

Resolution 2021-R-46

Approval of Execution of Second Amendment to Project Development, Funding and Cooperation Agreement with JJA Properties AL, LLC and BIJ MOTORS AL, LLC

WHEREAS, the City of Irondale, Alabama ("City") entered into a Project Development, Funding and Cooperation Agreement ("Agreement") with JJA Properties AL, LLC and BIJ MOTORS AL, LLC (collectively referred to herein as the "Developer") on or about the 5th day of January, 2016 in order to provide certain economic incentives to Developer in the form of sales tax rebates ("Economic Incentives") for the development of an upscale Mercedes-Benz automobile dealership ("Dealership") within the city limits of Irondale;

WHEREAS, the Agreement was amended on or about May 12, 2016 for development purposes;

WHEREAS, after operations of the Dealership began, disputes arose between the City and Developer concerning the rebating of sales taxes called for in the Agreement, and concerning the application of the City's occupational tax to the employees or operations of the Dealership, resulting in a lawsuit styled BIJ Properties AL, LLC & BIJ Motors AL, LLC v. City of Irondale, CV 2019-902054, pending in the Jefferson County Circuit Court (the "Lawsuit");

WHEREAS, the City and Developer desire to amend the Agreement as more particularly set forth in the Second Amendment (as defined below), in an effort to resolve their outstanding disputes existing as of the date of this Second Amendment concerning those matters referenced above; and

WHEREAS, The effect of the Second Amendment will be to moot and supersede the Lawsuit, and upon execution of this Second Amendment by all parties, the Parties will stipulate to a dismissal of the Lawsuit without prejudice.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Irondale, Alabama, as follows:

Section 1. Findings. The City Council has found and ascertained and does hereby declare as follows:

- (a) that it hereby approves the terms and conditions of that certain Second Amendment to Project Development, Funding And Cooperation Agreement, by and between the City and Developer in substantially the form attached hereto as Exhibit A (the "Second Amendment");
- (b) that the City has determined that the Second Amendment is in the best interests of the City and its taxpayers and citizens and will provide a public benefit to the citizens of the City (collectively, the "Public Benefit");


- (c) the Council heretofore, at a public meeting of the Council on June 2, 2021, satisfied the requirements of paragraph (c) of Section 94.01 of the *Constitution of Alabama of 1901* ("Amendment No. 772") with respect to the Second Amendment, all in accordance with the applicable provisions of the Amendment No. 772, and the Council hereby determines that the expenditure of public funds for the payment of the economic incentives set forth in the Second Amendment is for the Public Benefit and will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;
- (d) as required under Amendment No. 772, the City published notice of such proposed action of the City Council of the City of Irondale in *The Birmingham News* on Sunday, May 23, 2021 in accordance with the requirements of Amendment No. 772, a true and correct copy of which notice is set forth as Exhibit B hereto;
- (e) the information set forth in such published notice is true and correct and the publication thereof is ratified and confirmed; and,
- (f) for purposes of Amendment No. 772, the entity to whom or for whose benefit the City proposes to provide things of value is the Developer.

Section 2. Authorization of Agreement and its Execution and Delivery. The Council does hereby authorize and direct the Mayor of the City to execute and deliver, for and in the name and behalf of the City, the Second Amendment between the City and Developer. The Council does also hereby authorize and direct the City Clerk to affix the official seal of the City to the Agreement and to attest the same. The Agreement shall be in substantially the form attached hereto as Exhibit A.

Section 3. Severability. The provisions of this Resolution are hereby declared to be severable. In the event any court of competent jurisdiction should hold any provision hereof to be invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Resolution.

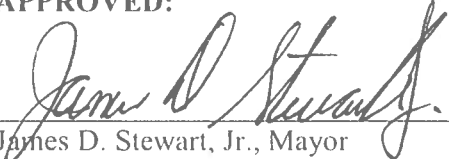
Section 4. Immediate Effect. This resolution shall take effect immediately.

ADOPTED & APPROVED: This 2nd day of June, 2021.



David Spivey, City Council President

APPROVED:



James D. Stewart, Jr., Mayor

ATTESTED:



Lue Jackson, City Clerk

CERTIFICATION

I, Lue Jackson, City Clerk of the City of Irondale, Alabama, hereby certify that the above to be a true and correct copy of a resolution adopted by the City Council of the City of Irondale at its regular meeting held on the 2nd day of June, 2021, as the same appears in the minutes of record of said meeting.



Lue Jackson, City Clerk

Exhibit A

Form of Second Amendment

Exhibit B

Public Notice

**LEGAL NOTICE OF PROPOSED ECONOMIC DEVELOPMENT ACTION
AND RELATED PUBLIC EXPENDITURES BY
THE CITY OF IRONDALE, ALABAMA**

The City of Irondale, Alabama (the "City") gives notice that the governing body of the City will meet in public session at 6:00 p.m. on the 2nd day of June, 2021 at City Hall at 101 20th Street South in the City of Irondale, Alabama, for the purpose of considering such matters as may be properly presented thereto, including the authorization by the City pursuant to Amendment No. 772 to the *Constitution of Alabama of 1901*, as amended, of the terms, validation, delivery and performance by the City of that certain Second Amendment to Project Development, Funding and Cooperation Agreement (the "Second Amendment") by the City and JJA Properties AL, LLC and BIJ MOTORS AL, LLC, (collectively referred to herein as the "Developer"), pursuant to which Second Amendment the City shall make economic development grants to the Developer of the net sales tax proceeds actually received by the City as particularly set forth in the Second Amendment in the maximum aggregate amount of \$10,000,000 for a period of twenty years from the upscale Mercedes-Benz automobile dealership and facilities established by the Developer at 750 Mercedes Way off Grants Mill Road in the City, in consideration of the public benefits to accrue from the Developer's establishment and operation of such dealership and facilities in the City.

The City seeks, by undertaking its obligations pursuant to the Amendment, (i) to promote the economic development of the City and (ii) to increase the tax and revenue base of the City from increased commercial activity within the city to improve the quality of life of the citizens of the City.

The business entity to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value is the Developer.

All interested persons may examine and review the Agreement and make copies thereof at personal expense, and obtain further information about the information and matters addressed in this Notice, at the office of the City Clerk of the City during normal business hours before and after the meeting herein referenced.

**SECOND AMENDMENT TO PROJECT DEVELOPMENT,
FUNDING AND COOPERATION AGREEMENT**

THIS SECOND AMENDMENT TO PROJECT DEVELOPMENT, FUNDING AND COOPERATION AGREEMENT (this "**Second Amendment**"), effective as of the date of the last party to execute hereunder, is entered into by and between The City of Irondale, Alabama, an Alabama municipal corporation (hereinafter called "**City**"), and JJA Properties AL, LLC AND BIJ MOTORS AL, LLC, both of which are Alabama limited liability companies licensed to do and doing business in the State of Alabama (hereinafter collectively called "**Developer**"). Collectively, the City and Developer are the "**Parties**."

RECITALS:

A. The City and Developer executed a Project Development, Funding and Cooperation Agreement, dated as of January 5, 2016, (the "**Agreement**") setting terms between the Parties which included certain incentives to the Developer to construct and for BIJ Motors AL, LLC thereafter to operate a Mercedes-Benz automobile dealership (the "**Dealership**") in the City; and,

B. The Agreement was amended on or about May 12, 2016 for purposes unrelated to the Second Amendment; and

C. After operations of the Dealership began, disputes arose between the Parties concerning the rebating of Sales Taxes called for in the Agreement, and concerning the application of the City's occupational tax to the employees or operations of the Dealership, resulting in a lawsuit styled BIJ Properties AL, LLC & BIJ Motors AL, LLC v. City of Irondale, CV 2019-902054, pending in the Jefferson County Circuit Court (the "**Lawsuit**"); and

D. The Parties desire to amend the Agreement as more particularly set forth herein, in an effort to resolve their outstanding disputes existing as of the date of this Amendment concerning those matters referenced above; and

E. The effect of this Second Amendment will be to moot and supersede the Lawsuit, and upon execution of this Second Amendment by all parties, the Parties will stipulate to a dismissal of the Lawsuit without prejudice; and

E. Unless otherwise provided herein, all capitalized words and terms in this Amendment shall have the same meanings ascribed to such words and terms as in the Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated herein by reference as if copied herein in full, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The fourth recital, which begins "WHEREAS, the City has agreed ... " is hereby deleted in its entirety and the following substituted in its place:

"WHEREAS, the City has agreed in consideration of certain public benefits described herein and to induce and aid the Developer in locating the Retail Center on the Property to the following: (i) to acquire the property required to and construct a two (2) lane public road (the "Access Road") suitable for vehicular ingress and egress from Grants Mill Road to the Property line at the location generally depicted on Appendix "B" which is incorporated herein by reference and attached hereto which shall be confirmed by Developer's Project Engineer (the "Entry Point"), together with asphalt paving, curbs, gutters, and lighting; (ii) to construct a temporary construction road to the Property from Grants Mill Road or Belmont Road sufficient to permit heavy construction equipment to access the Property; provided, however, that Developer may object to construction of such road from Belmont Road within 30 days from the date of this Agreement if Developer reasonably determines that access from Belmont Road would materially delay or increase the cost of Developer's work on the Property; (iii) to convey to Developer a temporary easement across such temporary construction road (the temporary construction road, together with this easement herein the "Construction Access"); (iv) to construct and install to the Property at the location generally depicted on Appendix "B" or elsewhere, those utilities required to operate the Retail Center, which improvements shall consist of sanitary sewer, power, natural gas, fiber optic lines, cable and a water line of at least 8" (i-iv, collectively, the "**Off Property Improvements**"); (v) to pay the Developer on or before the fifth (5th) day following the end of each calendar quarter beginning with the calendar quarter in which the Dealership begins business at the Retail Center, a sales tax rebate of two-thirds (2/3) of the total Sales Taxes attributable to the preceding calendar quarter until the first to occur of: (i) twenty (20) years from the date that the first such payment from the City is due (the "Incentive Period"), or (ii) the payment to Developer of \$10,000,000.00 (this item (v) shall hereinafter be referred to as the "Economic Incentives"; items (i)-(v) collectively herein referred to as the "Incentives"; and,"

2. The eighth recital to the Agreement and Exhibit "C" to the Agreement are deleted, and the Developer is fully released and discharged from the Guaranty described and created thereunder, and the Guaranty shall be null, void, and of no further force or effect.

3. Section 4.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

4.6 Tax Increases or Decreases. To the extent permitted by law, the parties agree that, as a material inducement for the Developer to construct the Retail Center within the City limits, that no additional City taxes will be imposed on the Property, the Retail Center or operation of the automobile dealership to be located on the Property ("Dealership") for a period of fifteen (15) years from the date of this Agreement. As such, the City hereby agrees that in the event of implementation or adoption of any new taxes or other law, rule, or ordinance effectively raising the City's existing tax rates on the Property or the operation of the Dealership (whether through a change in actual rates, appraisal methods, assessment methods, the

subject of such taxation or otherwise), the City shall promptly rebate to the Developer, its successors or permitted assigns, as applicable any such additional taxes paid or incurred by the same. The City and Developer agree that this section shall not apply to the City's occupational license fees imposed under Ordinance No. 2018-10 (or any subsequent act which merely adjusts the rate of taxation or fees imposed under Ordinance No. 2018-10); provided that the Parties' agreement to exclude taxes or fees imposed under Ordinance No. 2018-10 shall not constitute evidence of any other taxes which may or may not be included in this section.

In addition to the foregoing, the City covenants and agrees should it reduce any applicable Sales Tax Rate (defined below) during the 10 year rebate period described herein, the City shall nonetheless be obligated to rebate to Developer the amount which would have been due to Developer absent such reduction.

4. Section 7.11(d) of the Agreement is hereby deleted in its entirety and replaced with the following:

(d) At the time of execution of this Agreement, the City's portion of all applicable Sales Tax rates that are subject to rebate are: (i) 1.5% of all new and used vehicle sales; (ii) in lease transactions, (A) 1.5% of all portions of lease transactions for which the City receives tax revenues (i.e., capitalized cost reductions), and (B) 1.5% of leases for automobiles garaged in the City; and (ii) 4.0% on all parts sold (collectively, the "Sales Tax Rates"). The City is obligated to rebate two-thirds of all Sales Taxes which are actually received by the City in connection with sale and lease transactions of the Dealership until the first to occur of the following: (i) the Incentive Period ends, or (ii) the Economic Incentives are paid in full.; provided that, in the event the City voluntarily reduces or eliminates the Sales Taxes during the term of this Agreement, the City shall nevertheless be required to rebate under this Agreement an amount equal to the Sales Taxes which would have been collected using the Sales Tax Rates in this section until the first to occur of the following: (i) the Incentive Period ends, or (ii) the Economic Incentives are paid in full.

IN WITNESS WHEREOF, each Party hereto has caused this Second Amendment to be duly executed as of the date first above written.

THE CITY OF IRONDALE, an
Alabama municipal corporation

By: 
James D. Stewart, Jr., Mayor

JJA PROPERTIES AL, LLC, an Alabama
Limited Liability Company

By: _____

BIJ MOTORS AL, LLC, an Alabama
Limited Liability Company

By: _____