

Meeting Held Electronically



COMMITTEE OF THE WHOLE MEETING
Monday, August 17, 2020
(Immediately following the Village Board Meeting)

AGENDA

CALL TO ORDER

ROLL CALL

AUDIENCE COMMENTS

TRUSTEE COMMENTS

DISCUSSION

- Gerald Ford Economic Incentive Request

EXECUTIVE SESSION

ADJOURN

Initials: SB

**VILLAGE OF NORTH AURORA
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR
FROM: MIKE TOTH, COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR
SUBJECT: GERALD FORD INCENTIVE REQUEST
AGENDA: AUGUST 17, 2020 COMMITTEE OF THE WHOLE MEETING

DISCUSSION

The Gerald Group is looking to undergo a \$1,800,000 remodeling project at their Gerald Ford dealership to modernize the facility and enhance the customer experience while also increasing sales with additional volume and vehicle repair counts. In order to make the improvements financially possible the Gerald Auto Group is requesting assistance through a portion of the future sales tax dollars that would be generated because of the improvements over a 10-year period.

Similar to the tax increment financing (TIF) concept, this request would include the capturing of funds, not from current sales tax revenues, but from future sales tax revenues, not otherwise expected to occur without the facility upgrades. These new revenues are generated by the increased sales deriving solely from the Gerald Ford dealership. A similar incentive concept was discussed before the Village Board at the May 15, 2017 Committee of the Whole meeting, where the Gerald Group discussed the idea of using incremental sales tax for the expansion of their Hyundai dealership. As that project did not move forward, neither did the incentive request.

The specific request is for \$900,000 over a 10-year period. Gerald established a sales tax base (with staff's concurrence) of \$219,500 annually, which represents sales at the Village's 1% share of sales tax, equating to \$21,950,000 in actual sales. As such, any annual sales over the \$219,500 sales tax base threshold would be rebated at 85% back to Gerald. Payout would commence after project completion and issuance of a Certificate of Occupancy from the Village. Gerald has provided staff with detailed sales projections that estimates a cumulative increase in overall sales by as much as \$100,000,000 over the 10-year period following completion of the project.

The Village Board discussed this item at their July 20, 2020 Committee of the Whole meeting. Generally speaking, the Board was in favor of the request as a business retention effort. Some Board members did state that the agreement could be construed as subsidizing a business. After further discussion, the Board directed staff to work with the Gerald Auto Group on a draft Economic Incentive Agreement. Staff is now soliciting feedback from the Village Board on the draft Economic incentive Agreement.

ECONOMIC INCENTIVE AGREEMENT

THIS ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is entered into on this _____ day of _____, 2020, by and between the VILLAGE OF NORTH AURORA, Kane County, Illinois, an Illinois municipal corporation (hereinafter referred to as the "Village") and Gerald Realty Holdings, LLC, an Illinois limited liability company (hereinafter referred to as the "Owner") and Gerald Ford, Inc., an Illinois corporation (hereinafter referred to as the "Dealer").

WITNESSETH:

WHEREAS, the Village, 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, 65 ILCS 5/8-11-20 (the "Economic Incentive Act") authorizes municipalities to enter into economic incentive agreements that provide sales tax rebates in order to encourage the development or redevelopment of land within their corporate limits; and

WHEREAS, the 5.82 acre parcel of property located at 208 Hansen Blvd., North Aurora, IL (the "Property"), owned by Owner and occupied by Dealer has been significantly underutilized for more than a year; and

WHEREAS, the Owner and Dealer desire to remodel the existing building, which has not been updated since 1999, to reconfigure and make better use of the space, expand the showroom, eliminate wasted office space, improve the service area and other changes that will better utilize the premises (the "Project"); and

WHEREAS, the Owner and Dealer represent and warrant that the costs involved in the Project would make the project not economically feasible without help from the Village in the form of the requested rebate of a portion of the incremental increase in Sales Taxes (as hereinafter defined) that are projected to be generated by the increased revenue generated by the Project for a certain period of time, pursuant to the terms of this Agreement; and

WHEREAS, the Project is expected to retain job opportunities and create new job opportunities, serve to further the development of areas adjacent to the Auto Mall; and

WHEREAS, the Project will strengthen the commercial sector and enhance the tax base of the Village; and

WHEREAS, without this Agreement, the Project would not be economically feasible; and

WHEREAS, the Owner and Dealer meet high standards of creditworthiness and financial strength, including evidence of equity financing for more than ten percent (10%) of the project costs; and

WHEREAS, the President and Board of Directors of the Village of North Aurora have determined that entering into this Agreement is in the best interest of the Village.

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 Village, the Owner and the Dealer agree as follows:

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

Section 2. Conditions precedent. All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions on or before the Commencement Date (as hereinafter defined):

A. Approvals. The Owner shall have obtained all necessary Village approvals regarding the Project.

B. Code Compliance. The Owner shall be in full compliance with all applicable codes, ordinances, rules and regulations of the Village relating to the development of the Project, including, but not limited to, the Village's Zoning Ordinance.

C. Other Compliance. The Owner shall comply with all the terms and conditions in this Agreement, which are conditions precedent to the Village's obligation to disburse any Sales Tax revenues to the Owner.

Section 3. Sales Tax Distribution.

A. Definitions. For purposes of this Agreement, capitalized terms not otherwise defined herein shall have the following meanings:

"Commencement Date" means the 1st day of the month following issuance of the Certificate of Occupancy.

"Department" means the Illinois Department of Revenue.

"Incremental Sales Taxes" means those annual Sales Taxes in excess of the base annual sales tax generated to the Village of \$219,500.00 in the Sales Tax Participation Period (the "Base Annual Sales Tax").

"Sales Taxes" means the municipal portion of 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 Retailers' 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 (commonly referred to as the Village's Municipal 1%).

"Sales Tax Participation Period" means a period of ten (10) years beginning on the Commencement Date.

"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 12-month period thereafter.

B. Determination of Annual Incentive. Provided the Owner shall materially comply with and continue to be in material compliance with the provisions of this Agreement, subject to the expiration of any cure period as provided in Section 17 hereof, the Village shall distribute

eighty five percent (85%) of the Incremental Sales Taxes generated by taxable sales activity of the Property for each of the Sales Tax Years during the Sales Tax Participation Period to the Owner, subject to the terms and conditions of this Agreement, including, but not limited to, the limitations in Subsection D below.

The Village shall distribute the rebates as provided above only to the extent that Sales Taxes are actually received by the Village from the Department (the "Sales Tax Distributions"), and the Sales Tax Distributions shall not be subject to any minimum guaranty or maximum limitation.

C. Annual Payments. For each Sales Tax Year during the Sales Tax Participation Period in which Incremental Sales Taxes are received by the Village, the Village Shall make one (1) annual Sales Tax Distribution, for an aggregate total of ten (10) possible Sales Tax Distributions over the life of this Agreement. The Village shall compute the Sales Taxes for each annual period and make the Sales Tax Distribution in accordance with the formula set forth above in Section 3(B). The Village shall make the annual Sales Tax Distribution when Incremental Sales Taxes are received by the Village, based on the computation of the Sales Taxes received for each preceding annual period during the Sales Tax Participation Period after the Village has received the necessary information from the State.

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

1. Such Sales Tax Distributions shall be payable solely from Incremental Sales Taxes actually received by the Village from the Department and originating from the taxable sales activities of the Property, and the Village shall not be obligated to pay any Sales Tax Distributions identified herein from any other fund or source.

2. The Village shall not be required to make any Sales Tax Distributions from any Incremental Sales Taxes generated after expiration of the Sales Tax Participation Period. The foregoing, however, shall not relieve the Village from making Sales Tax Distributions from Incremental Sales Taxes paid after expiration of the Sales Tax Participation Period, subject to the limitations of this Section, to the extent that such Incremental Sales Taxes were generated during the Sales Tax Participation Period.

3. Sales tax distributions are limited under this Agreement to eighty-five percent (85%) of the Incremental Sales Taxes generated by taxable sales activities of the Property for each of the Sales Tax Years during the Sales Tax Participation Period to the Owner capped at total payments not to exceed, in the aggregate, \$900,000.00 (the "Incentive Cap"). The Owner and Dealer acknowledge that the Incentive Cap is not guaranteed and that the sales tax distributions will cease if they reach the Incentive Cap before the end of the Sales Tax Participation Period.

4. The Village does not warrant or guarantee that the payments will reach the Incentive Cap by the end of the Sales Tax Participation Period. The Owner and Dealer acknowledge that the sales tax distributions will cease at the end of the Sales Tax

Participation Period even if the total sales tax distributions have not reached the Incentive Cap.

E. Change in Law. The Parties acknowledge that the agreement to distribute Incremental 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 Sales taxes generated within each such municipality. The General Assembly of the State of Illinois, from time to time, has considered modifying or eliminating the distribution of Sales Tax Revenues to Illinois municipalities. The parties desire to make express provision for the effect of such change on the operation of this Section 3. Accordingly, the parties agree as follows:

1. The Village shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing an alternate source of funds for the Sales Tax Distributions herein contemplated.

2. If the Illinois General Assembly hereafter eliminates the distribution of sales tax revenues to Illinois municipalities, then the Village shall have no obligation to make Sales Tax Distributions to the Owner based on the taxable sales activities generated by the Project, except to the extent provided otherwise in Subparagraph 4 of this Section 3 subsection E. However, in the event the Village can ascertain with specificity the amount of Incremental Sales Taxes being received by the Village as a direct result of the taxable sales activities generated by the Project from the Owner's or Dealer's records (certified copies of which the Owner or Dealer shall prove to the Village), the Village shall make the Sales Tax Distributions.

3. If the Illinois General Assembly hereafter and during the Sales Tax Participation Period reduces the percentage of sales tax revenues distributed to Illinois municipalities, Sales Tax Distributions provided for herein shall continue but solely to the extent the Incremental Sales Taxes generated from taxable sales activities of the Property exceed the Base Annual Sales Tax, with such distribution continuing to be made in accordance with the distribution formula contained in this Section 3.

4. If the Illinois General Assembly hereafter and during the Sales Tax Participation Period eliminates or reduces the formula for the distribution of sales tax revenues, as contemplated in Subparagraphs 2 or 3 hereof, and (a) if the Village, during any such period of elimination or reduction occurring within the Sales Tax Participation Period, if authorized by law, imposes a municipal sales tax on retail sales activities occurring within the Village's boundaries, or (b) if the Illinois General Assembly imposes a state service tax or authorizes a local service tax, that can be rebated as authorized by law, and Village obtains a percentage of service tax revenues through the State or imposes and collects a local service tax that can be rebated, then the sales tax revenues or service tax revenues generated thereby, in excess of the Base Annual Sales Tax from retail sales activities or service activities of the Property, shall be distributed in accordance with the distribution formula contained in this Section 3.

F. Required Information. The Village 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 Village to determine the amount of Incremental Sales Taxes generated by all taxable sales activities of the Property during any portion of the Sales Tax Participation Period. The Owner and/or Dealer 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 Village 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 to the Village which letter shall authorize disclosing such information to the Village during the Sales Tax Participation Period. If the Department refuses or otherwise fails to make the necessary sales tax information available to the Village, then the Owner and/or Dealer shall furnish to the Village copies of the ST-1 and ST-2 and 556 monthly statements filed with the Department, certified by the Owner, showing the amount of Sales Taxes paid during such month by the Owner and/or Dealer, and to the extent permitted by tenant leases, the same information for all tenants of the Property, together with evidence of the payment of such revenues, and the Village agrees to rely on such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to the Owner and/or Dealer 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, then the Owner and/or Dealer shall furnish the Village, and the Village, in fulfilling its obligations under this Section 3, shall rely on such equivalent or replacement forms as the Department may then employ for determining and receiving such information, provided the Village receives certified copies of such equivalent or replacement forms and evidence of payment of the sums referred to in such forms.

G. Confidentiality. The Village, to the fullest extent permitted by law, shall treat information received by it pursuant to this Section 3 as confidential proprietary business information under the Illinois Freedom of Information Act, and, to the extent the Village 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 the proprietary information of individual businesses, lessees, and purchases is protected and kept confidential, including, but not limited to, the identity of the Owner and the specifics of the Owner’s tax returns. Owner acknowledges that some aggregate information may be disclosed through the Village’s obligation to disclose payments made under this Agreement through payment of bills, annual Treasurer’s Report or other similar reporting the Village is required to do.

H. Budgeting. The Village shall provide for payments required under this Section 3 in its annual budget ordinances for the fiscal year in which such payment may be due.

I. No Guaranty. The Village has made its findings that the incentive is warranted under the terms of the Economic Incentive Act, but the Village makes no guaranty thereto. If this Economic Incentive Agreement is adjudicated and found to be invalid, and the payment of the Sales Tax Distributions are not, therefore allowed, the Village shall have no further liability to the Owner to make such Sales Tax Distributions from and after the date of such adjudication.

Section 4. Notices. All Notices and requests required pursuant to this Agreement shall be sent by personal deliver, overnight courier, or certified mail as follows:

To the Owner: Gerald Realty Holdings, LLC
213 Hansen Boulevard
North Aurora, IL 60542
jessicagerald@johnngreenerestor.com

With a copy to: Vince Rosanova
Rosanova & Whitaker LTD
127 Aurora Avenue
Naperville, IL 60540
vince@rw-attorneys.com

To the Village: Village of North Aurora
c/o The Village Administrator
25 East State Street
North Aurora, Illinois 60542
Sbosco@northaurora.org

With a copy to: Kevin Drendel
Drendel & Jansons Law Group
111 Flinn Street
Batavia, Illinois 60510
kgd@batavialaw.com

Or at such addresses as the parties may indicate in writing to the other by personal delivery, facsimile or email transmission, overnight courier, or certified or registered mail, return receipt requested, with proof of deliver thereof. Notices shall be deemed delivered to the address set forth above (a) when delivered in person on the business day it is delivered or the next business day if not delivered on a business day, (b) when delivered by facsimile or email with proof of delivery, on the business day it is delivered or the next business day if not delivered on a business day, (c) on the same business day received if delivered by overnight courier, or (d) on the third business day after being deposited in any main or branch United States Post Office when sent by registered mail, return receipt requested.

Business days shall be the days that the Village of North Aurora is open according to its published schedule.

Section 5. Governing Law. This Agreement shall be construed and enforce in accordance with the laws of the State of Illinois.

Section 6. Successors and Assigns; Assignment. All of the terms and provisions of this Agreement shall be binding on and inure to the benefit of all of the successors and assigns of the parties hereto. This Agreement shall be considered to run with the land, the incentive provided in this Agreement shall only inure to the benefit of the title owner(s) and/or dealer(s) in possession of the Property. The right to receive the incentive shall cease as to any entity that no longer has title to the Property or which no longer is in lawful possession of the Property. No assignment shall

be valid or effective unless or until written notice is given to the Village of the proposed assignment and written consent by the Village, which consent shall not unreasonably be denied for an assignment to any entity or entities in title to the Property and/or any entities in lawful possession of the Property that are operating as an automobile dealer, providing that they have acknowledged and agreed to the terms and conditions of this Agreement in writing.

Section 7. Third-Party Beneficiaries. The Village and the Owner 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 Village arising from this Agreement.

Section 8. Time is of the essence. Time is of the essence under this Agreement, and all the 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 9. Limitation of Liability. Notwithstanding anything herein to the contrary by implication or otherwise, any obligations of the Village created by or arising out of this Agreement shall not be general debt of the Village on or a charge against its general credit or taxing powers but shall be payable solely out of the Sales Tax revenues as set forth in Section 3. No recourse shall be had for any payment pursuant to this Agreement against any officer, employee, attorney, or elected or appointed official, past, present, or future of the Village.

Section 10. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any party to this Agreement to insist on the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, on 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, which shall continue to full force and effect.

Section 11. Village Approval or Direction. When Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the President and Board of Trustees of the Village 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 12. 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 13. Authority to Execute. The Owner hereby represents and warrants that it has the requisite authority to enter into this Agreement and that the individual signing this Agreement on behalf of the Owner is duly authorized agent of the Owner and is authorized to sign this Agreement. The President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the President and Board of Trustees of the Village to execute this Agreement.

Section 14. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understanding between the Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them related thereto, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding on the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

However, whenever under the provisions of this Agreement any notice consent of the Village or the Owner is required, or the Village or the Owner is required to agree or to make some action at the request of the other, such approval or such consent or such request shall be given for the Village, unless otherwise provided herein, by the President or his designee and for the Owner by any officer or employee as the Owner so authorizes.

Section 15. Acknowledgement. The Owner and Dealer acknowledge and understand that the incentive is based on the generation of sales taxes from retail sales on the Property and is dependent upon the Owner and Dealer or other third party lessee cooperating together to provide the authorization, if necessary, for the Village to obtain the sales tax information. The Owner and Dealer hereby agree to provide whatever authorization may be necessary at any time during the Sales Tax Participation Period to release the sales tax information to the Village. If the Owner leases or Dealer subleases the property to any third-party dealer, they shall be solely responsible for obtaining that third-party dealer's consent and authorization. The Village shall have no responsibility or obligation to obtain such consent and authorization from the Dealer or any other third-party dealer. The Dealer shall not be bound by the terms of this Agreement except to the extent that the Dealer hereby agrees to consent to the release of sales tax information and to sign any required authorization form, and any understanding or agreements beyond the terms of this Agreement shall remain purely between the Owner and the Dealer.

Section 16. Counterparts. This Agreement may be executed in two or more counterparts, each of which taken together shall constitute one and the same instrument.

Section 17. Default. In the event of any material default under or violation of this Agreement, the party not in default or violation shall serve written notice on 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 30 days after receipt of written notice of such default; provided, however, that said 30-day period shall be extended (a) if the alleged violation or default is not reasonably susceptible to being cured within this 30-day period, (b) if the party in default has promptly initiated a cure or the violation or default, and (c) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

Section 18. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provisions shall be deemed to be excised from this Agreement, and the invalidity thereof shall not affect any of the other provisions contained herein.

Section 19. Term. Once the Village has made all of the Sales Tax Distributions as required hereunder, this Agreement shall become null and void and be of no further force or effect. The parties agree that there is no minimum guaranty or maximum amount for the distributions to be made, but the distributions shall depend solely upon the sales taxes generated on the Property and the Sales Taxes received by the Village as its municipal share of the sales taxes paid to the State.

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

VILLAGE OF NORTH AURORA,
an Illinois municipal corporation.

By: _____
President

Attest: _____
Deputy Village Clerk

OWNER:
Gerald Realty Holdings, LLC, an Illinois limited
liability company

By: Gerald Management Company, LLC,
an Illinois limited liability company

Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

DEALER (as to Section 15 only):
Gerald Ford, Inc., an Illinois corporation

By: _____

Name: _____

Title: _____