

**City of Carson City
Agenda Report**

Date Submitted: Nov. 24, 2008

Agenda Date Requested: Dec. 4, 2005

To: RDA/BOS

Time Requested: 20 minutes

From: Office of Business Development

Subject Title: Action to approve a Commitment Agreement for Continuing Business Operation between Carson City and Michael Hohl Motor Company that provides a financial incentive catalyst for the development of Mr. Hohl's new car sale facilities located within Redevelopment Project Area No. 2 in exchange for Mr. Hohl's commitment to retain all his auto dealerships in Carson City for a period of no less than 20 years.

Staff Summary: Carson City's new franchised auto dealers generate approximately \$200,000,000 in annual sales, which constitutes approximately 29 percent of Carson City's annual sales tax revenue. The Redevelopment Authority's Incentive Program for Redevelopment Project Area No. 2, South Carson Street – Carson Auto Row – provides for the use of redevelopment incentives 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. Consistent with the goals of Project Area No. 2's Redevelopment Plan, the Auto Sales Workgroup is proposing a 2-tiered incentive package for the Michael Hohl Motor Company to help Mr. Hohl develop state-of-the-art Honda, Subaru and possibly additional facilities to strengthen the auto sales sector in Carson City and generate increased new car sales. Mr. Hohl and the City have negotiated a Commitment Agreement that pledges his dealerships to remain in Carson City for no less than 20 years.

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 approve a Commitment Agreement for Continuing Business Operation between Carson City and Michael Hohl Motor Company that provides a financial incentive catalyst for the development of Mr. Hohl's new car sale facilities located within Redevelopment Project Area No. 2 in exchange for Mr. Hohl's commitment to retain all his auto dealerships in Carson City for a period of no less than 20 years.

Explanation for Recommended Board Action: This incentive award is a project-specific public/private partnership with Mr. Hohl. This incentive award protects the City's fiscal base, both short and long term. Mr. Hohl and the Auto Sales Workgroup has invested a considerable

amount of time and effort negotiating the elements of this incentive package while keenly aware that the investment will stimulate increased new car sales over a 20- year period that will potentially offset this initial investment.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 279

Fiscal Impact: \$2,400,000 initially with the promise of an additional \$2,400,000 that will be invested in one or more additional new car sales facilities as part of this the two-tiered incentive package.

Explanation of Impact: Pursuant to NRS 279, local governments are permitted to grant to the Redevelopment Authority funding specific for redevelopment purposes. This financial incentive package will be offset by increased sales growth over the next fifteen years at all of Mr. Hohl's new car dealerships: Honda, Subaru, Chevrolet, his General Motors products, and his RV sales.

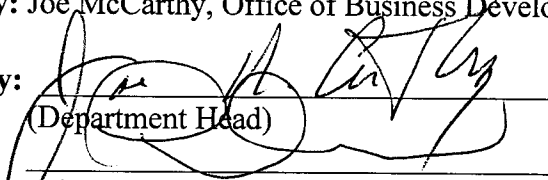
Funding Source: Redevelopment Project Area No. 2

Alternatives: Provide additional direction to the Auto Sales Workgroup.

Supporting Material: Commitment Agreement for Continuing Business Operation

Prepared By: Joe McCarthy, Office of Business Development

Reviewed By:



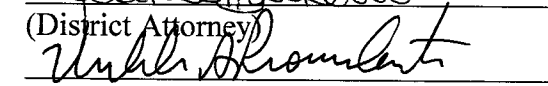
(Department Head)

Date: 11-29-08



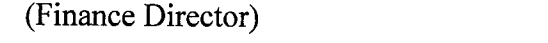
(City Manager)

Date: 11-24-08



(District Attorney)

Date: 11-24-08



(Finance Director)

Date: 11-24-08

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

COMMITMENT AGREEMENT FOR CONTINUING BUSINESS OPERATION

This COMMITMENT AGREEMENT FOR CONTINUING BUSINESS OPERATION (the "Agreement") is entered into on this day, __ of _____, 2008, between the CITY OF CARSON CITY, NEVADA (the "City") and the CARSON CITY REDEVELOPMENT AUTHORITY, (the "Authority"), and MICHAEL HOHL AUTOMOTIVE GROUP and MICHAEL HOHL acting in his individual capacity and as President of said GROUP, (hereinafter collectively referred to as the "Business").

RECITALS

WHEREAS, the Business operates FOUR (4) auto sales businesses in Carson City, Nevada, including Michael Hohl Honda-Subaru (4500 N. Carson St.), Michael Hohl Motor Company (3700 S. Carson St.) and Michael Hohl Chevrolet (2500 N. Carson St.); and

WHEREAS, the Business owns property in Carson City that is identified as Assessor's Parcel Numbers 009-111-21, 009-111-27, ("Property 1") and property in Carson City that is identified as Assessor's Parcel Number 009-163-10, 009-15 ("Property 2") and desires to relocate part or all of his new car sale activity to these properties,

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, the Property 1 and Property 2 (hereinafter collectively referred to as the "Properties") that the Business owns, and to which the Business intends to relocate, are located in the South Carson Street Redevelopment Project Area No. 2, the Business qualifies for the Incentive Program, and the City, Authority and Business desire to enter into this Commitment Agreement to implement the Incentive Program, and,

WHEREAS, more specifically, the Parties agree to undertake a cooperative effort whereby the City and Authority will provide financial assistance for the development of the Properties, commit to pursuing certain public infrastructure improvements near the Properties and commit to certain other incentives in exchange for a binding and enforceable commitment by the Business for continuing business operations in the City for the time period described in this Commitment Agreement,

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, 2009 or until the Promissory Notes are fully satisfied. The City and Authority's financial assistance to the Business shall be used, as described in this Agreement, for the development of the Properties on which the Business will conduct its auto sales activity. Pursuant to NRS 279.500, the development of the Properties is subject to the provisions of NRS 338.010 to 338.0090, inclusive, to the same extent as if the City or the Authority had awarded the contract for the development of the Properties.

B. Development Incentives for the Properties.

1. The Business agrees to develop Property #1 for the purpose of relocating the new car dealership of Michael Hohl Honda for a total cost of development of a minimum of FOUR MILLION SIX HUNDRED THOUSAND DOLLARS (\$4,600,000.00) on or before June 30, 2009. The City and Authority agree to provide an incentive payment in the amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00) to Business for the purpose of assisting in the cost of developing Property #1. The incentive payment required pursuant to this paragraph shall be due to the Business upon the commencement of construction of the development on Property #1.

2. The Business agrees to develop Property #1 for the purpose of relocating the new car dealership of Michael Hohl Subaru for a total cost of development of a minimum of FOUR MILLION

DOLLARS (\$4,000,000.00) on or before June 30, 2009. The City and Authority agree to provide an incentive payment in the amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00) to Business for the purpose of assisting in the cost of developing Property #1. The incentive payment required pursuant to this paragraph shall be due to the Business upon the commencement of construction of the development on Property #1.

3. The Business agrees to develop Property #2 for the purpose of relocating the new dealership of Michael Hohl Chevrolet or an equivalent franchised auto dealership on or before June 30, 2011. The City and Authority agree to provide an incentive payment in the amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00) to Business for the purpose of assisting in the cost of developing Property #2. The incentive payment required pursuant to this paragraph shall be due to the Business upon the commencement of construction of the development on Property #2.

C. Bonds to be Issued. The City and Authority reserve the right 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 and in good faith pursue the issuance of these bonds upon the execution of this Agreement.

D. Promissory Note. The City and Authority will provide total financial assistance in the amount of FOUR MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$4,800,000.00). In exchange, the Business will execute two Promissory Notes, each for TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00) when those funds are granted to the Business as provided herein, in favor of the City and Authority, and secure each Note by executing a Deed of Trust that is recorded against the subject Property for the total amount of the financial assistance from the City and Authority. The Promissory Note will be repaid as follows:

1. Each Promissory Note will include a five percent (5%) per annum interest charge and will be paid in full no later than December 31, 2028. The annual obligation of the Business to satisfy each Promissory Note will be calculated based on a TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00) 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, 2009.
3. The obligation under **each** 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 **each** Promissory Note including accrued interest, as that annual obligation is determined in Section D.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 **each** Promissory Note.
5. When the obligation under **each** Promissory Note is satisfied by the Business, the City and Authority will execute an Acknowledgment that **each** Promissory Note have been satisfied, and will release the Deed of Trust that have 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 Agreement. If **each** 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 Basic City-County Relief Tax and the Supplemental City-County Relief Tax revenue paid by the Business for the remaining years of the twenty (20) year period.
6. After twenty (20) years, the City and Authority shall determine whether Business has satisfied the obligations under **each** Promissory Note. If **each** Promissory Note have not been satisfied, the Business shall pay the full amount of the outstanding obligation under **each** Promissory Note, or the City and Authority can foreclose on the Business Property as authorized by the Deed of Trust.

E. Deeds of Trust. The City and Authority shall provide financial assistance as provided herein, and Business shall agree to execute Deeds of Trust in favor of the City and Authority in order to secure the obligations under this Agreement.

1. Business agrees that the Deeds of Trust executed pursuant to this Agreement will subordinate to another deed of trust and hold second position for security purposes. However, the Deeds 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 Trusts shall include the covenants made in this Agreement, and that those covenants run with the subject land binding future owners of the land to the 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 Agreement.
3. Reasons for the foreclosure by the City and Authority on the Deeds of Trust shall include failure of Business to operate in Carson City for twenty (20) years from the date of this Agreement.

F. Public Improvements. The City and Authority agree to pursue the following public infrastructure improvements near the Properties, subject to the approval of the Carson City Regional Transportation Commission when appropriate and based upon the availability of funds.

1. Upon the commencement of construction for the development of Property #1, the City and the Authority agree to pursue:
 - a. The installation of a traffic signal at the intersection of South Carson Street and Sonoma Street, subject to the installation of the traffic signal meeting the requirements of the latest edition of the Manual on Uniform Traffic Control Devices.
 - b. A driveway at Sonoma Street, including the installation of curb, gutter and sidewalk improvements.
2. Upon the commencement of construction for the development of Property #2, the City and the Authority agree to pursue:

- a. The realignment of Snyder Street to the intersection of Snyder Street and South Carson Street, including the installation of a traffic signal at the intersection of Snyder Street and South Carson Street, subject to the installation of the traffic signal meeting the requirements of the latest edition of the Manual on Uniform Traffic Control Devices.
 - b. The improvement of Oak Street.
 3. If Business relocates the Michael Hohl RV Center to the property located at XXXX Hwy 50 East, APN XXX-XX-XXX, the City and Authority agree to pursue the installation of drainage improvements adjacent to that property.
- G. 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 development of the Properties and the pursuit of certain public infrastructure improvements, 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 Agreement.
- B. As part of this Commitment for Continuing Business Operation, the Business agrees to continue to operate FOUR (4) auto sales businesses in Carson City, Nevada, including Michael Hohl Honda-Subaru (4500 N. Carson St.), Michael Hohl Motor Company (3700 S. Carson St.), Michael Hohl Chevrolet (2500 N. Carson St.), and Michael Hohl RV Center, or alternative and equivalent dealership points.

- 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, 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 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 (20) year period that starts on January 1, 2009, 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, 2009, 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 89701
Telephone: (775) 887-2100
Facsimile: (775) 887-2286

Carson City
201 North Carson Street
Carson City, NV 89701

To Business: Michael Hohl, President
ADDRESS
Carson City, NV 8970x
Telephone: (775) xxx-xxxx
Facsimile: (775) xxx-xxxx

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 Properties that are secured by the Deed of Trust.

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: _____

Michael Hohl

**Individually and on behalf of Michael
Hohl Honda-Subaru and Michael Hohl**

Motor Company

Its: President