Payment.** Developer shall provide the Village with monthly sales and sales tax reports and proofs of payment and reasonable access to its tax and financial records limited, however, to tax and financial records which relate to the computation and/or allocation of gross receipts, at reasonable times and places, which the Village hereby agrees to hold in strictest confidence except as is reasonably necessary to enforce the terms of this Agreement and as otherwise may be provided pursuant to the Illinois Freedom of Information Act. Developer shall execute an Illinois Department of Revenue Power of Attorney (currently Form IL-2848) designating the Village's attorney as one of Developer's agents(s) for purposes of receiving tax information, and receiving copies of returns and tax notices in the event that the Illinois Department of Revenue notifies Developer of an audit of any sales or use taxes collected by such Department. If the Village has good cause to believe that the Developer has under-reported gross receipts, then in such case, the Village may retain an independent auditor, at the Village's

sole cost and expense, to verify the sales of Developer. In the event that such independent auditor determines that there is a discrepancy in gross sales of more than one percent (1%), then all direct and reasonable costs and expenses incurred by the Village to retain the independent auditor to conduct the sales tax audit shall be promptly reimbursed to the Village by the Developer. In the event that such independent auditor fails to substantiate a discrepancy in gross sales of more than one percent (1%), then all direct and reasonable costs and expenses incurred by the Developer in the investigation shall be promptly reimbursed to the Developer by the Village. To the extent not otherwise available, Village shall provide Developer with sufficient information to verify the amount of sales tax collected by Village and attributable to sale by Developer.

10. **Conditions Precedent to Payment.** The liability of the Village to make any rebates under this Agreement is expressly conditioned on Developer's material compliance with each and every material covenant of this Agreement, including, without limitation, construction of the Facility substantially in accordance with the plans approved by the Village.

11. **Final Utilization of Economic Development Incentive.** Both Developer and Village agree that this Agreement will result in substantially increased utilization of the Property to the benefit of both the Village and the Developer. Both parties agree that upon payment of the sums stipulated in this Agreement, unless otherwise provided in writing between the parties, there will be no further extension or amendment of this Agreement. The Village acknowledges that the economic incentive provided to the Developer hereunder is a material inducement to the Developer in acquiring and improving the Property.

12. **Term of Agreement.** It is understood that this Agreement shall be effective as of the date the Village Board adopts a resolution authorizing the execution of this Agreement, and shall remain in full force and effect thereafter until all the terms hereof expire, are satisfied or settled by both parties or otherwise adjudicated. The delivery to the Developer of a resolution approving this Agreement is the Village's warranty that the subject Agreement has been duly approved and is enforceable against the Village in accordance with the terms herein contained.

13. **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed by the parties, each party agrees to perform such acts as may be reasonably necessary to consummate the terms of this Agreement.

14. **Parties Bound.** This Agreement shall be binding upon and inure to the respective legal representatives, successors, and assigns of the parties.

15. **Prevailing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Illinois.

16. **Invalidity of Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

IN WITNESS WHEREOF this Agreement has been duly authorized by the Village Board and the Board of Directors of Developer as of the date and year first above stated.

Village of Downers Grove, an Illinois home-rule municipal corporation

By: _____
Brian Krajewski, Village Mayor

ATTEST:

April Holden, Village Clerk

Fry Electronics, Inc.
a California corporation, Developer

By: _____

Subscribed and sworn to before
me this ____ day of June, 2001

Notary Public