



12 South Center Street

Bensenville, IL 60106

Office: 630 350 3404

Fax 630 350 2438

[www.bensenville.il.us](http://www.bensenville.il.us)

VILLAGE BOARD

July 27, 2020

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Corey Willemsen

Mr. Paul De Michele

17W275 Rodeck Lane

Bensenville, Illinois 60106

Re: July 20, 2020 FOIA Request

Dear Mr. De Michele:

I am pleased to help you with your July 20, 2020 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on July 20, 2020. You requested copies of the items indicated below:

*"1) A copy of any and all Incentive Agreements between the Village of Bensenville and Grand Subaru, LLC. 2) Copies of invoices and supporting documents for: Westbrook Strategic Consultant - \$3,750. Christopher B. Burke \$8,774. Alfred B. Ronan Ltd. \$7,500."*

After a search of Village files, the following information was found responsive to your request:

- 1) Village of Bensenville Ordinance No. 33-2020. (32 pgs.)
- 2) Westbrook Strategic Consultants Invoice No. 148. (1 pg.)
- 3) Christopher B. Burke Engineering Invoice No. 159186. (2 pgs.)
- 4) Alfred G. Ronan Ltd. Invoice Dated July, 2020. (1 pg.)

These are all the records found responsive to your request.

Do not hesitate to contact me if you have any questions or concerns in connection with this response.

Very truly yours,

  
Corey Willemsen  
Freedom of Information Officer  
Village of Bensenville

**VILLAGE OF BENSENVILLE  
12 S. CENTER STREET  
BENSENVILLE, ILLINOIS 60106**

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**Ordinance No. 33-2020**

**An Ordinance of the Village of Bensenville, DuPage and Cook Counties, Illinois  
Approving an Economic Incentive Agreement with Grand Subaru, LLC for the  
Sharing of Municipal Retailer's Occupation Tax Revenues**

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**ADOPTED BY THE  
VILLAGE BOARD OF TRUSTEES  
OF THE  
VILLAGE OF BENSENVILLE  
THIS 14th DAY OF JULY 2020**

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Published in pamphlet form by authority of the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois this 15th day of July, 2020

STATE OF ILLINOIS        )  
COUNTIES OF COOK    )  
SS AND DUPAGE        )

I, Corey Williamsen, do hereby certify that I am the duly appointed Deputy Village Clerk of the Village of Bensenville, DuPage and Cook Counties, Illinois, and as such officer, I am the keeper of the records and files of said Village; I do further certify that the foregoing constitutes a full, true and correct copy of Ordinance No. 33-2020 entitled an Ordinance of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving an Economic Incentive Agreement with Grand Subaru, LLC for the Sharing of Municipal Retailer's Occupation Tax Revenues.

IN WITNESS WHEREOF, I have hereunto affixed my official hand and seal on this 15th day of July, 2020.



  
Corey Williamsen  
Deputy Village Clerk

**AN ORDINANCE OF THE VILLAGE OF BENSENVILLE, DUPAGE AND  
COOK COUNTIES, ILLINOIS APPROVING AN ECONOMIC INCENTIVE  
AGREEMENT WITH GRAND SUBARU, LLC FOR THE SHARING OF  
MUNICIPAL RETAILER'S OCCUPATION TAX REVENUES**

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**WHEREAS**, the Village of Bensenville, DuPage and Cook Counties, Illinois (the "*Village*") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

**WHEREAS**, on April 28, 2015, after due consideration and investigation by the Village, the Village President and Board of Trustees of the Village of Bensenville (the "*Corporate Authorities*") adopted Resolution Number R-51-2015 entitled "*A Resolution Approving an Economic Incentive Agreement with Grand Subaru, LLC, for the Redevelopment of 125 West Grand Avenue and the Sharing of Municipal Retailer's Occupation Tax Revenues*" (the "*2015 Economic Incentive Agreement*"); and

**WHEREAS**, the 2015 Economic Incentive Agreement provided for the sharing of the retailer's occupation tax revenue as part of the redevelopment of a certain parcel of property pursuant to a proposal submitted by Grand Subaru, LLC, an Illinois limited liability company (the "*Grand Subaru*"), and said proposal was determined to comply with the requirements of 65 ILCS 5/8-11-20 of the Illinois Municipal Code; and

**WHEREAS**, Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, authorizes the Village to enter into an economic incentive agreement for the development or redevelopment of property within the Village, and to share a portion of the retailer's occupation tax revenue received by the Village attributable to the development or redevelopment of property;

and

**WHEREAS**. Grand Subaru is proposing to renovate and expand its current operations and redevelop additional property in connection therewith; and

**WHEREAS**. the Village and Grand Subaru find it prudent to enter into a this economic incentive agreement that incorporates the 2015 Economic Incentive Agreement, and further provides for the sharing of retailer's occupation tax revenue in order to provide for Grand Subaru's continued renovation, development and redevelopment as part of its overall expansion and operation in the Village; and

**WHEREAS**, the Corporate Authorities have determined that the sharing of additional retailer's occupation tax revenue with Grand Subaru pursuant to this economic incentive agreement is in the best interest of the health, safety and welfare of the residents of the Village; and

**WHEREAS**, the Corporate Authorities have further determined and find, after due consideration and investigation of Grand Subaru's proposal, that the sharing of retailer's occupation tax revenue from the renovation, development and redevelopment of property is appropriate and continues to abide by the requirements of Section 8-11-20 of the Illinois Municipal Code because structures on the property are no longer in full compliance with current building and safety code requirements; the redevelopment of adjacent property with an expanded dealership will create job opportunities within the Village; the renovations, development and redevelopment of additional property will serve to stimulate more development growth along the West Grand Avenue automobile sales corridor; that based upon representations by and information from Grand Subaru, without this economic incentive agreement, the renovation, development and redevelopment of adjacent property and the expansion of the Subaru dealership in the Village would not be possible;

that Grand Subaru meets high standards of creditworthiness and financial strength, as demonstrated by specific evidence of equity financing for not less than ten percent (10%) of the total project costs; that the overall project proposed by Grand Subaru will strengthen the commercial sector of the Village and continue to contribute to the improvement of the West Grand Avenue automobile sales corridor; that said project will enhance the tax base of the Village and generate additional retailer's occupation tax revenue; and that the entering into this economic incentive agreement is in the best interest of the Village; and

**WHEREAS**, Grand Subaru has further represented to the Village that the sharing of retailer's occupation tax revenue is essential for Grand Subaru to secure proper financing for the project herein contemplated, and that Grand Subaru would not be able to undertake the property without such tax revenue sharing; and

**WHEREAS**, Section 8-1-2.5 of the Illinois Municipal Code, 65 ILCS 5/8-1-2.5, also authorizes the Village to expend funds for economic development purposes, including the granting of funds or reimbursement of cost by a commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the Village; and

**WHEREAS**, the Village has developed a strategic plan which includes as two of its primary goals the creation and maintenance of a financially sound Village and vibrant major commercial corridors; and

**WHEREAS**, the creation of jobs, generation of additional retailer's occupation tax revenue, and the maintenance and improvement of West Grand Avenue automobile sales corridor that will result from the Village's entry into this economic incentive agreement with Grand Subaru contributes to the Village's strategic goals to ensure that the Village remains financially sound and provides for vibrant major commercial corridors.

**WHEREAS**, the Corporate Authorities have reviewed the benefits derived from entering into this economic incentive agreement and find that it is in the public interest to authorize it, as said agreement will best serve to ensure the health, safety and welfare of the residents of the Village; and

**WHEREAS**, the Corporate Authorities have determined it is in the best interest of the health, safety and welfare of the Village to provide for this agreement herein contemplated.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**Section 1.** That the above recitals and legislative findings are found to be true and correct and are hereby incorporated herein and made a part hereof, as if fully set forth in their entirety.

**Section 2.** The Corporate Authorities find and determine that it is necessary and desirable to enter into the agreement herein provided for the purpose set forth herein and that the adoption of this Ordinance is in the best interest of the Village.

**Section 3.** The recitals and legislative findings herein are declared to be *prima facie* evidence of the determination by the Corporate Authorities as to the validity and purpose of this Ordinance and the agreement herein provided and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**Section 4.** The Economic Incentive Agreement between the Village of Bensenville and Grand Subaru, LLC (the "*Agreement*"), a copy of which is attached hereto and made a part hereof as Exhibit A, is hereby approved substantially in the form presented to the Village Board, with such necessary changes and revisions therein determined and authorized by the Village Manager and subsequently approved by execution and delivery of the Agreement by the Village President.

**Section 5.** The Village President and Village Clerk are hereby authorized and directed to execute and deliver the Agreement and any and all other documents necessary to implement the provisions, terms and conditions thereof, as therein described.

**Section 6.** That the Finance Department of the Village is hereby authorized and directed to undertake such reporting requirements pertaining to the Agreement as required by 65 ILCS 5/8-11-21 of the Illinois Municipal Code and the Illinois Department of Revenue.

**Section 7.** The officers and officials of the Village are hereby authorized to undertake actions on the part of the Village as contained in the Agreement to complete satisfaction of the provisions, terms or conditions stated therein.

**Section 8.** This Ordinance, and its parts, are declared to be severable and any section, paragraph, clause, provision, or portion of this Ordinance that is declared invalid shall not affect the validity of any other provision of this Ordinance, which shall remain in full force and effect.

**Section 9.** All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**Section 10.** This Ordinance shall be in full force and effect upon its passage, approval and publication as provided by law.

*(Intentionally Left Blank)*

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, this 14<sup>th</sup> day of July 2020, pursuant to a roll call vote, as follows:

APPROVED:



Frank DeSimone, Village President

ATTEST:

  
Nancy Quinn, Village Clerk

AYES: Carmona, Franz, Frey, Lomax, Panicola, Perez

NAYES: None

ABSENT: None

Exhibit A

Agreement

**ECONOMIC INCENTIVE AGREEMENT BETWEEN  
THE VILLAGE OF BENSENVILLE AND GRAND SUBARU, LLC**

THIS ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is made and entered into as of the 14th day of July 2020 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the "Village"), and GRAND SUBARU, LLC, an Illinois limited liability company (the "Grand Subaru"), with its principal office at 125 West Grand Avenue, Bensenville, Illinois.

**WITNESSETH**

WHEREAS, the Village of Bensenville, DuPage and Cook Counties, Illinois (the "Village") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the corporate limits of the Village; and

WHEREAS, the laws of the State of Illinois authorize the corporate authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law, including 65 ILCS 5/8-1-2.5 of the Illinois Municipal Code, and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Grand Subaru has operated an automobile dealership at 125 West Grand Avenue in the Village since 2005 which presently draws clientele from all over the Chicago metropolitan area; and

WHEREAS, Grand Subaru and the Village entered into an Economic Incentive Agreement on April 28, 2015, as Grand Subaru invested approximately \$4,000,000.00 to redevelop its current dealership facilities to expand its showroom, office, and repair facility on its present site and to developed the vacant parcel to the immediate west for a new and previously owned vehicle display and provide for appropriate access to and from Grand Avenue with upgraded landscaping, lighting, and signage (the "2015 Agreement"); and

WHEREAS, at the time the Village and Grand Subaru entered into the 2015 Agreement, the Village determined that the findings contained in the provisions of 65 ILCS 5/8-11-20 of the Illinois Municipal Code were applicable; and

WHEREAS, Grand Subaru and the Village now desire to enter into a new Economic Incentive Agreement, as Grand Subaru plans to expand and invest an additional estimated \$11,000,000.00 in order to acquire adjacent property located at 111 West Grand Avenue, Bensenville, Illinois (the "Adjacent Property") in order to expand its inventory, undertake improvements to and construct additional service bays, construct a new tunnel-style car wash facility, additional parking facilities and provide for underground stormwater detention (the "2020 Agreement"); and

WHEREAS upon the Effective Date of the 2020 Agreement, as herein defined, the Village and Grand Subaru agree that the 2015 Agreement shall terminate, and the 2020 Agreement shall control, and the 2015 Agreement and the 2020 Agreement shall henceforth be identified as the "Agreement" (the "Agreement") with all such terms, conditions and obligations between the Village and Grand Subaru solely contained herein; and

WHEREAS, Grand Subaru has represented to the Village that sales tax revenue sharing is essential for Grand Subaru for the redevelopment of its current facilities and its further expansion onto the Adjacent Parcel, and that the redevelopment and expansion in this Agreement would not be possible without sales tax revenue sharing; and

WHEREAS, the redevelopment and expansion in this Agreement will generate increased real estate tax and sales tax revenues and employment opportunities for the Village and stimulate the further revitalization and redevelopment of the West Grand Avenue automobile sales corridor; and

WHEREAS, the Village desires to make it economically feasible for Grand Subaru to redevelop and expand its existing dealership facilities by entering into this Agreement with Grand Subaru pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with 65 ILCS 5/8-11-20, that a portion of Grand Subaru's facility is functionally obsolete and that the Adjacent Parcel is underutilized; that the project is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that Grand Subaru meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village; and

WHEREAS, Grand Subaru represents and warrants to the Village that the sales tax revenue proceeds herein contemplated would not have been paid to any other unit of local government and that Grand Subaru does not maintain within another unit of local government a retail location or a warehouse from which the tangible personal property is delivered to purchasers, in accordance with Section 8-11-21 of the Illinois Municipal Code, 65 ILCS 5/8-11-21.

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Grand Subaru and the Village hereby agree as follows:

### **SECTION 1. RECITALS**

The recitals, findings and determinations hereinabove set forth above are hereby incorporated herein by this reference into the body of this Agreement to the same extent as if each had been set forth in full in this Section of this Agreement.

### **SECTION 2. DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

**“Grand Subaru” and “Grand Subaru, LLC”:** Grand Subaru, LLC, an Illinois limited liability company, is the Dealership that operates at 125 W. Grand Avenue, Bensenville, Illinois 60106. Grand Subaru, LLC, and any and all successors and assignees thereof during the Term of this Agreement, shall be the sole entity with obligations to the Village under this Agreement.

**“Heritage Bensenville, LLC”:** Heritage Bensenville, LLC, an Illinois limited liability company, which is the owner of the land on which Grand Subaru, LLC currently operates its automobile dealership. Heritage Bensenville, LLC shall have no obligations to the Village under this Agreement and the Village shall have no obligation to Heritage Bensenville, LLC under this Agreement.

**“Grand 1000, LLC”:** Grand 1000, LLC, an Illinois limited liability company, which is the owner of the parcels on which Grand Subaru, LLC currently operates its automobile dealership and is the owner of the parcel commonly known as 111 W. Grand Avenue where the dealership plans to expand its operations pursuant to this Agreement. Grand 1000, LLC shall have no obligations to the Village under this Agreement and the Village shall have no obligation to Grand 1000, LLC under this Agreement.

**“Automobile or Truck Sales Franchise”:** The sale of a specified brand or brands of new automobiles and/or trucks and servicing of those brands pursuant to a dealership franchise agreement with the manufacture or those brands, in which any sales and servicing of used motor vehicles shall remain a subordinate business.

**“Corporate Authorities”:** The President and Board of Trustees of the Village of Bensenville, Illinois.

**“Current Facilities”:** Shall mean the property commonly known as 125 West Grand Avenue, Bensenville, DuPage County, Illinois, legally described in Exhibit A, a copy of which is attached hereto and incorporated herein by reference as if fully set forth, and on which Grand Subaru is operating its business on the Effective Date of this Agreement.

"Effective Date of this Agreement" or "Effective Date": Shall be January 1, 2020.

"Economic Incentive Payment" or "EIP": The amounts payable to the Grand Subaru pursuant to Section 3 of this Agreement.

"Force Majeure": Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of Grand Subaru or the Village, which include fire, strikes, lockouts, embargoes, civil riot, war, insurrection, earthquakes, casualties, acts of the public enemy, epidemics, pandemic, quarantine, or floods or natural catastrophe, lack of transportation, building material supply shortages or vendor problems not caused by Grand Subaru and occurring within the region, but specifically excluding any epidemic, pandemic or quarantine related to COVID-19 under Phase Three or Phase Four of the State of Illinois Restore Illinois Plan or such similar plan or model subsequently enacted by the State of Illinois.

"Maximum Sharing Amount": "Maximum Sharing Amount": Shall mean the not-to-exceed amount of Nine Million, Five Hundred Thousand and 00/100ths Dollars (\$9,500,000.00) to Grand Subaru pursuant to and in accordance with Section 3, A. of this Agreement.

"Project": Acquisition of the Adjacent Property together with the redevelopment of the Property and Adjacent Property to expand inventory, undertake improvements to and construct additional service bays, construct a new tunnel-style car wash facility, provide for additional screening adjacent to residential properties, provide for additional parking facilities and create underground stormwater detention. The Project will also include the demolition of the structure on the Adjacent Property, renovation and remodeling of the Current Facilities and subsequent integration of all improvements with existing facilities, as set out and described in Exhibit B, a copy of which is attached hereto and incorporated herein by reference as if fully set forth, which is subject to approval by the Village after submission by Grand Subaru.

"Property": Shall mean the Current Facilities and the Adjacent Parcel located at 111 West Grand Avenue, Bensenville, Illinois.

"Party" or "Parties": The Village and/or Grand Subaru.

"Sales Taxes": The not to exceed one percent (1%) portion of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer's Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, from sales and service transactions occurring on the Property, including internet, online or such other computer or direct generated sales of vehicles and parts from which Illinois sales tax receipts are derived, but not including any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term "Sales Taxes," and further excluding any portion of a tax imposed or that may be imposed under the Non-Home Rule Retailer's Occupation Tax Act, 65 ILCS 8-11-1.3 *et seq.*; Non-Home Rule Service Occupation Tax Act, 65 ILCS 8-11-1.4 *et seq.*; Non-Home Rule Use Tax Act, 65 ILCS 8-11-1.5 *et seq.*; and the Service Use Tax Act, 35 ILCS 110/1 *et seq.*, and

any other retailer's occupation tax, service occupation tax, use tax, or sales, except as expressly authorized by this definition.

“Sales Tax Year”: Each calendar year beginning from the Effective Date of this Agreement to December 31<sup>st</sup> and that year twenty-five (25) years from the Effective Date.

“State”: The State of Illinois.

“Term”: The period for which this Agreement shall be effective begins January 1, 2020, which shall be the Effective Date, through a date twenty-five (25) years from that date or January 1, 2045.

### **SECTION 3. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT**

#### **A. Amount of Economic Incentive Payment (“EIP”)**

The Parties agree that the first component of the Economic Incentive Payment (the “EIP”) is Four Million and 00/100ths Dollars (\$4,000,000.00) in Sales Tax Rebates owed to Grand Subaru for previous investments under the 2015 Agreement. The Parties further agree that Grand Subaru has received as part of the Maximum Sharing Amount and shall not contest any amounts previously calculated and paid under the 2015 Agreement, as identified on Exhibit C, a copy of which is attached hereto and incorporated herein by reference as if fully set forth. Payment of the remaining balance, as identified on Exhibit C and as of the Effective Date of this Agreement, shall be paid in yearly installments to Grand Subaru in accordance with this Agreement. The 2019 EIP and each subsequent annual EIP shall be automatically deducted from the prior year’s balance and Maximum Sharing Amount. Such amount shall be calculated annually on Exhibit C during the Term of this Agreement after payment to Grand Subaru by the Village and shall be done so until the remaining balance or Maximum Sharing Amount is paid. Any EIP due to Grand Subaru under this Agreement shall first be applied to this first component and shall be collectively referred to as the “2015 Residual Incentive”.

For each Sales Tax Year through the Term that is part of the 2015 Residual Incentive the Village shall wholly retain the first \$200,000.00 of any Sales Taxes received by the Village for any Sales Tax Year, and Grand Subaru shall only receive fifty (50%) of any subsequent amounts remaining that will be applied against the Maximum Sharing Amount. Only for the 2019 Sales Tax Year and 2019 EIP Payment, the Village shall retain \$200,000.00 or fifty percent (50%), whichever amount is greater, of any Sales Taxes received by the Village and Grand Subaru shall receive any amounts remaining after the Village’s allocation. The Parties expressly covenant and agree that the 2019 Sales Tax Year and 2019 EIP Payment calculation shall not apply to any other 2015 Residual Incentive thereafter.

The Parties agree that the second component of the EIP under this Agreement shall be for cost that Grand Subaru is eligible to receive reimbursement for the Project but not more than fifty percent (50%) of new investment dollars (investment cost not included in the 2015 Residual

Incentive) paid by Grand Subaru for the Project or Five Million Five Hundred Thousand and 00/100ths Dollars (\$5,500,000.00), whichever amount is less (the "New Incentive"). The New Incentive must be clearly evidenced in documents satisfactory to the Village that identify the exact funding source and capital outlay made by or on behalf of Grand Subaru to complete the Project. No EIP for the New Incentive under this Agreement shall be applied to this second component until the 2015 Residual Incentive is paid in full. Each New Incentive EIP shall also apply to the Maximum Sharing Amount.

For each Sales Tax Year through the Term that is part of the New Incentive the Village shall wholly retain the first \$200,000.00 of any Sales Taxes received by the Village for any Sales Tax Year, and Grand Subaru shall only receive fifty (50%) of any subsequent amounts remaining that will be applied against the Maximum Sharing Amount until such time as the Maximum Sharing Amount has been paid in full.

The total EIPs to Grand Subaru under this Agreement shall not exceed the Maximum Sharing Amount, and the Village shall have no obligation to make any EIPs to Grand Subaru above the Maximum Sharing Amount, regardless of whether or not the Term of this Agreement shall have expired when the EIP's paid Grand Subaru hereunder shall equal the Maximum Sharing Amount. In no event is the Village required to make up or provide any further EIP to Grand Subaru, if the Maximum Sharing Amount is not achieved at the end of the Term of this Agreement or termination of this Agreement. EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State, generated by sales and service transactions occurring on the Property, including internet generated sales of vehicles and parts from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for Grand Subaru.

B. Village Payment. All undertakings on the part of the Village are subject to the satisfaction of the following by Grand Subaru before the date of any payment by the Village, as herein provided. The Village shall make the EIPs in the amounts provided for in Section 3.A. from the proceeds of Sales Tax distributions actually received by the Village within one hundred twenty (120) days of the completion of the Sales Tax Year in which the revenues are recorded, subject to the receipt of the Illinois Department of Revenues Certification of the Sales Tax disbursements to the Village and Village's receipt of the required supporting documentation for such Sales Taxes as specified in Sections 4.C. and 9. If, for any reason, the State of Illinois fails to distribute the Sales Tax receipts to the Village in sufficient time for the Village to make such annual payments, then the Village shall provide notice of such fact to Grand Subaru. In such event, the Village shall make the required EIP within 60 days after the date on which the Village actually receives the Sales Tax Receipts due the Village for the applicable Sales Tax Year. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois, then the Village and Grand Subaru do hereby agree to cooperate with each other to accomplish such reconciliation.

No New Incentive EIP by the Village shall occur until the Project is substantially completed and operational and shall remain fully operational throughout the Term of this

Agreement to qualify and receive any EIP, as herein provided. Grand Subaru shall make available to the Village proof that it has substantially completed the Project and that the specific investment expenses by Grand Subaru are clearly evidenced in documentation satisfactory to the Village. Such documentation must identify the source of funding, exact capital outlay incurred, receipts, paid invoices and contracts for purchases, services and materials needed by Grand Subaru for the Project on the Property. The Village shall have the unequivocal right to require such additional documentation it needs to substantiate a cost incurred by Grand Subaru, including but not limited to the right to conduct an audit of the Project.

EIP Payment Audit-Reconciliation. Each EIP payment by the Village to Grand Subaru shall be accompanied by a statement from the Village, setting forth the calculations of such payment. The Village shall also issue a statement to Grand Subaru setting forth all payments made to date to Grand Subaru. Grand Subaru shall have thirty (30) days following the receipt of said payment to provide written notice of a dispute concerning the calculations contained in such statements. In the event that Grand Subaru shall initiate any such dispute, it must be made by written notice to the Village Manager. In the event that the Parties are unable to reconcile the dispute within thirty (30) days, the Village's auditor shall review such calculations and information and determine whether the amount paid to Grand Subaru was less or more than the amount that should have been paid hereunder. The determination of the Village's auditor shall be final and binding to the Parties. If such dispute shows that the amount paid to Grand Subaru was less or more than the amount that should have been paid to Grand Subaru, either the Village shall pay to the Grand Subaru the balance of such amount within thirty (30) days of the completion of the findings of the Village's Auditor, or Grand Subaru shall pay to the Village the amount of any overpayment within thirty (30) days of the completion date as herein provided, whichever is applicable. In the event that no dispute with respect to a payment is initiated as set forth above, such payment shall be deemed correct and not subject to dispute by Grand Subaru thereafter.

C. Change in the Law. The Village and Grand Subaru acknowledge and agree that the Village's obligation to pay the EIP to Grand Subaru is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act and Sections 8-11-20 and 8-11-21 of the Illinois Municipal Code. The Village and Grand Subaru further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of Local Sales Tax receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Tax receipts generated by Grand Subaru as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax receipts received by the Village, as specifically defined in Section 2 of

this Agreement. Subject to all the conditions, limitations, and restrictions in this Agreement, the Village shall be liable to Grand Subaru for disbursement of monies hereunder only to the extent of the Sales Tax or such other Replacement Tax Receipts actually received by the Village from the Illinois Department of Revenue or other applicable State governmental agency. Further, any payments due Grand Subaru from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collections of revenues to be shared. Grand Subaru shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse, claim of law or equity, liability, remedy, right or obligation shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity. Without limiting the generality of the foregoing, in the event any legal proceedings against the Village are instituted in no event shall any judgement for monetary damages or award be entered individually against any of the above referenced parties.

E. Exempt Entities and Persons. Both the Village and Grand Subaru, LLC acknowledge and agree that Heritage Bensenville, LLC and Grand 1000, LLC, and the respective officers, directors, and agents of each (hereinafter "Exempt Entities and Persons"), shall have no obligations under this Agreement to the Village and that neither the Village nor Grand Subaru, LLC will look to Exempt Entities and Persons for any remedy, financial or otherwise, pursuant to any breach or alleged breach of this Agreement. Grand Subaru, LLC alone shall be responsible to indemnify and hold harmless the Exempt Entities and Persons from any claims, actions, demands, suits in law or in equity, arising from this Agreement.

F. Consent to Payment to Grand Subaru. By signing this Agreement, Grand Subaru and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws), advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the Village; or
2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto.

#### **SECTION 4. GRAND SUBARU'S OBLIGATIONS**

Village's obligation to make the EIP's as provided for in this Agreement is conditioned upon Grand Subaru's performance of the following acts and obligations. Grand Subaru's

performance of such is material to this Agreement, and Grand Subaru's failure to perform such, subject to the provisions of notice and cure shall be deemed a breach of this Agreement for which the Village may immediately suspend and withhold payment of the EIP's or pursue all lawful remedies available to it.

A. Grand Subaru shall make available to the Village a copy of all fully executed franchise agreements with Subaru of America and/or other franchisors relating to its Current Facilities and the Project and shall also provide to the Village within five (5) business days of receipt thereof any notices or actions by Subaru of America and/or other Franchisors relating to the use of the Property as the site for said Subaru Automobile or Truck Sale Franchise.

B. Throughout the Term of this Agreement Grand Subaru shall maintain and continually operate on the Property an Automobile or Truck Sale Franchise. However, a termination of Grand Subaru's Franchise by Subaru of America shall not be a breach of this Agreement and shall terminate the obligations of each Party to the other pursuant to this Agreement.

C. Grand Subaru shall maintain for the Term any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity with respect to the Property. Such documents shall be available for inspection by the Village at all reasonable times and copies thereof shall be promptly provided to the Village if the Village requests such.

D. Grand Subaru shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

E. Grand Subaru shall establish and must maintain throughout the Term of this Agreement, a procedure whereby all of Grand Subaru's internet, online or such other computer or direct generated sales of vehicles and parts which generate Sales Tax is administered so that all receipts of such Sales Tax permitted by law therefrom flow to the Village.

F. Grand Subaru shall construct the Project in accordance with all approved plans and shall further maintain the Property at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway without approval from the Village. Further Grand Subaru shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property, except that Grand Subaru, I.L.C shall be permitted to erect temporary signage and conduct in any Sales Tax Year up to four (4) "tent-sales" and/or like event on the Property, with each event limited to a maximum duration of eighteen (18) consecutive days.

G. Grand Subaru shall promptly apply to the Village and any other governmental agencies with jurisdiction over the project for all permits and authorization needed therefor.

H. Subject to Grand Subaru receiving approval from the Village and the County of

DuPage for all required approvals and permits for construction on or before January 1, 2021, Grand Subaru shall complete the Project no later than January 1, 2023.

I. Grand Subaru shall offer to sell to the Village any Subaru vehicle offered for sale by Grand Subaru at the State bid price, provided nothing herein shall be construed to require the Village to accept such offer or purchase of any vehicles from Grand Subaru, LLC.

J. Grand Subaru will voluntarily donate to the Bensenville Community Foundation as a primary beneficiary so long as Subaru of America shall continue its "Share the Love" Campaign and the Bensenville Community Foundation continues as a 501(c)(3) and distributes 100% of the proceeds donated to persons of need within the local community.

K. Grand Subaru will continue to operate at the Property uninterrupted and if it ceases to operate or relocates its operation, or any portion thereof, to a different location during the Term of this Agreement, Grand Subaru shall forfeit any further EIP and shall reimburse the Village for the last three (3) EIP received by it from the Village, as liquidated damages.

#### **SECTION 5. FORCE MAJEURE**

A. Whenever a period of time is provided for in this Agreement for either Grand Subaru or the Village to perform any act or obligation, and Grand Subaru or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Grand Subaru is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which Grand Subaru would otherwise be entitled hereunder for said period.

#### **SECTION 6. LITIGATION AND DEFENSE OF AGREEMENT**

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either Party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("Litigation"), the Party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and Grand Subaru do hereby agree to use their respective best efforts to defend the validity of this Agreement and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken pursuant thereto. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and Grand

Subaru do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

### **SECTION 7. REMEDIES**

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in accordance with the provisions of Section 11 of this Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of fifteen (15) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said fifteen (15) day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

### **SECTION 8. PERMIT PROCEDURES**

Construction Plan and Permit Review Process. Grand Subaru shall timely submit all necessary plans and documents required for the issuance of a Village permit(s) for the Project. Within 30-days of submission of such plans and documents to the Village, the Village shall provide Grand Subaru written comments informing Grand Subaru of the need to submit or obtain additional information or documents required for the Village to complete its review and issue such permit(s) for the Project. Upon receipt of the Village's written comments, Grand Subaru shall submit to the Village within 30 days of receipt of the Village's written comments that which is required by the Village. Upon such additional submission, the Village shall within 30-days of receipt thereof, provide additional written comments, if applicable, or issue such permit(s) for the Project. Either party can request a meeting with the other Party during this process to clarify a requirement or address a permit(s) for the Project or construction matter pertaining to the Project. Each Party will act in good faith to address and resolve any issue or discrepancy.

### **SECTION 9. RELEASE OF INFORMATION**

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, Grand Subaru acknowledges the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records, and agrees to abide by the Village's determinations regarding required disclosures under such laws and not to bring any claims, actions, suits, or causes of action or to seek damages of any kind against the Village on account of any disclosure. In addition, prior to any payments to Grand Subaru pursuant to this Agreement, Grand Subaru shall provide the State

with properly executed authorizations granting the Village the right to access the Sales Tax records of Grand Subaru. Grand Subaru acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the Village to Grand Subaru pursuant to this Agreement. Grand Subaru further covenants and agrees, that upon the request of the Village, Grand Subaru shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and Grand Subaru in order to release the above-described sales tax information to the Village. Grand Subaru agrees and acknowledges that any disbursements made by the Village pursuant to this Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section.

#### **SECTION 10. PERMIT AND LICENSE APPLICATIONS; FEES AND COSTS**

The Village will act diligently to promptly review and process all building applications submitted to it by Grand Subaru. This Section shall not include any permit and inspection applied after Grand Subaru is granted the certificate of occupancy for the Project. Grand Subaru shall be responsible for the fees and costs of securing all licenses, permits, and certifications required for the Project and the operation of the dealership.

#### **SECTION 11. ENFORCEMENT**

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement, provided, however, that Grand Subaru agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property whenever Grand Subaru has failed or refused to meet fully any of its material obligations under this Agreement. In the event of any administrative or judicial proceeding brought by any Party to this Agreement against the other party to this Agreement for enforcement or for breach of any provision of this Agreement, each Party shall be responsible for all of its own costs and expenses, including attorney's fees, incurred in connection with such proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any

specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Upon the occurrence of any one or more of the following events during the period of time commencing as of the date of the making of this Agreement above, and ending on the date that the last EIP is made by the Village to Grand Subaru, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to Grand Subaru provided that Grand Subaru has not cured in accordance with terms of this Agreement:

1. A material breach of this Agreement by Grand Subaru; or

2. A significant reduction in the Sales Tax receipts as a direct result of changes in Grand Subaru's business plan and not as a result of factors beyond the reasonable control of Grand Subaru during the Term of this Agreement. A significant reduction in the Sales Tax receipts for purposes of this provision Section 11.C.2 in this Agreement shall mean and refer to a reduction in the amount of Sales Tax receipts which is equal to or greater than forty percent (40%) of the average of the Sales Tax receipts received by the Village in the last five (5) years during which economic incentive payments were made by the Village to Grand Subaru. Among the purposes of this provision is protection of the Village against relocation of the Franchise after incentive payments have been made or in the event that the Village declares any assignment or transfer of rights or interests void as provided in Section 13 of this Agreement and Grand Subaru proceeds with such assignment or transfer.

## **SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS**

The Parties covenant and agree that the terms and conditions of this Agreement shall survive the Term of this Agreement and that the indemnifications, representations, agreements, conditions, statements, warranties and covenants contained herein shall be enforceable against the other Party.

## **SECTION 13. TRANSFER OR ASSIGNMENT**

Grand Subaru's assignment or transfer of any of its rights or interests hereunder shall be made only upon notice and with the written consent of the Village, in its absolute sole discretion. All assignment or transfer by Grand Subaru of its rights and interest provided for under this Section shall be subject to the following terms and conditions:

A. Such assignment or transfer shall release Grand Subaru from any remaining obligations under this Agreement provided the assignee/purchaser agrees to be bound by the terms of this Agreement.

B. No assignments and transfer shall violate the requirements of Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20 or Section 8-11-21 of the Illinois Municipal Code.

65 ILCS 5/8-11-21, or other applicable law. Prior to consenting to such a transfer, the Village may require of Grand Subaru and Grand Subaru shall provide the Village documentation and other information demonstrating conformance therewith.

C. All assignees and transferees of all or any part of its rights or interests under this Agreement shall be subject to all terms, provisions, and conditions of this Agreement.

D. Any assignment or transfer of this Agreement or rights or interests hereunder shall be voidable, at the Village's option, within thirty (30) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the Village has given its written consent to such assignment or transfer, or the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

#### SECTION 14. REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this Agreement and to grant the rights herein provided for, Grand Subaru hereby warrants and represents to the Village as follows:

A. Grand Subaru is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. Grand Subaru has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

C. No mortgagee or any other secured party, other than those listed on Exhibit D, a copy of which is attached hereto and by reference incorporated herein, has an interest in the Property as of the date of this Agreement. No such mortgagee or any other secured party listed on Exhibit D has an objection to either (i) the execution and performance of this Agreement by Grand Subaru or (ii) the binding nature of this Agreement with respect to the Property.

D. All necessary consents of the members of Grand Subaru and its creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

E. Grand Subaru has provided, or will provide, any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village), that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

F. The individuals executing this Agreement on behalf of Grand Subaru have the full power and authority necessary to execute and deliver this Agreement on behalf of Grand Subaru.

G. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of Grand Subaru; (ii) will not result in

a breach or default under any agreement to which Grand Subaru is a party or to which Grand Subaru, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which Grand Subaru or the Property or any Franchise in whole or in part is or are subject.

II. Grand Subaru has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable, and that Grand Subaru has not and will not rely upon the Village Representatives in connection therewith.

## SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersede. This Agreement incorporates all agreements and understandings of the Parties hereto as of the date of its execution and each Party acknowledges that no representation or warranties have been made which have not been set forth herein and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. Each Party further agrees that no statement, representation, promise or provision it requested has been excluded in this Agreement and: if so omitted, that the Party hereby relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance thereon or making any other claim on account of such omission. This Agreement shall be deemed and construed to be the joint and collective work product between the Parties and, as such, this Agreement shall not be construed against the Village, as the otherwise purported drafter of same, by any court of competent jurisdiction or order resolving any inconsistency, any ambiguity, vagueness or conflict in the terms or provisions, if any, contained herein. This Agreement shall further supersede and specifically replace and repeal the 2015 Agreement. The Parties further covenant and agree that there exists no claim, remedy, demand, cause of action, default or right of one party against the other under the 2015 Agreement, and that any such claim, remedy, demand, cause of action, default or right, either known or unknown, is hereby specifically waived and relinquished in its entirety for the benefits and obligations of the Parties herein specified as of the Effective Date of this Agreement.

B. Amendments. No amendment, change, alteration, waiver or modification of any provision of this Agreement shall be valid or effective unless it is in writing and approved by the authorized representatives of Grand Subaru and the Corporate Authorities of the Village.

D. Notices. Any notice or other communication given under this Agreement shall be in writing, and shall be deemed delivered by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United States Mail, certified mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Evan Summers  
Village Manager  
Village of Bensenville  
12 South Center Street  
Bensenville, Illinois 60106

With a copy to:

Office of the Village Clerk  
Attn: Village Attorney  
Village of Bensenville  
12 South Center Street  
Bensenville, Illinois 60106

For notices and communications to Grand Subaru:

Grand Subaru, LLC  
125 West Grand Avenue  
Bensenville, Illinois 60106

With a copy to:

Steven R. Johnson, Esq.  
Langhenry, Gillen, Lundquist & Johnson, LLC  
311 South County Farm Road, Suite L  
Wheaton, Illinois 60187

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Language and Paragraph Headings. Any headings of this Agreement are for convenience of reference only and do not modify, define, or limit the provisions thereof and are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement.

E. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

F. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois. Any and all legal proceedings of any kind arising in connection with this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in the District Court for the Northern District of Illinois to enforce federal claims.

G. No Liability of Village for Cost or Expenses Incurred by Grand Subaru. The Village shall have no obligations to make any payment to Grand Subaru or any other person or entity, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic or materialman providing services or materials to Grand Subaru pertaining to the Property or operation of its enterprise.

H. Time of Essence. Time is of the essence of this Agreement and the term, condition and provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday or legal or Village holiday, then in such event, the expiration of such period of time shall be postponed to the next day which is not a Saturday, Sunday or a legal or Village holiday.

I. No Third-Party Beneficiaries or Joint Venture. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or partnership or fiduciaries or of a joint venture between the parties hereto.

J. Exhibits. The Exhibits attached to this Agreement, are incorporated herein and made a part hereof by this reference.

K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, be deemed an original and constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

M. Future Agreement or Amendment to this Agreement. Grand Subaru, or any of its subsidiaries or associated companies, shall not seek a revision or amendment to this Agreement during the Term of this Agreement and that the Village is not obligated in any way under this Agreement to consider same.

(Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

By:

  
Village President

GRAND SUBARU, LLC

By: N - Ol

Its: CFO

ATTEST:

  
Village Clerk

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTIES

CURRENT FACILITIES

PARCEL 1 (PIN No.: 03-26-204-005):

LOT 1 IN JOHN H. SCHUDDER'S RESUBDIVISION OF LOTS 30, 31, 32 IN ADDISON TOWNSHIP SUPERVISOR'S ASSESSMENT PLAT NO. 5, BEING THE PROPERTY KNOWN AS "YORK GRAND ESTATES" UNIT NO. 2, IN THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED NOVEMBER 16, 1966 AS DOCUMENT NO. R66-45131 IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2 (PIN No.: 03-26-204-024):

THAT PART OF LOT 3 IN WHITE PINES CENTER FOR BUSINESS AND INDUSTRY SUBDIVISION, BEING A SUBDIVISION IN THAT PART OF THE NORTH HALF OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS ACCORDING TO A PLAT THEREOF RECORDED NOVEMBER 7, 1977 AS DOCUMENT NO. R77-102033, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE FOUND IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID LOT 3; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 3, SAID SOUTHERLY LINE ALSO BEING THE NORTHERLY LINE OF GRAND AVENUE AS DEDICATED BY SAID DOCUMENT NO. R77-102033, AN ASSUMED BEARING OF SOUTH 85 DEGREES 16 MINUTES 46 SECONDS WEST A DISTANCE OF 290.46 FEET TO A 5/8 INCH REBAR WITH A PLASTIC CAP MARKED "P.L.S. 3240" ON A LINE 290.0 FEET WEST OF AND PARALLEL TO THE EASTERLY LINE OF SAID LOT 3; THENCE NORTH 01 DEGREES 29 MINUTES 51 SECONDS WEST, 311.71 FEET ALONG SAID PARALLEL LINE TO A 5/8 INCH REBAR WITH A PLASTIC CAP MARKED "P.L.S. 3240" ON THE NORTHERLY LINE OF SAID LOT 3; THENCE NORTH 87 DEGREES 24 MINUTES 34 SECONDS EAST, 290.05 FEET ALONG SAID NORTHERLY LINE OF LOT 3 TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTH 01 DEGREES 29 MINUTES 51 SECONDS EAST, 300.91 FEET ALONG THE EASTERLY LINE OF SAID LOT 3 TO THE POINT OF BEGINNING.

ADJACENT PARCEL

The Land referred to herein below is situated in the County of DuPage, State of IL, and is described as follows: That part of the Northeast Quarter of Section 26, Township 40 North, Range 11 East of the Third Principal Meridian, described by commencing at the Northeast corner of Section 26 and running thence South along the East line of said section 1486.7 feet to the center line of Grand Avenue; thence South 85 degrees 52 minutes 30 seconds West along said center line 495.59 feet for a point of beginning; thence continuing South 85 degrees 52 minutes 30 seconds West along said center line 91.39 feet; thence North 0 degrees 54 minutes 30 seconds West parallel with the West line of the Kaltenback Farm 507.26 feet to a line that is parallel with and 1000.7 feet South of the North line of said Section 26; thence North 87 degrees 57 minutes East along said parallel line 98.13 feet; thence South parallel with the East line of said Section 26, 504.05 feet to the point of beginning, in DuPage County, Illinois.

Note: For informational purposes only, the land is known as:

111 West Grand Avenue  
Bensenville, IL 60106

## EXHIBIT B

### **PROJECT DESCRIPTION**

This Project includes the acquisition of the Adjacent Property, commonly known as 111 W Grand Avenue, together with the redevelopment of the Property, commonly known as 125 W. Grand Avenue, and Adjacent Property to expand inventory, undertake improvements to and construct additional service bays, expand the service drive, construct a new tunnel-style car wash facility, provide for additional screening adjacent to residential properties, provide for additional parking facilities and create underground stormwater detention. The Project will also include the demolition of the structure on the Adjacent Property, renovation and remodeling of the Current Facilities and subsequent integration of all improvements with existing facilities.

Due to the costs associated with the Project, the work will be performed in stages. While the order of construction may be altered from the order set forth herein, Grand Subaru anticipates completion of the following work:

1. Completion of a new underground stormwater detention/drainage system for the Property and Adjacent Property.
2. Pave areas of the Property and Adjacent Property for parking and storage of additional inventory and expansion of the service drive.
3. Demolish the existing building on the Adjacent Property to prepare for construction of the tunnel-style car wash.
4. Expand the number of service bays and remodeling of existing buildings on the Property.
5. Provide additional screening for adjacent residential properties through additional landscape features and appropriate fencing.

EXHIBIT C

2015 Residual Incentive

\$4,000,000.00  
2017 EIP payment deduction \$ 448,118.45  
2017 remaining balance due \$3,551,881.55

2018 EIP payment deduction \$ 309,552.74  
2018 remaining balance due \$3,242,328.81

2019 EIP payment deduction \$ 347,816.36  
2019 remaining balance due \$2,925,469.77

2020 EIP payment deduction \$ \_\_\_\_\_  
2020 remaining balance due \$ \_\_\_\_\_

2021 EIP payment deduction \$ \_\_\_\_\_  
2021 remaining balance due \$ \_\_\_\_\_

2022 EIP payment deduction \$ \_\_\_\_\_  
2022 remaining balance due \$ \_\_\_\_\_

2023 EIP payment deduction \$ \_\_\_\_\_  
2023 remaining balance due \$ \_\_\_\_\_

2024 EIP payment deduction \$ \_\_\_\_\_  
2024 remaining balance due \$ \_\_\_\_\_

2025 EIP payment deduction \$ \_\_\_\_\_  
2025 remaining balance due \$ \_\_\_\_\_

Note 1: EIP payment deductions for years beyond 2019 identified above are for illustrative purposes only for use to calculate additional payments and balances.

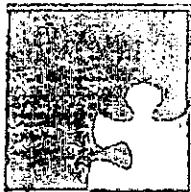
Note 2: The Village will retain the first two-hundred thousand (\$200,000.00) in sales taxes received from the State of Illinois throughout the term of this agreement.

Note 3: Grand Subaru shall receive fifty percent (50%) of all sales tax received by the Village above the first \$200,000.00 until Grand Subaru has been paid \$2,925,469.77, as illustrated above; then Grand Subaru shall receive 50% of any additional monies expended on the Project during the term of this agreement with the Village receiving the first \$200,000 in sales taxes received from the State of Illinois and the parties splitting the remaining sales taxes equally, as further provided in Section 3.

**EXHIBIT D**

**MORTGAGEES AND SECURED PARTIES**

Grand 1000 LLC.



**Westbrook Strategic Consultants**  
2585 Camberley Circle  
Westchester, IL 60154

07-01-2020

Village of Bensenville  
12 South Center Street  
Bensenville, IL 60106

**Consultant Invoice**

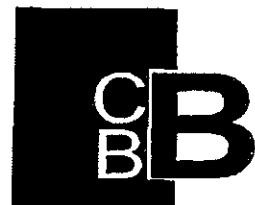
**Invoice Number: 148**

**RE: Consulting**

Scope of Services to be performed in August 2020. The Village of Bensenville (hereafter the "Village") contracted with Westbrook Strategic Consultants to provide independent consulting services to the Village. The Consultant provided the Village of Bensenville with these consulting services and advisory services (hereafter the "Services"), as requested by Village. In consideration for the performance of the services requested Village shall compensate Consultant \$3,750.

| <b>Fixed Fee Amount</b> | 3,750.00 |
|-------------------------|----------|
|-------------------------|----------|

| <b>Total for this Invoice</b> | 3,750.00 |
|-------------------------------|----------|
|-------------------------------|----------|

**Invoice**

Joseph Caracci  
Village of Bensenville  
12 South Center Street  
Bensenville, IL 60106

July 6, 2020  
Invoice No: 159186

Project 01.R120433.00005 White Pines Water Main Rehabilitation-Final Design  
Resolution No. R-111-2018

Professional Services from April 26, 2020 to June 27, 2020

Phase 01 IEPA Loan Appl. Assistance & Coord.  
Professional Personnel

|                    | Hours       | Rate             | Amount                     |
|--------------------|-------------|------------------|----------------------------|
| Engineer V         | 2.50        | 69.00            | 172.50                     |
| <b>Totals</b>      | <b>2.50</b> |                  | <b>172.50</b>              |
| <b>Total Labor</b> |             | <b>2.8 times</b> | <b>172.50</b>              |
|                    |             |                  | <b>\$483.00</b>            |
|                    |             |                  | <b>Subtotal this Phase</b> |
|                    |             |                  | <b>\$483.00</b>            |

Phase 08 Final Plans, Specs & Estimate(100%)

Professional Personnel

|                    | Hours        | Rate             | Amount                     |
|--------------------|--------------|------------------|----------------------------|
| Engineer III       | 13.25        | 42.00            | 556.50                     |
| Engineer V         | 6.00         | 69.00            | 414.00                     |
| <b>Totals</b>      | <b>19.25</b> |                  | <b>970.50</b>              |
| <b>Total Labor</b> |              | <b>2.8 times</b> | <b>970.50</b>              |
|                    |              |                  | <b>2,717.40</b>            |
|                    |              |                  | <b>Subtotal this Phase</b> |
|                    |              |                  | <b>\$2,717.40</b>          |

Phase 10 Bidding Assistance

Professional Personnel

|                    | Hours        | Rate             | Amount                     |
|--------------------|--------------|------------------|----------------------------|
| Engineer VI        | 1.00         | 70.00            | 70.00                      |
| Engineer V         | 25.75        | 69.00            | 1,776.75                   |
| <b>Totals</b>      | <b>26.75</b> |                  | <b>1,846.75</b>            |
| <b>Total Labor</b> |              | <b>2.8 times</b> | <b>1,846.75</b>            |
|                    |              |                  | <b>5,170.90</b>            |
|                    |              |                  | <b>Subtotal this Phase</b> |
|                    |              |                  | <b>\$5,170.90</b>          |

Phase 0-2 Design of Improvements-Private Property

**PLEASE REMIT PAYMENT TO:**

CHRISTOPHER B. BURKE ENGINEERING, LTD.  
DEPT. 20-8051  
P.O. BOX 5998  
CAROL STREAM, IL 60197-5998

|                               |                    |  |                            |                |               |                   |
|-------------------------------|--------------------|--|----------------------------|----------------|---------------|-------------------|
| Project                       | 01.R120433.00005   | White Pines WaterMain Rehab-Final Design |                            |                | Invoice       | 159186            |
| <b>Professional Personnel</b> |                    |  |                            |                |               |                   |
| Engineer I/II                 |                    | Hours                                    | Rate                       | Amount         |               |                   |
|                               |                    | 4.00                                     | 36.00                      | 144.00         |               |                   |
|                               | <b>Totals</b>      | 4.00                                     |                            | 144.00         |               |                   |
|                               | <b>Total Labor</b> |  | <b>2.8 times</b>           | <b>144.00</b>  | <b>403.20</b> |                   |
|                               |                    |  | <b>Subtotal this Phase</b> |                |               | <b>\$403.20</b>   |
| <b>Billing Limits</b>         |                    | <b>Current</b>                           | <b>Prior</b>               | <b>To-Date</b> |               |                   |
| Total Billings                |                    | 8,774.50                                 | 303,640.38                 | 312,414.88     |               |                   |
| Limit                         |                    |  |                            | 437,323.26     |               |                   |
| Remaining                     |                    |  |                            | 124,908.38     |               |                   |
|                               |                    |  | <b>TOTAL THIS INVOICE</b>  |                |               | <b>\$8,774.50</b> |

**PLEASE REMIT PAYMENT TO:**  
**CHRISTOPHER B. BURKE ENGINEERING, LTD.**  
**DEPT. 20-8051**  
**P.O. BOX 5998**  
**CAROL STREAM, IL 60197-5998**

Alfred G. Ronan Ltd.

JULY BILLING STATEMENT

To: Village of Bensenville  
Hon. Frank Desimone

From: Al Ronan  
Alfred G. Ronan, Ltd.

Month of July, 2020 \$7,500

Please remit to: Alfred G. Ronan, Ltd.  
328 S. Oak Park Ave.  
Suite 1  
Oak Park, IL 60302

328 S. Oak Park Ave, Unit 1, Oak Park, IL 60302 Phone: 312-498-1604  
Email: Al\_Ronan@hotmail.com