

**AN AGREEMENT FOR DEVELOPMENT INCENTIVES BY AND
BETWEEN THE CITY OF BRIGHTON, COLORADO, AND
JOHNSON AUTO PLAZA, INC., D/B/A JOHNSON AUTO PLAZA**

THIS AGREEMENT is entered into this 1st day of October, 2019 by and between the City of Brighton, Colorado, a municipal corporation (the “City”) and Johnson Auto Plaza, a Colorado Corporation (“Johnson Auto Plaza”). The City and Johnson Auto Plaza may be referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the City Council, through the enactment of Resolutions 99-24 and 04-121, has found and determined that the stimulation of economic development through the creation of new employment opportunities, the establishment of a sound tax base, and the promotion of business and industry, serves the general welfare of the citizens of Brighton; and

WHEREAS, the City Council, through the enactment of Resolutions 99-24 and 04-121, has established a justification for an economic incentives program to foster economic development within the City; and

WHEREAS, Johnson Auto Plaza has submitted an application for the development of a new automotive parts and service facility of approximately 44,000 square feet (the “Project”) on the Property; and

WHEREAS, the Project will create additional employment opportunities and it is anticipated that the Project will increase the sales tax and real property tax base of the City; and

WHEREAS, the City desires to offer certain economic development incentives to Johnson Auto Plaza as an inducement to complete this Project within the City.

NOW THEREFORE, for and in consideration of the recitals, premises, mutual covenants, and agreements herein contained, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Johnson Auto Plaza agree as follows:

AGREEMENT

SECTION 1. **DEFINITIONS.** Unless the context otherwise clearly indicates, the following words and phrases shall be defined as follows:

- 1.1 “Agreement” shall mean this agreement for Development Incentives By and Between the City and Johnson Auto Plaza.

- 1.2 “Certificates of Occupancy” shall have the meaning as provided in the most recently adopted Uniform Building Code, as amended by the City.
- 1.3 “Development Incentive Package” shall be comprised of both a rebate of use tax paid on construction materials for the Project and an annual share back of sales tax as both are described in Section 5 below. In no event shall the total Development Incentive Package to Johnson Auto Plaza exceed \$338,000.00.
- 1.4 “Opening Date” shall be the first day that the Project is open to the general public for business, and shall not be later than 300 calendar days from the start of construction, as specified in Section 4 herein.
- 1.5 “Project” shall mean the approximately 44,000 square foot automotive parts and service facility to be developed by Johnson Auto Plaza on the Property.
- 1.6 “Property” shall mean the approximately 38.695-acre property located in a portion of the Northwest Quarter of Section 25, Township 1 South, Range 67 West of the Sixth Principal Meridian, all in the City of Brighton, County of Adams, State of Colorado.
- 1.7 “Sales Tax” shall be as defined in §3-28-20 of the Brighton Municipal Code.
- 1.8 “Use Tax” shall be as defined in §3-32-20 of the Brighton Municipal Code and shall be limited herein to only the use tax related to building materials for construction of the Project on the Property (the “Building Use Tax”).

SECTION 2. PUBLIC PURPOSE. The City Council hereby declares that there are particular public purposes for which the economic development incentives contained in this Agreement overcome any individual interests incidentally served by the incentives. The Council finds that there will be the general benefit to the citizens of Brighton of increased employment, long term tax base growth, and related economic development benefits. In addition to these general public benefits, the City Council finds that there are at least two discrete and particularized public purposes:

- 2.1 These incentives will permit Johnson Auto Plaza to build and operate the Project, which will contribute to the development of new businesses within the City, and will result in substantial expansion of new employment and tax base within the City.

- 2.2 These incentives will provide direct and indirect benefits to the City's commercial markets. These public purposes outweigh any incidental individual interests and are not a special aid, grant, or privilege.

SECTION 3. ELIGIBILITY. The City Council has reviewed the economic development incentive request, in conjunction with Resolutions 99-24 and 04-121, and finds that the economic benefit to the City by virtue of development of the Project in the City is clearly demonstrated and that the proposal is eligible for economic incentives, based upon the following:

- 3.1 The proposed Project will put to beneficial use presently underutilized real property in the City.
- 3.2 The proposed Project will result in new employment opportunities in the City.
- 3.3 The proposed Project will increase the property tax base and sales tax base previously established within the City.

SECTION 4. CONSTRUCTION OF PROJECT. Johnson Auto Plaza shall begin construction of the Project by December 1, 2019, and continuously pursue construction of the Project until completion. Johnson Auto Plaza shall open the Project to the general public for business within 300 calendar days of the start of construction.

SECTION 5. ECONOMIC DEVELOPMENT INCENTIVES – SALES AND USE TAXES.

- 5.1 For purposes of any Sales Tax rebates provided for herein, the following procedures shall apply:
 - a. On or before the end of every twelve (12)-month period for which sales tax rebates are available, commencing with the first day of the month following the Opening Date, Johnson Auto Plaza shall submit to the City Manager, with a copy to the City Finance Director, a written request for the sales tax rebate for the prior twelve (12)-month period; and
 - b. Subject to the conditions and limitations set forth herein, within sixty (60) days of receipt of said written request for rebate from, the City shall rebate to Johnson Auto Plaza via wire transfer or check the amount in excess of \$512,000.00 paid by Johnson Auto Plaza to the City for sales within the City for that same twelve-month period. Eligibility for such Sales Tax rebate shall expire at the end of the fifth twelve-month period or when the total amount of Sales Tax rebated

pursuant to this Agreement reaches \$237,000.00, whichever comes first

5.2 For purposes of any Use Tax reimbursement provided for herein, the following procedures shall apply:

- a. Subject to the conditions and limitations set forth herein, within sixty (60) days of receipt of a written request for rebate from Johnson Auto Plaza, the City shall rebate to Johnson Auto Plaza via wire transfer or check the amount equivalent to fifty percent (50%) Use Tax paid by Johnson Auto Plaza to the City for the construction the Project (the "Building Use Tax"). The total of this Building Use Tax reimbursement for construction materials for the construction of the Project shall not exceed fifty percent (50%) of the valuation of the Project times the Brighton Use Tax rate of 3.75%. The written formal request for this reimbursement is to be submitted by Johnson Auto Plaza and addressed to the Director of Finance (with a copy to the Director of Community Planning and Development).
- b. Based on an approximate valuation of \$6,054,309, the Building Use Tax is estimated to be \$176,249, with an estimated rebate of \$88,125.

5.3 No interest shall accrue on any sum payable to Johnson Auto Plaza.

5.4 The right of rebate shall be personal to Johnson Auto Plaza, and shall not run with the land.

5.5 Johnson Auto Plaza shall keep accurate books and records of all business transactions as of the Opening Date. During regular business hours, and upon reasonable advance notice to Johnson Auto Plaza, the City or its designee is hereby authorized to review Johnson Auto Plaza's books and records. Such review shall be conducted at the expense of the City. Findings from a review of Johnson Auto Plaza's books and records may impact the amount of the Sales Tax rebates and reductions.

SECTION 6. SUBORDINATION TO USE TAX BONDS. Nothing herein shall be construed to grant any right, claim, lien, or priority to Johnson Auto Plaza in or to the City's sales and use tax revenue superior to, or on a parity with, the rights, claims, or liens of the holders of any sales or use tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes, use taxes, or any combination thereof, existing or hereafter issued by the City. Moreover,

nothing herein shall be construed to deny or limit the City's full authority to issue such sales and use tax bonds. Accordingly, Johnson Auto Plaza specifically acknowledges and agrees that all rights to the Development Incentive Package from sales and use taxes contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales and use tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales or use taxes existing or hereafter issued by the City. It is further acknowledged that the development incentive sales tax rebates to Johnson Auto Plaza shall be available only from City sales tax revenues collected from the Project on the Property and remitted to the City and only to the extent herein provided, and no obligation of the City pursuant to this Agreement shall provide access to any other City revenue source, nor shall such obligation be deemed to create any pledge of credit of the City.

SECTION 7. ANNUAL APPROPRIATION OF FUNDS BY THE CITY. The Parties acknowledge and agree that the City has advised and opined that the economic development incentive sales tax and use tax rebates provided for under this Agreement (and in particular Section 5) are contingent upon funds for such purpose being available, budgeted, and appropriated annually. In the event that the City does not budget and appropriate sufficient funds for any payment herein at any time, the City shall provide written notice to Johnson Auto Plaza that payment or payments will not be made. Further, if any court of competent jurisdiction determines that this Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the Parties agree that the Agreement shall immediately convert to a one-year contract, with automatic annual renewal provisions, subject only to failure by the City to appropriate funds annually. The failure to appropriate or have funds available shall not be a breach of this Agreement.

SECTION 8. GENERAL OBLIGATIONS OF JOHNSON AUTO PLAZA. As set forth in Section 4 of this Agreement, the Parties have agreed that this Agreement is specifically subject to and conditioned upon certain performance obligations by the Parties. In particular, Johnson Auto Plaza shall comply with all the provisions of the Development Improvement Agreement with the City, pursuant to which Johnson Auto Plaza will agree to comply with all City codes, ordinances, resolutions, and regulations, and pay all taxes, fees, and expenses required by the City in conjunction with the development and construction of the Project. Johnson Auto Plaza acknowledges that it is responsible for compliance with the obligations and responsibilities as identified in this Agreement.

SECTION 9. NO VESTED PROPERTY RIGHTS. It is understood and agreed by the Parties that no vested property rights are granted by this Agreement. Johnson Auto Plaza represents to the City that there are no vested rights to the Property from the County of Adams or any other governmental entity, and Johnson Auto Plaza hereby waives and releases any rights which may have been so granted.

SECTION 10. EVENTS OF DEFAULT; REMEDIES.

- 10.1 Default or an Event of Default under the Agreement shall mean that one or more of the following events shall have occurred during the term of this Agreement:
- a. Johnson Auto Plaza, in violation of Section 12 of this Agreement, assigns or attempts to assign this Agreement, the Project, or any part of the Property; or
 - b. Johnson Auto Plaza fails to commence, diligently pursue, and complete construction of the Project as required by Section 4; or
 - c. Johnson Auto Plaza fails to substantially observe or perform any other covenant, obligation, or agreement required under this Agreement; or
 - d. Johnson Auto Plaza files for protection under the United States Bankruptcy Code during the term of the Agreement wherein the City no longer has its consideration for this Agreement.
- 10.2 Upon the occurrence of any Event of Default, the City shall provide written notice to Johnson Auto Plaza. Johnson Auto Plaza shall immediately proceed to cure or remedy such Default, and in any event, such Default shall be cured within thirty (30) days after receipt of the notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time if curing cannot be reasonably accomplished within thirty (30) days.
- 10.3 Whenever any Event of Default occurs and is not cured under subsection 10.2 of this Agreement, the City may take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages.
- 10.4 The rights and remedies of the Parties to this Agreement, as provided herein, are cumulative except as otherwise expressly limited. The exercise by either Party of any one or more of such rights or remedies shall not preclude the exercise by that Party, at the same or different times, of any other right or remedy for any other Default by the other Party.

SECTION 11. DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, orders of civil or military authorities, failure to obtain permits, approvals, or consents (including building permits and certificates of occupancy) from local, state, or federal agencies, or other causes, but only to the extent that such causes are beyond the normal control of such Parties.

SECTION 12. ASSIGNMENT. This Agreement and the proceeds or obligations hereof are not assignable by Johnson Auto Plaza.

SECTION 13. TERMINATION. This Agreement, and the terms and provisions hereof, shall terminate upon the earlier of the following to occur: (a) the date at which Johnson Auto Plaza has received the full amount of the Development Incentive Package; or (b) the last day of the fifth (5th) year following the Opening Date; provided, however, that if termination occurs as a result of the expiration of the time period set forth in clause (b) hereof, any obligations of the City for rebate of any amount of the Development Incentives Package that have accrued on such date (but not yet paid) shall remain due and payable and such obligation shall not be discharged by such expiration under clause (b) hereof.

SECTION 14. NO THIRD PARTY BENEFICIARIES. The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

SECTION 15. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the U.S. mail, postage prepaid, and addressed to the intended recipient as follows. Any Party can change its address by written notice to the other given in accordance with this paragraph.

CITY OF BRIGHTON
Attn: City Manager
500 South 4TH Avenue
Brighton, CO 80601

JOHNSON AUTO PLAZA, INC.
12410 E. 136th Avenue
Brighton, CO 80601

SECTION 16. BINDING EFFECT. This Agreement shall be binding upon the City and Johnson Auto Plaza.

SECTION 17. GOOD FAITH. Each Party shall exercise good faith in the performance and enforcement of this Agreement. Johnson Auto Plaza acknowledges the benefits of this Agreement and agrees to use good faith in interviewing and hiring qualified Brighton residents for positions at the Project, subject to restrictions in existing labor contracts.

SECTION 18. VENUE. This Agreement is being executed, delivered, and is intended to be performed in the County of Adams, State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement.

SECTION 19. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

SECTION 20. WAIVER OF BREACH. A written waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

SECTION 21. SECTION CAPTIONS. The captions of the sections of this Agreement are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

SECTION 22. AUTHORITY. The City and Johnson Auto Plaza each hereby warrant that the Party signing below has full and lawful authority to execute this Agreement.

SECTION 23. CONDITIONS.

- 23.1 This Agreement is specifically subject to, and conditioned upon, Johnson Auto Plaza entering into a contract for development of the subject parcel by November 1, 2019, and submitting a copy to the City for review.
- 23.2 This Agreement is specifically subject to, and conditioned upon, Johnson Auto Plaza satisfying all the schedule and deadline requirements set forth in Section 4 hereof.

IN WITNESS WHEREOF, the City and Johnson Auto Plaza have executed this Agreement as of the date first written above.

CITY OF BRIGHTON

By: _____
Kenneth J. Kreutzer, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Jack D. Bajorek, City Attorney

JOHNSON AUTO PLAZA, INC., a Colorado Limited Liability Company

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Johnson Auto Plaza, Inc.

WITNESS my hand and official seal.

My Commission expires: _____

Notary Public