

REIMBURSEMENT AGREEMENT

By and Between the

CITY OF IMPERIAL

and

IMPERIAL VALLEY VOLKSWAGEN, LLC

June 17, 2015

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") dated as of June 17, 2015 is entered into by and between the CITY OF IMPERIAL, a municipal corporation of the State of California ("City") and IMPERIAL VALLEY VOLKSWAGEN, LLC, a California Limited Liability Company, ("Operator").

The City and Operator agree as follows:

ARTICLE 1. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to set forth the terms upon which City will assist Operator to establish a new vehicle dealership within the City. The new vehicle dealership is not currently located in the market area which includes the City and relocation of an existing business as set forth in Government Code Section 53084 shall not be involved in this Agreement. Operator estimates that the dealership will create up to twenty five (25) jobs the first year and ramp up to forty five (45) jobs by the end of the fifth year. Total sales tax receipts are estimated in excess of three hundred thousand dollars (\$300,000.00) by the end of the fourth year. City believes, and hereby finds, that in the absence of the assistance provided for in this agreement, the Operator would be compelled to establish its new vehicle dealership in a location outside of the City.

Recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California requires the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increase revenues and employment opportunities.

City further finds that in the event Operator was to locate its new vehicle dealership to a location outside the City, it is unlikely any other new vehicle dealerships would locate within the City.

City further finds that the assistance provided for herein would enhance the City and support the eradication of blight, consisting of, among other things, deteriorated structures, substandard design and obsolescence, depreciated or stagnant property values, and vacant lots.

The assistance set forth herein will address the conditions described above and provide for business expansion and attraction. It is the intent of this Agreement to set forth the terms upon which City will assist Operator to bring a new vehicle dealership to the City by reimbursing Operator a sum not to exceed two million dollars (\$2,000,000.00) of sales tax generated by the new vehicle dealership and received by the City.

ARTICLE 2. DEFINITIONS

"Act of God" means an event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution; an inevitable accident.

"Agreement" means this Reimbursement Agreement by and between City and Operator.

"City" means the City of Imperial, a municipal corporation, exercising governmental functions and powers and organized and existing under the laws of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"City Manager" means the City Manager of the City or his or her designee.

"Commencement Date" shall be the date which is the first day of the next full month immediately following the day that the City issues its final Certificate of Occupancy for the Site.

"County" means the County of Imperial, California.

"Date of Agreement" means the date first written above.

"Operator" means Imperial Valley Volkswagen, LLC, a California Limited Liability Company.

"Site" means such real property commonly known by the street address of 2381 State Highway 86, Imperial, CA 92251.

ARTICLE 3. IDENTITY OF THE OPERATOR

The qualifications and identity of the Operator are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Operator. No voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by City if there is any significant change (voluntary or involuntary) in the membership, management or control of the Operator. Operator shall not assign all or any part of this Agreement without the prior written approval of City. Notwithstanding the foregoing, City approval shall not be required in connection with any transfer by Operator to an entity in which the Operator retains not less than fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity.

ARTICLE 4. OPERATOR OBLIGATION

Operator agrees to make improvements described in the Scope of Development and operate a Volkswagen new vehicle dealership at the Site with a point of sale within the City.

ARTICLE 5. FINANCIAL TERMS

On a quarterly basis following the Commencement Date, and so long as the Operator is otherwise in compliance with all appropriate local, state and federal regulations and with the provisions of this Agreement, City shall reimburse Operator an amount equal to sixty five (65%) percent of all sales taxes generated from the Site and actually received by the City. Such payments shall be made until such time as the Operator has been reimbursed the sum of two million dollars (\$2,000,000.00). City shall, within thirty (30) days of receipt of information which discloses City's

actual sales tax revenue generated as a result of Operator's activities from the Site rebate to Operator the percentage of such sales tax revenue set forth herein. If Operator does not contest the amount of said payment within thirty (30) days of its receipt of the rebate, Operator shall be conclusively deemed to have accepted the payment as payment in full for that period.

Operator acknowledges that by entering into an Agreement which provides for the payment of public funds as set forth herein, City makes no promises or assurances regarding applicability or non-applicability of California Labor Code Sections 1720 (a) or (b). City will not monitor Operator's compliance, or the need for compliance with said Section 1720 and Operator will defend and hold the City harmless against any action which be brought against the City due to Operator's non-compliance, if any with said Section 1720 or the City's lack of monitoring for its need of such compliance.

ARTICLE 6. USE OF THE SITE

6.1 Uses. Operator covenants and agrees for itself, its successors, its assigns and every successor in interest that Operator, its successors and assignees shall devote the Site to operation of a new vehicle sales, used vehicle sales and service facility involving the Volkswagen manufacturer.

6.2 Obligation to Refrain From Discrimination. Operator covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any portion thereof, nor shall Operator or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

6.3 Effect and Duration of Covenants. Except as otherwise provided, the covenants contained in this Agreement shall remain in effect until the termination date of the sales tax payments. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, the City and any successor in interest to the Site or any part thereof.

6.4 City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

ARTICLE 7. DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults -- General. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Discontinuance or other interruption in the continuous operation of the Volkswagen dealership as described in Paragraph 6.1 lasting more than one hundred eight (180) days, except if damaged by an Act of God, shall give rise to a termination of this Agreement by the City and the obligation to continue reimbursement as provided herein shall cease.

7.2 Legal Actions.

(i) Institution of Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County or in the appropriate United States District Court in the State of California.

(ii) Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

(iii) Acceptance of Service of Process. In the event that any legal action is commenced by Operator against City, service of process on City shall be made by personal service in such other manner as may be provided by law. In the event that any legal action is commenced by City against Operator, service of process on Operator shall be made by personal service upon Operator in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

(iv) Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any oilier rights or remedies for the same default or any other default by the other party.

ARTICLE 8. GENERAL PROVISIONS

8.1 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between City and Operator shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by commercial overnight delivery to the principal offices of City and Operator as set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail.

To the City:

City of Imperial
420 South Imperial Avenue
Imperial, California 92251
Attn: City Manager

To the Operator

Imperial Valley Volkswagen, LLC
1520 West Ford Drive
El Centro, CA 92243
Attn: Dennis Nesselhauf

8.2 Conflicts of Interest. No member, official or employee of City or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

Operator warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

8.3 Nonliability of City Officials and Employees. No member, official or employee of City shall be personally liable to Operator in the event of any default or breach by City or for any amount which may become due to Operator or on any obligations under the terms of this Agreement.

8.4 Time of the Essence. Time is of the essence in this Agreement.

8.5 Taxes, Assessments, Encumbrances and Liens. Operator shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery of possession of the Site. Prior to the issuance of a Certificate of Completion, Operator shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. Operator shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained

shall be deemed to prohibit Operator from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Operator in respect thereto.

8.6 Submission of Documents to City for Approval. Whenever this Agreement requires Operator to submit plans, drawings or other documents to City for approval, which shall be deemed approved if not acted on by City within a specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by City within the stated time. If there is no time specified herein for such City action, Operator may submit a letter requiring City approval or rejection of documents within thirty (30) days after submission to City or such documents shall be deemed approved.

8.7 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections of this Agreement, unless expressly stated otherwise.

8.8 Severability. If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or of the application of the term, provision, condition, or covenant to persons or circumstances other than those as to whom or which is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

8.9 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; each has received independent legal advice from its respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, each has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or its respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

8.10 Amendments to this Agreement. Operator and City agree to mutually consider reasonable requests for written amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

ARTICLE 9. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement may be executed in multiple duplicate copies, each of which is deemed to be an original. This Agreement comprises pages 1 through 8, inclusive, all of which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Operator, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Operator.

IN WITNESS WHEREOF, the City and the Operator have signed this Agreement effective as of the Date of Agreement.

CITY:
CITY OF IMPERIAL

By Mark I. Dean
Mayor

Attest:

[Signature]
City Clerk

OPERATOR:
IMPERIAL VALLEY VOLKSWAGEN, LLC, a California Limited Liability Company

By Dennis Nesselhauf
Dennis Nesselhauf, Manager