

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JUNE 16, 2009 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Addendum to the Sales Tax Agreement with Pugi of Chicagoland	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

A resolution has been prepared to approve an addendum to the Sales Tax Rebate Agreement between the Village of Downers Grove and Downers Grove Imports, LTD. D/B/A Pugi of Chicagoland.

STRATEGIC PLAN ALIGNMENT

The Strategic Plan Goals for 2008 - 2013 include a *Strong, Diverse Local Economy* and *Vibrant Major Corridors*.

FISCAL IMPACT

Approval of the addendum would require the Village to make rebate payments for an additional five years. Because sales revenue from Pugi are tracking substantially lower than anticipated at the time the sales tax rebate agreement was executed, the total amount of rebate payments to be made to Pugi over the life of the extended agreement are expected to be equal to or less than the originally anticipated rebate payments.

UPDATE & RECOMMENDATION

This item was discussed at the June 9, 2009 workshop. Since the workshop, staff has modified the agreement to include a ninety day holdback provision. This holdback provision allows the Village to “hold” the sales tax rebate payment for ninety days prior to disbursing the rebate payment to Pugi. In the event that Pugi fails to continue to operate the dealership and fails to make the required reimbursement payment per the terms of the agreement, the amount of the rebate payments being held by the Village would be forfeited by Pugi to the Village. Staff recommends approval on the June 16, 2009 active agenda.

BACKGROUND

In March 2005, the Village entered into a sales tax rebate agreement with Pugi of Chicagoland. The agreement states, among other things that:

- Pugi shall purchase the property at 1850 Ogden Avenue and improve it with a new showroom on other site improvements including landscaping and sidewalks. Pugi has completed the purchase and improvements.
- The Village shall rebate a portion of the sales tax revenue generated by Pugi for a period of seven years (no rebate for sales tax revenue up to \$270,000, 50% rebate for sales tax revenue between \$270,000 and \$800,000, and 25% rebate for sales tax revenue above \$800,000).
- Pugi shall continue to operate the dealership for a period of not less than 10 years from the effective date of the agreement.
- In the event Pugi fails to continue to operate the dealership per the terms of the agreement, Pugi shall reimburse the Village according to a specific schedule
 - Years 1 through 3 - 100% of the rebate payments
 - Years 4 through 5 – 75% of the rebate payments
 - Years 5 through 10 – 50% of the rebate payments

Pugi has requested an addendum to the agreement to extend the term of the agreement and to waive the letter of credit requirement. The current economic conditions have negatively impacted Pugi's sales revenue. Their current sales revenues are substantially lower than the sales revenues anticipated at the time the agreement was executed. Therefore, the amount of the rebate payments due to Pugi has been substantially less than anticipated. To assist Pugi in covering the costs of the improvements to the building and property, Pugi has requested that the term of the agreement be extended. Further, changes in the banking industry practices regarding letters of credit have negatively impacted Pugi's ability to submit the letter of credit. At the time the agreement was executed, banks would provide letters of credit for a fee equal to a small percentage of the total amount of the letter of credit. Currently, banks generally require that the letter of credit be backed by a cash deposit equal to the amount of the letter of credit in addition to the percentage fee. Therefore, Pugi has requested that the letter of credit requirement be waived.

The addendum includes the following amendments to the existing agreement:

- Extends the term of the rebate payments from seven years to twelve years.
- Extends the requirement for Pugi to operate the dealership from ten years to fifteen years.
- Requires Pugi to reimburse the Village in an amount equal to 25% of the rebate payments for years 10 through 15 in the event that Pugi fails to operate the dealership
- Deletes the letter of credit submittal requirement.

ATTACHMENTS

Resolution

Addendum to the Sales Tax Rebate Agreement

Sales Tax Rebate Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager **DATE:** June 16, 2009
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

Ordinance

Resolution

Motion

Other

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN ADDENDUM TO A SALES TAX REBATE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND ", as presented.

SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of an addendum to a sales tax rebate agreement between the Village of Downers Grove and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN ADDENDUM
TO A SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Addendum to Sales Tax Rebate Agreement (the “Addendum”), between the Village of Downers Grove (the “Village”) and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland (“Pugi”), as set forth in the form of the addendum submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Addendum, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Addendum.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**ADDENDUM TO A SALES TAX REBATE AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
DOWNERS GROVE IMPORTS, LTD. D/B/A PUGI OF CHICAGOLAND**

The Village of Downers Grove, Illinois (the "Village") and Downers Grove Imports, Ltd. d/b/a Pugi of Chicagoland ("Pugi") hereby agree that the following language shall be and is hereby incorporated into the contract dated March 1, 2005, as follows:

SECTION 1. GENERAL TERMS

3. Sales Tax Incentives:

In the event that all terms and conditions set forth in this Agreement are satisfactorily met by Pugi, including but not limited to the construction of the sidewalk improvements and landscaping as well as the construction and development and operation of the Dealership on the Property, the Village hereby agrees to pay Pugi quarterly installments over a maximum period of ~~seven (7)~~ twelve (12) years (the "Incentive Period") as follows, subject however to the following conditions and restrictions:

- a) It is understood that each amount will be due and payable solely from the proceeds of sales tax revenue received by the Village from the Dealership Property.
- b) It is acknowledged and understood by and between the parties hereto that the Village receives sales tax revenue monthly, and that the taxes generated by sales in any one month are distributed to the Village approximately three months later (e.g. taxes generated by sales in July are generally not received by the Village until October).
- c) The initial payment year (hereinafter referred to as the "Initial Payment Year") shall be that twelve (12) month period commencing on the first day of the full month that follows the month in which the Dealership at the 1850 Ogden Avenue site is operating and opened to the public for business and the sidewalk and landscaping improvements have been completed (each subsequent twelve month period is hereinafter referred to as "Subsequent Incentive Year").
- d) The incentive base for the Incentive Period shall be TWENTY SEVEN MILLION DOLLARS (\$27,000,000.00) (hereinafter referred to as the "Incentive Base"). For the Incentive Period, the Village shall be entitled to all the sales tax revenue received from the Dealership Property up to the Incentive Base. For the Incentive Period, respectively, Pugi shall thereafter be entitled to fifty percent (50%) of the sales tax revenue, if any, received from the Dealership Property that exceeds the Incentive Base up to \$800,000.00 cumulative and after said incentive is reached, the Village shall receive seventy-five percent (75%) of the sales tax revenue and Pugi shall be entitled to twenty-five percent (25%) of the sales tax revenue for the remainder of the Incentive Period.
- e) The Incentive Payments shall be computed at the close of each calendar quarter (March 31, June 30, September 30, December 31) by the Village as provided herein. The Village shall withhold the incentive payments for will make payments to Pugi within thirty (30) ninety (90) days after it receives notification from the State of the sales tax revenue generated by the Dealership Property. If Pugi fails to continue the dealership as set forth in Section 4, the withheld incentive payment will be automatically forfeited to the Village. Upon expiration of the 90 day period set forth above, and only if Pugi is in compliance with Section 4, the Village will make payments to Pugi within thirty (30) days.

4. Commitment to Continue Dealership:

The parties agree that all Incentive Payments are based in part upon: 1) a commitment by Pugi to

purchase the property and to continue operation of the Dealership, or an equivalent dealership, on the Property for a period of not less than ~~ten (10)~~ fifteen (15) years from the effective date of this Agreement, and; 2) a scheduled reimbursement of such incentive payments, if the terms of this commitment are not fulfilled. To that end, Pugi agrees to continue the operation of a new car Dealership(s) on the Property and shall continue to offer automotive sales with the point of sale being in Downers Grove for ~~ten (10)~~ fifteen (15) years from the effective date of this Agreement. If, at any time during this time period, the Dealership, or a successor, fails to offer automotive sales of new automobiles as proposed by the Dealership, then the Village shall be released and discharged from any further obligation to make payments under this Agreement, and Pugi or its successors shall reimburse the Village in accordance with Section 7 of this Agreement. The failure to meet this commitment is not a breach, but rather a foreseeable event for which the offsetting terms have been agreed to in Section 7 of this Agreement.

7. Reimbursement:

In the event Pugi, or any approved successor, fails to continue the Dealership on the Property as provided in Section 6 of this Agreement, Pugi, or such approved successor, shall reimburse to the Village within sixty (60) days of receipt of a written demand from the Village specifying the amount of the reimbursement all or a portion of the Incentive Payments and TIF Reimbursement Payments paid hereunder according to the following schedule:

If said event occurs during:

- * Year one through three - One hundred percent (100%) of the Incentive Payment
- * Year four through year five - seventy-five percent (75%) of the Incentive Payment
- * Year five through year ten - fifty percent (50%) of the Incentive Payment
- * Year ten through year fifteen – twenty-five percent (25%) of the Incentive Payment.

After the expiration of a 60 day written demand by the Village to Pugi or its successors, specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including, without limitation:

- ~~* Drawing upon the Letter of Credit provided for below; and/or~~
- * Proceed with an action in law or in equity to recover the amounts owed.

8. Letter of Credit:

This paragraph shall be deleted in its entirety and all other paragraphs renumbered accordingly.

SECTION 2. All terms and conditions of the 2005 Agreement shall apply equally to this 2009 Addendum Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year first specified above.

VILLAGE OF DOWNERS GROVE

**DOWNERS GROVE IMPORTS, LTD.
D/B/A PUGI OF CHICAGOLAND**

By: _____

By: _____

Date: _____

Date: _____

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