

FORT WAYNE/ALLEN COUNTY JOINT LEDGE AGREEMENT

This Agreement is between and among the Allen County Redevelopment Commission, the Board of Commissioners of the County of Allen (sometimes hereinafter referred to as the "County"), the City of Fort Wayne, the Fort Wayne Common Council (sometimes hereinafter referred to as the "City") and the Allen County Council and General Motors, LLC ("Recipient"). The parties to this Agreement, in consideration of the mutual covenants, obligations and stipulations set forth therein, witness and agree as follows:

WHEREAS, the Recipient is a major employer in the City and the County; and

WHEREAS, the parties desire to enter into a joint agreement to encourage the retention of and possible expansion of job opportunities in the community; and

WHEREAS, I.C. 36-7-14-33 allows for agreement between and amongst the agencies which are a party to this Agreement to foster economic development;

NOW, THEREFORE, for and in consideration of the good and mutual consideration set forth hereinafter, the parties hereto agree as follows:

1. **Purpose of the Agreement.** The purpose of this Agreement is to promote job retention and creation in Allen County, Indiana. In order to fulfill this purpose, the Joint Ledge Board has awarded to the Recipient the financial assistance set forth herein as a portion of the economic development incentive package to relocate job opportunities to its Allen County, Indiana facility (the "Facility") and to retain at least 2,000 full-time jobs and to replace job opportunities being lost in the truck manufacturing sector of the national economy (the "Project"). The annual assistance provided for in this Agreement will be used to lease equipment from General Motors, LLC.

2. **Definitions.**

a. "Full-time Equivalents" ("FTE") means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five hours of an employee's time each week for the portion of the first year in which the employee was hired for or transferred to the Project; provided, however, that jobs requiring less than the specified hours may be aggregated to full-time equivalents with the aggregate considered to be full-time.

b. "Facility" means the truck assembly facility located at 12200 Lafayette Center Road, Roanoke, Indiana.

c. "Joint Ledge Board" means a board created by this Agreement and made up of the Allen County Redevelopment Commission members and two members appointed by the Mayor of the

City of Fort Wayne, to serve at his/her pleasure and said board to be charged with implementation and enforcement of this Agreement.

d. "Taxable Year" shall be defined as a calendar year in which benefits may be allowed under the provisions of this Agreement.

e. "Total annual payroll" shall be defined as ERA Statement of Benefit or IAC 50-10.

3. **Term of the Agreement.** This Agreement will commence effective _____, 2009 and shall be in effect for the length of the lease between the Recipient and the Joint Ledge Board, but may not exceed a cumulative total of three (3) years. The Recipient shall make commercially reasonable best efforts to maintain operations at the Project for a least ten (10) years.

4. **Description of the Project.** Recipient will reorganize, supplement and replace machinery, equipment, special tooling and other improvements to its Allen County Facility by December 31, 2010 investing approximately \$26,400,000. The equipment will be used by the Recipient in the production of trucks. Annual payroll of employees employed by the Facility, including those to be employed as a result of the Project shall be in excess of \$124,000,000.00.

5. **Duration of the Benefit.** Recipient may claim a benefit under this Agreement for any one or more Taxable Years, but the number of years in which Recipient claims a benefit under this Agreement may not exceed a cumulative total of three (3) consecutive Taxable Years.

6. **First Taxable Year for Which the Benefit is Claimed.** The first Taxable Year in which a benefit is claimed under this Agreement is the Taxable Year ending on or before December 31, 2009.

7. **The Benefit Amount and Allocation for Each Taxable Year.** The Benefit Amount shall be \$2,000,000.00, which shall be provided equally by the City and the County, and shall be paid in accordance with a lease of even date herewith between the parties hereto.

8. **The Benefit Amount Allowed for Each Taxable Year.** The maximum benefit amount that will be allowed for each Taxable Year is set forth below

Taxable Year	Maximum Ledge Benefit
2009	\$666,668.00
2010	\$666,666.00
2011	\$666,666.00

The Joint Ledge Board will consider front loading the benefit amount if the Recipient invests significantly more money or has significantly increased jobs/payroll. However, no increase based on jobs/payroll will be considered unless a majority of said increase goes to Allen County residents.

Provided further, that no benefit under the provisions of this Agreement shall be allowed in any year in which Recipient's net FTE at the Project falls below 2,000 (80% of 2,500) for more than three (3) months in that respective calendar year.

Neither party hereto shall be responsible or liable in any way for its failure to perform its obligations hereunder, if such failure to perform is beyond the control of said party whether caused by acts of God, unavailability or shortages of raw materials from usual sources of supply, or unavailability or shortages of energy necessary to produce and/or deliver the products by usual modes of transportation, fire, flood, war, unforeseen market forces, embargo, explosions, riots, or loss, rules, regulations, restrictions and orders of any governmental authority to which such entity is subject, or any other cause (excepting labor disputes and strikes), other than financial, beyond the reasonable control of the affected party. Such failure shall not terminate this Agreement but the obligations of the affected party shall be suspended during the period when performance is so suspended, unless such period exists beyond a period of one hundred and eighty (180) days, in which event either party shall have the right at any time thereafter during such force majeure to terminate this Agreement upon written notice to the other party. The party so prevented from complying with its obligations hereunder shall immediately notify and keep the other party from time to time apprized thereof, and such party so prevented shall endeavor to remove or overcome the cause of such inability to comply with its obligations under this Agreement. Nothing herein shall be construed to require the settlement of strikes, lockouts or other labor difficulties by the party involved contrary to its wishes.

The foregoing notwithstanding, the Benefit Amount set forth above shall be reduced by the amount of any unpaid real or personal property taxes applicable to the Facility regardless of Facility ownership at the time of assessment. If later paid, said Benefit Amount shall be restored.

9. Duties and Responsibilities of Recipient. Recipient has made certain promises to the Joint Ledge Board regarding the Project. These promises include the amount of private sector investment, the anticipated jobs to be retained in Allen County, and the annual payroll, as detailed in Section 4 of this Agreement. Recipient also promises that it will make best efforts to maintain operations at the Project location for at least ten (10) years. In the event Recipient materially fails to fulfill the obligations set forth in Paragraph 4 above, the rental offset shall be reduced according to the following schedule:

a. In the case that the FTE employment at the Facility falls below 2,000 based on the annual average FTE, then:

if the year is 2010 to 2011, the LEDGE benefit reduction will be calculated as follows:

$$(2,000 - \text{Average annual FTE}) / 2,000 \times \text{annual rental offset}$$

By execution of this Agreement, it is understood that the Recipient's investment in the Project and the Joint Ledge Board's investment in granting the benefit described in Paragraph 7 above is to encourage economic growth within the County. The Joint Ledge Board acknowledges that in some instances, economic conditions

or other factors not within the Recipient's control may prevent the Recipient from complying fully with this Agreement. The Joint Ledge Board will give the Recipient notice and an opportunity to explain the reasons for any variations from the representations contained in this Agreement, will evaluate the Recipient's situation prior to taking any action authorized by Paragraph 8 of this Agreement, and will act in good faith in taking such actions.

In addition to the originally required Statement of Benefits required pursuant to the Recipient's Tax Abatement Application, the Recipient shall submit to the Joint Ledge Board not later than February 28th of the following Taxable Year for which this Agreement is in force, the information listed below:

- b. The number of FTE at the Project for each month during the Taxable Year.
- c. The average annual FTE during the Taxable Year.
- d. The Recipient's federal identification number and taxpayer account number as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information.
- e. In the aggregate for each employee employed at the Project, the following information shall be provided:

GM shall provide in total, annual payroll paid to employees at the Project during the taxable year. W-2 tapes provided to the State of Indiana shall be the basis for this information. GM will not provide individual information by employee.

- f. Any other information required by the Joint Ledge Board to perform its duties as set forth under the provisions of the Interlocal Cooperation Agreement establishing the Board and any subsequent amendments thereto, so long as Recipient is given notice of such information requirements sufficient to allow Recipient reasonable time to prepare such information.
- g. In addition to the information provided under the provisions of the subsections contained in this paragraph, within ten (10) days of any modification, the Recipient shall provide to the Joint Ledge Board any change in the Lease Agreement between the Recipient and the Allen County Redevelopment Commission, the form of which is attached hereto as Exhibit A (the "Lease Agreement").
- h. In the alternative to the requirements set forth above, the Ledge Board will accept annual compliance with the Statements of Benefits Form filed with the Allen County Council for any year GM is required to file same.

The above information submitted to the Joint Ledge Board must be certified as true. The information submitted to the Joint Ledge Board shall be kept confidential by the Board unless law or judicial order requires disclosure

of the information. The Joint Ledge Board may, upon request, share the above provided information with the Board of Commissioners of the County of Allen, who shall also keep said information confidential unless law or judicial order requires disclosure of the information. The Joint Ledge Board, the Allen County Redevelopment Commission, the Board of Commissioners of the County of Allen, the City of Fort Wayne, the Fort Wayne Common Council, and the Allen County Council shall treat the above information as confidential financial information pursuant to IC 5-14-3-4(a)(5).

Any repayment of prior benefits awarded under this Agreement, as required by the Joint Ledge Board under Section 8A shall be paid by the Recipient to the Joint Ledge Board within one-hundred eighty (180) days of a written request from the Joint Ledge Board.

10. Exclusive Use of the Benefits by Recipient for Lease Payments on the Project. Subject to appropriation, The Joint Ledge Board shall use the benefits provided under the provisions of this Agreement exclusively for the payment of lease obligations pursuant to the Lease Agreement.

11. Duties and Responsibilities of the Joint Ledge Board. Upon the timely annual receipt of the information described under Section 8C of this Agreement from the Recipient, the Joint Ledge Board shall review the claim for annual benefit and supporting information and shall, within thirty (30) days provide the Recipient with (1) written verification of concurrence of the benefit amount claimed for the prior Taxable Year, or (2) written notice of the adjusted benefit amount the Joint Ledge Board determined appropriate for the prior Taxable Year along with justification of the modification from the amount claimed. The Joint Ledge Board shall concurrently provide to lessor payment as required under the Lease.

If the Joint Ledge Board determines that the Recipient is not materially complying with the requirements of this Agreement, it may, after giving the Recipient an opportunity to explain the noncompliance, take any action it deems appropriate.

12. Notice to Parties. Whenever any notice, statement or other communications shall be sent to the Joint Ledge Board or the Recipient, they shall be sent to the following addresses, unless otherwise specifically advised.

Mark Royse
Allen County Redevelopment Commission
610 City-County Building
One E. Main Street
Fort Wayne, IN 46802
PH: (260) 449-7607
FAX: (260) 449-7682

To the Recipient:

Troy D. Kennedy
General Motors Company
Mail Code: 482C16-B16
P.O. Box 300
Detroit, MI 48265-3000
PH: 313-665-4054
FAX: 313-665-4125
e-mail: troy.d.kennedy@gm.com

13. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized to execute this Agreement on its behalf.

14. **Amendment of this Agreement.** The annual maximum benefit amount specified in Section 7 of this Agreement may only be amended with the prior written approval of the Board of County Commissioners.

15. **Assignability.** The Recipient shall not assign the whole or any written part of this Agreement without the prior written consent of the Joint Ledge Board.

16. **Remedies not Impaired.** No delay or omission of the Joint Ledge Board in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

17. **Compliance with Laws.** The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances and all provisions required thereby are included and incorporated by reference herein. The enactment of any local, state or federal statute or ordinance or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the Joint Ledge Board and the Recipient to determine whether the provisions of this Agreement require formal amendment.

Pursuant to I.C. '22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

18. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, must be brought in the State of Indiana.

19. **Entire Agreement.** This Agreement, together with the Lease Agreements entered into of even date herewith, and any attachments hereto contain the entire understanding of the parties and this agreement supersedes all prior Agreements and understandings, oral and/or written, with respect to this subject matter.

20. **Indemnification.** The Recipient agrees to indemnify, defend and hold harmless the Joint Ledge Board and Allen County, Indiana, their agents, officers and employees from all claims and suits, including court costs, attorneys fees and other expenses caused by any act or omission of the company and/or its subcontractors, if any. The Joint Ledge Board and Allen County, Indiana shall not provide such indemnification to the Recipient.

21. **Penalties and Interest.** The Joint Ledge Board, the County of Allen and its officers and agents will in good faith perform their required obligations hereunder and shall not be required to pay any penalties, liquidated damages, interest, incidental or consequential damages as a result of the breach of this Agreement.

22. **Mutual Attorneys Fees Provision.** If either party hereto brings an action or proceeding to enforce the terms of this Agreement or of the lease or sublease executed of even date herewith between the parties hereto, the prevailing party (as hereinafter defined) and any such proceeding, action or appeal thereon, shall be entitled to reasonable attorneys fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the party of its claims or defense. The attorneys fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys fees incurred.

23. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

24. **Lead Agency.** The Allen County Redevelopment Commission shall act as the lead agency for the Joint Ledge Board. Funds necessary to comply with this Agreement shall be deposited with said Commission at least ten (10) days prior to the payment date. The Lead Agency shall be responsible to report to all participating bodies at least yearly with respect to the requirements of this Agreement

IN WITNESS WHEREOF, the parties hereby, by their duly authorized representatives, have executed this Agreement on the dates entered below.

Recipient:

By: _____

Allen County Redevelopment Commission

By: _____

Allen County, Indiana, by and through its Board of County Commissioners

Linda K. Bloom

ATTEST:

F. Nelson Peters

Lisbeth A. Blosser, Auditor

Wm. E. Brown

Allen County Council

By: _____

President

Fort Wayne Council

By: _____

President

City of Fort Wayne

By: _____

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Mayor