



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** 11/16/17

**Staff Contact:** Nick Marano, City Manager

**Agenda Title:** For Possible Action: To approve an agreement between Carson City, Carson City Redevelopment Authority and Chris Russell pursuant to the Incentive Program for Redevelopment Project Area No. 2: South Carson Street - Carson Auto Row. The incentive will be in the form of a 30% rebate of the Basic City-County Relief Taxes and Supplemental City-County Relief Taxes (sales taxes) generated by the new auto sales dealership located within Carson City Redevelopment Project Area No. 2 for a maximum rebate amount of \$3,500,000. (Nick Marano, nmarano@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. Russell 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:** 5 minutes

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## **Proposed Motion**

I move to approve an agreement between Carson City, Carson City Redevelopment Authority and Chris Russell pursuant to the Incentive Program for Redevelopment Project Area No. 2: South Carson Street - Carson Auto Row. The incentive will be in the form of a 30% rebate of the Basic City-County Relief Taxes and Supplemental City-County Relief Taxes generated by the new auto sales dealership located within Carson City Redevelopment Project Area No. 2 for a maximum rebate amount of \$3,500,000.

## **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. Russell whereby the City will reimburse Mr. Russell a portion of sales taxes (Rebate) generated by his establishment of a Nissan Dealership along South Carson Street. Mr. Russell shall qualify for a

Rebate from the time the new dealership has thirty (30) full-time employees through the sooner of (a) December 31, 2032 or (b) the receipt of \$3,500,000 in Rebates.

**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. Russell. 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**

**Chris Russell**

## **AGREEMENT**

This Agreement (“**Agreement**”) dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (“**Effective Date**”) is entered into by and between Carson City, Nevada A Consolidated Municipality (“**City**”), Carson City Redevelopment Authority (“**Authority**”) and Chris Russell (“**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:

1.1. **Allocation.** The City will begin to allocate to Participant a portion of Participant-Generated Sales Tax (“Rebate” or “PGST”) effective at the time Participant has thirty (30) full-time employees at the auto sales business within Carson City Redevelopment Project Area No. 2, along South Carson Street.

1.2. **Rate.** The allocation to Participant shall be thirty percent (30%) of PGST.

1.3. **Payment.** 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. City/Authority shall make an annual payment within thirty (30) days of the City/ Authority’s receipt of Participant’s monthly Nevada sales tax reports for the entire calendar year.

1.4. **Expiration.** This Agreement shall expire on the earlier of December 31, 2032 or when the aggregate Rebate has reached three million five hundred thousand dollars (\$3,500,000).

1.5. **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, allocated and otherwise being made available by state law. As a condition of participation in the program, Participant agrees that if for any reason the state law governing the City's ability to receive Sales Taxes from new car and vehicle related sales is amended to withdraw, limit, or impair the City's ability to collect 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.

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

2.1. **Commitment to Hire Local Contractor.** Participant shall hire a local general contractor and when available, local subcontractors.

2.2. **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.

2.3. **Commitment to Continue Business Operations in Carson City.** Participant will use best efforts to grow or maintain his auto sales business operations in the City for at least twenty (20) consecutive years from the effective date of this agreement.

2.4. **Change of Business Ownership.** Except as otherwise provided in Paragraph 7, Participant’s commitment agreement herein is nontransferable.

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 his 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

and/or 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 his reorganization under any bankruptcy or insolvency law that is not dismissed or stayed within ninety (90) days after such filing;
  - 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;
  - 3.5. Except as set forth in Paragraph 7, Participant's transfer of his commitment agreement; or
  - 3.6. The loss by Participant of his auto dealership franchise.
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.** Upon an Event of Default (following the expiration of the applicable cure period provided herein or by law), City and/or Authority shall have the right to terminate this Agreement. If the City and/or Authority makes such an election, the City and/or Authority shall give written notice to Participant and to any mortgagee entitled to such notice, specifying the Event of Default. The City and/or Authority shall have no right to exercise a right or remedy hereunder unless the subject Event of Default continues uncured for a period of thirty (30) days after delivery of the notice of the specific Event of Default, or, where the Event of Default is of nature which cannot be cured within such thirty (30) day period, the Participant fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. An Event of Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Event of Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, the City and/or Authority may institute an action for specific performance of the terms of this Agreement, or pursue such other rights and remedies it may have, including, without limitation, the termination of this Agreement and all rights of Participant under this Agreement.
  - 4.2. **Damages.** The City and/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 shall indemnify, hold harmless and defend, not excluding the right of the City and/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 Participant's performance of his rights and obligations under this Agreement or 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. The City and Authority shall indemnify, hold harmless and defend, not excluding the right of the Participant to participate, the Participant, his respective managers, members, shareholders, directors, officers, assigns, agents and employees from and against any or all 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 the City's and/or the Authority's performance of their rights and obligations under this Agreement or any action or inaction, error, negligent or wrongful act or omission, breach of warranty, willful misconduct or fraudulent misrepresentation of the City and/or the Authority or their respective elected and appointed boards, commissions, officers, agents, employees, contractors or subcontractors.
6. **LIMITED LIABILITY.** The City and/or 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 his spouse or descendants, or to an entity formed to operate the contemplated auto dealership, in which Participant, his spouse or descendants maintain the majority of the ownership interest or voting control. Beyond that assignment, this Agreement may not be assigned without the prior written approval of the City and/or Authority until the end of the eighth full year of this Agreement. At the end of the eighth full year of this Agreement, the Participant shall be entitled, upon 60 days' written notice to the City and/or Authority, to assign or transfer this Agreement to any non-tax-exempt entity that will undertake all obligations of the Participant under this Agreement and will continue to operate a franchised, full-service, new automobile dealership at the auto sales business within Carson City Redevelopment Project Area No. 2, along South Carson Street.
8. **ACCESS, DESIGN STANDARDS AND BUSINESS LICENSE.**
  - 8.1. **Access Improvements.** Participant is aware that City has plans for a redesign of South Carson Street known as the South Carson Street Corridor Project (Corridor Project), scheduled for 2019. Participant and the City and/or Authority shall coordinate access into Participant's property. If there is no current vehicular access from South Carson Street, City and/or Authority agrees to move forward funding from the Corridor Project to design and build, at City expense, a vehicular access driveway. City and/or Authority will work in good faith with Participant to place access driveway at a mutually agreed upon location. However, City reserves the right to place access driveway at a location that will not conflict with the aesthetic design and traffic control measures already

designed for the Corridor Project. City will synchronize the timing for the design and construction of the access driveway with Participant so that the driveway is installed and inspected prior to Participant being issued a Certificate of Occupancy for Participant's business location. Additionally, City will ensure that the design of the Corridor Project includes a left turn lane for northbound ingress into the property.

8.2. **Design Standards.** Participant agrees to comply with the building and site design standards of the Carson City Municipal Code, Title 18 (Zoning), and Title 18 Appendix, Development Standards (Development Standards), including site landscaping requirements. Participant agrees to provide the required amount of landscaping based on the Development Standards, except that Participant may exclude vehicle storage areas that are not accessible to the general public from the area used in calculating the landscaping requirements. City agrees to allow Participant to relocate required street trees and parking lot trees within the project site to accommodate visibility and access for vehicle display areas.

8.3. **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:**

Chris Russell  
865 S Sky Lark Lane  
North Salt Lake, UT 84054  
Telephone (208) 232-1062  
Facsimile (208) 235-7510

**With a copy to:**

Ray Quinney & Nebeker, P.C.  
36 South State Street, Suite 1400  
Salt Lake City, UT 84106  
Attn: Richard H. Madsen, II  
Telephone (801) 532-1500  
Facsimile (801) 532-7543

- 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 and/or 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 and/or Authority for any amount which may become due to Participant or his 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 and/or 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/Dispute Resolution.** In the event of any dispute between the Parties hereto arising out of this Agreement, each party agrees to bear their own legal costs and expenses incurred.
- 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 and/or 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.

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**

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By: Robert L. Crowell  
Its: Mayor

**CARSON CITY REDEVELOPMENT AUTHORITY**

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By: Karen Abowd  
Its: Chairman

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Chris Russell  
Its: Owner/Operator