

**AGENDA ITEM EXECUTIVE SUMMARY****Agenda Item Number: 5a****Title:****Recommendation to approve a Sales Tax Sharing Economic Incentive Agreement between City of St. Charles and Semersky Enterprises, Inc. (Audi-Exchange St. Charles)****Presenter:**

Rita Tungare, Director of Community and Economic Development

**Meeting:** Government Operations Committee**Date:** September 8, 2020**Proposed Cost:** \$2,616,000 (total incentive proposal)Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

Semersky Enterprises, Inc. (SEI), which owns and operates the Audi Exchange and Porsche Exchange in Highland Park and the Chevrolet Exchange in Lake Bluff, IL, is proposing to develop a 25,600+ sq. foot Audi Dealership and Service Facility on the 3.38 acre site located at 235 N Randall Road in St. Charles.

On June 30, 2020 Semersky Enterprises submitted a Financial Assistance Application for the proposed development of the Audi Dealership. The Financial Assistance Application details a request seeking an incentive agreement between the City and SEI to share the sales tax revenue generated from the property to cover the extraordinary development costs associated with the project, including the extension of Woodward Drive and the installation of a traffic signal on Randall Road, remediation of unsuitable soils, and improvements to the electric infrastructure.

Under the City's Economic Incentive Policy this project is considered **Business Development – Attraction**, which is eligible for financial assistance. The policy requires that two (2) of the financial assistance incentive criteria must be met in order for an incentive request to be considered. Based on the materials submitted, the incentive request satisfies six (6) of the criteria, including: business attraction, enhanced economic vitality, presence of extraordinary development costs, job creation, enhanced streetscape and pedestrian experience, and public infrastructure improvements.

The project is currently advancing through the City's building permit review process: revised plans for the on-site improvements were submitted on August 18, 2020 and are currently under review by the City.

The Kane County Department of Transportation review of the Randall Road signalized Intersection improvements is still under review. At this time, it is not clear whether SEI will be able to begin roadway work yet this season, or if it will start in Spring 2021. The construction of the on-site improvements (the dealership and service facility) will commence this fall, regardless of KDOT's approval timeline for the off-site improvements; however, the off-site roadway improvements must be complete prior to the opening of the dealership.

**Proposed Sales Tax Incentive Terms:**

The details of the requested incentive agreement are as follows:

- Total incentive requested - \$2,616,000 (Maximum Payment)
- Term - 15 years
- Sales Tax Sharing Split – 75/25
  - The incentive shall be paid through sales tax reimbursement where the dealership shall be rebated 75% of the sales tax generated by the dealership and the remaining 25% shall be retained by the City. The applicable sales tax rate is 1% of titled vehicle sales and 2% of parts sold.

- The applicant shall receive this share of quarterly sales tax until the applicant receives the total requested funds (\$2,616,000) OR the agreement reaches the 15-year term limit.
- Extraordinary development costs which are considering eligible expenses for this incentive and are subject to being paid back through reimbursed sales tax:
  - \$251,000 - Remediation of Unsuitable Soils
  - \$2,065,000 - Woodward Drive extension and Randall/Woodward intersection Improvements, including traffic signals and storm sewer improvements
  - \$300,000 - Electric Infrastructure
- In the event that the actual documented costs prove to be less than the Maximum Payment (\$2.616M), the City is under no obligation to reimburse the full Maximum Payment for the Eligible Expenses and, in the event the actual documented costs prove to exceed the Maximum Payment for the eligible expenses, such costs shall be solely at the developer's expense.

It is also important to note that this project triggers a condition in an Intergovernmental Agreement between Kane County and the City, that requires the City to contribute \$1.47M to the County for off-site Randall Road improvements (Randall Road Project Contribution) to be paid back in three payments. The drafted incentive agreement includes a clawback provision to ensure the City is repaid this \$1.47M should the dealership close or relocate outside of St. Charles. The payment schedule to the county is detailed below:

- (1) \$490,000 within one (1) year of the issuance of the permit for the construction of an intersection at Access Point E (Woodward and Randall Rd);
- (2) \$490,000 within one (1) year after the opening to the public of the intersection at Access Point E, and;
- (3) \$490,000 within three (3) years of the opening of the intersection at Access Point E to the public

**Attachments:**

1. Draft Economic Incentive Agreement
2. Abbreviated Incentive Application

**Recommendation/Suggested Action** (*briefly explain*):

Recommendation to approve a Sales Tax Sharing Economic Incentive Agreement between City of St. Charles and Semersky Enterprises, Inc. (Audi-Exchange St. Charles)

**SALES TAX REVENUE SHARING AGREEMENT**

**THIS SALES TAX REVENUE SHARING AGREEMENT** (the “**Agreement**”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **City of St. Charles**, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as the “**City**”), and **Semersky Enterprises, Inc.**, an Illinois corporation (hereinafter referred to as the “**Company**”). The Company and the City are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties**”.

**W I T N E S S E T H:**

**WHEREAS**, the City has a population of more than 25,000 persons, and is a home rule unit of government pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; and

**WHEREAS**, the City, pursuant to Section 10 of Article VII of the Constitution of the State of Illinois, is authorized to contract or otherwise associate with individuals in any manner not prohibited by law or by ordinance; and

**WHEREAS**, the City, pursuant to 65 ILCS 5/8-1-2.5 is authorized to appropriate and expend funds for economic development purposes, including, without limitation, 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; and

**WHEREAS**, the City, pursuant to 65 ILCS 5/8-11-20 is authorized to enter into economic incentive agreements relating to the development or redevelopment of land within its corporate limits and may agree to share or rebate a portion of the retailer’s occupation taxes received by the municipality that are generated by the development or redevelopment over a finite period of time; and

**WHEREAS**, the Company owns an auto dealership which will be located at 235 N Randall Road in the City of St. Charles, such property is legally described on Exhibit A, attached hereto and made a part hereof (the “**Property**”); and

**WHEREAS**, the Company intends to construct a new 25,000+ square foot Audi dealership and service facility in which to operate its business of automobile sales and servicing (“**Dealership**”), as well as certain off-site public improvements, including but not limited to the extension of the Woodward Drive right-of-way from Randall Road to the easterly terminus of the existing Woodward Drive, generally at the west property line of the Property, and the signalization at, Randall Road and Woodward Drive, as well as any Randall Road right-of-way improvements (“**Off-Site Public Improvements**”), as collectively described in more detail on Exhibit B, attached hereto and incorporated herein (the “**Project**”); and

**WHEREAS**, 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:

- A. The Project is expected to create or retain job opportunities within the City.
- B. The Project will serve to further the development of adjacent areas.
- C. Without this Agreement, the Project would not be possible.
- D. The Company meets high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution having assets of \$10,000,000 or more which attests to the financial strength of the Company.
- E. The Project will strengthen the commercial sector of the City.
- F. The Project will enhance the tax base of the City.
- G. 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 Company agree as follows:

**Section 1. Incorporation of Recitals.** The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Agreement.

**Section 2. Approval of Plans; Construction of Improvements.** It is hereby acknowledged that the Company has submitted to the City, as of the date of this Agreement, complete building plans, engineering plans and construction documents to the City for review and approval in such form and detail as the City customarily requires. The Company shall submit to the City complete plans and engineering plans for the required Woodward Drive right-of-way extension and to the Kane County Department of Transportation (“**KDOT**”) complete design and plans and all required security for completion, in such form and detail as required by the City and KDOT, for review and approval and shall, upon issuance of such permits, diligently pursue commencement and completion of construction of the Off-Site Public Improvements, all of which shall be completed prior to opening of the Dealership for business.

If the conditions set forth in this Section 2 are not met on or before December 31, 2021, the City shall have the option to terminate this Agreement.

**Section 3. Definitions.**

For purposes of this Agreement, the capitalized terms shall have the following meanings:

**"Department"** - means the Illinois Department of Revenue.

**“Eligible Expenses”** – means the components of the Project related to the required road improvements, stormwater storage improvements, traffic signal installation, electric infrastructure, and soil remediation, the details and cost of which are further defined and provided for in Exhibit C, attached hereto and made a part hereof.

**“Maximum Payment”** - means the amount not to exceed \$2,616,000.00, as provided for in this Agreement.

**“Randall Road Project Contribution”** – means the amount of \$1,470,000.00 to be paid by the City to the County of Kane (“**County**”) pursuant to that certain Intergovernmental Agreement by and between the City and the County, required as a result of the development of the Project, including but not limited to the construction of the Off-Site Public Improvements.

**“Sales Tax(es)”** - means any and all of those taxes imposed by the State of Illinois pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and the Retailer's Occupation Tax Act, each as supplemented and amended from time to time, or any substitute taxes

therefor as provided by the State of Illinois in the future. The term Sales Tax(es) shall also include the Home Rule Municipal Retailers' Occupation Tax and the Home Rule Municipal Service Occupation Tax imposed by the City pursuant to Chapter 3.36 of the City Code, for the sale of any item of tangible personal property not titled or registered with an agency of the State of Illinois. or any other municipal use, retail or service occupation tax imposed by the City, except as provided by Section 6(e) hereof The amount of Sales Taxes distributed to the City by the Department is hereinafter referred to as the “**City's Share**”.

“**Sales Tax Commencement Date**” – means the first day of the next calendar month after the Company opens for business on the Property. If the Company opens on the first day of the month, said month shall be considered the first month of the Sales Tax Participation Period.

“**Sales Tax Distribution(s)**” - means the distribution of Sales Taxes pursuant to the terms of this Agreement.

“**Sales Tax Participation Period**” - means the period of fifteen (15) Sales Tax Years beginning on the Sales Tax Commencement Date.

“**Sales Tax Year(s)**” - means the twelve (12) consecutive month period starting on the Sales Tax Commencement Date and ending twelve (12) months later, and each consecutive succeeding twelve (12) month period thereafter.

**Section 4. Sales Tax Distributions.** Provided the Company shall comply with, and continue to be in compliance with, the provisions of this Agreement, subject to the expiration of any cure period as provided in Section 13 hereof, the City shall make Sales Tax Distributions as follows:

- a. Seventy-five percent (75%) of the City’s Share of the Sales Tax shall be distributed to the Company (“**Company Share**”); and
- b. The remainder of the sales tax (25%) of the City’s Share of the Sales Tax shall be retained by the City and paid into the City’s General Fund (“**City’s Retained Share**”).

Notwithstanding the foregoing, the total amount of the Company Share of Sales Tax Distributions paid to the Company during the Sales Tax Participation Period, shall be the lesser of (i) the actual amount of City-approved documented costs of the Eligible Expenses and (ii) the Maximum Payment. Within thirty (30) days after the issuance of a certificate of occupancy for the Dealership and acceptance of completion of the Off-Site Public Improvements, the Company shall provide the City with all documentation the City reasonably requires, including but not limited to invoices,

sworn statements, pay requests and lien waivers, detailing the actual Eligible Expenses incurred by the Company for the Project. Within thirty (30) days after receipt by the City, the City and the Company shall mutually agree on the actual Eligible Expense reimbursement under this Agreement. In the event that the actual documented costs prove to be less than the Maximum Payment, the City is under no obligation to reimburse the full Maximum Payment for the Eligible Expenses and, in the event the actual documented costs prove to exceed the Maximum Payment for the Eligible Expenses, such costs shall be solely at the Company's expense.

For each Sales Tax Year during the Sales Tax Participation Period, the City shall make quarterly Sales Tax Distributions. The City shall compute the Sales Tax Distribution originating from taxable sales activities on the Project for each quarterly period on a calendar year basis (March 31, June 30, September 30 and December 31) and make the Sales Tax Distribution in accordance with the formula set forth above. The City shall make the Sales Tax Distribution within thirty (30) days of receipt of the Sales Tax Information from the Illinois Department of Revenue for the applicable quarterly period, and each Sales Tax Distribution shall be accompanied by an affidavit from the City's Director of Finance setting forth the determination of such Sales Tax Distribution. The affidavit from the City shall include the Sales Tax Distribution received by quarter for the reporting period as well as a breakdown, itemizing the distribution provided for and as detailed in Section 4 (b). Provided, however, in no event shall the City make any Sales Tax Distribution until the City shall actually receive payment of Sales Tax revenue from the Department.

If the payment due date does not fall on a business day, payment shall be made on the next following business day. If, for any reason, the Department fails to distribute all of the Sales Taxes due to the City that are attributable to the Property for an applicable period, then the City shall make the Sales Tax Distribution (calculated pursuant to the formula set forth above) based upon the amount

actually received by the City from the Department attributable to the Property. Upon receipt of any additional Sales Taxes attributable to the Property for such period, the City shall make an additional distribution within thirty (30) days of receipt of such additional Sales Taxes from the Department.

**Section 5. Limitations on Distributions.** The Sales Tax Distributions set forth herein shall be subject to the following additional terms and conditions:

- (a) Such Sales Tax Distributions shall be payable solely from Sales Taxes actually received (whether by check or electronic transfer) by the City from the Department and originating from the taxable sales activities on the Property, and the City shall not be obligated to pay any Sales Tax Distributions identified herein from any other fund or source.
- (b) The City shall not be required to affect any Sales Tax Distributions from any Sales Taxes generated after expiration of the Sales Tax Participation Period. The foregoing, however, shall not relieve the City from effecting Sales Tax Distributions from Sales Taxes paid after expiration of the Sales Tax Participation Period, subject to the limitations of this Agreement, to the extent that such Sales Taxes were generated during the Sales Tax Participation Period.
- (c) If at any time during the term of this Agreement, the Company (i) relocates or otherwise transfers its Dealership operations occurring on the Property to a site located outside the corporate limits of the City (a “**Company Prohibited Relocation**”), or (ii) should the Dealership be closed other than for reasons of improvements or remodeling or vacated and a new or successor dealership, pursuant to Section 18 below, not located and open for business on the Property, and which successor dealership expressly assumes in writing to be subject to the provisions of this Section 5(c) within sixty (60) days of such closure / vacation (a “**Dealership Closure**”), then in either case this Agreement shall terminate and the Company shall not be entitled to any further Sales Tax Distributions with respect to retail sales made thereafter. Additionally, upon either (x) a Company Prohibited Relocation or (y) a Dealership Closure where the new or successor dealership does not assume the Company obligations under this Agreement, the Company shall pay to the City, within seventy-five (75) days after the occurrence of either event, the positive difference (if any) obtained by deducting from the amount of the Randall Road Project Contribution to be paid by the City the accrued amount of the City’s Retained Share of Sales Taxes arising from sales on the Property through the date of such occurrence. Upon full payment to the City of the Randall Road Project Contribution from the City’s Retained Share Sales Taxes, in all regards, this provision shall terminate.

**Section 6. Changes in Law.** The parties acknowledge that the agreement to distribute Sales Taxes 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 taxable sales within each such

municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. The parties desire to make express provision for the effect of such change upon the operation of this Agreement.

Accordingly, the parties agree as follows:

- (a) The City 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 Sales Tax Distributions herein contemplated.
- (b) Should the Illinois General Assembly hereafter eliminate the distribution of sales tax revenues to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the City from being able to ascertain with specificity the amount of Sales Taxes being received by the City as a direct result of the taxable sales activities generated on the Property, the City shall have no obligation to make Sales Tax Distributions to the Company based upon the taxable sales activities generated on the Property, except to the extent provided otherwise in subparagraph (e) below. However, in the event the City can ascertain with specificity the amount of Sales Taxes being received by the City from the Company's records (certified copies of which the Company shall provide to the City), the City shall make the Sales Tax Distributions.
- (c) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period increase the percentage of sales tax revenues distributed to Illinois municipalities, the Sales Tax Distributions provided for herein shall continue but shall apply solely to the amount of Sales Taxes equal to one percent (1%) of taxable sales activities, with such distribution continuing to be made in accordance with the distribution formula contained in Section 4.
- (d) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period reduce the percentage of sales tax revenues distributed to Illinois municipalities, Sales Tax Distributions provided for herein shall continue to be made in accordance with the distribution formula contained in Section 4.
- (e) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period eliminate, reduce or alter the formula for the distribution of sales tax revenues, as contemplated in subparagraphs (b) or (d) hereof, and should the City, in response to and during any such period of elimination, reduction or alteration occurring within the Sales Tax Participation Period, if authorized by law, impose or increase its municipal sales tax on retail sales activities occurring within the City's boundaries, and provided the amount of sales tax revenues generated by the Property can thereafter be determined with specificity, then the sales tax revenues generated thereby, up to an amount equal to one (1%) of the eligible retail sales activities of the Property, shall be distributed in accordance with the distribution formula contained in Section 4 (subject to the various limitations contained herein).

**Section 7. Obtaining Sales Tax Information.** The City shall provide such authorization and/or take such additional actions as may reasonably be required to obtain necessary information from the Department to enable the City to determine the amount of Sales Taxes during any portion of the Sales Tax Participation Period. The Company shall take all reasonable actions necessary to provide the Department with any and all documentation, to the extent reasonably available, that may be required by the Department and shall provide the City with a power of attorney letter addressed to, and in a form satisfactory to, the Department authorizing the Department to release all general gross revenue and sales tax information relating to the Property to the City, which letter shall authorize disclosing such information to the City during the Sales Tax Participation Period. Such letter shall be in a form attached hereto as Exhibit D or such other or additional forms as required from time to time by the Department in order to release such information to the City.

In the event the Department refuses or otherwise fails to make the necessary sales tax information available to the City, the Company shall furnish to the City copies of the ST-1 and ST-2 or equivalent monthly statements filed with the Department relating to the Property, certified by the Company, showing the amount of Sales Taxes paid during such month by the Company, together with evidence of the payment of such revenues, and the City agrees to rely upon such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to the Company hereunder.

If the Department stops using either the ST-1 or ST-2 or equivalent monthly statement forms for the reporting of gross sales receipts and the determination of gross sales tax obligations, the Company shall furnish to the City, and the City, in fulfilling its obligations under this Agreement, shall rely upon, such equivalent or replacement forms as the Department may then employ for

determining and receiving such information, provided the City receives certified copies of such equivalent or replacement forms and evidence of payment of the sums referred to in such forms.

The Company acknowledges that the City shall have no obligation to make Sales Tax Distributions to the Company that reflect the taxable sales activities on the Property unless and until the City receives from the Company the documentation and evidence of payment referred to in this Section; provided, however, that the City shall request all such documentation from the Company in writing.

**Section 8. Confidentiality of Information.** The Company hereby claims that the information received, or to be received, by the City pursuant to this Agreement is proprietary and confidential and that the disclosure of such information would cause competitive harm to the Company; therefore, to the fullest extent permitted by law, the City shall treat information received by it as confidential financial information under the Illinois Freedom of Information Act. To the extent the City is required to disclose such information, it shall limit such disclosure, to the extent possible, to the release of general "gross" revenue and sales tax information so that proprietary information of individual businesses and purchasers is protected and kept confidential, including, but not limited to, the specifics of the Company's tax returns.

**Section 9. Amended Returns and Audits.** In the event the Company amends any sales and use tax return upon which Sales Tax Distributions were made to the Company pursuant to this Agreement, the Company will notify the City of such amendment within ten (10) days of filing such amended return and the City shall use its reasonable best efforts to obtain such information from the Department. If, as a result of an amended return, the City owes an additional distribution to the Company, such distribution shall be made promptly upon receipt by the City of such additional Sales Taxes. If, as a result of an amended return, the City is entitled to receive a portion of a Sales Tax

Distribution back, the Company shall repay such amount to the City within thirty (30) days of written notice from the City.

In the event that the Company is audited by the Department, the Company shall notify the City of such audit within ten (10) days of completion of said audit. If such audit results in adjustment to sales and use tax returns previously submitted upon which Sales Tax Distributions were made, upon final disposition of any changes made as a result of such audit, any amount due and owing to a party shall be made in the manner described in the preceding paragraph.

**Section 10. Compliance with Laws.** Subsequent to the Commencement Date, and for the duration of the Sales Tax Participation Period, the Company shall:

- (a) be in compliance with the terms and conditions of this Agreement and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Dealership and/or Property, as the same may, from time to time, be in force and effect. The Company specifically represents and warrants, but not by way of limitation of the foregoing, that it shall not knowingly take any actions that would cause this Agreement to be in violation of the provisions of 65 ILCS 5/8-11-21, as amended from time to time. The Company hereby agrees to indemnify and hold the City harmless from all liability, loss, cost, fine, penalty, interest or other expense, including court costs and attorneys' fees relating to any such judgments, awards, litigation, suits, demands or proceedings that may result from any violation of this provision.
- (b) To the extent required by law, the Company shall comply with the Prevailing Wage Act (for purposes of this Section, the “**Prevailing Wage Act**”) of the State of Illinois, 820 ILCS 130/0.01 *et seq.*, as amended. The Company agrees to indemnify, hold harmless, and defend the City, its governing body members, officers, and agents, including independent contractors, consultants and legal counsel, servants and employees thereof (“**Indemnified Parties**”) against all loss, cost, damage, judgments, awards, fines or interest sustained by the Indemnified Parties resulting from any regulatory actions, complaints, claims, suits, liabilities, liens, judgments, including reasonable attorneys’ fees, to the extent caused by noncompliance with the Prevailing Wage Act, including, but not limited to a complaint by the Illinois Department of Labor under Section 4(a-3) of the Prevailing Wage Act. The indemnification obligations of this Section on the part of the Company shall survive the termination or expiration of this Agreement. In any such claim, complaint or action against the Indemnified Parties, the Company shall, at its own expense, appear, defend and pay all charges of reasonable attorney’s fees and all reasonable costs and other reasonable expenses arising therefrom or incurred in connection therewith.

(c) Should the Company, for any reason, fail to remain in continual compliance with the standards set forth herein, the City's duty to make the Sales Tax Distributions during such period of non-compliance shall be suspended. If, at any time during the balance of the term of the Sales Tax Participation Period, the Company shall re-establish compliance with all of the standards set forth herein and the City shall acknowledge that such compliance exists, the City's duty to make Sales Tax Distributions as herein provided for shall resume; provided, however, that a Sales Tax Distribution for a Sales Tax Year during which the Company was out of compliance shall not be made and the period of time during which the Company was out of compliance with the standards set forth herein and for which the Company was properly noticed shall be counted in the maximum 15-year term of the Sales Tax Participation Period. Notwithstanding the foregoing, however, for purposes of this Agreement, the Company shall not be deemed to be out of compliance with the standards set forth herein if, following the Company's receipt of written notice from the City of non-compliance, the Company cures such non-compliance to the reasonable satisfaction of the City within the provisions and time constraints set forth in Section 13 herein.

**Section 11. Limitation of Liability.** Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the City created by or arising out of this Agreement shall not be a general debt of the City on or a charge against its general credit or taxing powers, but shall be payable solely out of the City's Share of Sales Taxes as set forth in this Agreement. No recourse shall be had for any payment pursuant to this Agreement against any officer, employee, attorney, elected or appointed official, past, present or future of the City.

**Section 12. Appropriation.** The City shall provide for payments required under this Agreement in its annual appropriation ordinance for the fiscal year in which such payment may be due.

**Section 13. Default.** In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall 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 thirty (30) days after receipt of written notice of such default; provided, however, that said thirty (30) day period shall be extended (i) if the alleged violation or default is not reasonably

susceptible to being cured within said thirty (30) day period and (ii) if the party in default has promptly initiated a cure of the violation or default and (iii) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

**Section 14. Law Governing/Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the Illinois state courts and venue shall be exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

**Section 15. Time.** Time is of the essence under 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.

**Section 16. No Waiver or Relinquishment of Right to Enforce Agreement.** Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall 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, but the same shall continue in full force and effect.

**Section 17. Notices.** All notices and requests required pursuant to this Agreement shall be sent by personal delivery, overnight courier or certified mail, return receipt requested, as follows:

To the Company: Audi Exchange – St. Charles  
707 Skokie Blvd., Suite 600  
Northbrook, Illinois 60062  
Attn: Chris Orth  
(847) 940-2200

with copies to: Garfield & Merel, Ltd.  
2 Prudential Plaza  
180 North Stetson Street, Suite 1300  
Chicago, Illinois 60601  
Attn: Alan Garfield  
Phone: (312) 288-0111  
Email: Garfield@garfield-merel.com

To the City: City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174  
Attn: City Administrator  
Phone: (630) 377-4422  
Email: CAO@stcharlesil.gov

with copies to: Storino, Ramello & Durkin  
9501 W Devon Avenue, Suite 800  
Rosemont, Illinois 60018  
Attn: Nicholas S. Peppers  
Phone: (847) 318-9500  
Email: [npeppers@srd-law.com](mailto:npeppers@srd-law.com)

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, overnight courier or by certified or registered mail, return receipt requested, with proof of delivery thereof. Notices shall be deemed delivered to the address set forth above (i) when delivered in person on a business day, (ii) on the same business day received if delivered by overnight courier.

**Section 18. Assignments.** This Agreement may not be assigned without the City's consent, such consent not to be unreasonably withheld, and in any event, such consent shall be granted in the event such assignment does not result in a violation of 65 ILCS 5/8-11-21 or other applicable law, and said assignment is to a vehicle dealer (i) maintaining the then existing Dealership on the Property in substantially the same manner, or (ii) having as a principal activity on the Property the sale of new

and used vehicles and which dealership is not already located within the City, and (iii) expressly assuming in writing to the City the rights, duties and obligations under this Agreement, including but not limited to Section 5(c) above. The Company hereby agrees to indemnify and hold the City harmless from all liability, loss, cost or expense, including court costs and attorneys' fees relating to any such judgments, awards, litigation, suits, demands or proceedings with regard to any assignment that violates this Section.

Upon any such assignment, any reference to the Company hereunder shall from and after the effective date of the assignment, be deemed such assignee and the Company shall thereupon have no further rights or obligations hereunder, except for the indemnification provisions set forth herein or as specifically provided for in the document governing such assignment.

Notwithstanding the foregoing, the Company may collaterally assign its rights hereunder to any Company lenders as security for loans to the Company and/or the title holder of the Property.

**Section 19. Force Majeure.** Material performance by either Party hereunder shall not be deemed to be in default as a result of unavoidable delays or defaults due to war, insurrection, strikes, lockouts, riots, extreme adverse weather conditions (such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, tornadoes or cyclones), earth-quakes, fires, casualties, acts of God, acts of a public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, or any other like event or condition beyond the reasonable control of the Party affected thereby which in fact interferes with the ability of such Party to discharge their respective obligations hereunder and which by the exercise of reasonable diligence the party affected was unable to prevent or mitigate (collectively, “**Force Majeure Events**”); provided, however, that unavoidable delays shall not include (i) economic hardship or impracticability of performance, (ii) commercial or economic frustration of purpose, or (iii) a failure of performance by

a contractor or vendor (unless caused by Force Majeure Events) and the party claiming a Force Majeure Event shall notify the other party in writing within twenty-one (21) days of the claimed Force Majeure Event, specifying, in sufficient detail, the Force Majeure Event and the reasons preventing performance of its obligations under this Agreement and then the performance time for such act or action shall be extended for a period equivalent to the period of such delay approved by the other party of the Force Majeure Event. Upon cessation of the Force Majeure Event, the party affected must as soon as reasonably practicable recommence its delayed performance under this Agreement.

**Section 20. Third Party Beneficiaries.** The City and the Company 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 shall have any rights or claims against the City arising from this Agreement.

**Section 21. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City, the Company and the Company's permitted assigns.

**Section 22. City Approval or Direction.** Where City approval or direction is required by this Agreement, such approval or direction means the approval or direction of the City Council of the City unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met.

**Section 23. Section Headings and Subheadings.** All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

**Section 24. Authority to Execute.** The Company hereby represents and warrants that it has the requisite authority to enter into this Agreement and the individual signing this Agreement on behalf of the Company is a duly authorized agent of the Company and is authorized to sign this

Agreement. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council of the City to execute this Agreement, all requisite action by the City having been taken.

**Section 25. Integration/Amendment.** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Company 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, other than as herein set forth.

No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by both parties hereto. However, whenever under the provisions of this Agreement any notice or consent of the City or the Company is required, or the City or the Company is required to agree or to take some action at the request of the other, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the Mayor or his designee and for the Company by any officer or employee as the Company so authorizes.

**Section 26. Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

**Section 27. Term.** Unless sooner terminated by agreement of the parties or otherwise pursuant to the provisions of this Agreement, but subject to Section 5(b), this Agreement shall be effective upon the execution by both parties thereto and shall continue in effect until the Sales Tax Distributions to the Company have reached the Maximum Payment or the expiration of the Sales Tax Participation Period, whichever occurs first. At such time, this Agreement shall become null and void and be of no further force or effect.

**Section 28. Counterparts.** This Agreement may be executed in two (2) or more counterparts each of which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals as of the date and year first written above.

**CITY OF ST. CHARLES**, an Illinois  
Municipal Corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

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

**SEMERSKY ENTERPRISES, INC.**, an Illinois  
corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF KANE            )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond Rogina, Mayor of the City of St. Charles, and Charles Amenta, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said City, for the uses and purposes therein set forth; and said City Clerk then and there acknowledged that he, as custodian of the corporate seal of the City of St. Charles, did affix the corporate seal of said City to said instrument, as his own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION**

LOT 1 OF INTERNAL COMBUSTION SUBDIVISION, BEING PART OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE PRINCIPAL MERIDIAN, RECORDED MAY 21, 2010 AS DOCUMENT 2010K032638, IN KANE COUNTY, ILLINOIS.

PIN: 09-29-480-001-0000

ADDRESS: 235 RANDALL ROAD, ST. CHARLES, ILLINOIS

## **EXHIBIT B**

### **PROJECT DESCRIPTION**

Construction and development of a new 25,000+ square foot Audi dealership and service facility in which to operate its business of automobile sales and servicing (“Dealership”), as well as certain off-site public improvements, including but not limited to the extension of the Woodward Drive right-of-way from Randall Road to the easterly terminus of the existing Woodward Drive, generally at the west property line of the Property, and the signalization at Randall Road and Woodward Drive, as well as any Randall Road right-of-way improvements (“Off-Site Public Improvements”) (the “Project”), in accordance with plans approved by the City of St. Charles and Kane County Department of Transportation.





Southeast View from Randall Road

Audi Exchange St. Charles  
225 N. Randall Rd - St. Charles, IL  
July 30th, 2019 | project 2019-068



Southeast View from Sidewalk

Audi Exchange St. Charles  
225 N. Randall Rd - St. Charles, IL  
July 30th, 2019 | project 2019-068



Northwest View from Parking Lot

Audi Exchange St. Charles  
225 N. Randall Rd - St. Charles, IL  
July 30th, 2019 | project 2019-068



Southeast View from Woodward Drive

Audi Exchange St. Charles  
225 N. Randall Rd - St. Charles, IL  
July 30th, 2019 | project 2019-068

**EXHIBIT C**

**ELIGIBLE EXPENSES**

Unsuitable Soil:	\$250,000
Woodward Dr./Randall Rd., Traffic Signal, Turning Lanes & Stormwater*	\$2,066,000
St. Charles Electric Utility Infrastructure (Allowance)	<u>\$300,000</u>
Extraordinary Costs Total:	\$2,616,000

\* per plans approved by City of St. Charles and KDOT

**EXHIBIT D**

**AUTHORIZATION TO RELEASE SALES TAX INFORMATION**

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("**IDOR**") to disclose to the designated city, town, village or county the amount of the local government's share of sales tax received on behalf of the taxpayer. Reporting for a period beginning with tax collected by the department during \_\_\_\_\_, \_\_\_\_\_ and  
(Beginning Month/Year)

ending with tax collected by the department in \_\_\_\_\_, \_\_\_\_\_ .  
(Ending Month/Year)

This information is to be released to the village, city, town or county of \_\_\_\_\_, attn: Clerk, Treasurer, Finance Officer, Comptroller, etc.

**BUSINESS INFORMATION:**

\_\_\_\_\_  
(Illinois Business Tax Number)

\_\_\_\_\_  
(Taxpayer/Business Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, Town, Village or County)

**TAXPAYER: The undersigned is an owner/authorized officer of this business.**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Telephone Number)

**Note:** All requests must have a beginning and ending date. Incomplete request will be returned to the local government.

**Attachment:  
Abbreviated Incentive Application**

July 29, 2020

Community & Economic Development Department  
c/o Mr. Russell Colby  
Planning Division Manager  
2 E. Main Street  
St. Charles, IL 60174-1984

RE: Semersky Enterprises, Inc. / Audi Exchange – St. Charles, IL

Dear Mr. Colby:

Semersky Enterprises, Inc. is pleased to present the information below and attached in response to the City of St. Charles Financial Assistance Application Package 1 & 2.

As you know, Semersky Enterprises, Inc. ("SEI") acquired approximately 27 acres of vacant land in the NWQ of N. Randall Road and St. Rt. 64 (Main Street) in St. Charles in 2015 for the purpose of developing an Audi Exchange car dealership and other mixed-use properties.

Conditioned upon approval of the Financial Assistance Application and adoption of a Sales Tax Sharing Agreement between SEI and the City of St. Charles, SEI will develop a new Audi Exchange-St. Charles, of approximately 25,664 square feet, on the 3.38 acre vacant parcel immediately north of the Mercedes Benz Dealership. The address of the development parcel is 235 N. Randall Road. The use of the shared sales tax revenue will be to reimburse SEI for its front-funded expenditure of dollars to extend Woodward Drive eastward to N. Randall Road and the installation of a fully signalized intersection. Additionally, shared funds will be used to reimburse SEI for extraordinary site work costs on the 3.38 acre development site and the Woodward Dr. extension area due to the poor quality of existing fill. The funds will also be used to reimburse SEI for the upfront costs of installing the looped, underground electric infrastructure from the Mercedes Benz Dealership to the transformer located at Woodward Dr. at Oak St.

Below is a summary of information requested in the Application Packet:

**Description of Site and Building:**

- 3.38 Acre Site
- New 25,664 SF +/- Audi Dealership Building
- Address: 235 N. Randall Road, St. Charles, IL 60174
- PIN: 09-29-480-001
- See attached Site Plan, Aerial Master Exhibit, representative renderings and Stormwater Management & Utility Availability Due Diligence Memorandum

**Current and Proposed Uses:**

- Current Use: Vacant Land
- Proposed Use: Audi Exchange-St. Charles Dealership

**Description of End Users:**

- End User: Semersky Enterprises, Inc. (d/b/a Audi Exchange-St. Charles)

**Project Start and End Dates:**

- Start Construction: Immediately upon completion of the Sales Tax Sharing Agreement
- Occupancy: Late Summer/Fall 2021
- Woodward Drive and Traffic Signal installation Late Summer/Fall 2021

**Name of Developer and Business Owner:**

- Semersky Enterprises, Inc. (Developer, Business Owner and Operator)
- The business will operate under the assumed name of Audi Exchange-St. Charles
- 235 N. Randall Rd. Property Title: Randall Road-Woodward Drive LLC

**Estimated Development Costs:**

- Land: \$2,280,000
- Unsuitable Soil: \$250,000\*\*\*
- Building: \$8,603,025
- FF&E: \$2,995,000
- Woodward Drive Extension and Signal: \$2,083,000\*\*\*
- Underground Electric Infrastructure: \$300,000\*\*\*
- **Total Project Estimated Costs: \$16,511,025**
  
- Categories of requested Sales Tax Assistance designated with \*\*\* above

**Overview of Private Sector Financing:**

- Equity: Semersky Enterprises, Inc.
- Debt: Audi Financial Services and Wintrust Financial Corporation

**Amount of Sales Tax Assistance:**

- \$2,633,000 (Use: Recover SEI front-funded costs of Woodward Dr., Traffic Signal, N. Randall Rd. improvements, Unsuitable Soil and Electric Infrastructure)

**Profitability: NA**

**Public Benefit:**

- **Productivity:** The proposed development will convert long vacant land to productive property for the St. Charles community.
- **Permanent Jobs Created:** New Permanent Job Creation (52 Jobs / Salaries = \$3,000,000 per year.)
- **Construction Jobs Created:** New Construction Job Creation
- **Retailers Benefit:** Positive impact of 52 employees and Audi Exchange customers on St. Charles restaurants, other retailers and service providers.
- **Infrastructure Improvements:** Extension of Woodward Dr., Traffic Signal at N. Randall Rd., N. Randall Rd. improvements, stormwater management and electric infrastructure.
- **Strengthen Property Tax Base:** Increase Property Tax Base of City of St. Charles
- **Strengthen Sales Tax Base:** Increase Sales Tax Base of City of St. Charles (Est. \$33,000,000 annual sales +)

- **Promotes Economic Development:** Promotes further Development of immediate area resulting from SEI investment and Woodward Drive extension. Two examples of new development described below.
- **Expands Retail Choices:** New retail choices (Audi product line) for St. Charles residents and service of same.
- **Introduces a new, involved Corporate Citizen:** Adds a new community involved corporate citizen in Semersky Enterprises, Inc.

#### **Project Narrative:**

As described above, the proposed Audi Exchange-St. Charles project will improve 3.38 acres of vacant land with a new, high quality building and landscaped site on N. Randall Rd. The development and operation of the Audi Exchange-St. Charles will create permanent full time jobs in the community. Mr. Semersky has a proven track record of developing and operating auto dealerships. He owns and operates the Audi Exchange and Porsche Exchange in Highland Park and the Chevrolet Exchange in Lake Bluff. Each of these dealerships contribute significantly to their respective communities by virtue of property taxes, sales taxes, employee purchases in the area, customers with disposable income and community involvement by supporting important community initiatives.

With respect to the architecture, the Audi Exchange-St. Charles has been designed as a single story dealership utilizing the most current approaches to high-end dealership design. From custom perforated, corrugated metal siding to vast areas of glass, it is designed to be a showcase for the new intersection at Woodward Dr. and Randall Rd. Like all dealerships, our building is divided into two sections, Service and Sales. We emphasize the separation, to reduce bulk, by stepping-back the façade where vehicles enter and exit the service lane. This feature further establishes the sales areas to be the focal-point of passer-by traffic. Site design played an integral part in the project. The thirteen (13) feet of grade change from west to east allowed us the opportunity to soften the plateau affect by terracing the landscaping with retaining walls along Randall Rd. The extension of Woodward Dr., in conjunction with retaining walls, afforded us an opportunity to create custom dealership signage as depicted in the 3D renderings. Further, low-profile, site signage has been designed to assist in way-finding and to meet Audi Corporate Brand requirements

The approximate 550' extension of Woodward Dr. and installation of a traffic signal at Woodward Dr. and N. Randall Rd., the cost of which will be front-funded by Semersky Enterprises, Inc., will accomplish a long time planning objective of the City of St. Charles and Kane County, as described in the Intergovernmental Agreement dated November 14, 2006. The Woodward Dr. Extension will improve traffic circulation in the NWQ as well as at the N. Randall Rd. and Main St. intersection. The improved circulation and property visibility in the area will promote further investment and development in the NWQ and NEQ of N. Randall Rd. and Main St.

Please see the attached Woodward Dr. SEI – Roadway Improvement Exhibit and the SEI Master Exhibit, which shows SEI acquired property. SEI looks forward to working with the City of St. Charles to promote development of these parcels for SEI and other uses that the City feels are appropriate.

As you know, one of the Semersky sites, the 1.79 acres at the NWC of N. Randall Rd. and W. Main St., is under contract to GMX for development of a Thorntons gas station and convenient store. The land sale to GMX and development of Thorntons is conditioned upon the Audi Exchange-St. Charles development going forward, Woodward Rd. extension commencing and

City of St. Charles  
Mr. Russell Colby  
July 29, 2020  
Page 4 of 4

Thorntons obtaining approval of the right-in-right-out access on N. Randall Rd. The Thorntons project will add approximately \$15 million in annual sales, including the sale of approximately 4,560,000 gallons of fuel. In addition, we are working on a sale contract for a vacant parcel north of Aldi Food Market at 2670 W. Main St. for development of a 10,000 SF building. The development of the later property is conditioned upon the extension of Woodward Dr.

The proposed Audi Exchange – St. Charles development is an expensive undertaking requiring significant investment by Semersky Enterprises, Inc. and Mr. Semersky personally. The extraordinary upfront costs of the Woodward Drive extension, the traffic signal, N. Randall Rd. turning lanes, unsuitable soil remediation and electric utility infrastructure push the project costs to a point where a request Sales Tax Sharing Agreement is required to make the project feasible.

The financial, construction and operational risk is borne by Semersky Enterprises, Inc. in that they will front-fund the Woodward Drive Extension, provided a Sales Tax Sharing Agreement is approved. It is anticipated that 75% of the City's Sales Tax Revenue from Audi Exchange-St. Charles sales will be refunded to Semersky Enterprises, Inc. and 25% will be paid to the City's General Fund until the front-funded \$2,633,000 is recovered. Thereafter 100% of the Sales Tax Revenue will be retained by the City of St. Charles.

**Other Subsidies:** None

**Ownership Structure (As described above):**

- Semersky Enterprises, Inc. (Developer, Business Owner and Operator)
- The business will operate under the assumed name of Audi Exchange-St. Charles
- 235 N. Randall Rd. Property Title: Randall Road-Woodward Drive LLC

**Principal Profile:**

- Ernie Semersky
- Home Address: 1301 E. Loch Lane, Lake Forest, IL 60045
- DOB/SSAN: Confidential
- SEI Dealership Websites:
  - [www.audiexchange.com](http://www.audiexchange.com)
  - [www.4porsche.com](http://www.4porsche.com)
  - [www.chevyexchange.com](http://www.chevyexchange.com)

The Semersky Enterprises, Inc. team looks forward to working with the City of St. Charles and to beginning this project and developing a long term relationship with the St. Charles community.

Very truly yours,



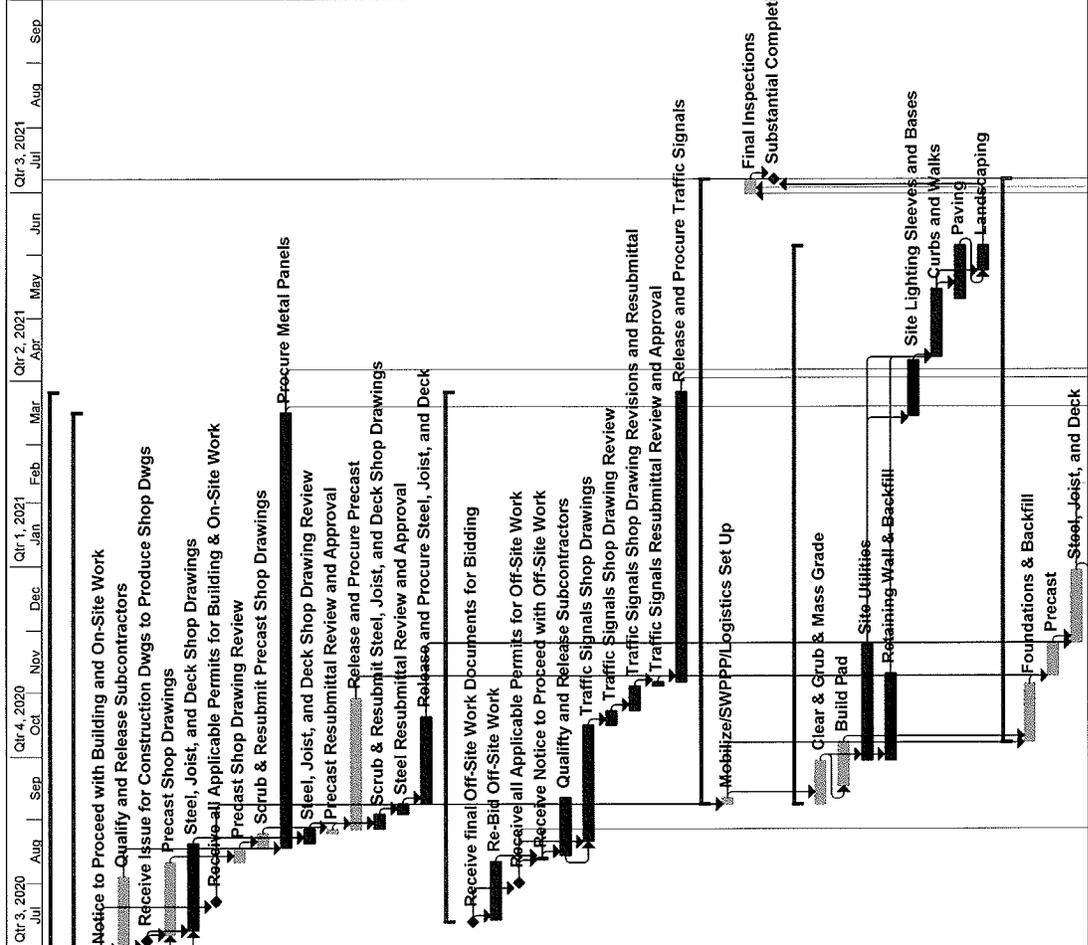
Jack E. Frigo

Encl.

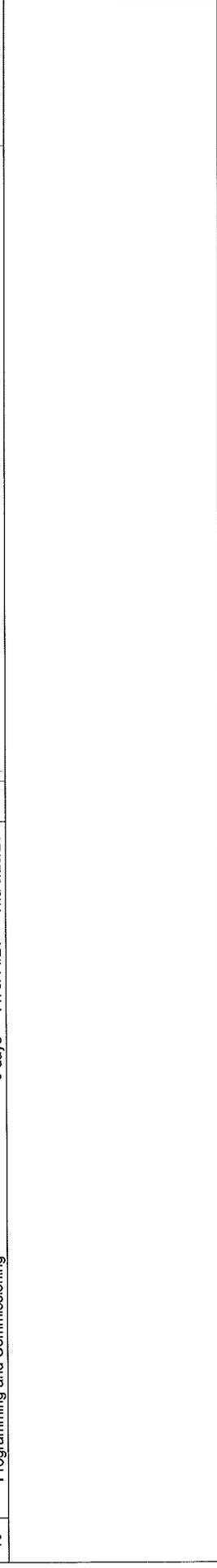
cc Ernie Semersky  
Chris Orth

**Project Timeline**

ID	Task Name	Duration	Start	Finish	Chr 3, 2020	Chr 4, 2020	Chr 1, 2021	Chr 2, 2021	Chr 3, 2021
1	<b>Preconstruction / Project Administration</b>	<b>186 days</b>	<b>Thu 6/25/20</b>	<b>Thu 3/25/21</b>	Jun	Jul	Aug	Sep	Oct
2	<b>Building / On-Site Construction</b>	<b>188 days</b>	<b>Thu 6/25/20</b>	<b>Mon 3/15/21</b>	Jun	Jul	Aug	Sep	Oct
3	Notice to Proceed with Building and On-Site Work	0 days	Thu 6/25/20	Thu 6/25/20	Jun	Jun	Jun	Jun	Jun
4	Qualify and Release Subcontractors	25 days	Tue 6/30/20	Mon 8/3/20	Jun	Jul	Jul	Jul	Jul
16	Receive Issue for Construction Dwg to Produce Shop Dw	0 days	Fri 7/3/20	Fri 7/3/20	Jul	Jul	Jul	Jul	Jul
5	Precast Shop Drawings	25 days	Tue 7/7/20	Mon 8/10/20	Jul	Jul	Jul	Jul	Jul
10	Steel, Joist, and Deck Shop Drawings	30 days	Thu 7/9/20	Wed 8/19/20	Jul	Jul	Jul	Jul	Jul
11	Receive all Applicable Permits for Building & On-Site Work	0 days	Wed 7/22/20	Wed 7/22/20	Jul	Jul	Jul	Jul	Jul
6	Precast Shop Drawing Review	5 days	Tue 8/11/20	Mon 8/17/20	Jul	Jul	Jul	Jul	Jul
7	Scrub & Resubmit Precast Shop Drawings	5 days	Tue 8/18/20	Mon 8/24/20	Jul	Jul	Jul	Jul	Jul
17	Procure Metal Panels	150 days	Tue 8/18/20	Mon 3/15/21	Jul	Aug	Sep	Oct	Nov
12	Steel, Joist, and Deck Shop Drawing Review	5 days	Thu 8/20/20	Wed 8/26/20	Jul	Jul	Jul	Jul	Jul
8	Precast Resubmittal Review and Approval	2 days	Tue 8/25/20	Wed 8/26/20	Jul	Jul	Jul	Jul	Jul
9	Release and Procure Precast	45 days	Thu 8/27/20	Wed 10/28/20	Jul	Aug	Sep	Oct	Nov
13	Scrub & Resubmit Steel, Joist, and Deck Shop Drawings	5 days	Thu 8/27/20	Wed 9/2/20	Jul	Jul	Jul	Jul	Jul
14	Steel Resubmittal Review and Approval	3 days	Thu 9/3/20	Mon 9/7/20	Jul	Jul	Jul	Jul	Jul
15	Release and Procure Steel, Joist, and Deck	30 days	Tue 9/8/20	Mon 10/19/20	Jul	Aug	Sep	Oct	Nov
18	<b>Off-Site Construction</b>	<b>184 days</b>	<b>Mon 7/13/20</b>	<b>Thu 3/25/21</b>	Jul	Aug	Sep	Oct	Nov
19	Receive final Off-Site Work Documents for Bidding	0 days	Mon 7/13/20	Mon 7/13/20	Jul	Jul	Jul	Jul	Jul
20	Re-Bid Off-Site Work	20 days	Tue 7/14/20	Mon 8/10/20	Jul	Jul	Jul	Jul	Jul
21	Receive all Applicable Permits for Off-Site Work	0 days	Fri 7/13/20	Fri 7/13/20	Jul	Jul	Jul	Jul	Jul
22	Receive Notice to Proceed with Off-Site Work	1 day	Wed 8/12/20	Wed 8/12/20	Jul	Jul	Jul	Jul	Jul
23	Qualify and Release Subcontractors	20 days	Fri 8/14/20	Thu 9/10/20	Jul	Jul	Jul	Jul	Jul
24	Traffic Signals Shop Drawings	40 days	Fri 8/21/20	Thu 10/15/20	Jul	Aug	Sep	Oct	Nov
25	Traffic Signals Shop Drawing Review	5 days	Fri 10/16/20	Thu 10/22/20	Jul	Jul	Jul	Jul	Jul
26	Traffic Signals Shop Drawing Revisions and Resubmittal	8 days	Fri 10/23/20	Tue 11/3/20	Jul	Jul	Jul	Jul	Jul
27	Traffic Signals Resubmittal Review and Approval	2 days	Wed 11/4/20	Thu 11/5/20	Jul	Jul	Jul	Jul	Jul
28	Release and Procure Traffic Signals	100 days	Fri 11/6/20	Thu 3/25/21	Jul	Aug	Sep	Oct	Nov
29	<b>Building / On-Site Construction</b>	<b>216 days</b>	<b>Tue 9/8/20</b>	<b>Tue 7/6/21</b>	Jul	Aug	Sep	Oct	Nov
30	Mobilize/SWPPP/Logistics Set Up	3 days	Tue 9/8/20	Thu 9/10/20	Jul	Jul	Jul	Jul	Jul
31	Final Inspections	5 days	Wed 6/30/21	Tue 7/6/21	Jul	Jul	Jul	Jul	Jul
32	Substantial Completion	0 days	Tue 7/6/21	Tue 7/6/21	Jul	Jul	Jul	Jul	Jul
54	<b>Site Construction</b>	<b>194 days</b>	<b>Tue 9/8/20</b>	<b>Fri 6/4/21</b>	Jul	Aug	Sep	Oct	Nov
55	Clear & Grub & Mass Grade	15 days	Tue 9/8/20	Mon 9/28/20	Jul	Jul	Jul	Jul	Jul
56	Build Pad	15 days	Thu 9/17/20	Wed 10/7/20	Jul	Jul	Jul	Jul	Jul
57	Site Utilities	40 days	Tue 9/29/20	Mon 11/23/20	Jul	Aug	Sep	Oct	Nov
59	Retaining Wall & Backfill	30 days	Tue 9/29/20	Mon 11/9/20	Jul	Jul	Jul	Jul	Jul
58	Site Lighting Sleeves and Bases	20 days	Mon 3/15/21	Fri 4/9/21	Jul	Jul	Jul	Jul	Jul
56	Curbs and Walks	25 days	Mon 4/12/21	Fri 5/14/21	Jul	Jul	Jul	Jul	Jul
61	Paving	20 days	Mon 5/10/21	Fri 6/4/21	Jul	Jul	Jul	Jul	Jul
62	Landscaping	10 days	Mon 5/24/21	Fri 6/4/21	Jul	Jul	Jul	Jul	Jul
33	<b>Building Construction</b>	<b>194 days</b>	<b>Thu 10/8/20</b>	<b>Tue 7/6/21</b>	Jul	Aug	Sep	Oct	Nov
34	Foundations & Backfill	20 days	Thu 10/8/20	Wed 11/4/20	Jul	Jul	Jul	Jul	Jul
35	Precast	12 days	Mon 11/9/20	Tue 11/24/20	Jul	Jul	Jul	Jul	Jul
36	Steel, Joist, and Deck	25 days	Wed 11/25/20	Tue 12/29/20	Jul	Jul	Jul	Jul	Jul



ID	Task Name	Duration	Start	Finish	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
37	Underground MEPPs	15 days	Wed 12/23/20	Tue 1/12/21																
41	Exterior Framing and Sheeting	30 days	Wed 12/23/20	Tue 2/2/21																
42	Roofing	15 days	Wed 1/13/21	Tue 2/2/21																
38	Slab on Grade	10 days	Wed 1/27/21	Tue 2/9/21																
40	Overhead MEPPs incl. Vehicle Service Equipment Piping	40 days	Wed 2/10/21	Tue 4/6/21																
46	Mezzanine Slab	5 days	Wed 2/10/21	Tue 2/16/21																
43	Interior Framing	35 days	Wed 2/17/21	Tue 4/6/21																
44	In-Wall MEPPs	30 days	Wed 2/24/21	Tue 4/6/21																
45	Curtainwall	40 days	Tue 3/16/21	Mon 5/10/21																
47	Drywall & Taping	30 days	Wed 3/24/21	Tue 5/4/21																
39	Metal Panels	40 days	Tue 4/6/21	Mon 5/31/21																
49	Floor and Wall Finishes and Millwork	40 days	Wed 4/21/21	Tue 6/15/21																
53	Ceilings	30 days	Wed 4/21/21	Tue 6/1/21																
52	MEP Trim	20 days	Wed 5/5/21	Tue 6/1/21																
48	Vehicle Service Equipment Installation	15 days	Wed 5/12/21	Tue 6/1/21																
51	Furniture, Graphics, and Signage	10 days	Wed 6/16/21	Tue 6/29/21																
50	Final Cleaning	5 days	Wed 6/30/21	Tue 7/6/21																
63	<b>Off-Site Construction</b>	<b>191 days</b>	<b>Thu 8/27/20</b>	<b>Thu 5/20/21</b>																
64	Mobilize / SWPPP & Traffic Control Installations	5 days	Thu 8/27/20	Wed 9/2/20																
65	Substantial Completion	0 days	Thu 5/20/21	Thu 5/20/21																
66	<b>Woodward Drive</b>	<b>40 days</b>	<b>Thu 9/3/20</b>	<b>Wed 10/28/20</b>																
67	Excavation	10 days	Thu 9/3/20	Wed 9/16/20																
68	Site Utilities	15 days	Thu 9/10/20	Wed 9/30/20																
69	Curbs	10 days	Thu 10/1/20	Wed 10/14/20																
70	Paving	10 days	Thu 10/15/20	Wed 10/28/20																
71	<b>Randall Road</b>	<b>45 days</b>	<b>Thu 9/17/20</b>	<b>Wed 11/18/20</b>																
72	Excavation	15 days	Thu 9/17/20	Wed 10/7/20																
73	Site Utilities	20 days	Thu 9/24/20	Wed 10/21/20																
74	Curbs	10 days	Thu 10/15/20	Wed 10/28/20																
75	Paving	20 days	Thu 10/22/20	Wed 11/18/20																
76	<b>Traffic Signals</b>	<b>35 days</b>	<b>Fri 4/2/21</b>	<b>Thu 5/20/21</b>																
77	Handholes and Infrastructure Piping and Cabling	15 days	Fri 4/2/21	Thu 4/22/21																
78	Equipment and Terminations	20 days	Fri 4/16/21	Thu 5/13/21																
79	Programming and Commissioning	5 days	Fri 5/14/21	Thu 5/20/21																



**Public Benefits**



**MEMORANDUM**

**DATE:** July 29, 2020  
**TO:** **Community & Economic Development Department**  
**FROM:** Jack Frigo  
**RE:** **Public Benefit – Sales Tax Sharing Agreement  
Audi Exchange-St. Charles**

The following is a description of Public Benefits as a result of the Semersky Enterprises' Audi Exchange-St. Charles project:

- Creation of fifty-two (52) new permanent jobs
- Creation of construction jobs
- Creation of new retail choices - Audi sales and service
- Catalyst for new private investment:
  - GMX/Thorntons Project w/\$15,000,000 in annual sales at the NWC of N. Randall Rd. & W. Main St. (projected sale of approximately 4,560,000 gallons of fuel per year)
  - Additional development on Woodward Dr. lots upon completion of roadway improvements.
- Long vacant land made productive for the St. Charles community
- Environmentally friendly design
- Creation of public infrastructure:
  - Woodward Dr. 550 LF extension
  - N. Randall Rd. traffic signal and roadway improvements
  - Electric infrastructure from Mercedes Benz to Woodward Dr. and west to Oak St.
  - Stormwater management
  - Enhanced streetscape and pedestrian experience on Randall Rd. and Woodward Dr.
  - Increased Sales Tax Revenue (\$33,000,000 estimated sales per year)
  - Increased Property Tax Revenue (Property taxes estimated to increase from \$55,600 per year to approximately \$150,000 per year.
- Introduces a new, involved corporate citizen (Semersky Enterprises, Inc.) to the St. Charles Community

## Audi Exchange-St. Charles

### Job Creation - Permanent

<b>Personnel</b>	<b>Cost \$</b>	<b>Count</b>
GM	200,000	1
Sales Manager	150,000	1
Used Car Mgr	150,000	1
Finance Manager	215,600	2
Office Manager	60,000	1
Billor/Receivable/Payable	100,000	2
Sales People	625,380	13
Service Manager	103,840	1
Technicians	600,000	10
Service Writers	223,200	3
Porters	240,000	8
Phone & Cashier	50,000	3
L&T	45,000	1
Parts MGR	63,480	1
Parts Clerk	140,000	4
Payroll Tax	0	<b>52</b>
<u>Insurance</u>	<u>0</u>	
<b>Employee Expense</b>	<b>\$2,966,500</b>	

**REAL PROPERTY TAXES AND ASSESSMENTS**

The subject property is located in Kane County and subject to real estate taxes levied at the county level. The following table summarizes the 2018 (Payable 2019) assessments and real estate taxes. The 2018 payable 2019 tax rate is 8.294541 percent.

<b>SUMMARY OF 2018 ASSESSMENTS &amp; TAXES</b>					
<b>Parcel No.</b>	<b>Assessed Value</b>			<b>Fair Market Value</b>	<b>Tax (\$)</b>
	<b>Land</b>	<b>Building</b>	<b>Total</b>		
09-29-480-001	\$639,024	\$0.00	\$639,024	\$1,917,264	\$53,004

The assessed value equates to 33.33 percent of the assessor’s estimate of fair market value for the real estate. The 2018 assessments total \$639,024 which implies a fair market value for the subject property of \$1,917,264 or \$13.02 per square foot site area. The 2018 property tax totals \$53,004 or \$0.36 per square foot of site area.

The subject property will likely not be re-assessed until the 2021 payable 2022 tax year since the improvements will not be complete until January 2021. Therefore, a similar tax expense is anticipated for the 2019 and 2020 taxes assuming a similar tax rate.

There are several automobile dealerships in the market area that are utilized for comparison. The assessment and property tax expense of the dealerships are summarized in the following table:

<b>2018 REAL ESTATE TAX</b>				
<b>Name</b>	<b>Address</b>	<b>Size</b>	<b>RE Tax</b>	<b>\$/SF</b>
Mercedes	205 Randall Rd	36,200	\$169,706	\$4.69
McGrath Honda of St. Charles	1411 E Main St	21,000	\$59,594	\$2.83
St. Charles Chrysler Dodge Jeep Ram	1611 E Main St	15,500	\$80,081	\$5.17

The neighboring dealerships range \$2.83 to \$5.17 per square foot in real estate tax expenses. The high end of the range indicates a tax expense of roughly \$128,000 for the subject property. The estimate value by the Cost Approach of \$14.0 million indicates an assessed value of \$4.7 million and using an 8.29 percent tax rate indicates a tax expense of \$390,000 or \$15.20 per square foot, which is well outside of the comparable property range.

We note the properties listed above are not new construction; however, they are generally in good condition. Based on uniformity, we forecast the 2021 real estate tax expense at \$150,000 or \$5.85 per square foot.

# Audi Exchange-St. Charles

## Project Costs (Including FF&E)

Prepared by Stout Development Services w/GC Bidding

Building Size in SF: 25,664  
Site Size in SF: 147,233

CSI	Trade	Site and Building	Per Building SF
01	General Conditions / General Requirements Budget	\$426,980	\$16.64
01	Traffic Control Budget	\$0	\$0.00
01	Survey & Layout Budget	\$49,581	\$1.93
03	Cast In Place Concrete Budget	\$293,440	\$11.43
03	Pre Cast Concrete Budget	\$588,452	\$22.93
05	Structural Steel Framing Budget	\$275,345	\$10.73
06	Millwork Budget	\$44,854	\$1.75
07	Fluid-Applied Waterproofing Budget	\$13,624	\$0.53
07	Exterior Insulation and Finish Systems	\$11,004	\$0.43
07	Metal Roof and Wall Panel	\$404,820	\$15.77
07	Membrane Roofing	\$199,644	\$7.78
07	Joint Sealant	\$3,092	\$0.12
08	Metal Doors & Frames	\$38,036	\$1.48
08	Coiling Doors and Grilles	\$118,424	\$4.61
08	Entrances and Storefronts	\$282,436	\$11.01
09	Gypsum Board	\$545,065	\$21.24
09	Tile	\$232,425	\$9.06
09	Resilient Flooring	\$43,115	\$1.68
09	Fluid Applied Epoxy Flooring	\$67,197	\$2.62
09	Paint	\$80,654	\$3.14
10	Signage	\$94,949	\$3.70
10	Specialties	\$18,277	\$0.71
11	Automotive Equipment	\$576,400	\$22.46
12	Furniture, Fixtures & Equipment	\$2,995,000	\$116.70
13	Fire Suppression	\$69,063	\$2.69
22	Plumbing	\$269,546	\$10.50
23	HVAC	\$415,480	\$16.19
16	Electrical	\$1,018,656	\$39.69
26	Low-Voltage Electrical Transmission	\$411,938	\$16.05
26	Security System	\$34,060	\$1.33
31	Earthwork	\$208,957	\$8.14
33	Water & Sewer Utilities	\$208,471	\$8.12
32	Asphalt Paving	\$215,364	\$8.39
32	Curbs and Gutters	\$134,144	\$5.23
32	Retaining Wall	\$173,901	\$6.78
32	Landscaping	\$63,928	\$2.49
	<b>Subtotal</b>	<b>\$10,626,322</b>	<b>\$414.06</b>
17-9999	GC Fee (Excluding FF&E)	\$300,000	\$11.69
	<b>Subtotal w/GC Fee</b>	<b>\$10,926,322</b>	<b>\$425.75</b>
01-0080	Permits ALLOWANCE	\$87,000	\$3.39
01-0081	Owners Rep - RW Stout	\$255,000	\$9.94
01-0086	Design Fees - CVG	\$242,000	\$9.43
	<b>Subtotal w/Permits, A&amp;E and Owner Rep.</b>	<b>\$11,510,322</b>	<b>\$448.50</b>
01-0115	General Liability Insurance	\$87,703	\$3.42
	Land Purchase Price:	\$2,280,000	\$88.84
	<b>Project Cost, Including FF&amp;E and Land:</b>	<b>\$13,878,025</b>	<b>\$540.76</b>
	<b>Extraordinary Costs:</b>		
	Unsuitable Soil:	\$250,000	\$9.74
	Woodward Dr., Traffic Signal, Turning Lanes & Stormwater:	\$2,083,000	\$81.16
	St. Charles Electric Utility Infrastructure (Allowance):	\$300,000	\$11.69
	<b>Extraordinary Costs Total:</b>	<b>\$2,633,000</b>	<b>\$102.60</b>
	<b>Total Project Cost:</b>	<b>\$16,511,025</b>	<b>\$643.35</b>

**Reasons for Financial Need**

**MEMORANDUM**

**DATE:** July 29, 2020

**TO:** **Community & Economic Development Department**

**FROM:** Jack Frigo

**RE:** **Reasons for Financial Assistance – Sales Tax Sharing Agreement  
Audi Exchange-St. Charles**

The development of the 3.38 acre 235 N. Randall Rd. site requires the developer to bear the cost of extending Woodward Dr. to N. Randall Rd., install a traffic signal, improve N. Randall Rd. with acceleration, deceleration and tuning lanes and engineer and provide for the stormwater management of the roadway improvements. The approximate cost of the above improvements along with the cost to correct the unsuitable soil on the Audi site and Woodward Dr. extension area and install the City electric utility infrastructure is approximately \$2,083,000.

As part of Semersky Enterprises' decision to purchase the property and develop the Audi Exchange-St. Charles we met with City of St. Charles staff numerous times to discuss how to best address the extraordinary development costs, unique to this particular site. The City suggested a Sales Tax Sharing Agreement under which a portion of the sales taxes generated by the sale of automobiles would be used to reimburse Semersky Enterprises for the upfront cost to make the above described improvements. Such an agreement is an economic development tool available to communities to promote desired development.

The formula we've used in the past and believe is fair in this case is 75% of the City's sales taxes would be returned to Semersky Enterprises until the cost of the above described improvements has been reimbursed. The City would receive 25% of the sales taxes during this time and 100% of the sales taxes thereafter.

Semersky Enterprises has used this tool to develop the Audi Exchange and Porsche Exchange in Highland Park and the Chevrolet Exchange in Lake Bluff. In each case the Sale Tax Sharing Agreement was necessary to make the projects feasible and help mitigate the upfront financial risk to Semersky Enterprises, resulting in successful projects that contribute significant benefits to their respective communities.

Based on positive discussions with the City, Semersky Enterprises purchased the subject site as well as other properties in the NWQ of N. Randall Rd. & Main St.

Since Semersky Enterprises' purchase of the 235 N. Randall Rd. property the following circumstances have stressed the Audi Exchange-St. Charles development:

- Projected sales volume has decreased per the Audi USA market study.
- Estimated project costs have increased.
- The economic climate has deteriorated and become more uncertain:
  - Administration threats to impose significant tariffs on German automobiles
  - COVID-19 impact on the worldwide automobile industry

Mr. Semersky is prepared to proceed immediately with the Audi Exchange-St. Charles provided the Sales Tax Sharing Agreement is approved. Without such an agreement, the project will not be developed.

**Sales Projections  
Included in Chris Orth Letter to Mayor Rogina**



July 16, 2020

Honorable Mayor Raymond P. Rogina  
 City of St. Charles  
 Two East Main Street  
 St. Charles, IL 60174

RE: Sales Projections for Audi Exchange-St. Charles

Mayor Rogina,

I hope you are doing well. Ernie and I wanted to provide you an update in regards to St. Charles.

Attached is a letter from Audi of America, Inc., which estimates the number of new Audi's to be sold in St. Charles.

As you can see, the numbers are very conservative in comparison to our projections that we developed with the Central Region of Audi of America. An important distinction is that Audi of America, Inc. is required to project sales estimates based on "average" dealer sales effectiveness and our performance, at all of our dealerships, significantly exceeds "average" projections. For over 40 years, we have doubled "average" sales effectiveness.

Below is a table that projects the next 6 years of business at the Audi Exchange of St. Charles.

As you'll see in the Sales Tax Sharing Application, we'll also employ approximately fifty (50) people at an annual cost of \$3,000,000.

We're looking forward to getting underway in St. Charles and have appreciated the professionalism and support you and your staff have shown us while we put this challenging project together.

Very truly yours,

Chris Orth  
 C.O.O.  
 Semersky Enterprises Inc.

cc. Jack Frigo  
 Ernie Semersky

	New	Used	Service (in \$M)	Parts (In \$M)	Sales \$\$
<b>Year 1</b>	400	260	1.95	1.95	32,715,000
<b>Year 2</b>	416	270	2.25	2.25	34,272,000
<b>Year 3</b>	433	281	2.55	2.55	35,885,000
<b>Year 4</b>	450	293	2.95	2.95	37,635,000
<b>Year 5</b>	468	304	3.4	3.4	39,496,000
<b>Year 6</b>	487	317	3.9	3.9	41,519,000
	2,654	1,725	17	17	221,522,000



Audi of America, Inc. • 6250 N. River Road, Suite 3000 • Rosemont, IL 60018

Via Email

Mr. Chris Orth  
2490 Skokie Valley Road  
Highland Park, IL 60035

**Subject: Audi St. Charles Open Point**

Dear Chris,

Below are the latest expected registration projections for the Audi St. Charles Open Point scheduled to open April 2021:

2020	2021	2022	2023	2024	2025	2026	2027
287	287	289	291	300	307	309	313

John Link  
Senior Manager  
Network Development  
john.link@audi.com  
847.232.1063

VIA EMAIL

April 24, 2020

Please note that these expected registration projections are based on market conditions prior to the current COVID-19 crisis.

Expected sales are not able to be projected, as many of the variables related to such a projections are within the area of control and influence at the dealer level.

Sincerely,

John Link  
Sr. Manager, Network Development

cc: Jeremy Meyer, Vice President – Central Region  
Fred Stolle, Director, Area 90