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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: November 13, 2019

RE: City of Detroit Transaction with Micheal Kelly regarding FCA Project

The Legislative Policy Division (LPD) has been requested to provide a report on the information that was provided by the Administration with regard to the transaction between the City of Detroit (City) and Michael G. Kelly (Kelly Entities) as it relates to the Fiat Chrysler of America (FCA) land assemblage.

In May 2019, the City was engage in assembling approximately 215 acres of land for the \$1.6 billion, FCA Assembly Plant Project. Of the total amount of acreage needed, approximately 0.3 acres of land within the FCA Assembly Plant Project was owned by Kelly Entities. The Duggan Administration negotitated a deal to acquire the necessary property from Kelly Entities. The Administration presented to City Council for approval on April 30, 2019 the sale of 6 parcels to Kelly Entities in exchange for the transfer of 3873, 3963 and 4621 St Jean and 5732 Winslow to the Detroit Brownfield Authority (DBRA). The Administration requested an amendment to this transaction to add one additional parcel to the list of properties Kelly Entities would transfer to the DBRA and remove five parcel and add one parcel to the list of properties the City would transfer to Kelly Enterprises. It was at this time as identified in the memorandum dated May 3, 2019, from the then Director of Plannint and Development Department Maurice Cox, that the proposed amended transaction included provisions to:

“settle with the Kelly Entities certain in personam actions for property tax liabilities for the tax years 2015 and prior, as well as settles certain blight violations wit the Kelly Entities for all years prior to the approval date of the attached resolutions.” No further details related by the “personam actions for property tax” or blight violations were provided in this initial correspondence.

The Property Transfer Agreement between the City, the DBRA and Michael Kelly (relative to the FCA project) under Section 2, *Releases: Subsection B, City Entities Release*, provides in pertinent part:

The City Entities RELEASE AND FOREVER DISCHARGE the Kelly Entities... and those entities associated with City of Detroit Mortgage Code #00313, that relate to any real-property tax debts of any kind or nature for any year prior to 2016, and blight violations (including any and all demolition-related claims) issued or incurred prior to the execution or effective date of this Agreement, whichever is later (the "Released Matters"). This release is expressly limited to those alleged and/or accrued debts of any kind or nature, whether known or unknown, relating to real-property taxes alleged to have been due at any time prior to December 31, 2015, and for blight violations (including any and all demolition-related claims) issued or incurred that were issued at any time prior to the execution date of this Agreement, whichever is later.

LPD notes that neither the memorandum, the Property Transfer Agreement nor any conversations with the Administration identified the nature of the unpaid blight violations or the types of properties involved. There was discussion as to the amount of the combined violations and lawsuits being settled, which were determined to be in excess of \$1 million. This amount was outlined in LPD's May 14, 2019 report summarizing the FCA Mack Assembly Project Report¹. At the time the transaction was being presented for approval, the number of blight violations and the nature of those violations were never brought forth by the Administration. Only the approximate amount of the settlement and the transfer of properties by the parties were disclosed along with the fact that the transaction involved 0.3 acres of land directly in the project footprint.

LPD notes that the amount of the settlement and property maintenance violations that were forgiven in this transaction in retrospect is significant. However, in light of the \$1.6 billion project and the potential 5,000 jobs the project would bring, the Kelly Entities transaction would be a necessary undertaking and was not prominent in LPD's review, particularly when the details underlying the blight violations were not disclosed. But it must be noted that the resolution of past debt owed would not relieve Mr. Kelly (or the affiliated entities) of his current and ongoing responsibilities under the City's Property Maintenance Code or any other local, state or federal law which applies to the rental of his vast real estate portfolio. The transaction also does not preclude the City of Detroit from conducting the appropriate property inspections and taking appropriate actions, including but not limited to shutting down properties that are unfit for habitation. LPD would be happy to provide further information and/or analysis should City Council so desire.

¹ See LPD's FCA Mack Assembly Project report summarizing the land transactions regarding the acquisition of Kelly property on page 6.

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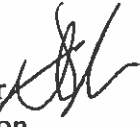
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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: May 14, 2019

RE: **FCA US LLC, Mack Assembly Project Report**

The Legislative Policy Division (LPD) has reviewed the Agreement for the Development of Mack Assembly Plant (the Development Agreement) between FCA US, LLC (FCA) the Detroit Brownfield Redevelopment Authority (DBRA), and the City of Detroit (City). This report provides a highlight of the pertinent provisions of the Agreement as well as some of the underlying elements undertaken to bring the project to fruition.

LPD notes that the Mack Assembly Plant Project is composed of a number of complex components which include but are not limited to: land acquisitions; land transfer agreements; intricate financial agreements and arrangements, employment agreements and plans; and community benefit agreement provisions. A summary and outline of the Project may not encompass the essence and gravity of each component. LPD submits this report to assist in reaching an understanding of the Project, however, the true gravamen of the Project can only be ascertained by the persons who crafted the terms and conditions of each connecting part. ¹

Summary of FCA Project

The Parties have come together and negotiated a way in which to bring about the construction and development of the FCA Assembly Plant project. In the construction of the assembly plant, FCA anticipates a total expenditure of approximately \$1.6 billion and the expected creation of

¹ Due to the complexities and overlapping interlocking nature of these various land deals and agreements LPD would ask that City Council request the aid and assistance of the City's Law Department and Outside Counsel who prepared or assisted in the preparation of these many documents to participate fully in bringing need clarity thereto. The Administration's summary of the FCA Agreement is attached for City Councils convenience.

approximately three thousand eight hundred fifty (3,850) net new full time employees in the operation of the FCA Assembly Plant. In addition to the construction and assembly of the Mack Assembly Plant, FCA intends to expend \$900 million to retool and modernize the existing Jefferson North Assembly Plant creating another 1,100 jobs and bringing the total number of net new jobs to approximately 4,950 and total investment in the area to approximately \$2.5 billion to Detroit. The City and the DBRA have agreed to assist in facilitating this project and together the parties have undertaken certain obligations.

In order to secure FCA's commitment to the project, the City and the DBRA entered into a Memorandum of Understanding (MOU), dated February 26, 2019. Under the MOU the City and DBRA agreed to facilitate as well as provide a number of things including, but not limited to: securing certain private parcels of land; provide certain publicly owned land; obtain approvals for rezoning; funding for land acquisition costs; complete environmental reviews and provide remedial plans where necessary; complete the process for a PA 198 tax abatement agreement (expected to be worth approximately \$12 million to FCA over 12 years); work closely together to support Detroit's Community Benefits process and reach final recommendations on community benefits; and obtaining final approvals that will be required for the Brownfield Redevelopment Plan.² All rights and liabilities under the MOU will be terminated upon the Effective Date of the Agreement for the Development of FCA Assembly Plant.

Land Acquisition

Under the MOU and the Development Agreement, the City and DBRA was to acquire certain private parcels necessary for the FCA Assembly Plant project. Some parcels would be acquired through the City/DBRA purchasing with cash, while others would require a land swap transfer of publicly owned property or both cash and land swap transfer of publicly owned property.³ The publicly owned property would be parcels of land owned by the City or the Detroit Land Bank (DLBA). The City entered into Land Transfer Agreements to cobble together approximately 215 acres of land for the FCA Assembly Plant project.⁴ According to the Administration, the City agreement provides for 155 acres of City-owned land to be swapped and \$48.1 million of cash to

² The State of Michigan has made a separate commitment to complete its process for State incentives during the same period. If these obligations are met and the parties enter into a final development agreement, FCA will start construction immediately in order to make its production deadline. The City has made an additional commitment to begin moving dirt from the berm along St. Jean immediately. That work will need to be done to reuse that property for FCA or for any other development. If the City is unable to secure the land required by FCA in the 60 day timetable FCA and the City will split the cost of the berm removal.

³ The land swaps include properties that are outside of the impact area in communities that were not provided any notice of the exchange. Although some areas may result in future community benefit engagement when redeveloped, providing those communities notice should have been included in the plan.

⁴ LPD notes that Council President, Brenda Jones asked the Administration, if FCA would be given fee land in competitor deals? The response from FCA was they have never paid for land in any assembly plant they have built. FCA also indicated they have secured all necessary properties and have a viable business plan to begin construction in Belvidere, IL. To restate it plainly, to build an automobile plant in our or any other community, the land that it is built upon comes free of charge. One might surmise from this response that the construction of this new and greatly expanded automobile manufacturing facility that when complete will employ nearly 5,000 new employees which when joined with its current staffing will house more than 10,000 employees, all of whom with pay at least 1/2 of the income tax rate of 2.4% on earnings of \$58,000. Jobs that have low barriers to entry, paying living wages that our large unemployment demographics in our city both need and deserve. A similar expectancy of low skill relatively high paying jobs from FCA's suppliers on a 1-to-4 ratio is a part of this equation. All of that sits as a counterbalance to the high price land acquisition

be used to acquire 214.6 acres.⁵ In addition to acquiring the necessary land, environmental clean-up, site preparation and other project cost came to approximately \$59.5 million. The total land acquisition cost according to the Administration is approximately \$107.6 as set forth below:

Site Acreage	Owner	Cash (\$MM)	Land Swaps Acreage	Value
55.6	City of Detroit	\$0		\$1.1
41.4	DTE	\$0	25.1	\$3.6
10.8	Great Lakes Water Authority	\$1		
5.3	Soave Enterprises LLC	\$0	9.5	\$0.3
3.9	Hantz Group	\$0	1.7	\$0.01
0.1	DPCS District	\$0.01		
82.2	Crown Enterprises, Inc.	\$43.5	116.6	\$10.5
6.9	Conrail	\$0.5		
8.1	Yahiahan	\$3		
0.3	Kelly	\$0	1.4	\$0.02
214.6	Acquisition Total	\$48.1	154.3	\$15.5
	Site Preparation and Other Project Cost	\$59.5		
	Total	\$107.6		

The breakdown of the land transactions to acquire the property to provide to FCA for the assembly plant project are as follows:

- The City assembled 55.6 acres of adjacent City owned property that consist of parcels identified as the North and South Berms on the west side of St. Jean, (24.9 Acres valued at \$383,992); St. Jean Street (12.6 acres valued at \$115,508); the Federal Mogul site across from DDOT Shoemaker facility (14.4 acres valued at \$521,805 and a parcel off St. Jean that connects to the parking lot north of Mack engine plant (1.2 acres valued at \$51,444). The total value of the City's land contribution is \$1,072,749. These evaluations were determined in accordance with the "Land Values from the City Assessor records". The information provided by the Duggan Administration's answers to LPD's questions from April 30, 2019.
- The acquisition of the DTE owned property at its Conner Creek site and at 11860 Freud consisting of 41.4 acres was obtained in a land swap deal for 25.1 acres which includes 1340 third Street (PLD Building of 0.9 acres); 9733 Grinnell (13.1 acres); 14584 Livernois (5.7 acres) Winslow/Lawton parcels (1.8 acres) 11900 Freud (2.6 acres); and 2 Canal (1.0 acres). DTE will demolish the existing structure at Conner Creek. The DTE site along with the GLWA and Conrail parcels will be used as a finished vehicle parking lot.⁶

⁵ According to the Detroit Economic Growth Corporation the property values were determined by comparable market rates in the area as well as an independent appraisal for the DWSD/GLWA parcels and the DTE Connors Creek property.

⁶ The City is responsible for assembling the site as well as constructing the parking lot before transferring the property to FCA. LPD notes we were unable to identify any reference to the cost of constructing the parking lot.

- The acquisition of the Great Lakes Water Authority owned property consist of 10.8 vacant acres at Freud Street for the purchase price of \$1 million.
- The acquisition of Soave Enterprises (Soave) property was made pursuant to a land swap agreement. Soave provided two parcels located at 12001 Mack and 12017 Mack to be provided as part of the new FCA assembly plant for employee parking. In exchange for the two Mack parcels Soave is to receive 9.5 acres at Lynch and Van Dyke and pay \$280,000 which will go into escrow for site development. In addition, Soave will receive 12.8 acres at Van Dyke and Huber adjacent to the DWSD Huber Yard and the City will receive 3.2 acres of property to square off the DWSD Huber site and \$768,000. Soave will also obtain a 2-year option on 9 acres of City owned parcels at 10600 Gratiot, 10644 Gratiot and the 1.7 acre State owned parcel at 10780 Gratiot (the concrete parking area only). The \$280,000 escrowed money can be used for site preparation.⁷
- The acquisition of Hantz Group properties consist of 3.7 acres of land adjacent to the South Berm on Beniteau Street to be used for a stormwater retention and additional parking. In exchange Hantz will receive approximately 1.7 acres of land in the area west of the FCA JNAP plant. The Hantz transaction was conducted in conjunction with the prior City/Hantz land transaction where Hantz had an option to buy 180 additional acres outside the original Hantz footprint.⁸ The City (through the DBRA) as part of the FCA project land swap is selling 40-45 acres of land to Hantz within the original footprint.
- The acquisition of the DPS parcel consisting of 0.1 acre located adjacent to the South Berm to be used for the retention pond and additional parking.
- The acquisition of Crown Enterprises property consist of an 82 acre parcel adjacent to the Jefferson North Assembly Plant that Crown currently leases to FCA. The acquisition cost totals \$54 million which includes \$43.5 million in cash and \$10.5 million in land.⁹ The land swap consist of 116.6 acres of City owned land. Included is 1.9 acres of land in the bridge area valued at \$148,521; 14.5

⁷ The escrow dollars can be used for site prep which includes, for Soave entities: cost of eligible activities under the Brownfield Act, above \$150,000 for any of the three purchase areas; Purchase of private parcels up to \$250,000 total; quiet title costs in excess of QTA Cap (DBRA covers quiet title cost up to \$50,000 on City property). For City: up to \$100,000 to be used by DBRA for purchase of State parcel under Lynch Road Land Agreement; Any remaining funds in escrow at the expiration of escrow period to be disbursed pro-rata to City, DBRA and EDC for sale of properties owned by them.

⁸ The original Hantz land purchase boundaries were from Jefferson to Mack and Fischer to St. Jean but allowed for an option to buy an additional 180 acres outside of the original boundaries. The 40-45 acres are being sold to Hantz at the price set under the original agreement. The sale also terminates the original option.

⁹ This 82 acre parcel of land (Former Budd Plant Site) sits in the middle of the FCA Assembly Plant project footprint and is currently leased by FCA. It is LPD's understanding that the underlying lease between Crown and FCA has a value of \$21 million. The land swap agreement with Crown discounts the 82 acre site at \$54 million (\$43.5 million in cash and \$10.5 million in land). If the City provides the property identified in the I-94 Industrial area that is located near another property that Crown leases to FCA on Georgia Street (required for expansion), the discount for the 82 acre site is applied. If the City is unable to provide the property as set forth in the Property Exchange Agreement, the \$21 million will be due of which \$15 million the City is responsible and \$6 million is the responsibility of FCA. ~~LPD does not know what the risk are that that City undertakes in this transaction, or how likely are we able to avoid paying out these contingency funds.~~

acres located at 9240 Mt. Elliot (I-94 Industrial Park) valued at \$1,265,854; 5.3 acres located at 696 Hart (Jefferson/Connor/Freud) valued at \$500,000; 4.0 acres at 7529 St. Aubin (Trombley Triangle) valued at \$325,000; 3.1 acres at 3600 Toledo (West Grand Blvd/Toledo) valued at \$564,033; 28.5 acres at 1420 Springwells Ct (Springwells Industrial Park) valued at \$2,600,000; 1.7 acres at 17140 Mitchell (UTS McNichols/ right of first refusal) valued at \$233,482; 45.6 acres 11111 French Road (Airport area) valued at \$3,970,930; 1.4 acres at 12121 Mack (JNAP area) valued at \$117,612. The total land swap acres for Crown is 116.6, the total dollar value is \$10,483,980.

- The acquisition of the Conrail property consist of 6.9 acres at a cost of \$484,000. The property sits between the acquired DTE and GLWA sites to create a single 60 acre parcel for FCA's finished vehicle parking lot.
- The acquisition of the Yahaiyan property consists of 8.1 acres of property that is adjacent to the Mack Engine plant. The cost for obtaining the property is \$3 million.¹⁰
- The acquisition of the Kelly property consist of 0.3 acres that is three parcels within the North Berm. The City is also acquiring one parcel in the Lawton/Winslow area (as part of the DTE swap) and one parcel in the I-94 Industrial Park area (as part of the Crown Enterprise swap). In exchange, Kelly receives 14 parcels on Ashland Ave (Jefferson/Chalmers); 1 parcel on Dexter Ave (Russell Woods); the release of pending lawsuits for 2012 unpaid property taxes; and release of claims for unpaid taxes for 2015 and prior.¹¹

Community Benefits Agreement

As set forth by City Ordinance under Chapter 14, Article XII, certain development projects referred to as "Tier 1 Development Projects" are required to undergo community engagement procedures to determine how the development project may impact the community. As a result of the community engagement with Neighborhood Advisory Council (NAC) certain assurances and benefits have been made by the FCA and the City which have been set forth in a formal Community Benefits Agreement entered into between the City and FCA.

LPD notes that the Community Benefits Agreement is a stand-alone agreement and is not incorporated by reference to the FCA Development Agreement.¹² The pertinent provision of the Community Benefits Agreement are highlighted below:

Neighborhood Stabilization Impact Area

¹⁰ The Yahaiyan property is currently used for parking by the adjacent retail center. The easements that were connected to the property are being extinguished and the FCA will use the parcel along with two of the Soave parcels for employee parking.

¹¹ It is LPD's understanding that the unpaid taxes owed by Kelly totaled approximately \$1 million.

¹² As conducted in the past, both the Community Benefits Agreement and the FCA Development Agreement should be approved by City Council at the same time to ensure that one does not go in effect without the other.

- City commits to invest \$5.4 million in the completion of 300 demolitions in the impact area, primarily the Beniteau area; 100 demolitions per year for next three years beginning 9 months after City Council approval; priority and accelerated demolition of vacant structure in the area of Beniteau to McClellan bordered by Mack and East Warren; \$500,000 will be dedicated to home rehabilitation of Detroit Land Bank Authority (DLBA) homes in the impact area.
- FCA commits to invest \$1.8 million in home repair grants up to \$15,000 per grant in the impact area for a two year period or until funds expended; \$700,000 will be directed to grant program to support Beniteau Street residents acutely impacted by construction to prevent noise pollution, up to \$15,000 per owner occupied income eligible home; the grant process will be led by Detroit Housing & Revitalization Department (HRD); residents who fall outside the income eligibility guidelines for grants will be encouraged to apply for 0% home repair loans; start of the home repair grants program will be 3 months from City Council approval date.
- DLBA commits to release DLBA side lots for sale in impact area within 3 months of Council approval; DLBA commits to hold an “Own it Now” home sales event; DLBA and the City commit to do complete and/or partial rehabs of vacant homes in and around the impact area to spur investment in the neighborhood, subject to completion of the Chandler Park, West End, Riverbend Neighborhood plan.

Engage Impact Area Residents in Planning and Development commitment of \$1.6M

- City commits to invest \$500,000 in developing a community plan for Chandler Park, West End and Riverbend sections of impact area; developer and community together are to direct funding specific outcomes; community planning efforts to be conducted by Detroit Planning and Development Department; procurement of planning consultant within 90 days of City Council Approval; City will request DTE to complete full analysis of electrical infrastructure in impact area (Beniteau to McClellan bordered by Mack and East Warren) to identify issues with power grid and cost to make necessary repairs; tree and weed removal in City and DLBA owned lots and continued maintenance in impact area; Detroit Water Sewerage Department (DWSD) postpone service interruptions in impact area for two weeks to allow delinquent residents to apply for funds through Water Residential Assistance Program (WRAP); Building Safety Engineering and Environmental Department (BSEED) will enter consent agreements to those homes in the process of securing a home renovation grant or loan,
- FCA commits \$800,000 to fund recommended projects that result from neighborhood planning process in Chandler Park, West End, Riverbend neighborhoods; funded projects may include but are not limited: small business development, additional home repair programs, park improvements, and recreation center study or capital investment; the \$800,000 fund will be held by Invest Detroit for development in the impact area when the plan is complete; Invest Detroit will invest all proceeds into ~~eligible activities when the plan is completed~~

- City will invest \$300,000 in marketing resources and engage with FCA and the community to develop a campaign to promote the impact area.

Access to Training and Job Opportunities Funding of \$18,800,000

- **Detroit at Work:** FCA commits to direct \$5.8 million in state funding towards programs to maximize employment opportunities for Detroit residents; State funding will be administered by Detroit Employment Solutions Corporation (DESC); DESC commits to provide \$2 million in-kind outreach, screening, pre-application support and interviewing services; FCA will collaborate to develop and implement pre-application readiness training programs using the state funds; FCA commits to hiring priority for impact area residents, Detroit residents, returning citizens and veterans; FCA commits to working with the City to recruit returning citizens from targeted community-based training and support service programs; FCA commits to provide work readiness training for new hires; DESC commits to providing quarterly updates and metrics regarding pre-employment and workforce development in the impact area.
- **Education Programs:** FCA commits to \$4 million to fund manufacturing career academy programs at Southeastern High School/CTE facilities for youth and adults in partnership with the City and Detroit Public Schools Community District (DPSCD); City commits to fundraise \$4 million from public and private sources in additional support to manufacturing career academy CTE programs in addition to 2 million contributed by the City for adult training; funds will be administered by DESC as the City's fiscal agent under partnership with DPSCD; City will work with philanthropic partners to fundraise \$50,000 for Timbuktu Academy's computer lab and library.
- **Grow Detroit's Young Talent (GDYT):** City commits to \$500,000 to fund GDYT summer youth employment program; GDYT funding will be administered by DESC.
- **Detroit Promise:** City commits \$500,000 to fund scholarships through the Detroit Promise;¹³ Detroit Promise will be administered by the Detroit Regional Chamber; the scholarships will be earmarked specifically for students in the impact area.
- **AMP at WCCCD:** FCA commits to develop the Automotive Manufacturing Program (AMP) at Wayne County Community College District.

Continued Community Engagement

- City has an enforcement committee that will meet for the duration of the time identified in the Community Benefits Provision and will inform and include the NAC in the enforcement process; FCA will submit all site plans through the standard

¹³ In reviewing the contract between the City and The Detroit Regional Chamber (Chamber), the Chamber is being paid \$500,000 to undertake the administration of the Detroit Promise Program. Under the Contract, the Detroit Promise Program is being administered throughout Detroit on behalf of the City by the Chamber. The City may be committing separately \$500,000 for scholarships in the impact area as well as paying the Chamber \$500,000 to facilitate the program, however, it is not reflected in the contract with the Chamber, which is being presented for approval at the same time the FCA related material is being submitted.

planning review process including PD&D and BSEED review; FCA commits to publishing its Environmental Protection Plans (EPP) and will make that report accessible and available to the public; FCA will abide by and comply with all existing ordinances and federal, state and local laws, including the City's Community Benefits Ordinance.

- **Small Business Support:** FCA commits to hosting a minority supplier matchmaking event in the impact area community within 90 days of City Councils approval; City committed to leveraging two existing small business programs (Motor City Match and Motor City Restore) to provide support to new and small business owners in the impact area; Specific focus will be placed on small business start-ups in the impact area

Mitigate Construction Impact by Investing \$7.1 Million

- **Wall Construction:** City commits to construct a wall along St. Jean Street as a sound barrier to the FCA plant from Warren to Kercheval; Wall design will be approved by residents along Beniteau Street through a series of meetings to end in May 2019; Height of the wall to be determined at the completion of a sound study; FCA to provide support on wall aesthetics by planting ivy and adding potential mural along portions of the barrier.
- **Stormwater Retention Pond:** FCA commits to the construction, security and maintenance of a stormwater retention pond on Beniteau Street at Lillibridge Street between Vernor and Kercheval; FCA will add fencing around the pond as a security measure to prevent any accidents. FCA commits to improvements around the plant (green buffer) and retention pond by adding natural sustainable landscaping and vegetation, low impact grass, and planting trees.¹⁴
- **Traffic Mitigation:** FCA commits to approving truck routing and targets certain times for increase trucks and vehicle operations to accommodate impact area schools and other non-industrial traffic demands; FCA commits to establishing a live person managed toll-free number for residents to report problems related to plant traffic; City's Department of Public Works (DPW) will continue to work with the FCA truck routing and area residents to develop a plan for preferred neighborhood traffic calming measures; DPW will install preferred traffic calming measures to ensure trucks do not drive along residential streets, including speed cushions, one-way street conversions, and posted signage; the St. Jean route of the Iron Belle Trail will be removed as part of this project. New routing for the Iron Belle Trail will be considered as part of the proposed Neighborhood Planning efforts.

¹⁴ LPD did have discussions with Administration representatives regarding suggested security measures including ~~but not limited to security cameras that can monitor the retention pond for persons who enter without authority and~~ safety of children in the area.

The Development Agreement with FCA

LPD has provided a brief summary of some of the provisions of the Development Agreement, a more detailed review is provided later. During the Planning and Economic Development Committee, there was discussion regarding some of the following:

Section 3.12 *Parcel 10 Property Exchange Agreement*

This provision provides that the DBRA, City and FCA entered into a Property Exchange Agreement (PEA)¹⁵ with Crown Enterprises regarding the purchase price of Parcel 10 (Former Budd Plant). The property sits in the middle of the FCA Project footprint and FCA currently leases the property from Crown. The purchase price of Parcel 10 has been reduced to \$54 million (\$43.5 million cash and 10.5 million in land swapped property). Under the PEA, it appears the City agrees to convey to Crown property located in the I-94 Industrial Park (an area where FCA leases additional property from Crown and the I-94 property is needed for anticipated expansion). If the City/DBRA cannot provide the I-94 property, the purchase price for Parcel 10 increases an additional \$21 million. The method in which the payment of the \$21 million is tendered is set forth in Section 3.12(a)(i) and (ii). Under subsection (a)(i), the City is responsible for \$15 million which will be added on to the Municipal Project Funds solely for this payment. Subsection (a)(ii) provides that FCA will be responsible for the remaining \$6 million. If the conveyance of the I-94 property transaction is not completed due to FCA's failure to consummate the transaction for reasons other than the removal of the I-94 Property from the city property, then FCA is responsible for the \$21 million.

Section 7.02(b) provides that FCA is subject to the Executive Order providing for 51% of the work to be done by Detroit residents and 30% of the contracts be awarded to Detroit Contractors. The Agreement provides that the City acknowledges that it has entered into enhanced recruitment agreements with the skilled trades unions that will reduce the payments under the Executive Orders, if FCA engages the skilled trade unions when seeking workers for construction. The City also agrees to work collaboratively with FCA to facilitate compliance with the Executive orders.

Section 7.03(d) *Mack Assembly Plant Application Process*: provides that the Detroit Employment Solutions Corporation (DESC) agrees to support FCA in its talent needs in recruiting, pre-screening and vetting, work-readiness training related to Production Jobs. The Agreement provides that priority will be given to UAW Candidates (in accordance with the UAW Collective Bargaining Contract)¹⁶. Detroit residents will be given priority¹⁷ after the UAW Candidates. The priority to Detroit residents occurs in two instances: (i) initial application priority (after UAW Candidates) will be given first to Detroit residents in the Project's impact area (including returning citizens and veterans), then to other Detroit Residents (including

¹⁵ LPD was not in receipt of the PEA or the Letter agreement between FCA and Crown which details the terms and conditions that must be satisfied regarding the I-94 Property.

¹⁶ LPD notes that due to FCA having collective bargaining contracts with the UAW that provide priority status to its members, FCA legally cannot contractually commit to giving another party priority over its prior legal obligation. The fact that the City is aware of the prior contractual commitment, should the City attempt to interfere with that commitment could arguably make the City liable for "Tortious Interference of a Contract".

¹⁷ While the term priority is not defined in the Agreement, as defined in Black's Law Dictionary, "Priority" means: A legal preference or precedence. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority.

returning citizens and veterans); (ii) hiring priority (after UAW Candidates), FCA will prioritize hiring for qualified Detroit residents with the assistance of DESC providing a list of candidates that meet FCA's basic job requirements. LPD notes, FCA has not provided any specific number of Detroit residents that will be hired which may be mostly due to the unknown number of UAW Candidates that may vie for the newly opened positions. As indicated the Detroit resident priority takes second to those candidates.

Section 10.4(d) *Payment Shortfall*: provides that if on the Monitoring Termination Date¹⁸. The cumulative Annual City Revenue (total amount of projected City revenue as set forth in Exhibit 10.4, is less than the Monitoring Investment Value (\$57,400,000), the FCA shall pay the City the shortfall within 30 days of the receipt of an invoice from the City (subject to setoffs as detailed below). Under the provision, at the end of 29 years if the City has not obtained in the cumulative Annual City Revenue the projected \$57,400,000 then FCA will pay the difference between what was the actual and the projected amount.

Detailed Highlights of Agreement for the Development of the Mack Assembly Plant

The Agreement for the Development (Agreement) of Mack Assembly Plant by and among FCA US, LLC (FCA), the City of Detroit (City) and the Detroit Brownfield Redevelopment Authority (DBRA). The Agreement must be fully executed by all parties and will become effective upon the expiration of the applicable seven-day reconsideration period following the approval of the Detroit City Council (the Effective Date). The following highlights some of the pertinent provisions.

Article II Memorandum of Understanding

Article II identifies the terms that were set forth in the Memorandum of Understanding dated February 26, 2019 between the City, DBRA and FCA. Section 2.02, provides that as of the Effective Date of the Agreement the MOU will be terminated and the rights, obligations, and liabilities of the Parties shall be governed by the Agreement.

Article III Sale and Purchase of Parcels

Section 3.01 indicates that DBRA is to enter into binding acquisition agreements to acquire all Private Parcels (i) with a minimum fourteen days title review period, and (ii) as to any Direct Transfer Parcel, have DBRA designate FCA as the grantee in lieu of deed to DBRA. The DBRA is to consummate the acquisition of Private Parcel by the Closing Date and complete all of its obligations provided they do not cause DBRA's cost to exceed the Then Remaining Municipal Project Funds¹⁹.

¹⁸ The Monitoring Termination Date means the earliest of (i) the date on which the cumulative Annual City Revenue stated in all Annual City Revenue Reports equals or exceeds the Monitoring Investment Value; or (ii) twenty-nine years from the date of submission by the City of the First Annual City Revenue Report to the Detroit City Council.

¹⁹ "Then Remaining Municipal Project Funds" means that portion of the Municipal Project Funds not yet expended or committed pursuant to an executed contract in accordance with the Municipal Project Funds Budget; provided ~~however the parties acknowledge and agree that the term "Municipal Project Funds" as used in the definition of~~ Then Remaining Municipal Project Funds shall equal \$107,590,000.

If during the inspection period of the Private Parcel the DBRA determines the cost or liability related to the environmental activities or environmental laws will result in an expenditure of Municipal Project Funds²⁰ beyond the Municipal Project Funds Budget²¹, DBRA shall notify FCA ten days prior to the expiration of the inspection period under the pending acquisition agreement.

Section 3.01 indicates that the closings for FCA's acquisition of each Parcel from DBRA shall occur in accordance with the schedule set forth in the Parcel Worksheet (subject to Force Majeure and the provisions of Section 6.16 regarding Delayed Acquisition) but only after each Condition Precedent have been met or waived for such Parcel.

Section 3.03(a) indicates that each Parcel that is not a Private Parcel, the GLWA Parcel or any parcel that is part of Parcels 1, 1A, 3,4,8A, 8B and 12, shall be delivered by quit claim deed. The Private Parcels shall be delivered by covenant deed. Each with a right of reversion or Grant of Rights for the benefit of DBRA, subject to FCA's prior review and approval as set forth in the Agreement.

Upon completion of the Closing FCA shall have exclusive possession of such Parcel, subject to DBRA's right to complete construction of the St. Jean Barrier as provided in Section 7.03(e). Should DBRA or the City desire to access any Parcel after Closing the parties shall enter into the DBRA Access Agreement prior to any entry thereupon.

Section 3.04(b) indicates that by no later than the Closing Dates for Parcels 1, 1A,8, 8A and 8B identified on the Parcel Worksheet, DBRA shall (i) complete Site Preparation Activities and Environmental Activities (except as to vacated St. Jean Street); (ii) satisfy all other obligations of DBRA under Article VI; (iii) along with the City take any and all legally required actions required to transfer the referenced Parcels to FCA; and (iv) transfer the referenced Parcels to FCA giving exclusive possession and fee simple title to the Parcels. All portions of vacated St. Jean Street, rights-of-way, alleys shall be added to the Title Insurance Commitment and Survey along with legal title by quit claim deed contemporaneously with the Closing of the Particular Parcel of which the vacated street, alley, or right-of-way is a part.

Section 3.04(c) indicates that on the Closing Date, unless extended by FCA, DBRA shall (i) close on the purchase of the Private Parcels (Subject to Section 6.16 regarding Delayed Acquisition); (ii) complete all Site Preparation Activities (except as to Parcels 6 and 10) and complete all Environmental Activities thereto; (iii) satisfy all obligations of DBRA under Article VI; and (iv) convey such Parcels to FCA, including any portion of vacated streets, alleys or rights-of-way.

Section 3.04(e) indicates the City shall file a petition to cause the vacation of Connor lane and use good faith efforts to effectuate the vacation including providing any necessary easements, subject to (i) Detroit City Council approval; (ii) the objections of impacted adjacent property

²⁰ Municipal Project Funds means the funding in the amount of \$107,590,000, identified in the Sources and Uses Funds Worksheet to fund DBRA's obligations under the Agreement, including without limitation the acquisition of the Parcels and the Site Preparation Activities. The portion available at any given time based on the schedule and milestones set forth in the Sources and Uses of Funds Worksheet.

²¹ The Municipal Project Fund Budget is to be established under Section 3.04(e) fifteen days after the Effective Date by DBRA and FCA and shall detail the anticipated expenditures of the Municipal Project Funds.

owners and public utilities; and (iii) FCA's satisfaction with the terms of the easement for public utilities. In the event of vacation of Connor Lane under this Agreement, it shall be conveyed by quit claim deed to FCA with Title Insurance Commitment and Survey as set forth in Section 6.01 and 6.02. All transactions are subject to (i) DBRA and City satisfaction of obligations under Article VI; (ii) satisfaction of Conditions Precedent; (iii) FCA's right to reject a Parcel and terminate its rights under the Agreement as a Declined Parcel; and (iv) the generally applicable limitation that DBRA shall not be required to perform obligations that would cause cost to exceed the Then Remaining Municipal Project Funds.

The City, DBRA and FCA shall meet at least weekly to (1) manage the project; (2) review the status of the undertakings of the Agreement; (3) coordinate Due Diligence activities; (4) issue periodic progress reports; and (5) facilitate and coordinate matters the Parties desire in order to manage and execute the undertakings under the "Working Group Protocol".²²

This provision further indicates that within 15 days of the Effective Date, the DBRA and FCA shall approve a budget, detailing anticipated expenditures of the Municipal Project Funds. DBRA shall submit to FCA (i) all contracts related to the Site Preparation and Environmental Activities; (ii) any change orders to existing contracts for FCA's prior written approval; (iii) a modification to the Municipal Project Funds Budget to account for additional cash substitutes or land exchanges. Neither the Municipal Project Fund Budget nor any other pertinent exhibit, including the worksheet delineating the Site Preparation Activities, the Parcel Worksheet, or the Development Plan, may be modified by DBRA without prior FCA written approval.

Section 3.05 indicates that if any Parcel is deemed Delinquent Parcel by FCA, then FCA's has a right to deliver a Notice of Delayed Article VI Performance or Defective Article VI Performance following the exhaustion of the following: (a) the right to extend the Closing Date providing more time for delivery; (b) continue the Project without the Delinquent Parcel in exchange for DBRA conveying one or more Substitute Parcels (evidenced by approval of Detroit City Council and DBRA Board) at the DBRA's sole cost using the Municipal Project Funds (provided the cost does not exceed the Then Remaining Municipal Project Funds subject to the MPF Limit²³ and that portion of the Municipal Project Funds Budgeted for Private Parcel acquisitions as identified in the Municipal Project Funds Budget); (c) To lease one or more Interim Parcels, (evidenced by approval of Detroit City Council and DBRA Board) at DBRA's sole cost and expense using Municipal Project Funds (provided the cost does not exceed the Then Remaining Municipal Project Funds subject to the MPF Limit) until the Delinquent Parcel is conveyed to FCA under the Agreement. Any Interim Parcel lease shall be in the form of an Interim Parcel Lease. Any Substitute Parcel shall be conveyed to FCA in accordance with the Agreement.

Section 3.08 indicates the Parcels will be sold "As Is, Where Is, With All Faults", except for representations made and/or warranty of DBRA and the City as set forth in the Agreement or at Closing. Upon accepting the Parcels and subject to Section 4.01 and 4.02, FCA waives all claims regarding environmental conditions that the City and DBRA are not otherwise legally liable for

²² Under the "Working Group Protocol" the City, DBRA and FCA shall designate representatives that shall have authority to make approvals and bind their respective entities subject to where City approvals (City Council), DBRA Board approvals or FCA approvals are required. The representative identified are; Dave Menardo (City) Kenyetta Bridges (DBRA) and Ben Monacelli (FCA).

²³ ~~MPF Limit means a limit equal to the Municipal Project Funds not yet expended, minus amounts necessary for DBRA Obligations Under Environmental Laws.~~

pursuant to Environmental Laws. FCA also upon accepting the Parcels releases the City and DBRA from any and all liability for any defects in or conditions of the Parcels.

Section 3.09 indicates that other than where (i) DBRA and/or City is in breach of any representation or warranty in the Agreement or documents delivered by DBRA or City or (ii) the gross negligence, fraud or willful misconduct of the DBRA and/or City, the DBRA shall not be required to incur expenses in excess of the Then Remaining Municipal Project Funds in the performance of its obligations, except as expressly set forth in the Agreement. Following the Closing Date regarding any Private Parcel and prior to the Closing of any City or DBRA owned Parcel, if the DBRA determines performing its obligations will cause expenses to exceed the Then Remaining Municipal Project Funds budgeted for that Parcel it shall notify FCA of the obligations and the extent to which anticipated cost are in excess for that Parcel. DBRA's obligation shall be tolled, provided DBRA may elect to continue work on any such Parcel to the extent necessary to comply with DBRA's obligations under Environmental Laws. The reasonable and actual cost that exceed the Then Remaining Municipal Project Funds shall be reimbursed by FCA.

Upon delivery of Notice from DBRA to FCA the parties shall meet to confer regarding any Parcel not yet conveyed to FCA that would cause DBRA to exceed the Then Remaining Municipal Project Funds budgeted for that Parcel. FCA can elect to have DBRA convey the subject Parcel "As-Is, Where Is, With All Faults" as set forth in the Agreement. Under such conveyance DBRA will not be required to perform any Identified Obligations or meet any Conditions Precedent that would require expenditure in excess of the Then Remaining Municipal Project Funds for such cost. FCA shall bear all cost to consummate Closing. FCA also may elect to have DBRA assign all rights and obligations under its agreements with contractors for work performed under DBRA's obligations and FCA shall fund any cost outstanding under those agreements.

Section 3.11 indicates that DBRA shall file the necessary petitions and make good faith efforts to cause the public hearing to be held to enable FCA to obtain rights as may be needed to install and maintain subsurface infrastructure running horizontally across Beniteau street right-of-way for storm water conveyance.

Section 3.12 indicates Crown Enterprises (Crown), DBRA and City have entered into a Property Exchange Agreement (PEA) regarding the purchase of Parcel 10 (Former Budd Site) to be conveyed Directly FCA by Crown. The PEA contemplates certain properties owned by the DBRA/City will be conveyed to Crown identified as the I-94 Property. In addition to the PEA, Crown has entered into a "Letter Agreement" with FCA regarding commercial arrangements and the expansion of leased property at 6836 Georgia and the proposed I-94 Property. According to the Agreement, the PEA provides if the conditions set forth therein as well as those set forth in the FCA/Crown Letter Agreement regarding the conveyance of the I-94 Property are not met the reduction of the purchase price for Parcel 10 of \$21 million will be nullified. The \$21 million reduction price for Parcel 10 is identified in the Agreement as the "Incremental Consideration" which will be due to Crown as set forth in Subsection (a) if the I-94 Property is removed from the transaction regarding Parcel 10.

Section 3.12(a)(i) indicates the DBRA and City will be responsible for funding the Municipal Project Funds by an additional \$15 million, to be used to pay the Incremental Consideration,

Promptly upon DBRA/City becoming aware that the Incremental Consideration is due to Crown the DBRA and City will secure \$15 million in additional funding (in excess of the Municipal Project Funds amount as of the Effective Date) so funds will be on hand prior to the Closing of Parcel 10. The Municipal Project Funds Budget will be revised in accordance with the Working Group Protocol and the \$15 million will be for the sole purpose of paying the Incremental Consideration. The Agreement makes clear that the increase in Municipal Project Funds shall in no way increase the Monitoring Investment Value.²⁴

Section 3.12(a)(ii) indicates FCA will be responsible for the remaining \$6 million of Incremental Consideration cost by (a) agreeing, pursuant to the Working Group Protocol Budget, or (b) paying the amount directly to DBRA; provided that DBRA shall be permitted to use the Municipal Project Funds to fund the remaining \$6 million of the Incremental Consideration if FCA elects to pay the amount to DBRA but fails to do so in time to consummate the closing on Parcel 10. In such case, FCA will reimburse DBRA any amounts used from the Municipal Project Funds to consummate the closing of Parcel 10 which will be used to replenish the Municipal Project Fund.

Section 3.12(b) indicates, if the Incremental Consideration is payable because FCA fails to consummate the transaction contemplated under the Crown/FCA Letter Agreement for any reason other than removal of the I-94 Property from the City Property, FCA will be solely responsible for the Incremental Consideration as set forth in the subsection.

Article IV Representation and Warranties of DBRA and the City

Section 4.01 for the DBRA and Section 402 for the City, indicate in pertinent part, the DBRA and City represents and warrants to FCA: The DBRA and City are a public corporation in good standing with the State of Michigan and has the authority to enter into the Agreement; no conflicts exist in the execution, delivery or performance of the DBRA or the City; the Agreement when executed and delivered by the parties will constitute a binding obligation of the DBRA and the City; there is no condition which would materially interfere with or impair the user by FCA of any portion of the Parcels. The DBRA and City represent and warrant that they are in compliance in all material respects will all Environmental Laws.

Section 4.01(k) indicates the DBRA represents and warrants as of the Effective Date DBRA shall have received the portion of the Municipal Projects Funds identified in the Sources and Uses of Funds Worksheet as City of Detroit Exit Financing Bonds; (ii) not later than for business days after the Effective Date, DBRA shall have received the portion of the Municipal Project Funds identified in the Sources and Uses of Funds Worksheet as "City of Detroit Unlimited Tax General Obligation Bonds"; (iii) not later than July 15, 2019, DBRA shall have received the portion of the Municipal Project of the Municipal Project Funds identified in the Sources and Uses of Funds Worksheet as "Millenium Parking Deck Sale"²⁵.

²⁴ The Monitoring Investment Value means Fifty-Seven Million Four Hundred Thousand and No/100 Dollars (\$57,400,000) less any amounts for which the Municipal Project Funds are used as consideration in place if exchange property in order to consummate an acquisition pursuant to any Private Parcel acquisition or property exchange agreement, pursuant to and in accordance with the terms of Section 3.04 with respect to a modification to the Municipal Project Funds Budget to account for additional cash substitutes for land exchanges.

²⁵ ~~LPD notes that the sale of the Millenium Parking Deck is a part of the representation and warranty of DBRA as~~
Municipal Project Funds. The sale of the parking deck was a matter of concern for members of City Council.

Article VI *Covenants and Agreement of DBRA and the City*

The more pertinent provisions of Article VI are highlighted below:

Section 6.03 indicates that as of the Effective Date, the Detroit City Council has approved of the vacation of the St. Jean Street. After the Effective Date, should FCA request, the City shall make good faith effort to cause the vacation of any additional streets, alleys and rights-of-way within and/or adjacent to any Parcel which may require the providing easements for public utilities all subject to City Council approval.

Section 6.04 indicates that the DBRA and City agree that after the Effective Date other than the Rezoning Requirements²⁶, no Parcel or Subparcel shall be rezoned without FCA's prior written consent.

Section 6.06 indicate that prior to the Closing Date for each Parcel the DBRA shall complete Site Preparation Activities at DBRA's cost and expense using Municipal Project Funds but not to exceed the Then Remaining Municipal Project Fund, subject to MPF Limit except as to Parcels 6 and 10.

Section 6.08 indicates no later than December 31, 2020 (i) the City shall have constructed or implemented, or shall cause to have been constructed or implemented, the road improvements as described in Exhibit 6.08(1)²⁷

Section 6.9 indicates that as of the Effective Date FCA has access to all City and DBRA owned Parcels under the terms of Due Diligence Access Agreement. Within 2 business days of DBRA obtaining access of Private Parcels, subject to FCA and Private Parcel owner's agreement on a Private parcel Sue Diligence Agreement, DBRA shall facilitate FCA's full access to such Private Parcels. If the I-94 property and "Sherwood Property (as defined in PEA) are owned by City/DBRA, the Due Diligence Agreement shall be amended to include such portions and facilitate access on the same terms.

Section 6.13(f) indicates that if DBRA has not performed the Site Preparation Activites or Environmental Activities within the time set forth in the Agreement, FCA shall have the right but not the obligation, to close on the Parcel and perform the same at DBRA's cost and expense using the Municipal Project Funds provided that the cost shall not cause the DBRA's total costs to exceed the Then Remaining Municipal Project Funds, subject to the MPF Limit.

²⁶ The Rezoning Requirements mean the following with respect to the following Parcels: Parcel 1: M2; Parcel 1A: M2; Parcel 8: M2; Parcel 8A: M2; Parcel 8B; M2.

²⁷ Exhibit 6.08(1) provides the City will repave the road surfaces in the following rights-of-way: Kercheval (between St. Jean an Mt. Elliot; McClellan (between Jefferson and Gratiot); and Conner (Between Mack and Jefferson); The City will modify traffic signals at Warrant and St. Jean to add a left turn phase, modify existing pavement markings to provide for two lanes to turn left into the site simultaneously; The City will install, if needed, pavement markings to allow for two lanes of traffic to turn left from St. Jean onto eastbound Jefferson, and the existing traffic will be modified to provide for a left turn only phase; The traffic signals and pavement markings at Jefferson and Conner will be modified to allow for two lanes eastbound Jefferson Traffic to turn onto northbound Conner during afternoon hours; City will install speed humps on blocks adjacent to St. Jena (e.g. Beniteau) to slow down traffic and to discourage FCA employees and other drivers from using these residential streets, if the City determines such measures are desired by residents.

Section 6.16 indicates as to any Private Parcel in the event of a Delayed Acquisition²⁸ DBRA shall provide Notice to FCA of such Delayed Acquisition. The Notice shall have a tolling effect on both (a) tolling the Closing Date applicable to such Parcel, and (b) tolling the Project Completion Date (unless the Delayed Acquisition is caused by FCA and the DBRA has provided Notice to FCA of the causal link between FCA's default and the Delay in the DBRA Closing Date. The Closing Date is tolled one day for each day following the date of such notice until DBRA closes on the acquisition of such Parcel. If the Delayed Acquisition also impedes DBRA's completion of its obligations regarding other parcels that are to be in assemblage with the Private Parcel that is the subject of the Delayed Acquisition, then DBRA may provide Notice to FCA and seek to similarly delay the Closing Date to such other Parcels. If a Delayed Acquisition has been pending over 30 days, FCA may within a period no longer than of 90 days thereafter elect to (i) await resolution of the Delayed Acquisition, in which the Project Completion Date shall be tolled for a period of no longer than 90 days after such election; (ii) exercise the options set forth in Subsection 3.05(a), (b) or (c); or (iii) elect to terminate its rights under this Agreement as to the subject Parcel(s) only in which the subject Parcel shall become a Declined Parcel²⁹.

Article VII *Party Obligations*

Section 7.01(a) indicates the DBRA has identified sources of funds for the Municipal Project Funds, the sources and uses are delineated on the Sources and Uses of Funds Worksheet and are anticipated to sufficiently fund DBRA's obligations under the Agreement. DBRA has received all approvals necessary to secure the Municipal Project Funds and said funds are available or to be made available for DBRA's use in accordance with the Sources and Uses of Funds Worksheet, except for the Municipal Project Funds requiring approval of the Brownfield Plan and the Sources and Uses of Funds Worksheet as coming from State sources. DBRA will take action to secure the portion of Municipal Project Funds requiring approval of the Brownfield Plan and shall use best efforts to comply with all requirements to secure the portion coming from the State by the last-in-time Closing Date of the Parcels.

Section 7.01(c) indicates the DBRA to the extent permitted by law and the extent covered by insurance proceeds, indemnifies, defends and save harmless FCA from any and all losses arising out of a claim by a third party, except those to the extent caused by gross negligence or willful misconduct of FCA, that may be imposed or asserted against FCA by reason of any of the following prior to the issuance of the Certificate of Completion: (i) any negligent or tortious act or omission of DBRA in the performance of its obligations under the Agreement resulting in personal injury, bodily injury, sickness, disease or death, or injury to or destruction of tangible

²⁸ A Delayed Acquisition means the occurrence of a delay in the DBRA Closing Date beyond the transaction schedule contemplated by the pending agreement, due to the default of the seller or transferor of such Private Parcel of seller's or transferor's obligations under DBRA's agreement to acquire such Private Parcel, or such other actions of the seller or transferor that delay the acquisition beyond the transaction schedule contemplated by the pending agreement, or due to the Event of Default of FCA in the timely performance of FCA's obligations under this Agreement with respect thereto, provided that DBRA shall have provided Notice to FCA identifying the causal link between seller's transferor's or FCA's Event of Default, as applicable, and the delay in the DBRA Closing Date; and further provided, however, in no event shall the City and/or DBRA's acts or omission that delay a DBRA Closing Date constitute or be characterized under this Agreement as a Delayed Acquisition.

²⁹ Declined Parcel means a Parcel for which FCA declines to take title pursuant to Section 3.01, Section 3.05, Section 6.02, Section 6.09(C), Section 6.16 or Article VIII.

property including loss of use; (ii) any failure by DBRA to perform its obligations under this Agreement.

Section 7.02(b) indicates Sellers and FCA acknowledge that the construction of the real estate improvements of the Project are subject to the Executive Orders providing for 51% of the work to be done by Detroit residents and 30% of contracts awarded to Detroit Contractors. The city acknowledges that as of the Effective Date, it has entered into enhanced recruitment agreements with the Carpenters', Electrical Workers', Plumbers', and Mechanical Contractors' unions that reduce the payments under the Executive Orders. The City shall provide further reasonable assistance to FCA, as reasonably requested by FCA until the Project is completed or there is Project Default, to meet any requirements under the Executive orders including working with FA to facilitate compliance with the Executive orders.

Section 7.02(c) indicates the City shall make good faith efforts to cause the owner of Parcel 2A (located at 12802 Kercheval) to undertake the following security measures: (i) demolition of improvements or installation of an unclimbable eight foot fence with razor wire around the perimeter if the improvements; (ii) blocking off existing driveways; (iii) encasing all doorway and window openings utilizing concrete blocks and cement to eliminate entry, if not demolished; (iv) closing all interior and exterior pathways that allow access to the roof; (v) cutting down and removing all overgrown foliage and maintain the grounds; (vi) removing all trash and debris including old shipping containers; (vii) installing and maintaining lighting to illuminate the property; (viii) installing and maintaining Project Green Light cameras and supporting infrastructure.

Section 7.02(d) indicates the City will consult with FCA on corporate income tax policy tax reforms that encourage manufacturing in the City and to develop legislation to be passed at the state level.

Section 7.02(e) indicates the City will devote the resources as may be necessary to optimize traffic flow around the Project, the JNAP Retooling Project and the immediate surrounding area, including but not limited to portions of Conner Street right-of-way between I-94 and Jefferson-Conner intersection. The efforts shall include the relocation of bike lanes to the easternmost lanes of Conner Street only.

Section 7.02(i) indicates the City to the extent permitted by law and the extent covered by insurance proceeds, indemnifies, defends and save harmless FCA from any and all losses arising out of a claim by a third party, except those to the extent caused by gross negligence or willful misconduct of FCA, that may be imposed or asserted against FCA by reason of any of the following prior to the issuance of the Certificate of Completion: (i) any negligent or tortious act or omission of City in the performance of its obligations under the Agreement resulting in personal injury, bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use; (ii) any failure by City to perform its obligations under this Agreement. The City's total liability under this Section shall be limited to \$3 million and any defense cost shall be payable from DBRA-City Payments to be deposited in the City/DBRA liability Escrow.

Section 7.03(a) indicates that FCA shall use commercially reasonable efforts to issue purchase orders in connections with the construction of real estate improvement that comprise the Project

in order to comply with the Executive Orders, as applicable. Failure of FCA to comply shall not constitute a breach of the Agreement or Event of Default. DBRA and City's sole remedy shall be FCA's obligation to comply with any recourse available under the City's Executive Orders.

Section 7.03(b) indicates the from and after the Effective Date, FCA agrees to begin within 90 days to complete applicable construction activities to the point where commencing operations to the Mack Assembly Plant by no later than the Project Completion Date subject to Force Majeure, any Delayed Acquisition (not caused by FCA Default or the City/DBRA to timely perform their respective obligations). If unexpected setbacks in construction and/or materially adverse economic changes cause FCA to require additional time to complete the Project and provide Operations Notice, FCA may in its sole and absolute discretion, extend the Project Date and accordingly, the time period for providing such Operations Notice³⁰, by one year by providing Notice to DBRA and the City by no later than September 30, 2022. The Project consist of an investment by FCA of \$1.6 billion and is intended to create approximately 3,850 net new full-time employees.

FCA shall, indemnify defend and save harmless the City and DBRA from any and all losses arising out of a claim by a third party, excluding all losses caused by gross negligence or willful misconduct of City and DBRA, that may be imposed or asserted against the City or DBRA by reason of any of the following prior to the issuance of the Certificate of Completion: (i) any negligent or tortious act or omission of FCA in the performance of its obligations under the Agreement resulting in personal injury, bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use; (ii) any failure by FCA to perform its obligations under this Agreement.

Section 7.03(c) indicates the JNAP Retooling Project will represent an investment by FCA of \$900 million and create approximately 1,100 net new full-time employees.

Section 7.03(d) indicates that providing the terms of this provision are permissible under any collective bargaining agreement entered into by FCA including the UAW Contract, FCA will use good faith efforts to provide Detroit Residents the opportunity to apply for Production Jobs as set forth in this Section.

Under the Initial Application Process, the Detroit Employment Solutions Corporation (DESC) as the implementation partner of Detroit At Work has agreed to support FCA's talent needs regarding recruiting, pre-screening and vetting, and work-readiness training related to Production Jobs. The City will cause DESC to provide such support in-kind with a value of at least \$2 million. FCA will work with DESC to develop a mutually agreeable initial application process that give Detroit residents the opportunity to apply for Production Jobs, subject however to FCA providing priority to UAW Candidates³¹.

Section 7.03(d)(i)(3) indicates that while priority will be given to the UAW Candidates, FCA will in cooperation with DESC open specified windows exclusively for Detroit Residents (anticipated to be 1-2 weeks) to apply for Production Jobs: (A) first to Detroit Residents in the geographic area most impacted by the Project in zip codes 48213, 48214 and 48215 (included

³⁰ Operations Notice means the Notice to be provided by FCA to DBRA when FCA certifies that it has commenced vehicle production at the Mack Assembly Plant.

³¹ UAW Candidates means certain individuals in accordance with the UAW Contract.

will be individuals who have successfully completed that DESC readiness program which include those who have a criminal convictions and military veterans); (B) second, to all other Detroit Residents and those similarly situated individuals under (A). DESC will provide a list of individuals that fall into the priority categories and otherwise meet the FCA's basic requirements.

Section 7.03(d)(ii) indicates that while priority will be given to the UAW Candidates, after the initial application process is complete., FCA will prioritize hiring for qualified Detroit Residents. DESC will provide a list of DESC Candidates who meet FCA's basic job requirements. If DESC fails to meet the standards specified in subsection (i), if DESC is unable to cure the deficiency within 90 days after FCA provides written notice, FCA's obligation to work with DESC will cease. If at any time DESC fails to provide the requested list within 2 working days of FCA's request, or if any such requested list does not include a sufficient number of DESC Candidates, the FCA may use its regular hiring processes to identify and hire any candidates, in order to meet FCA's business needs until such time as DESC provides the requested list.

Section 7.03(g) indicates FCA agrees to permit DBRA to construct the St. Jean Barrier on Parcels 1, 1A, 8, 8A and 8B at DBRA's sole cost and expense using the Municipal Project Funds. DBRA shall use commercially reasonable efforts to expedite the construction of the St. Jean Barrier, construction of the St. Jean Barrier is to be completed prior to FCA's paving of Parcel 1, 1A, 8, 8A, and 8B. If the DBRA is unable to complete the construction of the Barrier prior to conveyance to FCA, then DBRA shall be permitted under the terms of the DBRA Access Agreement to access and use of those areas of Parcels 1, 1A, 8, 8A and 8B as may be required for DBRA to construct the Barrier with the objective of completing such construction no later than one year after the Effective Date.

Section 7.03(k) indicates that beginning on the Effective Date, FCA covenants and agrees to comply within 15 days following the request from DBRA for information in its possession relating to the environmental condition of the Mack plant Property and evidence of eligible activities and the incurrence of eligible costs, as defined under the Brownfield Redevelopment Act. FCA shall provide DBRA with access to the Mack Plant Property to conduct environmental testing as may be required to include the Mack plant property in the Brownfield Plan.

Section 7.03(m) indicates from the Effective Date until the Monitoring Termination Date (except for a Permitted Transfer) FCA shall not convey or transfer any fee simple interest in any Parcel without prior written consent of the DBRA, except if FCA provides DBRA Notice and information that the conveyance or transfer of such Parcel will result in (i) business, commercial and/or industrial use (for parking, storage, vehicle marshalling or logistics) of the Parcel within 12 months of the date of conveyance or transfer; or (ii) commencement of a project for any such business, commercial and/or industrial use of the Parcel within 12 months of conveyance or transfer. If at any time prior to the Monitoring Termination Date (Except for a Permitted Transfer) FCA desires to convey or transfer fee simple interest in any Parcel with DBRA's consent as stated above, FCA may negotiate and enter into a purchase and sale agreement. FCA shall provide DBRA the price to be paid to FCA and Parcel Capital Expenses. Upon Conveyance of the Parcel FCA shall pay DBRA 75% of the Net Cash Proceeds from the sale but only to the

extent the cumulative Annual City Revenue³² which the City is then in receipt is less than the Monitoring Investment Value.

Section 7.03(n) indicates if at any time from the Effective Date until the latter of (1) the Monitoring Termination Date or (2) fifteen years from the Effective Date there is a Permanent Plant Shutdown and no conveyance or transfer under Subsection 7.03(m) with respect to Parcel 12, then the City shall have the option to purchase Parcel 12. At any time within one year following the receipt by the City of Notice form FCA of a Permanent Plant Shutdown to exercise the option to purchase Parcel 12 at fair market value.

Article 10 Project Completion

Section 10.01 indicates when FCA considers all work required of FCA regarding the Mack Plant Property and Parcels 1, 1A, 8, 8A, and 8B, FCA shall apply for and the City if the application and the City's inspections are reasonably satisfactory to the City, shall issue the Operative Certificate of Occupancy.

Section 10.04 indicates on or before September 1 of each year in which the City receives a Project Data Report from FCA, the City shall calculate the Annual City Revenue. The City shall produce and Annual City Revenue Report and submit such to the Detroit City Council no later than October 1 of each year. The Annual City Revenue Report shall also include the cumulative Annual City Revenue for all years following the Effective Date.

Section 10.04(d) indicates that if on the Monitoring Termination Date, the Cumulative Annual City Revenue stated in all Annual City Revenue Reports is less than the Monitoring Investment Value, FCA shall pay the City the shortfall within thirty days of receipt of receipt of an invoice from the City, less the sum of (i) any amounts that FCA was required to expend for the Project where the Then Remaining Municipal Project Funds, subject to the MPF Limit, were inadequate to fund obligations of the DBRA/City; (ii) Subject any damages incurred by FCA for an Event of Default which claim was not paid because the damages exceeded the Then Remaining Municipal Project Funds, subject to the MPF Limit; (iii) any and all Net Cash Proceeds received by DBRA/City under Section 7.03(m); and (iv) any fines and/or penalties FCA is required to pay under the Executive Orders. These will be used as set offs against any shortfall FCA is required to pay regarding the Monitoring Investment Value.

Section 10.04(e) indicates the City or the DBRA (but not both at the same audit period) shall have the right to audit, or engage a qualified non-contingency based third-party to audit the Project Data Report no more than once per calendar year and for no more than two immediately prior calendar years. In the event that such audit discloses that the Annual City Revenue has been underestimated or overestimated by more than 2.5% due to inaccuracy of data provided in FCA's Project Data Report, the Annual City Report for such year shall be promptly corrected.

Article XI Default and Remedies

³² The Annual City Revenue means the total amount of projected revenue to the City from the Sources described in Exhibit 10.04

Section 11.01 indicates in the Event of Default the non-defaulting party is entitled to the rights and remedies set forth in Sections 11.02 and 11.03. If a party defaults in the performance of its material obligations and the default continues for a period of twenty days after notice from the non-defaulting party, no Event of Default shall occur if the failure can be cured within twenty days and the defaulting party diligently pursues such cure to completion within a reasonable time not to exceed sixty days. If any representation or warranty made by the parties proves to be inaccurate or misleading in any material respect that impacts the Project for twenty days after Notice from the non-defaulting party they can be corrected by disclosures on appropriate exhibits which may be updated prior to Closing on an impacted Parcel.

Section 11.02(a) indicates the remedies of the City and DBA upon an Event of Default by FCA under Subsections 7.03(a) (Executive Orders), 7.03(d) (Mack Assembly Plant Application Process), 7.03(m) (Resale of Parcels), 7.03(n) (Permanent Plant Shutdown), Section 10.04 (Monitoring Revenue Generation), and Section 11.03 (a) Project Default, the parties shall continue to perform and submit the matter to arbitration under the terms set forth in Section 13.10 and the DBRA's sole remedy shall be the right to seek recovery of direct damages under section 12.02 and the limitations in Section 12.03.

Section 11.02(b) indicate the remedies for an Event of Default for FCA, the parties shall continue to perform and submit the matter to arbitration. FCA's remedies shall be limited to (i) the right to seek recovery of direct damages under Section 12.02 and the limitations of 12.03 and 12.04, (ii) seek specific performance of the Agreement, (iii) seek injunctive relief (to the extent specific performance or injunctive relief does not cause DBRA's total cost to exceed the Then Remaining Municipal Project Funds, Subject to the MPF Limit, unless the specific performance is limited to the transfer of a Parcel for the DBRA to FCA in which case it will not be limited to the Then Remaining Municipal Project Funds.

Section 11.03 indicates, in the event of a Project Default, as determined solely by arbitration, the City and DBRA's sole remedy is the right to reverter of title, or as to Direct Transfer Parcel, conveyance of title under the Grant of Rights to Parcels conveyed and to terminate any Interim Parcel Lease the City/DBRA may have with FCA. Subsection 11.02(a) and 11.02(b) does not apply to any Event Default under Subsections 7.03(a), 7.03(d) (Mack Assembly Plant Application Process), 7.03(m) Resale, 7.03(n) (Permanent Plant Shutdown) or 10.04 (Monitoring Revenue Generation).

The City/DBRA shall have as their sole and exclusive remedy for an Event of Default 7.03(d) (Mack Assembly Plant Application Process), 7.03(m) Resale, 7.03(n) (Permanent Plant Shutdown) is specific performance of the agreement and/or seek injunctive relief as well as recover all reasonable out of pocket cost incurred in enforcing its rights, subject to limitations set forth in 12.03. The sole remedy for the City/DBRA for an Event Default under Section 10.04 (Monitoring Revenue Generation) are set forth in that subsection. The sole remedy for the City/DBRA for failure to comply with the Executive Orders is the recourse outlined in the Executive orders.

Article XII Limitation of Damages

Section 12.02 indicates the sole and damages recoverable against each party by reason of Event of Default (except as provided in Section 11.03 and expressly excluding the Community Benefits

Agreement and Public Act 198 abatement agreements) shall be limited to reimbursement of the direct and documented out-of-pocket damages. Expenses and costs incurred by the party as a result of the breach or failure to comply and the parties disclaim and waive the right to recover any other damages, including without limitation, punitive, exemplary, damages that result from any application of multipliers, consequential and/or punitive damages.

Section 12.03(a) indicates DBRA/City's maximum liability that arises out of (i) DBRA and/or the City breach of any representation or warranty contained in the Agreement or any documents delivered by DBRA or the City under the terms of the Agreement or at Closing, or (ii) the gross negligence, fraud, willful misconduct of the City and/or DBRA in the performance of their respective obligation under the Agreement shall not be limited to the Then Remaining Municipal Project Funds but shall not exceed the sum of (x) any remaining Municipal Project Funds and (y) Three million dollars in the aggregate which shall come from DBRA-City payment or at FCA's election Real Property Equivalent. In no event shall the liability of the City under the Agreement exceed the sum of \$3 million. Nothing in the Agreement shall be read to abrogate DBRA's obligation to use third-party insurance proceeds to meet its indemnification obligations which shall not be subject to the \$3 million maximum.

Section 12.03(b) indicates the maximum liability for breach of its obligations (except as otherwise provided) for any damages incurred by DBRA and/or City arising out of breach by FCA for (i) FCA's breach of any representation or warranty contained in the Agreement or documents delivered by FCA under the Agreement or closing, or (ii) the gross negligence, fraud, willful misconduct of FCA in the performance of its obligation under the Agreement shall not exceed \$3 million.

Section 12.04 indicates that upon receipt by the DBRA or City of Notice of a City/DBRA liability and the absence of FCA election to satisfy the liability with the Real Property Equivalent, the City and DBRA shall enter into an Escrow Agreement with a financial institution (agreed upon by the parties) for the purpose of establishing an escrow account for the purpose of holding DBRA-City Payments in an aggregate amount not to exceed \$3 million. The City/DBRA Liability Escrow Agreement shall set forth the terms, conditions and procedures for the receipt and custody of the DBRA-City Payments and the release thereof to FCA in satisfaction of City/DBRA liability.