# Supplemental Material

## For

## City of Sacramento

**City Council**
**Financing Authority**
**Housing Authority**
**Redevelopment Agency**

## Agenda Packet

**Submitted:** 08/22/08

## For the Meeting of: August 26, 2008

☐ Additional Material

X Revised Material

**TITLE:** Agreement: City/County Joint Support And Apportionment Of Sales Tax Revenues Of Vehicle Dealers And A Sales Tax A Sharing Agreement Regarding Mel Rapton Honda

Please note: This report replaces the previous version. Changes were made to the order and labeling of exhibits and attachments.

**Contact Information:** John Dangberg, Assistant City Manager, 916-808-1222
David Spaur, Economic Development Director, 916-808-8196

Please include this supplemental material in your agenda packet. This material will also be published to the City's Internet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604, (916) 808-7200.

# REPORT TO COUNCIL
# City of Sacramento

**915 I Street, Sacramento, CA 95814-2604**
**www.CityofSacramento.org**

**Staff Report**
**August 26, 2008**

**Honorable Mayor and**
**Members of the City Council**

**Title: Agreement: City/County Joint Support and Apportionment of Sales Tax Revenues of Vehicle Dealers and a Sales Tax Sharing Agreement regarding Mel Rapton Honda**

**Location/Council District:** Citywide and District 2 (Business 80 between Watt and Fulton Avenues)

**Recommendation:** Adopt a City Council **Resolution** authorizing the City Manager to execute 1) an Agreement between the City of Sacramento and the County of Sacramento regarding the Joint Support and Apportionment of Sales Tax Revenues of Vehicle Dealers and 2) a Sales Tax Sharing Agreement regarding Mel Rapton Honda.

**Contact:** John Dangberg, Assistant City Manager, 808-1222
David Spaur, Economic Development Director, 808-8196

**Presenters:** John Dangberg, Assistant City Manager

**Department:** City Manager's Office, Economic Development

**Organization No:** 4453

**Description/Analysis:**

**Issue:** The sales and service of automobiles serves as a significant economic stimulus within the Sacramento region from the generation of sales tax and creation of jobs. The City and County of Sacramento have a common interest to foster the retention, renovation and expansion of existing auto dealerships and to work collaboratively to grow the industry within both jurisdictions. However, the City and County have traditionally not worked collaboratively primarily due to competition for sales tax revenue. The jurisdictions have competed against each other for automobile dealerships and automall proposals. This lack of collaboration has hampered each jurisdiction's success with this important component of the economy.

In addition, the automobile industry is currently undergoing significant changes that are resulting in the aggregation of existing dealerships, the abandonment of unprofitable brands, and the creation of new economic models regarding the manner in which automobiles are sold.

As a result of these industry changes, the desire to maintain and grow the industry as well as adapt to future industry trends, staff is recommending that the City and the County partner to stabilize and expand existing dealerships and position the City and the County to compete effectively for new dealerships within the region. The new approach would have the City and the County work collaboratively to grow the industry and share in the collective enhanced sales tax revenue streams.

To foster and facilitate a more collaborative environment, staff is recommending that the competition for jurisdictional sales tax revenue be eliminated while protecting each jurisdictions existing auto sales tax revenue through the attached revenue sharing agreements. Staff is recommending that the City and County enter into two agreements for the sharing of automobile sales tax revenue as follows:

**Agreement for Joint Support of Vehicle Dealers:** This agreement provides for the jurisdiction-wide sharing of revenues that are derived from automobile sales tax as defined in the agreement. General provisions of this agreement include:

*Base Revenue from Existing Dealerships:* Each jurisdiction will maintain its respective Base Tax Revenue amounts from Vehicle Dealers without regard to future location of the Vehicle Dealer provided that such future location is within the unincorporated territory of the County or within the boundaries of the City. For purposes of the agreement, a Base Revenue will be established for the fiscal year 2007/08 and is defined as the revenue from the sales and use tax levied and received by the City and County pursuant to the "Bradley-Burns Uniform Local Sales and Use Tax Law." As of June 30, 2008, the annual auto-based revenue for the City is estimated to be $2,307,649 for new auto sales and $678,058 for used auto sales. The annual auto-based revenue for the County is estimated to be $6,485,689 for new auto sales and $1,232,006 for used auto sales. Actual revenue numbers, including used car sales, for the quarter ending June 30, 2008 will not be available until mid-October 2008, at which time a truing-up procedure will occur.

*Growth above Base Revenue from existing Dealerships*: Sales tax revenue in excess of the other party's base will be shared equally. If there is no growth the parties will maintain revenue up to their respective bases until one or both parties exceeds their established base.

*New Dealerships within the City or County:* The jurisdictions will share equally from a New Vehicle Dealer that locates within the City or the County after the date of the agreement and for which there is no existing Base Tax Revenue.

*Closed Dealerships within the City or County:* In the event that a dealership goes out of business or relocates to a jurisdiction outside of the City or County, the Base Tax Revenue attributable to that dealer will be deducted from the respective jurisdiction's Base Tax Revenue.

**3701 Fulton Avenue (Mel Rapton Honda) Agreement:** This agreement provides for the sharing of revenues at 3701 Fulton Avenue that are derived from automobile sales tax as defined in the agreement. General provisions of this agreement include:

*Mel Rapton Honda*: The County and the City will share equally in the sales tax revenue generated from Mel Rapton Honda or any subsequent form of Honda dealership at the 20 acre former trap-shoot site.

*Mercedes of Sacramento:* The County and the City will share equally in the sales tax revenue from the Mercedes of Sacramento dealership if the dealership relocates to the twenty acre site. If the dealership does not relocate, the base revenue will be considered part of the 2008 Sacramento County base and will be subject to the comprehensive agreement.

*New or Other Dealerships:* Any new dealership or any other dealership other than Rapton Honda or Mercedes of Sacramento will be subject to the comprehensive agreement. The proposed agreement has been drafted to support the upgrade and expansion of the Honda dealership which could not be accommodated at the existing location or within the unincorporated County.

**Joint Development And Implementation Of Strategies For The Retention, Expansion And Attraction Of Automobile Dealerships:**

Following the execution of the outlined agreements, the City and County in cooperation with the automobile industry will engage in a joint planning and implementation effort to grow the retail automobile industry.

The basic principles of the joint effort include joint marketing efforts and other actions for:

- Retention – Coordinated effort to retain existing dealers within the two jurisdictions

- Expansion – Permit assistance and coordinated incentive programs for qualified projects that expand the existing dealership base
- Attraction – Foster sitting opportunities, including a focus on dealers not currently located in the area, and prepare for an expanded green fleet of vehicles using alternative fuels.

In addition to the collaborative efforts with automobile dealerships, the City and the County also will work with the community college system and the private sector in support of the industry. Strategies will be implemented to ensure a quality workforce for the automotive industry and to address comprehensively the needs of the industry now and into the future.

The success of the program will be measured by sales tax revenue growth, the number of dealers retained, expanded and attracted and the growth of auto sales and service employment at dealerships within both the County and the City. The program success measures will also be balanced against the relative increase or decrease of sales in relation to the industry nationwide and the economy as a whole.

**Policy Considerations:** Although the opportunity to cooperate, rather than compete for retention and attraction of new vehicular dealerships, would be of mutual benefit and, in the long run, financially beneficial to both jurisdictions, the sharing of sales tax revenue with the County has never been adopted before by the City of Sacramento. Adoption of these agreements would constitute a policy change from previously adopted positions.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** There are no CEQA issues presented under these proposals. Any future property sittings of vehicular dealerships would naturally fall under all appropriate environmental review.

**Sustainability Considerations:** This report does not address any sustainability issues.

**Rationale for Recommendation:** As noted above, traditionally jurisdictions have competed for vehicular dealerships, incurring enormous costs and burdens. The automobile industry is undergoing significant changes resulting in the aggregation of existing dealerships, the abandonment of unprofitable brands, and the creation of new economic models regarding the manner in which automobiles are sold.

As a result of these changes and the desire to maintain and grow the industry and adapt to future industry needs, staff is recommending that the City and the County partner to stabilize and expand existing dealerships and position the City and the County to compete effectively for new dealerships within the region. The new approach would have the City and the County work collaboratively to grow the industry and share in the collective benefits, instead of the norm which has jurisdictions competing for significant drivers of the economy.

The Sacramento County Board of Supervisors is expected to take action on these series of recommendations on Wednesday, August 27, 2008. If they fail to approve the recommendations, then any possible positive action the City may have taken with respect to these items would be rendered moot.

**Financial Considerations:** The joint marketing strategy to retain and expand the new sales auto industry by both jurisdictions will require resources to implement. As the strategy is further scoped and costs are applied to the implementation of the strategy, funding sources from the City and the County will be identified. The Tax Exchange Agreement results in a fiscally neutral outcome for the City in that the City will maintain the sales tax revenues up to the established 2008 base. Therefore no negative impact to the General Fund is anticipated. In a growth scenario for sales and in an environment where new dealerships enter the marketplace, the jurisdictions would share equally in the additional revenue generated.

**Emerging Small Business Development (ESBD):** Not applicable.

Respectfully Submitted by: _____
David L. Spaur, CEcD, EDFP
Economic Development Director

Approved by: _____
John Dangberg
Assistant City Manager

Recommendation Approved:

_____
Ray Kerridge
City Manager

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**Attachment 1**

# RESOLUTION NO.

Adopted by the Sacramento City Council

## RESOLUTION APPROVING AN AGREEMENT FOR CITY/COUNTY JOINT SUPPORT AND APPORTIONMENT OF SALES TAX REVENUES OF VEHICLE DEALERS AND A SALES TAX SHARING AGREEMENT REGARDING MEL RAPTON HONDA

## BACKGROUND

A. The sales and service of new automobiles serves as a significant economic stimulus within the Sacramento region from the generation of sales tax and creation of jobs.

B. The City and County of Sacramento have a common interest to foster the retention, renovation and expansion of existing auto dealerships and to work collaboratively to maintain and grow the industry within both the City and County jurisdictions.

C. Traditionally, the City and the County have competed for critical components of the economy such as automobile dealerships, as evidenced by the existing auto malls that ring the County and the City to the east and south.

D. The automobile industry is undergoing significant changes that are resulting in the aggregation of existing dealerships, the abandonment of unprofitable brands, and the creation of new economic models regarding the manner in which automobiles are sold.

E. Continued competition between the City and the County for a diminishing share of vehicular dealerships is non-beneficial to both jurisdictions. Therefore it is in the mutual best interest of the City and County enter into the Agreements contained in Exhibits A and B, attached hereto.

## BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City of Sacramento and the County of Sacramento will work together to stabilize and expand existing automobile dealerships and position the City and the County to compete effectively for new dealerships within the region.

Section 2. The City and the County will work collaboratively to grow the auto dealership industry and share in the collective benefits, instead of the norm which has jurisdictions competing for significant drivers of the economy.

Section 3. The City's and the County's joint marketing efforts include:

- Retention practices – Coordinated effort to retain existing dealers within the two jurisdictions
- Expansion efforts – Permit assistance and coordinated programs for qualified projects to assist in expanding the existing dealership base
- Attraction efforts – Foster and facilitate siting opportunities and focus on attracting auto dealers not currently located in the area and prepare for an expanded green fleet of autos using alternative fuels

Section 4. The City Council hereby approves the Agreement contained in Exhibit A, attached hereto and made part of this resolution, and authorizes the City Manager or his designee to execute the Agreement between the City of Sacramento and the County of Sacramento relating to the joint support of vehicular dealerships; and to execute any Reimbursement Agreement consistent with the exemplar contained in Exhibit B of that agreement.

Section 5. The City Council hereby approves the Agreement contained in Exhibit B, attached hereto and made part of this resolution, and authorizes the City Manager or his designee to execute the Agreement between the City of Sacramento and the County of Sacramento relating to Mel Rapton Honda.

Section 6. The City Manager or his designee is authorized to include the agreement provisions in the City's annual budget and make any payments to the County of Sacramento as are required under the Agreements described in Sections 4 and 5 of this resolution.

**Exhibit A to Attachment 1**

**AGREEMENT BETWEEN**
**THE COUNTY OF SACRAMENTO AND THE CITY OF SACRAMENTO,**
**RELATING TO JOINT SUPPORT OF VEHICLE DEALERS**

This AGREEMENT (hereinafter "Agreement") is made and executed in duplicate this ____ day of _____ 2008, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and the CITY OF SACRAMENTO, a municipal corporation (hereinafter referred to as "CITY").

**RECITALS**

A. CITY and COUNTY desire to foster the retention and renovation of automobile dealers which exist or may exist within both the unincorporated territory of COUNTY as well as within the territory of CITY; and

B. The automobile sales industry is undergoing significant changes which are resulting in both the aggregation of existing dealerships and the creation of new economic models regarding the manner in which automobiles are sold; and

C. CITY and COUNTY believe it is within their respective institutional interests to meet these changes by cooperating to retain and attract automobile dealerships without regard to the specific locations of such dealerships within the territorial limits of CITY or the unincorporated territory of COUNTY; and

D. CITY and COUNTY, in addition to jointly developing and implementing strategies for the retention, renovation and attraction of automobile dealerships, desire to share the revenues derived from such businesses in the manner set forth in this Agreement.

COUNTY and CITY hereby agree as follows:

1. **Recitals**. The facts set forth in the foregoing recitals are true and are hereby incorporated into this Agreement.

2. **Definitions**. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "Sales Tax Revenue" means the revenue from the sales and use tax levied and received by the CITY and COUNTY pursuant to the "Bradley-Burns Uniform Local Sales and Use Tax Law" (currently one percent), or any successor statutory provision, that is collected from sales occurring on the Property. "Sales Tax Revenue" does not include any sales tax revenue resulting from a tax-rate increase in the CITY or COUNTY that becomes effective after the effective date of this agreement.

(b) "Excess Sales Tax Revenue" means the amount of Sales Tax Revenue the CITY or COUNTY derives from Vehicle Dealers doing business in their respective jurisdictions during a specified time period, which is in excess of the lesser of their respective Base Tax Revenue amount or Adjusted Base Tax Revenue amount for the same time period.

(c) "Base Tax Revenue" means the amount of Sales Tax Revenue derived in the year ____ (Base Year) by either CITY or COUNTY from Vehicle Dealers conducting business in their respective jurisdictions during the Base Year. Base Tax Revenue shall be calculated specific to each Vehicle Dealer, and for each party is the sum of all Sales Tax Revenues derived from all Vehicles Dealers doing business in their respective jurisdictions during the Base Year. Once those individual Base Tax Revenue amounts are determined, a schedule of Vehicle Dealers existing in the CITY and COUNTY during the Base Year and their respective original Base Tax Revenue amounts shall be listed in Exhibit "A", and attached hereto as an addendum and incorporated herein by this reference.

Once the CITY's and COUNTY's respective Base Tax Revenue amounts are established in the Base Year, their Base Tax Revenue amounts shall remain at those same amounts for all future years unless required to be adjusted downward. Base Tax Revenue for a particular Vehicle Dealer shall terminate if the dealership goes out of business or relocates its business to a jurisdiction outside of the CITY or COUNTY or into a city other than the CITY within COUNTY. A dealership that does not engage in the sale of cars or trucks for a period of six months or more is deemed to have gone out of business. The Base Tax Revenue for a Vehicle Dealer shall also terminate if the Property of the dealership is located within an area that incorporates to form a new city, or if such area is annexed to a city other than the City of Sacramento. If the Base Tax Revenue for a particular Vehicle Dealer terminates, the CITY's or COUNTY's Base Tax Revenue amount shall be reduced by the proportionate amount that is attributable to said Vehicle Dealer (Adjusted Base Tax Revenue). The parties shall update Exhibit A annually, as necessary, to reflect downward adjustments to their Base Tax Revenue by deleting the original Base Tax Revenue Amount for each terminating Vehicle Dealer.

Base Tax Revenue does not include sales tax revenue received by the COUNTY from the City of Folsom pursuant to a separate agreement that was entered into prior to the effective date of this agreement.

(d) "Adjusted Base Tax Revenue" means the reduced level of the CITY's or COUNTY's Base Tax Revenue proportionate to the amount of Base Tax Revenue that is attributable to a particular Vehicle Dealer who terminates its automobile dealership within the CITY or COUNTY because it goes out of business, relocates outside of the CITY or COUNTY, or is subject to incorporation or annexation by another city.

(e) "Vehicle Dealer" means a retailer who now sells or in the future will sell new or used cars or trucks within the CITY or COUNTY who is also a "dealer" as defined by Vehicle Code Section 285, but shall not include Mel Rapton Honda if the parties have concurrently entered into a separate agreement regarding said business entity, or Asbury Sacramento Imports, LLC, dba Mercedes Benz of Sacramento, if this business is included in said separate agreement as a subtenant of Mel Rapton Honda. For purposes of this subsection, "cars" include vans that are sold primarily as passenger vehicles, and "trucks" include pickup trucks and cargo vans with a cargo capacity of one ton or less.

(f) "New Vehicle Dealer" means a Vehicle Dealer who commences doing business on a Property within the CITY or COUNTY after the Base Year.

(g) "Property" means the situs within the unincorporated area of the COUNTY or in the territorial limits of the CITY where a Vehicle Dealer has established a car or truck dealership.

3. **General Purpose of Agreement.** The general purpose of this Agreement is to devise a fair and equitable sharing of the Sales Tax Revenue generated from Vehicle Dealers operating now or in the future within the unincorporated territory of COUNTY or within the territorial limits of CITY as well as to set forth the intention of the CITY and COUNTY to cooperate regarding the development and implementation of a strategy to assist and support Vehicle Dealers to address the economic changes occurring within their industry.

4. **Sharing of Sales Tax Revenues.**

(a) On and after the effective date of this Agreement, the COUNTY and CITY shall each:

(1) retain their respective Base Tax Revenue amounts without regard to the future location of the Vehicle Dealer to which such Base Tax Revenue is attributable provided that such future location is within the unincorporated territory of COUNTY or within the territorial limits of CITY; and

(2) share equally in each party's Excess Sales Tax Revenue.

(b) For purposes of Subsection (a)(2), Sales Tax Revenue from a New Vehicle Dealer shall be shared equally only to the extent that the total Sales Tax Revenue that a party derives from all New Vehicle Dealer together with all other Sales Tax Revenues it collects, exceeds the that party's Base Tax Revenue or Adjusted Base Tax Revenue amount. In other words, a party is not required to share any Sales Tax Revenues until its total Sales Tax Revenue for a given period exceeds the lesser of its Base Tax Revenue or Adjusted Base Tax Revenue amount for that same period.

5. **Procedure for Allocation of Sales Tax Revenue.**

(a) General. The Sales Tax Revenue is collected by the State Board of Equalization and

remitted to the CITY and to COUNTY on a quarterly basis. On and after the effective date of this Agreement, CITY and COUNTY shall, on a quarterly basis, determine and pay the net amount each party owes the other pursuant to this Agreement. For each quarter, each party shall retain Sales Tax Revenue collected in the quarter up to the lower of their respective Base Tax Revenue or Adjusted Base Tax Revenue amount and shall owe to the other party fifty percent (50%) of the Sales Tax Revenue received by each party during the quarter which is in excess of the lower of the Base Tax Revenue or Adjusted Base Tax Revenue for that quarter (the "Excess Sales Tax Revenue").

(b) Comparison to the Base Tax Revenue Amount. Each quarter the CITY and COUNTY shall calculate the Sales Tax Revenue from all Vehicle Dealers in their respective jurisdictions, including Sales Tax Revenue derived from any New Vehicle Dealers. If the sum of that calculation is equal to or less than the Base Tax Revenue (or Adjusted Base Tax Revenue) amount for that party, there is no Excess Sales Tax Revenue to report. However, if the sum of that calculation is more than the Base Tax Revenue (or Adjusted Base Tax Revenue) amount for that party for the subject quarter, Excess Sales Tax Revenue shall be reported to the other party to the extent that Sales Tax Revenue exceeds the lesser of the Base Tax Revenue or Adjusted Base Tax Revenue amount. In other words, if a party's Sales Tax Revenue falls below its Base Tax Revenue (or Adjusted Base Tax Revenue) amount, it can retain any Sales Tax Revenue from "new growth" from its existing Vehicle Dealers and New Vehicle Dealers until it collects enough sales tax revenue to reach the lesser of its Base Tax Revenue or Adjusted Base Tax Revenue amount. The calculation under this subsection shall not include increases in Sales Tax Revenue attributable to tax-rate increases that become effective after November 4, 2008.

(c) Exchange of Information. Three months after the calendar quarter during which the Sales Tax Revenue was actually generated, the parties shall inform each other of the amount of Excess Sales Tax Revenue each owes the other for the subject quarter. Upon receipt of this information from the other party, each party shall offset the amount the other party owes it against the amount that it owes the other party, to determine the net excess amount that is owed by one party to the other party (the "Net Quarterly Payment"). The Net Quarterly Payment shall be due from the owing party at the end of the month which is four months after the calendar quarter during which the Sales Tax Revenue was actually generated. The Net Quarterly Payments schedule shall be consistent with the following chart:

| Quarter | Collection Period | Payment Due |
|---|---|---|
| 1st Qtr | Jan - March | July 31st |
| 2nd Qtr | April - June | Oct 31st |
| 3rd Qtr | July - Sept | Jan 31st |
| 4th Qtr | Oct - Dec | April 30th |

(d) Recovery of Underpayments. CITY and COUNTY shall each provide the other with a report with every quarterly remittance of Sales Tax Revenue that documents the total amount of such revenue received during that quarterly period. Either CITY or COUNTY shall be entitled at any time to conduct an audit at their own expense of the Excess Sales Tax Revenue received by the other party. In the event that this audit demonstrates that the CITY or COUNTY has been underpaid during any quarter by more than five percent (5%), the party which made the underpayment shall pay the other party the amount of the underpayment, and in addition shall pay interest on such amount at a rate equal to the rate of interest the CITY has earned on its Investment Pool during the period of underpayment.

**6. Cost Recovery.**

(a) If either CITY or COUNTY wants to incur certain costs or provide financial assistance to encourage Vehicle Dealers to remain within a given jurisdiction, or to attract Vehicle Dealers (other than those currently located within the CITY or within the unincorporated territory of the COUNTY) to locate within a given jurisdiction, the party desiring to incur such costs or provide such financial assistance (the "providing party") may request the other party to reimburse such costs (the "reimbursing party"), in whole or in part, in accordance with this section. Such costs may include, but are not limited to, costs for construction of infrastructure, and permitted direct financial assistance for construction of necessary infrastructure or renovations.

(b) During the term of this Agreement, either CITY or COUNTY shall notify the other of its intention to incur costs pursuant to Subsection 6(a). The providing party shall submit to the other party a Reimbursement Agreement consistent with the exemplar set forth in Exhibit B, attached hereto and

incorporated herein by this reference, and shall provide the other party with all requested documentation regarding the amount or value of such costs or financial assistance. The parties agree to negotiate in good faith to reach agreement on the amount or value of such costs or financial assistance that should be reimbursed by the other party. Failure to reach agreement shall be subject to the dispute resolution provisions of this Agreement.

(c) Negotiations under Subsection 6(b), shall include, but are not limited to, the following issues:

(1) Whether the entire scope of the proposed expenses are reasonable and necessary to attract or retain the subject Vehicle Dealer;
(2) Whether there are less expensive alternatives available;
(3) By how much future Sales Tax Revenue (i) is expected to increase for the reimbursing party if the expenditure is made by providing party, taking into account the timing of these revenue streams; or (ii) is expected to decrease for the reimbursing party if the proposed expenditure is not made by providing party, taking into account the timing of these revenue streams. The parties shall provide appropriate documentation to support their contentions;
(4) Whether the amount agreed upon to be reimbursed will be adjusted to cover unexpected cost-overruns;
(5) Whether any expenditures made by the providing party prior to approval by the reimbursing party ("Early Expenditures") will be reimbursed, taking consideration the necessity of making the Early Expenditure; and
(6) Whether there should be a maximum amount of cumulative unpaid reimbursement amount ("reimbursement ceiling") that will be permitted to accumulate for each party.

(d) Upon determination of the amount of reimbursement, such amount shall be recovered by the providing party, together with interest at the average rate of interest the City earned on its Investment Pool in the five years immediately preceding incurring such cost or paying the financial assistance. Such recovery shall be made as an off-set from the Sales Tax Revenue attributable to the Vehicle Dealer for which the costs were incurred or the financial assistance was provided, which is in excess of any Base Tax Revenue that is attributable to such Vehicle Dealer or upon agreement between the City and County recovery shall be made as an off-set from the aggregate Excess Sales Tax Revenue.

(e) CITY and COUNTY acknowledge the provisions of Government Code Section 53084 relative to providing incentives in prescribed circumstances to Vehicle Dealers, and to the extent those provisions may be applicable to any costs incurred or financial assistance provided hereunder, the parties hereby waive the provisions of Section 53084 as to each other.

(f) For purposes of this Section 6, the terms CITY and COUNTY include their respective redevelopment agencies.

**7. <u>Dispute Resolution</u>.**

(a) <u>Inadmissibility</u>. Should any disputes arise as to the performance of this Agreement, COUNTY and CITY agree to use the dispute resolution process set forth below. All conduct, testimony, statements or other evidence made or presented during the meeting described in subsection 7(b) shall be confidential and inadmissible in any subsequent arbitration proceedings brought to prove liability for any claimed breach or damages which are the subject of the dispute resolution process.

(b) <u>Initiation of Process</u>. COUNTY or CITY may initiate the dispute resolution process by submitting written notification to the other of a potential dispute concerning the performance of this Agreement. This written notification shall state what is in dispute, shall include all supporting documentation, and shall request a meeting between the County Executive and the City Manager, or their respective designees, to determine whether a resolution of the disagreement is possible without third party intervention. This meeting shall be scheduled to take place within thirty (30) working days of receipt of the written notification of the dispute. At the meeting, the respective representatives of the COUNTY and the CITY shall attempt to reach an equitable settlement of the disputed issue(s).

(c) <u>Binding Arbitration</u>. If the meeting provided for in subsection 7(b) fails to fully resolve the dispute, the matter shall then be submitted by either party to the American Arbitration Association ("Arbitrator") to appoint a single, neutral arbitrator for a decision. The arbitration shall be conducted pursuant to the procedures set forth in Chapter 3 (commencing with Section 1282) of Title 9 of the

California Code of Civil Procedure. The Arbitrator's decision shall be based on the following factors:

(1) evidence relevant to the scope of the issue being decided;
(2) timeliness of raising the issue at hand;
(3) whether the moving party has met its burden of persuasion; and
(4) any other factors the Arbitrator deems appropriate.

The matter shall be heard by the Arbitrator within forty five 45 days from one party serving a Notice of Request for Arbitration on the other party and final decision by the Arbitrator must be made within thirty 30 days from the day upon which the arbitration hearing is completed. The arbitration hearing date shall be established by the Arbitrator in accordance with the Code of Civil Procedure section 1282.2. The Arbitrator shall prepare in writing and provide to the parties factual findings and the reasons on which the decision of the Arbitrator is based as described in Code of Civil Procedure sections 1283.4 and 1283.6.

The decision of the Arbitrator shall be controlling between the CITY and the COUNTY and shall be final. Except as provided in Code of Civil Procedure sections 1286.2 and 1286.4, neither party shall be entitled to judicial review of the Arbitrator's decision. The party against whom the award is rendered shall pay any monetary award and/or comply with any other order of the Arbitrator within sixty (60) days of the entry of judgment on the award.

(d) Costs. The parties shall share equally in the costs and fees associated with the Arbitrator's fees and expenses. At the conclusion of the arbitration, the prevailing party, as determined by the Arbitrator, shall be entitled to reimbursement by the other party for the prevailing party's share of the Arbitrator's fees and expenses incurred in connection with the arbitration. The awarded arbitrator's fees and expenses shall be remitted to the prevailing party within thirty (30) days of the Arbitrator's decision. Each party shall bear its own costs, expenses and attorney's fees and no party shall be awarded its costs, expenses, or attorney's fees incurred in the dispute resolution process.

**8. Mutual Defense of Agreement.** If the validity of this Agreement is challenged in any legal action by a party other than COUNTY or CITY, then COUNTY and CITY agree to defend jointly against the legal challenge and to share equally any award of costs, including attorney's fees, against COUNTY, CITY, or both.

**9. Waiver of Retroactive Recovery.** If the validity of this Agreement is challenged in any legal action CITY and COUNTY hereby waive any right to the retroactive recovery of any Sales Tax Revenue transferred pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction.

**10. Term.**

(a) This Agreement shall become effective upon its approval by the governing bodies of each party and shall remain in effect until terminated by mutual consent of both the CITY and the COUNTY.

(b) Notwithstanding Subsection (a), this Agreement shall not become effective unless both CITY and COUNTY approve that separate agreement referenced in Subsection 2(c) of this Agreement.

(c) In the event either party terminates this Agreement, the terminating party shall repay to the other, prior to termination, an amount equaling all Sales Tax Revenue which would have otherwise accrued to the non-terminating party but for this Agreement, together with interest thereon at a rate equal to the average rate of interest the CITY has earned on its investment pool for the two years immediately preceding termination.

**11. Modification.** The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both the COUNTY and CITY.

**12. Entire Agreement.** With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between COUNTY and CITY except as otherwise provided herein.

**13. Notices.** All notices, requests, certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered

by first class mail to the respective parties at the following addresses:

COUNTY
County Executive
County of Sacramento
700 H Street, Room 7650
Sacramento, CA 95814

CITY
City Manager
City of Sacramento
915 "I" Street, 5th Floor
Sacramento, CA 95814

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three (3) days after mailing, whichever is earlier.

**14. Approval, Consent, and Agreement.** Wherever this Agreement requires a party's approval, consent, or agreement, the party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

**15. Construction of Captions.** Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in the County of Sacramento, State of California, on the dates set forth above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

_____
Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST:_____
Clerk, Board of Supervisors

Approved As to Form:

_____
County Counsel

CITY OFSACRAMENTO, a municipal corporation

By: _____
Mayor

(SEAL)

ATTEST: _____
City Clerk

Approved As to Form:

_____
City Attorney

**EXHIBIT A**

Schedule of Vehicle Dealers' Base Tax Revenue

| Vehicle Dealer | Base Tax Revenue Amount |
|---|---|

CITY:

| Vehicle Dealer | Base Tax Revenue Amount |
|---|---|

COUNTY:

# EXHIBIT B

## Reimbursement Agreement Exemplar

### REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (hereinafter "Agreement") is made and executed as of _____, 200_, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California ("COUNTY"), and the CITY OF SACRAMENTO, a municipal corporation ("CITY").

### RECITALS

A. CITY and COUNTY mutually desire to foster attraction and retention of Vehicle Dealers which exist or may exist within both the unincorporated territory of COUNTY as well as within the territory of CITY;

B. In order to attract or retain Vehicle Dealers, CITY and COUNTY may from time to time find it necessary to incur certain costs to construct infrastructure or otherwise make property within their respective jurisdictions suitable for Vehicle Dealers, or to provide financial assistance in order to make it economically feasible for Vehicle Dealers to locate within the CITY or COUNTY;

C. Because CITY and COUNTY have executed a separate agreement to share with each other tax revenues derived from Vehicle Dealers doing business in their respective jurisdictions (the "Joint Support of Vehicle Dealers Agreement"), CITY and COUNTY will mutually benefit from incurring costs or providing financial assistance to attract or retain Vehicle Dealers to their jurisdictions;

D. To the extent that such costs or financial assistance mutually benefits CITY and COUNTY, the parties desire to allow the party who incurs such costs or provides such financial assistance (the "providing party") to be able to seek reimbursement of those costs, in whole or in part, from the other party.

CITY and COUNTY hereby agree as follows:

1. The facts set forth in the foregoing recitals are true and are hereby incorporated into this Agreement.

2. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

   (a) "Sales Tax Revenue" means the revenue from the sales and use tax levied and received by the CITY and COUNTY pursuant to the "Bradley-Burns Uniform Local Sales and Use Tax Law" (currently one percent), or any successor statutory provision, that is collected from sales occurring on the Property. "Sales Tax Revenue" does not include any sales tax revenue resulting from a tax-rate increase in the CITY or COUNTY that becomes effective after the effective date of this agreement.
   (b) "Excess Sales Tax Revenue" means the amount of Sales Tax Revenue the CITY or COUNTY derives from Vehicle Dealers doing business in their respective jurisdictions during

a specified time period, which is in excess of the lesser of their respective Base Tax Revenue amount or Adjusted Base Tax Revenue amount for the same time period.
(c) "Base Tax Revenue" means the amount of Sales Tax Revenue derived in the year ____ (Base Year) by either CITY or COUNTY from Vehicle Dealers conducting business in their respective jurisdictions during the Base Year. Base Tax Revenue shall be calculated specific to each Vehicle Dealer, and for each party is the sum of all Sales Tax Revenues derived from all Vehicles Dealers doing business in their respective jurisdictions during the Base Year. Once those individual Base Tax Revenue amounts are determined, a schedule of Vehicle Dealers existing in the CITY and COUNTY during the Base Year and their respective original Base Tax Revenue amounts shall be listed in Exhibit "A", and attached hereto as an addendum and incorporated herein by this reference.
Once the CITY's and COUNTY's respective Base Tax Revenue amounts are established in the Base Year, their Base Tax Revenue amounts shall remain at those same amounts for all future years unless required to be adjusted downward. Base Tax Revenue for a particular Vehicle Dealer shall terminate if the dealership goes out of business or relocates its business to a jurisdiction outside of the CITY or COUNTY or into a city other than the CITY within COUNTY. A dealership that does not engage in the sale of cars or trucks for a period of six months or more is deemed to have gone out of business. The Base Tax Revenue for a Vehicle Dealer shall also terminate if the Property of the dealership is located within an area that incorporates to form a new city, or if such area is annexed to a city other than the City of Sacramento. If the Base Tax Revenue for a particular Vehicle Dealer terminates, the CITY's or COUNTY's Base Tax Revenue amount shall be reduced by the proportionate amount that is attributable to said Vehicle Dealer (Adjusted Base Tax Revenue). The parties shall update Exhibit A annually, as necessary, to reflect downward adjustments to their Base Tax Revenue by deleting the original Base Tax Revenue Amount for each terminating Vehicle Dealer.
Base Tax Revenue does not include sales tax revenue received by the COUNTY from the City of Folsom pursuant to a separate agreement that was entered into prior to the effective date of this agreement.
(d) "Adjusted Base Tax Revenue" means the reduced level of the CITY's or COUNTY's Base Tax Revenue proportionate to the amount of Base Tax Revenue that is attributable to a particular Vehicle Dealer who terminates its automobile dealership within the CITY or COUNTY because it goes out of business, relocates outside of the CITY or COUNTY, or is subject to incorporation or annexation by another city.
(e) "Vehicle Dealer" means a retailer who now sells or in the future will sell new or used cars or trucks within the CITY or COUNTY who is also a "dealer" as defined by Vehicle Code Section 285, but shall not include Mel Rapton Honda if the parties have concurrently entered into a separate agreement regarding said business entity, or Asbury Sacramento Imports, LLC, dba Mercedes Benz of Sacramento, if this business is included in said separate agreement as a subtenant of Mel Rapton Honda. For purposes of this subsection, "cars" include vans that are sold primarily as passenger vehicles, and "trucks" include pickup trucks and cargo vans with a cargo capacity of one ton or less.
(f) "New Vehicle Dealer" means a Vehicle Dealer who commences doing business on a Property within the CITY or COUNTY after the Base Year.
(g) "Property" means the situs within the unincorporated area of the COUNTY or in the territorial limits of the CITY where a Vehicle Dealer has established a car or truck dealership.

3. If CITY or COUNTY wants to incur any costs or provide financial assistance (providing party) because it believes such costs are necessary to encourage Vehicle Dealers to remain within either party's jurisdiction, or to attract Vehicle Dealers to locate within either of their jurisdictions, and the providing party wants to later seek reimbursement from the other party

for such costs or financial assistance, in whole or in part, the providing party may request such reimbursement in accordance with this Agreement. For purposes of this paragraph, the terms CITY and COUNTY include their respective redevelopment agencies.

4. During the term of this Agreement, before incurring any cost or providing financial assistance to attract or maintain any Vehicle Dealer in its jurisdiction, the providing party shall notify the other party of its intention to incur such costs or provide financial assistance for that purpose. The providing party shall submit to the other party complete documentation of the actual dollar value of the costs or financial assistance it expects to incur, along with its argument as to how and to what extent such costs or financial assistance benefit the other party.

5. (a) Based on the information submitted by the providing party under Paragraph 4, before the providing party incurs any costs or provides any financial assistance the parties agree to negotiate in good faith to reach agreement on what portion, if any, of such costs or financial assistance should be reimbursed by the other party. If the providing party incurs such costs or provides financial assistance to a Vehicle Dealer prior to following the procedures set forth in this Paragraph 5 (the "Early Expenditures"), it does so at the risk of not having those early expenditures reimbursed. Where time is of the essence in making the early expenditures, that fact shall be considered in the determination whether the early expenditures should be reimbursable.

   (b) Pursuant to Subparagraph 5(a), the parties shall negotiate the following issues.
      (1) Whether the entire scope of the proposed expenses are reasonable and necessary to attract or retain the subject Vehicle Dealer;
      (2) Whether there are less expensive alternatives available;
      (3) By how much future Sales Tax Revenue is (i) is expected to increase for the reimbursing party if the expenditure is made by providing party, taking into account the timing of these revenue streams; or (ii) expected to decrease for the reimbursing party if the proposed expenditure is not made by providing party, taking into account the timing of these revenue streams. The parties shall provide appropriate documentation to support their contentions;
      (4) Whether the amount agreed upon to be reimbursed will be adjusted to cover unexpected cost-overruns;
      (5) Whether any expenditures made by the providing party prior to approval by the reimbursing party ("Early Expenditures") will be reimbursed. For purposes of this subsection, the reimbursing party shall take into consideration the necessity of making the Early Expenditure; and
      (6) Whether there should be a maximum amount of cumulative unpaid reimbursement amount ("reimbursement ceiling") that will be permitted to accumulate for each party.
      (7) Whether such recovery (i) shall be made as an off-set from the Excess Sales Tax Revenue of the providing Party that is attributable to the Vehicle Dealer for which the costs were incurred or the financial assistance was provided, or (ii) shall be made as an off-set from the aggregate Excess Sales Tax Revenue of the providing Party.

   (c) Within ten (10) days of after final approval of the agreement reached between the parties under Subparagraph 5(a) as to what amount of the proposed expenditure will be reimbursed, the reimbursing party shall provide a signed written statement to the providing party stating the amount of the proposed expenditure and early expenditures that it will reimburse and any conditions the parties have agreed to. The providing party

may act in reliance on that written statement to enforce such reimbursement under the terms of this Agreement.

(d) Failure to reach agreement under Subparagraph 5(a) and any subsequent disagreement over the terms of the written statement described in Subparagraph 5(c) shall be subject to the dispute resolution provisions of the Joint Support of Vehicle Dealers Agreement.

6. Upon determination of the amount of reimbursement, such amount shall be recovered by the providing party, together with interest at the average rate of interest the City earned on its Investment Pool in the five years immediately preceding incurring such cost or paying the financial assistance. If reimbursement is agreed be provided pursuant to Paragraph 5, interest on the reimbursement amount shall commence running (i) for early expenditures, on the date the reimbursing party provides the signed written statement required under Subparagraph 5(c) to the providing party, or (ii) for all other reimbursable expenditures, when the providing party actually incurs the reimbursable costs or make the reimbursable financial-assistance payment. The reimbursement of these costs shall be made as an off-set against the Sales Tax Revenue under the Joint Support of Vehicle Dealers Agreement, which is attributable to the Vehicle Dealer or upon agreement between the City and County recovery shall be made as an off-set from the aggregate Excess Sales Tax Revenue.

7. CITY and COUNTY acknowledge the provisions of Government Code Section 53084 regarding the providing of incentives in prescribed circumstances to Vehicle Dealers, and to the extent those provisions may be applicable to any costs incurred or financial assistance provided hereunder, the parties hereby waive the provisions of Section 53084 as to each other. If the parties are of the opinion that those provisions may prohibit any costs incurred or financial assistance provided hereunder with respect to any other city or county, the parties will have the option to do one of the following: (i) not to reimburse the costs incurred or the financial assistance rendered; or (ii) to reimburse the providing party, and the parties will then jointly pay for any litigation costs to defend the reimbursement if challenged.

8. The parties acknowledge that in carrying out the terms of this Agreement, each party is responsible for complying with their own rules governing completion of proposed projects, such as competitive bidding, payment of prevailing wages, environmental review, etc. Each party shall be responsible for obtaining all required approvals required to execute this Agreement, including City Council or Board of Supervisor approval for reimbursement amounts that exceed the authority of the City Manager or the County Executive Officer, respectively.

9. This Agreement supersedes every antecedent and concurrent oral and/or written declaration and/or understanding by and between CITY and COUNTY pertaining to reimbursement of a providing party for costs incurred or financial assistance provided to retain or attract Vehicle Dealers to the CITY or COUNTY to the extent that such oral and/or written declaration and/or understanding is inconsistent with the terms of this Agreement.

10. The terms of this Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns.

11. The parties shall indemnify, defend, and hold harmless each other, their officers, agents, and employees from and against any and all loss, cost, damage, expense, claim, suit, demand, or liability of any kind or character, including but not limited to, reasonable attorney fees, arising from or relating to any act, omissions, or negligence of , its officers, agents, or

employees in the performance of, or otherwise in connection with any costs incurred or financial assistance provided to retain or attract Vehicle Dealers to the CITY or COUNTY, or reimbursement thereof, undertaken pursuant to this Agreement.

12. Any notice, invoice, or other communication that either party may or is required to give the other shall be in writing, and shall be sent either by certified U.S. Mail, return receipt requested, or by nationally recognized overnight delivery service, or by facsimile to the following address:

**To: COUNTY**

County Executive
County of Sacramento
700 H Street, Room 7650
Sacramento, CA 95814

**To: CITY**

City Manager
City of Sacramento
915 "I" Street, 5th Floor
Sacramento, CA 95814

**COUNTY OF SACRAMENTO**

COUNTY ADMINISTRATIVE OFFICER

**APPROVED AS TO FORM:**

COUNTY COUNSEL

**ATTEST:**

CLERK OF THE BOARD OF SUPERVISORS

**CITY OF SACRAMENTO**

CITY MANAGER

CITY ATTORNEY

CITY CLERK

**Exhibit B to Attachment 1**

**SALES TAX SHARING AGREEMENT**
**BETWEEN**
**THE COUNTY OF SACRAMENTO AND THE CITY OF SACRAMENTO,**
**RELATING TO 3701 FULTON AVENUE**

This SALES TAX SHARING AGREEMENT (hereinafter "Agreement") is made and executed in duplicate this ____ day of ____, 2008, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and the CITY OF SACRAMENTO, a municipal corporation (hereinafter referred to as "CITY").

**RECITALS**

A. CITY owns real property within the CITY that is generally located at 3701 Fulton Avenue and which comprises approximately 17.5 net acres or 20.3 gross acres (the "Property", as defined herein).

B. CITY has entered into a lease of the Property with Rapton Investment Group LLC ("Rapton") for purposes of enabling Rapton to sublease the Property to one or more parties for purposes of operating one or more new and used vehicle dealerships ("Lease"). The Lease contemplates that Rapton will sublease the property to Rapton Inc., which does business as Mel Rapton Honda, and to Asbury Sacramento Imports, LLC, dba Mercedes Benz of Sacramento. Mel Rapton Honda currently operates a new and used car dealership within the unincorporated area of the COUNTY and intends to relocate that dealership from its current location to the Property.

C Government Code Section 53084 prohibits any local agency from providing any form of financial assistance to a vehicle dealer that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency within the same market area. There is currently an actual controversy between the CITY and the COUNTY with respect to the applicability of Government Code Section 53084 to the Lease. COUNTY contends that the financial terms and conditions of the Lease constitute a form of financial assistance prohibited by Government Code Section 53084 in that it provides for below market lease rates. The CITY denies that the Lease violates the provisions of Government Code Section 53084.

COUNTY and CITY hereby agree as follows:

**1. Recitals**. The facts set forth in the foregoing recitals are true and are hereby incorporated into this Agreement.

**2. Definitions**. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "Property" shall mean the real property that is more particularly described and depicted in Exhibit "A" which is attached hereto and incorporated herein.

(b) "Sales Tax Revenue" shall mean the revenue from the sales and use tax levied and received by the CITY pursuant to the "Bradley-Burns Uniform Local Sales and Use Tax Law", or any successor statutory provision, that is collected from sales occurring on the Property.

(c) "Vehicle dealer"" shall mean Mel Rapton Honda or Asbury Sacramento Imports, LLC, dba Mercedes Benz of Sacramento.

**3. General Purpose of Agreement**. The general purpose of this Agreement is to devise a fair and equitable sharing of the Sales Tax Revenue generated from vehicle dealers.

**4. Sharing of Sales Tax Revenues**. On and after the effective date of this Agreement, the COUNTY and CITY shall share equally in all of the Sales Tax Revenue until the Property is no longer used by

the vehicle dealers defined herein. .

**5. Procedure For Allocation of Sales Tax Revenue.**

(a) The Sales Tax Revenue is collected by the State Board of Equalization and remitted to the CITY on a quarterly basis. On and after the effective date of this Agreement, CITY shall remit to COUNTY on a quarterly basis 50% of the Sales Tax Revenue received by the CITY during the preceding quarter. These quarterly payments shall be due at the end of the month which is four months after the calendar quarter during which the Sales Tax Revenue was actually generated. This quarterly payment schedule shall be consistent with the following chart:

| Quarter | Collection Period | Payment Due |
|---|---|---|
| 1st Qtr | Jan - March | July 31st |
| 2nd Qtr | April - June | Oct 31st |
| 3rd Qtr | July - Sept | Jan 31st |
| 4th Qtr | Oct - Dec | April 30th |

(b) In addition to the remittance of 50% of the Sales Tax Revenue as provided for in subsection (a) above, the CITY shall also remit such interest earned by the CITY on the COUNTY's share of the Sales Tax Revenue during the period of time that the CITY held the COUNTY's share of such revenue. This interest shall be calculated on the basis of the earnings of the City's Pool A and average daily cash balances, and shall be due and owing for the subject period from the time the CITY receives the Sales Tax Revenue from the state for said period until the CITY remits the COUNTY's share of the Sales Tax Revenue to the COUNTY.

(c) CITY shall provide COUNTY with a report with every quarterly remittance of Sales Tax Revenue that documents the total amount of such revenue received by the CITY during that quarterly period. COUNTY shall be entitled at any time to conduct an audit at its expense of the Sales Tax Revenue received by CITY. In the event that this audit demonstrates that the COUNTY has been underpaid during any quarter by more than five percent (5%), the CITY shall pay the COUNTY the amount of the underpayment, and in addition, shall pay interest on such amount at a rate equal to the rate of interest the City has earned on its Investment Pool during the period of underpayment.

**6. Dispute Resolution.**

(a) Inadmissability. Should any disputes arise as to the performance of this Agreement, COUNTY and CITY agree to use the dispute resolution process set forth below. All conduct, testimony, statements or other evidence made or presented during the meeting described in subsection 6(b) shall be confidential and inadmissible in any subsequent arbitration proceedings brought to prove liability for any claimed breach or damages which are the subject of the dispute resolution process.

(b) Initiation of Process. COUNTY or CITY may initiate the dispute resolution process by submitting written notification to the other of a potential dispute concerning the performance of this Agreement. This written notification shall state what is in dispute, shall include all supporting documentation, and shall request a meeting between the County Executive and the City Manager, or their respective designees, to determine whether a resolution of the disagreement is possible without third party intervention. This meeting shall be scheduled to take place within thirty (30) working days of receipt of the written notification of the dispute. At the meeting, the respective representatives of the COUNTY and the CITY shall attempt to reach an equitable settlement of the disputed issue(s).

(c) Binding Arbitration. If the meeting provided for in subsection 6(b) fails to fully resolve the dispute, the matter shall then be submitted by either party to the American Arbitration Association ("Arbitrator") to appoint a single, neutral arbitrator for a decision. The arbitration shall be conducted pursuant to the procedures set forth in Chapter 3 (commencing with Section 1282) of Title 9 of the California Code of Civil Procedure. The decision of the Arbitrator shall be controlling between the CITY and the COUNTY and shall be final. Except as provided in Code of Civil Procedure Sections 1286.2 and 1286.4, neither party shall be entitled to judicial review of the Arbitrator's decision. The party against

whom the award is rendered shall pay any monetary award and/or comply with any other order of the Arbitrator within sixty (60) days of the entry of judgment on the award.

(d) Costs. The parties shall share equally in the costs and fees associated with the Arbitrator's fees and expenses. At the conclusion of the arbitration, the prevailing party, as determined by the Arbitrator, shall be entitled to reimbursement by the other party for the prevailing party's share of the Arbitrator's fees and expenses incurred in connection with the arbitration. The awarded arbitrator's fees and expenses shall be remitted to the prevailing party within thirty (30) days of the Arbitrator's decision. Each party shall bear its own costs, expenses and attorney's fees and no party shall be awarded its costs, expenses, or attorney's fees incurred in the dispute resolution process.

**7. Mutual Defense of Agreement.** If the validity of this Agreement is challenged in any legal action by a party other than COUNTY or CITY, then COUNTY and CITY agree to defend jointly against the legal challenge and to share equally any award of costs, including attorneys fees, against COUNTY, CITY, or both.

**8. Waiver of Retroactive Recovery.** If the validity of this Agreement is challenged in any legal action brought by either CITY or any third party, CITY hereby waives any right to the retroactive recovery of any Sales Tax Revenue transferred to the COUNTY pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction. The remedy available in any such legal action shall be limited to a prospective invalidation of the Agreement.

**9. Term.** This Agreement shall become effective upon its approval by the governing bodies of each party and shall remain in effect until terminated by mutual consent of both the CITY and the COUNTY.

**10. Modification.** The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both the COUNTY and CITY.

**11. Entire Agreement.** With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between COUNTY and CITY except as otherwise provided herein.

**12. Notices.** All notices, requests, certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

| COUNTY | CITY |
|---|---|
| County Executive<br>County of Sacramento<br>700 H Street, Room 7650<br>Sacramento, CA 95814 | City Manager<br>City of Sacramento<br>915 "I" Street, 5th Floor<br>Sacramento, CA 95814 |

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

**13. Approval, Consent, and Agreement.** Wherever this Agreement requires a party's approval, consent, or agreement, the party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

**14. Construction of Captions.** Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in the county of Sacramento, State of California, on the dates set forth above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By _____
Chairperson of the Board of Supervisors

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors

Approved As to Form:

_____
County Counsel

CITY OFSACRAMENTO, a municipal corporation

By: _____
Mayor

(SEAL)

ATTEST: _____
City Clerk

Approved As to Form:

_____
City Attorney