

Item # 24B

**City of Carson City
Agenda Report**

Date Submitted: April 28, 2009

Agenda Date Requested: May 7, 2009

To: Redevelopment Authority

Time Requested: 10 minutes

From: Office of Business Development

Subject Title: Action to recommend to the Board of Supervisors approval of the Second Amended and Restated Commitment Agreement for Continuing Business Operations between Carson City and Richard Campagni.

Staff Summary: The Redevelopment Plan for Project Area No. 2 provides for public-private partnerships to retain and expand Carson City's auto sales sector. On March 17, 2005, the Board of Supervisors adopted Resolution No. RAR-2, a resolution to allow the Redevelopment Authority/Board of Supervisors to consider, on an individual basis, projects/incentive packages that are clearly designed to secure and stimulate auto sales investment along South Carson Street. In July of 2005, Mr. Campagni and the City negotiated a Commitment Agreement that pledged his dealerships to remain in Carson City and for him to build a new Toyota Store on South Carson Street. The requirement to use prevailing wage on redevelopment projects in which incentives were provided in excess of \$100,000 was not specified in the Commitment Agreement. This Second Amended Agreement requires compliance with the prevailing wage statutes and amends the repayment provision of the City financial assistance to reduce the principal amount from \$3,600,000 to \$3,057,000.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify) - None

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to recommend to the Board of Supervisors approval of the Second Amended and Restated Commitment Agreement for Continuing Business Operations between Carson City and Richard Campagni.

Explanation for Recommended Board Action: This South Carson Street redevelopment project requires that prevailing rates of wages be paid pursuant to NRS 279.500. In fact, the City has consistently required the use of prevailing wage in every other redevelopment incentive agreement it has approved since it approved the establishment of Redevelopment Project Area No. 2, on South Carson Street.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 279.500 and 338.010 – 338.090

Fiscal Impact: n/a

Explanation of Impact: n/a

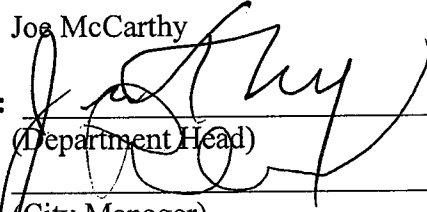
Funding Source: n/a

Alternatives: Provide additional direction.

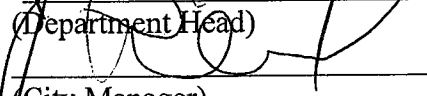
Supporting Material: Second Amended and Restated Commitment Agreement for Continuing Business Operation

Prepared By: Joe McCarthy

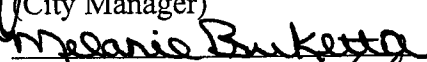
Reviewed By:


(Department Head)

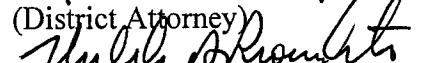
Date: 4-28-09


(City Manager)

Date: 4/28/09


(District Attorney)

Date: 4-28-09


(Finance Director)

Date: 4-28-09

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)

**SECOND AMENDED AND RESTATED COMMITMENT
AGREEMENT FOR
CONTINUING BUSINESS OPERATION**

This SECOND AMENDED AND RESTATED COMMITMENT AGREEMENT FOR CONTINUING BUSINESS OPERATION (the "Agreement") is entered into on this day, ___ of _____, 2009, between the CITY OF CARSON CITY, NEVADA (the "City") and the CARSON CITY REDEVELOPMENT AUTHORITY, (the "Authority"), and RICHARD CAMPAGNI, acting in his individual capacity and as President of Carson City Toyota-Scion and Capital Ford-Mazda-Hyundai (hereinafter referred to as the "Business").

RECITALS

WHEREAS, the Business operates three auto sales businesses in Carson City, Nevada, including Carson City Toyota-Scion (3659 S. Carson Street) and Capital Ford-Mazda-Hyundai (3550 & 3660 S. Carson Street),

WHEREAS, on March 17, 2005, the Board of Supervisors and the Authority adopted Resolution No.2005-R-12 to implement an Incentive Program for franchised auto dealers as part of the Redevelopment Plan for South Carson Street which authorizes the Authority to provide incentives to businesses in the South Carson Street Redevelopment Project Area No. 2 in order to retain those businesses in Carson City, and to increase new car sales for dealers that are operating in the South Carson Street Redevelopment Area,

WHEREAS, the City and Authority has authorized the execution of commitment agreements with dealers in exchange for long-term commitments from such businesses to continue operation in the South Carson Street Redevelopment Project Area No. 2,

WHEREAS, on or about July 21, 2005, the parties entered into a Commitment Agreement for Continuing Business Operation with regard to the acquisition and development by Business of certain real property located in Carson City that is identified as Assessor's Parcel Number 009-051-10, (the "Property") for the purpose of conducting the new car sales activities of Business,

WHEREAS, the Property is located in the South Carson Street Redevelopment Project Area No. 2, the Business qualifies for the Incentive Program, and the City, Authority and Business entered into the July 21, 2005 Commitment Agreement to implement the Incentive Program,

WHEREAS, pursuant to the July 21, 2005 Commitment Agreement, Business acquired the Property on or about August 12, 2005 and on or about August 14, 2008, a

building permit was issued for the construction of Business' Toyota dealership on the Property,

WHEREAS, on or about November 20, 2008, the parties entered into an Amended and Restated Commitment Agreement for Continuing Business Operation, restating, clarifying and modifying the time periods provided for in the Agreement, and

WHEREAS, the Parties desire to restate and clarify their agreement a second time in order to specifically provided for compliance with certain statutory provisions and for modification of Business' financial obligations to the City and the Authority.

NOW, THEREFORE, in consideration of the mutual commitments by the City, Authority and Business, as contained in this Agreement, the Parties agree as follows:

I. INCENTIVE PROVIDED BY CITY AND AUTHORITY

- A. Financial Assistance by City and Authority. The City and Authority will provide financial assistance to the Business in an amount that is not in excess of twenty (20) percent of the Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue generated by the Business each year for a twenty-year period that starts on January 1, 2006.
 - 1. The City and Authority's financial assistance to the Business shall be used, as described in this Agreement, for the acquisition of the Property on which the Business will conduct its auto sales activity.
 - 2. The City and Authority has reviewed the Business' past records of tax payment, and has determined that the financial assistance that will be available to the Business under the Incentive Program will be at least the amount that is being pledged in this Agreement, assuming the Business continues to sell new cars at or above the average sales figure for the calendar years 2002, 2003 and 2004. The taxes generated by this average sales volume will be defined as the Base Year Tax Contribution.
- B. Purchase Price for Property. The Business has acquired the Property for a total of Three Million and Six Hundred Thousand Dollars (\$3,600,000.00).
- C. Bonds to be Issued. The City and Authority intend to issue bonds to obtain the funds needed to provide the financial assistance to the Business that is described herein. The City and Authority will diligently pursue the issuance of these bonds upon the execution of this Agreement.

- D. Interim Financing. Until bonds are issued to provide the funds for the Authority and City's financial assistance that is outlined in this Agreement, the City and Authority has provided one half (½) of the purchase price for the Property. The Business agrees to act diligently in an effort to complete construction of the new Toyota dealership on the Property by December 31, 2009.
- E. Prevailing Wage. The Business agrees that all work associated with construction of the new Toyota dealership on the Property and for any other project for which funds provided by this incentive are used shall be subject to the provisions of NRS 338.010 to 338.090, inclusive, as required pursuant to NRS 279.500.
- F. Promissory Note. The City and Authority has provided total financial assistance in the amount of Three Million and Six Hundred Thousand Dollars (\$3,600,000.00). In exchange, the Business will execute a Second Amended and Restated Promissory Note for Three Million Fifty Seven Thousand Dollars (\$3,057,000.00), in favor of the City and Authority, and said Note shall be secured by that certain Deed of Trust that was recorded in Carson City on August 12, 2005, as Document Number 341075 against the Property for the total amount of the financial assistance from the City and Authority. The principal amount of the Second Amended and Restated Promissory Note is less than the total financial assistance described above, to compensate Business, in part, for the additional costs associated with having to comply the provisions of the NRS 338.010 to 338.090, inclusive, involving the payment of prevailing wages. The Second Amended and Restated Promissory Note will be repaid as follows:
1. The Second Amended and Restated Promissory Note will include a five percent (5%) interest charge and will be paid in full no later than December 31, 2025. The annual obligation of the Business to satisfy the Amended and Restated Promissory Note will be calculated based on a three million fifty seven thousand dollars (\$3,057,000) loan that is amortized over twenty (20) years.
 2. No later than thirty (30) days after the end of each calendar year, a determination will be made by the City and Authority of the actual amount of incentive available in that year. Such determination will be made based on the Basic City-County Relief Tax and the Supplemental City-County Relief Tax that is paid by the Business in that calendar year. The first such determination will be made no later than thirty (30) days after December 31, 2006.

3. The obligation under the Second Amended and Restated Promissory Note will be reduced each year by the amount that the City and Authority has determined is the amount of incentive that was available in that calendar year.
4. If the Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue paid by the Business in a calendar year falls below the annual obligation of the Business to satisfy the Second Amended and Restated Promissory Note including accrued interest, as that annual obligation is determined in Section E.1, the Business must, within thirty (30) days of such a determination, pay the difference in cash, or City and Authority may foreclose on the Deed of Trust to enforce the Second Amended and Restated Promissory Note.
5. When the obligation under the Second Amended and Restated Promissory Note is satisfied by the Business, the City and Authority will execute an Acknowledgment that the Second Amended and Restated Promissory Note has been satisfied, and will release the Deed of Trust that has been recorded against the Business Property. However, such action by the City and Authority will not relieve Business of its Commitment in this Agreement to Continue Business Operations in Carson City for at least twenty (20) years from the date of this Second Amended and Restated Agreement. If the Second Amended and Restated Promissory Note is satisfied before the end of the twenty (20) year period, the Business will receive an incentive of 10 (ten) percent of the City's portion of the sales tax for the twenty (20) year period. The base year will be established when the Second Amended and Restated Promissory Note is fully satisfied.
6. After twenty years, the City and Authority shall determine whether Business has satisfied the obligations under the Second Amended and Restated Promissory Note. If the Second Amended and Restated Promissory Note has not been satisfied, the Business shall pay the full amount of the outstanding obligation under the Second Amended and Restated Promissory Note, or the City and Authority can foreclose on the Business Property as authorized by the Deed of Trust.

G. Deed of Trust. The City and Authority shall provide financial assistance as provided herein, and Business has executed a Deed of Trust in favor of the City and Authority in order to secure the obligations under this Agreement.

1. Business agrees that the Deed of Trust executed pursuant to this Agreement will subordinate to another deed of trust and hold second position for security purposes. However, the Deed of Trust recorded pursuant to this Agreement shall only be subordinated to a deed of trust that is executed to secure construction related financing.
 2. Business agrees that the obligations and burdens stated in the Deed of Trust shall include the covenants made in this Agreement, and that those covenants run with the subject land binding future owners of the land to fullest extent permitted by law and equity for the benefit and favor of, and enforceable by, the City and Authority and their successors and assigns for the term of this Second Amended and Restated Agreement.
 3. Reasons for the foreclosure by the City and Authority on the Deed of Trust shall include failure of Business to operate in Carson City for twenty (20) years from the date of this Second Amended and Restated Agreement.
- H. Renegotiation of Commitment Agreements for Non-appropriation: The City and Authority's obligations under this Agreement to provide incentive funds for financial assistance is conditioned upon sufficient funds being collected, distributed and otherwise being made available by state law. As a condition of participation in the program, Business agrees that if for any reason the state law governing Carson City's ability to receive sales tax from new car and vehicle-related sales is amended to withdraw, limit, or impair Carson City's ability to collect those funds, this Commitment Agreement may be renegotiated, in good faith, and Business waives any and all claim(s) for damages that may arise against the City and/or Authority.

II. COMMITMENT PROVIDED BY BUSINESS OF CONTINUING BUSINESS OPERATION

- A. In exchange for financial assistance by the City and Authority for the acquisition of the Property, the Business agrees to make a Commitment for Continuing Business Operations in the South Carson Street Redevelopment Project Area No. 2 for a period of not less than twenty (20) consecutive years from the date of this Second Amended and Restated Agreement.

- B. As part of this Commitment for Continuing Business Operation, the Business agrees to continue to operate Carson City Toyota-Scion (3659 S. Carson Street), Carson City Mazda-Hyundai (3550 S. Carson Street), and Capital Ford (3660 S. Carson Street).
- C. Business shall use its best efforts to assure and maintain its existing business activity in Carson City at a greater level of sales for not less than twenty (20) consecutive years from the date of this Second Amended and Restated Agreement, but may terminate a certain franchise if the Business deems necessary. However, such termination shall not relieve the Business of the other obligations contained in this Second Amended and Restated Agreement.
- D. This Commitment by the Business shall be binding upon any successors in interest to the current Business owners, and shall be disclosed to any potential purchaser of the subject businesses. If the business is sold and the subsequent use remains the same and within the boundaries of South Carson Street Redevelopment Project Area No. 2, the Commitment Agreement transfers to the new owner and continues uninterrupted.
- E. Liquidated Damages. In the event Business breaches this Commitment Agreement by relocating any of its business operations outside Carson City, Nevada, the City and Authority shall be entitled to money damages, to be paid by Business within thirty (30) days of the demand by the City and Authority, as follows:
1. An amount equal to the value of the Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue that would have been generated by the Business for the twenty-year period that starts on January 1, 2006, minus the Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue that was generated by the Business and received by the City between January 1, 2006, and the time of the breach.
 2. The Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue that would have been generated by the Business after the breach will be determined by calculating the amount of such tax generated in the last year of performance, and multiplying that tax generation amount by the remaining number of years, or partial years, in the commitment obligation.

III. GENERAL CONDITIONS

- A. Successors and Assigns. This Agreement shall be binding upon the heirs, successors, and assigns of the parties.
- B. Time is of the Essence. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.
- C. Execution of Additional Documents. In addition to documents and other matters specifically referenced in this Agreement, the Business, City and Authority agree to execute and/or deliver, or cause to be executed and/or delivered such other documents and/or materials, including additional escrow instructions carrying out the terms and conditions of this Agreement, as may be reasonably necessary to effect the transaction contemplated by this Agreement.
- D. Notices and Other Communications. Every notice or other communication required or contemplated by this Agreement by any party shall be in writing delivered either by (a) personal delivery, (b) prepaid overnight delivery service or (c) facsimile addressed to the party for whom intended at the address specified in this Section.

To City and Authority: Carson City Redevelopment Authority
201 North Carson Street
Carson City, NV 89703
Telephone: (775) 887-2100
Facsimile: (775) 887-2286

To Business: Richard Campagni, President
3660 S. Carson St.
Carson City, NV 89703
Telephone: (775) 882-8211
Facsimile: (775) 882-7819

Notice by overnight delivery service shall be effective on the date it is officially recorded as delivered to the intended recipient. All notices delivered in person or sent by facsimile shall be deemed to have been delivered to and received by the addressees and shall be effective on the date of personal delivery or on the date sent, respectively. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given. Either

City and Authority or Business may, by notice to the other given as herein stated, change its address for future notices hereunder.

- E. Assignments. The parties shall have the right to assign this Agreement. Such assignment shall require the prior written approval of each of the Parties. Said approval shall not be unreasonably withheld, conditioned, or delayed.
- F. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of Nevada applicable to agreements negotiated, executed and performed in Nevada by Nevada residents, whether one or more of the parties shall now be or hereafter become a resident of another state.
- G. Ambiguities in Agreement. Both parties have participated in the drafting of this Agreement and any ambiguities in the language of the Agreement shall not be construed against either party.
- H. Facsimile Transmission of Signatures. All parties to this transaction instruct the agents and the escrow company to accept signatures forwarded herein via fax machine ("Faxed Signatures") to complete this Agreement. The signatures are to be accepted by all as though they were the original signatures. City and Authority and Business agree to forward the original signatures via regular U.S. Mail.
- I. Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart shall constitute an original instrument, but all such counterparts shall only constitute one and the same instrument.
- J. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between City and Authority and Business pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall survive any close of escrow and/or sale of the subject property and be binding upon the parties, their successors, heirs and/or assigns. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- K. Captions. The captions of this Agreement do not in any way limit or amplify the terms and provisions of this Agreement.

- L. Attorney's Fees. In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.
- M. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
- N. Effect of Termination. No termination of this Agreement shall be construed as relieving a party from liability to any other party for breach of this Agreement.
- O. Discrimination. Business agrees not to discriminate on the basis of race, color, creed, national origin, sex, age, disability, or any other legally protected class in the sale, lease, rental, use or occupancy of the subject property or any improvements made to the subject property.
- P. Authority.
1. If either Party hereto is a governmental entity, corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on its behalf. Each party shall, within thirty (30) days after request, deliver to the other party satisfactory evidence of such authority.
 2. If this Agreement is executed by more than one person or entity as a party to this Agreement, each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Parties shall be empowered to execute any amendment to this Agreement, or other document ancillary thereto and bind all of the named Parties.
- Q. Indemnification. Business agrees to indemnify and hold harmless the City and Authority, its successors, assigns, agents, contractors, employees, and attorneys from any and all liability, loss or damage City and Authority may suffer as a result of claims, demands, costs or judgments as a result of the Business' ownership of the Property that is secured by the Deed of Trust.

- R. Replacement of November 20, 2008 Amended and Restated Commitment Agreement. This Second Amended and Restated Commitment Agreement is meant to and hereby does amend and fully replace the November 20, 2008 Amended and Restated Commitment Agreement, described above.

IN WITNESS WHEREOF, the Authority, City and Business have executed this Agreement on the date first above written.

CITY OF CARSON CITY, NEVADA:

By: _____

Its: _____

**CARSON CITY REDEVELOPMENT
AUTHORITY**

By: _____

Its: _____

BUSINESS:

By: _____
Richard Campagni

**Individually and on behalf of Carson
City Toyota, Carson City Mazda-
Hyundai and Capital Ford**