

TO: City Council  
FROM: James L. App, City Manager *JL*  
SUBJECT: Economic Development - San Luis Bay Motors  
DATE: January 5, 1999

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**NEEDS:** For the City Council to consider an Economic Development Agreement with San Luis Bay Motors.

- FACTS:**
1. The City's Economic Development Strategy targets expansion of local commerce.
  2. The City's Financial Assistance Policy provides a mechanism whereby the City may assist new or expanding businesses, which fulfill key objectives of the Economic Strategy, with the cost of City building/development fees and/or installation of public improvements.
  3. San Luis Bay Motors, a new & used car dealership presently located in San Luis Obispo, plans to relocate to Paso Robles.
  4. The dealership will be built at 2700 Theatre Drive on 3.79 acres of raw land.
  5. San Luis Bay Motors seeks financial assistance to offset the cost of certain City fees and public improvements.
  6. The Council's Fiscal Committee has reviewed the proposed business relocation and development project. They recommend financial assistance as detailed in the attached Economic Development Agreement.

**ANALYSIS &**

**CONCLUSION:** The relocation of an established automobile dealership to Paso Robles is a significant addition to the City's regional commercial presence. It will increase the City's sales tax base. On both counts, it fulfills key objectives of the City's Economic Strategy and Financial Assistance Policy.

The attached Economic Development Agreement documents the Fiscal Committee's recommended assistance, as well as the owner's performance obligations. Financial assistance is offered in three parts: First, with the issuance of building permits, the City will waive up to \$50,000 in building/development fees. Second, following one full year of operation, if the dealership generates sufficient retail sales tax revenue for the City, it may be reimbursed up to \$30,000 for certain public improvements. And, third, after five years, up to \$50,000 may be reimbursed for certain deferred/installed public improvements if fifth year retail sales tax revenue increase by a like amount over first year sales, and owner has added a new major car dealership franchise to the Paso Robles site.

**POLICY**

**REFERENCE:** Economic Development Strategy; Financial Assistance Policy.

**FISCAL**

**IMPACT:** Income - New recurring sales tax revenue equal to 1% of all retail sales. Expense - Invest a maximum of \$130,000 over five years.

- OPTIONS:**
1. **Approve the Economic Incentive Agreement with San Luis Bay Motors and Authorize the Mayor to Execute the Agreement and Related Contingent Reimbursement Agreement.**
  2. **Amend, Modify or Reject the Option Above.**

**Attachment:** Economic Incentive Agreement  
Contingent Reimbursement Agreement

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF EL PASO DE ROBLES  
AND SAN LUIS BAY MOTORS**

**THIS ECONOMIC DEVELOPMENT AGREEMENT** (the "Agreement") is entered into this 6<sup>th</sup> day of January, 1999, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation organized and existing under the laws of the State of California (the "City") and SAN LUIS BAY MOTORS, a California corporation ("Owner").

**Recitals**

A. Owner is the owner and operator of a new & used car dealership and intends to expand its current operation and relocate its automobile dealership business on certain property to be acquired or leased by Owner for purposes of the development and construction of the automobile dealership facilities to be located at 2700 Theatre Drive (the "Property"), which is located within the City of El Paso de Robles. The proposed development and construction of the necessary facilities for and operation of the automobile dealership is referred to herein as the "Project."

B. Pursuant to the City's Economic Development Assistance Policy, City wishes to encourage and assist in the location and expansion of the facility, which will generate additional sales tax, property tax and employment opportunities within the City.

C. The City has determined that the proposed Project, if approved, will present certain public benefits and opportunities which are made possible by the parties entering into this Agreement. The Agreement will, among other things: (1) ensure the productive use of property and foster orderly growth and quality development in the City; (2) strengthen the City's economic base by providing a means of retaining existing sales tax revenues and existing jobs and providing the opportunity to increase its sales tax base and employment opportunities; (3) reduce uncertainties in planning and provide for the orderly development of the Project; (4) contribute to the provision of needed public improvements; and (5) provide for the reimbursement to Owner of costs for certain development fees and construction of public improvements in order to make development of the Project economically feasible and achieve the City's goals described in paragraph B., above.

D. Inasmuch as this Agreement provides for the participation of Owner in financing the public improvements required to carry out the project approvals for this Project, this Agreement constitutes a financing agreement within the meaning and scope of Government Code section 53511 in that it provides for a means of satisfying financing obligations for various public improvements and facilities to be owned by or maintained for the benefit of City and the public generally in the City's planning area.

NOW, THEREFORE, in consideration of the mutual covenants and promises of City and Owner, City and Owner agree as follows:

## Agreements

### Section 1. Parties

The City is a municipal corporation. The office of the City is located at 1000 Spring Street, Paso Robles 93446. "City" as used in this Agreement, includes the City of El Paso de Robles and any assignee of or success to its rights, powers and responsibilities.

Owner is San Luis Bay Motors, a California corporation. The Owner's offices for purposes of this Agreement are located at 2700 Theatre Drive, Paso Robles, California. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided. The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Owner. No voluntary or involuntary success in interest of Owner shall acquire any rights or powers under this Agreement.

### Section 2. Property

The Property is described in Exhibit A, attached hereto and incorporated herein by this reference.

### Section 3. Obligations Conditional

a. Owner acknowledges and agrees that the City's reimbursement obligations, as set forth in Section 5 below, are entirely contingent upon Owner's satisfaction of the conditions set forth in Section 6, below, and the City's reimbursement obligations, as set forth in Section 7 below, are entirely contingent upon Owner's satisfaction of the conditions set forth in Section 7, below.

b. The City acknowledges and agrees that Owner does not by this Agreement covenant to continue its business operations on the Property for any specified period of time, or maintain any particular level of employment on the Property. However, the continuation of such business operations is a condition to the City's obligations under this Agreement.

### Section 4. Lease and Development of the Property

Owner intends to lease the Property and to develop, or cause the development of, improvements on the Property, which shall include the development of facilities to house Owner's relocated and expanded new and used car dealership. Owner agrees that it will be responsible, at its sole cost and expense, for applying for and obtaining all

necessary environmental and land use approvals and making any submissions required by the City for the development and operation of the Project.

It is anticipated that in connection with the development of the Project, Owner will be required to install certain public improvements which include, but are not limited to, the installation and construction of the following improvements and related actions (collectively, the "Public Improvements"): submission of wastewater discharge permit application to the City; sewer lateral extended to serve the Project; installation of water backflow prevention device at each water service to the Property; arborist recommendations for any work around the existing oak trees on the Property; dedication of street right-of-way on Theater Drive, as approved by the City Engineer; installation of AC berm and drainage facilities south of the Property as approved by the City Engineer. The cost of such Public Improvements is estimated to exceed thirty nine thousand DOLLARS (\$39,000.00). Owner shall install all such required Public Improvements in accordance with all City requirements, standards and conditions, and maintain records and invoices of the costs of such Public Improvements, including evidence of payment therefor, and submit all such documentation to the City.

**Section 5. City Initial Obligations**

Subject to the satisfaction by Owner of all of the conditions described in Section 6., below, the City agrees as follows:

a. City agrees that, in consideration of the Owner's acquiring the Property and obtaining all approvals necessary for development of the Project improvements on the Property, that it shall waive a portion of the building permit fees to be paid by Owner in an amount not to exceed FIFTY THOUSAND DOLLARS (\$50,000).

b. City agrees to reimburse Owner for a portion of the costs actually incurred by the Owner for the construction and installation of the Public Improvements, until such reimbursement payments have reached a total aggregate amount of THIRTY THOUSAND DOLLARS (\$30,000), but in no event shall such reimbursement exceed the total cost of the Public Improvements. The amount of any such reimbursement shall be made at the following times and in the following amounts:

Within thirty (30) days of receipt by the City of four (4) full quarters of sales tax generated by Owner on the Property, City shall pay to Owner an amount equal to ONE PERCENT (1.0%) of the Sales Tax Generated from the Project (as defined below) pursuant to Sections 5a. & 5b above, to a maximum of \$80,000. As used herein, "Sales Tax Generated from the Project" shall mean that portion of the annual sales tax generated from the Owner's automobile dealership to be operated on the Property and allocated to the City.

## **Section 6. Conditions to Reimbursement**

Owner shall be entitled to receive a reimbursement payment for the costs for the Public Improvements under Section 5.b. if and only if the following conditions have been satisfied:

a. The Project has been completed in accordance with the Project approvals and the description set forth in Section 4. hereof, and the City has issued a Certificate of Occupancy for the improvements on the Property.

b. Owner is operating its new & used automobile dealership on the Property at the time such reimbursement is due.

c. The City has received one (1) full year of Sales Tax Generated from the Project equal to at least Eighty Thousand Dollars (\$80,000). In the event Sales Tax Generated from the Project is less than Eighty Thousand Dollars for the first year of operation, the amount of reimbursement to be paid to Owner by the City under Section 5.b shall be reduced on a dollar-for-dollar basis.

## **Section 7. Deferred Street Improvements**

In consideration of the Owner's development and operation of the Project, the City agrees to allow the Owner to delay the construction of certain street expansion improvements that the Owner would otherwise be required to construct in connection with the Project. Five (5) years following the issuance of a Certificate of Occupancy for the improvements to be constructed on the Property, the Owner shall be required to construct certain public improvements which shall include: the widening of Theatre Drive for the full frontage of the Property, to an engineering standard of 77 feet wide right-of-way, and construction and installation of new curb, gutter, sidewalk, pavement, streetlights and parkway landscaping, as approved by the City Engineer along such frontage (collectively, the "Deferred Street Improvements"). The cost of such Deferred Street Improvements is estimated to exceed one hundred thousand DOLLARS (\$100,000). Owner shall commence construction and installation of the Deferred Street Improvements within thirty (30) days following the fifth (5th) anniversary of the issuance of the Certificate of Occupancy referred to above, and shall diligently work to complete such construction and installation work within 180 days following commencement of construction. Owner shall construct and install all such required Deferred Street Improvements in accordance with all City requirements, standards and conditions, and maintain records and invoices of the costs of such Deferred Street Improvements, including evidence of payment therefor, and submit all such documentation to the City.

The City agrees to reimburse Owner for a portion of the costs actually incurred by the Owner for the construction and installation of the Deferred Street Improvements, up to a maximum amount of FIFTY THOUSAND DOLLARS (\$50,000), but in no event shall such reimbursement exceed the total cost of the Deferred Street Improvements.

The amount of any such reimbursement shall be made at the following times and in the following amounts:

Subject to the conditions set forth below, within thirty (30) days after completion of the Deferred Street Improvements and receipt by the City of evidence of the costs incurred by the Owner for such improvements, City shall pay to Owner an amount equal to ONE PERCENT (1%) of the incremental difference in the amount of Sales Tax Generated from the Project during the first (1st) full year of operation of the Project, and the amount of Sales Tax Generated from the Project during the fifth (5th) full year of operation of the Project.

Owner shall be entitled to receive a reimbursement payment for the costs of the Deferred Street Improvements if and only if the following conditions have been satisfied:

a. Not later than the fifth (5th) anniversary of the issuance of a Certificate of Occupancy for the improvements on the Property, Owner shall have secured and established a major automobile dealership (as defined below) on the Property. "Major automobile dealership" shall mean a dealership for the sale of, and ancillary uses relating to, new automobiles and/or motor vehicles, made by an industry-recognized major automobile manufacturer which produces at least 500,000 new cars and/or trucks annually, which is not already being sold within the City.

b. Owner has continuously operated its new & used car dealership business on the Property during such five-year period.

c. Owner received a reimbursement from the City under Section 5.b above.

d. The amount of Sales Tax Generated from the Project during the fifth (5th) year of operation is at least Fifty Thousand Dollars (\$50,000) greater than the amount of Sales Tax Generated from the Project during the first (1st) year of operation of the Project.

e. The amount of such reimbursement for the Deferred Street Improvements shall not exceed Fifty Thousand Dollars (\$50,000). In the event the Sales Tax Generated from the Project in the fifth (5th) year of the operation of the Project is less than Fifty Thousand Dollars (\$50,000) greater than those from the first (1st) year of operation, the amount of the reimbursement shall be reduced on a dollar-for-dollar basis.

#### **Section 8. Indemnification**

Owner hereby indemnifies and holds the City harmless from all demands, claims, actions and damages to any person or property arising out of or connected with the terms of this Agreement.

**Section 9. Default**

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and the other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement.

**Section 10. Termination of this Agreement**

This Agreement and the obligations of Owner and City hereunder shall terminate upon the earliest occurrence of any of the following events:

- a. The termination of Owner's operation of its new & used automobile dealership on the Property;
- b. When the total aggregate amount of the reimbursement payments paid to Owner by City equals the respective amounts set forth in Sections 5 and 7, above.
- c. Seven (7) years from the date of this Agreement.

**Section 11. Miscellaneous Provisions**

- a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- b. Time of the Essence. Time is of the essence of each and every provision of this Agreement.
- c. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attention: City Manager

San Luis Bay Motors  
2700 Theatre Drive  
Paso Robles, CA 93446  
Attention: Mr. Ottmar Thomas, Owner



d. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. Waiver. No waiver of any provision 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.

f. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

h. Entire Agreement. This Agreement and Exhibit A, which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the day first written above.

CITY:

-AND-

OWNER:

CITY OF EL PASO DE ROBLES

SAN LUIS BAY MOTORS  
a California Corporation

By: \_\_\_\_\_  
Duane J. Picanco  
Mayor

By: \_\_\_\_\_  
Ottmar Thomas

Its: Owner

Attest:

By: \_\_\_\_\_  
Madelyn Paasch  
City Clerk

## EXHIBIT A

### Economic Development Agreement ~ San Luis Bay Motors

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#### PROPERTY DESCRIPTION

Parcel 2 of Lot Line Adjustment PRAL 98-0204, Assessor's Parcel Number 009-851-009 and a Portion of 007.

#### PROJECT DISCRIPTION

A new and used car dealership with service garage would be built on a 3.79 acre site, located at 2700 Theater Drive, immediately north of Boatman Furniture. The site has approximately 230 feet of frontage on Theater Drive.

A 17,180 square foot building would be constructed in two phases, with 13,680 square feet being built in Phase I and 3,500 square feet being built in Phase II.

# **CONTINGENT REIMBURSEMENT AGREEMENT AND COVENANT NOT TO PROTEST**

## **RECITALS**

**A.** CGLPT Enterprises, a California general partnership (“CGLPT”) owns the real property commonly known as San Luis Obispo County Assessor’s Parcel Nos. 009–851–009 and 009–851–007 (Portion), Paso Robles, California (the “Premises”).

**B.** San Luis Bay Motors, Inc., a California corporation (“SLBM”) is a new and used car dealer which desires to relocate to the Paso Robles area.

**C.** CGLPT, as lessor, and SLBM, as lessee, are about to execute a Build-to-suit Lease and Purchase Option (the “Lease and Option”) pursuant to which SLBM will locate its dealerships to the Premises.

**D.** As an inducement for SLBM to move its San Luis Obispo dealerships to Paso Robles, the City of El Paso de Robles (the “City”) has offered SLBM certain financial incentives, the grant of which are subject to the parties execution of this Agreement. The terms of those incentives are described in the Economic Development Agreement Between the City of El Paso de Robles and San Luis Bay Motors (the “Economic Development Agreement”), a copy of which is attached as Exhibit “A.” CGLPT will benefit from those incentives because they are part of the inducement for SLBM to execute the Lease and Option.

## **AGREEMENT**

The parties agree as follows:

### **1. CONTINGENT OBLIGATION TO REIMBURSE ADVANCE**

If SLBM fails to take occupancy of the Premises for any reason, CGLPT shall reimburse the City for any funds advanced to SLBM pursuant to the Economic Development Agreement, not to exceed Fifty Thousand Dollars (\$50,000). Such reimbursement shall take place within sixty (60) days after written demand therefor by the City.

### **2. NO PROTEST OF FORMATION OF DISTRICT**

Neither CGLPT nor SLBM shall protest the formation of an assessment district, improvement district, or similar district to construct improvements at the intersections of Highways 46 West and 101 for the area served by Theater Drive, Ramada Drive, and South Vine Street. The then-fee owner of the Premises shall pay its pro-rata share of improvement and district organizational costs via assessments payable with—and in like manner to—real property taxes, based on the relative benefit of such improvements to the Premises. (As between CGLPT and SLBM, liability for such payment is governed by the Lease and Option.)

### **3. CITY IS THIRD-PARTY BENEFICIARY**

The City is a third-party beneficiary of this Agreement.

### **4. ATTORNEY’S FEES, ETC.**

In any action or proceeding arising out of or related to this Agreement or the transactions contemplated herein, the “Prevailing Party” shall be entitled to reimbursement of his reasonable costs and expenses, including fees of attorneys and experts. This Section 4(b) extends to

arbitration and other so-called "alternative dispute resolution" proceedings, as well as bankruptcy proceedings (including efforts to obtain relief from stay). "Prevailing Party" includes (i) a party who dismisses an action in exchange for sums allegedly due; (ii) a party who receives performance from the other party for an alleged breach of covenant or who receives a desired remedy that is substantially equal to the relief sought in an action; or (iii) a party determined to be the prevailing party by a court or arbitrator.

**5. WARRANTY OF AUTHORITY**

Each individual executing this Agreement represents and warrants that he/she is duly authorized to take that action on behalf of his/her indicated principal. The parties shall exchange certified copies of appropriate documents confirming such agency authority, as well as the due authorization of this transaction by the principals.

24, 1998. **IN WITNESS WHEREOF**, the parties have executed this Agreement on December

**CGLPT ENTERPRISES**, a California  
general partnership

By: Cheryl A. Parkin  
Cheryl A. Parkin, General Partner

By: Gary P. Boatman  
Gary P. Boatman, General Partner

By: Timothy D. Boatman  
Timothy D. Boatman, General Partner

**SAN LUIS BAY MOTORS, INC.**, a  
California corporation

By: Ottmar Thomas  
Ottmar Thomas, President

By: Jean C. Thomas  
Jean C. Thomas, Secretary

**APPROVED AS TO FORM:**

**CITY OF EL PASO DE ROBLES**

By: \_\_\_\_\_  
Duane J. Picanco, Mayor

**Attest:**

By: \_\_\_\_\_  
Madelyn Paasch, City Clerk