

SALES TAX REBATE AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2018, by and between the CITY OF SANDWICH, an Illinois municipal corporation (the "City") and GJOVIK FORD, INC., an Illinois corporation, its successors and assigns (the "Owner") collectively, (the "Parties").

WITNESSETH:

WHEREAS, Owner currently operates a Ford Dealership on real estate which it owns in the City of Sandwich, Illinois, located at 2500 U.S. Route 34 East; and

WHEREAS, Owner anticipates that the dealership will continue to generate a substantial sales tax revenue to the City; and

WHEREAS, the Owner desires to undertake construction of a new dealership facility on the property located within the City and in so doing will be investing substantial dollars within the community and committing to the future of the community through its ongoing and continued presence in the City, maintaining and potentially increasing sales tax revenues for the City; and

WHEREAS, the City Council hereby finds and determines that approval of this Sales Tax Rebate Agreement is in compliance with statutory requirements and will materially contribute to the economic development of the City of Sandwich and to the preservation of a suitable tax base, is in the best interest of the City, and will promote the general welfare of the City.

NOW THEREFORE, in consideration of the mutual promises of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS:** The foregoing recitals are incorporated herein, by reference, as if fully set forth in this Agreement.
2. **CONSTITUTIONAL AND LEGISLATIVE AUTHORITY:**
 - A. The Illinois Constitution of 1970 provides in pertinent part:

Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities. (Article VII, Section 10(a)).
 - B. The Illinois statutes provide that municipalities such as the City may enter into economic incentive agreements relating to the development or redevelopment of

land within the corporate limits of the municipality and related thereto may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time. (65 ILCS 5/8-11-20).

3. **ECONOMIC INCENTIVES:** It is understood by the Parties that the Owner will likely continue to generate City Sales Tax Revenue (as defined below) not otherwise realized by the City. It is also declared that the incentives contained in this Agreement are unique to this situation and Property. Owner will comply in all respects with the Retailer's Occupation Tax Act (35 ILCS 1 15/1 et seq.) and the Service Occupation Tax Act (35 ILCS 12011 et seq.) and will permit the individual sales tax reporting to be given to the City.

4. **CITY SALES TAX REBATE:** On an annual basis, commencing with January 1, 2020, the City shall, upon the conclusion of the tax year after full reporting and all taxes have been paid over to the City, rebate to Owner any of the total annual amount of Retailer's Occupation Tax collected from Owner which exceeds the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00).

The foregoing formula shall be applied annually, on a calendar year basis for a total of fifteen (15) years and shall be in effect for a period from 2020 through 2035, or until the total rebate to the Owner reaches the sum of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00), whichever comes first. Upon a total rebate during the life of this Agreement reaching the sum of \$800,000.00, the Owner shall not be entitled to any further rebate. Further, the City's obligations to rebate shall be subject to the conditions set forth in Paragraphs 6 and 7 of this Agreement.

5. **SALES TAX REBATE MECHANISM:**

Definitions: For the purpose of this Agreement, the use of the terms "City Sales Tax" and "City Sales Tax Revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the City pursuant to the Retailer's Occupation Tax Act (as the act may be amended) or any other "sales tax" that may be enacted by the State of Illinois, and which is collected by the State of Illinois and distributed to the City. Currently such net portion is One Percent (1.00 %) of the total amount of gross sales within the State of Illinois originated by automobile dealerships within the City.

Sales Tax Reports: Owner shall authorize, in writing, the Illinois Department of Revenue to disclose to the City the amount of the City's share of Sales Tax received on behalf of Owner's retail sales business. Owner and City officials shall meet annually to confirm agreement on the annual rebate figure. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such Reports but shall be permitted to disclose such information and documents on a confidential need-to-know basis to employees and consultants as the City, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. In the event that the City receives a request pursuant to the Illinois Freedom of Information Act for information contained

in the Reports, the City shall immediately notify Owner, providing a copy of the request, and Owner shall have the opportunity within three (3) days after receipt of such notice from the City to notify the City that it objects to the request. In the event that Owner objects, the City shall refuse to disclose the information and shall not thereafter disclose the information without the consent of Owner unless compelled to do so by Court Order. In the event that action is ever commenced against the City pursuant to the Illinois Freedom of Information Act or similar statute as a result of withholding any documents provided by Owner, Owner agrees to indemnify and hold the City harmless with respect to any attorney's fees or costs or judgments imposed on or incurred by the City as a result of such action; provided, that the City has notified Owner of the applicable request as specified above and the City has followed Owner's instructions in responding to such request. Owner understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to Owner pursuant to this Agreement. Owner also agrees upon the request of the City to furnish such consents or waivers as may be required by the Illinois Department of Revenue to allow the Illinois Department of Revenue to furnish the sales tax information concerning the GJOVIK FORD, INC. facilities in the City.

Reimbursement Mechanism: Not later than five business days after the meeting between City and Owner to confirm the amount of the annual rebate as referenced above, the City shall remit in full to Owner at the address specified below the applicable rebate amount of the City Sales Tax Revenue for that particular annual reporting period. If any distribution applicable to a period within the ten-year period is received by the City after the ten-year period, it shall be paid to Owner subject to the reduction requirements of this "Reimbursement Mechanism" Section. Any payments determined to be due to Owner from the City based upon the Reports shall be reduced by the amount of any and all collection fees, including but not limited to the "Seller's Discount", imposed upon the City by the State of Illinois or the Illinois Department of Revenue or successor agency for collection of the City Sales Tax Revenues.

6. **NO REMOVAL FOR 180 MONTHS:** It is a covenant of this Agreement that the Owner will keep the Dealership in the City until at least December 31, 2035. If the dealership is removed from the City to a location outside City, prior to the above date, the City shall be entitled to be reimbursed by the Owner, for any sales tax rebate paid to the Owner pursuant to this Agreement on a prorated basis. The basis of the proration shall be a ratio of the number of full months that have elapsed prior to the moving of the Dealership out of the City and to the 180 months that this Agreement requires that the Dealerships remain in the City. In the event that the Dealership is moved, the City shall have no further obligation pursuant to this Agreement.

7. **OTHER CONTINGENCIES:**

This Agreement, and the City's obligation to rebate Retailer's Occupation Tax collected by the City during the term of this Agreement, is specifically contingent upon Owner's remodeling and upgrading the current automotive dealership in accordance with the attached plans set forth as Exhibit "A."

12. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Owner, and its successors, assigns, divisions, subsidiaries, or corporate designees, and upon successor corporate authorities of the City and successor municipalities. The City shall have the right to approve any party to whom the Owner may wish to assign this Agreement. Such approval shall not be unreasonably withheld.
13. **SEVERABILITY:** If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to any other person or entity shall not be affected thereby, and to such end the provisions of this Agreement are agreed to be severable.
14. **ENTIRE AGREEMENT:** This Agreement constitutes the full and entire understanding and Agreement between the parties and supersedes any negotiations, drafts and exhibits thereto and understandings both written and oral between the parties.
15. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

**CITY OF SANDWICH, an
Illinois Municipal Corporation**

By: _____
Rick Olson, Mayor

ATTEST:

Denise Ii, City Clerk

GJOVIK FORD, INC.

By: _____
Scott J. Gjovik, President

ATTEST:

Authorized Officer