

RESOLUTION NO. 2016-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC.

WHEREAS, the City of Ontario ("City") and Mark Christopher Chevrolet, Inc. ("Mark Christopher") have negotiated an Operating Covenant Agreement ("Agreement") for the retention of an auto dealership within the City; and

WHEREAS, pursuant to that Agreement Mark Christopher is committed to continue operating an auto dealership in the City for an additional ten year period; and

WHEREAS, Mark Christopher is also covenanted to, among other things, designate the City as the point of sale for certain transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to fifty percent (50%) of the sales tax, above a base sales tax amount, generated by transactions allocated to the auto dealership; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the allocation of funds to Mark Christopher pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the retention of the auto dealership will provide numerous public benefits including:

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- Mark Christopher is a highly successful auto dealership who will be committed to maintaining the auto dealership in the City of Ontario which will ensure the retention and creation of jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the auto dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area; and
- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and

- Retaining Mark Christopher's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on February 2, 2016 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council will direct staff to file a categorical exemption with the County of San Bernardino for this location upon adoption of this Resolution.

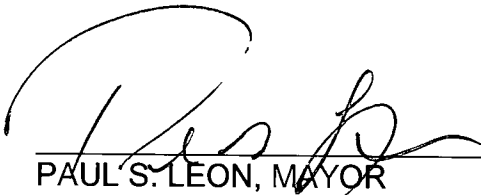
SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of February 2016.



PAUL S. LEON, MAYOR

ATTEST:



VICKI KASAD, MMC, ASSISTANT CITY CLERK

APPROVED AS TO LEGAL FORM:



BEST BEST & KRIEGER LLP
CITY ATTORNEY

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083

FOR AN OPERATING COVENANT AGREEMENT

BY AND BETWEEN

CITY OF ONTARIO

AND

MARK CHRISTOPHER CHEVROLET, INC.

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and Henry Schein, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on February 2, 2016.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

- 1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

The Agreement is with Mark Christopher Chevrolet, Inc., a Delaware corporation. Mark Christopher Chevrolet, Inc. is the sole beneficiary of the economic development subsidy.

Mark Christopher Chevrolet, Inc.

2131 E. Convention Center Way

Ontario, CA 91764

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

If the Agreement is approved by the City Council, the start date of the economic development subsidy for the Third Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant will be for the period commencing April 1, 2018 and ending March 31, 2028 ("Fourth Covenant Period"), unless extended pursuant to the terms of the Agreement. If the extended term is exercised, the subsidy shall continue for an additional 10 years and will end no later than March 31, 2038.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy is calculated based on Mark Christopher Chevrolet, Inc.'s sales tax revenue received by the City during a Covenant Period in an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales to the location in excess of the base, \$700,000 per year, sales tax amount for each year during the eligibility period.

The City estimates that the total amount of the expenditure of public funds as a result of the economic development subsidy will be approximately \$15,000,000.

4. A statement of the public purposes for the economic development subsidy.

Mark Christopher Chevrolet, Inc. ("Mark Christopher") is a highly successful auto dealership, which generates substantial annual sales tax for the City. Mark Christopher has been and remains one of the City's top sales tax generators on a yearly basis. The continued growth and prosperity of this auto center is of most importance to the City. Through this additional revenue, the City is able to fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years. Through this Agreement, Mark Christopher will be committed to retaining and operating their auto dealership in the City for transacting auto sales.

The public purpose of the economic development subsidy includes, but is not limited to, maintaining and creating jobs and stimulating the economic recovery of the Inland Empire. Mark Christopher has agreed to retain the auto dealership within the City for a period of not less than 10 years. The City has determined

that the retention of the auto dealership within the City will continue to generate substantial revenue for the City, retain jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years. Additionally, by having a company like Mark Christopher remain in the City, the City will be adding diversity to and generating new opportunities for economic growth.

Further, the commitment to stay in Ontario serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the retention of the auto dealership within the City will result in an approximate increase of sales tax revenue by \$1.5 million per year, minus the covenant payments to be paid to Mark Christopher Chevrolet, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes, in an approximate amount of \$50,000.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The retention of the auto dealership within the City is anticipated to result in the retention of approximately 200 jobs and the potential creation of new jobs over the term of the Agreement, as follows:

- 5 full-time jobs
- 5 part-time jobs