



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to approve economic development incentive Agreement between City of St. Charles and St. Charles Chrysler Dodge Jeep, Inc. (1611 East Main Street)
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Presenter:	Chris Aiston
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Please check appropriate box:

	Government Operations		Government Services
X	Planning & Development (08/13/12)		City Council

Estimated Cost:		Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

Executive Summary:

On May 14, 2012, the Planning & Development Committee endorsed an economic development incentive for St. Charles Chrysler Dodge Jeep, Inc., supporting the dealership's initiative to establish a fleet sales enterprise in St. Charles through purchasing additional property at Tyler Road and Production Drive and making certain improvements to such property (leveling site for development, constructing paved lot with lighting, and perimeter landscaping) and at its existing dealership (enhanced building façade, construct front yard display pods, new lot lighting, and signage) on East Main Street.

Legal counsel drafted an agreement that reflects the terms approved by the City Council.

Through the attached Agreement, the City agrees to reimburse St. Charles Chrysler Dodge Jeep 50% of municipal sales taxes (MT) generated from the aforementioned properties. For its part, the dealership shall make the above-described land purchase and property improvements. Total reimbursement shall be for actual cost of each action, or \$800,000 and \$600,000, whichever is less, plus interest costs. The reimbursement period shall be 15 years or when the total of said costs is matched, whichever occurs first.

Attachments: *(please list)*

Resolution; Agreement; and Bullet Point Position Statement in Support of Action

Recommendation / Suggested Action *(briefly explain):*

Recommend that the Planning & Development Committee recommend that the City Council approve a resolution authorizing the Mayor and City Clerk to execute the Agreement with St. Charles Chrysler Dodge Jeep, Inc.

For office use only

Agenda Item Number: 4a

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 Agreement – St. Charles Chrysler Dodge Jeep, Inc.**

**Presented & Passed by the
City Council on _____**

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 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 ____ day of _____, 2012.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of _____ 2012.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2012.

Mayor Donald P. DeWitte

ATTEST: _____
City Clerk

COUNCIL VOTE:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

AGREEMENT

THIS AGREEMENT is entered into on this ____ day of _____, 2012, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (hereinafter referred to as the "City") and Al Piemonte Cadillac, Inc., d/b/a St. Charles Chrysler Dodge Jeep, Inc., an Illinois corporation (hereinafter referred to as the "Company");

WITNESSETH:

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 Company owns an automobile dealership located at 1611 East Main Street (the "Dealership") in the City of St. Charles, such property legally described on Exhibit "A" attached hereto and made a part hereof (the "Existing Site"); and

WHEREAS, the Company desires to expand its Dealership and has entered into a purchase contract for Lot 1, Lot 2 and Outlot B of Tyler Production Subdivision, such real estate being legally described on Exhibit "A-1" (the "Additional Site"; the Existing Site and the Additional Site herein collectively described as the "Property"); and

WHEREAS, the Company represents and warrants that the Project (as hereinafter defined) requires economic assistance and that Company's willingness to acquire the Additional Site enter into the expansion and to locate it on the Additional Site is contingent upon the City

agreeing to rebate a portion of any Sales Taxes (as hereinafter defined) received by the City with respect to the Property for a certain period of time, pursuant to the terms of this Agreement; and

WHEREAS, the City has, or will, enter into an agreement for the purchase of Outlot A of Tyler Production Subdivision (“Outlot A”), upon which it intends to construct certain stormwater management improvements (“City Improvements”); and

WHEREAS, pursuant to the Act, the City Council of the City has made the following findings with respect to the Project:

- A. The buildings on the Additional Site have remained underutilized for a period of at least one year.
- B. The Project is expected to create or retain job opportunities within the City.
- C. The Project will serve to further the development of adjacent areas.
- D. Without this Agreement, the Project would not be possible.
- E. 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.
- F. The Project will strengthen the commercial sector of the City.
- G. The Project will enhance the tax base of the City.
- H. 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. Conditions Precedent. All undertakings on the part of the City pursuant to this Agreement are subject to satisfaction of the following preconditions:

- (A) The Company, or an entity controlled by the Company or its principal, shall have acquired title to the Additional Site.

(B) The Company shall have submitted preliminary building plans to the City.

If the above-described conditions are not met prior to October 1, 2012, this Agreement shall terminate and be of no further force or effect.

Section 3. Approval of Plans; Construction of Improvements. Upon acquisition of the Additional Site, the Company shall construct a parking lot and related facilities, including, but not limited to, a stormwater detention facility, thereon, as described in more detail on Exhibit “B” attached hereto and incorporated herein (collectively, the “Project”). Prior to commencement of construction of the Project, and no later than January 1, 2013, the Company shall submit complete building plans, engineering plans and construction documents consistent with the preliminary plans to the City for review and approval in such form and detail as the City customarily requires. Construction of the Project shall commence no earlier than the date the City has completed construction of the City Improvements and shall be complete no later than one hundred and eighty (180) days after the issuance of building permits and the completion of the City Improvements, subject to the Force Majeure provisions set forth in Section 20. The City shall provide written notice to the Company as to the completion date of the City Improvements.

If the conditions set forth in this Section 3 are not met, the City shall have the option to terminate this Agreement and the Company agrees to repay to the City any and all amounts previously paid by the City to the Company pursuant to this Agreement upon notice of such termination.

Section 4. Definitions.

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

"Commencement Date" - means the first day of the month immediately following the date upon which all of the conditions precedent set forth in Section 2 have been met, unless such date occurs on the first day of a month, in which case, that date is the Commencement Date.

"Department" - means the Illinois Department of Revenue.

"Maximum Payment" - means the total amount of the Project Costs.

"Project Costs" – means the sum total of the following amounts actually expended or incurred:

- (a) the costs incurred by the Company and/or the title holder of the Additional Site, for design and construction of the Project, up to a maximum amount of \$300,000; and
- (b) the costs of certain improvements to the Existing Site to enhance visibility of the for-sale vehicle inventory and improving merchandising, as listed in Exhibit "C" attached hereto and incorporated herein, up to a maximum amount of \$300,000; and
- (c) the purchase price of the Additional Site, up to a maximum amount of \$800,000; and
- (d) interest costs incurred and paid by the Company and/or title holder of the Additional Site in connection with financing items (a), (b) and (c) above, paid at the lower of the actual rate or 6.5%, up to a maximum amount of \$400,000.

"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) does not 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, or any other municipal use, retail or service occupation tax imposed by the City, except as provided by Section 7(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 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.

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

Section 5. 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 14 hereof, the City shall make Sales Tax Distributions as follows:

- (a) Fifty percent (50%) of the City's Share of Sales Taxes shall be distributed to the Company;
and
- (b) The remainder of such Sales Taxes shall be retained by the City.

Notwithstanding the foregoing, the total amount of Sales Tax Distributions to the Company shall not exceed the Maximum Payment.

For each Sales Tax Year during the Sales Tax Participation Period, the City shall make three (3) Sales Tax Distributions. The City shall compute the City's Share of Sales Taxes originating from taxable sales activities on the Property for each four-month period and make the Sales Tax Distribution in accordance with the formula set forth above. The City shall make the Sales Tax Distribution within forty-five (45) days after the end of each four-month period, provided the City shall have first actually received from the Department the distribution of Sales Taxes applicable to the period in question, 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. Prior to the City making any Sales Tax Distribution, the Company shall provide all documentation required by the City to verify the amount of Project Costs incurred by the Company.

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 fifteen (15) days of receipt of such additional Sales Taxes from the Department.

Section 6. 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 effect 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 relocates or otherwise transfers its operations occurring on the Existing Site or the Additional Site to a site located outside the corporate limits of the City, this Agreement shall terminate and the Company shall not be entitled to any further Sales Tax Distributions not previously accrued.

This paragraph (c) shall not apply if the Company assigns this Agreement pursuant to Section 19 of this Agreement.

- (d) If, in any Sales Tax Year, the City's Share of Sales Taxes does not meet or exceed \$128,000 (such figure to be adjusted at the beginning of each Sales Tax Year by the Consumer Price Index for the Chicago Metropolitan Statistical Area), the City shall provide written notice thereof to the Company. Within ninety (90) days of receipt of said notice, the Company shall repay to the City an amount equal to the difference between fifty percent (50%) of the City's Share of Sales Taxes for said Sales Tax Year and \$100,000.

If, upon calculating the City's Share of Sales Taxes for the last four-month period of any Sales Tax Year, the City determines that the Company will owe money to the City under this subsection (d), it shall be entitled to withhold the appropriate amount, calculated pursuant to the formula set forth in this subsection (d), from the Sales Tax Distribution for said four-month period. If the amount withheld is insufficient to meet the repayment

requirement, the Company shall pay the remaining amount owing within the time period stated in the preceding paragraph.

If the Company fails to make any payment to the City required by this subsection (d) within the time prescribed, the City shall have the option to terminate the Agreement, whereupon the Company shall not be entitled to any further Sales Tax Distributions.

The following illustrates how the formula in this subsection (d) is intended to operate:

Example 1:

Total annual sales: \$12,000,000

City's Share of Sales Taxes (1%): \$120,000 (less than \$128,000)

Per Section 5, each party is entitled to 50% (\$60,000 each)

Section 6(d) calculation:

$\$100,000 - 60,000 = \$40,000$ – Amount owed to City from the Company

Example 2:

Total annual sales: \$13,000,000

City's Share of Sales Taxes (1%): \$130,000 (more than \$128,000)

Per Section 5, each party is entitled to 50% (\$65,000 each)

Section 6(d) calculation is inapplicable, since City's Share of Sales Taxes exceeds \$128,000.

Section 7. 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 5.
- (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 5.
- (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 5 (subject to the various limitations contained herein).

Section 8. 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 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 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 9. 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 10. 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 11. Compliance with Laws. Subsequent to the Commencement Date, and for the duration of the Sales Tax Participation Period, the Company shall continue to 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 Property and this Agreement 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 take no 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.

This Agreement calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* (the “Prevailing Wage Act”). The Prevailing Wage Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, reference made be made to the Illinois Department of Labor’s website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services in connection with the Project must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. The Company shall notify its contractors and subcontractors of the Prevailing Wage Act requirements.

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 Section.

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 be made only if the Company re-establishes compliance within one hundred twenty (120) days of the end of such Sales Tax Year. 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 14 herein.

Section 12. 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 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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: Al Piemonte Cadillac, Inc., d/b/a St. Charles Chrysler Dodge Jeep, Inc., an Illinois corporation

Attn: _____

with copies to: Fuchs & Roselli, Ltd.
440 West Randolph Street, Suite 500
Chicago, Illinois 60606
Attn: John T. Roselli

To the City: City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
Attn: Brian Townsend, City Administrator

with copies to: Gorski & Good, LLP
211 South Wheaton Avenue
Wheaton, Illinois 60187
Attn: Robin N. Jones

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 or (iii) on the third (3rd) business day after being deposited in any main or branch United States Post Office when sent by registered mail, return receipt requested.

Section 19. 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 vehicles and which dealership is not already located within the City. 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 Additional Site or Existing Site.

The parties acknowledge that this Agreement is an obligation which is for the benefit of the Company, or permitted assignee, and is not a covenant running with the land.

Section 20. Force Majeure. 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, 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 (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 (unless caused by Force Majeure Events).

Section 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. Term. Unless sooner terminated by agreement of the parties or otherwise pursuant to the provisions of this Agreement, but subject to Section 6(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.

In addition, should the Dealership be closed or vacated and not re-established within thirty (30) days, this Agreement shall terminate and be of no further force or effect, unless the Dealership is sold or otherwise transferred to another party, and the Agreement assigned pursuant to Section 19.

Section 29. 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

AL PIEMONTE CADILLAC, INC., d/b/a St.
Charles Chrysler Dodge Jeep, Inc., an Illinois
corporation

By: _____

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 Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, 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 she, as custodian of the corporate seal of the City of St. Charles, did affix the corporate seal of said City to said instrument, as her 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 _____, 2012.

Notary Public

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 _____, _____ of Al Piemonte Cadillac, Inc. and _____, _____ of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, 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 company, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the seal of said company, did affix the seal of said company to said instrument, as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2012.

Notary Public

EXHIBIT "A"

**LEGAL DESCRIPTION
OF EXISTING SITE**

EXHIBIT "A-1"

**LEGAL DESCRIPTION
OF ADDITIONAL SITE**

EXHIBIT “B”

PROJECT DESCRIPTION

Company shall cause the required site preparation to make development-ready Lots 1 and 2 and Outlot B of the Tyler-Production Subdivision, per City-approved site improvement plans. Company shall also construct an asphalt-paved, vehicle storage lot, to include required site lighting and perimeter landscaping, per City-approved building plans and in substantial conformity with preliminary site improvement plans shown in Figures 1 through 3, below.

Exhibit "B" Project Description – Figure 1. Plan Depicting Mass Grading Plan, Including Private Stormwater Detention Area and Adjacent Public Property Drainage Channel

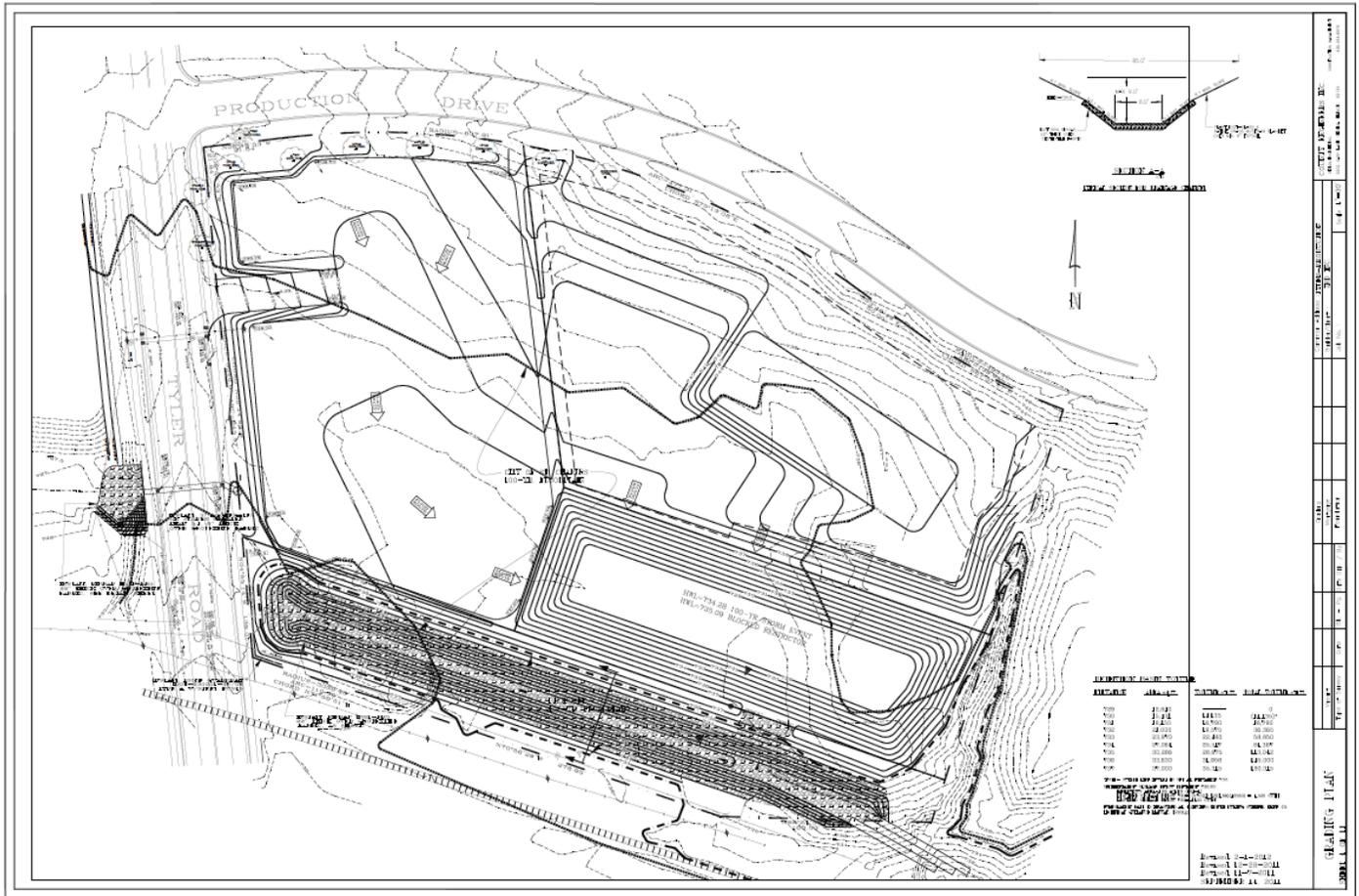


Exhibit "B" Project Description – Figure 3. Plan Depicting Perimeter Landscaping

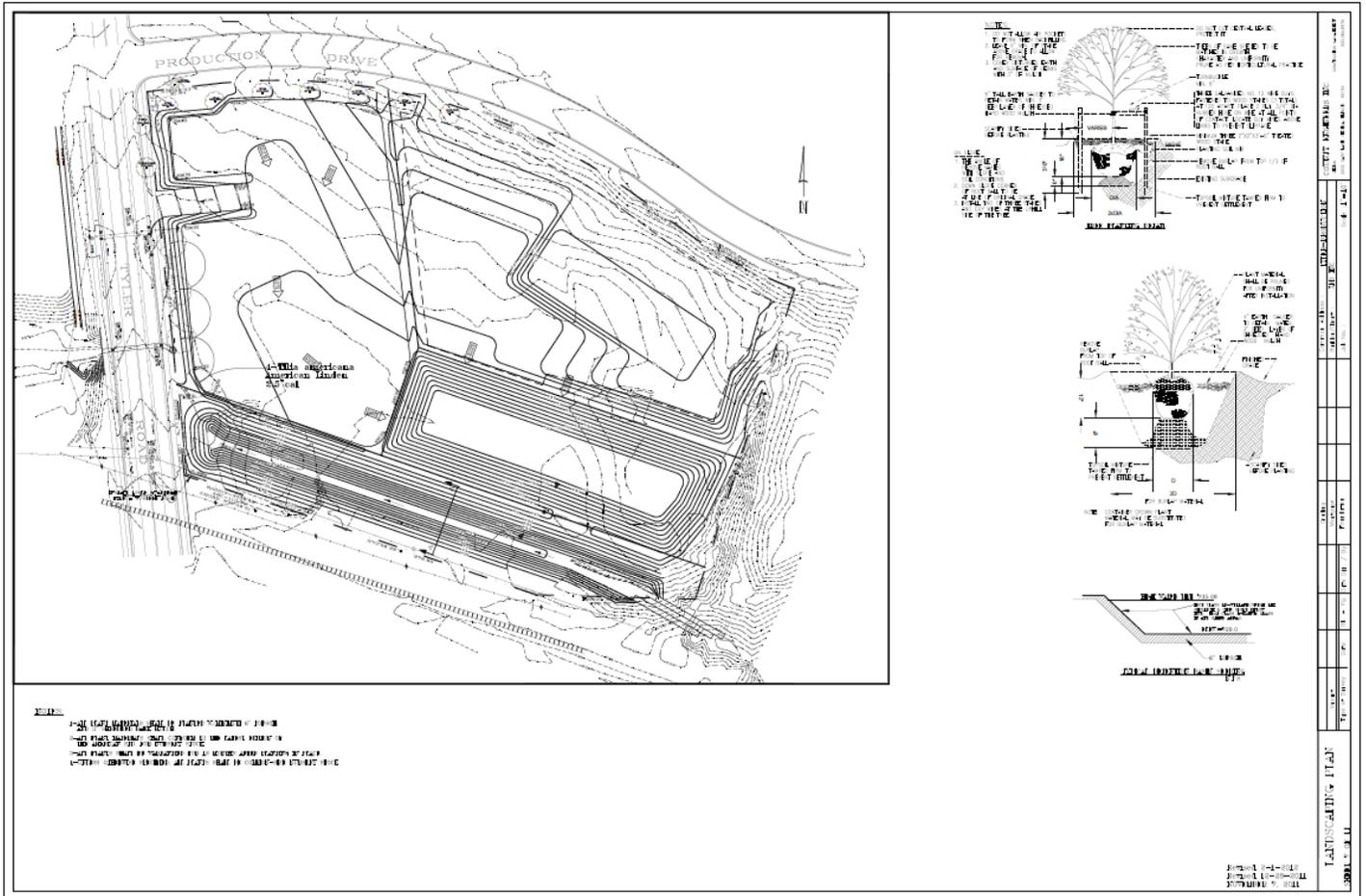


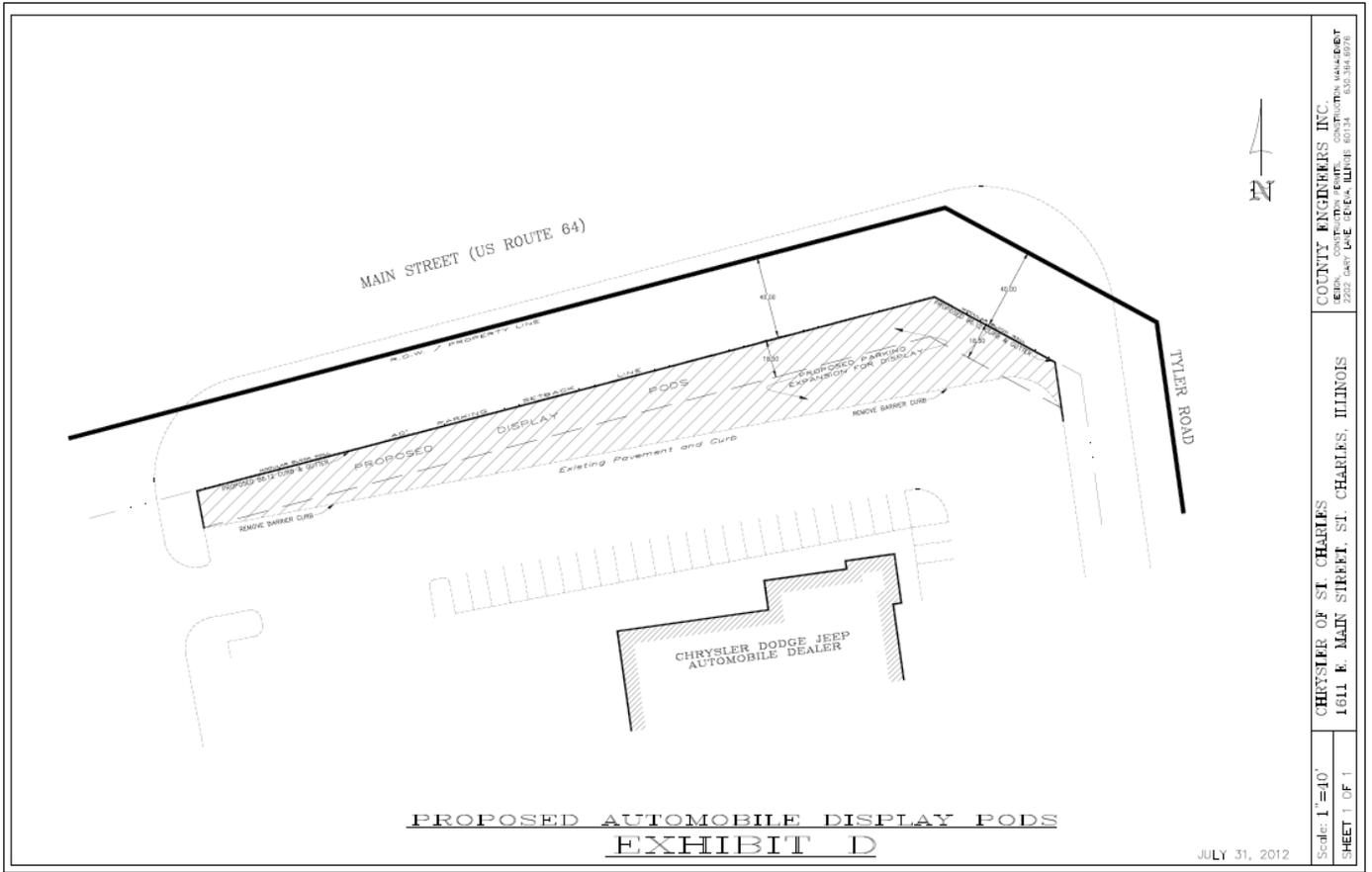
EXHIBIT “C”

LIST OF IMPROVEMENTS FOR EXISTING SITE

Company shall make the following improvements to the “Existing Site”, pursuant to required City permit approvals, and in substantial compliance with development plans shown in figures 1 through 4, below.

- 1. Enhancement to Dealership Building Façade;**
- 2. Construct Front Yard, Vehicle Sales Display Pods;**
- 3. Install New Exterior Lighting; and**
- 4. Install New Commercial Signage.**

Exhibit "C" Improvements to Existing Site – Figure 2. Vehicle Sales Display Pod Locations



COUNTY ENGINEERS, INC.
 1501 W. STATE STREET, SUITE 200, CHICAGO, ILLINOIS 60607
 2012 CARY LANE TELE. ILLINOIS 80134 FAX 80134

CHRYSLER OF ST. CHARLES
 1611 E. MAIN STREET, ST. CHARLES, ILLINOIS

Scale: 1"=10'
 SHEET 1 OF 1

EXHIBIT "D"

SAMPLE

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.

St. Charles Chrysler Economic Development Incentive Agreement

Bullet Point Position Statement in Support of Action

I. St. Charles Chrysler Incentive Development Agreement

- A. City will reimburse 50% of Dealership's Municipal Sales Taxes (MT) until total disbursements equal Dealership's costs up to \$1,200,000 (Land Purchase: \$800,000; Land Improvements: \$600,000 and Interest costs (up to \$400,000) or for a period of fifteen years, whichever occurs first.
- B. Piemonte to purchase Lots 1, 2 and Outlot B of Tyler-Production Subdivision for the purpose of locating/establishing fleet vehicle sales/lease enterprise thereon. Enterprise must be maintained at this site for no less than five years.
- C. Sales volume incentive: City/Dealership MT split is 50/50 unless annual sales drop below \$12.8M (\$128K in MT revenues). If annual sales do not meet this figure, Piemonte guarantees City receive no less than \$100K in MT for that period.

II. Public Benefits Derived from Incentive Agreement

- A. Business Attraction and Retention
 - i. Secure appropriate location (Lot 1, Tyler-Production Subdivision) for long term fleet sales/leasing within City of St. Charles. It should be noted that such sales/leasing are not local market driven and can occur anywhere, with the resulting local tax revenues going to the point of sale.
 - ii. Balance and make development-ready (including providing stormwater detention facility) Lot 2, Tyler-Production subdivision.
 - iii. Estimates indicate that total annual sales at St. Charles Chrysler dealership will more than double within the first five years of having established the fleet enterprise at this location.
 - iv. City to retain significant sales tax revenues (50% or greater) until total reimbursement disbursements equal \$1.2M (see I.A., above) or 15 years from Agreement, whichever occurs first. Thereafter, City will retain all MT revenues from business.
 - v. City's Home Rule Sales Tax (HR) revenues are not subject to the Agreement.
- B. Blighted and Underutilized Property Conditions Removed and Property Developed
 - i. Substantial amount of property to be removed from regulatory floodplain and placed in development-ready condition
 - ii. Any environmental concerns on property to be ameliorated
- C. Physical Improvements to Existing Dealership and to Subdivision Lots 1, 2 and Outlot B.
- D. Increased Property Tax and Utility Tax Revenues from Immediate and Future Land Improvements and Use Change.