

City of St. Charles, Illinois
Resolution No. _____

**A Resolution Authorizing the Mayor and City Clerk of the City of St. Charles to
Execute a Certain Sales Tax Revenue Sharing Agreement – the City of St.
Charles and Fox Valley Buick-GMC, Inc.**

**Presented & Passed by the
City Council on February 20, 2024**

BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute that certain Sales Tax Revenue Sharing Agreement, in substantially the form attached hereto and incorporated herein as Exhibit “A”, by and on behalf of the City of St. Charles.

Presented to the City Council of the City of St. Charles, Illinois this 20th day of February, 2024.

Passed by the City Council of the City of St. Charles, Illinois this 20th day of February, 2024.

Approved by the Mayor of the City of St. Charles, Illinois this 20th day of February, 2024.

Mayor Lora Vitek

ATTEST: _____
City Clerk

COUNCIL VOTE:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

**SALES TAX REVENUE SHARING
AGREEMENT**

This **Sales Tax Revenue Sharing Agreement (the “*Agreement*”)** is entered into on this ____ day of _____, 2024 (the “*Effective Date*”) by and between the City of St. Charles, Illinois, an Illinois home rule municipal corporation (the “*City*”), and Fox Valley Buick-GMC, Inc., an Illinois corporation (“*Fox Valley*”). (The City and Fox Valley are sometimes referred to herein collectively as the “*Parties*,” and individually as a “*Party*.”)

RECITALS

- A. The City is a home rule Illinois municipality, and hereby enters into this Agreement pursuant to its home rule powers; and, pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970, the City has determined that it has the authority to enter into this Agreement.
- B. The City deems it to be of significant importance to encourage development and redevelopment within the City, so as to maintain a viable real estate tax and sales tax base and employment opportunities.
- C. On May 26, 2022, Schaumburg VW Real Estate, LLC, an Illinois Limited Liability Company which has affiliate ownership with Fox Valley purchased the real estate and building, relative to the former McGrath Honda automobile dealership at 1411 East Main Street, St. Charles, Illinois 60174 for Two Million Eight Hundred Thousand and 00/100 Dollars (\$2,800,000.00), with said location being legally described on Exhibit A-1 and depicted on Exhibit A-2, each attached hereto and made a part hereof (the “Subject Property”).

- D. Fox Valley currently operates a Buick-GMC dealership which adjoins the Subject Property, and intends to repurpose the Subject Property to expand its Buick-GMC dealership footprint to allow for a greater selection of used vehicles, to bring offsite operations onto the Subject Property, and to expand its service facilities in the existing Buick-GMC dealership (“*Dealership*”).
- E. Fox Valley intends to improve the Subject Property by an exterior façade remodel, site improvements and certain interior improvements, as depicted on Group Exhibit B attached hereto and made part hereof (the “*Project*”).
- F. The cost of the Project is currently estimated to be approximately One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), as more fully set forth on Exhibit C attached hereto and made part hereof, (although the cost of the Project may be higher or lower depending upon the actual cost of the construction of the Project), bringing Fox Valley’s total anticipated investment in the Project to be approximately Four Million and 00/100 Dollars (\$4,000,000.00) (the “*Total Investment Cost*”).
- G. The Parties anticipate that the Project will enhance the City’s real estate and sales tax bases, and create additional employment opportunities in the City, by creating additional used automobile sales, which will require the need for additional employees.
- H. Fox Valley and the City acknowledge that Fox Valley requires economic assistance from the City in order to complete the Project, given the Total Investment Cost, and that the Project would not be economically feasible, but for the economic assistance promised by the City in this Agreement.
- I. In light of the Total Investment Cost, and because the Project would not be economically feasible but for the economic assistance promised by the City in this Agreement, the City agrees, pursuant to the terms of this Agreement, to rebate to Fox Valley up to Eight Hundred Sixty Thousand and 00/100 Dollars (\$860,000.00) over a

ten (10) year period, in Fox Valley Sales Taxes, (as defined in Section 3.0(A)(4) below), generated by the Dealership (the “*Maximum Reimbursement Amount*”), subject to the other terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the City and Fox Valley hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
OBLIGATIONS OF FOX VALLEY
CONDITION PRECEDENT TO CITY UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be a condition precedent to the City’s financial undertakings in this Agreement. The City shall have no financial obligation to Fox Valley under this Agreement until the satisfaction by Fox Valley of each and every condition of this Article II.

2.02 Construction of the Project.

(A) Fox Valley shall (i) apply or have applied for all necessary permits, and (ii) have commenced construction relative to the Project, within fifteen (15) days of the Effective Date of this Agreement, subject to the *force majeure* provisions of Section 4.01 hereof.

(B) Fox Valley shall receive a certificate of project completion for the Project on or before the date which is three (3) full months after the Effective Date, subject to the *force majeure* provisions of Section 4.01 hereof, and further subject to:

- (i) Delays caused by the City not granting the required approvals, except delays caused as a result of the acts or omissions of Fox Valley, which cause the delay by the City; and
 - (ii) Delays caused by the City not issuing the required certificate of Project completion, except delays caused as a result of the acts or omissions of Fox Valley, which cause the delay by the City.
- (C) The Project shall be built in accordance with all applicable ordinances, rules and regulations of the City. Fox Valley shall not knowingly cause or permit the existence of any violation of City ordinances, rules or regulations, including, but not limited to, the Building Code, the Zoning Ordinance, the Fire Code, and all rules and regulations thereunder applicable to the Dealership and the Project.
- (D) Fox Valley shall pay the prevailing rate of wages (as established under 820 ILCS 130/0.01 *et seq.* – the “Prevailing Wage Act”) to all workers involved with the Project, as may be required under the Prevailing Wage Act.

2.03 State Sales Taxes Information. Upon request by the City, Fox Valley shall supply the City with State Sales Taxes (as defined in Section 3.01(A)(5) below) information for the Dealership, certified as true by an officer of Fox Valley, in the format, and in compliance with the timing, as requested by the City’s Director of Finance, or designee. Fox Valley represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the City relies on the truth and accuracy of said information as a basis for its entering into this Agreement. Upon request by the City, Fox Valley shall submit to the City an executed Illinois Department of Revenue form PTAX 1002-21 for the Dealership with a reporting period from the Effective Date through December 31, 2033.

2.04 State Sales Taxes Reporting, Audits and Confidentiality.

- (A) Upon request by the City, Fox Valley shall provide the City with written reports of all the State Sales Taxes (as defined in Section 3.01(A)(4) below) generated by the Dealership during each calendar year of the Revenue Sharing Term (as defined in Section 3.01(B) below), as requested by the City's Director of Finance, or designee. Such reports shall be certified as true by an officer of Fox Valley. Upon request by the City, Fox Valley shall deliver said reports to the City on an annual basis before the fifteenth (15th) day following the end of the calendar quarter for which Fox Valley is reporting.

The parties acknowledge that the City has entered into a reciprocal agreement for access to State Sales Tax records with the Illinois Department of Revenue (IDOR). The City may verify the information submitted by Fox Valley by comparing sales tax data with the information maintained by IDOR. In the event of any discrepancy, the amounts maintained by IDOR will be deemed to be the correct amount of State Sales Tax revenue remitted to the City and will be the basis for calculation of any reimbursement which may be due to Fox Valley.

- (B) Upon request, the City shall have the right to audit Fox Valley's records of Project costs, sales, and State Sales Taxes (as defined in Section 3.01(A)(5) below) returns from time-to-time. The City hereby represents and warrants that any and all information regarding sales and State Sales Taxes (as defined in Section 3.01(A)(5) below) shall be confidential and used only for the purpose of calculating any amounts due and owing to Fox Valley pursuant to this Agreement. The City and Fox Valley acknowledge that Fox Valley's sales and State Sales Taxes (as defined in Section 3.01(A)(5) below) information is financial information obtained from a business that is proprietary, privileged and/or confidential, and that disclosure of the sales and State Sales Taxes (as

defined in Section 3.01(A)(5) below) information would cause competitive harm to Fox Valley, and, therefore, would not be subject to disclosure pursuant to a request under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq*, as amended (the “FOIA”). Fox Valley agrees to reimburse the City for the reasonable attorneys’ fees and costs incurred by the City in responding to any requests for information under FOIA, subpoena or otherwise relating to this Agreement or Fox Valley’s sales and State Sales Taxes (as defined in Section 3.01(A)(5) below) information supplied under this Agreement. Fox Valley agrees that the City’s compliance with any court order to produce information shall not subject the City to any liability hereunder for said information release; *provided, however*, the City will promptly notify Fox Valley, in writing, so that Fox Valley may seek a protective order or other appropriate remedy.

- (C) In the event Fox Valley amends any sales and use tax return upon which Fox Valley Sales Tax Allocations were made to Fox Valley pursuant to this Agreement, Fox Valley shall 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 State. If, as a result of an amended return, the City owes additional Fox Valley Sales Tax Allocations to Fox Valley, such rebate 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 Fox Valley Sales Tax Allocation back, Fox Valley shall repay such amount to the City within thirty (30) days of written notice from the City. In the event that Fox Valley is audited by the State, Fox Valley 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 Fox Valley Sales Tax Allocations 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 above.

- 2.05 Guaranteed Occupancy and Operation of the Dealership. Fox Valley agrees that it, or its successors and assignees, shall occupy and operate the Dealership, on the Subject Property for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below). Fox Valley or its successors and assignees further agrees that the City shall receive State Sales Taxes (as defined in Section 3.01(A)(5) below) and Home Rule Sales Taxes (as defined in Section 3.01(A)(2) below) from the Dealership, for a minimum of ten (10) years from the Commencement Date (as defined in Section 3.02 below).
- 2.06 Real Estate Taxes and Other Charges. Fox Valley hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and any portion of the Dealership which is owned and controlled by Fox Valley.
- 2.07 Certification of Project Costs. Fox Valley shall supply the City with a statement of the costs of the Project certified as true by an officer of Fox Valley, and such other information reasonably requested by the City. Fox Valley represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the City may, and does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement.
- 2.08 No Default. Fox Valley shall not be in default of any term of this Agreement.

ARTICLE III
CITY OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance.

(A) Definitions.

- (1) "Annual Sales Tax Floor" shall be Two Hundred Forty-Five Thousand Four Hundred Fifty and 00/100 Dollars (\$245,450.00), to be increased three percent (3%) every twelve (12) months after the Commencement Date, during the term of this Agreement.
- (2) "Fox Valley Sales Tax Allocation" shall be seventy-five percent (75%) for years 1 through 10.
- (3) "Fox Valley Sales Taxes" shall be: (i) those State Sales Taxes generated by the Dealership, which are distributed to the City by the State of Illinois, in excess of the Annual Sales Tax Floor, after the Commencement Date, during the Revenue Sharing Term of this Agreement, multiplied by (ii) the Fox Valley Sales Tax Allocation.
- (4) "State Sales Taxes" shall mean only those taxes imposed and collected by the State of Illinois, collected by the City and generated by Fox Valley, pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Use Tax Act,, 35 ILCS 110/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, the Use Tax Act, 35 ILCS 105/1 *et seq.*, and 66.66% of the Home Rule Municipal Retailers' Occupation Tax, 65 ILCS 5/8-11-1.

(B) Assistance.

Upon satisfaction by Fox Valley of all of the conditions stated in this Agreement, the City shall rebate to Fox Valley the Fox Valley Sales Taxes. Said payments shall be made by the City to Fox Valley for a period of ten (10) years from the

Commencement Date (as defined in Section 3.02 below) or until the Maximum Reimbursement Amount is reached, whichever occurs first (the "Revenue Sharing Term").

3.02 Commencement Date. Upon Fox Valley giving the City written notice that it has satisfied all of the conditions of Article II of this Agreement, the Revenue Sharing Term shall commence the first calendar day of the succeeding month (the "Commencement Date"). The City shall thereafter confirm whether Fox Valley has satisfied all of the conditions of Article II of this Agreement and determine whether Fox Valley is entitled to receive the Fox Valley Sales Taxes.

3.03 Payment Procedure. After the Commencement Date, subject to and so long as the City has confirmed that Fox Valley has satisfied all the conditions of Article II of this Agreement, during the Revenue Sharing Term, the City shall pay to Fox Valley the Fox Valley Sales Taxes, on an annual basis, within thirty (30) days of receipt of State Sales Taxes in an amount which results in Fox Valley Sales Taxes due to Fox Valley after calculation of the amount due based on the current Annual Sales Tax Floor for that annual period.

3.04 Limitations on Rebates. The Fox Valley Sales Taxes set forth herein shall be subject to the following additional terms and conditions:

- (A) Such Fox Valley Sales Taxes shall be payable to Fox Valley solely from the City's Share of State Sales Taxes actually received by the City and originating from the taxable sales activities from the Dealership, and the City shall not be obligated to pay any Fox Valley Sales Taxes identified herein from any other fund or source.
- (B) If at any time during the term of this Agreement Fox Valley (i) relocates or otherwise transfers its operations occurring on the Subject Property to a site

located outside the corporate limits of the City, or (ii) should the Dealership be closed or vacated and not re-established within the corporate limits of the City within thirty (30) days of such closure/vacation, then in either case this Agreement shall terminate and Fox Valley shall not be entitled to any other Fox Valley Sales Taxes.

ARTICLE IV
GENERAL PROVISIONS

- 4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the City nor Fox Valley, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornados and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.
- 4.02 Assignment of Agreement. 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 Subject Property in substantially the same manner, or (ii) having a principal activity on the Subject Property of the sale of new and/or used vehicles and which Dealership is not already located within the City. Fox Valley 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 Fox Valley hereunder shall from and after the effective date of the assignment be deemed such assignee and Fox Valley 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, Fox Valley may collaterally assign its rights hereunder to any Fox Valley lenders as security for loans to Fox Valley and/or the title holder of the Subject Property. The Parties acknowledge that this Agreement is an obligation which is for the benefit of Fox Valley, or permitted assignee, and is not a covenant running with the land.

4.03 Fox Valley Authority. Fox Valley hereby represents and warrants that it is a corporation authorized to do business in, and in good standing with, the State of Illinois. Fox Valley further represents and warrants that all corporate action necessary to make Fox Valley's obligations hereunder enforceable against Fox Valley have been taken, and that no further approvals or actions are required.

4.04 Defaults; Remedies.

(1) In the event of any default under or violation of this Agreement (the "Default"), the Party not in Default shall serve notice upon the Party in Default (the "Defaulting Party"), which notice shall be in writing and shall specify the particular Default (the "Default Notice"). The Defaulting Party shall have the right to cure the Default within thirty (30) days from written notice of such Default; provided, however, if such Default cannot practically be cured within said thirty (30) days, provided the Defaulting Party has commenced the cure within such thirty (30) day period, and is actively and diligently proceeding with such cure, the Defaulting Party shall be granted such additional time to cure the Default as shall be reasonable under the circumstances. In this regard, the Defaulting Party

shall advise the other Party, in writing, during the initial thirty (30) day cure period, of the amount of time needed to cure said Default, and why the additional time is needed. After issuance of the Default Notice, and the Defaulting Party's failure to cure within the time frame required, the Party which served the Default Notice may terminate this Agreement, or may proceed to seek a cure of the Default by any action or proceeding at law or in equity, including seeking specific performance of the covenants and agreements herein contained, and/or an award for money damages for failure of performance. Notwithstanding the foregoing, in the event of a Default by the City, relative to its obligations to Fox Valley under Article III, Fox Valley's sole and exclusive remedies shall be to terminate this Agreement or seek specific performance from a court of competent jurisdiction of any sums due under this Agreement, if any, and Fox Valley shall not be entitled and expressly waives any claims to any monetary damages from the City.

(B) In the event that Fox Valley fails to meet its obligations as set forth in Sections 2.05 and 3.04B above, other than as a result of the termination of Fox Valley's franchise by GMC-Buick, through no fault of Fox Valley, or GMC-Buick going out of business as a manufacturer of motor vehicles, the City shall have the following additional remedies, after giving Fox Valley the notice required by Section 4.04(A) above:

- (1) In the first (1st) year after the Commencement Date, the City shall be repaid one-hundred percent (100%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
- (2) In the second (2nd) year after the Commencement Date, the City shall be repaid ninety percent (90%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.

- (3) In the third (3rd) year after the Commencement Date, the City shall be repaid eighty percent (80%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (4) In the fourth (4th) year after the Commencement Date, the City shall be repaid seventy percent (70%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (5) In the fifth (5th) year after the Commencement Date, the City shall be repaid sixty percent (60%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (6) In the sixth (6th) year after the Commencement Date, the City shall be repaid fifty percent (50%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (7) In the seventh (7th) year after the Commencement Date, the City shall be repaid forty percent (40%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (8) In the eighth (8th) year after the Commencement Date, the City shall be repaid thirty percent (30%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (9) In the ninth (9th) year after the Commencement Date, the City shall be repaid twenty percent (20%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
 - (10) In the tenth (10th) year after the Commencement Date, the City shall be repaid ten percent (10%) of any sums paid or rebated to Fox Valley pursuant to this Agreement.
- (C) Fox Valley shall make any repayment owed to the City under this Agreement within thirty (30) days of a written demand from the City. Any amounts not repaid within said thirty (30) day period shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period.
- (D) The provisions of Section 4.04(B) and (C) above shall survive the termination of this Agreement.

4.05 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth

below, by any of the following means: (a) personal service, (b) electronic communications, (c) overnight courier, (d) registered or certified first class mail, postage prepaid, return receipt requested, or (e) priority mail with delivery confirmation

If to Fox Valley: Emir Abinon
4050 E. Main St.
St. Charles, IL 60174
E-Mail: Emir@foxvalleyag.com

with a copy to: Scott Richmond
Ariano, Hardy, Ritt, Nyuli, Richmond, Lytle & Goettel, P.C.
2000 McDonald Road, Suite 200
South Elgin, Illinois 60177
E-Mail: sgr@attorneys-illinois.com

If to the City: City Administrator
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
E-Mail: hmcguire@stcharlesil.gov

with copies to: Nicholas S. Peppers
Storino, Ramello & Durkin
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
E-Mail: npeppers@srd-law.com

or at such other addresses as either Party may indicate in writing to the other Party. Service by personal or overnight delivery shall be deemed to occur at the time of the delivery, and service by certified mail, return receipt requested, shall be deemed to occur on the third (3rd) day after mailing.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in the Circuit Court of Kane County, Illinois.

4.07 Time. Time is of the essence under this Agreement and all time limits set forth herein are mandatory, and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

4.08 Limitation of Debt. 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, the City's general credit or taxing powers, but shall be a limited obligation payable solely out of the Fox Valley Sales Taxes as set forth in Article III. Provided, however, if the City no longer receives State Sales Taxes from the Dealership due to a law change by the State of Illinois, then the City shall make payments to Fox Valley from any alternate sources of revenue provided to the City, by the State of Illinois, specifically as a replacement or substitute for State Sales Taxes presently received by the City (the "Alternate Source Revenues") and, in that event, the payment to Fox Valley shall be calculated as if the City were continuing to receive the State Sales Taxes at a rate equal to the sales tax rate applicable to the City's share of the State Sales Taxes immediately prior to the elimination of the City's State Sales Taxes, multiplied by Fox Valley's sales that would have been subject to State Sales Taxes. The amount to be tendered to Fox Valley from any Alternate Source Revenues shall be subject to a proportionate reduction in the event that the Alternate Source Revenues do not constitute, or are not intended to constitute, a one hundred percent (100%) replacement of the State Sales Taxes previously received by the City. The City's obligation to provide Fox Valley with Fox Valley Sales Taxes is restricted to State Sales Taxes generated by Fox Valley and actually received by the City, or Alternate Source Revenues actually received by the City.

4.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of either 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 the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

- 4.10 Article and Section Headings. All Article and Section headings or other headings in this Agreement are for the 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.
- 4.11 Amendments. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those set forth in this Agreement. 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 to writing and signed by them.
- 4.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 4.13 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.
- 4.14 Changed Conditions. In the event it is finally determined by any court of competent jurisdiction (after exhaustion of all regular appeals) that any of the covenants of this Agreement cannot legally be performed by the City or are not within the constitutional authority conferred upon the City as a home rule municipality, or the State of Illinois constitutional or statutory scheme shall become inconsistent with this Agreement, notwithstanding such judicial determination, or constitutional or statutory change, the City agrees to make every reasonable effort within its lawful authority to carry out the intention of the Parties as hereinabove agreed. The City shall, after such judicial determination, or constitutional or statutory change, make every reasonable effort to substitute a mechanism to accomplish the intent of this Agreement within its power as a home rule municipality. Notwithstanding anything to the contrary contained herein,

the City shall not be obligated to pay any sums to Fox Valley hereunder, in the event the City no longer receives State Sales Taxes, unless Alternate Source Revenues are provided to the City from the State of Illinois, and provided payment hereunder from Alternate Source Revenues is not illegal.

4.15 Indemnification. In the event that a claim is made against the City, its officers, officials, agents and employees, or any of them (or if the City, its officers, officials, agents and employees or any of them is made a party-defendant in any proceeding), arising out of or in connection with (1) this Agreement, or (2) the operation of Fox Valley at the Subject Property, Fox Valley shall defend and hold the City, its officers, officials, agents and employees harmless from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorneys' fees. In such event, the City and its officers, officials, agents and employees shall have the right to retain independent counsel, should it choose to defend any action resulting from the indemnification obligations under this Section. In such event, Fox Valley shall reimburse the City for all legal expenses incurred in connection with such defense. The City and its officers, officials, agents and employees shall cooperate in the defense of such proceedings and be available for any litigation-related appearances which may be required. Further, Fox Valley shall be entitled to settle any and all claims for money, in such amounts and upon such terms as to payment as it may deem appropriate, with the prior approval or consent of the City, its officers, officials, agents and employees, as the case may be, provided the City shall not be required to contribute to such settlement.

4.16 Limitation of Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement, or for any claim based thereon or otherwise in respect thereof shall be had against any officer, agent or employee of the City, and all and any such rights or claims of Fox Valley against any officer, agent or employee of the City are hereby expressly waived and released as a condition of and as consideration for the execution

of this Agreement by the City.

4.17 Attorney Fees. Should it become necessary to bring legal action or proceedings to enforce this Agreement, or any portion thereof, or to declare the effect of the provisions of this Agreement, the prevailing party shall be entitled to recover or offset against sums due, its costs, including reasonable attorney's fees, in addition to whatever other relief the prevailing party may be entitled.

City of St. Charles,
an Illinois home rule municipal corporation

Fox Valley Buick-GMC, Inc.,
an Illinois corporation,

By: _____
Lora A. Vitek, Mayor

By: _____
Name: _____
Authorized Officer

ATTEST:

By: _____
Nancy Garrison, City Clerk

EXHIBIT A-1

Legal Description of the Subject Property

LOT 1 IN MCGRATH AUTOPARK SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF KANE COUNTY, ILLINOIS ON FEBRUARY 13, 2008 AS DOCUMENT NO. 2008K011521

EXCEPTING THEREFROM THE FOLLOWING CONDEMNED BY THE ILLINOIS DEPARTMENT OF TRANSPORTATION IN CASE 11 ED 94 DESCRIBED AS FOLLOWS:

THAT PART OF LOT 1 IN MCGRATH AUTOPARK SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 13, 2008 AS DOCUMENT NO. 2008K011521 IN KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE EAST ON THE NORTH LINE OF SAID LOT 1 AND ON A 9466.15 FOOT RADIUS CURVE CONCAVE TO THE SOUTH 20.01 FEET; THE CHORD OF SAID CURVE BEARS NORTH 75 DEGREES, 18 MINUTES 09 SECONDS EAST ON A BEARING BASED ON THE ILLINOIS (STATE PLANE COORDINATE SYSTEM EAST ZONE NAD 83) A DISTANCE OF 20.01 FEET; THENCE SOUTH 16 DEGREES 13 MINUTES 40 SECONDS EAST, 19.47 FEET; THENCE SOUTH 73 DEGREES 46 MINUTES 20 SECONDS WEST, 20.00 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 16 DEGREES 13 MINUTES 40 SECONDS WEST ON THE WEST LINE OF SAID LOT 1, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

PIN: 09-26-302-014

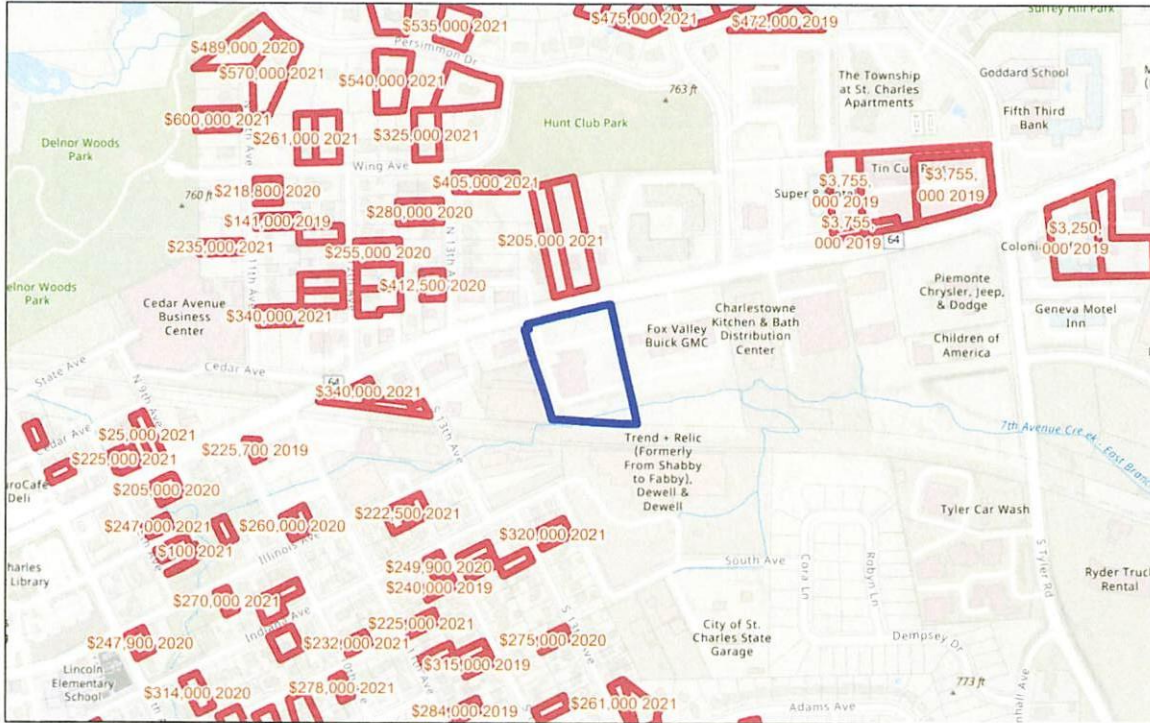
Commonly known as: 1411 East Main St., St. Charles, IL 60174

P.I.N.: _____

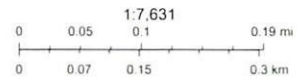
Common Address: 1411 East Main Street, St. Charles, Illinois 60174

EXHIBIT A-2

Depiction of the Location of the Dealership



4/4/2023

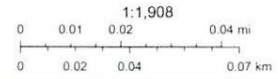


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These layers do not represent a survey. No Accuracy is assumed for the data records, including plats, surveys, recorded deeds, and contracts, and only contains information required for local government purposes. See the recorded documents for more detailed legal information.



4/4/2023

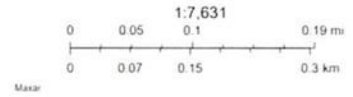


Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N. Robinson, NCEAS, NLS, OS, NMA, Geodatasystemen, Rijkswaterstaat, GSA, Geoland, FEMA

These layers do not represent a survey. No Accuracy is assumed for the data records, including plats, surveys, recorded deeds, and contracts, and only contains information required for local government purposes. See the recorded documents for more detailed legal information.



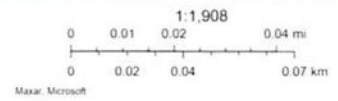
4/4/2023



These layers do not represent a survey. No Accuracy is assumed for the data records, including plats, surveys, recorded deeds, and contracts, and only contains information required for local government purposes. See the recorded documents for more detailed legal information.



4/4/2023



These layers do not represent a survey. No Accuracy is assumed for the data records, including plats, surveys, recorded deeds, and contracts, and only contains information required for local government purposes. See the recorded documents for more detailed legal information.

GROUP EXHIBIT B

Description and Depiction of the Project

DESCRIPTION: Fox Valley Buick-GMC, Inc. currently operates a Buick-GMC dealership which adjoins the former McGrath dealership property. Fox Valley Buick-GMC, Inc. intends to use the former McGrath Honda site to expand its Buick-GMC dealership footprint to allow for a greater selection of used vehicles and to bring offsite operations onto the subject property and expand its service facilities in the existing Buick-GMC dealership.

Fox Valley Buick-GMC, mc. plans to improve the existing facility on the Property through interior and exterior improvements including electrical upgrades, painting, extensive interior cleaning, new epoxy flooring, a new car wash, new LED lighting, new carpeting, façade repairs and rebranding away from the prior Honda brand. The parking lot will be repaired, sealed and striped.

Additionally, exterior concrete will be repaired. By improving the Property, Fox Valley Buick-GMC will use the extended parking frontage for Used Vehicle Inventory. This will allow it to grow its sales and revenue. Fox Valley Buick-GMC, Inc. plans to increase its investment in Used Vehicle Inventory by an additional \$1,500,000.00, effectively doubling its availability of vehicles to sell. The business anticipates sales to grow by 30%.

Depiction: See attached plans and drawings

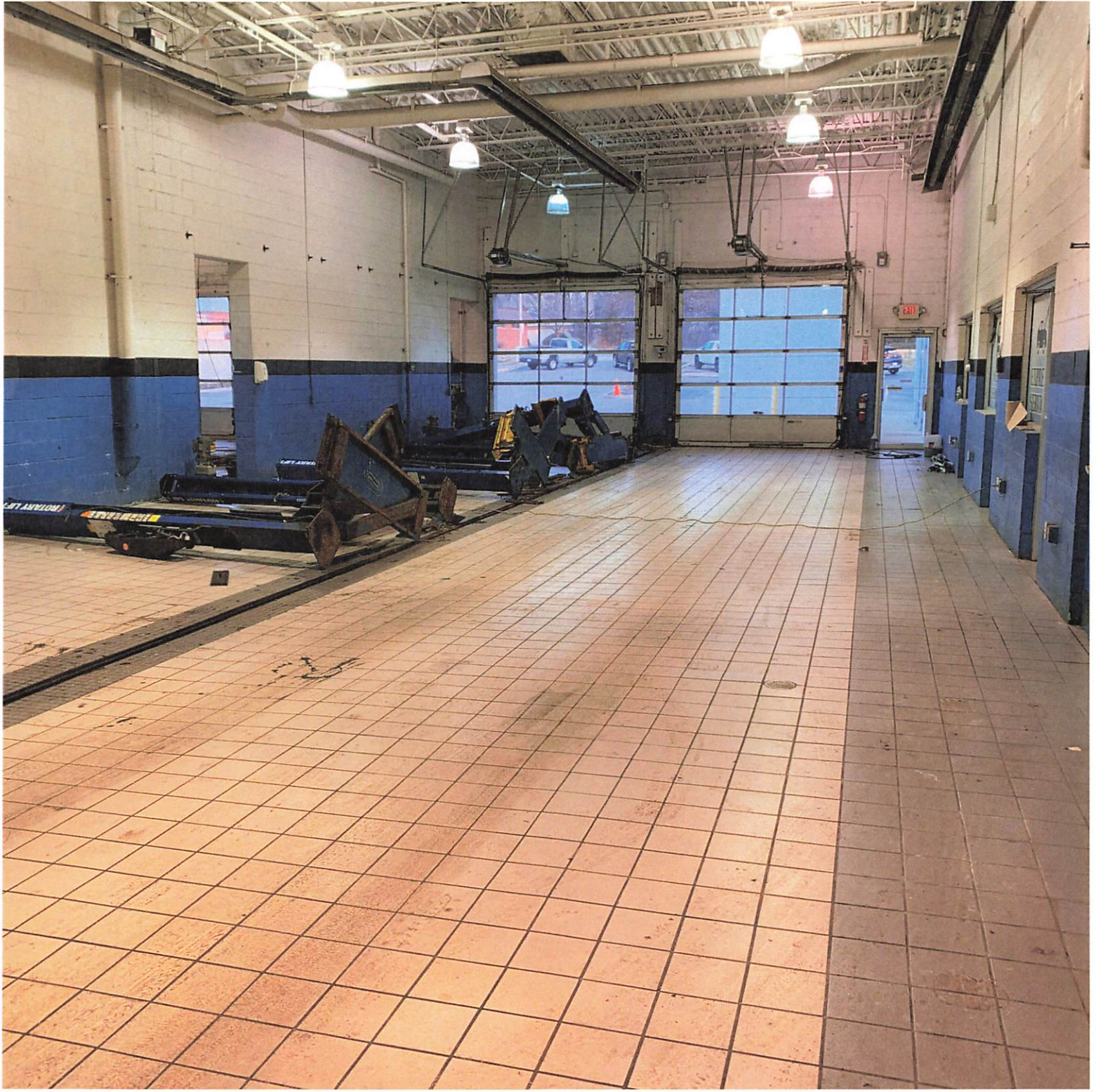
GROUP EXHIBIT B



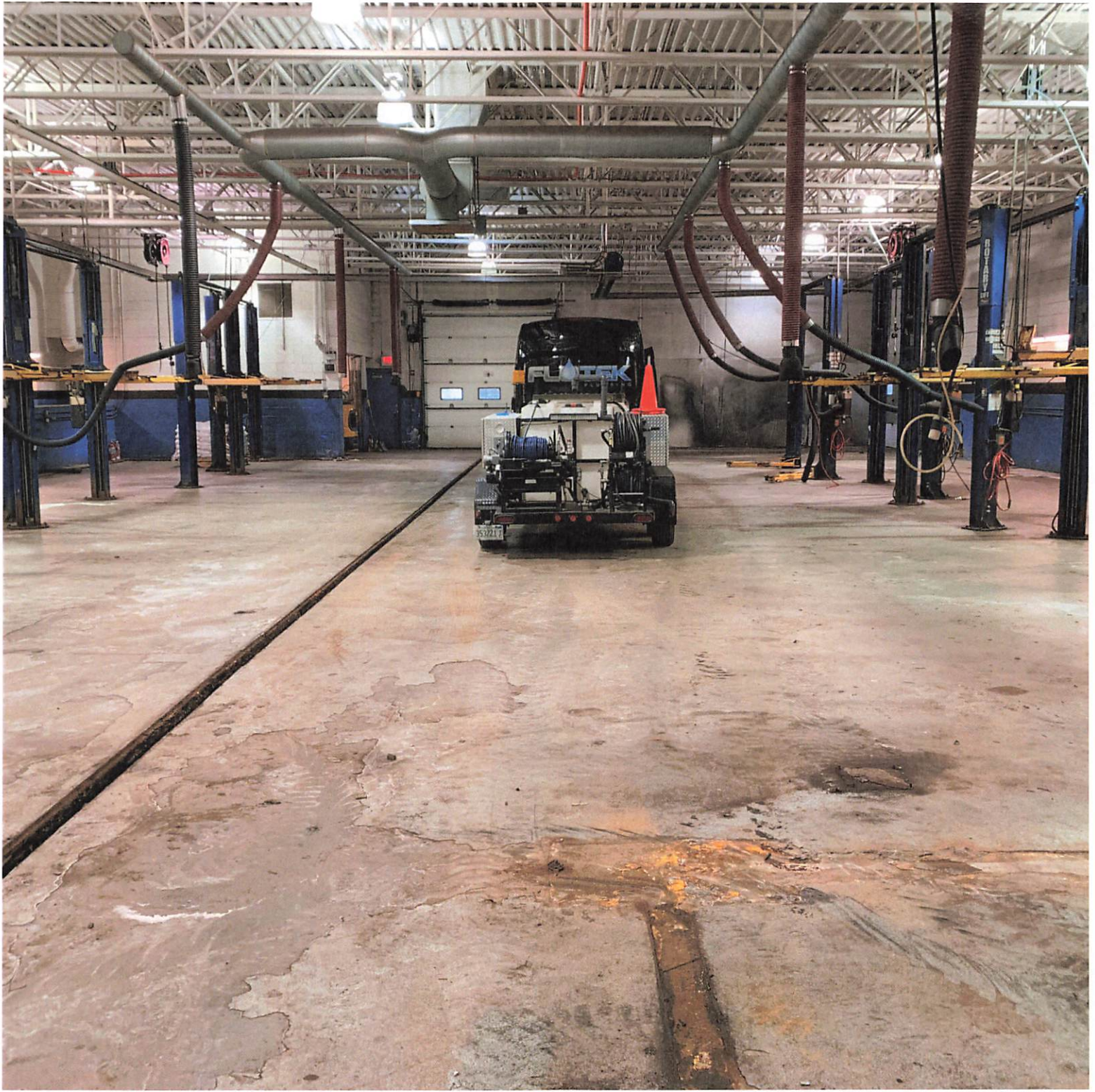




















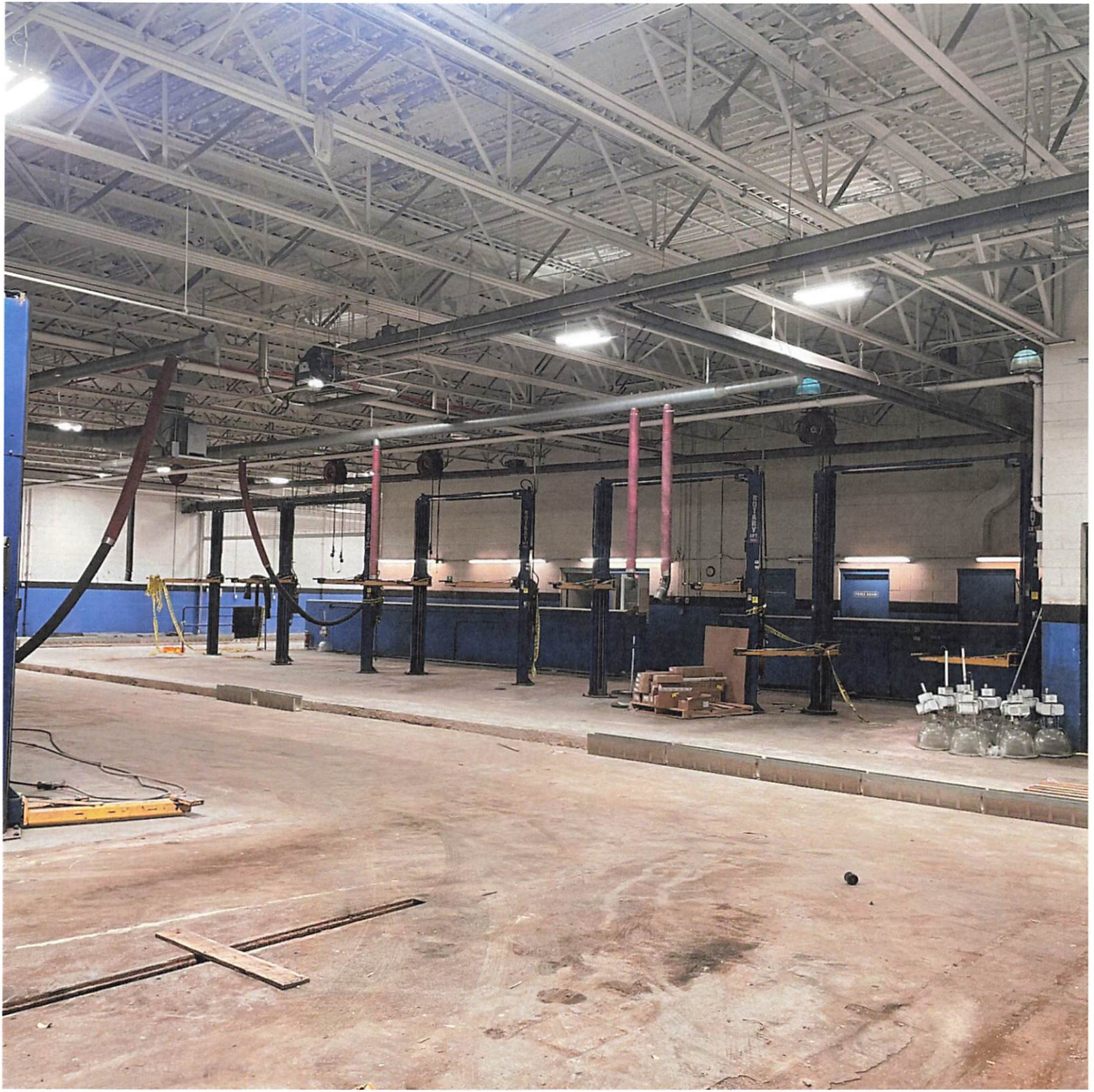












EXHIBIT C

Estimated Project Costs

GROUP EXHIBIT C

BUILDING CHARGES

DATE	PAY TO	EXPENSE	REPAIR	DESCRIPTION
5/2/2022	TINY BARN		8575.00	CONCRETE DRAIN REPAIR
5/17/2022	TINY BARN		3750.41	CAST TRENCH DRAINS
6/13/2022	TINY BARN		4768.79	TRENCH DRAIN INSTALL
6/29/2023	TINY BARN		1238.00	REPAIR STAIR RISERS
7/13/2022	TINY BARN		1350.00	CHARGING STATION ISLAND REPAIR
12/5/2022	RENT	15000.00		RENT
12/2/2022	ALARM DETECTION	511.25		EXT DOOR ALARMS
12/6/2022	TOWN&COUNTRY ELEC		164.20	REMOVE CONDUIT/CARWASH
12/27/2022	BGMC 90500	(500.00)		SALE OF OLD PARTS BINS
12/11/2022	ALARM DETECTION	159.00		QRTLY CHARGES
12/8/2022	ALARM DETECTION	41.03		FIRE ALARM MONITOR DEC
12/16/2022	ALARM DETECTION	511.25		REKEY EXT DOORS
12/8/2022	ALARM DETECTION	1735.00		ALARM SYSTEM
12/31/2022	NICOR GAS	2759.72		GAS BILL 11/24-12/21
1/2/2023	RENT	15000.00		
1/4/2023	FLOTEK PLUMBING		281.25	REMOVE FLOOR DRAIN GATES
1/11/2023	TINY BARN		2850.00	
1/12/2023	VONS ELECTRIC		8825.00	REPLACE CARWASH ELECTRICAL
12/29/2022	ALARM DETECTION	1989.03		ALARM SYSTEM UPGRADE
1/13/2023	FLOTEK PLUMBING		6965.00	INSTALL NEW WATER LINE
1/21/2023	CITY OF ST CHARLES	3384.97		ELECTRIC BILL
1/23/2023	AAA DOOR TEK		2604.77	ROLLERS & SPRINGS GARAGE DOORS
1/24/2023	BGMC 8200	(3500.00)		SALE OF LIFT
1/25/2023	TINY BARN		26816.00	REPLACE TRENCH DRAINS
1/25/2023	TINY BARN		6650.00	DRAIN & TILE REMOVAL
1/31/2023	AMAZON		194.39	THERMOSTAT
1/31/2023	NICOR GAS	3153.85		GAS BILL 12/21-01/23
2/2/2023	FLOTEK PLUMBING		1644.50	ROD BRANCH DRAINS FOR NEW TRENCH DRAIN
2/2/2023	RENT	15000.00		RENT
2/13/2023	TINY BARN		10436.54	LOCKING GRATEDS FOR DRAINS
1/11/2023	TINY BARN		2850.00	REMOVE CIDERBLOCK WALL
1/18/2023	FLOTEK PLUMBING		4485.00	REPLACE WATER HEATER
2/7/2023	FLOTEK PLUMBING		4300.00	PROVIDE & INSTALL DRINKING/FILLER FOUNTAIN
2/13/2023	360 PHOTO BOOTH		9033.12	RELOCATE BOOTH FROM VW TO 1411
2/13/2023	TINY BARN		9786.54	LOCKING GRATES FOR DRAINS
2/13/2023	TINY BARN		650.00	CLEAN & REPAIR WALL CRACKS
2/14/2023	AAA DOOR TEK		1150.00	DEPOSIT FOR HOIST OPERATOR
2/13/2023	MIDWEST MECHANICAL		1256.09	SHOWROOM EAST & WESTSIDE HEATER REPAIR
2/15/2023	FLOTEK PLUMBING		1106.50	REMOVAL OF BATHROOM FIXTURES FOR NEW WALL
2/16/2023	AAA DOOR TEK		1192.00	BALANCE OF HOIST OPERATOR REPLACEMENT
2/20/2023	CITY OF ST CHARLES	4237.77		ELECTRIC BILL
2/22/2023	TINY BARN		31300.00	COMPLETION OF TRENCH DRAINS & FOOTAGE DRAINS
2/23/2023	briteomatic		900.00	CARWASH REMOVAL
2/28/2023	NICOR GAS	2435.93		
1/24/2023	E & J DISPOSAL		445.00	DUMPSTER RENTAL
1/24/2023	E & J DISPOSAL		445.00	DUMPSTER RENTAL
1/26/2023	E & J DISPOSAL		335.00	CONSTRUCTION DEBREE
1/31/2023	E & J DISPOSAL		165.90	CONSTRUCTION DEBREE
3/1/2023	TOWN&COUNTRY ELEC		523.30	PARKING LOT LIGHT FIXTURE NOT WORKING
3/6/2023	RENT	15000.00		MARCH
3/10/2023	LAKESHORE GARBAGE	1121.66		GARBAGE PICK UP 3 MONTHS

3/16/2023	ALARM DETECTION	384.00		BUILDING ALARM
3/16/2023	FLOTEK PLUMBING		547.62	PARTS DRAIN CLEAN OUT
3/20/2023	MENARDS		999.24	WHITE FRP WALL PANELS/MLDG
3/30/2023	MENARDS		111.68	WALL PANEL ADDTNL SUPPLIES
3/22/2023	TINY BARN		5150.00	REMOVE & REPLACE 6 BOLLARDS
3/22/2023	TINY BARN		1050.00	REMOVE CLEAN OUT DRAIN COVERS
3/22/2023	CITY OF ST CHARLES	3027.63		ELECTRIC BILL
3/24/2023	REDMOND CONSTR		158570.00	1411 CONSTRUCT (EMIR PY1)
3/28/2023	FLOTEK PLUMBING		4634.00	TOILET/URINAL CLEAN AND REINSTALL
3/29/2023	MENARDS		166.81	FAST GRAB ADHESIVE
3/30/2023	NICOR GAS	1710.98		
3/31/2023	TINY BARN		2351.00	23 YELLOW BOLLARD COVERS
4/3/2023	CITY OF ST CHARLES		7000.00	ST CHARLES TAX ASSISTANCE FEE
4/3/2023	RENT	15000.00		
4/20/2023	TINY BARN		20000.00	REMOVE & READJUST 10 MANHOLE FRAMES
4/23/2023	NICOR GAS	2214.89		
12/28/2022	CRYSTAL CLEAN		3197.49	TRIPLE TRAP CLEAN OUT
4/26/2023	CITY OF ST CHARLES		375.00	BUILDING PERMIT FOR CARWASH
4/28/2023	AAA DOOR TEK		1150.00	DEPOSIT FOR HOIST OPERATOR
4/19/2023	ORION LANDSCAPE	773.00		LAWN CLEAN UP
4/29/2023	ST CHLS HRDWR		12.87	KEY
5/1/2023	REDMOND CONSTR		72942.00	1411 CONSTRUCT (EMIR PY2)
5/3/2023	RENT	15000.00		
5/10/2023	PETES A TOWING	320.00		SCISSOR LIFT TRANSPORT
5/10/2023	AAA DOOR TEK		1992.60	HOIST OPERATOR
5/11/2023	NICOR GAS	890.48		
5/15/2023	AUTO OWNERS	2410.00		FLOOD INSURANCE
5/17/2023	CITY OF ST CHARLES	3204.07		ELEC/WATER
5/17/2023	CITY OF ST CHARLES	640.00		CARWASH PERMIT FEE
5/10/2023	AMAZON		172.79	THERMOSTAT
5/15/2023	GABI CAP ONE		92.74	KEY BOX
5/25/2023	LAKESHORE GARBAGE	507.44		2 months garbage pickup
5/25/2023	TINY BARN		97278.00	50% PARKING LOT REPAIR
5/31/2023	MATRIX COATING		3750.00	2ND FLOOR STORAGE AREA COATING
6/1/2023	RENT	15000.00		
6/9/2023	LAKESHORE GARBAGE	267.62		garbage
6/9/2023	NICOR GAS	432.31		
6/14/2023	TINY BARN		9375.00	50% PARKING LOT REPAIR
6/15/2023	FLOTEK PLUMBING		2347.80	BACKFLOW INSTALL AND TEST
6/7/2023	AMAZON		35.63	FIRE EXTIGUISHER MOUNTS
6/19/2023	TINY BARN(53232)		15000.00	PARKING LOT REPAIRS
6/22/2023	PROVIGIL	947.64		BUILDING ALARMS
6/23/2023	ALARM DETECTION	1093.20		qrtrly July-Sept plus Annual
6/25/2023	LAKESHORE GARBAGE	250.66		TRASH PICK UP
6/25/2023	ALARM DETECTION	714.00		ADD STROBE IN WASH BAY
6/28/2023	TINY BARN		9375.00	REMAINING 50% PARKING LOT
6/30/2023	REDMOND CONSTR		166125.00	REMODEL
7/7/2023	NICOR GAS	198.49		
07/08/23	FOUR STAR ELECTRIC		574.00	INSTALL EXIT SIGNS BATTERY LIGHTS & BATTERY
7/12/2023	CITY OF ST CHARLES	2277.33		ELECTRIC BILL
7/12/2023	TINY BARN		97278.00	REMAINING 50% PARKING LOT
7/25/2023	FLOTEK PLUMBING		1848.25	REPAIR BAD VALVE/FIX LEAK/INSTALL WASHER/DRYER
7/1/2023	HOME DEPOT		654.01	EXIT LIGHTING
7/27/2023	COSTCO		357.95	LUNCH ROOM TABLE / CHAIRS

Cost Summary: Fox Valley Automotive Exterior Renovations

12/20/2022

Labor	Bid Package	Location	Base Bid	Notes	Adjustment	SCOPED BID	FINAL COST	BUDGET
07-0000	Exterior Cleaning						\$6,752.00	\$0.00
	Imperial Service Systems, Inc.	Lombard, IL	\$6,752.00			\$6,752.00		
						\$0.00		
						\$0.00		
07-2410	EIFS						\$19,100.00	\$0.00
	JPP Construction	Franklin Park, IL	\$19,100.00			\$19,100.00		
						\$0.00		
						\$0.00		
07-4200	ACM						\$7,100.00	\$0.00
	DK Metals Ltd	Sycamore, IL	\$7,100.00			\$7,100.00		
						\$0.00		
						\$0.00		
09-9100	Painting						\$12,180.00	\$0.00
	Lankford Construction Company	Johnsburg, IL	\$12,180.00			\$12,180.00		
						\$0.00		
						\$0.00		
10-7313	Awnings						\$5,147.00	\$0.00
	ASL Metal Fabricators	Addison, IL	\$5,147.00			\$5,147.00		
						\$0.00		
99-0001	LIST ALLOWANCES						\$5,000.00	\$0.00
	Wall Prep Allowance		\$5,000.00			\$5,000.00		
01-0000	General Conditions						\$20,301.00	\$0.00
	General Conditions		\$20,301.00			\$20,301.00		
SUBTOTAL							\$75,580	\$0
OWNER CONTINGENCY - 10.0%							\$7,558	\$0
CONSTRUCTION FEE 10.0%							\$8,314	\$0
TOTAL PROJECT DESIGN/BUILD COST							\$91,452	\$0
ALTERNATE:								
Alternate #1 - Paint existing exterior blue metal panel at entrance								
							\$3,839	

