



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: 12/01/16

Staff Contact: Supervisor Jim Shirk, Ward 4

Agenda Title: For Possible Action: To consider approving a revenue sharing agreement between Carson City, Carson City Redevelopment Authority and David Pedder with regard to a new auto sales business within Carson City Redevelopment Project Area No. 2. And to further consider allocating the City's portion of the sales tax revenue generated for city-wide street repairs and maintenance. (Supervisor Jim Shirk, Ward 4, jshirk@carson.org)

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. 2005-R-12, 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.

Mr. Pedder is the owner of auto sales businesses and plans to establish an auto sales business within Carson City Redevelopment Project Area No. 2, along South Carson Street. The planned dealership will substantially improve the economic and physical conditions in the Project Area and is in accordance with the purposes and goals of the Redevelopment Authority's Redevelopment Plan.

Agenda Action: Formal Action/Motion

Time Requested: 10 minutes

Proposed Motion

I move to approve a revenue sharing agreement between Carson City, Carson City Redevelopment Authority and David Pedder with regard to a new auto sales business within Carson City Redevelopment Project Area No. 2. And to further consider allocating the City's portion of the sales tax revenue generated for city-wide street repairs and maintenance.

Board's Strategic Goal

Economic Development

Previous Action

N/A

Background/Issues & Analysis

Pursuant to the agreement, the City and the Redevelopment Authority will participate in a revenue sharing agreement with Mr. Pedder whereby the City will reimburse Mr. Pedder a portion of sales taxes (Rebate) generated by his establishment of a Nissan Dealership along South Carson Street. Mr. Pedder shall qualify for a graduated Rebate from the time the new dealership first generates sales taxes through the sooner of (a) December 31, 2032 or (b) the receipt of \$3,500,000 in Rebates.

The Rebate will be 50% of the Basic City-County Relief Taxes and Supplemental City-County Relief Taxes (sales taxes) generated by the new dealership in the first calendar year (or portion thereof), 55% in calendar year 2, and 60% thereafter.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 279

Financial Information

Is there a fiscal impact? ☒ Yes ☐ No

If yes, account name/number: Increase in General Fund Consolidated Tax Revenues.

Is it currently budgeted? ☐ Yes ☒ No

Explanation of Fiscal Impact: The General Fund will see an increase in Consolidated Tax Revenues, net of the annual Rebate(incentive) to Mr. Pedder. The portion of sales tax revenue necessary to pay the annual Rebate will be transferred from the General Fund to the Redevelopment Revolving Fund. According to the Redevelopment Plan, the Rebate (incentive) payment will be made from the Redevelopment Revolving Fund.

Alternatives

Not approve the Agreement.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

AGREEMENT

by and between

**Carson City Redevelopment Authority
And Carson City, Nevada A Consolidated Municipality**

and

David Pedder

AGREEMENT

This Agreement ("**Agreement**") dated this _____ day of _____, 2016 ("**Effective Date**") is entered into by and between Carson City, Nevada A Consolidated Municipality ("**City**"), Carson City Redevelopment Authority ("**Authority**") and David Pedder ("**Participant**"). The Authority, City and Participant are hereinafter collectively referred to as the "**Parties.**"

RECITALS

WHEREAS, City strives to cultivate a vibrant, diverse, and dynamic economy that attracts and retains businesses and a skilled workforce; and

WHEREAS, the Participant is the owner of auto sales businesses and plans to establish an auto sales business within Carson City Redevelopment Project Area No. 2, along South Carson Street; and

WHEREAS, the Board of Supervisors and the Authority implemented an Incentive Program for franchised auto dealers as part of the Redevelopment Plan for South Carson Street (Resolution No. 2005-R-12); and

WHEREAS, the Incentive Program authorizes the Board of Supervisors and the Authority to provide incentives to vehicle-related sales businesses in the 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 Redevelopment Project Area No. 2; and

WHEREAS, providing such incentive is in the best interest of the City, the Authority and the health, safety and welfare of the residents and the taxpayers. It is also in accordance with the provisions of Nevada Revised Statutes (NRS) Chapter 279, the Redevelopment of Communities; and

WHEREAS, the City and the Authority find that Participant's planned auto sales business will substantially improve the economic and physical conditions in the Redevelopment Project Area No. 2 and is in accordance with the purposes and goals of the Authority's Redevelopment Plan.

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

AGREEMENT

1. **REVENUE SHARING.** In consideration of the Participant entering in this Agreement, the City and the Authority agree to participate in revenue sharing with the Participant on the following terms:

- a. City will reimburse Participant a portion of Participant-Generated Sales Tax ("Rebate," "PGST") commencing on the date Participant first opens for business (the "Opening Date").
- b. The Rebate shall be equal to a percentage of PGST, which shall increase over time. The period of time commencing on the Opening Date and ending on December 31 of that same calendar year shall be called Year

One. The full calendar year which immediately follows shall be called Year Two. The Rebate shall be:

- i. During Year One: fifty percent (50.0%)
 - ii. During Year Two: fifty-five percent (55.0%)
 - iii. Thereafter: sixty percent (60.0%)
- c. During the term of this Agreement, the City/Authority shall determine the amount of PGST based upon the Basic City-County Relief Taxes and Supplemental City-County Relief Taxes ("Sales Taxes"). The determination shall be based upon a review and a right to audit the monthly sales tax reports submitted by the Participant to the Nevada Department of Taxation. Payment shall be made within thirty (30) days of the City and Authority's receipt of Participant's annual Nevada sales tax reports.
- d. This Agreement shall expire on the earlier of (x) December 31, 2032, (y) the 15th anniversary of the Opening Date, or (z) when the aggregate Rebate has reached three and one-half million dollars (\$3,500,000).
- e. **Renegotiation of the Agreement for Non-Appropriation.** The City and Authority's obligations under this Agreement to share revenue, as provided herein, is conditioned upon sufficient funds being collected, distributed and otherwise being made available by state law to meet any budgeted expenditures or bonding debt or other obligation of the City and the Authority. As a condition of participation in the program, Participant agrees that if for any reason the state law governing Carson City's ability to receive Sales Taxes is amended to withdraw, limit, or impair Carson City's ability to collect or pay those funds, this Agreement may be renegotiated, in good faith, and the Parties shall use their best efforts to achieve an alternative reasonable incentive as anticipated in the Area 2 Redevelopment Plan. Participant waives any and all claim(s) for damages that may arise against the City and/or Authority in the event of any such non-appropriation or renegotiation as anticipated under this paragraph.

2. **DUTIES AND OBLIGATIONS OF THE PARTICIPANT.**

- 2.1. **Consent to Dissemination of Sales Tax Reports.** Participant shall provide to the City/Authority the monthly gross annual sales tax reports submitted to the Nevada Department of Taxation.
- 2.2. **Commitment to Continue Business Operations in Carson City.** Participant will use best efforts to grow or maintain its auto sales business operations in Carson City for at least twenty (20) consecutive years from the effective date of this agreement.
- 2.3. **Change of Business Ownership.** If Participant's auto sales business is sold and the subsequent use remains the same and within the boundaries of the South Carson Street Redevelopment Project Area No. 2, Participant's commitment agreement shall transfer to the new owner and continue uninterrupted.

3. **PARTICIPANT'S DEFAULT.** The following events shall constitute an event of default ("Event of Default") on the part of Participant:

- 3.1. If the Participant fails to keep, observe or perform any of its covenants, duties or obligations under this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the

Authority/City to the Participant, or in the case of a default which cannot, with due diligence, be cured within thirty (30) days, Participant fails to promptly begin and diligently proceed to cure such default promptly after such notice;

- 3.2. The making by Participant of an assignment for the benefit of creditors, or filing by Participant of a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law;
 - 3.3. The filing of a petition in bankruptcy against Participant or for its reorganization under any bankruptcy or insolvency law that is not dismissed or stayed within ninety (90) days after such filing; or
 - 3.4. The appointment of a receiver or trustee of the property of Participant where the auto sales business exists which appointment is not vacated or stayed within ninety (90) days after such appointment.
4. **CITY/AUTHORITY REMEDIES IN THE EVENT OF DEFAULT.** If an Event of Default on the part of Participant occurs and continues beyond any applicable cure period, then City/Authority shall have the following rights and remedies in addition to other rights available to it under law or this Agreement:
- 4.1. **Termination.** City/Authority shall have the right to terminate this Agreement. If the City/Authority makes such an election, the City/Authority shall give written notice to Participant and to any mortgagee entitled to such notice, specifying the Event of Default and stating that this Agreement shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, and upon the date specified in such notice, this Agreement and all rights of Participant under this Agreement shall expire and terminate.
 - 4.2. **Damages.** The City or Authority shall be entitled to proceed against Participant for all damages, costs and expenses arising from Participant's commission of an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees.
5. **INDEMNIFICATION/HOLD HARMLESS.** Participant hereby shall indemnify, hold harmless and defend, not excluding the right of the City or Authority to participate, the City and the Authority, their respective elected and appointed boards, commissions, officers, agents and employees from and against any or all losses, expenses, claims, suits, demands, costs (including attorneys' fees and expenses of litigation), damages and liabilities of every kind (collectively, "Claims"), including without limitation, claims arising in connection with any personal injury, death or property damage, which may arise directly or indirectly as a result of any action or inaction, error, negligent or wrongful act or omission, breach of warranty, willful misconduct or fraudulent misrepresentation of Participant's or Participant's contractors, subcontractors, agents or employees. Participant shall defend the City, the Authority, and their elected and appointed boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of Participant's performance of its rights and obligations under this Agreement.

6. **LIMITED LIABILITY.** The City/Authority will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases.
7. **ASSIGNABILITY.** Participant has the right to assign this Agreement to an entity formed to operate the contemplated auto dealership. Beyond that assignment, this Agreement may only be assigned if mutually agreed upon in writing by the Parties.
8. **BUSINESS LICENSE.** Participant shall obtain a Carson City business license and provide a copy of same to Carson City Purchasing & Contracts, 201 North Carson Street, Carson City, Nevada 89701, prior to commencing with business operations and renew annually while operating in Carson City.
9. **COMPLIANCE WITH LAW.** Participant shall comply with all Federal, State and local laws and regulations.
10. **GENERAL PROVISIONS**
 - 10.1. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:
 - 10.1.1. Personal delivery, in which case notice is effective upon delivery;
 - 10.1.2. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
 - 10.1.3. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
 - 10.1.4. Facsimile or Electronic Mail transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery; or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

TO CITY:

Carson City
Executive Offices, Ste. 2
201 N. Carson Street
Carson City, NV 89701
Attn: City Manager
Telephone (775) 283-7100
Facsimile (775) 887-2286
cc: Finance Department

TO AUTHORITY:

Carson City Redevelopment Authority
108 E. Proctor Street
Carson City, NV 89701
Attn: Office of Business Development
Telephone (775) 283-7080
Facsimile (775) 887-2283

TO PARTICIPANT:

David Pedder
200 Carriage Circle
Hemet, CA 92545

With a copy to
Benjamin Berger
BERGER HARRISON, APC
114 Pacifica, Suite 280
Irvine, CA 92618
P: 949-548-1700
F: 949-548-1001

- 10.2. **Conflicts of Interest.** No member, official or employee of the City/Authority shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.
- 10.3. **Warranties Against Payment of Consideration for Agreement.** Participant warrants that it has not paid or given, and will not pay or give, to any third party, any money or other consideration for obtaining this Agreement, other than to pay for the normal costs of conducting business and to pay for the services of such professionals as accountants and attorneys.
- 10.4. **Non-liability of City Officials.** No member, official or employee of the City/Authority shall personally be liable to Participant, or any assignee or successor of Participant, in the event of any default or breach by the City/Authority for any amount which may become due to Participant or its successors or on any obligation under the terms of this Agreement.
- 10.5. **Parties Not Partners; No Third-Party Beneficiaries.** No provision of this Agreement nor any act of the City/Authority shall be deemed or construed to establish the Parties as partners or principal and agent with one another or to create a co-venture or any relationship of a third-party beneficiary.
- 10.6. **Litigation.** In the event of any dispute between the Parties hereto arising out of this Agreement the non-prevailing party agrees to pay to the prevailing party all sums paid or incurred by the prevailing party as reasonable costs and expenses and incurred in the legal proceedings, including but not limited to reasonable attorneys' fees.

- 10.7. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. If as a result of any final judgment this Agreement or any other required approvals under this Agreement are determined to be invalid, the Parties agree to cooperate to amend this Agreement and other necessary documents in order to accomplish the basic purposes and intent of this Agreement.
- 10.8. **Counterparts; Entire Agreement; Captions.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall be deemed to be one agreement. This Agreement, together with all Exhibits, if any, attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations or agreements between the Parties with respect thereto. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
- 10.9. **Amendments; Waivers.** This Agreement may be amended only by a written instrument executed by the Parties. No waiver of any provision of this Agreement shall constitute or be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless it is executed in writing by the Party making the waiver.
- 10.10. **Governing Law; Venue.** The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement without giving affect to any principle of conflict of law that would require application of the law of any other jurisdiction. Participant consents and agrees that any action to enforce or interpret this Agreement shall be filed in the First Judicial District Court for Carson City, Nevada.
- 10.11. **Waiver of Breach.** Failure of a party to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms shall not operate as a waiver of any of a party's rights or remedies as to any other breach.
- 10.12. **Lobbying.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- 10.12.1. Any federal, state, county or local agency, legislature, commission, counsel or board;
- 10.12.2. Any federal, state, county or local legislator, commission member, counsel member, board member or other elected official; or

- 10.12.3. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
- 10.13. **Recordation; Further Assurances.** The City/Authority is authorized to record in the official records of Carson City, Nevada this Agreement and any amendments. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as may be reasonably necessary to carry out the intent of this Agreement.
- 10.14. **Proper Authority.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and Authority to enter into this Agreement. Participant acknowledges that this Agreement is effective only after approval by the Carson City Board of Supervisors.
- 10.15. **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 will be deemed to be the succeeding day on which the public agencies and major banks are open and available to Participant.
- 10.16. **Ambiguities in Agreement.** Both Parties have participated in the drafting of this Agreement and any ambiguities in the language of the Agreement will not be construed against either party.
- 10.17. **Effect of Termination.** No termination of this Agreement will be construed as relieving a party from liability to any other party for breach of this Agreement.

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IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date and intend to be legally bound.

CARSON CITY, NEVADA a Consolidated Municipality

By: Robert L. Crowell
Its: Mayor

CARSON CITY REDEVELOPMENT AUTHORITY

By: Karen Abowd
Its: Chairman

DAVID PEDDER

David Pedder